Decision No. 7247

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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W. P. Fuller and Company)
)
Complainant,)
)
vs.) Case No. 1763.
)
Southern Pacific Company)
)
Defendant.)

ORIGINAL

Gwyn H. Baker for Complainant.
F. B. Austin and C. J. Cuneo for Defendant.

BY THE COMMISSION:

O P I N I O N

In this complaint it is alleged that the rate of 7 cents per 100 pounds charged for the transportation of 8 carloads of fuel oil from San Francisco to South San Francisco between May 10, 1920 and August 17, 1920, was unreasonable and unduly discriminatory to the extent that it exceeded a rate of 3 cents contemporaneously in effect between these points on practically all other commodities. Following our Decision No. 7983 of August 17, 1920, the 7¢ rate was increased to 9¢ and the rate on the other commodities was increased from 3¢ to 4¢. The complainant herein, on October 24, 1921, filed with us a complaint, Case No. 1684, attacking as unreasonable and unjustly discriminatory to the extent that it exceeded 4¢, the rate of 9¢ charged on 24 carloads of fuel oil which moved from San Francisco to South San Francisco between September 1, 1920, and July 31, 1921. We dismissed the latter proceeding

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on March 7, 1922, Decision No. 10159. In the meantime complainant had filed with the Interstate Commerce Commission a complaint attacking as unreasonable the rate of 7¢ charged on certain shipments made between May and September, 1920, or during the so-called "federal guaranty" period, and asking reparation to the basis of 3 cents. That complaint was heard by the federal commission on March 30, 1922. In view, however, of a general announcement by the latter commission on April 15, 1922, that it was not authorized under Section 208(a) of the Transportation Act, 1920, "to award or to consent to an award of reparation made by a State Commission on intrastate shipments which moved during the guaranty period of March 1 to September 1, 1920," a complaint was filed with us. The complainant is interested only in reparation, since under our Decision No. 8960 of May 12, 1921, by virtue of which South San Francisco was brought within the switching limits of San Francisco, the rate on fuel oil from San Francisco to South San Francisco was reduced to 2½ cents, which latter rate is still in effect.

A brief outline of the history of the rate involved will be helpful to an understanding of the issue. Prior to June 25,1918, the rate on all freight between San Francisco and South San Francisco was 2.5 cents per 100 pounds. By General Order No. 28 of the Director General of Railroads, effective on the date last mentioned, rates on practically all commodities were increased 25 per cent. The 2.5 cent rate on fuel oil above referred to thereupon became 3 cents. Even before the new rates became effective representation was made to the railroad administration, particularly by independent operators, that the percentage increase not only disturbed pre-existing relationships, but operated to their disadvantage since their shipments generally moved over longer distances than those made by the Standard Oil Company. They asked for a flat increase in lieu of the percentage increase, which substitution was recommended by the Oil Division of the United States Fuel Administration and

the National War Petroleum Service Committee,, the latter comprising representatives of producers, refiners, and jobbers, including the Standard Oil interests, and was subsequently approved by the Director General. The Railroad Administration having reached the conclusion, after investigation, that a uniform increase of 4½ cents in all petroleum rates would yield approximately the same revenue as the percentage increase, issued, on July 17, 1918, freight rate authority No. 96, directing the publication of such rates on short notice. Where the rate in effect June 24, 1918, was 18 cents, the increase of 4.5 cents amounted to 25 per cent, to a less per cent where the former rate was more, and to a greater per cent where the former rate was less than 18 cents. In the case of the particular rate under consideration the increase was 180 per cent. This adjustment was made effective all over the United States, both state and interstate, and wherever prior to June 24, 1918, there existed a rate of 2.5 cents on fuel oil, that rate on July 17, 1918, became 7 cents. The circumstances surrounding the modification of General Order No. 28 are set forth in some detail in our Decision No. 10159, W. P. Fuller & Co. v. Southern Pacific Company, and by the Interstate Commerce Commission in Barnett Oil and Gas Company v. Director General, 61 I.C.C. 568, referred to in the record and briefs in the instant proceeding.

The record before the Interstate Commerce Commission was introduced in evidence in the proceeding before us. The traffic manager of the complainant testified that during the period here involved there were shipped by it from San Francisco to South San Francisco box cars containing vinegar, dried paints, cans, etc., the average weight of which was between 20 and 25 tons and on which shipments a rate of 3 cents per 100 pounds was paid. The average weight of the shipments of oil was about 48 tons. Reference is here made also to certain petroleum rates applicable from Los Angeles to nearby points and other short haul rates. The language

of the Interstate Commerce Commission in Barnett Oil and Gas Company, supra, is particularly applicable here. The Commission there said:

> "The 4.5-cent increase was part of a general readjustment made in an effort to minimize serious disturbances of rate relationships. It met with the approval of producers, refiners, and jobbers generally, and, on the whole, seems to be satisfactory to them. No sufficient reason is shown on this record why it should be condemned as applied to the particular rates in issue."

From the facts of record we have reached the conclusion, and so find, that the rate of 7 cents here attacked was not unreasonable.

