Decision No. 18473.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of R. C. Dearborn, as agent, for an order authorizing carriers operating within the State of California to publish a charge for transporting ice placed on top of the load in body of car by shippers.

Application No. 12788.

J.E.Lyons and Elmer Westlake, for applicant.
J.F.Bon, for Western Pacific Railroad.
Max Thelen, for Western Growers' Protective Association.
Edson Abel, for California Farm Bureau Federation.

BY THE COMMISSION:

O P I N I O N

This is an application filed by R. C. Dearborn as agent for and on behalf of the California rail lines parties to Perishable Protective Tariff No.2, C.R.C. No.1, seeking authority to establish on intrastate traffic the interstate provisions of Paragraph G, Rule 200-R, Paragraphs A to E inclusive, Rule 240-F, and Rule 242-B of Perishable Protective Tariff No.2, C.R.C. No.1, as specifically set forth in the application.

The Western Growers' Protective Association and California Farm Bureau Federation appeared in opposition to the granting of the application. Public hearings were held before Examiner Geary at San Francisco, and the application having been duly submitted and briefs filed, is now ready for our decision and order.

The proposed publication of Paragraph G, Rule 200-R, is claimed to be for the purpose of definitely providing that carriers will not place ice or salt in the body of refrigerator cars. At the present time the tariff provides that this service

246

will be rendered by carriers at regular icing stations in case of an emergency and/or upon request of shippers.

The establishment of Paragraphs A to E inclusive of Rule 240-F on intrastate traffic is claimed to be for the purpose of removing an ambiguity and clearly setting forth in the tariff a practice that has always been adhered to by carriers, namely, that on shipments under refrigeration moving with instructions "do not re-ice" the ice shall be loaded only in the bunkers of the car and not in the body of the car.

The establishment of Rule 242-B on intrastate traffic will have the effect of limiting the amount of ice placed on the top of the load in the body of the car, to 9600 pounds on shipments of cauliflower and Faba beans, and 7500 pounds for other vegetables and for berries, melons or other perishable fruit named in Section 2 of the tariff, and in addition it will provide for a charge of $5.00 per car if the journey is confined within the limits of a single origin group, $7.50 per car if confined within two contiguous origin groups, and in all other cases 20 per cent. of the stated refrigeration charge. Ice on top of the load in excess of 9600 or 7500 pounds, as the case may be, will be assessed on the basis of the freight rate applicable to the lowest rated commodity in the car.

The changes contemplated primarily relate to the practice of California producers in shipping vegetables of placing ice in the body of refrigerator cars for the purpose, it is claimed, of properly protecting the entire lading. This method of refrigeration, commonly referred to as top icing, has been used by the California shippers of vegetables since about the year 1920. There are two forms of top icing, the so-called pigeon-holing or checkerboard method, which consists of placing blocks of ice on top of each tier of crates throughout the load,

and the placing of either blocks of ice or crushed ice on the top tier of the lading. The former method is used principally in connection with shipments of cauliflower, and the latter is generally employed in moving shipments of lettuce, peas, beets, carrots, artichokes and other vegetables.

Prior to the inception of top icing, refrigeration of vegetables was accomplished by the use of ice in the bunkers of the car and in addition 25 to 30 pounds of ice in each crate with the vegetables. It was found however that this method of refrigeration was not satisfactory, for the two top tiers of crates reached the market in an unsatisfactory condition, due to the fact that the heavier and warmer air at the top damaged the vegetables. Frequently the price received for the crates in the upper tiers was but a fraction of the price received for the balance of the load, and often resulted in a total loss. To remedy this situation and to insure the entire lading reaching the destinations in a marketable condition shippers began placing blocks of ice on top of the load, in addition to the ice in the crates. This form of protection proved so satisfactory that today practically all shipments of vegetables, both intrastate and interstate, are so transported. With the advent of top icing the use of ice in the bunkers of the cars practically ceased, but shippers still continue to use crate icing. As illustrative of the extent that top icing is now used in preference to bunker icing, it is in evidence that during a test period, extending from February 18 to May 31, 1926, the Southern Pacific Company originated 747 cars of vegetables, of which 90 moved with ice in the bunkers and 657 with only top and crate icing.

