

Decision No. 18994.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SPERRY FLOUR COMPANY, a corpo-
ration,
Complainant,

vs.

ISLAND TRANSPORTATION COMPANY,
a corporation,
Defendant.

ORIGINAL

Case No. 2335.

E. B. Smith, for complainant.

Gwyn H. Baker, for defendant.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation organized under the laws of the State of California, with its office in San Francisco and a mill at South Vallejo, California, and is engaged in buying, selling and manufacturing grain and grain products. It is alleged by complaint seasonably filed (a) that the rate of \$2.00 per ton, minimum weight 12 tons, assessed by defendant for the transportation of flour and articles taking the same rate, moving during the period extending from June 1, 1926, to March 10, 1927, inclusive, from South Vallejo to Stockton, was at the time the shipments moved and for the future will be unjust, unreasonable and in violation of Section 15 of the Public Utilities Act to the extent it exceeded or may exceed \$1.40 per ton, minimum weight 30

tons; and (b) that the concurrently effective rates maintained by defendant on flour and related articles between San Francisco and Stockton and between Oakland and Stockton, of \$1.40 per ton and \$1.60 per ton respectively, minimum weight 40 tons, are and for the future will be unduly discriminatory to South Vallejo, in violation of Section 19 of the Act.

Reparation and just, reasonable, non-prejudicial and non-preferential rates for the future are sought. Rates will be stated in dollars and cents per ton of 2,000 pounds.

A public hearing was held before Examiner Geary at San Francisco, and the case having been duly submitted and briefs filed, is now ready for our opinion and order.

South Vallejo is situated at the confluence of Napa Creek and San Pablo Bay, it is served by defendant and the Southern Pacific Company, and the distance by water to Stockton is approximately 76 miles and by rail 108 miles. Complainant's Vallejo mill is located on tidewater and is equipped with docks, spur tracks and other facilities to enable it efficiently and quickly to receive and ship its products by either rail or water. The major portion of complainant's coarse grain is secured in the Pacific Northwest and adjacent territory and moves either by rail direct, or by rail to Portland, thence by water to Vallejo, where it is manufactured into flour and other cereal products. In distributing the manufactured articles to the Stockton district complainant can use the services of both defendant and the Southern Pacific Company.

The present rate of defendant from South Vallejo to Stockton is \$2.00 per ton and that of the Southern Pacific \$2.10 per ton. The \$2.00 rate was assessed and collected on the shipments here involved which moved during the period extending from December, 1926, to March, 1927 inclusive. Prior to December, 1926

defendant erroneously applied a rate of \$1.40, the concurrent rate on flour and mill stuff from San Francisco to Stockton, which rate was not in effect at the intermediate points. For a time defendant through an oversight published this violative rate of \$1.40 without express authority of this Commission under the provisions of Section 24 (a) of the Public Utilities Act, a situation which has since been cured by an appropriate order. Complainant admits that on and after May 30, 1926, when the tariff was corrected, the rate of \$2.00 was applicable, and the record indicates that whatever undercharges existed on the shipments moving subsequent thereto have been paid to defendant. Complainant maintains that on the shipments moving before May 30, 1926, the published rate of \$2.00 from South Vallejo to Stockton was inapplicable, contending for the \$1.40 rate upon the grounds that South Vallejo is directly intermediate between San Francisco and Stockton. The record however does not sustain the contention that South Vallejo is an intermediate point on this water route. The only evidence submitted in this connection was some photographs taken from a point in the main channel in Carquinez Straits, showing that the docks of complainant were visible to the naked eye. The actual distance from the Carquinez Straits fairway to the docks at South Vallejo is not in evidence, nor does the record show that the vessels traveling by any of the regular routes, California Navigation and Improvement Company, California Transportation Company, or Southern Pacific Company, traversing the waterways between Stockton and San Francisco, pass near or touch at South Vallejo. From the evidence submitted it appears South Vallejo is an out-of-line landing wharf on the route between San Francisco and Stockton, and in the absence of specific proof to the contrary cannot be given the status of an intermediate point as contemplated by Section 24 (a) of the Public Utilities Act.

Complainant in support of its plea that the South Vallejo-Stockton rate was and is unreasonable per se compares the assailed rate of \$2.00 with the rates concurrently maintained by defendant on flour of \$1.40 minimum weight 40 tons between San Francisco and Stockton; \$1.60 minimum 40 tons and \$2.00 minimum 12 tons between Oakland and Stockton, and a rate of \$1.35 minimum 20 tons on grain and mill feed between Stockton and South Vallejo. Complainant points to the fact that the haul from San Francisco to Stockton is farther than from South Vallejo to Stockton and also contends that the tidal conditions, loading facilities, handling and other operating factors are favorable for the handling of grain at South Vallejo. While the evidence indicates the operating conditions from South Vallejo to Stockton are on the whole more satisfactory than between Oakland-San Francisco and Stockton, complainant has failed to show on this record that the rates used as a measure are in and of themselves reasonable.

