Decision No. 11034

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Piedra Rock Company, a Corporation,
Complainant,

vs.

Southern Pacific Company, a Corporation,
The Atchison, Topeka & Santa Fe Railway Company, a Corporation,
Defendants.

ORIGINAL

CASE NO. 1645.

Sanborn, Roehl & Smith and James A. Keller, for Complainant.
Frank B. Austin, for Southern Pacific Company,
G.H.Baker, for Grant Rock and Gravel Company, Intervener.

BY THE COMMISSION:

PETITION FOR REHEARING

REPORT OF THE COMMISSION UPON ORAL ARGUMENT.

O P I N I O N

At the request of the complainant this case was set for argument for the purpose of determining the merits of the petition for rehearing submitted by them, in which the Commission is requested to modify the findings and orders therein and the conclusions reached in Decision No.10619, June 23, 1922.

The points relied upon by complainant in support of its

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petition will be considered separately:

I:
"That the findings and the order in said proceeding are erroneous and not supported by the evidence and are contrary to the evidence".

This allegation is so general in character that it needs no attention further than to state that in considering the other points involved the declaration is disposed of.

II:
"That the statement on page 5 of the opinion that

'The evidence was to the effect that the Santa Fe in order to allow the product of the quarry at Dwight to be given as large a circulation as possible and in order to keep the quarry operating at full capacity, made rates into Oakland in competition with rock reaching Oakland by water from a quarry at Richmond and from other quarries shipping into Oakland by barge,'

is erroneous, contrary to the evidence, and not supported by the evidence."

This exception is not well taken, for a witness on behalf of defendant made the following statement:

"Well, I know that the Santa Fe was anxious to place that Dwight rock, to give it as large circulation as they could in order to keep the quarry operating to full capacity, and that they made the rate into Oakland in competition with rock reaching Oakland by water from a quarry at Richmond and from other quarries that came into Oakland by barge; that when the interchange switching arrangement with the Southern Pacific was made the Hutchinson Company, who operated that quarry at Dwight, immediately begun to make prices and make bids on placing that Dwight rock, or Hutchinson rock, at points on the Southern Pacific in competition with the local rock coming from what was known as Leona quarry that Mr. Klein referred to here this morning on the California Railway, and with the quarries that were sending rock in there from Richmond by water."(Trans.p.149)

The testimony of this witness that the rock reaching Oakland by water carriers influenced the adjustment of the rate by rail from Dwight to Oakland was not substantially refuted either in cross examination or by further direct testimony.

III.

"That the statement appearing on page 5 of the opinion that,-

'The testimony also showed that the operation of getting the rock from the Dwight quarry into the Oakland yard, where it was turned over to the Southern Pacific, was practically a yard operation.'

is erroneous, unsupported by the evidence, and contrary to the evidence."

The testimony shows that the train crew performing the freight work on the Oakland branch of the Atchison, Topeka & Santa Fe moved to Oakland in the morning, handled the freight at that station and at the industry tracks under the direction of the Oakland agent, and at noon, or as soon thereafter as they reached the Oakland yard, would pick up empty cars and return to the quarry. The testimony further shows that this crew would, on occasions, make the round trip in a period of four hours and while the territory operated over is not entirely within yard limits and, therefore, necessitates running orders from the train dispatcher, the distinction as between this crew and a regular switching crew is not apparent. The work as performed, when we consider that the crew did the switching between Richmond and Oakland, including the quarry at Richmond and the industry tracks in Oakland, is practically a switching service, and our declaration to that effect is most positively sustained by the testimony.

IV.

"That the statement appearing on page 5 of said opinion, that,-

'It will therefore be seen that the Dwight rates are on a low basis to meet water competition and the competition from quarries located in the City of Oakland, Leona Heights, on the San Francisco-Oakland Terminal Railways, and in these respects at least are not fairly comparable with the rates from either Piedra or Friant',

is erroneous, unsupported by the evidence, and is contrary to the evidence".

