Decision No. 846

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ORIGINAL

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

SCOTT, MAGNER & MILLER, et al., Complainants, vs. SOUTHERN PACIFIC COMPANY, Defendant.	Case No. 228

J. O. Bracken representing complainants.
George D. Squires representing defendant.

LOVELAND, Commissioner:

SUPPLEMENTAL OPINION.

On June 14, 1912, the Commission made an order in this proceeding directing defendant to pay to complainants reparation to the amount of $2,150.30. The reparation was awarded upon alleged violations of the long and short haul clause of the Constitution of this State and of the Wright Act, in the collection of charges upon carload shipments of hay which moved from points of origin west of Tracy on the Niles and Livermore line destined to Oakland and San Francisco. The claim to reparation was based on an alleged violation of the long and short haul clause, in that the rates collected were greater than the rate from Tracy to the point of destination.

On April 15, 1913, the Commission rendered its decision in Case No. 283 - Scott, Magner & Miller et al. vs. Western Pacific Railway Company, in which decision the Commission announced its conclusions upon the limitation of its power to award reparation. On April 29, 1913, the Commission reopened the present case for the purpose of considering it in the light of the conclusions announced by the Commission in its decision in Case No. 283. A further hearing in the present case was had on June 3, 1913, at which time the parties were given until July 22, 1913, in which to file briefs.

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The shipments in this case moved between January 16, 1910, and November 25, 1911. This Commission has already decided that every claim arising prior to February 10, 1910, has been barred by the Statute of Limitations. I will consider, therefore, only such claims as arose subsequent to this date.

Reparation is requested in this case upon an alleged violation of the long and short haul clause contained in Section 21 of Article XII of the Constitution of this State prior to its amendment on October 10, 1911, and under the long and short haul provisions of the Wright Act. This Commission's decision in Case No. 283, to which reference has already been made, gives a complete analysis of the effect of the long and short haul clause in the Constitution and in the Wright Act. It was there decided that the long and short haul clause in the Constitution, when construed together with other provisions in the Constitution announcing that the rates established by this Commission should be "deemed conclusively just and reasonable," must be regarded as binding upon the carriers only until such time as the Commission in any particular instance actually established the rates. The records of the Commission show that on June 11, 1909, the Commission established the rates to be charged by defendant for carrying hay between the points involved in this proceeding. These rates thereupon became "conclusively just and reasonable," and the provisions of the long and short haul clause in the Constitution and in the Wright Act could not be made the basis of a claim for reparation upon charges which were collected in conformity with these rates.

On October 10, 1911, Section 21 of Article XII of the Constitution of this State was amended to read in part as follows:-

> "It shall be unlawful for any railroad or other transportation company to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates; provided, however, that upon application to the Railroad Commission provided for in this Constitution such company may, in special cases, after investigation, be authorized by such commission to charge less for longer than for shorter distances for the transpor-

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tion of persons or property and the Railroad Commission may from time to time prescribe the extent to which such company may be relieved from the prohibition to charge less for the longer than for the shorter haul."

Thereafter the railroads filed with this Commission applications for permission to continue existing deviations from the long and short haul clause of the Constitution, and the Commission on February 15, 1912, issued its order in Case No. 214 authorizing the railroads to continue these deviations until the Commission could determine definitely the instances, if any, in which it will permit deviations to continue to be made.

I am of the opinion, ~~therefore~~ that no claim to reparation can now be asserted under the long and short haul clause of the Constitution for an alleged violation thereof occurring subsequent to October 10, 1911.

It becomes necessary now to determine whether or not the "conclusiveness" of the rates established by this Commission on June 11, 1909, has in any way been impaired during the period up to October 10, 1911, for if the rates so established remained "conclusively just and reasonable" during this period, it is clear that the complainants are not entitled to reparation upon charges collected in conformity with these rates. In this connection, I wish to draw attention to Section 17 of the Stetson-Eshleman Act, which went into effect on February10, 1911. Under the provisions of this section, it was made the duty of the railroads to file tariffs with the Commission, and it made it the duty of the Commission to establish the rates so filed, or others in lieu thereof, within at least sixty days from the date the rates were filed. Under the provisions of this section, the defendant company filed a tariff which included the rates covering the shipment of hay between the points involved in this proceeding. On June 2, 1911, the Commission passed a resolution approving such of the rates contained in the tariff so filed as were not in violation " of the provisions of the Constitution or Statutes of California."

