JLA.

Decision No. 20134.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

AMERICAN REFRACTORIES COMPANY, a corporation, and THE VITREFRAX COMPANY, a corporation,

Complainants,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation,

Defendant.

Case No. 2495.

F. W. Turcotte and B. H. Carmichael, for complainants.

E. W. Camp and B. Levy, for The Atchison, Topeka and Santa Fe Railway Company, defendant.

BY THE COMMISSION:

O P I N I O N

Complainants are corporations engaged in the manufacture of refractories, with their principal places of business at Los Angeles. By complaint filed February 3, 1926, it is alleged that the rate assessed and collected on 76 carloads of crude clay moving during the period extending from October 16, 1924, to July 10, 1925, both dates inclusive, from San Juan Capistrano to Los Angeles were excessive, unjust and unreasonable to the extent it exceeded 5½ cents per 100 pounds.

Informal complaints covering these claims were filed with the Commission within the two-year statutory period, our files I.C. 35907 and I.C. 32281.

Reparation only is sought. Rates will be stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at Los Angeles June 6, 1928, and the case having been duly submitted is now ready for an opinion and order.

The crude clay here at issue was used by complainants in the manufacture of fire brick. It is a comparatively low grade commodity, having a value f.o.b. point of origin of approximately $3.00 to $5.00 per ton, is hauled in gondola type equipment and capable of heavy loading.

Complainants' cars were loaded to an average of 58.61 tons and moved a distance of 56 miles at the lawfully applicable rate of 7 cents as published in defendant's Tariff 9788-I, C.R.C. No. 535, holding the rate from Farr to Los Angeles, a distance of 91 miles, as maximum at San Juan Capistrano. The shipments yielded an average per car revenue of $82.06, per car mile revenue of 146.54 cents, and per ton mile revenue of 25.00 mills.

Effective July 15, 1925, defendant voluntarily reduced the 7-cent rate to 5½ cents, and it is upon the basis of the subsequently established rate that reparation is sought.

Complainants in support of their plea that the assailed rate was unreasonable cite rates on crude clay maintained by defendant in Southern California ranging from 2½ cents for a haul of 18 miles to 7½ cents for a haul of 99 miles. These rates, together with the rate assailed and that sought, and the ton mile and per car mile revenue thereunder based on the average per car loading of 58.61 tons are shown in the following table:

From	To	Miles	Rate	Per ton Mile (mills)	Per car Mile (cents)
		RATE ASSAILED			
San Juan Capistrano	Los Angeles	56	7	25.0	146.54
		RATE SOUGHT			
San Juan Capistrano	Los Angeles	56	5½	19.64	115.12
		COMPARISONS			
Farr	Los Angeles	91	7	15.38	90.18
Farr	Los Nietos	79	6	15.19	89.03
Corona	Los Nietos	35	4	22.85	133.97
Corona	Los Angeles	47	5	21.27	124.72
Vidal	Amboy	84	7	16.66	97.69
Cardiff	San Diego	27	4	29.63	173.66
Sorrento	San Diego	18	3½	38.88	227.94
Cardiff	Los Angeles	99	7½	15.15	88.81
Alberhill	San Dimas	74	7	18.91	90.18

Thus it may be seen from the above that the assailed rate produced a higher per ton mile and per car mile revenue than do the rates compared except from Cardiff and Sorrento to San Diego.

Defendant contends the rate of 5½ cents was established July 15, 1925, solely to meet the needs of the industry, and that this voluntary action on its part should not be construed as an admission that the 7-cent rate was unreasonable. It also maintains the assailed rate was not only ½ cent lower than that in effect June 24, 1918, prior to the general wartime increases and reductions, but compared favorably with concurrently effective rates for hauls ranging from 18 to 88 miles from Murrieta to Colton; Gypsum to Los Angeles and Los Nietos; Alberhill to Corona, Redondo Beach and Olive; Temecula to Los Angeles; Corona to Olive and Antioch to Oakland and Richmond. Defendant refers to the fact that this Commission in Merchants Traffic Association et al. vs. A.T.& S.F.Ry.

et al., 4 C.R.C. 268 (February 27, 1914), prescribed rates of 6½ cents and 5½ cents on crude clay from Alberhill to Los Angeles and Los Nietos, respectively, and these rates subject to the general advances and reductions made since then are now 9 cents and 8 cents. The present distance from Alberhill to Los Angeles is 65 miles and from Alberhill to Los Nietos 53 miles, but the Commission established these rates before defendant constructed its Corona Cutoff, the distances at the time being 104 miles from Alberhill to Los Angeles and 91 miles from Alberhill to Los Nietos. Based on these mileages and the average loading of complainant's shipments, the present rate to Los Angeles yields a per ton mile revenue of 17.30 mills and per car mile revenue of 101.44 cents, while to Los Nietos the per ton mile revenue is 17.58 mills and per car mile revenue 103.05 cents.

In the same proceeding we set rates of 3½ cents from Corona to Los Angeles, 48 miles, and 2½ cents from Corona to Los Angeles, 36 miles, and these rates subject to the general wartime increases and reductions are now 5 cents and 4 cents respectively.

After careful consideration of all the facts of record we are of the opinion and so find that the assailed rate was unjust and unreasonable to the extent it exceeded 5½ cents. We further find that complainants paid and bore the charges on the shipments in question, have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate found reasonable, and are entitled to reparation with interest at the rate of 6 per cent. per annum.

Defendant at the hearing questioned the right of the Commission to award reparation, inasmuch as the formal complaint herein was not filed within two years after the cause of action accrued. As previously stated, these claims were presented to the Commission by the filing of an informal complaint within the statutory two-year

period, and this was held, by our Decision 19854 of June 1, 1928, in Case 2490, Van Camp Sea Food Company vs. L.A.& S.L.R.R., to be in substantial compliance with the provisions of Section 71 of the Public Utilities Act.

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 defendant, The Atchison, Topeka and Santa Fe Railway Company, be and it is hereby authorized and directed to refund to complainants, American Refractories Company and The Vitrefrax Company, according as their interests appear, with interest at 6 per cent. per annum, all charges collected in excess of 5½ cents per 100 pounds for the transportation of the shipments of crude clay here involved moving from San Juan Capistrano to Los Angeles during the period from October 16, 1924, to July 10, 1925, both dates inclusive.

Dated at San Francisco, California, this 20th day of August, 1928.

Leon O. Whitsell
Commissioners.