

Decision No. 21920.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PACIFIC COTTONSEED PRODUCTS CORPORATION,
SAN DIEGO OIL PRODUCTS CORPORATION,
(Pacific Cottonseed Products Corporation,
Successor),

Complainants,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY,
SAN DIEGO AND ARIZONA RAILWAY COMPANY,

Defendants.

Case No. 2645.

L. E. Stewart, for complainants.

R. G. Dilworth and F. B. Dorsey, for San Diego
and Arizona Railway Company, defendant.

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

C. F. Reynolds, for San Diego Chamber of Com-
merce, intervener on behalf of complainants.

BY THE COMMISSION:

O P I N I O N

Complainant San Diego Oil Products Corporation was during the period December 31, 1925, to August 14, 1927, a corporation organized under the laws of the State of California with its principal place of business at Potash, California, and was engaged in the crushing, manufacturing, buying, selling and shipping of cottonseed and its products and the buying, selling, feeding and shipping of live stock. Under date of August 15, 1927, said com-

plainant was succeeded by complainant Pacific Cottonseed Products Corporation, also organized under the laws of the State of California with its principal place of business at Potash, which latter corporation is engaged in the same pursuit. By complaint filed January 10, 1929, it is alleged that the rates charged on various carloads of (1) cottonseed from Potash to San Diego and Los Angeles; (2) cottonseed oil from Potash to Los Angeles and San Francisco; (3) one carload of cottonseed oil from Potash to South San Francisco and return to Potash; (4) one carload of cottonseed oil from Potash billed to San Francisco but stopped at San Diego and returned to Potash; and (5) cattle (beef and feeder) moved between Potash and Los Angeles, were, are and for the future will be unjust and unreasonable in violation of Section 13 of the Public Utilities Act. It is also alleged that defendants are assessing a separate minimum charge of \$15.00 per car for each line in connection with joint through rates on freight, in carloads, which practice was, is and for the future will be unjust and unreasonable in violation of Section 13 of the Act. Reparation and just, reasonable and lawful rates for the future are sought. The San Diego Chamber of Commerce intervened in behalf of complainants. Rates are stated in cents per 100 pounds except as noted.

Public hearings were held before Examiner Geary at Los Angeles August 7 and 8, 1929, and the case having been submitted is now ready for an opinion and order.

Complainant operates a cottonseed crushing mill and oil refinery at Potash, an industrial suburb of San Diego located on the line of the San Diego and Arizona Railway Company, hereinafter referred to as the San Diego and Arizona, 6.7 miles south of San Diego. Cottonseed is secured principally from the Imperial Valley in California and the Yuma Valley in Arizona and is moved to Potash via the San Diego and Arizona or in connection with

that line via El Centro. At complainant's plant the cottonseed is crushed and the crude oil drawn off and refined and subsequently reshipped via the San Diego and Arizona to San Diego, thence via the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the Santa Fe, to the consuming markets, the principal ones being San Francisco and Los Angeles, located on the Santa Fe 676.0 miles and 126.0 miles respectively north of San Diego. The by-products derived from these operations consist largely of cottonseed hulls, cake and meal, which are used chiefly as a stock food. Complainant also maintains stockyards at Potash for the feeding and fattening of cattle. Feeder stock is shipped or driven to Potash for fattening, after which it is reshipped to the markets for slaughter, principally to Los Angeles. Complainant in the conduct of its cattle fattening business absorbs large quantities of its by-products, shipping the balance to various points for use as a stock food.

COTTONSEED

The movement of cottonseed subsequent to January 10, 1927, amounted to but nine carloads; four averaging 50,820 pounds were local shipments to San Diego during March 1928, and five averaging 65,860 pounds moved to Los Angeles during May 1928. Charges on the shipments to San Diego were collected at the San Diego and Arizona Local Class "A" rate of $12\frac{1}{2}$ cents, and on the shipments to Los Angeles a rate of 34 cents, being the combination of class rates over San Diego, composed of the factors of $12\frac{1}{2}$ cents Potash to San Diego and $21\frac{1}{2}$ cents beyond. Complainant seeks rates for the future and reparation based on a rate of $3\frac{1}{2}$ cents for the local movement Potash to San Diego and a rate of $17\frac{1}{2}$ cents plus \$2.70 per car as the through charge Potash to Los Angeles.

