

Decision No. 21818.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

J. E. JOENSTON, doing business as
Johnston Rock Company,

Complainant,

vs.

Case No. 2647.

SOUTHERN PACIFIC COMPANY,
THE WESTERN PACIFIC RAILROAD COMPANY,
SACRAMENTO NORTHERN RAILWAY,
INDIAN VALLEY RAILROAD COMPANY,

Defendants.

ORIGINAL

E. W. Hollingsworth, for complainant.

C. N. Bell and A. B. Mason, for Southern Pacific
Company, defendant.L. N. Bradshaw and J. P. Haynes, for The Western
Pacific Railroad Company and Sacramento Northern
Railway, defendants.

BY THE COMMISSION:

OPINION ON REHEARING

The Commission on June 18, 1929, rendered its Decision No. 21255 in the above entitled case. Petitions for rehearing were filed by complainant and by defendant Southern Pacific Company, hereinafter referred to as the Southern Pacific. On August 20, 1929, complainant's petition was denied and that of defendant Southern Pacific granted in so far as it referred to a violation of Section 33 of the Public Utilities Act. The effective date of the order was extended until further notice of the Commission. A further hearing was held before Examiner Geary at

San Francisco September 24, 1929, and the proceeding submitted for our final consideration.

In our original decision herein we found that the combination of local rates applying to sand, rock and gravel from Butte Creek on the Southern Pacific to Chico, thence Sacramento Northern to Oroville, destined to points on the Western Pacific Railroad between Tambo and Calneva, were unjust and unreasonable to the extent they exceeded just and reasonable rates as specifically set forth in the order. With the exception of rates to Tambo, Greybros and Craig the prescribed rates via the Sacramento Northern were of the same volume or 1/2 cent per 100 pounds lower than the rates then in effect via the Southern Pacific to Marysville thence Western Pacific.

At the original hearing a witness testified that the reason complainant desired to use the three-line route via the Sacramento Northern was on the assumption that because it was shorter, lower rates would be established than via the longer two-line route.

The record shows that the actual time required for the movements via either route is not materially different and that aside from the rate consideration shippers are not concerned in the route.

Section No. 33 of the Act, upon which defendants' petition for rehearing is based, empowers this Commission to order the establishment of through routes and joint rates, the section reading in part as follows:

"Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares or charges in force over two or more common carriers, between any two points in this state, are unjust, unreasonable or excessive, or that no satisfactory through route or joint rate, fare or charge exists between such points, and that the public convenience and necessity demand the establishment of a through route and joint rate, fare or charge

between such points, the commission may order such common carriers to establish such through route * * * * : provided, that where any railroad, or passenger stage corporation which is made a party to a through route has itself over its own line an equally satisfactory through route between the termini of the through route established, such railroad, or passenger stage corporation shall have the right to require as its division of the joint rate, fare or charge its local rate, fare or charge over the portion of its line comprised in such through route."

At the original hearing defendant Southern Pacific did not strenuously object to the establishment of rates via its line to Chico, Sacramento Northern to Oroville, thence Western Pacific, on the grounds that it would be short-hauled. Rather it endeavored to show that the combination of locals via the three-line route, which were the only rates here at issue, were reasonable.

However, it has long been recognized as the right of the originating carrier to retain the longest haul possible on tonnage which it originates. Our Decision No. 19457, Case No. 2253, Western Pacific Railroad Company vs. Northwestern Pacific Railroad Company, decided March 10, 1928, 31 C.R.C. 321, involves identically the same situation. The Western Pacific, the originator of the traffic, sought joint rates via its much longer and more difficult route through San Francisco in connection with the Northwestern Pacific instead of turning the tonnage over to the Southern Pacific at Sacramento for delivery by that line via the short route to the Northwestern Pacific at Shellville Junction. At page 324 we employed this language:

"Complainant, being the originator of the traffic, is entitled to the longest reasonable haul and could not under ordinary circumstances be asked to short-haul itself because of the desire of a third carrier to interject itself as a participating carrier."

Counsel for defendant Southern Pacific announced that his company was willing to publish the rates prescribed over the three-line route (Southern Pacific, Sacramento Northern and Western Pacific) via the two-line route (Southern Pacific and Western Pacific) if the Commission on reconsideration found such action justified.

In the light of the issues as here framed, the record as now made, and the case cited, we find that the two-line route via Marysville, giving the originating carrier the long haul, meets all of the requirements of the shipping public. In this proceeding we can make no order establishing the rates through Marysville, but since defendant Southern Pacific has volunteered to publish via its line through Marysville the rates we found just and reasonable via the Sacramento Northern to these destination points on the Western Pacific as set forth in our Decision No. 21255, supra, we are of the opinion and find that this proceeding should be dismissed.

O R D E R

This case having been duly reheard 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 Decision No. 21255 dated June 18, 1929, in the above entitled proceeding be and it is hereby set aside and the case dismissed.

Dated at San Francisco, California, this 26th day of November, 1929.

Thos D. Lovell
C. Leary
Emerson
Leon White
Commissioners.