

Decision No. 23135.**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CONTINENTAL CAN COMPANY, INCORPORATED,
OF CALIFORNIA,
LOS ANGELES CAN CORPORATION,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

Case No. 2846.

F. A. Jones and E. M. Avey for complainants.

James E. Lyons and J. L. Fielding for defendant.

BY THE COMMISSION:

O P I N I O N

Complainants are corporations engaged in the manufacture and distribution of metal containers. By complaint filed March 28, 1930, and amended May 9, 1930, it is alleged that the rates assessed for the transportation of empty tin cans and parts thereof from San Jose to Los Angeles and Los Angeles Harbor, hereafter referred to as the Harbor, and on tin plate from San Jose to Los Angeles, were, are, and for the future will be excessive, unjust and unreasonable, in violation of Section 13 of the Public Utilities Act, and unduly prejudicial and discriminatory, in violation of Section 19 of the Act.

Reparation and rates for the future are sought. Rates are stated in cents per 100 pounds.

Public hearings were held before Examiner Geary at Los Angeles May 21 and 22, 1930, and the case submitted on briefs.

Complainants are subsidiaries of the Continental Can Company of New York. They are engaged in the manufacture of tin cans and distribute their products throughout the state in competition with other manufacturers of these products. The plant of the Los Angeles Can Corporation is at Los Angeles and that of the Continental Can Company at San Jose. The cans shipped from San Jose to Los Angeles and the Harbor were either of the type not manufactured by the Los Angeles factory or were for the purpose of relieving a shortage at the Southern California plant. The shipments of tin plate originally came from the Pittsburgh, Pennsylvania district to San Jose and were subsequently reshipped from there to Los Angeles to supply a shortage at the Los Angeles plant. During the period here involved complainants shipped 82 cars of cans from San Jose to Los Angeles, 25 cars of cans from San Jose to the Harbor and 26 cars of tin plate from San Jose to Los Angeles. The average loading of the cans was 22,800 pounds and of the tin plate 90,000 pounds.

EMPTY CANS

Under the current Western Classification empty tin cans, in carloads, are classified 4th class, minimum weight 14,000 pounds. This basis was found reasonable by the Commission for general application in California with the exception that specific commodity rates, hereafter referred to in detail, lower than 4th class, were established between certain points. (In the Matter of the Application of F. W. Comph, etc., 11 C.R.C. 21.) The 4th class rate from San Jose to Los Angeles is 53 cents. This rate is non-intermediate in application and was established

by authority of this Commission to enable the rail carriers to meet water competition. The rate assessed on the shipments at issue was 51 cents, 2 cents below the applicable 4th class rate. Complainants ask for a rate of $42\frac{1}{2}$ cents, minimum weight 22000 pounds. This is the same as the rate now in effect on tinware and stamped ware from San Francisco to Los Angeles and the Harbor.

The 51-cent rate, here under attack, is a combination of class and commodity rates over San Francisco, using the 4th class rate of $8\frac{1}{2}$ cents, minimum 14,000 pounds, from San Jose to San Francisco, plus a commodity rate on tinware and stamped ware of $42\frac{1}{2}$ cents, minimum 22,000 pounds, from San Francisco to Los Angeles and the Harbor. The $42\frac{1}{2}$ -cent factor from San Francisco to Los Angeles and the Harbor was established in 1923 and was made non-intermediate in application by authority of this Commission, to enable manufacturers of tin ware and stamped ware at San Francisco to meet the competition of eastern manufacturers distributing similar articles in Southern California.

Complainants contend the 51-cent rate is unreasonable when measured by rates on approximately 43 miscellaneous commodities (Exhibit No. 3), including clay pipe, beverages, coffee, acid, cottonseed oil and salt, applicable between San Francisco, San Jose and other points in Northern California on the one hand, and points in Southern California on the other, and by commodity rates on tin cans established by this Commission In the Matter of the Application of F. W. Comph, etc., supra.

There is nothing in the record to show that the rates on the miscellaneous commodities, some of which produce lower per-car-mile and per-ton-mile earnings than the 51-cent rate, are the proper gauge for the rates on tin cans. Indeed many of them are totally unrelated to tin cans from a transportation standpoint, and moreover apply between points where there are

obviously competitive conditions which tend to depress the rates. However, as heretofore stated, the Commission In the Matter of the Application of F. W. Gompf, etc., supra, in addition to prescribing the 4th class rates for general application in California, also established commodity rates lower than 4th class. These rates were established from San Francisco and San Jose to points in the Sacramento and San Joaquin Valleys and Coast Division points of the Southern Pacific, and from Los Angeles to points east thereof and in the San Joaquin Valley, and were approximately 125% of the Class C rates. Defendant subsequently voluntarily established rates on the same basis between Sacramento and points in the San Joaquin Valley. The present Class C rate from San Jose to Los Angeles and the Harbor is $38\frac{1}{2}$ cents, approximately the same as we prescribed for comparable distances in the Sacramento Valley Class Rate Case, 11 C.R.C. 867. 125% of the present Class C rate from San Jose to Los Angeles and the Harbor would be 48 cents. The rates prescribed by the Commission or voluntarily published by defendant carried a minimum of 14,000 pounds, while complainant is here asking for a rate with a minimum of 22,000 pounds. The $42\frac{1}{2}$ -cent rate with a minimum of 22,000 pounds here sought by complainant would yield a higher per-car-mile revenue than the 48-cent rate based upon the average loading of 18,500 pounds prevailing on the defendant's line in 1929. As already stated, the average loading of complainants' shipments was 22,800 pounds.