For shipments with ice in the bunkers of the car, initially iced and re-iced en route, carriers receive a stated refrigeration charge, ranging from $30 to $55 per car, and for those

initially iced only and not re-iced en route, from $4.50 to $6.50 per ton for the ice furnished, plus an additional charge of $5.00, $7.50 or 20 per cent. of the stated charge, according to the length of haul.

The ice loaded in the crates is charged for on the basis of the freight rate applicable to the lading, less an allowance of 10 pounds of ice per crate for meltage, but neither a refrigeration nor transportation charge is made for the ice used in top icing. Shippers are now placing as much ice as they desire on the top of the tiers or crates, and usually provide between 6000 and 7500 pounds for all vegetables except cauliflower and Faba beans, when a somewhat greater amount of ice is ordinarily used.

Applicants contend they should receive some revenue from top icing to cover the cost of transporting the ice, and for the damage to the insulation of the floors and side walls of refrigerator cars caused by the water melting from the ice and saturating the cork, felt and other materials used for insulation.

The cost of transporting the ice is computed by applicants at 3.026 mills per ton mile, which amount is claimed to represent the average line haul cost per gross ton mile for all traffic moving over the lines of Class 1 carriers in the western district during the year 1924. Based on this factor the average cost for hauling top ice in the 747 cars moving via the Southern Pacific Company between various points in California during a period extending from February 18, 1926, to May 31, 1926, was $3.67 per car. During the same period the alleged cost of performing a similar service on 43 cars moving via the Santa Fe was $2.35 per car.

The damage to the insulation of the floors and side walls of refrigerator cars caused by dripping water is stated to be approximately $8.00 per car per trip. This amount, however, is purely an estimate by operating witnesses, and was unsupported by any definite cost figures. It is clear on this record that water from ice in the body of the car causes the insulation to deteriorate and lessen the life of refrigerator cars, but what portion of this damage is properly attributable to top icing is impossible to here determine. The damage resulting from water dripping on the floors of the car from ice in the crates must be taken into consideration. In a carload of lettuce there are about 320 crates, and as each crate contains 25 pounds of ice there is an aggregate of about 8000 pounds of crate icing. The meltage from the ice in the crates not absorbed by the lading passes to the floor of the car, as well as the meltage from the top ice. Thus, if the practice of top icing were eliminated entirely there would still remain the damage caused by the ice in the crates.

Protestants contend no charges should be assessed for the hauling of the top ice nor for damages to the equipment, upon the theory that the volume of the freight rates is sufficiently high to include these services. They point to the fact that from the Imperial Valley to Los Angeles, where the most important movements here under consideration obtain, that the Class C rates, the basis generally used in California for the movement of vegetables, were established by this Commission in Board of Supervisors of Imperial County vs. Southern Pacific, 22 C.R.C. 93, decided July 28, 1922. But the record in that proceeding does not bear out this contention, for the class rates were established without consideration to the icing services and

apply to all commodities moving under the classification rates by use of the Western Classification or the Exception Sheet. We said in considering the level of the fruit and vegetable rates (22 C.R.C. 93):

> "In the Western Classification, fresh fruit, N.O.I.B.N., moving in carload lots, is rated third class, while vegetables are rated fifth class. In the State of California, however, these commodities move under Class C rating, as per item published in the Exception Sheet, issued by Pacific Freight Tariff Bureau.
>
> "This Class C rating in California was established years ago to take care of the movement of fresh fruits and vegetables and is on a basis very much lower than the rates applying in the fruit and vegetable districts of other states."

