

Decision No. 8962

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Pacific Portland Cement Company, )  
Consolidated, a corporation, )  
Complainant, )

vs

Southern Pacific Company, )  
a corporation, and )  
Cement, Tolenas & Tidewater Rail- )  
road, a corporation. )  
Defendants. )

CASE NO. 1447.

ORIGINAL

Jas. A. Keller and H.E. Sanborn, for Complainant.  
Frank B. Austin, for Southern Pacific Company, Defendant.  
Pillsbury, Madison & Sutro, by M.P. Madison, for  
Cement, Tolenas & Tidewater Railroad Company, Defendant.

LOVELAND, COMMISSIONER:

O P I N I O N

This is a proceeding in which the Pacific Portland Cement Company, Consolidated, a corporation, filed a formal complaint with the Railroad Commission against the Southern Pacific Company, hereinafter called the carrier, and the Cement, Tolenas & Tidewater Railroad Company, hereinafter called the Cement road, averring that the rate on lime rock of 70 cents per ton from Flint to Tolenas, California, as provided for in Southern Pacific Company's Tariff 730-A. I.C.C.No.4088, C.R.C.No.2436, page 248, Item No.5770-A, effective February 20, 1920, and a rate of \$6.50 per car from Tolenas to Cement, California, as provided in Cement, Tolenas &

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Tidewater Railroad Company's Local Freight Tariff No.2, Supplement No.6, C.R.C.No.3, superseded by Cement, Tolenas & Tidewater Railroad Company's Local Freight Tariff No.3, C.R.C. No. 13, are:

First- Excessive, unjust and unreasonable to the extent that they exceed a through rate from Flint to Cement, California, of 60 cents per ton of 2000 pounds, carload minimum weight 60,000 pounds, in violation of Section 13 of the Act.

Second- Unduly prejudicial to the complainant and preferential to other producers of cement with whom complainant competes, in violation of Section 19 of the Act.

Third- In violation of Section 60 of the Act; the rates hereinbefore mentioned having been published during the period of Federal control, complainant was thereby prevented from filing a complaint asking for a finding as to the reasonableness thereof.

Fourth- In violation of Section 63 of the Act; the aforesaid rates having been increased without a hearing before the Railroad Commission of California and a finding thereby that such increases were justified.

Fifth- That the defendants, after the expiration of the period of Federal control, hereinbefore mentioned, demanded and received charges for the transportation of lime rock from Flint to Cement, California, based on the said rate of 70 cents per ton of 2000 pounds, plus \$6.50 per car, without a finding by the Railroad Commission of the State of California that said increase in rates was justified, in violation of Section 63, and therefore are in violation of Section 76 of Chapter 91 of the Laws of the State of California, approved March 23, 1915, known as the Public Utilities Act and acts amendatory thereof and supplementary thereto.

The complainant asks that just and reasonable rates be prescribed and reparation granted.

The Pacific Portland Cement Company, Consolidated, herein referred to as complainant, is a corporation engaged in the manufacture and sale of cement. The complainant built its cement plant in 1902 at Cement, California, which is located on the line of the Cement road, two miles from Tolenas, which is between San Francisco and Sacramento, 52 miles east of San Francisco. When the plant was located at Cement there was an apparent ample supply of lime rock immediately adjacent; however, a few years later the lime rock deposit became exhausted and it was necessary for the complainant to either abandon the plant at Cement or to secure a new supply of rock from some other locality. Subsequently, the complainant developed lime rock quarries seven miles from Flint, California, on the American River, and built the Mountain Quarries Railroad, hereinafter called the quarry road, which railroad facility is used for the purpose of bringing lime rock from the quarries to Flint, and returning the empty cars to the quarries for reloading. At Flint the traffic is turned over to the Southern Pacific Company for handling to Tolenas, where it is turned over to the cement road for delivery to destination. The quarry road and the cement road are properties owned by the complainant. The cement road is a common carrier and is made one of the defendants in this proceeding.

