

Decision No. 21257.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

C. R. BIRD, an individual doing business under the trade name of "HERCULES SALES COMPANY", and HERCULES GASOLINE COMPANY, a corporation,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY, PACIFIC ELECTRIC RAILWAY COMPANY, LOS ANGELES & SALT LAKE RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

Defendants.

ORIGINAL

Case No. 2627.

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

J. P. Quigley and E. E. Bennett, for the Los Angeles & Salt Lake Railroad Company, defendant.

James E. Lyons and A. L. Whittle and C. N. Bell, for the Southern Pacific Company and all other defendants not specifically represented.

BY THE COMMISSION:

O P I N I O N

Complainant C. R. Bird is an individual doing business under the trade name of "Hercules Sales Company", with his principal place of business at Los Angeles, and is engaged in marketing petroleum refined oils. Complainant Hercules Gasoline Company is a corporation engaged in manufacturing and marketing petroleum refined oils with its principal place of business at Los

Angeles. By complaint filed November 15, 1928, and as amended at the hearing it is alleged that the rates assessed on numerous carloads of gasoline and kerosene from Los Angeles, Watson, Signal Hill, Wilmington, Burnett and Torrance to Imperial moving during the period subsequent to April 1, 1925, were, are, and for the future will be, (a) unjust and unreasonable in violation of Section 13 of the Public Utilities Act; (b) unduly prejudicial and disadvantageous to complainants, in violation of Section 19 of the Act; and (c) as to shipments originating on an industry track of The Atchison, Topeka and Santa Fe Railway at Los Angeles and destined to Imperial, inapplicable under the tariffs, in violation of Section 17 of the Act and in violation of the long and short haul provision of Section 24(a) of the Act.

The shipments involved in this proceeding moving more than two years prior to the filing of the complaint, although registered with the Commission within the two years' statutory period for the purpose of tolling the statute of limitations, are barred from further consideration by reason of the decision of the California Supreme Court rendered April 26, 1929, in Los Angeles & Salt Lake Railroad vs. Railroad Commission of California et al., S.F. No. 13152, 77 Cal.Dec. 594.

Reparation and rates for the future are asked. Rates will be stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at Los Angeles March 13, 1929, and the case having been submitted is now ready for an opinion and order.

Complainants' shipments which are not barred from further consideration consisted of 77 tank cars of gasoline and 28 tank cars of kerosene originating at Los Angeles on the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway, and one car of gasoline originating at each of the following four

points: Signal Hill and Wilmington on the Pacific Electric Railway, Burnett on the Los Angeles & Salt Lake Railroad, and Torrance on the Atchison, Topeka and Santa Fe Railway. All of these shipments were destined to Imperial, a point on the Southern Pacific 213.8 miles, 232.6 miles, 232.5 miles, 232.8 miles and 237.8 miles southeast of Los Angeles, Signal Hill, Wilmington, Burnett and Torrance, respectively. Prior to April 1, 1927, complainant Hercules Gasoline Company, and subsequent thereto the Hercules Sales Company, maintained at Imperial a bulk station, consisting of an unloading rack and storage tanks for the distribution of gasoline and kerosene in motor trucks to adjacent points throughout the Imperial Valley. The rates assessed complainants' shipments from all points of origin to Imperial were 56 cents prior to August 20, 1927, and 45 cents thereafter, except that against the shipments originating at Los Angeles on the rails of the Atchison, Topeka and Santa Fe Railway, defendants assessed in addition to these line haul rates a switching charge of \$2.70 per car.

Complainants' allegation that the assailed rates were and are unreasonable rests upon a comparison with rates on gasoline, kerosene and lubricating oil between selected points in California for varying distances which produce in some instances a lower per ton per mile and per car mile revenue than that obtained under the rates here involved. In so far as the present rate of 45 cents is concerned, these comparisons are not convincing viewed in the light of the rates on gasoline prescribed by this Commission in Richfield Oil Company vs. Sunset Railway et al., 24 C.R.C. 736. In that proceeding we found as reasonable from Bakersfield to Modesto, Stockton and Redlands rates on gasoline of 40 cents, 45 cents and 51 cents respectively for distances of 200 miles, 229 miles and 235 miles. We also established from Kerto to Modesto a rate of 43 cents for 240 miles and to Ventura 46 cents

for 238 miles. The record however is convincing that the 56-cent rate in effect prior to August 20, 1927, was unreasonable to the extent it exceeded the subsequently established rate of 45 cents, and we so find.

The allegation of undue prejudice and disadvantage is based upon the present rate adjustment on gasoline and kerosene from San Diego to Imperial. The rail distance between these two points is 151 miles, as compared with distances varying from 214 to 238 miles from Los Angeles and the harbor points to Imperial. The present rate from San Diego is 32 cents, 13 cents under the present Los Angeles rate. Prior to March 8, 1927, the spread between the two rates was 4 cents, the San Diego rate being 52 cents and the Los Angeles rate, as heretofore stated, 56 cents. On March 8, 1927, the San Diego rate was reduced to  $36\frac{1}{2}$  cents and on August 15, 1927, it was further reduced to 32 cents, the present level. Complainants are here seeking the restoration of the 4-cent differential.

In marketing their products complainants meet with competition of other concerns which transport gasoline and kerosene from Los Angeles harbor points to San Diego via tank vessels, and reship from the latter point to Imperial. Complainants contend that with the exception of gasoline and kerosene defendants now maintain class and commodity rates from San Diego to Imperial which are either on the same level as the Los Angeles-Imperial rates or reflect a slight differential under the Los Angeles rates, and their failure to treat the oil rates in the same manner has placed them at a disadvantage in meeting the competition from gasoline and kerosene moving through the port of San Diego.

