

Decision No. 25209 .

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

JAHN AND BRESSI CONSTRUCTION COMPANY,
INCORPORATED,

Complainant,

vs.

HOLTON INTER-URBAN RAILWAY COMPANY,
INTER-CALIFORNIA RAILWAY COMPANY,
SOUTHERN PACIFIC COMPANY,

Defendants.

ORIGINAL

Case No. 3140.

F. W. Turcotte and L. E. Stewart, for the complainant .

James E. Lyons and E. H. McElroy, for the defendants.

F. C. Nelson, for the defendants.

BY THE COMMISSION:

O P I N I O N

Complainant is an Arizona corporation with its principal place of business in Los Angeles, and among other activities it is engaged in the construction of roads and highways in California. It is alleged in this proceeding that defendants charged and collected for the transportation of rock, sand and gravel from Frink to Holtville since June 5, 1931, a rate of 5 cents per 100 pounds, which rate was unjust and unreasonable and in violation of Section 13 of the Public Utilities Act. We are asked to prescribe a reasonable rate and to award reparation.

The Imperial Rock Corporation, a California corporation

owning a plant at Frink and producing rock, sand and gravel, was permitted to intervene.

A public hearing was held at Los Angeles before Examiner Geary, and the matter having been taken under submission and briefs filed, is now ready for an opinion and order.

Frink, the shipping point of all cars involved, is on the main line of the Southern Pacific Company approximately 12 miles west of Niland, while Holtville is on the Holton Inter-Urban Railway Company 11 miles east of El Centro. The distance from Frink to Holtville via El Centro is 55 miles. Another route is available, diverging from the El Centro branch of the Southern Pacific at Calipatria and passing through Turn and Sandia to interchange with the Holton Inter-Urban Railway at Holtville. This route involves a distance of 48 miles, all via the Southern Pacific except for the use of the Holton Inter-Urban tracks at Holtville. That part of the Southern Pacific south of Sandia to the interchange at Holtville represents a distance of 6.5 miles, and the link between Sandia and Holtville was opened for traffic in the early part of the year 1930, since which date there have actually been two lines into Holtville, although the Southern Pacific has no station by that name. The Holton Inter-Urban Railway was acquired by the Southern Pacific Company by the purchase of its capital stock, which control was authorized by the Interstate Commerce Commission January 2, 1926, in Finance Docket No. 5086 (105 I.C. C. 282). The Holton Inter-Urban however continues to maintain its legal entity although all train operations are rendered by the Southern Pacific Company by virtue of a trackage agreement and therefore for all purposes the rails of the Holton Inter-Urban are now an integral part of the Southern Pacific system. It was so held by the Interstate Commerce Commission Docket 20066, 164

I.C.C. 505:

"There is no evidence of record justifying the maintenance of a differential for the benefit of the Holton subsequent to the date the Southern Pacific acquired ownership thereof. There is no longer justification for according the Holton special-rate treatment. It is now a part of a strong railroad system, and is now, in effect, a branch of the Southern Pacific, although its accounts may be kept separately." (509)

The cars involved in this proceeding were moved to the interchange tracks at Frink by the shipper's facilities in blocks of from 10 to 14, and practically all of them traveled over the rails of the Southern Pacific the entire distance from Frink to the interchange tracks at Holtville via the short line through Calipatria, Turn and Sandia. The Southern Pacific Company, having no station by the name of Holtville in its tariffs, contends that deliveries could only be effected at the destination point by use of the facilities of the Holton Inter-Urban. The fact remains however that the cars were handled 100 per cent. by the Southern Pacific trains and that the Holton Inter-Urban as an operating carrier is a mere fiction. The use of the Holton Inter-Urban tracks under a trackage agreement is no different than the dual trackage uses employed between railroads such as that now existing between The Atchison, Topeka and Santa Fe and the Los Angeles & Salt Lake, or in the joint use of the tracks over the Tehachapi Mountains by The Atchison, Topeka and Santa Fe and the Southern Pacific Company. In these situations the leasing company functions in train services and traffic matters without interference or control from the owning corporation.

