

Decision No. 7817

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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Pacific States Corporation,	)	
	)	
Complainant,	)	Case No. 1238
vs.	)	
Southern Pacific Company,	)	
	)	
Defendant.	)	

C. W. Pendleton, for Complainant.  
H. H. Gogarty, for Defendant.

LOVELAND, Commissioner.

OPINION

This is a case in which the complainant asks to recover from the defendant reciprocal demurrage in the sum of \$3,217.00. The basis upon which the claim is made is set forth in the application.

The Pacific States Corporation, the plaintiff in this proceeding is the owner of extensive ranch lands located at Tagus, a non-agency station about 4.4 miles north of Tulare on the line of defendant, Southern Pacific Company.

The testimony showed that the plaintiff ordered equipment as follows:

"5 box cars, size 40 feet, each day for 7 days, to be furnished on July 20, 21, 22, 24, 25, 26 and 27, said cars to be placed at Tagus Station to be loaded with hay by Pacific States Corporation, shipper, and that the destination of the cars was to be Los Angeles."

"5 box cars, size 40 feet, each day for 7 days, to be furnished on August 4, 5, 6, 7, 8, 10 and 11, said cars to be placed at Tagus Station to be loaded with hay by Pacific States Corporation, shipper, and that the destination of the cars was to be Los Angeles."

"4 box or stock cars, size 36 feet, each day for 7 days, to be furnished on September 4, 5, 6, 7, 8, 9 and 11, said cars to be placed at Tagus Station to be loaded with hay by Pacific States Corporation, shipper, and that the destination of the cars was to be Los Angeles."

These cars to be set on the spur track on the property of the plaintiff for loading hay.

The cars were ordered in July, August and September, 1916 during the war period and while there was an extreme car shortage. This car shortage was not only proven by the testimony, but was a well known fact that a tremendous congestion of freight cars existed at all the principal terminals, especially on the Eastern seaboard, where great quantities of war materials, supplies and munitions were awaiting export and during a time when all transportation facilities were taxed to the utmost.

Rule 3, paragraph b of the Uniform Rules for Demurrage and Reciprocal Demurrage, contained in General Order No. 41 of this Commission provides as follows:

"Whenever it shall appear to the satisfaction of the Commission that the failure of a railroad to furnish a car or cars for loading within the time fixed by these rules, or the failure of the shipper or consignee to load or unload the same was due to causes beyond the control of such carrier, shipper or consignee, no payment shall be required to be made on account of such delay."

The reciprocal feature of the Commission's rule would seem to us to be absolutely worthless if carriers were compelled to furnish cars only when they are plentiful; when cars are plentiful carriers are only too willing to furnish them, consequently the reciprocal feature would be of no advantage to the shipping public at such times, but only in times of car shortage and by this we do not mean a dearth of cars, but such a shortage as requires extra effort on the part of carriers to provide; nevertheless, there are times when equipment is so scarce that it becomes a physical impossibility to furnish cars as ordered.

The record... was devoid of evidence that any discrimination was practiced by the defendant, or that cars were furnished other shippers in or about Tulare or Tagus to the detriment of the plaintiff in this case.

The period for which the cars were ordered was also during the green fruit season, when this defendant's equipment was in great demand, especially the kind of cars ordered by the plaintiff in this case. Furthermore, the defendant could not anticipate the requirements of the plaintiff, it being shown that the latter used 300 per cent more cars in 1916 than in 1915. The defendant offered testimony proving a nation-wide car shortage, supported by this Commission's letters, dated October 19, 1915 and November 6, 1916, addressed to all shippers and receivers of freight, in which the Commission outlined the conditions causing the car shortage and making a plea to the shippers and receivers of freight to load and unload promptly. The anticipated car shortage became a fact and the shortage increased until the American Railway Association reported as of October 1, 1916 a net shortage of 61,030 cars, while on the same date in 1915 there was a surplus of 78,299 cars.

In view of these ~~alleged~~ facts, all of which were testified to by the defendant and none of which were controverted by testimony of the plaintiff, it is manifestly true that such a car shortage existed as made it absolutely impossible for the defendant to furnish the cars in this instance.

I am of the opinion that the circumstances of the case are such as to relieve the defendant from the penalty imposed by reciprocal demurrage, for the reason that its failure to furnish the cars ordered was due to causes beyond the control of said defendant.

I recommend the following order:

O R D E R

The Pacific States Corporation, a corporation, having filed complaint against the Southern Pacific Company asking for reciprocal demurrage on account of not having received cars as ordered, as explained in the foregoing opinion, the case having been regularly heard and considered, and it having been found as a fact that the defendant, Southern Pacific Company, did not and could not for reasons beyond its control, furnish the cars ordered,

IT IS HEREBY ORDERED that the complaint in this case should be and the same hereby is dismissed.

Dated at San Francisco, California, this 30<sup>th</sup> day of June, 1920.

H. L. Leonard  
Stanley R. Brown  
H. C. Brundage  
Iving Mathis  
Commissioners.