

JLA
Decision No. 19171.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

HURCHINSON CO., INC.,

Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY CO., BAY POINT & CLAYTON
RAILROAD CO.,

Defendants.

Case No. 2390.

E. W. Hollingsworth, for complainant.

Platt Kent and Berne Levy, for defendant The
Atchison, Topeka and Santa Fe Railway Company.

R. B. Mitchell, for defendant Bay Point & Clayton
Railroad Company.

BY THE COMMISSION:

O P I N I O N

Complainant, a corporation organized under the laws of the State of California, with its principal place of business at Oakland, is engaged in the production and sale of crushed rock, sand and gravel. By complaint filed July 15, 1927, as amended at the hearing it is alleged that the rate charged for the transportation of 44 carloads of crushed rock moving during the month of July, 1925, from Dwight to Matheson was excessive, unjust and unreasonable to the extent it exceeded 60 cents per ton of 2000 pounds.

Reparation only is sought. Rates will be stated in cents per ton of 2000 pounds.

A public hearing was held before Examiner Geary at San

Francisco October 3, 1927, and the case having been duly submitted is now ready for our opinion and order.

The shipments here involved moved via The Atchison, Topeka and Santa Fe Railway from Dwight to Bay Point, thence Bay Point and Clayton Railroad to Matheson, a distance of 38 miles. Defendants assessed and collected the lawfully applicable rate of \$1.00, made by a combination of commodity rates over the junction point, the factors being 50 cents from Dwight to Bay Point and 50 cents from Bay Point to destination.

The present rate of \$1.00 is approximately 122 per cent. higher than the rate prior to the commencement of federal control of railroads, June 25, 1918. The rate then in effect was 45 cents, made by a combination of separately established commodity rates over Bay Point, the factor being from Dwight to Bay Point 25 cents and from Bay Point to Matheson 20 cents. On June 25, 1918, under authority of General Order No. 28 of the Director General of Railroads both factors were increased 20 cents, subject however to the so-called combination rule issued by the Director General of Railroads and later published in Agent B. T. Jones' Combination Tariff 228, C.R.C. No. 1, which combination tariff provided a temporary method of constructing through rates for separately established commodity factors but not to exceed the flat amount under the provisions of General Order No. 28. Thus the through rate on June 25, 1918, became 65 cents. Effective August 26, 1920, a further increase of 25 per cent. (18 C.R.C. 646) made the through rate 90 cents. Effective July 1, 1922 (Reduced Rates 1922, 68 I.C.C.676), the factor from Dwight to Bay Point was reduced to 50 cents, making a through rate of 80 cents. The combination tariff was not a satisfactory method for computing rates, and on September 1, 1923, the rail lines in this territory, by appropriate authority, cancelled the provisions of the combination tariff, subject to the stipulation that specific through rates not in excess of those provided

by the combination tariff would be established between points where there was a movement of any consequence. At the time the combination tariff was cancelled there was no movement from Dwight to Matheson, hence on and after September 1, 1923, a rate of \$1.00, the full combination of locals, was applicable.

Complainant contends that not only has the Dwight to Matheson rate been increased in a greater proportion than other rates on crushed rock, but it is also higher than the joint line mileage scale of rates maintained by carriers in this territory. The scale, published in Pacific Freight Tariff Bureau Tariff 166-B, C.R.C.385, applies jointly between points on The Atchison, Topeka and Santa Fe Railway, Southern Pacific Company, Western Pacific Railroad, Central California Traction Company, Sacramento Northern Railroad, Tidewater Southern and Visalia Electric Railroad in the territory north of Bakersfield, Caliente and Santa Barbara, and provides a rate of 60 cents for a two-line haul of 40 miles or less. The Bay Point and Clayton is not a party to the joint mileage tariff, but complainant points to the fact that defendants established on sand, effective February 6, 1926, rates of 60 cents from Cowell to Richmond, 34 miles, and 70 cents from Cowell to Oakland, 45 miles. Defendants testified that the latter two rates were established to meet the competition of sand moving by barges from plants located on Sacramento River and its tributaries and to utilize empty equipment returning from Cowell after having moved into that point with gypsum, but the reduced rates to the San Francisco Bay points failed to secure a single ton of crushed rock, sand or gravel.