When the lime rock deposit at Cement became exhausted and it became necessary to transport its supply of rock from Flint to Tolenas, the complainant started negotiations with the carrier's local traffic officials at San Francisco, and executive officers at Chicago, explaining to them its predicament concerning its supply

of raw material and requested the carrier to establish a 50 cent per ton rate on lime rock from Flint to Tolenas, stating that "50¢ per ton was the maximum freight rate we could stand and continue operations and meet the competition of the other cement plants who enjoyed the same freight rate to the San Francisco Bay territory on the manufactured product, cement."

The 50 cent rate as then agreed upon was established several years ago and was still in effect on June 24, 1918 in Southern Pacific Company's Local and Proportional Tariff No. 730, C.R.C. No. 1632, and contemporaneously a rate of \$5.00 per car was provided for the transportation of lime rock, in carloads, from Tolenas to Cement and was published in Cement, Tolenas & Tidewater Railroad Company's Tariff No. 2, C.R.C. No. 3. Since that time, however, all rate schedules have increased. During the period of Federal control the Director General of Railroads increased all then existing rates by his General Order No. 28, which increased the rate on lime rock from Flint to Tolenas to 70 cents per ton and \$6.50 per car and these are the rates against which the plaintiff in this proceeding complains.

By Interstate Commerce Commission Ex Parte 74 and California Railroad Commission Decision No. 7983, effective August 26, 1920, the rates were made 90 cents per ton and \$8.00 per car, and these are the present rates.

The lime rock is quarried by the complainant and hauled by the quarry road to its junction with the carrier. The carrier's haul between Flint and Tolenas is a main-line haul, partly "foothill road" and partly "valley road". There is a division terminal at Roseville where trains are broken up, switched and reclassified.

The complainant's first allegation is to the effect

that the 70 cent per ton rate (now 90¢ per ton) on lime rock, carloads, between Flint and Tolenas and the \$6.50 per car rate (now \$8.00 per car) are excessive, unjust and unreasonable to the extent that they exceed a joint through rate of 60 cents per ton Flint to Cement. Complainant argues that its shipments are handled by the carrier at considerably less expense than it costs it to handle other commodities; it contends that the carrier performs no terminal service in connection with traffic from Flint to Tolenas; furthermore, that the cars are weighed by the quarry road and offered to defendant carrier ready to move and that the defendant is required only to turn over carloads of lime rock to a connecting carrier at Tolenas and that all of the service performed is a line-haul service. It is self-evident, however, that the defendant carrier does perform terminal service in the case of handling this lime rock to the same extent it would in picking up a shipment from an industrial plant whose side track makes direct connection with the main-line track at point of origin and is delivered to an industry whose side track has direct connection with the main line at destination, or as much terminal service as any intermediate carrier.

Flint is located on a double track line, and testimony showed that on account of Flint/<sup>not</sup>being on the eastbound track empties must be hauled to Bowman and returned in face of traffic and, further, that a switch engine from Suisun does the work at Tolenas. This practice, however, was acknowledged an operating convenience, but nevertheless is a terminal service.

The defendant's witness testified that it is necessary in handling these lime rock shipments, because of the heavy weight per car thereof, to put empty cars into trains in order to equalize

the braking power. It was further testified that the braking power of a single average unit is 100 Ms, or 100000 pounds, while the average load per car of the lime rock in question is 60 tons, or 120 Ms, but the same witness acknowledged that it is and would be necessary to equalize braking power on other commodities of similar weight and which might be hauled in the same trains with the lime rock, and this would be necessary whether lime rock were in the train or not. Furthermore, the empties used to equalize braking power were westbound empties traveling over the same route and caused no extra expense in thus handling except that of setting cars out at Colfax, to be picked up by trains handling the rock cars. Of course, the defendant could have at once eliminated any inconvenience caused by heavy loading of cars by simply instructing the shipper to load lighter, but in practically all seasons during recent years carriers have agitated heavy loading of all equipment in order to increase the car supply and this was made a special feature during the war period.

