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ORIGINAL

Decision No. _____

Decision No. 4260

BEFORE THE RAILROAD COMMISSION OF THE

STATE OF CALIFORNIA.

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PACIFIC FIBRE & RETARDER COMPANY, a Corporation, Complainant,	)	
-vs-	)	Case No. 1029.
SOUTHERN PACIFIC COMPANY, a Corporation, Defendant.	)	

Barnes & Weldon, for Complainant.

George D. Squires, for Defendant.

BY THE COMMISSION.

OPINION

This is an action by Pacific Fibre & Retarder Company, a California corporation, engaged in the manufacture of retarder and fibre from bean straw in the City of Ventura, charging that defendant's rates on shipments of bean straw from Santa Susanna, Simi, Moorepark and other points to Ventura are excessive and discriminatory as compared with the rates on this material from the same points to Los Angeles. Complainant's prayer asks for the establishment of lower rates, for reparation in the amount of $301.18 upon past shipments and for such

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other relief as the Commission may deem reasonable. Both the alleged discrimination and the excessiveness of the rates are denied by the answer.

A public hearing was held in Ventura on February 7th, 1917 before Examiner Bancroft.

It appears that bean straw moves under the general hay rates. The following table shows these rates from various points to Ventura and also from the same points to Los Angeles, together with the mileage and the rate per ton mile in each instance:

RATES ON HAY AND BEAN STRAW

From	To Ventura			To Los Angeles		
	Mileage	Rate Per Ton	Rate Per Ton Mi.	Mileage	Rate Per Ton	Rate Per Ton Mi.
Santa Susanna	39.3	2.25	5.7¢	35.4	$1.50	4.2¢
Simi	35.3	2.00	5.7¢	39.4	1.75	4.4¢
Moorepark	28.9	1.75	6.0¢	45.8	1.75	3.8¢

There was some question as to whether the allegations in the complaint were sufficient to support the charge of the rates being excessive; and at the hearing complainant voluntarily waived for the purpose of this case any question of unreasonableness and proceeded with the case solely upon the theory of discrimination.

From the foregoing table it will be seen that the rates are materially higher per ton mile from Santa Susanna, Simi, and Moorepark to Ventura than to Los Angeles. For example, the rate from Santa Susanna to Los Angeles, a distance of approximately 35 miles is $1.50 per ton, or 4.2¢ per ton mile, while from Santa Susanna to Ventura, a distance of approximately 39 miles, the rate is $2.25 per ton or 5.7¢ per ton mile. There is no question

but that there is a material discrepancy in these rates against Ventura, and the point to be determined is whether this discrepancy constitutes an unreasonable discrimination. Section 19 of the Public Utilities Act reads as follows:

> "Sec. 19. No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service. The commission shall have the power to determine any question of fact arising under this section."

The first sentence in the above section does not apply in this case, as the testimony shows that there is no other manufacturer of retarder west of Webster City, Iowa.

The question then arises as to whether defendant is maintaining an unreasonable difference as to rates on bean straw into Ventura as distinguished from those into Los Angeles. Defendant attempted to justify the difference in rates on several grounds, among which may be mentioned the following:

1. That the transportation of bean straw from the points mentioned to Ventura constitutes a different kind of traffic from the transportation of this straw to Los Angeles, inasmuch as the straw hauled to Ventura is used solely for the manufacture of retarder and fibre, while the straw hauled to Los Angeles is used solely for hay or fertilizer.

2. That the lower rates into Los Angeles are justified in order to meet three classes of competition into that city, namely, other railroad competition, auto-

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mobile truck competition, and water competition.

3. That defendant renders a more valuable service to complainant when it moves a ton of bean straw into Ventura to be manufactured into retarder worth $30.00 a ton than when it moves a ton of the same material into Los Angeles to be used as a fertilizer, worth approximately $7.00 per ton.

4. That cars carrying freight into Los Angeles are promptly reloaded, thus reducing the movement of empty car equipment; while cars carrying freight into Ventura frequently find difficulty in securing tonnage for outbound movements.

