ORIGINAL

Decision No. 8474

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Pacific Rice Growers Association.

Complainant,

vs.

The Atchison, Topeka & Santa Fe Railway Co.,
Chowchilla Pacific Railway Company,
Los Angeles & Salt Lake Railroad Company,
Northwestern Pacific Railroad Company,
Sierra Railway Company of California,
Sacramento Northern Railroad Company,
Southern Pacific Company,
Tonopah & Tidewater Railroad Company,
Western Pacific Railroad Company,
Central California Traction Company,
Oakland & Antioch Railway,
Tidewater Southern Railway Company,
California Navigation & Improvement Co.,
California Transportation Company,
Farmers Transportation Company,
Island Transportation Company,
Lauritzen Transportation Company,
Sacramento Transportation Company,

Defendants.

CASE NO. 1432.

Rosenberg Bros. & Company, a corporation,
Growers Rice Milling Company, a corporation,
Globe Grain & Milling Company.a corporation,
National Rice Mills, a corporation,
Oriental Trading Corporation. a corporation.
Pacific Trading Company, a corporation,
D. C. Jackling, J.F.Judge. and A.J.McLean,
copartners doing business under the firm
name and style of Pacific Rice Mills,
C.E.Grosjean, doing business as C.E.Grosjean
Rice Milling Company,
M.J.Brandenstein, Manfred Branstcn and
Edward Branstcn. copartners doing business
under the firm name and style of
M. Brandenstein & Company,
J.G.McNamara and C.T.McNamara, copartners
doing business under the firm name and
style of Natoma Milling Company.
S. M. Phillips, M. D. Green and M. Phillips.
copartners doing business under the firm name
and style of M. Phillips & Company,
R. Kanikowa, O. Hirowa, R. Tapako, F.J.Morigaf
and K. Pogasaki. copartners doing business
under the firm name and style of
Union Rice Mills,
K. Iwakami and K. Sawada, copartners doing
business under the firm name and style of
Iwakami & Co.,

Complainants,

vs.

Southern Pacific Company, a corporation.
The Atchison, Topeka & Santa Fe Railway Company,
a corporation,
Western Pacific Railroad Company,
a corporation,
San Francisco-Sacramento Railroad Company,
a corporation,
Sacramento Northern Railroad Company,
a corporation.
Central California Traction Company,
a corporation,

Defendants.

CASE NO. 1437.

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John S. Burchmore, for Pacific Rice Growers Association, Complainant,
Aitken, Glenson, Clewe & Van Dine, by H.W. Glenson and Melvin E. Van Dine; and Bishop & Behler, Traffic Managers, for Rosenberg Bros. & Company. Complainants,
Elmer Westlake and Frank B. Austin, for Southern Pacific Company, Defendant,
G. H. Baker, for Atchison, Topeka & Santa Fe Railway Company, Defendant,
Heller, Powers & Ehrman and Charles R. Detrick, for Sacramento Northern Railroad,
Jesse E. Steinhart and J. J. Goldberg, for San Francisco-Sacramento Railroad,
Sanborn & Roehl, by E.E. Sanborn, for Sacramento Transportation Company, Farmers Transportation Company and California Transportation Company, interveners.
Theodore Earte, for Western Pacific Railroad Company.

LOVELAND, COMMISSIONER:

O P I N I O N

The above entitled cases were consolidated for hearing and decision.

In Case No. 1432, Pacific Rice Growers' Association made a complaint that the Atchison, Topeka & Santa Fe Railway Company, et al accord analogous commodities rates substantially lower than are accorded rice to and from the same points within the State of California and that defendants accord to grain advantages, such as milling, cleaning, storing and bulking, or otherwise treating in-transit privileges, which are denied to rice and rice products.

Complainants further allege that the present rates on rice and rice products are in and of themselves unjust, unreasonable and discriminatory and unduly prejudicial to the rice growers and producers of California and that said growers and producers have

been seriously injured and will continue to be seriously affected until the cause for such injuries is removed.

Complainants conclude with a request that this Commission establish a reasonable mileage scale of rates on paddy rice and rice products and also demand transit privileges on these commodities such as milling, cleaning, storing and bulking or otherwise treating in transit from producing points to consuming points in California, such mileage rates to act as maxima in the future for the transportation of paddy rice and rice products between points within the State of California.

In Case No. 1437, Rosenberg Bros. & Company, et al., make complaint against Southern Pacific Company, et al. alleging that said defendants maintain carload rates on grain within the State of California relatively lower than on paddy rice and that they, the complainants, have been and continue to be seriously injured by these unjust, unreasonable and discriminatory rates.

Public hearings having been held on August 9th and 10th and September 2nd, 3rd and 4th, 1920 and final briefs having been received November 29, 1920, these cases are now ready for decision.

