Decision No. 581

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

D. & B. PUMP SUPPLY COMPANY, Incorporated, Complainant,	:	
vs.	:	
	:	Case No. 346.
SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY and SUNSET RAILROAD COMPANY, Defendants.	:	

Charles Clifford, for D. & B. Pump Supply Company;
Geo. D. Squires, for Southern Pacific Company;
H. P. Anewalt for The Atchison, Topeka & Santa Fe Railway Company.

LOVELAND, Commissioner.

O P I N I O N.

The complainant in this case is a corporation engaged in the manufacture and sale of oil well supplies, shipping such supplies from the city of Los Angeles, California, to the oil fields of California.

Complainant alleges that for many years it has been shipping an article known as oil well working-barrels which defendants have classified as third class, but recently, without permission of this Commission, as required by law, and without any change in the Western Classification have arbitrarily assessed the rate of first class on movements of this article. Complainant further alleges that, notwithstanding the fact that in Pacific Freight Tariff Bureau Exception Sheet No. 1-B CRC 52, Rule 10-E, it is provided that machinery and machines and parts thereof returned to original point of shipment for repairs, take one-half of the outbound rate current at time of return movement, defendants have assessed a charge of one-half of first class instead of one-half of third class on return movements on oil well working-barrels when such barrels are being returned for repairs. Complainant also alleges that in arbitrarily assessing a rate of first class on movements of oil well working-barrels, defendants

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violated Section 63 (a) of the Public Utilities Act, which reads as follows:-

> Sec. 63. (a) No public utility shall raise any rate, fare, toll, rental or charge or so alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge, under any circumstances whatsoever, except upon a showing before the Commission and a finding by the Commission that such increase is justified.

Complainant asks for reparation from the various defendants in the amount of Two Thousand, Three Hundred Twenty and 85/100 (2,320.85) Dollars.

Complainant's claim that oil well working-barrels should move at third class is based upon the following provision in Western Classification under the head of "Oil Well Supplies". After enumerating numerous articles which go to make up oil well supplies, Western Classification No. 50, Item 32, page 136, provides as follows:-

> ---and other tools or appliances used in connection with drilling gas, oil and water wells and not otherwise specified in Classification---third class.

The defendant, Southern Pacific Company, admits that oil well working-barrels are not specifically provided for in Western Classification but alleges that they are, as a matter of fact, pump cylinders and as such are properly rated under the provisions of Western Classification No. 50, which read as follows:-

> Page 152, Item 37. Iron pump cylinders (plain or brass lined) for hand or windmill iron pumps loose---- first class.

Item 41 reads:-

> Pipe for connecting pump heads and cylinders but not exceeding one-third of weight of entire shipment.

This last mentioned Item No. 41 appears to cover such pipe as may be included in carloads of pumps or pump cylinders.

The Southern Pacific Company maintains that oil well working-barrels should never have been classed as third class and that it was an error of its employees in so classing them, for which reason it has refused to protect one-half of third class on oil well

working-barrels returned for repairs.

Defendant, Southern Pacific Company, for a further answer alleges that all shipments moving prior to February 10, 1911 are barred by the Statute of Limitations and that this Commission has no jurisdiction to award reparation on any shipment which moved prior to March 23, 1912.

The defendants, The Atchison, Topeka & Santa Fe Railway Company and Sunset Railroad Company, in their joint answer, admit that oil well working-barrels are machines and that when same are returned for repairs are entitled to one-half of the rate which would be applied on the outbound movement. These defendants contend that oil well working-barrels are not used in connection with drilling oil wells but are used for the purpose of lifting oil out of a well after same has been drilled; and further contend that oil well working-barrels should be properly classified under the general head of machinery and machines, Item 38, page 120 of Western Classification No. 50, which provides:-

Pumps N.O.S. less carloads---first class.

At the hearing, complainant introduced testimony to prove that oil well working-barrels were used in drilling operations to test wells. The defendants introduced testimony showing that, on the property with which witnesses were familiar, oil well working-barrels were very rarely used except after the well was completed. The weight of the testimony was to the effect that oil well working-barrels were principally used after the well was completed. All of these witnesses were, doubtless, honest in their convictions and in their testimony, and the difference in their testimony is explained as follows:-

Witnesses for defendants are engaged principally in drilling wells in what may be called "proven territory", while the complainant sought to establish the fact that many oil well working-barrels were used during drilling operating in sinking what are known

as "wildcat wells". In other words, the necessity for testing wells during drilling operations would be more necessary to operators working in territory where the chances for securing oil were not as good as on proven land, and the testimony shows that in such operations the oil well working-barrel is used.

A description of the article under consideration will aid in passing upon the justness of our findings in this case. The oil well working-barrel is a wrought iron tube, the usual dimensions being six (6) feet in length by three (3) inches in diameter. When it is being used it contains a plunger and certain linings and is connected with a valve, but the testimony showed that the iron tube, weighing about one hundred and fifty (150) pounds, with the lining and plunger inside, was shipped by itself and the valve also shipped separately. This iron tube is something that is not liable to damage in transit and it is difficult to understand how it can reasonably be maintained that such a piece of iron of this weight, without liability to damage, should be classified as first class, while the valve, which is a highly finished piece of machinery and much more valuable per pound, much more liable to damage in transit, is classed as fourth class. Classification is generally presumed to be consistent with common sense and it is my opinion that a classification which may be construed so as to provide first class rating on an article such as this oil well working-barrel, is in need of revision.

