Decision No. 10895

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ROSENBERG BROS & COMPANY,
GROWERS RICE MILLING CO.,
C. E. GROSJEAN RICE MILLING CO.,
SACRAMENTO VALLEY RICE MILLING CO.,
THE NATIONAL RICE MILLS,
CALIFORNIA STATE RICE MILLING CO.,

Complainants,

Vs.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
SOUTHERN PACIFIC COMPANY,
WESTERN PACIFIC RAILROAD COMPANY,
CENTRAL CALIFORNIA TRACTION COMPANY,
SAN FRANCISCO-SACRAMENTO RAILROAD CO.,

Defendants.

Case No. 1744.

E. W. Hollingsworth, R. T. Boyd and Bishop & Bahler for Complainants.

Elmer Westlake and H. W. Klein for Atchison, Topeka & Santa Fe Railway Company and for Southern Pacific Company.

James S. Moore for Western Pacific Railroad Company.

Charles R. Detrick and Heller, Ehrman, White & McAuliffe for Sacramento Northern Railroad Company.

Butler & Van Dyke for Central California Traction Company.

L. H. Rodebaugh for San Francisco-Sacramento Railroad Company.

Sanborn, Roehl & Smith for Sacramento Navigation Company and California Transportation Company, Intervenors.

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BY THE COMMISSION.

O P I N I O N

The complainants herein are owners and operators of rice mills located at various points within the State of California. By complaint filed on April 14, 1922, it is alleged that the rates on paddy rice are, and since January 7, 1922 have been, unreasonable, unjustly discriminatory and unduly prejudicial to the extent that they exceed and have exceeded 125 per cent of the rates contemporaneously in effect between the same points on whole grains, such as wheat, corn, oats, etc. Reparation is asked and an order fixing for the future reasonable and non-discriminatory rates on this commodity, which will be hereinafter referred to as rice.

A petition of intervention was filed on behalf of the Sacramento Navigation Company and the California Transportation Company stating that, directly or indirectly with other carriers, they serve a large part of the rice producing area of the Sacramento Valley and that their revenues would be "vitally affected" by our decision. By consent of counsel, the following rice millers were added as parties complainant: Dupont, Carleton & Company; M. J. Brandenstein & Company; Natoma Rice Milling Company, and M. Phillips & Company.

This is the fifth complaint filed with us in less than two years, involving the rates on this commodity. It was agreed between counsel that the records made in those proceedings should be considered by us in connection with the instant case. The development of the rice industry within the state and the origin and history of the rates applicable thereto have been fully

discussed in our former decisions, and need not be repeated here in detail. However, a complete understanding of the rate adjustment now complained of makes necessary a brief reference to those cases and to the numerous changes that have taken place during the past two years in the rice rates as the result of decisions of the Interstate Commerce Commission, of this Commission, and through the voluntary action of the carriers themselves.

The instant complaint grows out of and is predicated upon our order entered in Cases 1432 and 1437 on January 6, 1921, Decision No. 8517. Briefly stated, those complaints, which were consolidated for hearing, alleged that the rates on rice within the state were unreasonable, unjustly discriminatory and unduly prejudicial. On the record then before us, we found the existing rates to be unreasonable, and required the carriers to establish carload rates on rice based on "125 per cent of the rates established August 26, 1920" on whole grains. The carriers interpreted this order as fixing a definite percentage relationship between the rates as of August 26, 1920, on whole grains and rice, and the tariffs filed by them effective February 5, 1921, may be said to have established this basis, the rice rates in some instances being increased in order to make them 125 per cent of the grain rates. The complainants, who had asked for rates no higher than the grain rates, were dissatisfied with this decision and filed a petition for rehearing, which petition was denied on March 4, 1921. Shortly thereafter, a complaint was filed by Rosenberg Brothers and others, Case 1585, alleging that the rates charged on shipments of rice made by the complainants therein between January 1, 1917 and the date of the complaint, April 16, 1921, were unreasonable and asking reparation to the basis of rates which should be found reasonable by us. On April 22, 1921,

still another complaint was filed, Case 1588, by the Pacific Rice Growers Association, alleging that the then existing rates on rice were unreasonable, discriminatory and prejudicial to the extent that they exceeded the rates contemporaneously in effect on grain. In other words, these two cases really again raised practically the same issues as were decided in our Decision No. 8517. Case 1588 was dismissed on August 24, 1921 for the reason, as stated in the syllabus of the decision, No. 9411, that the complainants had "adduced no evidence to show that rates per se, on paddy rice are unreasonable, or that grain rates are or are not reasonable." The complaint in Case 1585 was dismissed on March 21, 1922 for reasons later stated in this report.

