

Decision No. 10159

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

W. P. Fuller & Company,)
Complainant,)
vs.)
Southern Pacific Company,)
Defendant.)

CASE NO. 1684.

ORIGINAL

D. T. Berry, for Complainant.
J. E. Lyons, for Defendant.

BENEDICT, COMMISSIONER.

O P I N I O N

The complainant, W. P. Fuller & Company, manufacturers and distributors of paints, oils, etc., with offices in San Francisco, Cal., alleges that the rate of 9 cents per 100 pounds collected by Southern Pacific Company, hereinafter referred to as defendant, on shipments consisting of 24 carloads fuel oil from San Francisco to South San Francisco within the period September 1, 1920 to July 31, 1921, was unreasonable and discriminatingly high to the extent it exceeded 4 cents. Reparation only is sought. Rates are stated in cents per 100 pounds.

A public hearing having been held and the case submitted on briefs, the matter is now ready for opinion and order.

The only evidence offered by the complainant to substantiate the complaint was an exhibit consisting of copies of

invoices for one carload of Whiting and one carload of vinegar which, it is alleged, were of greater value than a similar shipment of fuel oil. The testimony of complainant's witness went to the issue that the transportation charge was greater on fuel oil than the transportation charge for whiting or vinegar moving between the same points (South San Francisco and San Francisco), the two last named commodities being of greater value than fuel oil. No evidence was offered as to the similarity of the service performed on the two commodities nor as to the transportation conditions prevailing and no other statement was made than that the defendant carried a higher valued commodity at a lower rate than it carried commodities of ^{lesser} ~~greater~~ value between the same points.

The foregoing testimony was uncontroverted, but Value is not the only nor the controlling element to be taken into consideration in the construction of rates.

A witness for the complainant testified that in his opinion the rates complained of were unreasonable per se as compared with rates on other commodities, but he did not elaborate, explain or compare comparable rates and made no complaint of the current rates.

Defendant's witness testified that formerly the rate on all freight between San Francisco and South San Francisco was 50 cents per ton, or $2\frac{1}{2}$ cents per 100 pounds. Shortly after the railroads were taken under federal control the Railroad Administration increased all freight rates by General Order No. 28, effective June 25, 1918. That order brought the $2\frac{1}{2}$ cent rate to 3 cents and by this Commission's Decision No. 7983 the 3 cent rate was brought to 4 cents, effective August 26, 1920. This rate applied on all commodities generally, with a few exceptions - live stock, cement, lime, etc. Shortly after General Order No. 28 became

effective that order was amended by Rate Authority No. 96 to provide instead of a flat increase of 25 per cent, petroleum oil would be subjected to a flat increase of $4\frac{1}{2}$ cents applied uniformly to all petroleum oil rates, both state and interstate, throughout the nation. This was done, the Director General declared, at the instigation and demand of shippers for a continuation of the differential basis which had always been preserved on petroleum and its products and it was found that approximately the same aggregate revenue would accrue to the carriers under the $4\frac{1}{2}$ cent increase as would have accrued under a 25 per cent increase. Naturally, the adjustment whereby $4\frac{1}{2}$ cents was added to the petroleum oil rates after the petroleum rates had been established under General Order No. 28, brought about both reductions and increases.

The defendant further contended that the rate of $2\frac{1}{2}$ cents in effect prior to Government control of railroads was unduly low and was a water-compelled rate, made necessary to meet barge competition.

By this Commission's Decision No. 8960, May 12, 1921, South San Francisco was brought within the switching limits of San Francisco and the condition complained of in this proceeding was cured, effective July 11, 1921, when defendant published the rates prescribed and, therefore, the only question before the Commission in this proceeding is the reasonableness of the 9 cent rate in effect between September 1, 1920 (end of guaranty period) and July 11, 1921, and whether or not the same was discriminatory.

Taking into consideration that all of the petroleum rates throughout the State and Nation were increased $4\frac{1}{2}$ cents in order to maintain relationships long existing between the various producing and consuming points and, furthermore, considering the

fact that other commodities - live stock, cement, lime, etc. were increased in different ratio and there having been no complaint against the rates on these other excepted commodities between the points in issue and it being obvious that any general adjustment of rates such as the one referred to would result in increases as well as decreases; for instance, all rates on petroleum oil over 19½ cents in effect prior to General Order No. 28 by applying the 4½ cent increase, would result in lower rates than if the 25 per cent General Order No. 28 horizontal increase had been allowed to remain in effect and, further, in view of the fact that defendant inherited the rate complained of from the United States Railroad Administration and that the adjustment complained of resulted from the desire of the government to preserve existing relationships, I find that the rate complained of in this proceeding was not unreasonable nor unduly discriminatory at the time it was assessed. It applied to all oil traffic throughout the State. Furthermore, we believe reparation should not be awarded on readjustments of this character effective during a period when the railroads were operated by the government as a war emergency measure, and no evidence was offered indicating that complainant suffered any damage.

Under all of these circumstances, I believe that reparation should be denied and the complaint dismissed.

I submit the following form of order.

O R D E R

IT IS HEREBY ORDERED that the complaint in this

proceeding should be and the same is 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 7th day of March 1922.

H. B. Brundage

H. D. Loveland

Waring Martin

J. F. Pennington
Commissioners.