

Decision No. 10263

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of)
the McCloud River Railroad Company)
for authority to establish a penalty)
charge of \$10.00 on Stock Cars ordered)
and not used.)

APPLICATION NO. 7478.

D. M. Swobe, for Applicant,
G. J. Bradley, for C. Swanston & Son.

BY THE COMMISSION:

O P I N I O N

This is an application under Section 63(a) of the Public Utilities Act of the State of California for an order authorizing the McCloud River Railroad Company to establish a \$10.00 penalty charge against stock cars ordered placed for loading and not used by the shipper.

A public hearing was held by Examiner Geary on March 3, 1922 at San Francisco. No protests were entered, although notice of the proceeding had been given to all interested parties.

The evidence in support of the application shows that shippers of live stock place orders for cars without a reasonable attempt to ascertain the number required to fill their needs. The McCloud River Railroad Company owning none of this class of equipment places orders in good faith with the Southern Pacific Company.

the connecting carrier, which in turn furnishes the cars as requested and the applicant is required to haul the empty equipment from Sisson to the stock shipping points on its line.

Applicant performs all of the service necessary to prepare the equipment for loading, such as sanding and bedding, for which the authorized tariff charge is 50 cents for single and \$1.00 for double-deck cars and this is done without any assurance on the part of the shippers that the cars ordered will be used.

The evidence further shows that when shippers order more cars than they have loads for the McCloud River Railroad Company is not only burdened with the expense of sanding and bedding but, in addition, must pay the Southern Pacific Company a per diem charge of \$1.00 per day for each car furnished, to say nothing of the expense incurred in hauling the empty cars from Sisson to points along the line and their return to the junction point, covering distances ranging from 6 to 72 miles. Oftentimes extra trains are made necessary by reason of the heavy grades, ranging from 2½ to 4 per cent, and the many severe curves.

The stock cars furnished shipper cannot be used in transporting other commodities and it being practically impossible to return the unused cars in less than three days, with a per diem charge of \$3.00, it is self evident that the McCloud River Railroad Company is performing the service at an actual out-of-pocket loss of at least \$4.00 per car, including the cost of sanding and bedding the cars, and exclusive of the expense of haulage from and to Sisson. The average revenue of the applicant from the live stock is \$33.00 per car and it can be readily seen that if a large number of stock cars are ordered and not used the net revenue is very much depleted.

The testimony given indicates that the application was

presented by the McCloud River Railroad Company not for the purpose of securing additional revenue, but in an attempt to discourage and avoid performing a service for which it now receives no compensation and which is actually performed at a loss.

Prior to Federal control the carriers had in their tariffs an item providing that when empty cars were placed for loading on orders and were not used, the party ordering the cars would be subject to regular demurrage charges, together with a charge for the empty haul of \$5.00 per car when the equipment was moved from a point outside of the station limits.

The forwarding of live stock involves features and difficulties not present in the moving of other commodities, for it frequently happens that stock cannot be driven to the loading stations because of weather or other conditions beyond the control of shippers, therefore the carrier should participate, to some extent, in the unusual and peculiar conditions surrounding the shipments of live stock. A charge of \$10.00 would be in the nature of a severe penalty in situations entirely beyond the control of the shipper. It is, therefore, our opinion that nothing more than the proven out-of-pocket cost to the applicant should be allowed for the service given and this does not appear to be in excess of \$5.00 per car.

In view of the evidence produced it is the opinion of the Commission that the McCloud River Railroad Company should be authorized to publish a transportation charge of \$5.00 per car when live stock cars are ordered and not used, this charge to apply only when the equipment must be moved from a station other than that at which the loading takes place.

ORDER

Application having been made by the McCloud River Railroad Company for permission to make a charge when cars are ordered for the loading of live stock and after having been placed are not used, a public hearing having been had on said application, and the Commission being fully apprised in the premises,

IT IS HEREBY ORDERED that the McCloud River Railroad Company be and it is hereby authorized to publish in its tariffs a charge of \$5.00 per car, to be collected when cars are ordered for live stock and after having been moved from another station are not used by the shipper.

Dated at San Francisco, California, this 29th day of March, 1922.

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