

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Decision No. 4820

GEORGE A. WEBSTER,
Complainant,

vs.

Case No. 1133

THE ATCHISON, TOPEKA & SANTA
FE RAILWAY COMPANY,
Defendant.

Roy R. Waterbury and Alfred A. Cohen for complainant.
G. H. Baker and Platt Kent for defendant.

BY THE COMMISSION.

O P I N I O N

Complainant is an individual engaged in the produce business at San Francisco. By complaint filed August 11, 1917, he alleges that the combination rate of 64 cents per 100 pounds charged by defendant for the transportation of two carloads of potatoes in February, 1916, from Stockton to Needles was unreasonable to the extent that it exceeded a through rate of 49 cents per 100 pounds.

The shipments were offered at Stockton, January 20, 1916, billed to complainant at San Diego. At this time, because of flood in Southern California which had washed out a portion of defendant's line between Los Angeles and San Diego, an embargo had been placed against the traffic and complainant's agent at Stockton was advised of the situation and that cars could not be accepted for San Diego. On January 21st the shipments were again offered with Los Angeles as the destination instead of San Diego. The cars reached Los Angeles January 25th and on January 27th were, by order of the complainant, through his San Francisco office, diverted to San Diego. On the same day

(January 27th), the Los Angeles agent of defendant wired that the diversion to San Diego could not be accepted on account of the embargo being still in effect. This information was conveyed to complainant at San Francisco and the consignments were thereupon ordered held at Los Angeles.

On February 5th cars were ordered diverted to Needles and reached that point February 7th, or 18 days after having been loaded at Stockton.

The rate on potatoes, carloads, from Stockton to Los Angeles is 25 cents per 100 pounds and from Los Angeles to Needles 39 cents per 100 pounds as per defendant's tariffs 11992, Cal.R.C.323 and 9885-B, Cal.R.C.322, or a total rate of 64 cents, which complainant has refused to pay. The through rate between the same points is 49 cents per 100 pounds as per defendant's tariff 9885-B, Cal.R.C.322.

The rules and regulations relating to reconsignment and change of destination of carload freight, are published in defendant's tariff No.8117-E, Cal.R.C.305, Item No.765 and contain the following pertinent provisions:

"(B) For each diversion or reconsignment (change in destination including change in consignee, if desired), filed with carrier's agent before car arrives at first destination, or within 96 hours (exclusive of Sundays and holidays), after 7:00 A.M. of day following arrival of car at first destination, a charge of \$2.00 per car will be made and through rate from point of origin to final destination will apply; but if instructions to change destination are not filed within the time specified herein, freight charges will be based on rate from originating point to first destination, plus rate from such point to final destination, in which case no charge for diversion will be made, except as provided in paragraphs (C) and (D)."

Cars were held in Los Angeles a total of twelve days, January 25th to February 5th, and this delay complainant alleges was due to insufficient and ^{uncertain} ~~incomplete~~ information as to what action would be taken on the diversion order of January 27th.

Defendant denies that the cars were entitled to treatment as having been diverted at their billed destination, Los Angeles, within the rules of the tariff and it maintains that during the entire delay to the shipments efforts were made to secure disposition and, as an exhibit, presented some fifteen telegrams passing between its San Francisco and Los Angeles offices. The first of these messages is dated January 27th and the last February 5th and they illustrate in chronological order the actions taken. Reference to several of these documents is relevant. Under date of January 27, 1916, there is a telegram from Los Angeles reading :

"Cannot accept any diversions now to San Diego either with or without release from delay until embargo actually lifted and open line now very remote."

On January 29th another wire from Los Angeles again refusing to accept diversion to San Diego. On January 31st messages were exchanged with reference to the demurrage charges accruing at Los Angeles. Under date of February 4th Los Angeles agent sent the following wire:

"Both Webster cars still on track. Understand Morgan trying to dispose, but nothing done yet, advise if any other disposition."

The Mr. Morgan mentioned in this telegram was a local representative of complainant.

Cars were diverted to Needles February 5th after notification from Los Angeles that the diversion could only be made upon a combination of the local rates.

A witness for defendant testified that the contents of all telegrams was promptly telephoned the San Francisco office of complainant, that the situation was explained and a continuous effort made to secure disposal of the potatoes. This testimony is confirmed by notations on the telegrams showing telephone number, date and hour of conversation.

Complainant's sales blanks, submitted in evidence show that the potatoes were actually sold to firms at San Diego, and pencil notations on the blanks give a partial record of the efforts made by defendant to secure disposition of the consignments.

The fact that the shipments in controversy were from the first intended to move beyond Los Angeles would not alter their status after they arrived at that point and even if the order to make diversion to San Diego had been placed prior to time cars arrived at Los Angeles, a notification from carrier that the diversion was impossible of performance and therefore cancelled placed the burden of making prompt disposition of cars upon the complainant .

It would appear that the tariff rule limiting reconsignment at the through rate to a period of 96 hours, after the first 7:00 A.M. of day following arrival of car at destination, exclusive of Sundays and holidays, is not unreasonable.

In the light of the whole record we find that the detention at Los Angeles was not caused by railroad errors. The lawful rate against these shipments from Stockton to Needles is 64 cents per hundred pounds based on local rate of 25 cents per hundred pounds, Stockton to Los Angeles, and 39 cents per hundred pounds, Los Angeles to Needles, as published in defendant's tariffs No. 11992, C.R.C. No. 323 and No. 9885-B, C.R.C. No. 322 and complainant should pay charges accordingly.

The complaint will be dismissed.

O R D E R

A public hearing having been held in the above entitled proceeding and the proceeding having been submitted and being now ready for a decision, and it appearing for the reasons set

forth in the foregoing opinion that the complaint should be dismissed,

IT IS HEREBY ORDERED that the complaint in the above entitled proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 7th.
day of November 1917.

Max Thelen
H. D. Howard
Frank R. Dyer