As is well known, following the decision of the Interstate Commerce Commission in Increased Rates 1920, 58 I.C.C. 320, rates in the so-called Mountain-Pacific group were generally increased 25 per cent, effective August 26, 1920. Like increases were permitted on traffic within the state of California under our Decision No. 7983. As the result of a decision by the federal commission in Rates on Grain, Grain Products and Hay, 64 I.C.C. 85, the interstate rates on grain, and also rice, effective January 7, 1922, were reduced 10 per cent. A like percentage reduction was made effective on the same date, on rates within this state on numerous agricultural products, not, however, including rice. The carriers explain that no reductions were then made in the state rates on rice since, in most instances, those rates had been reduced more than 10 per cent under our order in Cases 1432 and 1437, and it was their purpose to then make reductions only where the rates on a specified commodity had not been already reduced 10 per cent or more subsequent to August 26, 1920. This statement, however, is controverted by a rate witness

for complainants who testified that from an examination of the tariffs "90 per cent of the rates which were reduced voluntarily by the carriers were further reduced under this 10 per cent reduction of January, 1922." In any event, as the result of these various adjustments the state rates made effective on rice on January 7, 1922, exceeded the rates contemporaneously applicable on whole grains by more than 125 per cent. It is this higher rate basis that is here attacked as unreasonable.

Shortly before this proceeding was heard, and on May 16, 1922, the Interstate Commerce Commission handed down its decision in Reduced Rates 1922, 68 I.C.C. 676. In pursuance of the conclusions therein announced, the carriers filed tariffs effective July 1, 1922, or later, which so reduced many rates which had been increased 25 per cent, effective August 26, 1920, as to make them but 12.5 per cent in excess of the rates in effect August 25, 1920. Like reductions were made effective within this state on rice and many other commodities. Since the rates on grain had been reduced in January of this year, they were not further reduced, interstate or intrastate, effective July 1. Summarized, therefore, the state rates on rice which were reduced by us in February, 1921, were not reduced in January of this year when the grain rates were voluntarily reduced; and the latter rates were not further reduced effective July 1, 1922, at which time the rice rates were reduced. As the result of these several readjustments, the state rates on rice are now, and since July 1, 1922 have been, approximately 125 per cent of the grain rates and are, therefore, in substantial conformity with the basis fixed by us as reasonable in Decision No. 8517. The exceptions to this basis result from the disposition made of fractional parts of a cent in publishing rates.

In dismissing Case 1585 on March 21, 1922, we referred to the fact that the readjustments brought about on February 5,1921,

as the result of our Decision No. 8517, resulted in both increases and decreases, and, in denying reparation, said:

> "This Commission has heretofore stated its belief that reparation should not be awarded on adjustments such as are involved here on rates effective by mandate of governmental power and during a period when the railroads were operated by the government as a war emergency measure.
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> "The paddy rice rates fixed and prescribed by this Commission's Decision Nos. 7983 and 8517 applied to all of the defendants and at practically every rice-shipping point throughout the entire state. Under a general adjustment of all rates on a particular commodity to a reasonable basis, as was done by Decision No. 8517, carriers are not permitted to make any resultant increases as to certain rates retroactive. For similar reasons reparation should not be allowed on resultant decreased rates unless the evidence clearly shows justification therefor.
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> "No evidence was offered indicating that complainants had suffered any damage, beyond having paid a higher rate during a certain period than they were required to pay at a later date."

When Case 1585 was filed with us, a similar proceeding was filed by the same complainants with the Interstate Commerce Commission, involving intrastate shipments moving during the period of federal control. That case was decided on May 20, 1922, Rosenberg Bros. & Co. v. Director General, 69 I.C.C. 103. The federal commission there held the rates unreasonable to the extent that they exceeded 125 per cent of the grain rates. The record in that proceeding consisted almost entirely of the record made before us in Cases 1432 and 1437, and the Commission said, page 104:

> "The determination of the State commission made with full knowledge of local conditions and upon practically the same record as is here presented is entitled to much weight."

