JLA

Decision No. 23842.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

GENFIRE STEEL COMPANY,

Complainant,

vs.

LOS ANGELES JUNCTION RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY,

Defendants.

Case No. 2950.

V. O. Conaway, for complainant.

Walter S. Wheaton and Gibson, Dunn & Crutcher, by Woodward M. Taylor, for defendant Los Angeles Junction Railway Company.

A. Burton Mason, for defendant Southern Pacific Company.

BY THE COMMISSION:

O P I N I O N

Genfire Steel Company is a fictitious name for a division of the Truscon Steel Company, a Michigan corporation. By complaint filed October 31, 1930, and as amended at the hearing it is alleged that the charges assessed and collected for the transportation of one carload of structural steel shipped November 1, 1928, from Los Angeles to Ione and reshipped November 5, 1928, from Ione to Los Angeles, were in excess of those applicable under the tariffs, in violation of Section 17 of the Public Utilities Act.

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

A public hearing was held before Examiner Geary at Los Angeles, and the case having been duly heard and submitted is now ready for an opinion and order.

The complaint involves one carload of structural steel (metal lath) loaded on SP 20613, originating on the Los Angeles Junction Railway Company at Los Angeles, and transported to Ione, a point on a branch of the Southern Pacific Company 140 miles east of San Francisco. Upon arrival at Ione the shipment with the exception of a few parts was refused by the consignee and ordered returned to complainant at Los Angeles. Charges were assessed and collected on the basis of the 5th class rate of 54½ cents for both the original and the return movements. The rate and charges assessed and collected for the original movement, Los Angeles to Ione, are not under attack. Complainant asks that for the return movement one half of the outbound rate be charged, as provided for in Rule 135 of Pacific Freight Tariff Bureau Exception Sheet 1-M, C.R.C. 437, F. W. Gomph, Agent. This rule provides that on returned shipments one half the outbound rate will be assessed if (1) the goods are presented to carrier within ten days from the date of the delivery order of original movement; (2) all charges are prepaid or guaranteed and the waybills covering the return movement and the shipping receipt show reference to the original outbound shipment and waybill; and (3) the goods are returned over the same route and line as the original outbound movement. The first and third requirements of the rule were complied with. The record also shows the second requirement of the rule in so far as the prepayment or guarantee of the freight charges was concerned was complied with but that the bill of lading (shipping receipt) did not show reference to the original outbound shipment. Because of this defendants declined to apply one half of

the outbound rate on the returned shipment.

The facts essential to a proper interpretation of this portion of the rule may be briefly summarized as follows: The shipment was billed from Los Angeles on November 1, 1928, and was delivered to the consignee at Ione, who removed a portion of the shipment and returned the balance thereof to complainant on November 5, 1928. The agent at Ione actually filled out the bill of lading but failed to make reference to the outbound shipment. The consignee of the original shipment was the shipper and he signed the bill of lading. Upon arrival of the shipment at Los Angeles defendant assessed and collected one half the outbound rate on the assumption that the shipment was being returned, as indicated by the following notation on the freight bill:

> "Rule 135 exception sheet A-C returned shipment car billed out on Jct. Sta. L.A. Cal. WB of 11-1-28 to Ione, Calif."

Defendant states that the information on the freight bill was placed there in error, as the waybill contained no reference to this being a returned shipment. The error was discovered and a balance due bill was rendered increasing the charges to the basis of the full local. According to the billing clerk's notation on the balance due bill the charges were increased solely because of the absence of a proper reference to the original outbound shipment on the bill of lading. The charges were paid without protest by complainant at that time. Approximately 18 months later this complaint was filed.

The issue is thus narrowed to a question of whether the absence of reference to the original outbound shipment on

the bill of lading precludes complainant from applying Rule 135 of the Exception Sheet. The rule does not specifically state who shall be responsible for placing on the bill of lading reference to the outbound shipment. As already stated, the agent at Ione actually made out the bill of lading on instructions from the shipper, who signed it, and under a fair construction of Rule 135 the agent should have made the proper notation thereon provided he had knowledge that the shipment was being returned. The consignor who signed the bill of lading written by the Southern Pacific agent at Ione, may not have referred to the fact that the consignment was a return shipment, but certainly this incident was understood by all interested parties. That the Los Angeles office had the details is not disputed, for as heretofore stated the freight bill originally rendered computed the charges at one half of the outbound rate and a notation on the freight bill stated:

"Returned shipment car billed out on Jct. Sta. L.A. Cal. WB of 11-1-28 to Ione, Calif."

This defendant was legally correct in protecting the integrity of the tariff and refraining from adjusting the charges without proper authority. However, it is the duty of this Commission to take judicial notice of facts revealed by the record and employ those facts to do justice to all parties. We are of the opinion and find that the reasonable charges were those computed under the provisions of Rule 135 of the tariff and that complainant is entitled to reparation refund of $109.70 with interest at 6 per cent.

O R D E R

This case having been duly heard 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 preceding opinion,

IT IS HEREBY ORDERED that defendant Southern Pacific Company be and it is hereby authorized to refund $109.70, with interest at six (6) per cent. per annum, to complainant, Genfire Steel Company, on account of the return shipment from Ione to Los Angeles of the carload of structural steel involved in this proceeding.

Dated at San Francisco, California, this 27th day of June, 1931.

Commissioners.