Complainant in Case No. 1432, Pacific Rice Growers' Association, is a cooperative, non-profit association, being conducted for the protection and welfare generally of its members. The membership of the association represents about three-fourths of the acreage devoted to rice in the State.

Complainants in Case No. 1437 are rice millers, operating mills, the testimony showed, at San Francisco, Sacramento, Woodland, Gridley, Colusa, Biggs and Chico.

The rice growing territory in the State of California may be described generally as the Sacramento Valley, beginning at a point a short distance north and west of Sacramento and extending as far north as Gerber, a small section near Redding and also in the San Joaquin Valley in the vicinity of Dos Palos, Madera, San Joaquin and Famosa.

In 1918 there were planted to rice 145,000 acres; in 1919, 155000, and in 1920, 175000 acres.

The commodity in question in this proceeding is that of paddy rice, which is whole rice in hull as it is sold by the grower to the miller. The average production per acre of rice is approximately 3,000 pounds and in 1919 there were produced in California 3,500,000 bags of paddy rice, approximately 100 pounds per bag. Rice is harvested during a period, roughly speaking, of eight weeks, beginning generally in October. The marketing season runs about five months, beginning in October. Rice is generally purchased from the growers by the millers either f.o.b. at point of origin, or f.o.b. at milling point. The price paid to the grower depends in some degree upon the freight rates applicablefrom the producing territory to the mill. In most instances the miller pays the freight. Where rice is purchased f.o.b. milling point, freight is deducted from the purchase price. The evidence showed that 85% of the rice grown in the State of California is shipped outside the State and but 15% is consumed locally. (Trans.308)

In 1915-1916 the value of rice was shown to be from $1.50 to $1.75 per 100 pounds. According to the testimony, rice, in 1919 started in somewhere about $5.25 to $5.50 in the early

operations and then worked up to a legitimate price of about $7.00 or $7.25 and under subsequent excitement it ran as high as $8.00. However, this witness testified that the highest price he paid was $7.65. (Trans.294)

Complainants in Case 1432 allege that the rates in effect on rice and rice products are per se unreasonable, discriminatory and unduly prejudicial and request the Commission to establish a reasonable mileage scale.

It is well established that distance is always a factor taken into consideration in determining either the reasonableness of a rate by itself or its relation to rates to other points, but it is equally well settled that distance alone is not controlling. Competition is also an important element and there are various other conditions, all of which must be taken into account in determining whether a particular rate or a system of rates is, as a matter of law, reasonable and not discriminatory. In the entire territory where rice is grown, grain also is grown in abundance and these areas lie on either side of the Sacramento River, which is navigable the entire length of the rice growing territory and keen competition prevails between rail and water transportation at points where rail and water meet and at points conveniently near both rail and water stations.

Inasmuch as the routes between producing points and some of the further distant milling points are served by widely divergent transportation lines, both rail and water, over more or less circuitous routes, shows clearly the impracticability of applying a mileage scale. Some routes are reasonably direct, while others are circuitous and, therefore, points only a few miles apart in the heart of such territory, one point located on one line and another

located on a different line would, by applying a mileage scale, create widely different rates to the same milling centers. A mileage scale would also result in a general conflict with the long and short haul provision of the Constitution. There was no testimony given in support of a mileage scale of rates.

The Commission is of the opinion that a mileage scale of rates could not be constructed that would be reasonable and non-discriminatory and, therefore, this part of the complaint is dismissed.

Complainants in Case No. 1432 are also seeking milling-in-transit privileges for rice on the claim that there is a discrimination by reason of the fact that milling-in-transit is permitted in connection with grain at certain points within the State of California. The evidence, however, is destitute of any showing of discrimination or prejudice as between the mills manufacturing the flour and the mills where rice is cleaned. It was not shown that there was any similarity of the conditions which induced carriers to accord milling in transit to grain as compared with the conditions prevailing in the marketing of rice. The testimony showed that during the period of the war, with the lines operated under unified control, the Administration ordered carriers to establish milling-in-transit on grain, apparently more as a war measure than as an adjustment of a transportation situation.

Complainants offered considerable testimony regarding milling-in-transit in Louisiana and Texas and referred to the cases adjudicated by the Interstate Commerce Commission, but the cases referred to were those in which the carriers had voluntarily

established milling-in-transit privileges and had subsequently cancelled these privileges, whereupon the rice growers complained and, after a hearing, the Interstate Commerce Commission ordered the carriers to restore the privileges they had previously voluntarily accorded.