Therefore, the equalization of braking power is an operating disability not confined to lime rock, but applies to any loading reaching a weight over 100 Ms. On the other hand, the complainant set forth the heavy loading of cars as one of the transportation advantages in favor of lime rock. The lime rock cars averaged 60.87 tons per car in 1919, while the average weight per car over carrier's entire system for the same period amounted to 22.90 tons. The testimony also indicated a further transportation advantage on account of the assignment of particular equipment for handling lime rock from Flint to Cement. It was shown that on account of the carrier discontinuing the burning of coal on its Salt Lake Division it was able to release a number of

hopper type gondola cars, commonly termed "battle ships". These cars have V shaped bottoms and were formerly used in the hauling of coal; inasmuch as there is comparatively little coal used in California and these cars being specially built for that kind of traffic could not be used for many other kinds of traffic, but could be used to great advantage in the handling of lime rock, for which this type of car is specially adapted.

While the complainant's contention that the heavy loading is a transportation advantage and that it saved many cars during car shortage seasons, in this case there is certainly a mutual advantage in capacity loading alike to shipper, carrier and consignee. In the first place it is not necessary to use so many units in the handling of the large traffic and on account of the particular type of equipment available the shipper suffers less disadvantage in securing equipment in times of car shortage. Furthermore, the hopper type, or automatic unloading facility, is likewise an advantage to the consignee, who is also the complainant. The disadvantage suffered by the carrier on account of the necessity for equalization of braking power is probably offset by the fewer units necessary to handle the traffic and the fewer number of cars required, thus conserving cars and promoting efficiency generally. While the hopper type of gondola car, with V shaped bottom, cannot be used for some commodities, it can be used in such service as the hauling of sugar beets, sand and gravel, of which a large traffic moves over defendant's line.

Complainant's second allegation is that rates are prejudicial and discriminatory.

The complainant's contention that it is compelled to ultimately pay/higher freight rates on cement for the reason that the supply of raw material at its plant is exhausted, making it necessary to go elsewhere for its supply of rock, while at the same time,

competing cement manufacturing plants continue to use raw materials procured immediately adjacent to their plants, is a matter of disability of geographical location and one which a regulatory body should not be required to relieve.

In support of the above conclusion we quote the following:

"The jobber with the better geographical location should have the advantage in rates." 27 I.C.C. 417-429.

"The Commission will not overcome a disadvantage arising to the shipper from his geographical location." 26 I.C.C. 8-10.

"The commercial interests of a shipper do not constitute a sufficient ground for demanding lower rates." 26 I.C.C. 13-17.

"It is not the province of the Commission to prescribe rates to enable shippers to overcome their natural disadvantages of location." 24 I.C.C. 315-317.

"It is the duty of the Commission to examine the rates themselves, their relationship one to another, their effect, and to determine under all the circumstances what is the just, the reasonable and the lawful thing to do." 29 I.C.C. 550-557.

It may be that one cement plant, on account of labor or housing conditions, availability of supplies, or other reasons, cannot operate as cheaply as a competitor, yet for these reasons alone the carrier could not consistently undertake to equalize cost of distribution of finished product.

The complainant sets forth in its third allegation that the rates in question are in violation of Section 60 of the Public Utilities Act, in view of the fact that they were published during the period of Federal control and the complainant was thereby prevented from filing a complaint as to the reasonableness thereof.



and allegation four, that the aforesaid rates are in violation of Section 63 of the Act, because the rates were increased without a hearing before the Railroad Commission and the finding by the Railroad Commission that such increases were justified. The rates prescribed in General Order No. 28 by the Director General of Railroads, effective June 25, 1918, were mandatory and a matter not coming within the purview of State jurisdiction. In the case of Northern Pacific Railway Company vs State of North Dakota, the Supreme Court of the United States ruled as follows:

"In taking over the railroads from private ownership to its control and operation, was the resulting power of the United States to fix the rates to be charged for the transportation services to be by it rendered subordinative to the asserted authority of the several states to regulate the rates for all local or intrastate business, \* \* \* \* \*"  
250 U.S. 134- 63 LAD - ED 897.

