

ORIGINAL

Decision No. 1055

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

SAN FRANCISCO CHAMBER OF COMMERCE,
a corporation,

Complainant,

vs

Case No. 385

SOUTHERN PACIFIC COMPANY,
a corporation,

Defendant.

APPEARANCES:

Seth Mann and Wm. R. Wheeler, for the complainant.
Geo. D. Squires and E. G. Toll, for the defendant.

GORDON, Commissioner:

OPINION

The complainant in this case, the San Francisco Chamber of Commerce, includes in its membership certain corporations engaged in the manufacture of clay products, such as fire brick, pressed brick, sewer pipe, terra cotta, drain tile and the like, whose factories are situated at South San Francisco, East Oakland and Alameda, and in the behalf of such members, it puts in issue, in this case, the reasonableness of the rate of \$1.25 per ton of 2000 pounds maintained, charged and collected by the defendant Southern Pacific Company for the transportation of Clay, in car-load lots of 40,000 pounds or more, to said points of manufacture from Ione, Clarkston, Yuba, Carbondale, Lincoln, Clayton and Valley Springs, where are located the clay pits from which the clay used in these manufactories is largely obtained.

The complainant contends, that the unreasonableness of the rates on Clay, here involved, is evidenced by the fact that the same rates are charged for similar movements of the manufactured products thereof, an adjustment voluntarily established by the carrier, notwithstanding that the value of the products of clay is greatly in excess of the value of the clay itself.

and it is urged that the rate on the clay should be materially lower than the rate on the products manufactured therefrom. This question was gone into at great length at the hearing and much testimony was introduced to establish the principle, but, in my opinion, it is unnecessary at this time to consider whether or not it can be laid down as a principle of general application or of particular application to the facts in this case, that the raw material is entitled to a lower rate than are the products manufactured therefrom, for the reason that it is conceded by the defendants that for the movements here involved the clay is entitled to a rate somewhat less than the rate on clay products, at least eighty per cent, and it is of record that the defendant Southern Pacific Company offered to reduce the rates, on Clay, complained of to 90¢ per ton of 2000 lbs., and from the testimony of the defendant in this regard it is reasonable to assume that there was to be no corresponding reduction in the rates on the clay products.

As a further cause for complaint it is urged that the rates charged for the transportation of clay, between the points designated, are higher than the rates contemporaneously maintained and charged for the transportation of commodities of similar nature and value under similar transportation conditions, which complainant contends demonstrates the unreasonableness of the rates on the clay and complainant shows that the Southern Pacific Company is maintaining and charging on such commodities as sand, gravel, boulders, crushed rock, disintegrated granite, granite spalls, grout, gutter rock, macadam, rip rap, rubble, shale, tufa and waste rock, in carload quantities, rates which are considerably lower than the rates charged for the transportation of clay between the same points of origin and destination. The so-called shale, which is included in the crushed rock grouping and which the carrier is transporting at the same rates as apply to the other low grade commodities mentioned,

but which it has consistently refused to apply to clay, is to all purposes a clay of equal efficiency in the manufacture of clay products as many of the so-called plastic clays being used and on which a rate of transportation much greater is being paid. In this regard a witness for the complainant testified that from analyses and experiments with shale, as far as they had extended, he had not found that the shale is less efficient in any respect than the clay generally used in the plant of the company of which he is superintendent. The defendant contends in this regard that the rates on crushed rock and the articles taking the same rates, were extended so as to apply on shale on the representation and understanding that it was a waste rock similar to the other rock materials contained in the crushed rock grouping, and that it, the carrier, had no knowledge that the so-called shale could be substituted for plastic clay in the manufacture of clay or pottery products, and I am of the opinion that the carrier was misled and, upon a misunderstanding, extended to shale the rates applying on crushed rock and similar commodities.

The carrier justifies the lower rates on the crushed rock on the grounds that the rates were originally established on a low basis to foster and encourage the use of crushed rock and similar materials in the construction of roads and in establishing the rates thereon it had in mind largely the general public good; and the carrier further contends that the difference in value between crushed rock and the commodities taking the same rates, and clay, is sufficient to justify the higher rate on the clay. Again, that the transportation conditions are such that the lower rate upon the crushed rock than upon the clay is justified for the reason that it is largely moved in bulk loads, the equipment being immediately released upon arrival at destination by dumping and is thereafter immediately available for reloading. While there is, no doubt, merit to the contention that the rates on crushed rock were originally established for the purpose of promoting the building of public roads, this same contention does not justify nor did the carrier attempt, in this

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but which it has consistently refused to apply to clay, is to all purposes a clay of equal efficiency in the manufacture of clay products as many of the so-called plastic clays being used and on which a rate of transportation much greater is being paid. In this regard a witness for the complainant testified that from analyses and experiments with shale, as far as they had extended, he had not found that the shale is less efficient in any respect than the clay generally used in the plant of the company of which he is superintendent. The defendant contends in this regard that the rates on crushed rock and the articles taking the same rates, were extended so as to apply on shale on the representation and understanding that it was a waste rock similar to the other rock materials contained in the crushed rock grouping, and that it, the carrier, had no knowledge that the so-called shale could be substituted for plastic clay in the manufacture of clay or pottery products, and I am of the opinion that the carrier was misled and, upon a misunderstanding, extended to shale the rates applying on crushed rock and similar commodities.

