

Decision No. 18988.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ARTHUR M. LOEB, doing business as  
Allied Construction Co.,

Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY,

Defendant.

**ORIGINAL**

Case No. 2348.

Arthur M. Loeb, for complainant.

Forrest A. Betts, for defendant.

BY THE COMMISSION:

O P I N I O N

Complainant, Arthur M. Loeb, an individual doing business under the fictitious name of the Allied Construction Company, is a contractor with offices in the Wilcox Building, Los Angeles. By complaint filed April 8, 1927, and amended May 18, 1927, he alleges that certain demurrage charges assessed by defendant for the detention in March and April, 1925, of numerous carloads of cement, rock and sand consigned for delivery on defendant's siding at Abila, were unlawful, unjust and unreasonable and in violation of the provisions of the Public Utilities Act.

Complainant seeks an award of reparation approximating \$94 and the cancellation of bills rendered for charges assessed but not paid. Certain allegations are also made having reference

to damages to a passenger car of defendant struck by the unloading crane of the complainant and for expenses incurred because of delays in placing cars, etc., but since we have no jurisdiction over these difficulties they will not be further discussed.

A public hearing was held September 6, 1927, before Examiner Geary at Los Angeles, and the matter having been duly submitted is now ready for our opinion and order.

Complainant avers he made a verbal agreement with an agent of the Pacific Electric Railway for the delivery of carloads of cement, rock and gravel on the passing tracks at Abila switch, and that this switch was to be at his disposal until certain street work was completed. Approximately 75 carloads of the material referred to were unloaded, and demurrage totalling \$210 was originally assessed on 32 cars. Of this amount \$32 was cancelled, \$70 actually paid, leaving \$108 in dispute. Defendant filed a suit in the Municipal Court, City of Los Angeles, for the sum of \$108, and the court entered a judgment against the complainant in the sum of \$67, together with the costs in the sum of \$48.45.

Complainant contends the demurrage charges accrued because cars were not spotted at the most convenient points for unloading and that there was a ditch alongside the tracks, making it difficult and sometimes impossible to reach the cars. The record however shows the cancellation of \$20 because of the placing of certain cars opposite this ditch.

Defendant introduced the testimony of its agents, car checkers, conductors, train-masters and section foremen, and also furnished exhibits describing in detail the manner in which the cars were dealt with. The traveling auditor of the Pacific Car Demurrage Bureau, the organization having jurisdiction over contested demurrage charges, presented an exhibit giving a complete

record of the movement of each and every car. The testimony showed that Abila switch was a passenger passing track for interurban trains and not a regular unloading track, and that special permission was given for the use of the track to this complainant in order to facilitate a street improvement contract; that the cars were at first unloaded with a crane and clam-shell bucket, which proved dangerous to the operation of passenger trains, and after some material had been delivered it was found necessary to discontinue the use of the crane because it had collided with a passenger coach, destroying a part of the roof of the car and endangering passengers. The testimony further showed that complainant had failed to completely unload a number of cars, leaving tools, cement sacks, etc., in the equipment, thus preventing their removal. Also at times the rock and sand was permitted to cover the tracks, making it impossible for the switching crews to remove the cars.

Defendant introduced an exhibit showing a track check record made by the Compton Station daily for 29 days, excluding Sundays and holidays, from March 12, 1925, when the first of the cars arrived, to April 14, 1925, when the last car was released. Attention is called to the fact that the track check was made every day at 7:00 A.M., and that when cars were unloaded later during the day they would be shown as empties the following morning. The charges are governed by Pacific Car Demurrage Bureau Tariff 1-0, C.R.C. 14. Rule 2 of the tariff provides that 48 hours' free time will be allowed for loading or unloading of carload freight, and Section D of Rule 3 reads:

On cars to be delivered on other-than-public delivery tracks, time will be computed from the first 7:00 A.M. after actual or constructive placement on such tracks. Time computed from actual placement on cars placed at exactly 7:00 A.M. will begin at the same 7:00 A.M.; actual placement to be determined by the precise time the engine cuts loose.

Note 1 reads:

"Actual Placement" is made when a car is placed in an accessible position for loading or unloading or at a point previously designated by the consignor or consignee.

And Note 2 reads:

Any railroad track or portion thereof assigned for individual use will be treated as "other-then-public-delivery track".

Complainant's testimony is in no manner conclusive, is not substantiated by any written records, and presents no proof as to time or circumstances when defendant failed to perform the proper services.

After giving a consideration to all of the evidence and the exhibits, we are of the opinion and find that the demurrage charges assailed have not been shown to be unreasonable, in violation of the tariff, or unlawful. There being no supporting proof of the allegations, the complaint must be dismissed.

O R D E R

This case 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 conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that the complaint in the above entitled proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 19<sup>th</sup> day of October, 1927.

Ernest DeWitt  
Ed Sealey  
Leon Whitell  
W. H. R. R.  
M. A. C.  
Commissioners.