

Decision No. 22790.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MONOLITE PORTLAND CEMENT COMPANY,
 Complainant,
 Vs.
 SOUTHERN PACIFIC COMPANY,
 Defendant.

ORIGINAL

Case No. 2884.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation engaged in the manufacturing, buying and selling of cement. By complaint filed July 8, 1930, and as amended July 29, 1930, it is alleged that the charges assessed and collected on two carloads of castings forwarded from Los Angeles to Monolith during July 1928 were in excess of those specified in defendant's schedules effective at the time, in violation of Section 17(a) of the Public Utilities Act.

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

Complainant and defendant agreed to submit the proceeding under the shortened procedure plan without a formal hearing.

Monolith is on the main line of the Southern Pacific Company 127 miles north of Los Angeles. Charges were assessed on complainant's shipments of castings on the basis of the 5th class rate of 47 cents, subject to a minimum weight of 40,000 pounds. The rating is provided in Item 5 page 31 of Supplement

No. 9 to Consolidated Freight Classification No. 5, C.R.C. No. 412 of F. W. Gomph, Agent. This item applies on "Liners, Breast or End, for Ball, Bar or Tube Mills" and appears under the main heading of "Machinery and Machines" and the sub-heading "Crusher, Breaker or Grinder Parts, Coal, Ore or Stone, iron or steel".

Complainant seeks a rate of 35 cents, minimum 40,000 pounds, applicable on iron and steel "Castings, rough" from Los Angeles to Monolith, published in Item 4705 Series of Southern Pacific Company, Local, Joint and Proportional Freight Tariff 730-C, C.R.C. 2904. It is also contended by complainant and conceded by defendant that the billed weights are in error in that they exceed the invoice weights of 32,120 pounds on Car SP 31001 and 44,870 pounds on Car SP 31757, subject to the established minimum.

The record shows that the shipments consisted of Durox liners in the form of rough iron castings as from the mold upon which no machine work was done either before shipment or subsequent thereto. They contained a small percentage of nickel added to give toughness to the casting. It appears however that iron and steel castings generally contain a certain amount of alloy and this fact is not in issue.

The classification in addition to the item on liners already referred to provides a rating on "Iron or Steel Castings N.O.I.B.N., in the rough (castings as from the mold * *)". A note in connection with this rating reads as follows:

"Note 5 - Where a casting in the rough constitutes an article for which a specific classification item or rate is provided when in an unfinished condition, or where a casting in the rough requires no further work before becoming a finished article for which a specific classification item or rate is provided, such specific classification item or rate must be used and the Castings, N.O.I.B.N. rating will not apply."

Defendants contend that inasmuch as the liners were not further machined at destination but were used in the mills

precisely as they came from the molds, Note 5 just quoted operates to remove them from the rough casting description, both as to class and commodity rates. That in the absence of a commodity rate it does remove them from the rough casting description of the Classification is not disputed. The commodity item (No.4705) however applies on iron and steel articles, viz., castings, rough, the only restriction or qualification being that they must be "rough". Complainant's shipments consisted of rough castings, used in the state in which they came from the mold, and in the absence of a restriction in the commodity item similar to that provided in Note 5 in the Classification, the rate in Item No. 4705 was properly applicable.

Defendant furthermore questions the right of this Commission to award reparation in cases where rates in excess of those named in carriers' tariffs have been applied. Section 71(a) of the Public Utilities Act reads in part as follows:

"When complaint has been made to the Commission concerning any rate, fare, toll, rental or charge * * * and the Commission has found after investigation that the public utility has charged an unreasonable, excessive or discriminatory amount * * * the Commission may order that the public utility make due reparation to the complainant therefor * * *."

The term "excessive" used in this section has been construed to mean in excess of the tariff. (San Francisco Artichoke Assn. vs. Ocean Shore R. Co., 8 C.R.C. 519; Mills S.V.O. & C. Fruit Co. vs. Southern Pacific Co., 9 C.R.C. 80; Geo. H. Croley Co. Inc. vs. Southern Pacific Co. et al., 33 C.R.C. 565. See also A.T. & S. F. Ry. et al. vs. Railroad Commission et al. (April 27, 1931), 81 Cal. Dec. 667.)

Upon consideration of all the facts of record we are of the opinion and find that the charges collected were inapplicable under the tariffs in that they exceeded 35 cents per 100 pounds based on invoice weights protecting a minimum of 40,000 pounds per car; that complainant made the shipments as described, paid

and bore the charges thereon and is entitled to reparation with interest at 6% per annum.

The exact amount of reparation due is not of record. Complainant will submit to defendant for verification a statement of the shipments made and upon payment of reparation defendant will notify the Commission 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 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 precedes this order,

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be and it is hereby authorized and directed to refund to complainant, Monolith Portland Cement Company, together with interest at six (6) per cent. per annum, all charges collected for the transportation from Los Angeles to Monolith of the shipments of castings involved in this proceeding in excess of those that would have accrued on basis of a rate of 35 cents per 100 pounds at actual invoice weights subject to a minimum weight of 40,000 pounds per car.

Dated at San Francisco, California, this 15th day of June, 1931.

Clarence
Leon Whidby
M. J. Cox
M. B. Harris
Frederic G. Stearns
Commissioners.