

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

Decision No. 3003

In the Matter of the Application of
F. W. Gomph, Agent, for authority to
amend Pacific Freight Tariff Bureau's
Local and Joint Freight Tariff No. 42-B,
C.R.C. No. 105 and Joint Freight Tariff
No. 120-B, C.R.C. No. 160; also Los Angeles
and Salt Lake Railroad Company's Tariff
No. 133-C, C.R.C. No. 66; Pacific Electric
Railway Company's Tariff No. 120-C, C.R.C.
No. 187, and Southern Pacific Company's
Tariff No. 584-A, C.R.C. No. 1670, by clearly
setting forth that the rates referred to
will apply only on shipments from the ports
named or to the ports named when delivered
by or to ocean carriers and incident to
transportation on the high seas to points
beyond such ports.

Application No. 3332.

E. W. Camp and A. S. Halsted, for Applicant.

Bishop & Bahler, by H. M. Wade, for California-
Portland Cement Company, Protestant.

Loveland, Commissioner:

O P I N I O N

This is an application filed by F. W. Gomph, Agent,
on behalf of carriers parties to Pacific Freight Tariff Bureau's
Local and Joint Freight Tariff No. 42-B, C.R.C. No. 105, and
Joint Freight Tariff No. 120-B, C.R.C. No. 160; also in connection
with Los Angeles & Salt Lake Railroad Tariff No. 133-C, C.R.C. No. 66,
Pacific Electric Railway Company's Tariff No. 120, C.R.C. No. 187 and
Southern Pacific Company's Tariff No. 584-A, C.R.C. No. 1670, for

permission to change the wording of certain items in these tariffs covering trans-shipment of freight received from or delivered to water carriers.

The primary purpose of the application will be illustrated by quoting from the first named tariff - Pacific Freight Tariff Bureau's Tariff No.42-B, C.R.C.No.105. Item No.5 thereof now reads:

"Rates named herein apply only on freight received from or delivered to water carriers at the ports named in each individual item".

It is proposed to amend the item to read as follows:

"Rates named herein from the ports named apply only on freight transported on the high seas from points beyond the port and delivered by the Ocean Carrier to the Rail Carriers at the ports named, subject to such further restrictions as may be provided in connection with individual rates.

"Rates named herein to the ports named apply only on freight delivered to the Ocean Carrier for transportation on the high seas to points beyond the port, subject to such further restrictions as may be provided in connection with individual rates".

The reasons for desiring to amend tariffs as set forth in the application are, briefly, that certain rates were published on cement to place the cement factories in Southern California on a parity with the factories in Northern California at tidewater points: Otherwise stated, the rate from the Northern California producing points - Davenport, Cement, Cowell and Napa Junction to San Francisco and bay points is 75 cents per ton, which would give the Northern California mills a decided advantage at tidewater if a similar trans-shipment rate were not made for Southern California producing points - Crestmore, Colton and Riverside to the ports in that part of the State.

It is alleged that the rate of 75 cents per ton on

cement to San Diego and other southern ports was intended for use only in connection with shipments destined to points reached by ocean-going vessels, either in coast-wise or foreign trade.

Applicant maintains that the rate has never been used in connection with consignments for local consumption and the proposed changes bring about no increases, being made simply to clarify the tariffs and remove a present ambiguity.

It is further alleged that an attempt was recently made to apply the 75 cent rate to cement moving to San Diego, for consumption in the construction of a dam at Otay, located a few miles from Chula Vista on the San Diego Bay, the intention of the shippers being to load the cement on barges at San Diego, move it to a point near Chula Vista and haul from that point by motor truck to final destination.

Applicant insists that under a reasonable interpretation of the language used in these tariffs the proportional rates could not be made to apply on tonnage destined to the ports or to local points within the ports by the mere subterfuge of placing the freight on some kind of a water craft and moving it short distances within the confines of the particular harbor.

The granting of the application was protested by the California Portland Cement Company, who declared it had entered into a contract to furnish cement for the construction of a reservoir at Otay and had figured upon the 75 cent rate, expecting to move the tonnage by water carrier from the wharf at San Diego to a convenient landing point on the San Diego Bay opposite the dam site.

The point made by protestant that it had entered into a contract and figured on the trans-shipment rate and that, therefore, no changes should be allowed in these tariffs until

the contract had been fulfilled, cannot be admitted as controlling. If carriers proposed reductions in rates this protestant certainly would not contend that the rates must not be changed because its profits under the contract would be ^{ordinarily} increased. The reasonableness of a rate, rule or regulation must be determined independently of contracts made by shippers.

The evidence shows that no cement has ever moved to San Diego at the 75 cent per ton rate and was there delivered to water carriers for local consumption at that port; it is therefore not necessary to decide what the legal charge would have been had such shipments moved, nor what the lawful rates are under the tariffs as now constructed.

The items in the tariffs to be amended clearly indicate that same were published to cover proportional rates in connection with a common carrier by water and, from their very nature and history, are nothing but factors in a through rate. They are part of a rate structure created by competitive conditions from producing points to a common market, have no particular bearing upon local rates within the territory and, because of the difference in conditions, cannot be said to be either preferential or discriminatory against the same commodities moving to the local markets.

The issues in Case No. 362, Golden Gate Brick Company vs. Western Pacific Railway Company, decided by Commissioner Eshleman April 12, 1913 (Vol. 2, Opinions and Orders of the Railroad Commission of California, page 607) were similar to those in the case at bar, being based on a tariff interpretation, where he held:

"I am not in sympathy with the practice of carriers in putting tortured construction upon a tariff provision so that the same may yield them more revenue, and I certainly am no more in sympathy with the same practice when indulged in by shippers with a view to securing less rates. 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".

In the light of this record, which has been carefully considered, I see no reason for deviating from the findings and conclusions announced in the Golden Gate Brick Company case, No. 362, supra, and I find that the changes proposed in the tariffs covered by this application are reasonable and that the application should be granted in order that the positive intent of the rates may be set forth in unmistakable terms.

I submit the following order:

O R D E R

Application having been made by F. W. Gomph, Agent, on behalf of carriers parties to Pacific Freight Tariff Bureau Tariffs C.R.C. Nos. 105 and 160, and also in connection with Los Angeles & Salt Lake Railroad Tariff No. 133-C, C.R.C. No. 66, Pacific Electric Railway Tariff No. 120, C.R.C. No. 187 and Southern Pacific Company's Tariff No. 584-A, C.R.C. No. 1670 to make certain changes in said

tariffs, and a ^{public} ~~regular~~ hearing having been held.

IT IS HEREBY ORDERED that the application of the carriers to make the changes in the tariffs, as outlined in the application filed with this Commission, be and the same is hereby authorized.

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 31st day of December, 1917.

Max Thelen
H. B. Loveland
Alex Gordon
Edwin C. Edgerton
Francis P. Nelson
Commissioners.