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Decision No. 3487.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

CALIFORNIA PORTLAND CEMENT COMPANY, a corporation, Complainant, vs. SOUTHERN PACIFIC COMPANY, a corporation, Defendant.	Case No. 3046.
RIVERSIDE CEMENT COMPANY, a corporation, Complainant, vs. SOUTHERN PACIFIC COMPANY, a corporation, and LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation, Defendants.	Case No. 3055.
MONOLITH PORTLAND CEMENT COMPANY, a corporation, Complainant, vs. PACIFIC ELECTRIC RAILWAY COMPANY, a corporation, and SOUTHERN PACIFIC COMPANY, a corporation, Defendants.	Case No. 3056.
MONOLITH PORTLAND CEMENT COMPANY, a corporation, Complainant, vs. SOUTHERN PACIFIC COMPANY, a corporation, Defendant.	Case No. 3057.

SOUTHWESTERN PORTLAND CEMENT COMPANY, a corporation,
Complainant,
vs.
SOUTHERN PACIFIC COMPANY, a corporation,
PACIFIC ELECTRIC RAILWAY COMPANY, a corporation,
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation,
LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation,
Defendants.

Case No. 3060.

B. H. Carmichael, Call & Murphey and F. W. Turcotte, for California Portland Cement Company.
A. R. Sutton and T. A. L. Loretz, for Blue Diamond Corporation, Limited.
Waldo A. Gillette and W. D. Burnett, for Monolith Portland Cement Company.
O'Melveny, Tuller & Meyers, William W. Clary and O. T. Helpling, for Riverside Cement Company.
Chas. R. Boyer and Sanborn, Roehl & Brookman, for Southwestern Portland Cement Company.
James E. Lyons and Burton Mason, for Southern Pacific Company, defendant.
Berne Levy and G. E. Duffy, for The Atchison, Topeka and Santa Fe Railway Company, defendant.
A. S. Halsted and E. E. Bennett, for Los Angeles & Salt Lake Railroad Company, defendant.
R. E. Wedekind and W. G. Knoche, for Pacific Electric Railway Company, defendant.

SEAVEY, Commissioner:

O P I N I O N

These proceedings arise from the Commission's decision in California Portland Cement Company et al. vs. Southern Pacific Company et al., 34 C.R.C. 459 (affirmed 35 C.R.C. 904). The complaint in that case and the petitions in intervention asking for affirmative relief brought into issue the carload rates on cement from five of the six mills located in Southern California, namely,

Colton, Crestmore, Oro Grande, Victorville and Monolith,[1] to destinations in Southern California, National City and north and Monolith, Santa Barbara and south. The differential of one cent between the nearby mills (Colton and Crestmore) and the distant mills (Oro Grande, Victorville and Monolith) was attacked by the nearby mills as being unduly prejudicial to them and unduly preferential of the distant mills. The distant mills alleged that the rates to points beyond Los Angeles were unduly prejudicial to them and preferential of the nearby mills. All of the mills alleged that the rates were unreasonable.[2]

The same complainants[3] are now before us in these proceedings. They seek reparation on shipments to Somis, Cavin, Ventura, Ravenna and points intermediate thereto and beyond on the grounds of unreasonableness. Complainants at Victorville and Monolith also seek reparation on shipments moving to points beyond Los Angeles where such rates were found prejudicial and preferential in Case 2663. Although complainants in Cases 3046, 3056 and

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[1] At Colton and Crestmore are located the cement mills of the California Portland Cement Company and Riverside Cement Company respectively. The Southwestern Portland Cement Company has two mills, one at Oro Grande and one at Victorville. At Monolith is the mill of the Monolith Portland Cement Company.

[2] The Commission found (1) that the differential of one cent between the nearby mills and the distant mills was not unduly prejudicial and preferential; (2) that the rates from Victorville and Monolith to points beyond Los Angeles where such rates were based over Los Angeles were unduly preferential of Colton and Crestmore and unduly prejudicial to Victorville and Monolith to the extent such rates exceeded for comparable distances the amounts contemporaneously added to the rates from Colton and Crestmore; and (3) that the rates from all mills to Somis, Cavin, Ventura and Ravenna were unreasonable. Reasonable rates were prescribed to these four points.

[3] In Case 2663 the complainants were the California Portland Cement Company and Riverside Cement Company. The interveners were the Southwestern Portland Cement Company and Monolith Portland Cement Company. Complainants and interveners are collectively referred to as complainants.

