Decision No. 369

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Decision No. 369

ORIGINAL

MAMMOTH COPPER MINING COMPANY OF MAINE, (a corporation),

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, (a corporation),

Defendant.

Case No.300.

Pillsbury, Madison & Sutro for complainant,
George D. Squires for defendant.

THELEN, Commissioner.

OPINION.

This is an action for the establishment of a rate on blister copper moving from Kennett, in Shasta County, California, to Oakland Long Wharf and San Francisco. Complainant asks for the establishment of a rate of $3.00 per ton of 2000 lbs. on blister copper in anodes, pigs or bars in carload lots from Kennett to Oakland Long Wharf and San Francisco.

Complainant originally asked that the rate established be on blister copper released to a valuation of one hundred dollars ($100.00) per ton and considerable evidence was introduced on this question of release valuation. Before the termination of the hearing, however, complainant asked that the request for release value be stricken from the complaint and this was done.

Complainant is the owner of a copper mine and smelter near Kennett, California. In its smelter it subjects crude copper ore to furnace treatment, securing therefrom a product known as copper matte, which contains generally some where between 40% and 50% of copper. The copper matte is then placed in a converter and converted into blister copper, which contains about 98% of copper.

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The blister copper is then shipped to complainant's refinery at Chrome, New Jersey, where it is refined into commercial copper, which is then shipped to different points, principally New England, for manufacture into articles of commerce. The value of blister copper is about $400.00 per ton.

The existing rate on blister copper in carload lots from Kennett to San Francisco is $11.00 per ton of 2000 lbs., actual value not to exceed $300.00 per ton. The rate on a valuation of $400.00 is $13.00 per ton.

At the hearing complainant relied on rates which were largely the results of water competition or proportional rates. I am of the opinion that these rates cannot properly be used as basis of comparison for a rate under the circumstances and conditions disclosed by the facts in this case as affecting movements from Kennett to San Francisco. The plaintiff, however, pointed to certain material considerations affecting the question of a proper rate from Kennett to San Francisco. Complainant drew attention to the fact that blister copper cannot be injured by the elements; that it is almost impossible to loze it in transportation; that defendant transports a large number of cars of coke for use by complainant's smelter at Kennett and that shipments of blister copper from complainant's plant permit the use of about one-fourth of these cars for return movements; that if it were not for the blister copper so transported most of these cars would have to be returned empty; and that the haul from Kennett to San Francisco is mostly down-hill.

Complainant relies also for purposes of comparison on a rate of $3.50 per ton of 2000 lbs., on copper matte in carload lots from San Francisco to Kennett, first made effective March 28, 1908, actual value not to exceed $100.00 per ton. Effective July 31, 1910, this rate was amended to read "actual value not to exceed $150.00 per ton". As this rate was established by defendant voluntarily, it must be assumed as against defendant that it was a fair and reasonable rate for the movement in question. It must be noted, however, that this rate is a rate on copper matte and not on blister copper, and that it applies to copper matte, of which the actual value is not to exceed $150.00 per ton. On copper matte of a higher valuation from San Francisco to Kennett, in case such higher valuation were found, charges would be assessed in accordance with Rule 7 of the Southern Pacific Company's local, joint and proportional freight tariff No. 635-A, C.R.C. No. 1290, providing in part as follows:

> "When rates on Ore, Concentrates, Sulphurets, Metal, Bullion, Matte, Etc., of value in excess of $100.00 per ton of 2000 lbs. are not specifically shown between any two points in this Tariff, rates for valuation in excess of $100.00 per ton of 2000 lbs., but not over $200.00 per ton of 2000 lbs. will be 120% of the rates applicable on Ore, etc., of $100.00 per ton of 2000 lbs. valuation; on valuations in excess of $200.00 per ton of 2000 lbs. but not over $300.00 per ton of 2000 lbs., rates will be 140% of the rates applicable on Ore, etc., of $100.00 per ton of 2000 lbs. valuation; on valuations in excess of $300.00 per ton of 2000 lbs. the rate will be made by adding to the rate given for $300.00 valuation, two per cent on the value above $300.00 per ton of 2000 lbs."

If this rule were applied to copper matte having a value of $400.00 per ton, if such matte were offered for shipment, such copper matte in carload lots with a minimum of 30,000 lbs. would have a rate of $6.90 per ton from San Francisco to Kennett. The evidence submitted in this case shows that the distinction between copper matte and blister copper as affects the proper rate, is mostly one of valuation. Hence, it appears reasonable to assume that $6.90 per ton of 2000 lbs. would be at least a fair and reasonable rate based on the defendant's known rate on copper matte from San Francisco to Kennett on blister copper, actual value not to exceed $400.00 per ton carload minimum weight 30,000 lbs., from San Francisco to Kennett.

Assuming that this is a reasonable constructive rate for movements of blister copper from San Francisco to Kennett, it would seem from the evidence in this case that such rate would be at least a reasonable rate for a movement in the reverse direction, from Kennett to San Francisco. If there should be any difference between these two movements, the rate from Kennet to San Francisco should be the smaller one because of the facts which have hereinbefore been referred to, affecting movements from Kennett to San Francisco. I have taken into consideration all the facts surrounding the movements in both directions, as disclosed by the testimony in this case.

