

Decision No. _____

ORIGINAL

Decision No. 11800

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

PACIFIC PORTLAND CEMENT COMPANY,
 a corporation,
 Plaintiff,
 vs.
 TIDEWATER SOUTHERN RAILWAY COMPANY,
 ET AL.,
 Defendants.

CASE NO. 1129.

Pillsbury, Madison & Sutro, by A.E.Roth, for Complainant.
 Allan P. Matthew and R.W.McDonald, for Tidewater Southern
 Railway Company, et al., Defendants.
 George D. Squires, for Southern Pacific Company.

LOVELAND, Commissioner:

O P I N I O N

Complainant is a corporation, and operates a plant at Cement, Cal., in the manufacture of cement and other building materials.

The substance of the complaint is this; that, effective February 23, 1917, in Item No. 72, Supplement No.5 to Pacific Freight Tariff Bureau Joint Tariff No.88-C, C.R.C.No.137, there was established on cement, in carload lots, from Cowell to Modesto, rate of \$1.70 and to Turlock \$1.90 per ton of 2000 pounds, routed Bay Point & Clayton Railroad, Atchison, Topeka & Santa Fe Railway and Tidewater Southern Railway; that at the time no through rates were published from Cement Station on the Cement, Tolinas & Tidewater Railway to the same destinations. Accordingly, complainant alleges discrimination and is seeking the establishment of through

route and joint rates which will put its plant on an equality with the cement plant at Bay Point. Reparation is asked for on all shipments moved subsequent to February 23, 1917.

Effective April 27, 1917, in Item No. 73, Supplement No. 6 to Pacific Freight Tariff No. 88-C, the same rates were established from Cowell to Modesto and Turlock via Bay Point & Clayton Railway, Oakland, Antioch & Eastern Railway, Western Pacific Railroad and Tidewater Southern Railway.

The actual mileages via the different routes are as follows:

		Miles :	R o u t e
Cowell to Modesto:	86	:	(Bay Point & Clayton RR to Bay Point
" " Turlock:	103	:	(Atchison, Topeka & Santa Fe to Stockton (Tidewater Southern Ry. to destination
Cowell to Modesto:	139	:	(Bay Point & Clayton RR. to Government Ranch
" " Turlock:	156	:	(Oakland, Antioch & Eastern Ry. to Sacramento (Western Pacific RR. to Stockton (Tidewater Southern Ry. to destination.
Cement to Modesto:	120	:	(Cement, Tolenas & Tidewater RR. to Tolenas
" " Turlock:	137	:	(Southern Pacific Company to Stockton (Tidewater Southern Ry. to destination.

The joint rates established April 27th via route No. 22 takes the Modesto tonnage 139 miles over the rails of four independent carriers, while the route proposed by applicant from Cement involves but three carriers and a haul of only 120 miles.

The testimony and exhibits of complainant clearly show that carriers have voluntarily created a discriminatory situation as between the different producing plants, for complainant is now required to pay the combination of local rates over Stockton, or \$2.15 to Modesto and \$2.35 to Turlock as against \$1.70 and \$1.90 paid by its competitor over a longer route from Cowell.

No testimony was presented by either the Southern Pacific

Company or the Cement, Tolenas & Tidewater Railroad Company; both of these defendants, through their attorneys, announced at the hearing that they were willing to join in a tariff establishing from Cement the same rates as are now in effect from Cowell.

The third defendant, Tidewater Southern Railway Company, in its answer to the complaint, makes the following allegation in Paragraph IX:

"Answering paragraphs XII and XIII of the complaint, this defendant admits that the plaintiff has made application for the establishment of through rates from Cement to points on the line of this defendant and that this defendant has heretofore declined to concur in the publication of the rates for which application was made by the said plaintiff. In this behalf this defendant avers the fact to be that it has declined to concur in the publication of the said rates for which application was made by the said plaintiff as aforesaid because of the failure of the defendant to reach an agreement with defendant, Southern Pacific Company, respecting terms for the division of such rates between this defendant and the defendant, Southern Pacific Company, and because of the refusal of the defendant, Southern Pacific Company, to consent to the establishment of joint rates on commodities other than cement between points on or reached by the line of this defendant and points on or reached by the line of the Southern Pacific Company".

This defendant produced but one witness, its Assistant General Manager, whose testimony was, in the main, a more detailed explanation of the statements set forth in the answer to the complaint. The policy of this defendant, in essence, seems to be one of endeavor to secure an agreement favorable to itself from the Southern Pacific Company covering a large territory and an entire schedule of rates before consenting to the establishment of joint rates on this specified commodity. The position is untenable, for by the publication of joint rates on cement from Cowell via the Santa Fe and later by the circuitous route over the rails of

the Oakland, Antioch & Eastern Railway and the Western Pacific Railroad, there was created a discrimination as between shipping points.