The rates assailed, together with the earnings thereunder, are compared by complainant with lower rates and earnings on the same commodity for equal or comparative distances over the Southern Pacific Company. Defendants attack these comparisons as improper, asserting that the rates used apply from cottonseed producing points to crushing mill points in connection with a regular and substantial movement, whereas the shipments here at issue are only occasional and in the reverse direction of the normal movement.

Complainant also makes comparisons with lower freight rates, proportional and otherwise, applying between closely related points within a centralized industrial area. The rate from Potash to Los Angeles is compared with the rates applying to other commodities from various points to the industrial suburbs of Los Angeles, which rates are made by adding proportional per car rates to the Los Angeles line haul rates. In connection with these comparisons complainant contends that the instant charges should not exceed the San Diego rate by more than the amount of the per car proportional rates assessed for similar movements in the vicinity of Los Angeles. The record shows there is no movement of cottonseed under the rates compared and also that the proportional rates in the Los Angeles territories were established to meet varying competitive conditions not existing in connection with a movement from Potash. The record fails to prove the existence of the same circumstances and conditions at Potash as at the points with which comparison is made.

The movement of cottonseed is from the fields to the mills and as no cottonseed is produced in the vicinity of Potash the probability of any future shipments to San Diego and Los Angeles is extremely remote. The natural and normal rates for sporadic tonnage are the class rates.

After consideration of all the facts of record we are of the opinion and so find that the cottonseed rates assailed were not and are not unjust or unreasonable.

COTTONSEED OIL

Complainants attack as unreasonable the rates on cottonseed oil from Potash to Los Angeles, San Francisco, Oakland and stations within the switching limits of these points. They also attack rates assessed on one carload of cottonseed oil from Potash to San Diego and returned to Potash and one carload from Potash to South San Francisco and returned to Potash.

In so far as rates from Potash to San Francisco and Oakland are concerned this Commission found in J. G. Boswell Company et al. vs. A.T. & S.F. Ry., 33 C.R.C. 308, that a rate of 41 cents between those points was not unreasonable. In the same proceeding we prescribed 25½ cents as a reasonable rate between Potash and Los Angeles. Complainant Pacific Cottonseed Products Corporation was a party in the Boswell case, supra, and there is nothing now presented to show that our conclusions in that case rendered June 28, 1929, were incorrect.

There is no regular movement of cottonseed oil from San Diego to Potash nor from South San Francisco to Potash, the returned shipments here involved being occasioned by errors in forwarding a different quality of oil than that desired by the purchasers. On the one shipment from Potash to San Diego and return defendant (San Diego and Arizona) collected a commodity rate of 5 cents for the outbound movement from Potash to San Diego and a rate of 11 cents, the applicable minimum scale fifth class rate from San Diego to Potash. On the one shipment of cottonseed oil from Potash to South San Francisco defendant assessed the outbound commodity rate of 41 cents and on the return movement a rate of 49½ cents, the latter being the applicable combination of class and commodity rates over

San Diego. The factor from South San Francisco to San Diego was a commodity rate of 38½ cents and from San Diego to Potash the applicable minimum scale fifth class rate of 11 cents.

While we have heretofore held that for sporadic movements shippers are not entitled to special commodity rates, the fact that these were returned shipments place them in a somewhat different category. Defendants have provided reduced rates for returned shipments subject to certain conditions which were not complied with by complainants. However, the facts of record in connection with the shipments here involved lead us to conclude that complainants were at least entitled to the outbound rates for the return movement from San Diego to Potash and from South San Francisco to Potash.

We are of the opinion and so find that the charges assessed against these returned shipments were unreasonable to the extent that they exceeded 5 cents San Diego to Potash and 41 cents San Francisco to Potash; that the shipments as described were made; that complainants paid and bore the charges thereon at the rates herein found unreasonable; that they have been damaged thereby in the amount of the difference between the freight charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest at 6% per annum.