The record however shows that the San Diego-Imperial rate was established to meet the truck competition. As previously stated, the rail distance from San Diego to Imperial is 151 miles. By highway the distance is only 118 miles, and it was in an endeavor

to meet this competition that defendants first reduced the San Diego rate from 52 cents to 36½ cents, and later were forced to reduce the rate to 32 cents because the tonnage continued to move by truck. In view of the circumstances and conditions surrounding the establishment of the present rail rate it cannot be held to create undue or unlawful prejudice to complainants. Indeed, if the San Diego rate were adjusted to reflect a 4-cent differential under the present Los Angeles rate herein found reasonable, as complainants are here contending for, the record shows that the competition complained of would still exist, the only difference being that the preponderance of the tonnage from San Diego to Imperial would move by truck, thus forcing the railroads to relinquish the traffic they now enjoy.

There now remains for consideration complainants' third allegation, that the charges on certain shipments were inapplicable under the tariffs. The cause for this allegation is due to the assessing and collecting of a switching charge of \$2.70 per car in addition to the line haul rates on shipments originating on the rails of The Atchison, Topeka and Santa Fe Railway at Los Angeles, switched by that carrier to the interchange track of the Southern Pacific Company, and line-hauled by the Southern Pacific Company to Imperial. During the time the shipments moved The Atchison, Topeka and Santa Fe Railway and Southern Pacific Company maintained in Pacific Freight Tariff Bureau Tariff 167-C, C.R.C. 346, from El Segundo, a point 17 miles west of Los Angeles, joint rates of the same volume as the local rates of the Southern Pacific Company from Los Angeles to Imperial, viz., 56 cents prior to August 20, 1927, and 45 cents thereafter. On shipments moving from El Segundo to Imperial no switching charge was assessed. It is complainants' contention that the joint rates from El Segundo to Imperial established the maximum charge which could be assessed on the shipments from Los Angeles to Imperial. This question has

heretofore been considered by this Commission in Case 2176, Decision No. 17175 of July 31, 1926, 28 C.R.C. 440, and again in Case 2588, Decision No. 20781 of February 13, 1929, and it was stipulated at the hearing that in so far as the evidence or testimony in Case 2588 was pertinent or relevant, it should be deemed to supplement the testimony of both the complainants and defendants in this proceeding. In both Cases 2176 and 2588 we held that under the intermediate application rule contained in the tariffs issued by the Pacific Freight Tariff Bureau, including the tariff in which the rate from El Segundo to Imperial is named, the joint rates contained therein established as maximum the charges that could be made on traffic originating at or destined to the interchange point on the direct route with connecting carriers, and that the assessing and collecting of a switching charge at the intermediate interchange point which resulted in higher total charges than applied from or to more distant points under the same line haul rate, was in violation of the tariffs and of the long and short haul provisions of Section 24(a). The decision in Case 2588 was affirmed by Decision No. 20947 of April 10, 1929, denying respondents' petition for rehearing, and the California Supreme Court by its decision rendered May 27, 1929, denied carriers' petition for a writ of review of our Decision No. 20947.

Upon consideration of all the facts of record we are of the opinion and so find that the present rate of 45 cents applying on gasoline and kerosene from Los Angeles and Los Angeles Harbor points to Imperial is not unjust, unreasonable, or unduly prejudicial or disadvantageous. We do find, however, that the rate of 56 cents assessed and collected prior to August 20, 1927, was unjust and unreasonable to the extent that it exceeded the subsequently established rate of 45 cents; that the switching charge of \$2.70 per car assessed and collected on complainants' shipments originating on the rails of The Atchison, Topeka and Santa Fe

Railway at Los Angeles was contrary to the tariffs in violation of Section 17(2) of the Act and resulted in charges which in the aggregate exceeded those applicable from or to more distant points in violation of Section 24(a) of the Act. We further find that complainants made the shipments as described, paid or bore the charges thereon, and have been damaged to the extent of the difference between the charges paid and those herein found reasonable, applicable under the tariffs, and otherwise lawful, and are entitled to reparation with interest on all shipments upon which the cause of action accrued within two years immediately preceding the filing of this complaint.

Complainants should submit a statement of the shipments to defendants for check. Should it not be possible to reach an agreement as to the amount of reparation the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

#### O R D E R

This case being at issue upon complaint and answers 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 precedes this order,

IT IS HEREBY ORDERED that defendants, Southern Pacific Company, Pacific Electric Railway Company, Los Angeles & Salt Lake Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund, with interest at six (6) per cent. per annum, to complainants, C. R. Bird, an individual, and Hercules Gasoline Company, according as their interests may appear, all charges collected in excess of 45 cents per 100 pounds for the transportation from Los Angeles, Signal

Mill, Wilmington, Burnett and Torrance to Imperial of the shipments of gasoline and kerosene involved in this proceeding upon which the cause of action accrued within the two-year period immediately preceding the filing of this complaint.

IT IS HEREBY FURTHER ORDERED that defendants, Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company, according as they participated in the transportation, be and they are hereby notified and required to cease and desist and thereafter to abstain from assessing, collecting, maintaining or applying charges for the transportation of complainants' shipments of gasoline and kerosene from Los Angeles to Imperial originating on an industry track of The Atchison, Topeka and Santa Fe Railway within the switching limits of Los Angeles which in the aggregate exceed those applicable on like traffic from El Segundo to Imperial.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 1<sup>st</sup> day of June, 1929.

Thomas D. Lott  
C. A. ...  
Leon ...  
M. P. ...  
Commissioners.