

Decision No. 303
BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

ORIGINAL

Decision No. 303

.....
CLARK & HENERY CONSTRUCTION COMPANY, :
Complainant, :
vs. :
SOUTHERN PACIFIC COMPANY, :
Defendant. :
.....

Case No. 254

APPEARANCES:

J. O. Bracken, for Complainant,
George D. Squires, for Defendant.

GORDON AND EDGERTON, Commissioners:

O P I N I O N .

In this action complainant asks for reparation to the amount of Twelve (\$12) Dollars, for an alleged excessive charge on a carload of machinery shipped from San Carlos to Sacramento, on November 7, 1910.

The rate charged on this shipment was 18 cents per hundred pounds, with a carload minimum of 24,000 pounds, as provided in Southern Pacific Company's Tariff C. R. C. 134. This rate is a combination of the locals on San Francisco of 5 cents per hundred pounds from San Carlos to San Francisco, and 13 cents per hundred pounds from San Francisco to Sacramento. The total amount collected was Forty-three and 20/100 (\$43.20) Dollars.

Complainant bases its right to reparation upon a subsequent voluntary reduction in this rate made by the defendant company after a new and additional route had been opened between San Carlos and Sacramento. This new route is the Dumbarton Cutoff, which is alleged to have been completed and opened for business September 8, 1910, two months prior to the date of the shipment

involved in this case. No tariff was published over this new route, however, until March 1, 1911, four months subsequent to the date of the shipment involved in this case.

On March 1, 1911, defendant issued Supplement No. 11 to its G. F. D. Circular No. 199-B, C. R. C. 476, which supplement put into effect between San Carlos and Sacramento a rate of 13 cents per hundred pounds on carload shipments of machinery, with a minimum of 24,000 pounds. This rate was made applicable on shipments moving either over the old route, via San Francisco, or over the new route, via Dumbarton Cutoff.

It appeared at the hearing that the actual route taken by the shipment in question was not known. The complainant's contention, therefore, is that the mere voluntary reduction of the rate from 18 cents to 13 cents establishes per se that the prior rate of 18 cents was excessive and unreasonable, and complainant accordingly seeks reparation to the amount of this reduction. This Commission can see no merit in this contention. The Interstate Commerce Commission has stated its view upon this identical question as follows:

Stockyards, etc. vs. K. K. & T. R. R., 17 I.C.C. 295.

"We have said many times the voluntary reduction of a rate by a carrier, with no other evidence of its unreasonableness except the fact that a lower rate is at present in existence, does not present a case where reparation should be awarded."

Foster Lumber Company vs. A. T. & S. F. Ry. Co., 15 I.C.C. 56.

"It must be apparent that it is to the interest of the shipping public in no wise to embarrass carriers in decreasing rates when they think such decrease equitable. Under existing standards, all will admit that there must be a wide divergence of opinion as to what a reasonable rate between two points may be, and any policy pursued by this Commission tending to make it burdensome to the carriers to reduce a rate would in the end work a hardship to shippers."

We have already, in Case No. 260, Henderson-Longton vs. Southern Pacific Company, expressed our approval of the view taken by the Interstate Commerce Commission.

No facts, other than the voluntary reduction of the rate, were presented by complainant in this case to establish the unreasonableness of the rate as it stood prior to the reduction.

We are of the opinion, therefore, that the claim presented by the Clark & Henery Construction Company in this case should be denied, and submit, herewith, the following form of order:-

O R D E R .

The Clark & Henery Construction Company having presented to this Commission a claim of reparation to the amount of Twelve (\$12) Dollars, for an alleged excessive charge made by the Southern Pacific Company on a carload shipment of machinery from San Carlos to Sacramento, on November 7, 1910, and a formal hearing having been duly held thereon, and the Commission being of the opinion that the claim for reparation presented in this case should be denied,

IT IS HEREBY ORDERED that the claim for reparation presented by the Clark & Henery Construction Company in this case be and the same hereby is denied.

The foregoing Opinion and Order are hereby ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th
day of October, 1912.

John M. Eschman
Allen Gordon
Max Fisher
Edwin O. Edgerton
Commissioners