JLA

Decision No. 23794.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

ASSOCIATED OIL COMPANY, Complainant, vs. SOUTHERN PACIFIC COMPANY, PACIFIC ELECTRIC RAILWAY COMPANY, Defendants.	Case No. 3032.

Sanborn, Roehl, Smith & Brookman, by H. H. Sanborn, for the complainant.

R. W. Fyfe, R. E. Wedekind and James E. Lyons, for the defendants.

CARR, Commissioner:

O P I N I O N

Complainant seeks reparations in the amount of $85,059.86 on shipments of casinghead gasoline from Wadstrom to various points in the State. The complaint asked rates for the future, but this relief was waived and abandoned at the hearing, complainant having ceased to ship casinghead gasoline by rail from Wadstrom to the points involved.

The complaint alleges, and it was conceded at the hearing, that the charges assessed and borne were in accord with tariff authority. Reparations are sought upon the ground that the tariff in providing that the rates will be applied against an assumed or estimated weight per gallon of 6.6 pounds is unreasonable, casinghead gasoline actually weighing only about 5.5 pounds

per gallon. In other words, complainant without seeking to show the over-all charges were unreasonable seeks reparation upon the narrow ground that one of the two factors going to make up the charge was unreasonable.

Reparations should be denied and the case dismissed.

1. The claim here presented is singularly without equity. The shipper, when reduced rates were negotiated, knew that the actual weight was less than the assumed weight against which the rates were assessed and that the Western Classification carried the assumed weight provision. The carrier in conceding reduced rates proceeded upon the assumption that this provision would prevail. It is probable the shipper did likewise and that the filing of a claim for reparations was an afterthought. The inequity would be even greater if a contrary view were taken of the shipper's attitude. In either event and under the circumstances here present the shipper, after getting the benefit of lowered rates, should not be allowed to reap an additional advantage in the way of reparations.

2. The evidence all tends to establish the over-all charge to be under the level of comparable rates and as yielding a revenue which the carrier might, for reasons of its own, concede but which this Commission could not require it to accept as a fair compensation for the service rendered. It is not enough to pick out one factor and attack that as unreasonable where the result of the application of the two factors making up the total charge is not shown to accomplish an unreasonable result.

3. The use of assumed weights in computing freight charges is common, has met with the acquiescence of shippers and carriers for about 40 years, and has repeatedly been approved by the Interstate Commerce Commission. The assumed weight of 6.6 pounds per gallon here attacked has been in effect for many years

in Official, Southern and Western Classification territories and has been accepted and approved by that Commission. (Lone Star Gas Co. vs. A.Y. & R.Co., 148 I.C.C. 81; Petroleum and its Products, 171 I.C.C. 286; Sharplee Solvents Corp. vs. A.T.& S.F. Ry.Co., 172 I.C.C. 474; Phillips Pete Co. vs. A.T.& S.F.Ry.Co., 123 I.C.C. 724.)

I recommend the following form of order:

O R D E R

Public hearing having been held in the above entitled case and the matter having been submitted,

IT IS HEREBY ORDERED that reparations be denied and the complaint dismissed.

The effective date of this order shall be twenty (20) days from the date hereof.

The foregoing opinion and order are hereby adopted as the opinion and order of the Railroad Commission of the State of California.

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

C L Seavey

Leon O Whitsell

M. J. Carr

W B Harris

Fred G. Stevenot.

Commissioners.