V.

That the manner in which the rate from Dwight to Oakland was

constructed has no bearing on this proceeding; also that the rates from Dwight to Livermore, San Ramon, Midway, Danville, Manteca and numerous other points on the line of the Southern Pacific were not given proper consideration.

These allegations, IV and V, may be treated together. Examination of the whole record shows a continual reference to the Dwight rates and most certainly the Dwight-Oakland rate, being the foundation of the Dwight joint rates to points on the Southern Pacific, is entitled to much attention. The answer made as to allegation II applies here to a greater or less extent.

VI.

"That the statement appearing on page 6 of the opinion in this proceeding, that,-

'The defendant, Southern Pacific Company, would be required to short-haul itself if compelled to equalize the rates from an off-line shipping point with rates from a shipping point local to its line',

is erroneous, unsupported by the evidence, contrary to the evidence, etc."

The above quotation has no particular importance when considered in connection with the entire decision. This Commission has never permitted a carrier to restrict fair competition, but a carrier may properly retain traffic to its own rails when the rates under which the revenue is secured are not unreasonable, excessive or discriminatory.

VII.

"That the statement that,-

'Railroad commissions generally, as well as the interstate Commerce Commission, have recognized the principle that a two-line haul is entitled to a proportionately higher rate than a one-line haul',

disregards the evidence in this proceeding".

Our opinion quotes from six decisions of the Interstate Commerce Commission and one of this Commission.

The main contention in this proceeding, as developed by

the exhibits and the testimony, is that the joint rates from Piedra, on the Santa Fe, to points on the Southern Pacific in the San Joaquin Valley, are discriminatory to the extent that they exceed by 10 cents per ton the unpublished mileage scale of rates usually employed for a one-line haul between points both of which are located in Northern-Central California on the rails of the Southern Pacific.

It might here be stated that an identical mileage scale is published by the Western Pacific, their Tariff G.F.D. No.36-F, C.R.C.257, and this basis is generally used by carriers when commodity rates are made on rock between points in the northern-central part of the State.

The testimony shows that defendant has for years, with but few deviations, employed the one-line mileage scale, plus 20 cents per ton, when publishing rock rates for a two-line haul. The only territory where this basis is freely departed from is between Dwight, a point on the Santa Fe, and stations on the Southern Pacific. Distribution of rock from the Dwight quarry is limited to points around San Francisco Bay - Martinez, San Jose and Redwood City.

The record clearly shows that Dwight could not compete with the quarries located nearer the points of consumption in the San Joaquin Valley because of the lower freight rates from the latter points. It therefore follows that the rates published from Dwight, although on a lower mileage scale than from Piedra, can have no effect whatever over the tonnage moving out of the Piedra quarry to San Joaquin Valley destinations. The Dwight rates, the record shows, were arbitrarily established to meet a competitive situation and, originally, in the divisions of the earnings the Southern Pacific Company was given its full local

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mileage scale. These rates, therefore, are not fairly comparable with the rates from Piedra or from other points throughout the State.

With respect to the differential of 20 cents, we said in our original opinion:

> "Furthermore, a two-line haul rate that is less than a combination of locals is obviously less remunerative to either participating company than a haul local to one line. The revenue must be divided and in all cases when such two-line haul revenue is split, one or the other or both of the lines must shrink their locals. So the question resolved itself into: What is a reasonable additional charge for a two-line haul as compared to a one-line haul? An analysis of the joint rates contained in the tariffs filed by the various carriers with the Railroad Commission shows that almost invariably the joint rates are higher on rock, sand and gravel than are the local rates for the same distances, but not so high as a combination of locals." (page 8)
>
> "In reaching our conclusion we have taken into consideration that while the present joint rates of the carriers, defendants in this proceeding, are not on a uniform basis they are, however, to a marked degree based upon an arbitrary over a one-line haul rate. The evidence indicates that the existing joint rates compare favorably with like rates in other territories for comparative distances where traffic conditions are similar, and our conclusion is that the rates assailed are not unreasonable, unjustnor unduly prejudicial or discriminatory, and an order in harmony with that conclusion will be rendered." (page 12)

