

Decision No. 18696.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

AMERICAN POTASH & CHEMICAL CORPORATION,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
TRONA RAILWAY COMPANY,

Defendants.

ORIGINAL

Case No. 2315.

O. W. Tuckwood and D. E. Staley, for complainant.

James E. Lyons, F. W. Mielke and A. L. Whittle,
for the Southern Pacific Company, defendant.

BY THE COMMISSION:

O P I N I O N

Complainant, a corporation organized under the laws of the State of Delaware with its principal place of business at Trona, California, is engaged in manufacturing borax, boracic acid and muriate of potash. By complaint filed February 4, 1927, it alleges that the rate of 77 cents and the charges assessed and collected on 20 carloads of slack wooden barrels moved from San Francisco to Trona during the period from March 9, 1925, to December 21, 1926, inclusive were excessive, unjust and unreasonable in violation of Section 13 of the Public Utilities Act to the extent they exceeded charges based on a rate of 60 cents and minimum weight of 10,000 pounds per 36 foot car subject to the graduated minima for longer cars provided in Rule 34 of Consolidated Classification No. 4, C.R.C. 347.

Reparation and rate together with minimum weight for the future are sought. Rates are stated in cents per 100 pounds.

A public hearing was held May 18, 1927, before Examiner Geary at Los Angeles, and the case having been duly submitted and briefs filed is now ready for our opinion and order.

Trona is 31 miles from Searles, the junction point with the Southern Pacific, and is located on the Trona Railway Company, a corporation controlled by complainant. Searles is on the Owenyo branch of the Southern Pacific 48 miles from Mojave and 417 miles from San Francisco. The traffic between Mojave and Searles is extremely light, the grades are undulating, and the practice is to maintain higher rates on the Owenyo branch than on the main line.

The applicable rate of 77 cents is published in Item 90 of Southern Pacific Company's Joint Freight Tariff 863-J, C.R.C. 3086, and applies on barrels, casks, drums and kegs, wooden, also drums, fibreboard or pulpboard. The minimum weight in connection with the item is 15,000 pounds, subject to Rule 24 of Consolidated Classification No. 4. Under the provisions of Rule 34 the 15,000 pounds minimum applies to cars 36' 6" or less in length. For cars of greater length higher minimums are provided. For instance, cars over 39' 6" and under 40' 6" the minimum is 16,800 pounds, cars over 46' 6" and under 50' 6" in length the minimum is 24,300 pounds.

Wooden barrels are light articles and generally move on class rates. The carload ratings are third class on slack and fourth class on tight barrels. Minimum weights are 10,000 pounds and 12,000 pounds respectively, subject to the graduated minima provided by Rule 34 of the Classification.

The third class rate from San Francisco to Trona is \$1.57, therefore the assailed rate of 77 cents is 48 per cent. of the class rate applicable on slack barrels.

The record discloses that the shipments involved in

this proceeding moved in seventeen 40 foot cars and three 50 foot cars, the actual weights ranging from 7,912 pounds to 8,880 pounds for the 40 foot cars and 8,600 pounds to 8,910 pounds for the 50 foot cars. It is evident that these latter cars were not loaded to full visible space capacity; however, complainant states that 40 foot cars were ordered, and in order to avoid paying charges based on the minimum weight for a 50 foot car the full space capacity was not utilized.

Complainant compares the rate assailed with those on barrels and other containers from Los Angeles and San Francisco to destinations in California, Arizona, New Mexico and Utah, also between points east of the Rocky Mountains. Many of the rates shown are between points in Eastern and Middle Western territory, some of them between points in the States of New York and Pennsylvania where rate levels obtain which are generally lower than those in effect between the points involved, therefore do not reflect a proper comparison.

At the hearing it was developed that the rate assailed was established effective October 1, 1924, upon request of the Traffic Manager for complainant's predecessor, American Trona Company. A copy of his application requesting the establishment of a commodity rate was submitted as evidence subsequent to the hearing, and proposed a rate of 65 cents and a minimum weight of 14,000 pounds.

The present rate of 77 cents and minimum weight of 15,000 pounds yield a per car revenue of \$115.50, and the previously existing rate of \$1.57 with a minimum weight of 10,000 pounds yielded \$157, or \$41.50 less than that obtained under the rate effective prior to October 1, 1924.

Defendant Southern Pacific Company compares the rates on barrels and earnings thereunder with rates and earnings on other commodities moved from and to the points in the same general

territory as Trona for comparable distances. Following is a list of commodities, rates, distances, etc., taken from defendant's exhibits.

Commodity	From	To	Miles	Rate Per Cwt. Cents	Average Loading Per Car	Revenue Per Car	Revenue Per Mile Cents
Barrels - 40-ft. car	San Francisco	Trona	448	77	16800#	\$129.36	28.9
Bags, burlap	"	"	448	105½	42000#	443.10	98.9
Pipe, wooden	Oakland	West End	416	63	30000#	189.00	45.4
Borax	Trona	San Francisco	448	62	69200#	429.04	95.8
Soda ash	Cartago	"	486	28½	80200#	228.57	47.
" "	"	Los Angeles	218	21½	80200#	172.43	79.1

From the foregoing exhibits it is apparent that the revenue per car mile on barrels is low when compared with the revenue received for the transportation of other commodities moving from and to points in the vicinity of Trona.