As to the first and the third of the above defenses, which may be considered together, we cannot hold that defendant is justified in charging more for hauling bean straw to Ventura where it is used for manufacturing purposes than for hauling it to Los Angeles where it is used for hay or fertilizer. No evidence was introduced to show that there was the slightest difference either in the equipment used or in the method of transporting the bean straw to the two cities. In fact, defendant introduced evidence to the effect that the market value of bean straw is substantially the same both at Ventura and at Los Angeles, varying from $6.00 to $8.00 per ton, while the price of ordinary hay at Los Angeles runs from $17.00 to $20.00 per ton. Defendant also introduced evidence to the effect that no bean straw is used at Ventura for either fertilizer or hay. But if it so happened that bean straw were used in Ventura for hay, then to carry out defendant's argument to its logical conclusion, there would be one rate for bean straw to a dealer in hay at Ventura, and

a higher rate for the same material, of exactly the same value at point of shipment, carried in the same kind of cars, under the same conditions, to complainant for manufacturing purposes. Obviously, such a system of rates would not for a moment be sanctioned by this Commission.

It appears from the evidence that complainant uses both lima bean straw and black eye bean straw; and, according to complainant's uncontradicted testimony, no black eye bean straw is shipped into Los Angeles for use as hay or feed of any kind. Furthermore, Mr. W. S. Baylis, President and General Manager of complainant, expressly declared at the hearing that he would be satisfied if this Commission merely gave his company relief as to the rate upon black eye bean straw. This materially simplifies the consideration of carrier's second defense, which is based upon the premise that the lower rate into Los Angeles is justified on account of the bean straw being used for hay, in competition with alfalfa and other hay in the vicinity of that city.

No evidence was introduced as to the necessity of meeting any competition in the use of the bean straw as a fertilizer, and, accordingly, we cannot hold that the discrimination in the transporting of black eye bean straw is justified by reason of any such possible competition; and owing to the stand taken by Mr. Baylis at the hearing, it is not necessary for us to determine whether or not the difference in rates upon lima bean straw is justifiable.

Some evidence was introduced in support of defendant's allegation that cars moving into Los Angeles

are apt to be loaded out more promptly than when they move into Ventura, owing to Los Angeles being a larger shipping center; but complainant introduced testimony to the effect that during the season when bean straw is being shipped into Ventura, beans are being shipped out of that city and that, for a number of years past, during such periods the problem has not been that of obtaining sufficient tonnage at Ventura to fill defendant's cars, but of supplying the shippers in that city with sufficient cars to meet their requirements.

The fact that there is no retarder factory at Los Angeles is no defense to the charge of discrimination, for it would hardly be reasonable to require the city of Ventura to lose complainant's factory, or to have a rival factory established in Los Angeles, before it would have a right to complain of the discrimination. Complainant's factory was located in Ventura, apparently on account of the loyalty of its promoters to their home town, and in spite of the higher freight rates; but the City of Ventura could hardly expect outside capital to erect factories at this point under the heavy handicap of higher freight rates than those applying to Los Angeles. In other words, we do not consider it necessary for complainant to wait until the horse has been stolen before locking the stable door.

After full consideration of all the evidence we find that while defendant's tariff does not grant any preference or advantage to any person or corporation, it does result in the maintenance of an unreasonable difference as to rates between the cities of Los Angeles and Ventura

for the carriage of black eye bean straw, which discrimination should be removed.

The record does not contain any proof of damages to complainant by reason of the discrimination found to exist, to justify an award of reparation, and none will be made.

O R D E R

A public hearing having been held in the above entitled proceeding and the same having been submitted upon briefs of the respective parties and the Commission being fully apprised in the premises, and basing its order upon the findings of fact which appear in the foregoing opinion,

IT IS HEREBY ORDERED that the Southern Pacific Company within sixty (60) days of the date of this order remove the discrimination against the City of Ventura now existing in the rates for the shipment of black eye bean straw from Santa Susanna, Simi, Moorepark and any other points in Ventura County to said City of Ventura.

Dated at San Francisco, California, this 23d day of April, 1917.

Max Thelen

J. P. Haynes

Alex Gordon

Edwin O. Edgerton

Frank R. Devlin

Commissioners.