Decision No._____

Decision No. 4621

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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ORIGINAL

WEYL-ZUCKERMAN & COMPANY,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
Defendant.

CASE NO 1063.

C. W. De Journette for Complainant.
Elmer Westlake for Defendant.

Loveland, COMMISSIONER:

O P I N I O N

Complainant in this action, a corporation organized and existing under the laws of the State of California, by complaint filed April 5, 1917, alleges that a reciprocal demurrage bond was filed with defendant in accordance with Pacific Car Demurrage Bureau Tariff No. 2-E (C.R.C.No.7) and that under the rules of this tariff an order was given carrier calling for ten cars to be placed at Stockton October 20, 1915 for loading potatoes and onions and which is referred to in the complaint as Order No.7 of October 19th; likewise that shipper filed an order October 21, 1915, referred to as Order No.9, requesting three cars to be placed at Stockton October 22, 1915 for loading of same commodities.

Complaint further avers that three cars on Order No. 7, viz: Pacific Fruit Express 4607, 3869 and 8622 and two cars on Order No.9, viz: Pacific Fruit Express 8083 and 2328 were not placed until October 26th, in consequence of which it is contended that defendant is liable to shipper for reciprocal demurrage amounting to $15.00, which it refuses to pay.

The answer alleges that Order No.7 called for Pacific Fruit

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Express refrigerator cars, specifying destination as Los Angeles and that complainant refused to accept cars of other character, although defendant was willing and able to furnish suitable equipment; that it is not required to furnish Pacific Fruit Express refrigerator equipment for the transportation of these commodities.

It further avers that three cars mentioned in complaint under this order, viz: P.F.E.4607, 3869 and 8622, were not billed to Los Angeles, as specified in shipper's application, but were ordered to Bakersfield and Fresno and subsequently diverted to Los Angeles; also that some of the ten cars furnished were shipped or diverted to interstate points and to destinations within this State other than Los Angeles.

Concerning Order No.9, defendant makes same allegation with respect to Pacific Fruit Express refrigerator equipment being requested and refusal of complainant to accept other equipment; furthermore, that this order specifies destination as Bakersfield, but that car P.F.E.8083 was shipped to Fillmore, P.F.E.2328 billed to Los Angeles and there reconsigned to El Paso and that under this order there was also furnished car P.F.E. No. 4719, which was billed to Los Angeles and subsequently reconsigned to El Paso, all of which, it is contended, thereby precludes the application of the Reciprocal Demurrage provision.

Defendant's answer furthermore avers that all of the five cars specified in complaint were furnished within the time allowed by rules of the tariff.

At the hearing complaint was amended by reducing the amount to $3.00 and excluding all cars except P.F.E. 8083; this for the reason that the consignments loaded into the other four cars were diverted to interstate destinations, thus removing them from the jurisdiction of this Commission.

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Only one witness appeared for complainant and no exhibits were filed at the hearing, testimony being devoted almost entirely to a recital of the difficulties experienced in securing cars during this period of car shortage and to a general discussion of the rules contained in Pacific Car Demurrage Tariff No.2-E, C.R.C.No.7, particularly Rules 3-A (f), 13(b) and 16, which read as follows:

> "Whenever it shall appear to the satisfaction of the Commission that the failure of a railroad to furnish a car or cars for loading within the time fixed by these rules, or the failure of the shipper or consignee to load or unload the same was due to causes beyond the control of such carrier, shipper or consignee, no payment shall be required to be made on account of such delay".

> "A shipper ~~may~~ may order cars for placing at any time within fifteen (15) days from the time of the order and the carrier shall be required to place the cars on the date required by the shipper, except that on orders of three cars or less the carrier shall be allowed forty-eight (48) hours to place such cars for loading after the first 7 a.m.following the receipt of the order; seventy-two (72) hours for any number of cars more than three and less than six; ninety-six (96) hours for any number of cars more than five and less than eight; one hundred and twenty (120) hours for any number of cars more than seven and less than eleven; and for each three additional cars in excess of ten, twenty-four (24) hours additional time. Each of such periods of time shall begin to run at the first 7 a.m. following the receipt of the order."