Defendants also contend that the general level of rates in Northern California is depressed by water competition in and around San Francisco Bay points and its tributaries. They point to Case No. 2087, Union Rock Company vs. Atchison, Topeka and Santa Fe Railway et al., 27 C.R.C. 285, wherein Commissioner

Squires said:

"Defendants, on the other hand, maintain that the northern California scale was and is predicated upon water competition and that this water competition was brought about by the operation of boats and barges on San Francisco, San Pablo and Suisun Bays and on the Sacramento, Yuba and San Joaquin rivers and other streams as far north as Red Bluff in the Sacramento Valley and as far south as Merndon in the San Joaquin Valley. This competition, it is alleged, was active as far back as 1897, and although it is not now so keen as then, the influence of the water-borne tonnage still governs the northern California rate adjustments on crushed rock, sand and gravel to a very large extent.

"The record shows that at the time the rail carriers first felt the effects of this water competition they endeavored only to establish low rates at points where the competition was active and where it was necessary to go below the normal rates in order to secure to the rail carriers a portion of the water-borne traffic. But as additional plants were opened up at inland points the carriers were forced to establish rates whereby producers at those points could reach the consuming markets in competition with shippers enjoying the water-influenced rates. Following the San Francisco fire and earthquake of 1906 an abnormal demand was created for building materials. This condition resulted in the development of many sand and gravel deposits, and in order to permit shippers at the new points to compete for San Francisco business rates were established comparable with the water-compelled rates. Thus the low basis of rates originally intended to apply only between points where there was actual water competition gradually extended to the inland points not served by water until the rates were practically uniform in northern California. Defendants contend that the entire northern California scale reflects either water or market competition and is manifestly less than reasonable, per se."

A witness for the Bay Point and Clayton Railroad testified that the operating conditions in handling the traffic over his line were unusually difficult because of a ruling grade of 2 per cent. encountered in the haul from Bay Point to Matheson. There was also testimony to the effect that the siding facilities at Matheson were not adequate to handle more than three carloads,

making it necessary to haul a portion of complainant's consignment to Cowell, and when the siding was clear to return them to Matheson.

The Bay Point and Clayton Railroad was primarily constructed to serve the cement plant of the Henry Cowell Lime and Cement Company at Cowell, and the latter company controls through stock ownership the Bay Point and Clayton Railroad. Practically 90 per cent. of the traffic handled by this defendant consists of the movement of cement from Cowell to points beyond Bay Point.

The average weight of complainant's shipments was 101,700 lbs. per car, yielding a ton-mile revenue of 2.63 cents, a car-mile revenue of \$1.34, and a per-car revenue of \$50.85. Under the 60-cent rate sought in the instant proceeding the revenue per ton-mile would be 1.58¢, per car-mile 80.2 cents, and per car \$30.51; and under the rate of 80 cents in effect prior to the cancellation of the provisions of the combination tariff, heretofore referred to, the revenue per ton-mile would be 2.1 cents, per car-mile \$1.07, and per car \$40.68.

After careful consideration of the record we are of the opinion and find that the assailed rate was unjust and unreasonable to the extent it exceeded 80 cents; that complainant paid and bore the charges on the shipments in question and has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable, and is entitled to reparation with interest at 6 per cent. per annum on all shipments here involved on which the cause of action accrued within the statutory period.

O R D E R

This case being at issue upon complaint and answer on file, 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 said opinion is hereby referred to and made a part hereof,

IT IS HEREBY ORDERED that defendants, The Atchison, Topeka and Santa Fe Railway Company and the Bay Point and Clayton Railroad Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund to complainant, Hutchinson Co., Inc., with interest at 6 per cent. per annum, all charges they may have collected in excess of 80 cents per ton of 2000 pounds for the transportation of carload shipments of crushed rock involved in this proceeding, moved from Dwight to Matheson during the month of July, 1925, on which the cause of action accrued within two years prior to July 15, 1927.

Dated at San Francisco, California, this 23^d day of December, 1927.

Ernest W. Cook
Clarence
Leon Whipple
David L. Lott
W. J. Case
Commissioners.