It is true that our finding in Cases 1432 and 1437 was that the present rates on paddy rice "are unjust and unreasonable

to the extent that they exceed 125 per cent of the rates established August 26, 1920, applying to whole grain." Our order required that the prescribed basis be established on or before January 20, 1921, and that the defendant carriers thereafter "abstain from maintaining the unreasonable rates found to be existing by the preceding opinion." While our order, therefore, did not in specific terms fix a definite relationship for the future, inferentially, at least, it was an order for the future, a fact made clear by a careful reading of the report itself. In both Cases 1432 and 1437, the existing rates were alleged to be unreasonable and discriminatory. The complainants in Case 1437 asked that the Commission fix rates on rice not to exceed those contemporaneously in effect on whole grains; the complainants in Case 1432 asked that we fix a reasonable mileage scale of rates. As to the latter contention, we expressed "the opinion that a mileage scale of rates could not be constructed that would be reasonable and non-discriminatory" and dismissed this part of the complaint. The history of the rates on grain and rice was there related in detail. We referred to the fact that testimony offered by the defendant showed that in the beginning,

> "rice rates were based upon 150 per cent of the grain rates, but subsequent horizontal percentage increases have resulted in increasing the differential and widening the relationship between grain rates and rice rates until the rice rates are now higher than they probably would have been had adjustments been made by any other method than a horizontal increase."

Taking all factors into consideration, we found the then existing rates on rice unreasonable to the extent that they exceeded rates based on 125 per cent of the rates established August 26, 1920 on whole grain. Reparation was not asked in either proceeding, but the question of reasonableness of rates for the future was involved in both cases. In determining that issue, we refused

either to prescribe a mileage scale or to establish the same rates on rice as were applicable to whole grains, as prayed for in the two complaints. On the contrary we but continued a policy adopted by the principal defendant in initiating rice rates, that is making such rates with relation to the grain rates. The relationship fixed by us, however, differed in degree from that used by the defendant and was clearly intended as a basis for future application. Were this not the case, our finding would have been futile. As a matter of fact, the relationship fixed by our order did continue until January 7, 1922, when the rates on grain were reduced without a corresponding reduction in the rates on rice, thereby again producing a situation similar to that condemned in our Decision No. 8517. It appears, therefore, that during the period of federal control up to and including February 28, 1920, the federal commission has recognized as reasonable rice rates based on 125 per cent of the grain rates; that this basis prevailed between February 5, 1921, and January 7, 1922, and was restored with but few deviations on July 1, 1922. In the light of all the circumstances, no other conclusion can be reached than that basis should also have prevailed during the period January 7, 1922 to July 1, 1922, and should now be in effect. To the extent, therefore, that the rates on paddy rice during the period last named exceeded, and to the extent that they now exceed, 125 per cent of the rates contemporaneously applicable on whole grains between the same points, they were, are, and for the future will be to that extent unreasonable.

The complaint asks reparation, but by agreement of counsel no evidence was submitted at the hearing as to shipments made by the complainants or the payment of freight charges, these matters being deferred pending the determination of the issue of

reasonableness of the rates involved. The rates now having been found unreasonable, reparation to the basis of the rates herein held reasonable should be paid by the defendant carriers to the parties of record by whom the freight charges were actually paid and borne. The complainants should submit statements of shipments to the defendant carriers for check, thereby avoiding the necessity of a further hearing. Should it not be possible to reach an agreement as to particular shipments, the matter can then be referred to us for further consideration and the entry of a supplemental order, should this prove necessary.

An order will be entered accordingly.

O R D E R

This case being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

IT IS HEREBY ORDERED that the defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before September 23, 1922, and thereafter to abstain from publishing, demanding or collecting for the transportation of paddy rice, in carloads, between points within the State of California, rates which exceed by more than 25 per cent the rates contemporaneously applicable on whole grains, viz., wheat, oats, barley, etc., in carloads, from and to the same points of origin and destination.

IT IS HEREBY FURTHER ORDERED that the said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before September 30,1922, upon notice to this Commission and to the general public by not less than ten days filing and posting, and thereafter to maintain and apply to the transportation of paddy rice, in carloads, between points in the State of California, rates which shall not exceed by more than 25 per cent the rates contemporaneously applicable between the same points of origin and destination, on whole grains, viz., wheat, oats, barley, etc.

Dated at San Francisco, California, this 23d day of August, 1922.

H. G. Brundige

Irving Martin

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Commissioners.

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