In this case it appears that the same joint rates would have been published from Cement as from Cowell had not the Southern Pacific Company and the Tidewater Southern Railway disagreed with reference to other traffic matters entirely foreign to this particular rate.

A manufacturer, with tonnage, has the right to have it moved at reasonable, non-discriminatory rates and this petitioner is not concerned with the means by which the desired results are obtained. Certainly its activities should not be crippled while the carriers are considering other rate adjustments, which, while of great importance to them, are no concern of shippers.

The contention is also made that because the mileage from Cement is longer than from Cowell direct via the Atchison, Topeka & Santa Fe Railway through Stockton, the Tidewater Southern would not receive the same revenue on the basis of a mileage pro-rate. When it is considered, however, that the distance from Cement is nineteen miles shorter than from Cowell through Sacramento in connection with the Oakland, Antioch & Eastern and the Western Pacific, this contention is not impressive.

It is to be regretted carriers did not handle this situation with a more liberal spirit, for apparently there was no disagreement as to what the rates should be which could have been published in the first instance and the question of the division of the earnings and other involved traffic matters submitted to the Commission under Section 33 of the Public Utilities Act for adjustment. In my judgment, this proceeding and the attending annoyances and delays to the public could and should have been avoided.

Upon consideration of all the facts. I am of the opinion and find that the present rates on cement, carloads, from Cement to Modesto. of \$2.15 and to Turlock of \$2.35 per ton, made up of the combination of locals over Stockton, are discriminatory; that a through rate should be established from Cement via the Cement, Tolenas & Tidewater, Southern Pacific and Tidewater Southern to Modesto and Turlock and joint rates published from Cement of \$1.70 to Modesto and \$1.90 to Turlock, the same as are now in effect from Cowell. No testimony was presented and the Commission is not at this time passing upon the reasonableness of the joint rates.

I find that the rates charged on the shipments in controversy were unduly discriminatory to the extent that they exceeded the rates contemporaneously applicable on cement in carloads from Cowell to same points of destination; that complainant has been damaged to the extent that the charges collected exceeded the charges that would have accrued had the same rates as applied from Cowell been in effect. The exact amount of reparation cannot be determined on the record, and complainant should prepare a statement showing the details of shipments, which statement should be submitted to defendants for adjustment. Should the parties fail to agree upon amount of reparation the facts may be submitted to the Commission for further consideration.

I would suggest that carriers also give thought to the publication of joint rates on cement from Napa Junction and Davenport to points on the Tidewater Southern.

O R D E R

The Pacific Portland Cement Company, a corporation, having applied to the Commission for a through route and joint

rates with the Cement, Tolenas & Tidewater Railroad, the Southern Pacific Company and the Tidewater Southern Railway Company on cement in carloads from Cement to Modesto and Turlock and a hearing having been held and basing its findings upon the statement of facts in the opinion which precedes this order.

IT IS HEREBY ORDERED that the Cement, Tolenas & Tidewater Railroad, Southern Pacific Company and Tidewater Southern Railway Company publish and file with this Commission on or before twenty days from the date hereof joint rates for the transportation of cement, in carloads, minimum weight 60000 pounds, from Cement to Modesto of \$1.70 per ton and to Turlock of \$1.90 per ton, which rates are hereby found to be non-discriminatory for such joint service.

IT IS FURTHER ORDERED that the said Cement, Tolenas & Tidewater Railroad, Southern Pacific Company and Tidewater, Southern Railway Company agree upon division of said joint rates heretofore found to be non-discriminatory, and in the event of failure to agree upon such division, said carriers shall appear before the Commission and show cause why this Commission should not proceed to the establishment of division as provided for by law.

IT IS FURTHER ORDERED that these defendants pay, by way of reparation, to the Pacific Portland Cement Company a sum equal to the difference between the amounts paid and what would have been paid for the shipments of cement forwarded from Cement to points on the Tidewater Southern Railway Company since February 23, 1917, and the rates of \$1.70 and \$1.90 herein found to be non-discriminatory for such shipments. In case the parties to this proceeding fail, within sixty days, to agree upon the amount of reparation due under this order, said parties, or either of them may appear

before the Commission and submit proofs, whereupon the Commission will determine the amount of reparation due and issue a supplemental order.

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 29th day of October, 1917.

Max Theiler
H. B. Loveland
W. E. Gordon
Edwin O. Edgerton

Commissioners.