It is complainant's contention that it should have the rate of 4 cents on crushed rock, sand and gravel for distances of from 36 to 55 miles, which rate is based on the unpublished Southern California mileage scale, a scale while not contained in any railroad tariff has been generally adopted in Southern California when commodity rates are published for a one-line movement. The

5-cent rate assessed is also the Southern California mileage scale with one cent added for joint line movements. Computed on an average loading of 116,728 pounds the 5-cent rate produces \$58.36 per car or \$1.12 $\frac{1}{2}$ per car mile if moved via Sandia, a distance of 48 miles, and \$1.06 per car mile if moved via El Centro, a distance of 55 miles. Under the one-line mileage scale rate of 4 cents the earnings through Sandia would be \$46.62 per car, or 97 cents per car mile, and through El Centro 85 cents per car mile. As heretofore shown the actual route of the tonnage was via the short line of 48 miles through Sandia.

The defendants' principal contention is that the Holton Inter-Urban is an independent corporation and that although leased to and operated by the Southern Pacific the rate should nevertheless be based upon a 2-line movement. They presented exhibits showing crushed rock rates in different parts of the United States, and an exhibit giving the results of net railway operations of the Southern Pacific Company during the past seven years and also for the month of January for each of the past five years. These exhibits disclosed that the Southern Pacific Company earned a rate of return of 3.98% in 1929 and only 1.58% in 1931, also that for the month of January 1932 there was a net operating income loss of \$33,171.00. All of these data have had our careful consideration.

It is of record that prior to the movement of the tonnage involved the shippers endeavored to secure the publication of the Southern California one-line scale rate of 4 cents, also that they offered to build a spur track near the end of the Southern Pacific rails at Holtville in order to avoid the use of the facilities of the Holton Inter-Urban. Both of these requests were declined by the defendants. The exhibits indicate that with very few exceptions the 4-cent rate is applied in Southern California for 55-mile hauls

via a single line. The record shows that at all points within the Imperial Valley the Southern California mileage scale is applied with the single exception of Holtville, and Holtville is not given the same treatment because of the contention of the Southern Pacific that it is an exclusive Holton Inter-Urban station and therefore involves a joint carrier movement.

It would appear to the Commission upon this record that 4 cents is a reasonable rate for a haul of 55 miles, since Holtville is now actually a station on the rails of the Southern Pacific by reason of the trackage agreements. We conclude and find that the rate of 5 cents from Frink to Holtville is excessive and is in violation of Section 13 of the Public Utilities Act.

We further find that complainant made certain shipments during the period from June 5, 1931, to August 5, 1931, inclusive, and paid and bore the charges thereon; that it has been damaged to the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable and that it is entitled to reparation on such shipments with interest at 6 per cent. 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 con-

tained in the preceding opinion,

IT IS HEREBY ORDERED that defendants, Holton Inter-Urban Railway Company, Inter-California Railway Company and Southern Pacific Company, be and they are hereby ordered and directed 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 the public and thereafter to maintain for the transportation of rock, sand and gravel from Frink to Holtville a rate not in excess of 4 cents per 100 pounds.

IT IS HEREBY FURTHER ORDERED that defendants, Holton Inter-Urban Railway Company, Inter-California Railway Company and Southern Pacific 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, Jahn and Bressi Construction Company, Incorporated, all charges they may have collected in excess of 4 cents per 100 pounds for the transportation of the shipments of rock, sand and gravel involved in this proceeding moving on and after June 5, 1931, to and including August 5, 1931, from Frink to Holtville.

Dated at San Francisco, California, this 21st day of September, 1932.

C. S. Seavey
Leon Whiskey
W. A. Cunn
W. B. Harris
James H. Stewart
Commissioners.