

Decision No.

ORIGINAL

Decision No. 3118

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

STOCKTON FIRE AND ENAMEL BRICK)
COMPANY,)

Complainant,)

vs.)

CASE No. 968.

SOUTHERN PACIFIC COMPANY,)
Defendant.)

S. E. Semple, for Complainant
Geo.D.Squires and F.B.Austin, for Defendant.

Loveland, Commissioner.

O P I N I O N

Complainant is a corporation engaged in the manufacture of fire brick and fire clay materials, and has offices and a plant in the city of Stockton, located on a spur track, known and designated in the defendant's tariffs as Hislop.

Complainant avers that upon its request and after a full investigation of the commodity to be shipped, defendant published, effective July 3, 1915, a rate of 80 cents per ton of 2000 pounds, carload minimum weight 60000 pounds, on boulders from Midas to Hislop. That during the period July 3, 1915 to June 2, 1916, many carloads of boulders were forwarded from Midas to Hislop, on which rate of 80 cents per ton was assessed; that since June 2, 1916, defendant has refused to apply the 80 cent rate and has charged various sums in excess of said rate, and in violation of paragraph (b) Section 17, of the Public Utilities Act.

The issue presented is thus one of tariff interpretation. Defendants Tariff No.330-B, C.R.C.41, Item 1245 in Supplement No.68,

effective July 3, 1915, reads as follows:

"Boulders, Crushed Rock, Disintegrated Granite, Granite Spalls, Grout, Gutter Rock, Lime Rock (of low grade suitable only for Road or Concrete Work), Macadam, Riprap, Rubble, Tufa and Waste Rock, Straight or Mixed Carloads, carload minimum weight 60000 pounds, from Midas to Eislup, 80 cents per ton of 2000 pounds."

Witness for complainant testified that this rate was agreed upon after a conference with the traffic officials of defendant and that a sample of the boulders was submitted previous to the publication of the rate. It would thus appear that defendant was in possession of all the facts and intended the 80 cent rate to apply on the commodity transported and did apply such rate without question for a period of almost a year.

Boulders of the kind used by complainant are found in vast quantities at different points in California wherever placer mining was conducted in the pioneer days. Complainant has secured them at different times from Alta, Towle, Dutch Flat and Ione, as well as from Midas and, until June 2, 1916, paid freight charges applying on common boulders, as per Tariff No. 330-B.

Testimony also developed the fact that these boulders have practically no value at point of shipment and are secured upon payment of from 10 to 25 cents per ton, plus the cost of teaming to the railroad and the loading on cars.

In January, 1914, complainant was receiving boulders from Alta and Dutch Flat and submitted extracts from a letter written January 24, 1914, signed G. W. Luce, Freight Traffic Manager Southern Pacific Company, reading, in part:

"Investigation develops the fact that this was not a question of difference in rate from Dutch Flat versus Alta, but refers to commodity description there being 75¢ per 100 lbs., on Cobbles, while on Boulders rate is 80¢. Have secured sample of the commodity and find that shipment actually consisted of Boulders, not cobbles, and I am advising our Agent at Stockton to assess charges accordingly, canceling his supplementary freight bill, as charges were paid originally on correct basis, namely 75¢ per ton."

This would indicate that defendant's Traffic Manager was familiar with the commodity and approved the rate.

From the standpoint of physical transportation, there is no difference in the conditions surrounding the movement of the boulders used by complainant and those used for road and concrete work. A witness for defendant admitted that if the boulders were consigned to a contractor engaged in road and concrete work the rate of 80 cents per ton would be applied without question.

The testimony submitted by defendant may be summarized as follows: That the rate of 80 cents per ton was published without a complete understanding of the commodity and the use to which it was to be put. After a number of consignments had moved an investigation was made by the Trans-Continental Weighing and Inspection Bureau and samples of the boulders analyzed by a chemist, who reported that they consisted of silica, practically 98 per cent pure. Following this investigation defendant discontinued the application of the 80 cent rate. When conflicting rates are shown in tariffs, shippers are entitled to the lowest rate and should not be subjected to the annoyance consequent upon interpretations placed on the value of the commodity or the use to which it may be put.

Inasmuch as a rate may not lawfully be made on a commodity according to the use to which it is put, and since the tariff publishes rate of 80 cents per ton Midas to Hiscop on boulders, without qualification and as the evidence submitted clearly shows that the commodity actually shipped consisted of "boulders", I am of the opinion that the lawful rate to apply on the shipments in question since July 3, 1915, under the tariffs on file with this Commission, is 80 cents per ton of 2000 pounds, carload minimum weight 60000 pounds, as per Item 1245 in Supplement No.68 to Tariff 330-B, C.R.C. No.41.

Defendant should refund to complainant any illegal charges collected on shipments moved subsequent to July 3, 1915.

I therefore submit the following form of order:

O R D E R

The Stockton Fire and Enamel Brick Company having filed complaint against the Southern Pacific Company on account of rate assessed on shipments of boulders, as set forth in the opinion which precedes this order, and a public hearing having been held and a full investigation of the matters and things involved having been had and being fully apprised in the premises, the Commission finds as a fact that the lawful rate, since July 3, 1915, on boulders, from Midas to Hislop, is 80 cents per ton, carload minimum weight 60000 pounds.

IT IS HEREBY ORDERED that the Southern Pacific Company refund to the Stockton Fire and Enamel Brick Company any charges that may have been collected in excess of 80 cents per ton, the rate found to be the lawful rate, on shipments of boulders moved from Midas to Hislop subsequent to July 3, 1915.

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, Cal., this 11th day of October, 1916.

Max Shelen
H. D. Loveland
W. Gordon
Edwin O. Edgerston
Stanley R. Dewey

Commissioners.