

Decision No. _____

ORIGINAL

Decision No. 4926

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

CITY STREET IMPROVEMENT COMPANY,)
Complainant,)

vs.)

SOUTHERN PACIFIC COMPANY.)
PENINSULAR RAILWAY COMPANY.)
Defendants.)

CASE No. 1122.

Bishop & Bahler, by L.R. Bishop and L.M. Wade,
for complainant.
S. F. Leib, for Peninsular Railway Company.
George D. Squires, for Southern Pacific Company.

LOVELAND, Commissioner:

O P I N I O N

Complainant is a corporation engaged in the general contracting business, constructing streets, roads and wharves, with offices at San Francisco.

By complaint filed July 28, 1917, it alleges that the rates charged by defendants for the transportation of crushed rock, sand and bituminous rock from various points on the Southern Pacific Company's lines to points on the Peninsular Railway Company were unreasonable. Reparation is asked for on shipments that moved during the period July 1, 1916 to March 31, 1917.

The shipments moved over the Southern Pacific Company to San Jose, thence to destinations, Meridian, Cupertino and Saratoga over the Peninsular Railway. No joint rates were applicable and charges were collected at combination rates based over San Jose.

It will be unnecessary to here state the rates of the Southern Pacific Company from the different points of origin to San Jose, for the reason that complainant made no showing that this factor, in the amount charged, was excessive or unreasonable. The issue, therefore, relates only to the reasonableness of the local charges assessed by the Peninsular Railway, or to the establishment of through joint rates.

Complainant sought to show that the Peninsular Railway's local commodity rate of 25 cents per ton on crushed rock and sand from San Jose to the different destinations was unreasonable as compared with a rate of 16-2/3 cents per ton from the quarry producing points, Bell, Campbell and Stanfield, to San Jose and other stations in what is termed the Group "A" district.

The contention that the 25 cent rate is unreasonable as compared with the 16-2/3 cent rate does not seem to be well founded. Complainant's comparison is open to criticism, inasmuch as it loses sight of the fact that the crushed rock moving from the quarries is handled in large quantities. ~~xxxxxxxxxxxxxxxxxxxx~~ The traffic manager for this defendant testified that the 16-2/3 cent rate was established many years ago to create tonnage and to assist in the building of good highways, the theory then being that with good roads the country would rapidly develop, to the great advantage of carriers. This was before the advent of the automobile, which has greatly changed the situation and, today, instead of securing larger revenues because of good roads, the same have steadily decreased. The earnings per car from this 16-2/3 cent rate are meager, ranging from \$4.58 for a minimum load of 55,000 pounds to \$9.16 for the maximum load of 110,000 pounds. It was the opinion of defendant's witness that this rate did not meet the operating expenses. Further, it was shown that in order to facil-

itate the handling of rock and sand defendant permitted this complainant to unload at convenient points on its double track between Meridian and Cupertino for a distance of about four miles, thus reducing team and auto haulage charges to the highway, where the material was used.

It has not been shown that the rate of 25 cents on crushed rock and sand is either excessive or unreasonable as compared with the 16-2/3 cent rate from the quarry producing points, for rates in one direction, under the conditions here existing, may properly be higher than in the other. Neither was it shown that the rate is excessive per se, nor that the combination of the rock and sand rates on San Jose make an excessive or unreasonable through charge. This part of the case will be dismissed.

The record discloses no previous movement of bituminous rock from San Jose to points on the Peninsular, therefore there was no demand for a commodity rate. In the absence of a commodity rate the Western Classification rates bituminous asphalt rock Class D, in carloads, minimum weight 40000 lbs applied; this created a rate of 70 cents per ton from San Jose to the points in question.

Complainant submitted an exhibit showing that the rate on bituminous rock from Godola to points on the Southern Pacific is the same for greater distances than the rate charged by the Peninsular for its short haul from San Jose and, by the testimony of a witness, urged that a through joint rate should not exceed \$1.00 per ton. The shipments of bituminous rock comprised some 2500 tons and were used in connection with a contract entered into with the County of Santa Clara. Complainant's witness alleges that the contract was based on a through rate of 70 cents, Godola to Meridian, which rate, he understood, could be applied, same being the published rate Godola to San Francisco via the

Southern Pacific Company. While complainant may have suffered a loss because of a misunderstanding of a rate or a misquotation of a rate, such mistakes cannot be urged as a basis for reparation, the law charging all parties with a knowledge of the rates from which neither the shipper nor the carrier can deviate.

Peninsular Railway
Defendant/submitted numerous comparisons to illustrate that the rate in question is on a parity with rates for similar distances via electric lines in California and that none of the carriers mentioned in the exhibit named commodity rates for this article. The apparent purpose of the comparisons for the most part is to show that the Class D rate is reasonable. It is to be noted, however, that the Peninsular carries in its Local Freight Tariff No. 4, C.R.C.No.15, many carload commodity rates of 50 cents per ton between its Group A stations, which include San Jose; among these commodities will be found box material, cereals, cement, fruit, salt, sulphur, coal and oils.

Said defendant's Exhibit B is a statement of its income account for seven months, ending July 31, 1917; the operating income, after payment of taxes, shows a loss of \$4,702.56, while the total loss, after deductions for interest on funded and unfunded debts and other miscellaneous debits, shows a gross income loss of \$149,696.55 for the seven months' period. The company's total corporate deficit as of July 31, 1917 was \$1,368,403.87, a rather difficult financial situation for a railroad with only sixty-four miles of track.

Upon all the facts I find that the rate attacked for the transportation of bituminous rock is excessive and discriminatory as

compared with other commodity rates in effect between the same points on defendant's line, these commodities being of greater value than the bituminous rock.

My conclusion is that, under the circumstances, a just and reasonable rate for the transportation of bituminous rock in carloads, from San Jose to Group A stations on the Peninsular Railway is 50 cents per ton, with a minimum weight of 60000 pounds; that complainant, the City Street Improvement Company, made shipments at 70 cents per ton, the rate found to be excessive and discriminatory; that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found reasonable, and that it is entitled to reparation.

The exact amount of reparation due cannot be determined on the present record, and complainant should prepare a statement showing full details of each shipment and the amount of reparation due, which statement should be presented to defendant for verification and payment. If parties cannot agree as to the amount the facts may be presented to the Commission for an order awarding the specific amount of reparation.

I submit the following form of order:

O R D E R

This case having come on regularly for hearing and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED that the Peninsular Railway Company publish, and file a tariff with this Commission, to become effective within twenty days from the date of this order, showing a rate of 50 cents per ton of 2000 pounds on bituminous rock, carloads, minimum weight 60000 pounds, from San Jose to defendant's Group A stations, which rate is found to be just and reasonable, in lieu of the present rate of 70 cents per ton, which is found to be excessive

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and discriminatory.

IT IS FURTHER ORDERED that the Peninsular Railway Company refund to the City Street Improvement Company, as reparation, all charges collected in excess of 50 cents per ton on shipments of bituminous rock moved from San Jose to the points in question July 1, 1916 to March 31, 1917.

In the event that the parties to this proceeding are unable to agree upon the exact amount of the reparation under the order, they may, within thirty days from the date hereof, report that fact to the Commission, whereupon the Commission will issue a supplemental order fixing the exact amount due.

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 6th day
of December 1917.

Max Thilen
H. D. Loveland
Alex. Gordon
Edwin O. Edgerton
Frank R. Wilson
Commissioners