Defendants admit that oil well working-barrels are not specifically provided for in the classification and, in view of this fact and what has been said as to the character of the article, and inasmuch as these oil well working-barrels <u>are</u> used during the drilling of oil wells, frequently or infrequently, we believe that the proper classification is third class, according to Classification No. 50, Item 52, page 136, Western Classification.

I do not consider that Item 37, page 152, Western Classi-

fication No. 50, cited by the defendant, Southern Pacific Company, is applicable in this case, for this item specifically refers to iron pipe cylinders for hand or windmill iron pumps, which cannot be said to cover oil well pumps.

I regard the claim of defendants, The Atchison, Topeka & Santa Fe Railway Company and Sunset Railroad Company, that oil well working-barrels might be properly classified under the head of machines and machinery, Item 38, page 120 of Western Classification, which reads as follows:-

Pumps N. O. S. less carloads---first class

as worthy of more consideration than the claim of defendant, Southern Pacific Company, but for reasons above stated, namely: the character of the article, the fact that it cannot be damaged in transit, the fact that it is used, more or less, in drilling oil wells, the fact that the valve which is attached to it when in operation, although much more expensive and delicate, is classed at fourth class, and, finally, the fact that oil well working-barrels have for years been classed at third class and moved at third class rate, I find that the proper classification for oil well working-barrels has been and is third class, according to Classification No. 50.

It has been the practice of carriers in the past to classify articles by analogy when such articles were not specifically provided for in the classification and the Commission takes the position that the continued classification of an article by analogy establishes that classification as a practice which cannot be altered without the consent of the Commission. In saying this, we do not wish to be understood that ordinary mistakes cannot be corrected, but simply that the continued application of a certain rate or classification, when the article is not specifically provided for, establishes the presumption that the carriers regard the rate and classification as just and one that must be maintained or changed only by consent of the Commission.

With reference to the claim of the defendant, Southern Pacific Company, that claims for refunds are barred by the Statute of Limitations on all shipments moving prior to February 10, 1911, and that the Commission has no jurisdiction to award reparation on any shipment which moved prior to March 23, 1912, I find that this point is not well taken and refer to the Opinion and Order in Case No. 283 in which the question of claims being barred by the Statute of Limitations and the jurisdiction of the Commission to award reparation are fully analyzed and passed upon.

In holding that oil well working-barrels have been and should be classified as third class, I incidentally hold that shippers of that article are entitled to the rate on third class on the outgoing movement and to one-half of third class on the return movement, when the article is being returned for repairs.

I recommend the following Order:-

O R D E R.

The D. & B. Pump Supply Company, incorporated, complainant, of Los Angeles, California, having complained of the Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company and the Sunset Railroad Company, defendants, the basis of such complaint being that said defendants have arbitrarily raised the rate on an article, known as oil well working-barrels, from the rate on third class to the rate on first class, without permission of the Railroad Commission, and without making any change in the Western Classification; and a hearing having been duly held; and it appearing to the Commission that the article in question, oil well working-barrels, have been and should be classed as third class and moved at the third class rate;

IT IS HELD: That third class, according to Western Classification No. 50, is the proper class to be applied to oil well working-barrels.

IT IS FURTHER HELD: That the contention of the defendant,

Southern Pacific Company, that all claims on shipments moving prior to February 10, 1911, for reparation, are barred by the Statute of Limitations, and that this Commission has no jurisdiction to award reparation on any shipment which moved prior to March 23, 1912, is not well taken, the opinion of the Commission on these matters being clearly set forth in Case No. 283, to which reference is made.

IT IS ALSO HELD: That on the movement of oil well working-barrels being returned for repairs one-half of third class should be assessed.

IT IS, THEREFORE, HEREBY ORDERED: That defendants, Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company and Sunset Railroad Company, adjust all overcharges on shipments of oil well working-barrels where such oil well working-barrels have been classed and the movement paid for at the rate of first class to the third class rate, by refunding to shippers the difference between the first class and the third class rate on outgoing movements and the difference between one-half of first class and one-half of third class on return movements where oil well working-barrels were returned for repairs, and that hereafter this article be classed as third class and moved at that rate.

We will not at this time mention specifically each shipment upon which complainant claims adjustment of overcharge should be made, as it is expected that the carriers will adjust all overcharges due to erroneous classification and rating of oil well working-barrels. Should the parties to this application fail to agree upon the specific shipments upon which reparation should be made to applicant, they, or either of them, may report to the Commission such failure to agree and the Commission will, thereupon, set the matter for a further hearing and will make a supplemental order, if necessary. And it is understood that no finding is made in this Opinion and Order affecting reparation in specific cases, that matter being held

open for future determination.

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 15-th day of April, 1913.

John M Eshleman

H D Loveland

Max Thelen

Commissioners.