> "Whenever any disputes arise between shippers, consignees and carriers concerning the interpretation of these rules and concerning any claim arising hereunder, the same shall be submitted to the Commission for adjustment".

Defendant's witnesses went into great detail and introduced a number of carefully prepared exhibits, showing the methods employed by complainants in their efforts to secure refrigerator cars for consignments of potatoes and onions; number of cars handled by complainant, compared with the total number of cars forwarded by other dealers; cars diverted and ordered to connecting

lines; cars held overtime and amount of demurrage charge paid; kind of equipment used; copies of diversion orders and other particulars not necessary to refer to here.

It is not essential to analyse these exhibits, for while interesting and complete they are nowise controlling in reaching a conclusion in this case.

Demurrage Rule 13(b), supra, provides that on orders of three cars or less the carrier shall be allowed forty-eight hours; more than three cars and less than six, seventy-two hours; more than five cars and less than eight, ninety-six hours.

The car in question, P.F.E. 8083, was one of six wanted for loading at Stockton October 22, 1915. Order No.9, calling for three cars, was placed with agent, Stockton, 5:30 P.M. October 21st, and Order No. 10, also for three cars, was issued at 1:30 P.M. October 22nd, both orders specifying that cars were wanted for loading on October 22nd. Therefore, we have two orders for six cars to be loaded by the same consignor at the same station on the same date. The six cars to fill the order were all placed at 5:30 A.M. October 26th and had they been requisitioned on the one order October 21st, instead of being covered by two, defendant would have enjoyed a free period of ninety-six hours in which to furnish the cars, or until 7 A.M. October 27th and, therefore, the placing of the cars October 26th was twenty-four hours in advance of the free time allowance given in the tariff under the one order rule.

The settlement of this particular claim is one of tariff interpretation and I am of the opinion that when separate orders are issued for cars under reciprocal demurrage rule No.13, and all cars demanded are for placement at one station on one day, the orders should be combined, treated as one and as of date of the first order. To interpret the rule otherwise would lead to endless

confusion, deprive carriers of their time tolerance and make void the reciprocal feature of this Commission's General Order No. 41 of December 12, 1914.

In Case No. 362, Golden Gate Brick Company vs. Western Pacific Railway Company, Vol. 2, Opinions and Orders of the Railroad Commission of California, pages 607 - 609, Commissioner Eshleman said:

> "Tariffs should be clear and unambiguous, and when there is an ambiguity by reason of which a shipper has suffered, the carrier being responsible for the ambiguity should certainly be required to sustain the loss, but where, as here, the shipper shows no loss whatsoever and the construction sought is contrary to the plain intent of the tariff, I think such shipper should have no standing before this Commission."

This ruling holds good to the case at bar.

The complainant in this case, as testified by its own witness, claims that it being a very large shipper of both state and interstate traffic is entitled to preference in the distribution of equipment. This position is entirely untenable, for one of the principal objects of the Public Utilities Act was to require carriers to formulate rules which would apply alike to all shippers, whether large or small, having one carload a year or a thousand.

Defendant discussed at length the difficulties under which it labored at the time these car orders were filed, and reference is made to the acute equipment shortage brought about by the international situation and to the fact that available cars were distributed without discrimination as between shippers, also that this complainant could have been supplied with safe equipment for the transportation of potatoes and onions had it been willing to accept cars other than refrigerators for local movements.

There is no reciprocal demurrage due in this case, as the methods used by complainant in ordering cars is not permitted by the tariffs and there was no showing that any of the rules or regulations were or are unjust or unreasonable. The complaint will be dismissed.

I submit the following form of order:

O R D E R

The above entitled case having come on regularly for hearing and the Commission being duly advised in the premises,

IT IS HEREBY ORDERED that said complaint be and the same is hereby dismissed.

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 5th day of September 1917.

Max Thelen

H. B. Loveland

Alex Gordon

Edwin O. Edgerton

Frank R. Devlin

Commissioners.