CATTLE

Subsequent to January 10, 1927, the movement of feeder cattle from Los Angeles to Potash amounted to five cars during January 1928, on which charges were collected at a combination rate of \$64.50 per car, composed of \$49.50 to San Diego and \$15.00 beyond. The movement of beef cattle from Potash to Los Angeles amounted to 23 cars, 16 during September 1927, and 7 during October 1927, on which charges were collected at a combination rate of \$73.50 per car, composed of \$15.00 to San Diego and \$58.50 beyond.

Complainants seek rates on the cattle between Los Angeles and Potash based on a charge of \$2.70 per car over the present San Diego rates. As a justification they compare the extent of the switching limits at Los Angeles with the lesser extent of the limits in the San Diego-Potash territory, contending that the charge between Los Angeles and Potash should not exceed the San Diego rate by more than the amount charged within the switching limits at Los Angeles on traffic incidental to a line haul. The proposed basis has the equivalent effect, in so far as particular movements are concerned, as would be accomplished by the extension of the San Diego switching limits of the Santa Fe to include the station of Potash on the San Diego and Arizona. Revision of the switching limits is not here at issue and the comparisons therefore have no value.

Complainants as an alternate would make the rates on cattle between Los Angeles and Potash \$4.50 per car higher than the present rates in effect between Los Angeles and San Diego. In support of this basis they refer to the rates to and from Industrial and Forest Lawn, which rates are made by adding a proportional per car charge of \$4.50 to the Los Angeles rates. Industrial and Forest Lawn are suburbs of Los Angeles, Industrial being located on the Southern Pacific 4 miles from Los Angeles, and Forest Lawn on the Los Angeles & Salt Lake Railroad 11 miles from Los Angeles. Complainants contend that Potash is an industrial suburb of San Diego and that it bears the same relationship to San Diego that the stations of Industrial and Forest Lawn bear to Los Angeles. Defendants contend the \$4.50 per car charge between Los Angeles and its suburbs was published to meet the industrial land necessities and the manufacturing, competitive conditions not existing at Potash, and also that the operating conditions surrounding a movement between Potash and San Diego are

substantially different than exist in connection with a movement between Los Angeles and its industrial suburbs.

The rates assailed were also compared by complainants with single and joint line mileage rates on feeder cattle and beef cattle prescribed by the Interstate Commerce Commission in Arizona Cattle Growers Association vs. Apache Railway Company et al., 101 I.C.C. 181, for application between points in Arizona and points in California on lines of the defendants which are lower for the distances here involved. The rates, however, to points on the San Diego and Arizona are restricted to that portion of their line from Wilsie to Division inclusive. Comparison was also made with single line mileage rates applying between points in California over the lines of the Santa Fe and Southern Pacific which are slightly higher than the rates under the Arizona-California scale but lower for the distances involved than are the assailed rates.

Defendants contend these shipments of cattle were sporadic and that the present rates are reasonable for the light tonnage. Irrespective of the past movements, complainants have shown the shipments to be potentially regular and are entitled to reasonable rates.

Upon consideration of all the facts of record we are of the opinion and so find that the rates assailed were, are, and for the future will be unreasonable to the extent they exceeded, exceed or may exceed \$57.50 per 36-foot car for feeder cattle from Los Angeles to Potash, and \$66.50 per 36-foot car for beef cattle from Potash to Los Angeles; that the shipments as described were made and complainants paid and bore the charges thereon at the rates herein found unreasonable; that they have been damaged thereby in the amount of the difference between the freight charges paid and those which would have accrued at the rates herein found

reasonable; and that they are entitled to reparation, with interest at 6% per annum.

Complainant Pacific Cottonseed Products Corporation will submit statement 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.