This allegation further recites that the differential of 20 cents per ton amounts to a terminal service charge of $10.00 per car at the interchange point. The opinion makes no reference to a terminal charge or a switching charge and the mere fact that a joint rate for a two-line haul is less than the combination of local rates but higher than an unpublished mileage scale for a one-line haul, is no indication that it carries with it a switching charge.

The declared principle that a two-line haul involving a short distance is ordinarily entitled to a higher rate than a one-line haul for the same distance is so firmly established that it needs no serious consideration. We find nothing in the

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petition or in the oral argument to here warrant any change in our conclusion.

VIII.

"That the statement of the Commission appearing on pages 8 and 9 of the opinion, concerning the joint rate from Dwight to Neroly, is not supported by the evidence."

The Assistant General Freight Agent of the Southern Pacific Company in his testimony (Trans.p.88) referred to the manner in which the joint rates were published from Dwight, on the Santa Fe, to points on the Southern Pacific, and quoted as his authority this Commission's Form 63,No.1389,dated March 29, 1917. The rates from Dwight to Neroly are specifically set forth in the 63 authorization mentioned and, therefore, that part of the decision dealing with the rate from Dwight to Neroly is not outside of the record, as all of the rates from Dwight to points on the Southern Pacific are covered by that authorization.

It does not appear that the complainant has been denied any of its rights, and under the circumstances as outlined above, and the rates being in the same general territory, we see no impropriety in making use of the Dwight-Neroly rates contained in the document referred to by the witness, and which is a part of the official file of this Commission.

IX.

That the opinion erroneously considered the statement of rates shown in Southern Pacific Exhibit "B" on the grounds that the witness for defendant knew nothing of the circumstances or conditions surrounding the establishment of the rate.

In our opinion we said:

"The defendant,Southern Pacific Company,filed an exhibit (Defendant Southern Pacific Company's Exhibit B) showing rates on crushed rock from Piedra to points in California on the Southern Pacific lines,compared with two-line haul rates in other territories for the same distances, in part as follows:

One of the most satisfactory tests of the reasonableness of rates is a comparison of the rates of other carriers operating in the same general territory under like conditions:

No reference is made to this exhibit in any other part of the opinion and consideration was and always is given to the fact that the value of such exhibits depends to a great extent upon the proof of the similarity of transportation conditions.

X.

This paragraph of complainant's petition for rehearing and modification of findings and order, states:

> "That the statement appearing on page 10 of the opinion in this proceeding showing comparison of rates is erroneous and unlawful and in this behalf petitioner respectfully alleges that the rates therein quoted were not in evidence, and complainant had no opportunity to test, explain or refute the same."

There is no presumption of error arising from the fact that the Commission in its decision has seen fit to incorporate therein a table of rates applicable within the territory attacked by the complainant, inasmuch as it has not been shown, neither does it follow, that said table has been in any way a controlling factor in arriving at the conclusions and findings of the Commission in its decision.

In all matters brought before it the Commission makes every effort to obtain facts bearing upon the issue presented and from these facts endeavors to formulate a decision equitable to all parties. In view of this we feel the exception made is not well taken.

XI.

This paragraph of complainant's petition attacks the statement on page 10 of the Commission's decision, reading in part:

> "That complainant urges that the difference in freight rates has kept it out of important markets",

Is made under an entire misapprehension of complainant's position in this proceeding. That complainant has simply urged that the imposition of unreasonable rates upon its products has the effect of depriving it of certain business, and that if those rates had been adjusted upon a basis admitted by defendants to be reasonable it would not have been deprived of said business.