It is necessary, therefore, to determine the effect which this procedure provided in Section 17 of the Stetson-Eshleman Act had upon the "conclusiveness" of the rates theretofore established by the Commission. I am of the opinion that the Stetson-Eshleman Act contemplated that the Commission should overhaul all the rates of all the railroads in this state and to establish these rates anew. The rates theretofore established by the Commission continued to be the legal rates until the Commission took action on the schedule of rates filed by the railroads in accordance with the provisions of the Stetson-Eshleman Act and designed to supersede the existing schedules. When the Commission acted upon any particular schedule of rates the entire schedule theretofore in effect was superseded, even though the Commission did not in fact approve everyone of the rates in the new schedule. In this particular case, the rates established by the Commission on June 11, 1909, covering movements of hay between the points involved in this proceeding, continued to be the legal rates until on June 2, 1911, when the Commission took action on the schedule of rates filed by the defendant, in accordance with the provisions of the Stetson-Eshleman Act and designed to supersede the existing rates upon shipments of hay between the points involved in this proceeding. The Commission, however, on June 2, 1911, did not approve all the rates which were filed, but only such as did not violate "any of the provisions of the Constitution or Statutes of the State of California."

If the rates collected by the defendant company upon the shipments involved in this proceeding moving between June 2, 1911, and October 10, 1911, are in violation of any of the provisions of the Constitution or Statutes of this State, the complainants are entitled to reparation. The complainants have based their right to reparation upon the provisions of the long and short haul clause of the Constitution, there being no long and short haul provision in the Stetson-Eshleman Act. The long and short haul clause of the Constitution in effect between June 2, 1911, and October 10, 1911, is found

in Section 21 of Article XII of the Constitution, and reads as follows:

> "Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing or port, at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction, to any more distant station, port or landing."

It will be noted that this provision includes only such cases as involve a lower rate "to a more distant station, port or landing." It is not sufficient that the case involves a lower rate "from a more distant station, port or landing." Complainants rely in this proceeding on the fact that the rate from points intermediate between Tracy and San Francisco is less than the rate from Tracy to San Francisco, i. e., less than the rate "from a more distant station, port or landing."

The facts of this proceeding do not, therefore, entitle complainants to an award of reparation under the long and short haul provisions of the Constitution.

Complainants have based their right to reparation, in part, upon alleged violations of Rule 7a, C. R. C. Tariff Circular No.1, effective November 21, 1910, reading as follows:

> "In every instance where a class or commodity rate is named in a tariff between specified points, the lowest of such rates is the lawful rate; provided, that if some combination of class or commodity rates or class and commodity rates is found to be lower than the through rate, the lower combination of rates shall apply and the carrier shall immediately make its through rate correspond to the lower combination of rates. It being the intention to give the shipper the advantage of the lowest possible rate."

The evidence introduced in this case, and the argument presented in the briefs were directed, however, solely to the alleged violations of the long and short haul clause of the Constitution and the provisions of Rule 7a were resorted to merely in determining the rates upon which the alleged violations of the long and short haul clause of the Constitution should be based. Complainants did not in this proceeding direct their attention to any instance in which they were entitled to an award of reparation solely upon the provisions

of Rule 7a. It becomes unnecessary, therefore, to determine in this proceeding whether complainants have any right to reparation based solely upon the provisions of Rule 7a.

I recommend, therefore, that the complaint be dismissed and submit the following form of order:

O R D E R.

The above entitled proceeding having come on regularly for hearing, and it appearing that the complainants are not entitled to the reparation requested,

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

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 2nd day of August, 1913.

John M. Eshleman

H. D. Loveland

Max Thelen

Commissioners.