3060 request rates for the future, these proceedings are for the main purpose of obtaining reparation on shipments moving during the pendency of Case 2663 and subsequent thereto.[4] Reparation was not prayed for by complainants in Case 2663, they contenting themselves with seeking relief for the future.[5]

Defendants contend that the Commission is without power under the provisions of Section 71(a) of the Public Utilities Act to award reparation (except on shipments to Somis, Cavin, Ventura and Ravenna). This contention rests on two grounds: First, the Commission in Case 2663, it is claimed, found the rates on which

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[4] The allegations of the instant complaints are as follows:
Case 3046: That the rates from Colton to specifically designated points on the Southern Pacific Company north of Los Angeles to Mojave and Miramar, both inclusive, were and are unjust and unreasonable in violation of Section 13 of the Act.
Case 3055: That the rates from Crestmore to points on the Southern Pacific Company north of Los Angeles to and including Lancaster on the San Joaquin Valley line, and to Ventura and points on the Ojai branch, both inclusive, on the Coast Route were unjust and unreasonable in violation of Section 13 of the Act.
Case 3056: That the rates from Monolith to specifically designated points on the Pacific Electric Railway south and west of Los Angeles, also to Burbank and Glendale were and are unjust, unreasonable, unduly prejudicial, preferential and discriminatory, in violation of Article XII Section 21 of the State Constitution and Sections 13 and 19 of the Public Utilities Act.
Case 3057: That the rates from Monolith to points on the Southern Pacific Company north of Los Angeles to Santa Barbara inclusive to points on the Ojai branch and to Anaheim, West Orange and Santa Ana, were and are unjust, unreasonable, unduly prejudicial, preferential and discriminatory, in violation of Article XII Section 21 of the State Constitution and in violation of Sections 13 and 19 of the Public Utilities Act.
Case 3060: That the rates from Victorville to specifically designated points on the Southern Pacific Company and Pacific Electric Railway were unjust, unreasonable and unduly prejudicial in violation of Sections 13 and 19 of the Public Utilities Act and in violation of Section 21 Article XII of the State Constitution.

[5] Case 2663 was filed March 4, 1929, heard July 11, 1929 and August 20, 21 and 22, 1929, and decided March 18, 1930. Upon petitions filed by complainants and defendants the proceeding was reopened for further hearing. The original decision was affirmed by Decision No. 23476 of March 9, 1931. The rates ordered published by the Commission became effective April 28, 1931.

reparation is now sought to be reasonable; and second, on shipments moving to agency stations the consignee assigned the reparation claim to complainants.[6] The record shows that in some instances the freight charges were actually paid by the consignees and the amounts thereof deducted from the invoices rendered by complainants. According to defendants this constitutes an assignment of a reparation claim.

The precise finding by the Commission in Case 2663 with respect to the reasonableness of the rates from Colton, Crestmore, Oro Grande, Victorville and Monolith to main and branch line points west thereof to and including Santa Barbara, National City and points south of Monolith was as follows:

"That the present rates from Colton, Crestmore, Victorville, Oro Grande and Monolith are not unjust and unreasonable except to the extent they exceed the rates set forth below:

	Rates in cents per 100 pounds		
To	From Colton Crestmore	From Victorville Oro Grande	From Monolith
Somis	11½	12½	12½
Cavin	11½	12½	11½
Ventura	12½	13½	12½
Ravenna	11½	12½	--- "

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6 Section 71(a) reads as follows: "When complaint has been made to the commission concerning any rate, rare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an unreasonable, excessive or discriminatory amount for such product, commodity or service in violation or any of the provisions of this act, including sections 13, 17(a)2, 17(b), 19 and 24 the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date or collection; provided, no discrimination will result from such reparation; and provided further, that no order for the payment of reparation upon the ground of unreasonableness shall be made by the commission in any instance wherein the rate, fare, toll, rental or charge in question has, by formal finding, been declared by the commission to be reasonable; and provided further, that no assignment of a reparation claim shall be recognized by the commission except assignments by operation or law as in cases of death, insanity, bankruptcy, receivership or order of court."

Defendants contend that this finding, although in the negative (except as to rates to Somis, Cavin, Ventura and Ravenna) has the force of a formal finding that the rates under review were maximum reasonable rates and thus they are Commission-made rates. This is not the interpretation I would place upon the finding. The obvious intention of the Commission was to hold that on the record the complainants and interveners had failed to sustain the burden of proof by not showing that the rates were unreasonable except to the four points where specific rates were prescribed. This finding was the foundation for the order or dismissal entered in Case 2663 with respect to this issue of the complaint. The record supported an order of dismissal but it did not support an affirmative finding that the rates which complainants failed to prove unreasonable were in fact maximum reasonable rates. In complaint cases the burden of proof is upon complainants to affirmatively show that the rates under attack are unlawful, and when this is not done the complaints are dismissed; (Gladding, McBean & Co. vs. P.G.& E.Co., 34 C.R.C. 513, 515.)