The Interstate Commerce Commission in Docket 2262, Protective Service Rules on Perishable Freight 104, I.C.C. 79, decided December 10, 1925, a proceeding involving the same issues on interstate traffic, announced an investigation in cooperation with the Department of Agriculture. The Commission said:

> "We have authorized an investigation in cooperation with the Department of Agriculture into and concerning the practice of body icing vegetables, with a view to determining the value of body icing in the shipment of certain types of vegetables, the effect of the practice on the equipment, and means of obviating a deleterious effect upon the equipment from this practice. * * * * until the results of those tests are known, respondent cannot be expected to transport the ice placed upon the load without charge. As we have hereinbefore indicated, the damage to the equipment resulting from top ice is incapable of measurement. This is particularly so when wetting of the car floor and sides from the crate ice is considered. It does not follow however that the carrier should not be compensated in some way for whatever damage may be attributable to the top ice, and for the cost of transporting the ice."

Pending the results of the investigation the Federal Commisaion temporarily approved for interstate traffic a charge of $5.00 per car if the journey was confined to the limits of a

single origin group, $7.50 if confined to the limits of two contiguous origin groups, and in all other cases 20 per cent. of the stated refrigeration charge, and also limited the amount of top icing to 7500 pounds. For the purpose of assessing intrastate refrigeration charges California is divided into seven origin groups, designated as A to G inclusive, with but three groups, designated A to C inclusive, on interstate traffic. Roughly speaking, intrastate Group A embraces the territory east of and including Daggett and Banning; Group B, west of Daggett and Banning and south of the Tehachapi and Santa Barbara; Group C, San Joaquin Valley south of Stockton and Lathrop; Group D, Coast Division of the Southern Pacific north of Santa Barbara and south of San Jose; Group E, the territory north of San Jose west of Stockton and Sacramento and south of Sherwood and Willits; Group F, all territory north and east of Sacramento, Sherwood and Willits except points on the Fernley branch of the Southern Pacific, Stacy to Westwood inclusive, which latter territory embraces Group G.

The interstate Group A includes practically the entire state, with the exception of points on the San Diego and Arizona Railway, Campo and east thereof, points on the Holton Interurban Railway, and points on the Atchison, Topeka and Santa Fe Railway south of Cadiz, which have been designated as Group B, and points on the Southern Pacific, Banning and east, designated as Group C.

Under the proposed charges a shipment of vegetables top iced from Sacramento to Los Angeles, 447 miles, would be assessed $8.00 per car, but for a similar shipment via the Southern Pacific from Roseburg, Oregon, or Winnemucca, Nevada, to Los Angeles, 925 miles and 770 miles respectively, the charge would be only $7.50 per car, although the shipments moving from the interstate destinations are hauled directly through Sacramento

and other points in California where higher intrastate charges would prevail.

If the interstate groups were used as a basis for establishing the proposed charges in California, practically all intrastate shipments would be confined to a single origin group save those originating at or destined to a comparatively small portion of the state included within Groups B and C, the latter including practically all of the Imperial Valley. Thus, top iced vegetables originating at points west of Banning and north of Cadiz and destined to the primary consuming markets San Francisco and Los Angeles, would be assessed $5.00 per car, but if originating at points in the Imperial Valley or any other point in Groups B and C, the charge would be $7.50 per car. This difference in intrastate charges would create a discriminatory and unsatisfactory condition and is unwarranted.

After careful consideration of all the facts of record we are of the opinion and find that the application should be granted, subject however to a maximum charge of $5.00 per car in connection with shipments moving under the provisions of Rule 242-B.

We are of the further opinion that this proceeding should be held open and the matter given further consideration when the results of the investigation by the Interstate Commerce Commission and the Department of Agriculture referred to in Docket 2262 are determined.

O R D E R

This application having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the

conclusion contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that applicant be and he is hereby authorized to establish and file for application on intrastate traffic in California the interstate provisions of Paragraph G, Rule 200-R, Paragraphs A to E inclusive, Rule 240-F and Rule 242-B of Perishable Protective Tariff No. 2, C.R.C. No.1, subject to a maximum charge of $5.00 per car in connection with shipments moving under the provisions of Rule 242-B.

IT IS HEREBY FURTHER ORDERED that this proceeding be held open for such further order or orders as the Commission may deem proper.

Dated at San Francisco, California, this 6th day of June, 1927.

Commissioners.