

Decision No. 25070.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

R. E. HAZARD CONTRACTING COMPANY,

Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY,
SOUTHERN PACIFIC COMPANY,
SAN DIEGO AND ARIZONA RAILWAY COMPANY,

Defendants.

ORIGINAL

Case No. 3205.

Richard T. Eddy, for complainant.

Frank Kerr, R. E. Wedekind, R. G. Dilworth,
James E. Lyons, J. L. Fielding and A. L.
Whittle, by J. L. Fielding and A. L. Whittle,
for defendants.

BY THE COMMISSION:

O P I N I O N

Complainant, a California corporation, alleges by complaint filed February 23, 1932, that the rate charged on numerous carloads of asphalt shipped between March 6 and May 6, 1930, from Los Angeles Harbor and Watson to Seeley was unreasonable to the extent that it exceeded a subsequently established rate of 30½ cents.

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

Seeley, the destination point, is 8 miles west of El Centro and is served by the San Diego and Arizona Railway.

Shipments from Los Angeles Harbor moved Southern Pacific Company

to El Centro, thence San Diego and Arizona Railway a distance of 247 miles; shipments from Watson moved Pacific Electric Railway to Los Angeles, Southern Pacific Company to El Centro, thence San Diego and Arizona Railway a distance of 242 miles. From Los Angeles Harbor there was a two-line movement and from Watson a three-line movement.

A public hearing was held at Los Angeles before Examiner Geary and the matter submitted. At the hearing complainant amended its complaint to the extent of petitioning for reparation on the basis of 24 cents, the rate made effective April 1, 1932, instead of to 30½ cents, the rate which became effective May 12, 1930. This amendment was protested by defendants. The rate charged was 35 cents prior to May 12, 1930, and 30½ cents subsequent to that date.

Twenty-eight shipments are embraced in the reparation claim. Twenty-one cars moved March 6 to May 6, 1930, at rate of 35 cents, made up of 28 cents Class D to El Centro, plus Class D rate of 7 cents El Centro to Seeley. There was no joint commodity rate in effect until May 12, 1930, when rate of 30½ cents became effective, and under this rate the remaining seven cars were shipped. On April 1, 1932, a further reduction to 24 cents was published. The record shows that both the 30½ cent and the 24 cent joint rates reflect truck competition and an effort on the part of defendants to retain the tonnage to their rails.

At the time these shipments moved there was in effect a joint rate of 29 cents from the Los Angeles Harbor to Holtville. Holtville is on what was formerly the Holtville Interurban Railway 11 miles east of El Centro, while Seeley is 8 miles west of El Centro on the San Diego and Arizona Railway. There being no joint rate to Seeley the combination rate of 35 cents applied for a distance of 247 miles as against the joint rate of 29

cents to Holtville for 250 miles.

The shipments averaged 76,462 pounds and based on the rate of 35 cents and the distance over the route of movement produced car mile earnings of 109.6 cents and ton mile earnings of 26.3 mills. Complainant seeks reparation based on 24 cents, which would yield car earnings of 74.3 cents and ton mile earnings of 15.3 mills.

Complainant compares the rate assailed with numerous commodity rates on asphalt for distances equal to or greater than, the distances over the route of movement of the shipments considered. The compared rates cover a wide spread of territory and are lower in volume for the same or greater distances. But the circumstances surrounding the establishment of the rates used as a measure are not disclosed and since this information is peculiarly important in the consideration of reasonable rates the exhibit cannot be given a controlling value.

Defendants by an exhibit compare the assailed rates with the rates applying on gasoline, kerosene and other high grade petroleum products, but make no reference to the asphalt rates in effect to Holtville and other Southern California points. Exhibits were also presented showing the depressed net earnings of defendant railroads, which have radically declined during the past three years.

The record shows that at the time the asphalt was purchased the traffic department of the selling oil company advised complainant that a rate of 30 cents was appropriate, and it is also in evidence that the asphalt could have been hauled from the refinery to the job by trucks. It appears that in February 1930 the Southern Pacific Company was addressed by letter and after some negotiations agreed to a rate of 30½ cents to Seeley. This rate was published on full statutory notice and became

effective May 12, 1930, after twenty-one cars of asphalt had gone forward at the 35-cent rate. When no commodity rates are published asphalt takes the Western Classification rate of Class D. The Class D rate from Los Angeles Harbor to El Centro, 239 miles, is 28 cents; to Colorado, 271 miles, 30 cents; and from San Diego to Colorado (a joint haul), 243 miles, it is also 30 cents.

It is apparent that the through joint rate of $30\frac{1}{2}$ cents as published May 12, 1930, was reasonable for this tonnage, involving a haul of 247 miles, being but $\frac{1}{2}$ cent higher than the Class D rate for similar distances in this general territory.

When the shipments under consideration moved, a commodity rate of 29 cents applied Los Angeles Harbor to Holtville, a point, as heretofore described, 11 miles east of El Centro on the Holtville Interurban (now part of the Southern Pacific Company), as compared with 35 cents to Seeley, 8 miles west of El Centro. Complainant is contending for reparation to basis of the 24-cent rate, effective April 1, 1932, two years after this tonnage moved. This rate was voluntarily published by defendants to meet truck competitors operating at the time in the southern territory, and has not, by any standard of railroad rate making, been shown to be reasonable retroactive to the year 1930.

We find that the rate assailed during the period involved, March 6 to May 6, 1930, was unreasonable to the extent that it exceeded the rate of $30\frac{1}{2}$ cents published April 2 and effective May 12, 1930. We further find that complainant R. E. Hazard Contracting Company received the shipments as described and bore the freight charges thereon; that it was damaged thereby in the amount of the difference between the charges borne and those which would have accrued at the rate herein found reasonable, and that it is entitled to reparation with interest at 6 per cent. per annum.

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, Pacific Electric Railway Company, Southern Pacific Company and San Diego and Arizona Railway 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, R. E. Hazard Constracting Company, all charges they may have collected in excess of 30½ cents per 100 pounds for the transportation of the shipments of asphalt involved in this proceeding moving on and after March 6, 1930, to and including May 6, 1930, from Los Angeles Harbor and Watson to Seeley.

Dated at San Francisco, California, this 15th day of August, 1932.

O. S. Seaver
Leon O. Brown
W. A. Cunn
W. B. Lavin
Fred G. Stewart
Commissioners.