The Commission would refer complainant to pages 8, 14, 15, 45 and 47 of the transcript, where great stress has been laid upon the inability of the complainant to dispose of its products in various markets, claiming it was unable to do business at certain points.

We would particularly refer complainant to page 15, and quote, in part:

> "Our people were so discouraged that we were losing all this business that they finally wanted me to go over to Chicago to see Mr. Chambers * * *".

As hereinbefore stated, the complainant has failed to prove its contention that the joint rates of defendant carriers are unreasonable, and for these reasons the exception made by complainant is not well taken.

XII.

This paragraph of complainant's petition for rehearing and modification of findings and order attacks the statement appearing on page 11 of the opinion and order, reading as follows:

> "No substantial evidence was offered assailing the volume of the local and joint rates and nothing appears upon this record to indicate that complainant is in any way prejudiced or suffers any disadvantage in its business by reason of the rates attacked."

And alleges that it did not assail any local rates whatsoever, and that the uncontroverted evidence shows that the joint rates are excessive in volume, and that complainant suffers prejudice and

great disadvantage by reason thereof.

While the decision was broader than necessary for adjudication of this matter, yet recognition must be given to the fact that the issue is covered by the petition of intervention therein. We could eliminate the words "Local and" and it would not in any sense change the decision.

With reference to the last part of the paragraph, the Commission must reiterate that outside of the disability of complainant to compete in markets where it could not possibly get into without being given a preference over other quarries, complainant is not discriminated against in any degree.

XIII.

Petitioner here alleges that the statement appearing on page 11 of the opinion to the effect that the complainant suffered a handicap by reason of its geographical location, is entirely unwarranted by any evidence introduced in this proceeding.

The paragraph referred to reads:

> "No substantial evidence was offered assailing the volume of the local or joint rates and nothing appears upon this record to indicate that complainant is in any manner prejudiced or suffers any disadvantage in its business by reason of the rates attacked and if the complainant does suffer a handicap it is by virtue of its geographical location as related to its markets. This Commission has repeatedly held that it cannot equalize geographical locations or marketing conditions nor relieve commercial handicaps."

The conclusion here reached by the Commission is borne out by the record in the proceeding and we believe is entirely proper.

Manifestly, if the complainant were not located at a point requiring a two-line movement of its rock shipments this complaint would never have been brought and the geographical

location appears to have everything to do with the bringing of this proceeding.

This allegation also contends that the Commission's opinion practically resulted in an interchange charge at junction points. An answer to this allegation is covered by our answer to allegation No. VII, and will not be further dealt with.

XIV.

Complainant's petition for rehearing, in paragraph XIV states:

> "Petitioner further alleges that the Commission disregarded entirely the evidence of complainant relating to rates from Piedra to points on the McKittrick branch of the Southern Pacific; that said evidence shows conclusively that said rates are made and constructed on an inconsistent basis and said opinion and order of the Commission does not in any way correct or modify the same."

Evidence submitted by the complainant dealing with rates from Piedra to points on the McKittrick Branch of the Southern Pacific Company has been thoroughly analyzed, and Decision No.40619 of June 23,1922 was issued after a very careful review of the entire rate situation.

At the present time, as shown by the table of rates below, applicable to the McKittrick Branch, from both Piedra and Friant, and taking into consideration the fact that the plant of the complainant is handicapped by its geographical location, it is on an equal basis to all points on that branch with the exception of Lokern, McKittrick and Olig. Prior to July 1, 1922 the arbitrary in favor of Friant was 20 cents a ton when destined to McKittrick and Olig and 10 cents per ton at Lokern. However, the 10 per cent reduction effective July 1, 1922 reduced the arbitrary at McKittrick and Olig to 10 cents per ton. To all other points on the McKittrick

Branch both Piedra and Friant are on an equal basis, notwithstanding the fact that traffic from Piedra moves over two lines.

