

Decision No. 19456.**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PIONEER RUBBER MILLS,

Complainant,

vs.

Case No. 2426.

SOUTHERN PACIFIC COMPANY, THE ATCHISON,
TOPEKA AND SANTA FE RAILWAY COMPANY,

Defendants.

D. K. Donelson, for complainant.

A. L. Whittle and C. N. Bell, for defendant Southern
Pacific Company.Berne Levy, for defendant The Atchison, Topeka and
Santa Fe Railway 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 San Francisco, is engaged in manufacturing and selling mechanical rubber goods. It alleges by complaint filed October 6, 1927, that the rates charged on numerous carloads of junk rubber tires shipped from San Francisco and Oakland to Pittsburg during the period November 30, 1925, to March 26, 1927, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act to the extent they exceeded 6 cents per 100 pounds.

We are asked to prescribe a rate of 6 cents for the future and to award reparation. Rates are stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at San Francisco January 24, 1928, and the case having been duly submitted is now ready for an opinion and order.

The points of origin and destination are served by both defendants also by water carriers operating on San Francisco Bay and the Sacramento and San Joaquin Rivers. The distances via the Southern Pacific to Pittsburg from San Francisco and Oakland are 49 miles and 45 miles respectively; via The Atchison, Topeka and Santa Fe Railway the distance from San Francisco is 43 miles and from Oakland 44 miles.

Junk rubber tires vary in price from \$11.00 to \$17.00 per ton and are rated Class "C" in the Western Classification. The lawfully applicable Class "C" rate of 8½ cents was charged on the shipments moving prior to March 26, 1927. On and after that date charges were assessed on the basis of a commodity rate of 7 cents which was voluntarily established by each defendant. These rates yielded ton-mile earnings ranging from 3.47 cents to 3.95 cents on the shipments moving prior to March 26, 1927, and from 2.86 cents to 3.25 cents on those that moved after that date.

Complainant compares the rates assailed with those on crude rubber, window glass, scrap paper, rags, rosin, iron and steel castings and other articles from San Francisco, Oakland, Stockton and Wilmington to destinations in California. Practically all of the rates shown are applicable on commodities that are not comparable with the rates on junk rubber tires, and the earnings, although in certain instances slightly lower than those under the rates assailed, are not helpful in determining the issues herein. Such comparison is of little or no probative value, it not being shown to what extent, if any, the commodity here under consideration comes into competition with the commodities instanced.

Defendants introduced exhibits comparing the rates charged and earnings thereunder with the following rates and earnings on junk rubber tires to Pittsburg: from Modesto 14 cents 64 miles, San Jose 13 cents 71 miles, Sacramento 13 cents 75 miles, and Santa Rosa 16 cents 86 miles. These rates yield ton-mile earnings of 4.38 cents, 3.66 cents, 3.47 cents and 3.72 cents respectively. Other comparisons include rates of 7½ cents from Los Angeles to El Monte 13 miles and Oakland to Manteca 12½ cents for 80 miles. They also refer to rates on lumber, grain, asphalt, sulphur, infusorial earth and fuel oil for distances ranging from 24 to 60 miles; however, these commodities are not similar to junk rubber tires, and furthermore the rates shown are not between the points involved in this proceeding, therefore do not reflect a proper comparison.

Defendants contend that the general level of rates between San Francisco-Oakland and Pittsburg is depressed by active water competition in and around San Francisco Bay and tributaries thereto. They contend further that prior to the establishment of the present 7-cent rate complainant was advised of the action to be taken and that this rate was entirely satisfactory to the complainant. A copy of its letter addressed to The Atchison, Topeka and Santa Fe Railway under date of January 19, 1927, bearing out defendant's testimony, was introduced at the hearing.

In Consolidated Southwestern Cases, 123 I.C.C. 203-450 the Federal Commission prescribed a distance scale of class rates also commodity rates on numerous articles, and on scrap rubber for distances ranging from 40 to 50 miles a rate of 13 cents was prescribed.

The primary question for determination is the reasonableness of the rates charged. Complainant offered no conclusive evidence to show that the rates assessed were unreasonable per se or in comparison with other rates on junk rubber tires.

Defendants show that the ton-mile earnings under these rates were substantially lower than those under the rates contemporaneously applicable from a number of points to Pittsburg for somewhat longer hauls where the operating conditions are more favorable than those prevailing between San Francisco and Pittsburg.

After consideration of the testimony and exhibits we are of the opinion and find that the rates charged were not unjust or unreasonable. The record is convincing that for the future the current 7-cent commodity rate is reasonable for the service involved. The complaint will be dismissed.

O R D E R

This case being at issue upon complaint and answers on file, having been duly heard and submitted by the parties, 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 the complaint in this proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 10th day of March, 1928.
~~February~~

C. Deane

Thos. B. Lott

M. J. Carr
Commissioners.