Defendant has contended that this Commission has no authority to establish a rate on blister copper from Kennett to San Francisco, for the reason that it claims that complainant intends to load the copper at Oakland Long Wharf or San Francisco on vessels which are then to transport it to complainant's factory at Chrome, New Jersey. Defendant claims that the movement is accordingly an interstate movement throughout its entire extent, and on this point relies on the case of <u>Railroad Commission of Ohio</u> vs. <u>Worthington</u>, 225 U.S. 101, decided on May 27, 1912. The facts of that case, however, are entirely different from the facts of this case. In the Worthington case, two rates for coal were in effect from the No. 8 coal district of Ohio to Huron and Cleveland, Ohio. One rate was a rate of $1.00 per ton on commercial coal, which coal was to remain in Ohio. The other rate was a rate of 90 cents per ton on what is called lake-cargo coal, which coal was not to remain in Ohio, but was to be transported to points in other states. This rate of 90 cents per ton included the transportation to Huron or Cleveland and also the loading of the coal into the vessels which were to convey it to points in other states, and also the trimming of the coal in the vessels forthe continuance on its interstate journey. Under these conditions, the Railroad Commission of Ohio reduced the rate on lake-cargo coal from 90 cents to 70 cents per ton, f.o.b. vessel. The Supreme Court in holding this order void as an interference with interstate commerce, uses the following language:

> "The so-called 'lake-cargo coal' is necessarily shipped beyond Huron. If it stops there, another and higher rate applies. Practically all of it is put on vessels for carriage beyond the state, usually to upper lake ports, and then, and only then, the 70 cent rate fixed by the commission applies. This 70 cent rate covers

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the transportation of the coal to Huron, the placing of it on board vessels, and, if necessary, trimming it for the continuance of its interstate journey."

The facts in the case now before the Commission are entirely different. In this case there is only one rate between Kennett and San Francisco. The rate established by the Commission in this case will be the sole rate on blister copper from Kennett to Oakland Long Wharf and San Francisco and will not include any service in connection with a possible loading of the copper on any vessel or any service analogous to the trimming of the coal. While it is true that complainant has hitherto shipped its blister copper from Kennett to its refinery at Chrome, New Jersey, Complainant's counsel insisted that his company was considering the possibility of shipping this copper to points in Europe. It must also be borne in mind that while there is at present no refinery for copper in San Francisco or vicinity, there is nothing in the evidence in this case to show that such refinery cannot be established there. Whatever may be the true effect of the decision of the United States Supreme Court in the Worthington case, that case certainly cannot go so far as to deny to a state the right to fix the rate for a movement entirely within the state between two points, both located therein. If any question can arise in connection with such an order, it will be a question as to applicability of the Commission's rate to a particular movement and not of the power of the Commission to establish such a rate. I am of the opinion that the Worthington case does not apply to the facts in this case and that this Commission has the undoubted jurisdiction to establish a rate on blister copper from Kennett to Oakland Long Wharf and San Francisco.

After a careful consideration of the evidence in this case proper to be considered in connection with this matter, I find that the present rate of $11.00 per ton of 2000 lbs. on copper blister actual value not to exceed $300.00 per ton of 2000 lbs., carloads, from Kennett to Oakland Long Wharf and San Francisco is an unjust and unreasonable rate and that a rate of $6.90 per ton of 2000 lbs. on copper blister in anodes, pigs or bars, actual value not to exceed $400.00 per ton of 2000 lbs. carload minimum weight

30,000 lbs., from Kennett to Oakland Long Wharf and San Francisco would be a just and reasonable rate and that defendant should be ordered to file and publish such rate.

I submit herewith the following form of order:

O R D E R.

THE MAMMOTH COPPER MINING COMPANY OF MAINE having filed with this Commission its complaint against the SOUTHERN PACIFIC COMPANY in the matter entitled as above and the Southern Pacific Company having filed with this Commission its answer, and a public hearing having been held and evidence having been submitted by both parties and the case having been submitted and careful consideration having been given to all the evidence in the case proper to be considered in this matter, and the Commission finding as a fact that the present rate of $11.00 per ton of 2000 lbs. on blister copper actual value not to exceed $300.00 per ton of 2000 lbs., in carload lots, from Kennett to Oakland Long Wharf and San Francisco is an unjust and unreasonable rate and that the rate of $6.90 per ton of 2000 lbs. on blister copper, in anodes, pigs or bars from Kennett to Oakland Long Wharf and San Francisco, actual value not to exceed $400.00 per ton of 2000 lbs. carloads minimum weight 30,000 lbs., would be a just and reasonable rate and that defendant should publish such rate,

IT IS HEREBY ORDERED, that within twenty days from the service on defendant of this order, defendant shall file and publish, effective at the expiration of said period of twenty days, a rate of six dollars and ninety cents ($6.90) per ton of 2000 lbs. on blister copper in anodes, pigs or bars, actual value not to exceed $400.00 per ton of 2000 lbs., carloads, minimum weight 30,000 lbs., from Kennett to Oakland Long Wharf and San Francisco, said rate to apply on state movements alone and not to include any service of defendant in loading said copper on any vessel at said Oakland Long Wharf or San Francisco or arrange said copper in said vessel for safe transportation or otherwise.

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 20th day of December, 1912.

John M. Eshleman

H. D. Loveland

Max Thelen

Edwin O. Edgerton

Commissioners.