Elaborate exhibits going into greatly detailed analysis of general statistics taken from the carrier's annual reports to this Commission and to the Interstate Commerce Commission, showing the average net tonnage per revenue car; average tare weight per revenue car; empty and loaded car miles; average gross revenue per car; average miles distance haul; average earnings per ton mile and per car mile, etc., etc. These statistics contain all kinds and character of traffic - switching charges, traffic hauled long distances, traffic hauled short distances, light as well as heavy traffic on which large volume and small volume rates apply. No segregation is made as to state and interstate business, but data is for system-wide operations. Certain of these exhibits purported to show that the car-mile earnings on lime rock were greater than the average car mile earnings on all business handled by the

carrier. Car mile earnings, while to be considered, are not the controlling factor in rate making, but the rate per car per mile must be considered in connection with revenue per ton per mile, density of traffic, density of population, operating conditions, cost of service performed, etc., etc. The figures in these exhibits are general and are comparable only to like general figures and were made, undoubtedly, for the purpose of comparing the various elements or factors set forth therein from month to month and from year to year, but it is a practical impossibility to pick out any one factor average and set it up as a measure to build new rates upon, for the very reason that the figures are not comparable - a single rate on a particular commodity cannot be made comparable to general figures resulting from massed traffic. Furthermore, these general figures contain amounts required for taxes, interest on indebtedness and investment and overhead expenses, as well as any profits that might accrue.

Evidence was presented indicating that lime rock is more valuable than sand, gravel and ballasting materials. In rate making value is a pertinent factor but not a controlling one. It was further contended that a lower rate should apply on the lime rock traveling from the quarry to the point of manufacture on account of the second haul of the finished product, cement. In making rates on raw materials the second haul should be considered, but at the same time the second haul alone does not warrant the making of an unreasonably low rate on raw materials. Carriers are entitled to a reasonable rate on all commodities.

Testimony was given to the effect that marketing conditions were equalized on cement from San Juan, Davenport and Cement to the San Francisco market, but no evidence was produced to show that any one of the cement plants can get to the San Francisco

market any cheaper than another. The record is barren of any evidence of the cost of producing cement, or of the sale price, or of the profit and loss on cement either at San Juan, Davenport, Cowell or the complainant's plant at Cement, California. We find that not only is the cement rate equalized to the San Francisco market district, but is also equalized to Los Angeles, Pasadena and San Bernardino, to which points the complainant's competitors are nearer. The same rates apply from cement-producing plants at Cowell, Napa Junction, Cement, Davenport and San Juan; to Calexico in the Imperial Valley; to Lone Pine on the Owenyo Branch of the Southern Pacific. The same rates apply from all cement-producing plants referred to above to San Jose, to which point complainant's competitors are nearer.

Differences in industrial and traffic conditions in different territories may justify the maintenance of higher or lower rates in one or the other section, as conditions and circumstances may require. Such adjustments, however, are usually made voluntarily by carriers.

The complainant contended that transportation conditions are more favorable between Buman and Oswego, Oregon; that the operating expense is much less on account of physical conditions; it showed that the average weight per car is less, and that the rate volume is slightly less. The distance between Buman and Oswego is 65 miles, as compared with 72 miles between Flint and Molenas. The cars used in carrying lime rock from Buman to Oswego are of various types and capacities and which would otherwise move empty to loading points, and the carrier's witness testified that low rates were made on rock from Buman to Oswego in order to provide return loads for empty equipment.

