

ORIGINAL

Decision No. 909

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

FRED GUNTHER COMPANY,  
a corporation,  
Plaintiff.

vs.

Case No. 404.

SOUTHERN PACIFIC COMPANY,  
a corporation,  
Defendant.

E. J. Emmons, for Plaintiff;  
George D. Squires, for Defendant.

LOVELAND, Commissioner.

O P I N I O N

This case, upon complaint and answer, came on for hearing August 15, 1913 at 10 o'clock A. M.

In support of pleadings, plaintiff showed that it is a corporation doing business as a wholesale liquor dealer in the city of Bakersfield, Kern county, California; that in the conduct of such business it has shipped as freight mineral water in car-loads from the town of Williams, California to said city of Bakersfield over the lines of defendant, Southern Pacific Company, said shipments of mineral water being described as to weight, date of shipment, rate, etc., as follows:-

Date	E.B.No.	Car No.	Billed Wgt.	Rate	Collected.
1/13/12	1784	81516	37.000	8.00	150.40
4/16/12	15637	3149	37.000	8.00	148.00
7/12/12	27800	83731	37.000	8.00	148.00
10/26/12	42905	60158	37.000	8.00	148.00
2/19/13	7396	80617	37.000	8.00	148.00
5/21/13	22369	11350	37.000	8.00	148.00
Total.....			222.500		890.40

The amount set forth under the title "Collected 890.40" is the amount paid by plaintiff to defendant, Southern Pacific Company on said shipments, being a rate of \$8.00 per ton.

This rate of \$8.00 per ton on mineral water plaintiff alleges is unreasonable and discriminatory. Plaintiff bases its allegation that this rate is discriminatory upon the following com-

parison: the distance from Williams, the point of origin of said shipments, to Bakersfield is 340 miles. The distance from Shasta to Bakersfield is 517 miles and the rate on mineral water from Shasta to Bakersfield, carloads, is \$5.00 per ton.

For second cause of action, plaintiff alleges that defendant has collected, at the times and on the shipments named above, for overweight and that the correct weight of said shipments is as follows:-

Date	E.B. No.	Car No.	Weight
1/13/12	1784	81516	36.000
4/12/12	15637	3149	36.000
7/12/12	27800	83731	36.000
10/26/12	42905	60158	36.000
2/19/13	7396	80617	36.000
5/21/13	22369	11350	36.000
		Total.....	216.000

Considerable testimony was introduced as to the weight of the shipments, which need not be considered in this Opinion and Order as it was finally stipulated by counsel for plaintiff and defendant that the Superintendent of the Pacific Weighing Bureau, or a representative of that Bureau, should meet with plaintiff, Mr. Gunther, and weigh as many cases of this mineral water as would enable them to arrive at a satisfactory average weight, and upon the application of that weight to these shipments defendant stipulated to repay to plaintiff any overcharge found to have been collected. The second cause of action is, therefore, eliminated.

For the third cause of action, plaintiff alleges that the rates of the defendant on mineral water, from Williams, California, to Bakersfield, California, are unreasonable, excessive and discriminatory. The rates from Shasta, California, to Bakersfield, California, on mineral water, \$5.00 per ton in carloads, as compared with the rate of \$8.00 per ton on mineral water from Williams, California, to Bakersfield, California, were offered as

evidence that the rate from Williams, California, to Bakersfield, California, on mineral water, is excessive, extortionate and discriminatory. The class ~~000000~~ rates from San Francisco to Bakersfield, on the class in which mineral water is placed, were also put in evidence, but no comparisons were offered by plaintiff on shipments which could be considered as substantially the same under the circumstances and conditions as to distance, value of product, character of container in which the commodity was shipped, etc.

In justification of its rates, defendant showed that the mineral water in question from Williams to Bakersfield, California, was a high priced commodity known as Bartlett water and that it was only shipped in cases of 50 bottles each; that a car-load was valued at approximately \$1,000.00; That the mineral water shipped from Shasta was a lower priced commodity shipped in tank cars—lower priced during the movement from Shasta to Bakersfield because it is shipped in tank cars—and that the expense of bottling and casing must be done at Bakersfield; That the rate on Shasta water bottled and cased, from Shasta to Bakersfield, is \$10.30 per ton and that, owing to these differing circumstances and conditions under which shipments of mineral water are made respectively from Williams and Shasta, California, to Bakersfield, California, defendant claims that the rate of \$8.00 per ton from Williams, California, to Bakersfield, California, on mineral water in cases is not discriminatory.

With this contention of defendant, we agree. As to the rate being unreasonable and extortionate, it is well known that this Commission is engaged in taking the physical valuation of transportation properties in this state to the end that, after necessary investigation, the reasonableness of all rates may be passed upon. That work has not proceeded far enough to be applied to this situation, in consequence of which the Commission must

depend upon what it can learn by comparing rates for similar distances under similar circumstances.

In our judgment, plaintiff has failed to show that this rate is an unreasonable or extortionate rate and, while not declaring in this Opinion and Order that the rate in question is a reasonable rate, the Commission fails to find that it has been proven unreasonable.

The second cause for action having been eliminated by stipulation, I find as a fact that plaintiff has not proven the allegations in the first and third causes for complaint, and that such complaints should be dismissed.

I recommend the following Order:-

#### O R D E R

WHEREAS, Fred Gunther Company, of Bakersfield, California, has filed a complaint with this Commission against the Southern Pacific Company, alleging that rates charged and collected by said Southern Pacific Company on mineral water in cases from Williams, California, to Bakersfield, California, are unreasonable and extortionate, as first cause of action, that overweight was collected, as second cause of action, and that said rates were discriminatory as compared with rates on mineral water from Shasta, California, to Bakersfield, California; and,

WHEREAS, a hearing has been regularly had, and the second cause of action eliminated by stipulation; and,

WHEREAS, the Commission finds that plaintiff has failed to establish that said rates on mineral water were discriminatory or unreasonable and extortionate;

IT IS HEREBY ORDERED: That the complaint be and it 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 25<sup>th</sup>  
day of August, 1913.

H. J. Loveland  
Secretary  
Max Thellus

Commissioners.