We are of the opinion from the facts of record the assailed rate of 51 cents was and is unjust and unreasonable to the extent it exceeded or exceeds $42\frac{1}{2}$ cents, minimum 22,000 pounds. Our finding of unreasonableness will remove the cause for the allegation of undue prejudice and discrimination.

TIN PLATE

The tin plate rate here under attack is $37\frac{1}{2}$ cents, composed of a combination of class and commodity rates over Pittsburgh. The factor from San Jose to Pittsburgh is the 5th class rate of 16 cents, minimum 36,000 pounds, plus a commodity rate of $21\frac{1}{2}$ cents, minimum 50,000 pounds, from Pittsburgh to Los Angeles. Complainants ask that the $21\frac{1}{2}$ -cent rate from Pittsburgh to Los Angeles be extended to apply also from San Jose. The Pittsburgh rate was published in the early part of 1929 to enable the Southern Pacific Company to meet the competition of water carriers who were prepared to handle tin plate at approximately $12\frac{1}{2}$ cents per 100 pounds, plus the incidental charges relating to water-borne traffic. The shippers at Pittsburgh stated it was necessary to obtain a low rate either by rail or water to permit them to meet the competition of eastern tin plate coming to Los Angeles via intercoastal steamers. The $21\frac{1}{2}$ -cent rate is published non-intermediate in application under appropriate authority of this Commission and is thus presumptively less than a maximum reasonable rate. (San Pedro Chamber of Commerce et al. vs. A.T. & S.F. Ry. et al., 34 C.R.C. 341.) The only effort made by complainants to rebut this presumption was a comparison of the tin plate rate with rates between various points in the state on miscellaneous selected commodities having a lower per-car-mile and per-ton-mile earning than the assailed rate on tin plate. But most of the commodities on which lower rates apply bear little or no relation to tin plate, and like those compared with the tin can rate apply between points where the general level of rates is usually less than maximum reasonable because of competitive conditions.

Complainants' allegation of undue prejudice and discrimination is apparently based entirely upon the difference in

the rates between Pittsburgh and Los Angeles and between San Jose and Los Angeles. As we have heretofore said, the 21½-cent rate from Pittsburgh to Los Angeles was established to meet water competition. The same competition does not exist in connection with the tin plate traffic from San Jose to Los Angeles. It is a well established principle that carriers may establish water-compelled rates lower than from points not so situated without creating undue or unlawful discrimination.

CONCLUSIONS

After consideration of all the facts of record we are of the opinion and so find:

- (1) That the assailed rate on empty tin cans from San Jose to Los Angeles and Los Angeles Harbor was and is excessive, unjust and unreasonable, in violation of Section 13 of the Public Utilities Act to the extent it exceeded or exceeds 42½ cents, minimum weight 22,000 pounds.
- (2) That the assailed rate on tin plate from San Jose to Los Angeles is not unreasonable in violation of Section 13 of the Act, nor unduly prejudicial or discriminatory in violation of Section 19 of the Act.
- (3) That complainants made the shipments of empty tin cans from San Jose to Los Angeles and Los Angeles Harbor as described and paid or bore the charges thereon and have been damaged in the amount of the difference between the charges paid or borne and those herein found reasonable, and are entitled to reparation with interest according as their interests may appear.

The exact amount of reparation due is not of record. Complainants will submit to defendant for verification a statement of the shipments made and upon payment of the reparation defendant will notify the Commission of the amount thereof. Should it not be possible to reach an agreement as to the reparation award, 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 having been duly heard and submitted, full investigation of the matters involved, having been had, and basing the order on the findings of fact and the conclusions contained in the opinion preceding this order,

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be and it is hereby ordered to cease and desist within thirty (30) days from the effective date of this order and thereafter abstain from applying, demanding, collecting or receiving for the transportation of tin cans in carloads from San Jose to Los Angeles and Los Angeles Harbor rates which shall exceed those found reasonable in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that defendant, Southern Pacific Company, be and it is hereby ordered to establish on or before thirty (30) days from the effective date of this order for the transportation of tin cans in carloads from San Jose to Los Angeles and Los Angeles Harbor a rate not to exceed that found reasonable in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that defendant, Southern Pacific Company, be and it is hereby authorized and directed to refund with interest at six (6) per cent per annum to complainants,

Continental Can Company, Incorporated, of California and Los Angeles Can Corporation according as their interests may appear, all charges collected in excess of 42½ cents per 100 pounds, minimum weight 22,000 pounds, for the transportation of tin cans in carloads involved in this proceeding, from San Jose to Los Angeles and Los Angeles Harbor.

Accepted
Dated at San Francisco, California, this 1st day
of ~~February~~, 1930.

Al Lewis
Robert G. Smith
Leon White
John D. Latta

Commissioners.