The evidence showed that the complainant competes with Oregon in the sale of cement, but not lime rock; it also showed that the Oregon cement manufacturers cannot compete in California in the sale of cement.

Comparing the rates on crushed rock, sand and gravel in various parts of the State where traffic actually moves, we find on the San Francisco-Sacramento Railroad between Oakland and Bancroft, a distance of 23 miles, a rate of 70 cents applies, minimum carload weight 30 tons, producing a per ton mile earning of 30 mills and a revenue per car mile of 91 cents; On the Northwestern Pacific Railroad, between San Francisco and Healdsburg, 51 miles, 70 cents per ton produces a per ton mile earning of 13.7 mills and revenue per car mile of 41 cents; on the Santa Fe, between Woodrock and Ducor, the same rate applies for a distance of 78 miles, producing a per ton mile earning of 9 mills and a revenue per car mile of 27 cents; on the Western Pacific mileage scale a 70 cent per ton rate applies for 41 miles, producing a per ton mile earning of 17 mills and a per car mile revenue of 51 cents; the Southern Pacific Company, between Euman, Oregon and Oswego, Oregon, a movement referred to by the complainant, a rate of 60 cents per ton applies for a distance of 65 miles, producing a per ton per mile earning of 9 mills and a revenue per car mile of 27 cents. As compared with the rate between Tolenas and Flint of 70 cents per ton for a distance of 72 miles at minimum weight, which produces an earning of 9.7 mills per ton mile and a revenue of 28 cents per car mile.

The rates on crushed rock, sand and gravel quoted above, generally speaking, are rates applying on a fluctuating business,

with various points of origin and various destination points and are not comparable to a single rate applying between fixed termini where an extremely heavy regular and constant traffic moves. In fact, the record is barren of any instance where traffic conditions are similar or comparable.

This complaint was filed shortly after the relinquishment of Government control of railroads, during the guaranty or transition period. The rates herein complained of were the result of Director-General of Railroad General Order No.28 and did not include increases brought about by the Interstate Commerce Commission's Ex Parte No.74 and this Commission's Decision No.7983, effective August 26,1920.

When this Commission considered the application of all steam and electric interurban railroads and boat line common carriers to increase freight and passenger rates throughout the State of California in harmony with the increases granted by the Interstate Commerce Commission for interstate business; we concluded that on account of the emergency then existing it would be most expedient to go with the Interstate Commerce Commission and authorize the identical percentage increase for State business as was authorized for interstate business. It was entirely inconsistent for this Commission to undertake independent action, for the reason that it would be necessary for us to gather adequate data upon which to base a sound judgment of what all transportation rates in California ought to be, as it would require many months and would, therefore, eliminate all possibility of immediate relief to carriers, so necessary at that time.

Furthermore, we realized that the Interstate Commerce

Commission was acting under the mandate of Congress and had proceeded impartially, using the best available information and the best judgment of its members in rendering its decision and order in Ex Parte No.74. Following that line of thought this Commission in its Decision No. 7983 included the following language:

"It is our deliberate judgment that it is the duty of this Commission to cooperate in every reasonable way to give the Esch-Cummins Act a fair trial and, rather than to attempt to impair the success of this legislation, to so act as to make it successful, not merely on the general proposition that all laws should have a fair test, but on the more definite situation that now confronts this country. We must all realize that the transportation companies have resumed control of the various railroad properties under difficult circumstances, and in view of the vital needs of this country for adequate transportation it is the duty of all citizens and officials to further any movement looking to the bettering of the transportation business.

"We feel that regardless of any opinion we might have as to the wisdom or unwisdom of the Esch-Cummins Act, it is the foundation upon which the regulation of the railroad now rests and to shake that foundation would be against the public interest.