The Interstate Commerce Commission in Case No. 12205, Pioneer Cooperage Company vs. Baltimore & Ohio Railroad, 68 I.C.C. 645, found the third class rate on slack barrels from St. Louis to Evansville, Louisville and Cincinnati not unreasonable. The distances and rates from St. Louis to these points were shown as follows:

Evansville, 165 miles, 49½ cents.
 Louisville, 274 miles, 58½ cents.
 Cincinnati, 339 miles, 61½ cents.

The matters involved in the case at issue are similar to those considered by the Federal Commission in Case No. 1934, Montague & Company vs. Atchison, Topeka & Santa Fe Railway et al., 17 I.C.C. 72, involving minimum weights and charges on furniture. In its decision the Commission said:

"In dealing with the transportation of such a commodity the carrier may both for the purpose of securing the greatest possible use of the capacity of its car and for the purpose of protecting itself against an unduly low charge for a carload movement, establish a minimum below which the carload rate shall not be applied. Nor is the minimum thus established of necessity unlawful, because it may happen in some instances that the weight prescribed

can not by any possibility be put into the car. It is no hardship in such case to require the shipper to pay either the L.C.L. rate on the number of pounds actually shipped by him or the C.L. rate on the number of pounds fixed by the minimum.

"The proposition of the defendants is that a minimum may be established which shall protect the carrier against being required to haul its car for less than a fair compensation, and that so long as the combination of rate and minimum in a particular case does not yield to the railway more than a just sum for the transportation of the car, the minimum is not unlawful.

"It is certain that the objective point is the charge to the shipper for the service, which is worked out by the combined application of rate and minimum. It would seem to follow, therefore, that there is a connection between the minimum and the rate. If the minimum is reduced the rate may be properly advanced, and if the minimum is increased the rate should be reduced. This principle has been observed in fixing the rates and the minimums applicable to the movement of many kinds of furniture, and within proper limits is a reasonable one."

From the testimony it is evident that slack barrels can not be loaded to the prescribed minimum, but tight barrels which are included in the same rate load to approximately the minimum weight.

It is a matter of record that the present rate is the combination Class B rate to and from Searles, made 55½ cents to Searles plus 21½ cents beyond, and these figures reduced to a percentage basis allow the Southern Pacific 72% and Trossa Railway 28%.

Using a 36 foot 6 inch car as a basis the present rate and minimum weight yield revenue of \$115.50 per car, and per car mile revenue of 25.78 cents, and the proportion accruing to the Southern Pacific out of this charge is \$83.20 per car and 19.95 cents per car mile. If based on a minimum of 14,000 pounds, the minimum weight in general use on both interstate and intrastate traffic in this territory for commodity rates on barrels, the 77¢ rate yields revenue of \$107.80 per car and car mile revenue of 24.06 cents. The Southern Pacific Company's proportion based on 72% of the through rate would be \$77.70 per car and 18.59 cents per car mile. The earnings of 18.59 cents per car mile for a haul

of 417 miles compares favorably with revenue of \$51.80 per car and 16.55 cents per car mile earned on barrels moving from San Francisco to Bakersfield for a haul of 313 miles.

Defendant Trena Railway Company presented no evidence nor made any effort whatsoever to defend the case. The testimony given at the hearing developed that it and complainant are under the same management and control.

After giving consideration to all the evidence, exhibits and briefs we are of the opinion and find that the rate assailed is not excessive, unjust or unreasonable. We further find that the minimum of 15,000 pounds per 36 foot 6 inch car was, is and for the future will be excessive to the extent that it exceeds minimum weight of 14,000 pounds subject to the graduated minima provided by Rule 34 of the Consolidated Classification; that complainant made the shipments as described, paid and bore the charges thereon, and has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate and minimum herein found reasonable and that it is entitled to reparation with interest at 6% per annum.

Complainant will submit statement to defendant for check. Should it not be possible to reach an agreement as to the amount of reparation, the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

O R D E R

This case being at issue upon complaint and answer on file, having been duly heard and submitted by the parties, full investigation of the matters and things involved having been had, and the Commission having filed its opinion, which said opinion is hereby referred to and made a part hereof,

IT IS HEREBY ORDERED that defendants, Southern Pacific Company and Trena Railway Company, be and they are hereby notified

and required to desist on or before twenty (20) days from the date of this order and thereafter to abstain from publishing, maintaining and applying rate and minimum weight not in accordance with the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that defendants, Southern Pacific Company and Trena Railway Company, be and they are hereby notified and required to establish on or before twenty (20) days from the date of this order, upon notice to this Commission and to the general public by not less than five (5) days' filing and posting in the manner prescribed in Section 14 of the Public Utilities Act, and thereafter to maintain and apply to the transportation of barrels, in carloads, the rate and minimum prescribed in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that defendants, Southern Pacific Company and Trena Railway Company, according as they participated in the transportation, be and they are hereby instructed to refund with interest at the rate of 6% per annum to complainant, American Potash and Chemical Corporation, all charges collected in excess of the rate and minimum herein found reasonable for the transportation of 20 carloads of slack wooden barrels moved from San Francisco to Trena during the period from March 9, 1925, to December 21, 1926, inclusive.

IT IS HEREBY FURTHER ORDERED that as to all other respects the complaint in the above entitled proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 8th day of August, 1927.

Leon Whitell
Thos B. Rowan
W. J. Carr