The prohibition in Section 71(a) or the Act with respect to assignments of reparation claims in my opinion refers to assignments to one who is neither a consignor nor consignee but a third party whose only interest in the transportation of the shipment is the amount of reparation which may be recovered. Here the situation is materially different. Consignees in some instances paid the freight charges but deducted the amount thereof from the invoices. In the true sense this is not an assignment of a claim. Complainants ultimately bore the transportation charges. The actual payment was made for them by the consignees.

While I believe reparation should not be denied on

these two technical grounds, I am of the opinion that it should be denied upon broader grounds. These complainants were before us in Case 2663 and elected to ask the Commission for relief for the future. They did not then seek reparation. The relief they sought was granted in part and denied in part. They now request reparation on shipments which moved during the pendency of Case 2663 and subsequent thereto. If they were being damaged by the exaction of unlawful rates at the time Case 2663 was before the Commission, they should have asked for reparation. It is true that the cause of action on some of the shipments accrued after Case 2663 was filed, but complainants and interveners were aware that there was a steady movement of cement from the mills and they had the right to ask for reparation on shipments moving pendente lite.

Complainants have not shown any reason why reparation should be granted in these proceedings, except on shipments to points beyond Ventura and Ravenna during the period subsequent to the effective date of the rates ordered by the Commission. As already stated the Commission established specific rates to Ventura and Ravenna. Defendants reduced their rates to the intermediate points to avoid violations of the long and short haul provisions of Section 24(a) of the Public Utilities Act. But to the points beyond they made no relative adjustment, the only reductions being those made to avoid violation or the aggregate of intermediate provisions of Section 24(a) of the Act. This failure of defendants has resulted in incongruities which they should have eliminated. For example, the Commission prescribed a rate of 12½ cents from Colton to Ventura for a haul of 132 miles. From Colton to Carpinteria, the latter point located 17 miles beyond Ventura, defendants established a rate of 19.5 cents. At

Ojai they maintain a rate of 22 cents or 9½ cents over the Ventura rate for an added haul or only 16 miles. Similar inconsistencies prevail in the rates beyond Ravenna. The Commission should prescribe reasonable rates to points beyond Ventura and Ravenna and award reparation on shipments moving on and after April 28, 1931.

Upon consideration of all the facts of record I am of the opinion the Commission should find:

1. That the present rates from Colton, Crestmore, Victorville and Monolith to points beyond Ventura and Ravenna have been unreasonable since April 28, 1931, are now unreasonable and for the future will be unreasonable in violation of Section 13 or the Public Utilities Act to the extent they exceeded, exceed or may exceed the following:

	Rates in cents per 100 pounds		
	From Colton Crestmore	From Victorville	From Monolith
To			
Ojai	14	15	14
Dulah	13	14	13
Sea Cliff	13½	14½	13½
Punta	14	15	14
Carpinteria	14	15	14
Summerland	14½	15½	14½
Miramar	14½	15½	14½
Palmdale	12½	*13½	-
Lancaster	13	*14	-
Rosamond	14	-	-
Gloster	14½	-	-
Fleta	14½	-	-

* Via Colton or Los Angeles.

The rates prescribed above do not include the emergency charges authorized by the Commission in Application 17536, Decision No. 24382.

2. That since April 28, 1931, complainants made certain shipments to the points shown above, paid or bore the charges thereon and are entitled to reparation thereon in the

amount of the difference between the charges paid and those herein found reasonable, together with interest at 6% per annum.

3. That in all other respects the complaints should be dismissed.

The exact amount of reparation due is not of record. Complainants 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.

The following form of order is recommended:

O R D E R

These cases 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 opinion which precedes this order,

IT IS HEREBY ORDERED that defendants, Southern Pacific Company, Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company and The Atchison, Topeka and Santa Fe Railway Company, be and they are hereby ordered to cease and desist and thereafter to abstain from applying, demanding or collecting rates for the transportation of cement in carloads which exceed those found reasonable and non-prejudicial in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that defendants, Southern

Pacific Company, Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company and The Atchison, Topeka and Santa Fe Railway Company, according as they participate in the transportation, be and they are hereby ordered to establish on or before thirty (30) days from the effective date of this order, on not less than five (5) days' notice to the Commission and to the public, rates which shall not exceed those found reasonable in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that defendants, Southern Pacific Company, Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company and The Atchison, Topeka and Santa Fe Railway Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund to complainants, California Portland Cement Company, Riverside Cement Company, Monolith Portland Cement Company and Southwestern Portland Cement Company, according as their interests may appear, all charges collected in excess of the rates found reasonable in the opinion which precedes this order for the transportation of the shipments of cement involved in these proceedings.

IT IS HEREBY FURTHER ORDERED that in all other respects these proceedings be and they are hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of June, 1932.

Commissioners.