"We do not mean to say that this Commission has abdicated its functions in rate fixing, as we believe that our determination to grant the prayer of applicants is sustainable upon the ground of reasonableness. Furthermore, we realize that we have a heavy responsibility in the matter of adjusting state rates which inevitably will become necessary upon the imposition of a percentage increase. The shippers who appeared before us in this proceeding have taken a very commendable position. Practically without exception they have stated their conviction that the railroads must have relief in increased rates in order adequately to give service. Furthermore, they believe that this Commission should cooperate with the Interstate Commerce Commission and make effective its order increasing rates. They do urge, however, that this Commission keep control of the matter of adjustment of rates after the imposition of a percentage increase.

"The carriers have agreed that they will, as promptly as possible, make adjustments or change rates in agreement with their patrons wherever possible without resort to this Commission and as to all disputes or disagreements which may arise they will be promptly referred to this Commission for decision."

In line with the immediate preceding paragraph, we placed in our order the following:

"ADJUSTMENTS:

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

"Adjustments will be necessary and carriers will be expected to deal promptly and effectively therewith, to the end that such readjustments may be made in as many instances as practicable without forcing an appeal to this Commission."

The hearings in this proceeding were concluded and the case submitted on August 26, 1920, and subsequent thereto the complainant, in accordance with the adjustment clause in our order referred to above, took up with the carrier the matter of an informal adjustment of the lime rock rate between Flint and Tolenas and they were unable to agree.

Taking into consideration that the original rate of 50 cents per ton on lime rock, carloads, Flint to Tolenas, was voluntarily established by the carrier; that there is a second haul on all lime rock moved between the points in question; competitive marketing conditions on cement that carrier has undertaken to equalize; the extremely large volume of traffic; the constancy of the traffic; that cars are weighed by the shipper and thus the carrier is relieved of that expense; nominal terminal service; that special equipment is used, resulting in mutual benefit to all concerned; the heavy loading of cars, also a mutual benefit; that the rate resulting from General Order No. 28 was 20 cents per ton instead of a flat 25 per cent increase, thereby

causing in reality an actual increase of 40 per cent.

Upon this record I find that the 70 cent per ton carload rate on lime rock from Flint to Tolenas, assailed by the complainant, is not unreasonable, unjust, discriminatory or unduly prejudicial.

For the reason that the complainant owns and operates the defendant carrier, Cement, Tolenas & Tidewater Railroad Company, I will make no finding as to the reasonableness of the rate over that line, leaving that to the complainant to adjust as it chooses.

This determination is necessarily based upon the record presented in this case, which was completed and submitted on August 26, 1920. Insofar as any reparation was asked for by the complainant, it relates entirely to the difference between the alleged unreasonableness of the rate in effect when the complaint was filed and the rates proposed by complainant as reasonable rates.

I must conclude, however, from the record before me that not only is a rate in excess of 70 cents per ton charged and collected since September 1, 1920 unreasonable, but that the reasonable rate is 70 cents per ton for the future. In reaching this conclusion I am not unmindful of the authority granted the carrier in Decision No. 7983, Application No. 5728, August 17, 1920 to increase the entire fabric of freight rates, but that authority was granted without consideration of any specific rates, they being subject to future adjustments as appeared necessary. Clearly the record in this proceeding shows that a rate higher than 70 cents per ton would at this time and for the future be excessive and unreasonable.

Having found herein that 70 cents per ton is a reasonable rate for the movement of lime rock, in carloads, from Flint to



Tolenas, if the matter of reparation on shipments moved subsequent to the submission of this case is not voluntarily adjusted, the Commission will entertain an application for such adjustment. The case will be dismissed.

O R D E R

Complaint and answer having been filed in the above entitled proceeding, a public hearing having been held, the Commission being fully apprised in the premises, and basing its order on the findings of fact which appear in the foregoing opinion,

IT IS HEREBY ORDERED that the complaint in this proceeding be and the same is hereby 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 12<sup>th</sup> day of May, 1921.

H. B. Boyd  
H. J. Loveland  
Dwight Martin  
Chester H. Powell  
W. E. Benedict  
Commissioners.