The following table shows conclusively that the plant at Piedra is not in any way discriminated against because of the fact that the rates for a single line haul are made upon the basis of the mileage scale, to which is added less than the 20 cents per ton arbitrary on traffic moving via the Atchison, Topeka & Santa Fe and the Southern Pacific Company:

FROM PIEDRA (Atchison, Topeka & Santa Fe, (Southern Pacific Company.

To	Period	Mileage	Rate per 100 lbs.	Mileage Scale per 100 lbs.	Mileage Scale plus 20¢ per ton, 2-line haul- per 100 lbs.
Gosford	6/30/22	132	7 ¢	6 ¢	7 ¢
	7/ 1/22		6½¢	5½¢	6½¢
Buttonwillow	6/30/22	155.7	7	6½	7½
	7/ 1/22		6½	6	7
Lokern	6/30/22	159.9	7½	6½	7½
	7/ 1/22		7	6	7
McKittrick	6/30/22	170	8	7	8
	7/ 1/22		7	6½	7
Olig	6/30/22	172.1	8	7	8
	7/ 1/22		7	6½	7

FROM FRIANT (Southern Pacific Local)

To	Period	Mileage	Rate per 100 lbs.	Mileage Scale per 100 lbs.	Arbitrary in favor of Friant, per ton.
Gosford	6/30/22	141.9	7 ¢	6½¢	-
	7/ 1/22		6½¢	6 ¢	-
Buttonwillow	6/30/22	165.7	7	7	-
	7/ 1/22		6½	6½	-
Lokern	6/30/22	170	7	7	10
	7/ 1/22		6½	6½	10
McKittrick	6/30/22	180	7	7	20
	7/ 1/22		6½	6½	10
Olig	6/30/22	182.1	7	7½	20
	7/ 1/22		6½	7	10

In view of the foregoing the Commission feels that the findings contained in its Decision No.10619 are sustained and should not be amended or modified.

XV.

That many rates from Piedra to points in the San Joaquin Valley have been constructed on a combination of an unpublished mileage scale, and that the order of the Commission in this proceeding sanctions and authorizes rates higher than said mileage scale over junction points.

Petitioner fails to point out any joint rates from Piedra higher than a combination of the unpublished mileage scale. If any such rates are now in effect adjustment will be made.

The question before us was the alleged unreasonableness and the discriminatory nature of the joint rates on crushed rock from Piedra, a point on the Santa Fe, to stations located on the Southern Pacific and complainant relied strongly upon a comparison with the rates applying from Dwight.

The testimony, however, was to the effect that the Dwight rates were on a low basis to meet competitive conditions, had been published many years ago, and that the defendant had consistently declined to establish that basis of rates at other points on its line; also that during federal control and since efforts had been made to republish the rates to the basis of the 20 cents per ton arbitrary.

The testimony further shows that the quarry at Dwight, even at the low joint rates, was unable to market its products beyond San Francisco bay points, therefore a comparison of the rates applying from Dwight to points in Northern-Central California with those applying from Piedra to points in the San Joaquin Valley, does not show the Piedra rates to be unreasonable.

as the competition which was the factor in fixing the Dwight rate does not exist at Piedra. A comparison of the actual rates paid by this complainant with rates a competitor in another part of the state would theoretically pay for the same distance hauls, fails to prove discrimination.

It was not shown by any of the testimony or exhibits that, per se, the Piedra rates were unreasonable or discriminatory simply because a lower rate was in effect from Dwight.

Neither the oral argument, the case citations, nor the reconsideration of the whole record has convinced us that the former opinion and order should be either modified or set aside. The petition is denied.

O R D E R

Upon further consideration of the record in the above entitled proceeding and of complainant's oral argument for rehearing,

IT IS HEREBY ORDERED that the said petition be and it is hereby denied.

Dated at San Francisco, California, this 28th day of September, 1922.

H. B. Loudenback

Irving Martin

J. S. Wendich

Commissioners.