The carrier justifies the lower rates on the crushed rock on the grounds that the rates were originally established on a low basis to foster and encourage the use of crushed rock and similar materials in the construction of roads and in establishing the rates thereon it had in mind largely the general public good; and the carrier further contends that the difference in value between crushed rock and the commodities taking the same rates, and clay, is sufficient to justify the higher rate upon the clay. Again, that the transportation conditions are such that the lower rate upon the crushed rock than upon the clay is justified for the reason that it is largely moved in trainloads; the equipment being immediately released upon arrival at destination by dumping and is thereafter immediately available for re-loading. While there is, no doubt, merit to the contention that the rates on crushed rock were originally established for the purpose of promoting the building of public roads, this same reason does not justify nor did the carrier attempt, in this

manner, to justify the lower rates on the sand and gravel than on the clay, but admitted, because of the competition between crushed rock, sand and gravel - all of which are used as building and construction material, a rate was established on gravel and sand similar to that applied on the crushed rock. In this regard a witness for the defendant testified, as follows:

"The first rock rates were made primarily for the movement of crushed rock as road material ***** very low rates on crushed rock were necessary if it was to be used at all for the making of roads ***** it was impossible to restrict the use of the crushed rock on which this rate was applied. Especially after the destruction of San Francisco there was a large movement of crushed rock into this point for reinforced concrete work for building purposes. The rate on crushed rock that was put in for road material likewise applied on that material. ***** after that rate was applied on this material without any restrictions it naturally came in competition with kindred articles like sand and gravel which were also used in the manufacture of concrete work and it was almost impossible to differentiate in the rate between these commodities that came in competition with each other and were used for identically the same purpose".

— As regards the transportation conditions surrounding the traffic under consideration, it is my opinion that any advantages that might accrue to the carrier because of the movement of the crushed rock in trainload lots, is offset by the fact that in such cases special equipment is usually necessary, that an empty back-haul for the equipment so utilized is generally made and that equipment moving into factories, loaded with clay, is entirely utilized and loaded out of the factory with the manufactured products of the clay: in fact, the manufacturing of clay products, involved in this proceeding, load and ship out from their factories approximately two carloads of clay products to each carload of clay shipped in. Again, the sand and gravel and materials other than crushed rock, do not usually move in trainloads. Nor is it my opinion that any justification exists for a higher rate upon the clay than upon sand and gravel and like commodities, on the theory that the value of the clay is sufficiently in excess of the value

of the other commodities to justify a difference in rate. The testimony in this case does not seem to sustain this contention of the carrier. It is of record that the clay at the pit brings approximately \$1.00 per ton and that the value of the gravel and sand varies from \$.25 to \$1.00 per ton and that the crushed rock and the other materials are of slightly less value and it is my opinion that the difference in the value of these articles is not sufficient to justify a difference in the rating thereon, between the points involved in this proceeding, if that alone were the only element proper to consider, and this seems to have been the general conception of the relative values of fire clay, sand and gravel entertained by the framers of the Western Classification, inasmuch as these commodities are all rated at Class "B" in that Classification.

The complainant further urges that the commodities which are given the crushed rock, sand and gravel ratings in a great measure enter into competition with the products manufactured from clay and used in the construction of buildings, and that, therefore, the lower rate on the crushed rock, and similar materials, inures to the disadvantage of the manufacturers of clay products, and for this reason the rates should be similar where the conditions of transportation are similar. This latter principle, as a general proposition, is undoubtedly sound but when, as is here the case, the commodities on which the lower rates are provided and with which comparisons are made, in addition to competing with the products of clay, supply a general demand and contribute generally to the development and upgrowth of the entire community, and by reason of that fact are given rates lower than would ordinarily be given, as the record shows in the case here, to permit of their free movement and distribution, I am of the opinion that the general interest of the public justifies a reasonable difference between the rates on such commodities and on commodities limited to

commercial uses strictly, even though the values and character of the commodities are similar and the conditions of transportation in all respects are equal.

After a full consideration of all the facts I find that the present rates on clay, in carloads, from Clayton, Lincoln, Ione, Clarksons, Yaru, Carbondale and Valley Springs to East Oakland, South San Francisco and Alameda (Pacific Avenue) are unreasonable, excessive and unjust and that a reasonable and just rate upon clay, in carload lots of 60,000 lbs. or more, from and to the points named is 85 cents per ton of 2000 lbs.

I therefore recommend the following form of order.

O R D E R

Complaint having been filed by the San Francisco Chamber of Commerce against the Southern Pacific Company as to the reasonableness of said company's rates on clay in carload quantities from Ione, Clarksons, Yaru, Carbondale, Lincoln, Clayton and Valley Springs to South San Francisco, East Oakland and Alameda (Pacific Avenue) and a full investigation of matters and things involved having been had and a public hearing thereon having been held and being fully apprised in the premises,

The Commission finds as a fact that the rate on clay, in carloads, of \$1.25 per ton of 2000 lbs. from Ione, Clarksons, Yaru, Carbondale, Lincoln, Clayton and Valley Springs to South San Francisco, East Oakland and Alameda (Pacific Avenue) maintained and charged by said Southern Pacific Company, is excessive, unjust and unreasonable and that a just and reasonable rate on clay, in carload quantities, of 60,000 lbs. or more, from and to the points named is 85 cents per ton of 2000 lbs., and,

IT IS HEREBY ORDERED that the Southern Pacific

Company publish and file in tariff with this Commission, to become effective within twenty days from the date of this order, a rate of 85 cents per ton of 2000 lbs. on clay, in carload quantities of 60,000 lbs. or more, from Ione, Clarkston, Yuba, Carbondale, Lincoln, Clayton and Valley Springs to South San Francisco, East Oakland and Alameda (Pacific Avenue).

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 30th day of October, 1913.

Alex Gordon

Marion Thelen

Edwin O. Edgerton

Commissioners.