The question of our jurisdiction to award reparation on intrastate shipments moving during the federal guaranty period is raised on this record, and has been discussed in detail on briefs. Because of its far reaching importance in connection with a large number of informal complaints now on file with us, we think the time opportune to state our views on this question. The answer of the Southern Pacific Company denies our jurisdiction to award reparation on such shipments, while the position of the complainant is that if jurisdiction does not lie with the federal commission it must be within the jurisdiction of the state commissions.

Section 208(a) of the Transportation Act reads as follows:

> "All rates, fares, and charges, and all classifications, regulations, and practices, in anywise changing, affecting, or determining, any part or the aggregate of rates, fares, or charges, or the value of the service rendered, which on February 29, 1920, are in effect on the lines of carriers subject to the Interstate Commerce Act, shall continue in force and effect until thereafter changed by State or Federal authority, respectively, or pursuant to authority of law; but prior to September 1, 1920, no such rate, fare, or charge shall be reduced, and no such classification, regulation, or practice shall be changed in such manner as to reduce any such rate, fare, or charge, unless such reduction or change is approved by the Commission."

The object of that provision is clear when consideration is given to the conditions existing in the transportation world

at the time the act was passed. The leading railroads of the country had been operated by the government since December 1, 1917, under a guarantee that the compensation of each during the period of federal control should be based on its average annual operating income for the three years ended June 30, 1917. It is a well known fact that the total operating income of the carriers under federal control was insufficient to meet the governmental guarantees and that the deficit was paid out of the public treasury. Under the terms of the Transportation Act of 1920 the President was required, on March 1, 1920, to "relinquish possession and control of all railroads and systems of transportation then under federal control and to cease the use and operation thereof." The total railway operating income of the carriers was then so low that it was not deemed advisable by Congress to hand back the roads to their owners without making some financial provision that would insure their continued operation under private management. Accordingly, Congress provided for a transition period to commence March 1, 1920, and end September 1, 1920, during which time the government would insure to such carriers as, prior to March 15, 1920, accepted the provisions of Section 209 of the Transportation Act, earnings on practically the same basis as during federal control. The transition period is here referred to as the federal guaranty period. Having thus assumed a financial responsibility with respect to the railway operating income of carriers accepting the provisions of section 209, it is but natural that Congress, so far as the situation was in its hands, should take the necessary steps to guard the revenues and expenditures of those carriers during the guaranty period. Accordingly, it was provided that the Interstate Commerce Commission should have jurisdiction over the expenditures for maintenance of way, structures and equipment. Provision was also made for an adjustment and restatement of operating revenues and expenses

should this appear advisable in the public interest. Certain carriers, it was assumed, would prefer to resume operations March 1st on their individual responsibility without accepting the federal guaranty. Since such carriers would be in direct competition with others who had accepted the guaranty, it became necessary for Congress, in the protection of the revenues of the latter lines, and to prevent possible disastrous rate wars, to require the existing schedule of rates to be maintained not only by the lines accepting the guaranty, but by all "carriers subject to the Interstate Commerce Act."

In furtherance of its policy of rate stabilization during the transition period it became necessary for Congress to continue to retain a measure of control also over the intrastate rates. It was accordingly provided, first, that all rates, interstate and intrastate, which, on February 29, 1920, were in effect on the lines of carriers subject to the Interstate Commerce Act "shall continue in force and effect until thereafter changed by state or federal authorities," and, second, that no such rate should be changed in such manner as to bring about a reduction unless the reduction or change was approved by the Interstate Commerce Commission. In so far as intrastate rates are concerned our authority, temporarily suspended during the period of federal control, was restored, effective March 1, 1920, subject only to the qualifications just mentioned. Between that date and September 1, 1920, no carrier, subject to the act to regulate commerce, could voluntarily reduce a rate, state or interstate, in effect on February 28, 1920, nor could we, during that period, enter an order requiring the reduction of a state rate without first securing the approval of the federal commission.

There seems little doubt that, under Section 208 of the Transportation Act, it was within our jurisdiction during the guaranty period to entertain complaints in which it was alleged that rates charged for the transportation of commodities between

points within this state were unreasonable, to hold hearings thereon, and to determine the reasonableness of the rate or rates under attack. A finding by us that the existing rate was unreasonable, and would be unreasonable for the future, required the approval of the Interstate Commerce Commission before any order could be entered requiring a reduction in the rate. That approval having been secured, we could then order established for the future the rate found by us to be reasonable. In view of the specific language contained in Section 208, that existing rates shall continue "until" thereafter changed by state or federal authority, we find no warrant for holding that this Commission may enter an award of reparation in connection with intrastate shipments moving during the federal guaranty period. To hold otherwise would render it possible to accomplish by indirection that which the Transportation Act specifically prohibits to be accomplished directly.

We conclude and find that we have no jurisdiction to award reparation on intrastate shipments moving during federal guaranty period, i.e., March 1, 1920, to September 1, 1920. The complaint must be dismissed and an order to that effect will be entered.

O R D E R

This case being at issue upon complaint 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 Railroad 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 ORDERED, that the complaint in this proceeding be, and it is hereby, dismissed.

Dated at San Francisco, California, this 18th day of November, 1922.

Commissioners.