Milling-in-transit of commodities is a special arrangement which may be established by the carriers just the same as they may undertake to accept subnormal rates to meet water competition, and this Commission would hesitate to establish the practice unless it were proven that the milling in transit was necessary in order to remove a discrimination existing between different shippers of the same commodity. As heretofore stated, 85% of the rice grown in California moves to points outside of the State. There is now no milling-in-transit privileges accorded rice at any point in California and, therefore, there is no discrimination as between the rice mills in this State. The claim that there is direct and active competition between rice and its products and grain and its products is not substantiated by the testimony or the exhibits. The rice millers in California, especially those at tidewater, are opposed to the transit privileges being granted, on the grounds that they would disturb the commercial relationship now existing and impair the value of the mill property.

I am of the opinion that no justification or necessity has been shown for the milling in transit of rice moving locally within California, nor would any benefit be derived from the practice, and this part of Case No. 1432 will be dismissed.

The complainants in Case No. 1437, who are rice millers,

alleged that the rates on paddy rice are unjust, unreasonable and discriminatory insofar as they exceed the rates contemporaneously in effect on grain.

Let us analyze the rates on grain applicable within the State of California and which are used as the basis for comparison in this case.

The testimony showed that the original grain rates in California were established more than forty years ago and many of the present rates (without considering the general increase in rates brough about by Director General of Railroad's General Order No. 28 and the increase authorized by this Commission's Decision No. 7983) were still in effect in defendants' tariffs when the increases authorized in General Order No.28 and our Decision No. 7983 were applied.

Prior to the construction of the railroads, the Sacramento River and its tributaries were covered with innumerable water craft, conducting the only systematic transportation service for freight then in existence. The historical facts brought out in the testimony are, briefly, as follows:

The first railroad constructed in the Sacramento Valley was the Central Pacific, which operated a short distance out of Roseville in June,1869, reaching Chico in July,1870 and Red Bluff in December,1871. On the west side of the Sacramento River a rail line was constructed north from Woodland, reaching Williams in July,1876. A line north of Orland commenced operations in July, 1882; the same year this line was completed to Tehama, where it

connected with the rail line on the east side of the Sacramento River. Prior to the establishment of these rail lines the population of the Sacramento Valley depended entirely on river transportation. When the railroad lines entered this territory it was the occasion for the commencement of a rate war between rail carriers on the one hand and the water carriers on the other unprecedented in the history of western transportation. The effect of these rate wars is still reflected in the present day freight rates. Water carriers, in order to gain an advantage, subsidized lines of teams operating out of Chico and Red Bluff which hauled freight between river points and mountain towns as far east as Susanville and as far north as Lake View and Silver Lake, Oregon.

The principal commodity grown in the territory thus served was grain.

The rail carriers purchased steamers and entered into competition with the established water carriers and the established water carriers undertook to build railroads. Both the rail and water carriers established warehouses. During these pioneer activities , the testimony shows, "everybody got a rebate", hence there was no further use for high rates in their tariffs, so the rebates were discontinued and the freight rates reduced accordingly. In the early 80's the rate on grain from Chico to Port Costa and San Francisco was $6.00 a ton. This was gradually decreased during the rate wars until it reached $2.50 a ton. The rate from Colusa to Port Costa and San Francisco, also Sacramento by one of the water carriers decreased from $3.50 a ton to the low level of $1.50 a ton. It was also shown that in 1893 or 1894 competition became

in California has been constant since its beginning. It was shown (Trans.564) that in the Sacramento Valley in 1912 there were planted to rice 1400 acres; in 1913, 6000 acres; in 1914, 15000 acres, in 1915, 29000 acres; 1916, 72000 acres; 1918, 120000 acres; 1919, 140000 acres and in 1920, 170000 acres. The same witness testified that there is now about 2,000,000 acres of grain planted in California, of which about 1,000,000 acres are in the Sacramento Valley (Trans.543), and it was also shown that the yield per acre of wheat in California is about 10 sacks, or 1400 pounds, and the yield of barley per acre is 20 sacks, or about 2000 pounds, as compared with 35 sacks of rice per acre, weighing about 3500 pounds (Trans.561). It was shown that the value of wheat rose from 60 cents per 100 pounds in 1897 to the neighborhood of $4.00 in 1919 (Trans.294), while rice ranged in price in 1915 and 1916 from $1.50 to $1.75 per hundred pounds and in 1919 as high as $8.00 per hundred (Trans.294). It is thus established that rice is comparatively of higher value than grain and that the acreage in the Sacramento Valley of rice to grain is about 1 to 6. However, we also have the condition that the rice industry is constantly increasing in magnitude, but at the same time it is not expected to ever reach the volume of grain. Rice may be produced on land that was theretofore of no practical value for any other purpose.

Rice rates in the first instance were established by the carriers at the request of the rice growers and the rates then established were undoubtedly considered reasonable and acceptable to the shippers. In the beginning, the testimony offered by the

defendant showed rice rates were based upon 150% of the grain rates, but subsequent horizontal percentage increases have resulted in increasing the differential and widening the relationship between grain rates and rice rates until the rice rates are now higher than they probably would have been had adjustments been made by any other method than a horizontal increase.

