Decision No. 40

Decision No. 40

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

---

| | | |
|---|---|---|
| B. J. McCullough, Complainant, | ) | |
| vs. | ) | No. 225. |
| Southern Pacific Company, Defendant. | ) | |

J. O. Bracken for complainant.
George D. Squires for defendant.

## D E C I S I O N

Gordon, Commissioner.

The claims in this case arise out of movements of cars of horses and mules from Marysville, Woodland, Tehama and Red Bluff to Crows Landing, in Stanislaus County. Both parties admit that no through rates for these movements had been published, that the governing rate is to be ascertained by a combination of local rates on Sacramento and that in so doing it is proper to apply the commodity rates on horses and mules from points of origin to Sacramento. The question at issue is the proper rate to apply between Sacramento and Crows Landing. Complainant contends that class B rate should be applied, while defendant contends that a commodity rate was in existence between these points and that it should be applied, though higher than the class rate. The complaint does not allege that the rates charged by defendant are unjust or unreasonable, and no question concerning the justice or reasonableness of those rates is involved in this case. The question presented by the pleadings is simply the rate actually in effect when the shipments moved.



107

Complainant relies on the provisions of Exception Sheet No. 1, C.R.C. 2, Western Classification, which provided class B rating on horses, mules and cattle "not otherwise provided for," but contends that the term "not otherwise provided for" appearing in the exception to the Western Classification and the term "N.O.S." (not otherwise specified) in the Western Classification, are synonymous and that as no other rate was specified in said exception sheet as applicable to movements of live stock between the points affected, the governing rate is class B. Defendant contends that the term "not otherwise provided for" means not otherwise provided in any tariffs, and that, inasmuch as specific commodity rates are provided for in Tariff C.R.C. 108, governing live stock shipments between Sacramento and Crows Landing, these commodity rates must be used. Defendant further contends that, irrespective of the proper interpretation of the term "N.O.S.", the commodity rates specified in C.R.C. 108 were in effect and that hence, under Rule 7 (a) of C.R.C. Tariff Circular No. 1, horses and mules moving between the points affected were taken out of class rates, so that the commodity rates alone were applicable.

The shipments under consideration moved and were paid for between November 24, 1909, and March 14, 1910. C.R.C. Tariff Circular No. 1 became effective May 15, 1909. Section 7 (a) reads as follows:

> "In every instance where a commodity rate is named in a tariff upon a commodity, and between specified points, such commodity rate is the lawful rate and the only rate that can be used with relation to that traffic between those points, even though a class or some combination may make lower. The naming of a commodity rate on any article or character of traffic takes such article or traffic out of the classification and out of the class rate between the points to which such commodity rate applies."

This rule remained in effect until November 21, 1910, at which time it was amended to read as follows:

"In every instance where a class or commodity rate is named in a tariff between specified points, the lowest of such rates is the lawful rate; provided, that if some combination of class or commodity rates or class and commodity rates is found to be lower than the through rate, the lower combination of rates shall apply and the carrier shall immediately make its through rate correspond to the lower combination of rates. It being the intention to give the shipper the advantage of the lowest possible rate."

Defendant maintains that this rule does not entitle shippers to the class rates except where commodity rates are not provided and such being the case, there were no class rates on live stock in effect between Sacramento and Crows Landing. In other words, the defendant's position is that the Western Classification makes no provision for live stock but merely gives reference to live stock tariffs. The defendant published specific live stock commodity rates between all shipping points and consuming markets. This left the rest of their line without any live stock rates in effect for the reason that the Western Classification provided no rating and, in order to take care of an occasional movement between points other than the regular shipping or consuming markets and save the publication of a tariff containing several hundred thousand rates which would seldom be used, the defendant claims a provision was made in the exception to the Western Classification providing class B rates on live stock not otherwise provided for, which provision was to cover only such occasional movements.

We must consider this item in the exception to the Western Classification in connection with the movement of live stock and the tariffs governing the same. In the live stock Tariff C.R.C. 108, effective at the time the shipments in question moved, the following provision appears:

"Rates named in this tariff and supplements thereto will apply regardless of whether class rates or some combination of class rates make lower."

Considering this provision, the Commission is forced to

the conclusion that the provision in the exception to the Western Classification providing class B rating on live stock, reading "not otherwise provided for," means that this rule applies where commodity rates are not specifically provided for.

All shipments which moved between May 15, 1909, and November 21, 1910, as to which it might otherwise have been possible to apply either a class or a commodity rate, were subject to this rule, and as to such shipments the rate was, in fact, the commodity rate. It follows that complainant's contention that he can apply the class B rate between Sacramento and Crows Landing can not be sustained.

It appearing that defendant has paid certain claims for reparation on similar shipments on the theory that the class rates were applicable instead of commodity rates, it becomes the duty of defendant to take all necessary proceedings [illegible] to recover back such payments. Otherwise defendant lays itself open to the penalties prescribed by law for rebating.

Defendant's answer admits that the following amounts are now due to complainant on account of overcharges made on certain of the shipments referred to in the complaint, due to the fact that a combination of rates on Davis and Tracy gives a lower rate:

| | | | | |
|---|---|---|---|---|
| Car | O.R.& N. | 13154 | March 9, 1910 | 2 cents |
| " | S.P. | 76486 | March 9, 1910 | $1.15 |
| " | S.P. | 75744 | February 8, 1910 | 9.20 |
| " | S.P. | 75930 | February 8, 1910 | 9.20 |
| " | S.P. | 75644 | February 10, 1910 | 6.90 |

The Commission accordingly finds that the rates charged and collected on said five shipments were excessive in the amounts

specified and orders and directs defendant to repay said amounts to complainant, with interest at the rate of 7% per annum.

The foregoing decision is hereby approved and ordered filed as the decision of the Commission.

John M. Eshleman

H. D. Loveland

Alex Gordon

Commissioners.

San Francisco, California.
January 29th, 1912.