MINIMUM PER CAR CHARGE

The minimum charge rule governing carload shipments moving over the San Diego and Arizona at local rates is \$15.00 as published in Tariff 21-A, C.R.C. 68, subject to certain exceptions. This is the minimum charge generally assessed by the majority of the railroad systems throughout the country, having been prescribed during the period of federal control for application uniformly over all federal controlled lines, and it was adopted by many of the non-federal controlled carriers. The rule provides that when the total charges on a continuous through movement of a carload shipment are obtained by combination of separately established rates to and from junction points the minimum charge of \$15.00 per car applies not to each of the separately established factors but to the total charges made by such combination.

This local tariff of the San Diego and Arizona contains the uniform rule but restricts its application to the total through charges to the eastern portion of its line from El Centro to Coyote Wells inclusive. On freight moving over the balance of its line between San Diego and the Mexican border the minimum charge of \$15.00 per car is exacted for each separately established rate or factor. In explanation of this restriction defendant San Diego and Arizona stated that during the period of federal control and at the time the uniform rule was first established the line from El Centro to Coyote Wells was owned and operated

by the Southern Pacific Company, a federal controlled line. The line from San Diego to the Mexican border was not under federal control, and while adopting a portion of the rule prescribed for federal controlled lines it did not duplicate the rule in its entirety. When the line of the Southern Pacific extending from El Centro to Coyote Wells was taken over by the San Diego and Arizona the situation was left unchanged, resulting in a different and higher minimum rule being in effect over the western division than applied over the eastern division. Defendant contends that the San Diego and Arizona with its large investment and its small volume of business is entitled to at least \$15.00 per car as a minimum.

The record shows that the minimum charge of \$15.00 has seldom if ever been assessed on complainants' shipments and has not therefore resulted in a hardship to complainant. The showing was restricted to only a few specific commodities over a small section of defendant's line to which the assailed rule applies. However, the facts of record are sufficient in this connection to support a finding that the restricted minimum charge rule is prima facie unreasonable. Defendant San Diego and Arizona will be required to establish the uniform minimum charge rule of \$15.00 for carload shipments applicable to the total charge made by the combination of the separately established rates.

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 by reference made a part hereof,

IT IS HEREBY ORDERED that defendants, The Atchison, Topeka and Santa Fe Railway Company and San Diego and Arizona Railway

Company, according as they participated in the transportation, be and they are hereby ordered to cease and desist on or before thirty (30) days from the date of this order and thereafter abstain from publishing, maintaining, assessing and collecting for the transportation of feeder cattle, in carloads, from Los Angeles to Potash a rate in excess of \$57.50 per car and on beef cattle from Potash to Los Angeles a rate in excess of \$66.50 per car.

IT IS HEREBY FURTHER ORDERED that defendants, The Atchison, Topeka and Santa Fe Railway Company and San Diego and Arizona Railway Company, be and they are hereby notified and required to establish on or before thirty (30) days from the date of this order by not less than five (5) days' notice to the Commission and the public, and thereafter to apply to the transportation of feeder cattle, in carloads, from Los Angeles to Potash a rate of \$57.50 per car and on beef cattle from Potash to Los Angeles a rate of \$66.50 per car.

IT IS HEREBY FURTHER ORDERED that defendant San Diego and Arizona Railway Company be and it is hereby notified to establish on or before thirty (30) days from the date of this order by not less than five (5) days' notice to the Commission and the public and thereafter to apply a minimum charge of \$15.00 for carload shipments applicable to the total charge made by the combination of the separate rates.

IT IS HEREBY FURTHER ORDERED that defendants, The Atchison, Topeka and Santa Fe Railway Company and San Diego and Arizona Railway Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund to complainant, Pacific Cottonseed Products Corporation, with interest at the rate of six (6) per cent. per annum, all charges they may have collected in excess of the rates herein found just

and reasonable for the transportation of cottonseed oil from San Diego and San Francisco to Potash and of feeder cattle from Los Angeles to Potash and beef cattle from Potash to Los Angeles involved in this proceeding.

IT IS HEREBY FURTHER ORDERED that as to all other matters the complaint in the above entitled proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 9th day of December, 1929.

Thos. L. Smith
Ed. Scavoy
Edward D. [unclear]
Leon Whiteley
W. M. [unclear]
Commissioners.