

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

GRAYSON-OWEN COMPANY,	Complainant,	:	
vs.		:	Case No. 356.
		:	
SOUTHERN PACIFIC COMPANY.	Defendant.	:	

J. O. Bracken, for Complainant;
George D. Squires and E. C. Booth,
for Defendant.

LOVELAND and TEBBEN, Commissioners.

OPINION ON MOTION FOR REHEARING.

This case came on regularly for hearing before the Commission upon complaint and answer and, after a thorough presentation to and consideration by the Commission of the matters and things involved herein, a decision was rendered on June 17, 1913 awarding complainant Six Hundred and Fifty-Four (654) Dollars as reciprocal demurrage for the failure of defendant to furnish cars to complainant, as provided by law.

Thereafter, to-wit: on August 16, 1913, defendant filed a petition for rehearing which was set down for argument and was argued and additional testimony introduced on December 5, 1913, at which time the Rate Department of the Commission presented a statement showing the equipment in freight cars of railroads comparable to defendant, such statement apparently showing as a fact that this defendant company was not as well equipped as other roads which might reasonably be compared with it.

The defendant asked for an adjournment of the hearing to give it time to meet this testimony, and further time was given, the application being finally heard and submitted on January 24, 1914. At that time various statements were presented by defendant

and filed as exhibits in the case, the general object of which was to show that the equipment of the defendant, Southern Pacific Company, was in many respects equal to, and in some ways superior to, that of other roads of like character and importance.

We do not consider it necessary to comment upon these tables further than to say that, while they were ingeniously prepared and illuminating in some respects, they do not, in our judgment, refute the testimony given by the Rate Expert of the Commission. It is idle to say that any statement that the equipment of the defendant company is equal or superior to that of the Pennsylvania system, when conditions of traffic are considered, or any statement that shows the number of cars owned per thousand tons of freight carried, without some idea as to the average distance a ton of freight is carried, or the average loading of a car, is not appealing to the Commission as to the former, and conveys no proper idea or efficiency of the road, so far as equipment is concerned, as to the latter.

For instance, if the Pennsylvania Railroad or Pennsylvania Company only carries freight an average distance of one-half the distance the Southern Pacific Company carries it, and at the same time loads the equipments nearly twice as heavily as does the Southern Pacific Company, it is obvious that the Pennsylvania Railroad, as well as the defendant herein, would occupy a different position in table No. 3, presented by the defendant.

It is our understanding that, under Section 45 (a) of the Public Utilities Act, it is the duty of the Commission to prescribe uniform demurrage charges, so that the same penalty shall be paid by both shipper or consignee and railroad corporation for failure to release equipment by shipper or consignee or for failure to provide equipment by the railroads.

Acting in accordance with this provision of the Public Utilities Act, the Commission promulgated its uniform rules for

demurrage and reciprocal demurrage for broad gauge railroads in this State. Under such rules, it was intended that railroads should be compelled to pay demurrage to a shipper for failure to furnish cars unless, under certain circumstances, they could furnish an excuse satisfactory to the Commission; and it seems manifestly absurd that railroads should be relieved from paying this demurrage on the ground of car shortage unless such car shortage makes it absolutely impossible to furnish them.

A study of the equipment available on the division comprehended in this case and on two adjoining divisions satisfies us that such a condition of car shortage did not exist as should be accepted as a reason for relieving defendant from reciprocal demurrage charge.

The reciprocal feature of our rule would seem to us to be absolutely worthless if carriers could only be compelled to furnish cars when they are plentiful. When cars are plentiful, carriers are only too willing to furnish them. Consequently, the reciprocal feature is of no advantage to the shipping public at such a time, and it is only in times of car shortage - and by this we do not mean a dearth of cars, but such a shortage as requires extra effort upon the part of the carriers to provide equipment - that the reciprocal feature is supposed to cover and to be of benefit to the shipping public.

We see no reason for reversing or changing the former Opinion and Order of the Commission, and recommend that said former Opinion and Order be affirmed and the application for rehearing dismissed.

We recommend the following form of Order:-

O R D E R

A decision having heretofore, to-wit: on June 17, 1913, been rendered in the above entitled case, awarding complainant Six Hundred and Fifty-four (654) Dollars as reciprocal demurrage, and

defendant having applied for a rehearing and having been given an opportunity to present argument and further testimony in favor of said rehearing, and the Commission having carefully considered such argument and evidence offered in favor of rehearing, and having found that its former decision should be reaffirmed and this application dismissed.

IT IS HEREBY ORDERED: That the application of the defendant, Southern Pacific Company, for a rehearing in Case No. 356 (Grayson-Owen Company, complainant, versus Southern Pacific Company, defendant) be and it is hereby dismissed.

The foregoing Opinion on Motion for Rehearing, and Order are hereby approved and ordered filed as the Opinion on Motion for Rehearing, and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of February, 1914.

John M. Gresham
H. D. Loveland
Max Shelton
Edwin O. Edgerton

Commissioners.