Since the establishment of the rice rates there have been two general increases in all freight rates. The Director General of Railroads by his General Order No. 28, effective June 25, 1918, authorized a horizontal increase of 25% over all rates in effect on May 25, 1918, and the Interstate Commerce Commission by its order in Ex Parte No.74 authorized an additional 25% horizontal increase on all interstate rates, effective August 26, 1920, and this Commission, by its Decision No.7983 on Application No.5728, rendered August 17,1928, authorized increases on intrastate rates in harmony with the rates authorized by the Federal Commission.

The question of whether or not the present relationship of the rates between grains, such as wheat and barley as compared with paddy rice are unjustly discriminatory, is one of fact and must be determined upon consideration of all the circumstances and conditions, including the interests of the carriers, the rice growers, the millers and the consumers.

In arriving at the reasonableness of rates for a selected commodity, comparisons with rates in effect on comparable commodities are entitled to much consideration. As heretofore stated, paddy rice rates have twice been increased by 25%, thus

greatly widening the differential of 150% originally existing between the wheat-barley rates and those applying to paddy rice. Complainants are contending for the same rates on both commodities, but in view of the history of the grain rates I am not convinced that this adjustment should be made.

It is apparent from a consideration of the evidence, exhibits and briefs that had the readjustment of all rates, made necessary by the war, been carefully studied and increases based upon reasonableness per se. the paddy rice rates would have received a different adjustment. Paddy rice is easily handled and comparatively heavy, which results in the heavy loading of cars, and on account of its inherent character is not susceptible to damage, especially by water, to the same extent as grain.

In our Decision No. 7983, supra, this Commission followed the action of the Interstate Commerce Commission, their ex parte 74, and granted to carriers increases in freight rates to meet the mandate of Congress set forth in the Esch-Cummings Bill, known as Transportation Act 1920, which provided that rates be prescribed producing approximately 6% return to carriers. Our action was not based upon the reasonableness per se of any rates involved and in our decision the following language was used:

> "This proceeding will be kept open for the purpose of considering adjustments of rates and all appropriate matters which may be properly brought before the Commission."

Taking all of the foregoing matters into consideration, I conclude that the rates on paddy rice, carloads, between points within the State of California are unjust and unreasonable to the extent that they exceed rates based on 125% of the rates established August 26, 1920, applying to whole grain, viz: wheat, rye, oats, barley and corn. Defendants will, at the same time, remove certain unjust discriminations now appearing in the tariffs.

O R D E R

The Pacific Rice Growers' Association, complainants in Case No.1432, and Rosenberg Brothers & Company, et al., complainants in Case No.1437, having filed complaints against the Atchison, Topeka & Santa Fe Railway Company et al., among other things alleging that milling-in-transit privileges should be accorded to paddy rice; that a mileage scale of commodity rates should be established for the transportation of paddy rice and that the rates generally for the transportation of paddy rice are unjust, unreasonable, discriminatory and unduly prejudicial, a regular hearing having been held,

The Railroad Commission finds as a fact that the present rates on paddy rice, in carloads, between points within the State of California are excessive, unjust and unreasonable and that just, reasonable, nondiscriminatory and nonprejudicial rates on paddy rice in carload quantities are 125 per cent of the rates established August 26, 1920, applying to whole grains, viz: wheat, rye, oats, barley and corn in the tariffs of carriers, defendants in these two proceedings.

IT IS HEREBY ORDERED that that part of the complaint in Case No.1432 for an order establishing milling-in-transit and a mileage scale of commodity rates for paddy rice be, and the same is hereby dismissed.

IT IS HEREBY FURTHER ORDERED that the defendants according as they participate in the proceedings be, and they are hereby notified and required to desist on or before January 20, 1921, and thereafter to abstain from maintaining the unreasonable rates found to be existing by the preceding opinion.

IT IS HEREBY FURTHER ORDERED that defendants according as they participate in these proceedings be and they are hereby notified and required to establish on or before January 20, 1921, in the manner prescribed by the rules of this Commission, the rates on paddy rice, carloads, based on 125 per cent of the rates established August 26, 1920, applying to whole grains, viz: wheat, rye, oats, barley and corn.

IT IS HEREBY FURTHER ORDERED that in computing rates authorized herein, fractions will be treated as follows:

Where rates are stated in amounts per 100 pounds, or any other unit, fractions of less than one fourth of a cent will be omitted; fractions of one fourth of a cent, or greater, but less than three fourths of a cent, will be stated as one half cent; fractions of three fourths of a cent, or greater, will be increased to the next whole cent.

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 January.

H. D. Loveland
Frank R. Devlin
H. F. Grundige
Duncan Mastain
COMMISSIONERS.