Decision No. 2884

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

FRESNO TRAFFIC ASSOCIATION, a corporation,

Complainant,

vs

SOUTHERN PACIFIC COMPANY, et al., a corporation,

Defendants.

Case No. 878.

M. K. Harris and F. M. Hill for Fresno Traffic Association.

C. W. Durbrow for Southern Pacific Company.

E. W. Camp for Atchison, Topeka and Santa Fe Railway Company.

LOVELAND, Commissioner:

O P I N I O N

In this complaint reparation is asked under the provisions of the Constitution of California and the Public Utilities Act for charging a greater sum for a short haul than for a long haul when both hauls are in the same direction and over the same rails.

The complaint alleges that certain shipments were made by certain business firms, members of the Fresno Traffic Association, complainant, over the rails of the defendant carriers from San Francisco to Fresno, upon which a rate, violative of the provisions of the long and short haul clause of the Constitution and of the Public Utilities Act, was charged and collected. These shipments are set forth in the complaint as follows:

On the 24th day of August, 1914, shipment by the Western Sugar Refining Company, San Francisco, via Southern Pacific Company to the San Joaquin Grocery Company, Fresno, California, of sugar weighing 55,550 lbs., on which the rate of 25¢ per hundred pounds was charged, total amounting to $138.88, whereas complainant claims rate of 22½¢, being the rate from San Francisco to Los Angeles, should have been charged and collected.

On the 30th day of March, 1914, shipment by the Western Sugar Refining Company, San Francisco, via Southern Pacific Company to the San Joaquin Grocery Company, Fresno, California, of sugar weighing 51,493 lbs., on which the rate of 25¢ per hundred pounds was charged, total amounting to $128.73, whereas complainant claims rate of 22½¢, being the rate from San Francisco to Los Angeles, should have been charged and collected.

On the 15th day of September, 1914, shipment by the A. S. Company, San Francisco, via Atchison, Topeka & Santa Fe Railway Company to the San Joaquin Grocery Company, Fresno, California, of canned fish (sardines) weighing 40,880 lbs., on which the rate of 27½¢ per hundred pounds was charged, total amounting to $112.42, whereas complainant claims rate of 22½¢, being the rate from San Francisco to Los Angeles, should have been charged and collected.

On the 26th day of May, 1915, the Lucherbach S.S. Company delivered to the Southern Pacific Company at San Francisco, consigned to the Inland Iron Company at Fresno, California, a shipment of horse shoes and calks weighing 50,400 lbs., on which the rate of 31¢ per hundred pounds was charged, total amounting to $156.24, whereas complainant claims rate of 27½¢, being the rate from San Francisco to Los Angeles, should have been charged and collected.

49

On the 21st day of March, 1914, the Inland Iron Company, San Francisco, caused to be delivered to the Southern Pacific Company, consigned to the Inland Iron Company, Fresno, California, a shipment of angle, hoop and bar iron, weighing 84,400 lbs., on which the rate of 31¢ per hundred pounds was charged, total amounting to $261.64, whereas complainant claims rate of 27½¢, being rate from San Francisco to Los Angeles, should have been charged and collected.

On the 13th day of August, 1915, shipment by the Pacific Coast Steel Company, South San Francisco, via Southern Pacific Company to the Inland Iron Company at Fresno, California, of steel bars, weighing 70,870 lbs., on which the rate of 31¢ per hundred pounds was charged, total amounting to $219.70, whereas complainant claims the rate of 15¢, being the rate from South San Francisco to Los Angeles, should have been charged and collected.

The complaint further alleges that the defendant carriers "have not been authorized by the Railroad Commission of the State of California, to charge less for the transportation of shipments of the character specified in the complainant's petition for a longer distance than for a shorter distance, and that said railroad commission has never, after investigation, authorized defendants by any order to charge less for transporting shipments over said longer distance than over said shorter distance, and has never, after investigation, granted any application of defendants, or either of them, to be relieved from the provisions of the Constitution of the State of California, forbidding railroads to charge less for hauling shipments over longer than over shorter distances"; and prays for judgment against defendant carriers in the sum of $207.76 and for interest on each excessive

charge alleged to have been made by defendants at the rate of 7% from date of payment.

At the hearing it was agreed by counsel for defendant carriers that the statement of Mr. F.M. Hill, manager of complainant, would be accepted that the said shipments were made and that claims for reparation upon said shipments were assigned to complainant. The sole question, therefore, to be decided in this proceeding is whether the carriers violated the provisions of the long and short haul clause of the Constitution and Public Utilities Act in assessing and collecting higher rates on said shipments between San Francisco and Fresno than the carriers collected on similar shipments between San Francisco and Los Angeles, or whether any action taken by the Railroad Commission of the State of California, hereinafter designated as the Commission, relieved the defendant carriers from the obligation of observing the long and short haul provisions on said shipments.

To set forth clearly the grounds upon which the decision in this case is based, a history of such action as has been taken by this Commission, with reference to the long and short haul clause, follows.

Section 21 of Article XII of the Constitution of 1879 of this stste contained a long and short haul clause. On October 10, 1911, this section was amended so as to provide that "upon application to the Railroad Commission provided for in this constitution, such company may, in special cases, after investigation, be authorized by such Commission to charge less for longer than for shorter distances for the transportation of persons or property".

On October 26, 1911, the Commission served notice on all carriers to file with the Commission on or before January 2nd, 1912, a complete list of each rate or charge not in conformity

with the long and short haul clause, in every case in which the carrier desired to continue to deviate from the long and short haul clause. This time was afterward extended to February 15, 1912.

Some of the carriers having filed their petitions for relief from the provisions of the long and short haul clause, the Commission, on January 2, 1912, held a hearing upon the petitions.

On February 15, 1912, the Commission issued an order authorizing the carriers to continue deviations from the long and short haul clause until the petitions had been finally passed upon by the Commission.

Previous to said order of February 15, 1912, an extended investigation was made by the Rate Department of the Commission, under the Commission's instructions and supervision, with reference to the deviations from the long and short haul clause, on the part of the carriers, including the defendants herein, as shown by said petitions.

The evidence in this proceeding shows clearly that the investigations thus conducted by the rate department were extended and exhaustive and that frequent conferences on this subject were held, as the investigation proceeded, between the Commission and its rate department, prior to the order of February 15, 1912. This investigation, as shown by the evidence herein, covered not merely the general subject but also was specifically directed to the individual deviations shown in the petitions of the carriers. The order of February 15, 1912, was based upon these investigations.

Complainant's claims in this proceeding are, accordingly, without merit.

As this Commission has, after investigation, authorized the carriers, pending the further order of the Commission, to continue the deviations from the long and short haul clause herein involved, and as the question of the violation of the long and short haul clause is the sole basis for the claim to reparation herein, the complaint should be dismissed.

I submit herewith the following form of order:

O R D E R

A public hearing having been held in the above entitled proceeding and the case having been submitted and being ready for decision,

IT IS HEREBY ORDERED that the complaint in the above entitled proceeding be and the same is hereby dismissed.

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 8th day of November, 1915.

Max Thelen

H. Loveland

Alex Gordon

Edwin O. Edgerton

Frank R. Devlin

Commissioners.