JLA

Decision No. 24767.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SEABOARD PETROLEUM CORPORATION, a corporation,
Complainant,
vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
LOS ANGELES & SALT LAKE RAILROAD COMPANY,
Defendants.

ORIGINAL

Case No. 2920.

F. W. Turcotte and B. H. Carmichael, for the complainant.

G. E. Duffy and E. C. Pierre, for The Atchison, Topeka and Santa Fe Railway Company, defendant.

E. C. Renwick and W. H. Love, for Los Angeles & Salt Lake Railroad Company, defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding complainant alleges that the charges assessed and collected for the transportation of five tank carloads of petroleum oil from Wilmington to Los Angeles via the Atchison, Topeka and Santa Fe Railway Company during September, 1928, and fourteen tank carloads of petroleum oil from Burnett to Los Angeles via the Los Angeles & Salt Lake Railroad Company during February, March and April, 1929, were unjust, unreasonable and inapplicable in violation of Sections 13 and 17(2) of the Public Utilities Act. All of the charges were paid during the two-year period immediately preceding the filing of the complaint.

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

A public hearing was held before Examiner Geary at Los Angeles, and the case submitted. At the hearing complainant withdrew its allegation that the rates were in violation of Section 13 of the Act. The issues are thus narrowed to determining the lawful rate under the applicable tariffs.

The cars here at issue contained a petroleum product purchased from the Western Oil and Refining Company at Wilmington and from the Hancock Oil Company at Burnett. It was described on the invoices and the bills of lading as "kerosene distillate". Defendant assessed charges at a rate of 4 cents subject to an estimated weight of 6.6 pounds per gallon. This rate and estimated weight are also applicable on petroleum refined oils, and petroleum and petroleum products N.O.I.B.N. Complainant contends that the commodity shipped was misdescribed on the bills of lading, as it was in fact a petroleum gas oil. Under the tariff the applicable rate on petroleum gas oil was 3 cents, subject to an estimated weight of 7.75 pounds per gallon. If the commodity was in fact petroleum gas oil the shipments were overcharged.

The record shows that the petroleum oil described on the bills of lading as "kerosene distillate" was a second-run refinery top having a specific gravity of from 38° to 40°, requiring a further treatment before being commercially usable as kerosene. Complainant contends that in the transportation field the terms "gas oil" and "refinery tops" are synonymous and in the absence of a specific rate on the commodity transported the gas oil rate should be applied.

The term "refinery tops" had its origin many years ago when the smaller oil companies maintained topping plants adjacent to the oil fields for the purpose of extracting from the crude

oil, by a distillation process, the higher fractioned oils. From the first distillation was obtained the so-called first run tops consisting principally of gasoline, engine (naphtha) distillate and kerosene. The second distillation produced a kerosene stock or kerosene distillate. The topping process has been largely discontinued although there is still a considerable quantity of second run tops produced.[1]

Gas oil as it is known in the petroleum industry is the residue of the crude oil after the higher fractioned oils have been extracted. Originally it was used in the manufacture of illiminating gas but is now used chiefly as a fuel oil or as charging stock in the production of gasoline by the cracking process.

Commercially the terms "refinery tops" and "gas oil" refer to products entirely dissimilar. However for years they have been considered synonymous in the transportation field.[2] In Re Application of F. W. Gomph, supra, the Commission in reviewing the history of rates on refinery tops stated:

> "When refinery tops first started to move in California the carriers transported them at the gas oil rates, due possibly to an original misconception of what was meant by the term 'gas oil' in the tariffs. However they knowingly continued this practice for a number of years before requesting authority of the Commission to classify refinery tops with engine (naphtha) distillate on the grounds that they had been incorrectly transported as gas oil and should properly take higher rates, inasmuch as they were a manufactured article with a value in excess of other commodities in the crude oil group. (Application of F. W. Gomph, etc., 4 C.R.C. 281.) The authority was denied for two reasons: first, that the carriers had for a matter of seven years knowingly transported refinery tops under the gas oil rates; and second, the value of tops was not sufficiently in excess of the commodities grouped with crude oil to warrant a different classification. Since then we have held that refinery tops should move under the gas oil rates."

---

[1] In Re Application of F.W.Gomph, etc., 36 C.R.C. 285.

[2] Richfield Oil Company vs. Sunset Railway, 25 C.R.C. 619. Gilmore Oil Company vs. Santa Fe, 28 C.R.C. 878. Hercules Gasoline Co. et al. vs. Santa Fe, 30 C.R.C. 574; Hercules Gasoline Co. et al. vs. Santa Fe, 32 C.R.C. 164. Hercules Gasoline Co. et al. vs. Santa Fe et al., 34 C.R.C. 112. Pan-Pacific Oil Co. vs. P.E.Ry., 34 C.R.C. 569.

There is nothing in this record which would warrant a conclusion different from that reached in the cases cited herein. We therefore find as a fact that the shipments were overcharged in violation of Section 17 of the Public Utilities Act to the extent the rate charged exceeded 3 cents per 100 pounds, subject to an estimated weight of 7.75 pounds per gallon; 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 defendants for verification a statement of the shipments made and upon payment of the reparation defendants 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 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 defendants, The Atchison, Topeka and Santa Fe Railway Company and Los Angeles & Salt Lake Railroad Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund with interest at six (6) per cent. per annum to complainant, Seaboard

Petroleum Corporation, all charges collected for the transportation of the shipments of petroleum oil from Wilmington and Burnett to Los Angeles involved in this proceeding in excess of 3 cents per 100 pounds on an estimated weight of 7.75 pounds per gallon.

Dated at San Francisco, California, this 16th day of May, 1932.

O. L. Jenny

Leon O. Whitsell

H. P. Case

M. B. Harris

Fred E. Stewart

Commissioners.