Complainant also compares the assailed rate with the rate of \$1.70, minimum weight 10 tons, on sugar between Oakland-Crockett on the one hand and Stockton on the other. This rate is applicable only via the California Transportation Company and is non-intermediate by authority of this Commission, Decision No. 3428, June 19, 1916, in Case No. 214-C, 10 C.R.C. 377, and Decision No. 7933, August 17, 1920, in Application No. 5723, 18 C.R.C. 646. No evidence was submitted to show that this terminal rate on sugar was per se a just and reasonable rate. We have repeatedly held that mere comparisons of rates such as these have little if any probative value.

Defendant contends the rates between terminal points are unremunerative, and directs attention to the fact that there is now pending before this Commission a petition, Case No. 2319, Bay and River Boat Owners' Association versus practically all

river boat operators, for authority to increase the flour rates between San Francisco-Oakland and Stockton from \$1.40 to \$2.00 per ton. Defendant claims that flour is a difficult commodity to handle, being very susceptible to damage, that in most cases it must be transported in closed barges with the decks and sides lined with paper, and that extra care is required in trucking by reason of the fact that the bags are easily broken. In addition it is maintained that in handling flour from South Vallejo to Stockton it is not possible except in remote instances to utilize the barges traveling between San Francisco and Stockton, but it is necessary to send special equipment from Stockton. Witnesses for defendant testified that the average barge time in the transportation of a load of flour from Vallejo to Stockton was approximately 48 hours. This time is segregated into 12 four-hour periods, as follows: first, the movement from Stockton to Vallejo; second, the loading at the barge; third, the movement from Vallejo to Stockton; and fourth, the unloading at destination. If a barge is available near complainant's mill the time is reduced by approximately 12 hours. There was further testimony to the effect that the minimum labor cost for the operation of a barge in the round trip is \$140, and to this sum should be added the cost of fuel, insurance and overhead. The average transportation revenue received is \$200 per trip, which under the proposed rate would be reduced to approximately \$140 per trip. Defendant contends that the rate of \$1.40 between San Francisco and Stockton is extremely low, and that it was necessary to maintain this rate inasmuch as the California Transportation Company published a rate of the same volume, but the record shows that defendant did not handle any flour for this complainant from San Francisco to Stockton by its barges.

A copy of defendant's financial statement for the year 1926, submitted in evidence, shows that the transportation revenue received was \$94,515.62, and the operating expenses including taxes and depreciation were \$150,978.24, resulting in a deficit from operations of \$56,462.62. The sum of \$27,725.85 was charged to depreciation of property and equipment. A deduction of this amount from the operating expenses leaves an out-of-pocket loss of \$28,736.77 for the year. Prior years also show operations at substantial losses.

After careful consideration of all the facts of record we are of the opinion and find that complainant has failed to show that the assailed rate is either unjust or unreasonable.

There now remains for consideration complainant's allegation that the rate of \$1.40 per ton from San Francisco to Stockton is unduly discriminatory to complainant.

In selling flour and other milled products at Stockton complainant is more or less in competition with the flour mills at San Francisco and Oakland, and also with mills in the Pacific Northwest which forward their products to San Francisco by steamer and reship from that port to Stockton. Complainant forwards consignments of flour by rail and water from its mill at Spokane, Washington, to San Francisco, and practically all of its movement of flour from San Francisco to Stockton is moved by the California Transportation Company. Defendant, while maintaining the same rate as the California Transportation Company from San Francisco to Stockton, did not during the year 1926 handle any of the tonnage between these two cities. If any discrimination exists by reason of the lower rate between San Francisco and Stockton, it is not caused by defendant but by a carrier not a party to this proceeding. Discrimination to be unlawful must be unjust, and to be unjust it

must be shown that the rates at the preferred points are not justified and that the circumstances and conditions are the same as at the point which is alleged to be damaged. This record shows that the circumstances and conditions surrounding the rates between San Francisco and Oakland are different from those which govern the South Vallejo to Stockton rate. As previously stated, the first mentioned rates were established by this defendant to meet the competition of the California Transportation Company, and that this carrier does not operate between South Vallejo and Stockton. Carrier competition has long been recognized as a controlling factor in creating different circumstances and conditions, warranting a lower level of rates between points where the competition exists than between points not so situated. The mere showing that rates from one point in a territory are higher than rates from other points in that territory whether maintained by the same carrier or different carriers, does not establish the fact of undue prejudice or preference. (Texas and Pacific R.R. vs. Interstate Commerce Commission, 162 U.S. 197; Interstate Commerce Commission vs. Alabama Midland R. Co., 168 U.S., 144; Louisville and N. R. Co. vs. Behlmer, 175 U.S., 648; East Tennessee V. & G. R. Co. vs. Interstate Commerce Commission, 181 U.S., 1; Interstate Commerce Commission vs. Louisville & N. R. Co., 190 U.S., 273.)

We are of the opinion and find from all the facts of record that the rate assailed was not in the past nor is it now unduly discriminatory. The complaint should 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 this proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 3d day
November
of ~~October~~, 1927.

Edmund A. ...
Chasey
Leon ...
Thos ...
M. J. ...
Commissioners.