Decision No. 9411

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Pacific Rice Growers Association, a corporation, Complainant, vs. Atchison, Topeka & Santa Fe Railway Company, et al., Defendants.	CASE NO. 1588.

J.M.Inman, and Downey & Downey, by Stephen W. Downey, for Pacific Rice Growers Association.

Elmer Westlake and M.A.Cummings, for Southern Pacific Company.

Charles R. Detrick, and Heller, Ehrman, White & McAuliffe, for Sacramento Northern Railroad.

James S. Moore, Jr. for Western Pacific Railroad Company.

F.B.Cruice, for Atchison, Topeka & Santa Fe Railway Company.

Sanborn & Roehl, for Sacramento Transportation Company; Farmers Transportation Company; California Transportation Company; California Navigation & Improvement Company, and Island Transportation Company.

L.H.Rodebaugh, for San Francisco-Sacramento Railroad Company,

J.J.Geary, for Northwestern Pacific Railroad Company.

BENEDICT, COMMISSIONER:

O P I N I O N

The complainant in this proceeding is a corporation, incorporated under the laws of the State of California, with its principal place of business at Sacramento, California, and is an

association composed of persons engaged in the growing and marketing of rice. In its complaint, filed April 22, 1921, it alleges that the rates charged by the defendants for the transportation of paddy rice within the State of California are unjust, unreasonable, discriminatory and unduly prejudicial to the rice growers and producers in the State of California to the extent that such rates exceed rates applying to whole grains; namely, wheat, rye, oats, barley and corn.

Complainant prays that defendants be required to accord to paddy rice and rice products the same rates as apply to whole grains, including milling, cleaning, storing, bulking or otherwise treating in transit from producing points to consuming points within the State of California and that rice be carried in the Grain Tariff and be subject to all the transportation facilities and rights now enjoyed by grains.

Public hearing has been held and the matter is now ready for opinion and decision. At the hearing the complainant amended its complaint, limiting same "strictly to asking that same rates be applied on rice as are applied on grain". (Trans.page 4). Therefore, the Commission will consider the case as amended.

The complainant in this proceeding previously filed a complaint in Case No. 1432, which was decided by this Commission's Decision No. 8517 January 6, 1921. Complainant in Case No. 1432 alleged that the rates in effect on rice and rice products were, per se, unreasonable, discriminatory and unduly prejudicial, and requested the Commission to establish a reasonable mileage scale. The Commission's order in that proceeding established paddy rice rates based on 125% of the grain rates, and these are the rates under attack in this proceeding.

Counsel for complainant requested that evidence, in-

cluding exhibits and testimony taken in Cases Nos. 1432 and 1437, (which two cases were consolidated for hearing and decision), be considered as evidence before the Commission in this hearing, to be supplemented with such evidence as either side desired to offer. This was objected to by defendants' counsel, on the ground that since the evidence was taken in Cases 1432 and 1437 there had been two changes in rates and that entirely different conditions now prevail.

The Commission ruled that the records in Cases 1432 and 1437 are official records and that the evidence presented in those cases would be considered in this matter for what it is worth and that the evidence in these previous cases would be consolidated with the evidence submitted in the present hearing.

The rates, charges, rules, regulations and practices of the carriers, defendants in this proceeding, were exhaustively gone into in previous cases. The character of paddy rice as a commodity, its value, bulk, weight, cost of production, etc., were discussed at considerable length in Case No.831, Decision No. 2783, decided September 28, 1915, and in Cases Nos. 1432 and 1437, Decision No. 8517, January 6, 1921. In the two last named cases application for rehearing was denied by Decision No. 8697 March 4, 1921. It will, therefore, not be necessary to go into great detail on these matters in this instance.

The testimony showed that of the 1920 paddy rice crop 80% is controlled by members of the complainant association and that the amount of acreage planted to rice in the State in 1920 was 170,200 acres and that in 1921 there has been planted 168,200 acres, but slightly less acreage in 1920 than in 1921. From the same source the evidence shows there are large quantities of the 1920 paddy rice crop unsold, stored in country warehouses and under toll milling. It was evidenced that in the Fall of 1920

there were storms and rainfall which did serious injury to the rice crop in general. The record shows there are stored in country warehouses 1,500,000 bags and in mills under toll milling 350,000 bags paddy rice, of which but 50,000 to 75,000 bags is of first quality rice. The price of paddy rice in August,1920, was $6.00 and at the time of this hearing $1.80 per one hundred pounds.

It was further shown that the condition of the rice industry has changed from one of reasonable profit to one of actual and heavy loss this last season. The complainant's witness attributed this loss mainly to market conditions, falling market, lack of demand, and the storm damage as a second consideration.

Another witness testified that his principal difficulty was high labor, low market and bad season. It was further shown the labor cost for common labor last year averaged about $4.00 and that this year it is $2.00 and board, while skilled labor last year was $6.00 per day and this year $3.50 and $4.00; that bags in 1919 cost as high as 25½ cents, in 1920 19 cents and in 1921 between 6 and 7 cents, indicating that the condition, especially insofar as labor and sacks are concerned, has now been greatly relieved.

In reply to a query whether or not, if the freight rate on rice were the same as that on grain would producers be able to market a large portion of the crop. - witness stated it would not move a large portion and qualified such reply by explaining it could not meet competition of the southern rice in the Los Angeles market. The rate to Los Angeles from California producing points is 38 cents, while the rate from the Louisiana and Texas fields is $1.08, but testimony showed the southern rice is a different kind of rice - a long grain rice, preferred by consumers, which proves conclusively that the freight rate is

not a prominent factor in meeting such competition.

There is nothing in the record to indicate that reduced rates would substantially increase the traffic. The carriers contend that the grain rates, on account of previous rate wars, water competition and other elements, have been depressed generally in the locality of the Sacramento Valley and that this condition has been reflected at other points and that therefore the grain rates are not reasonable in this State. Carriers further contend that the rates on rice should not be the same as on grain, taking into consideration the volume of the movement, the ability of the traffic to pay higher rates, and that the grain rates are already low.

We quote from our Decision No. 8517, January 6, 1921:

> "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.
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> "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.
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> "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 brought about by Director General of Railroads' General Order No. 28 and the increase authorized by this Commission's Decision No. 7983) were still in effect in defendants' tariffs when the increase authorized in General Order No. 28 and our Decision No. 7983 were applied.
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> "Prior to 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:
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> "The first railroad constructed in the Sacramento Valley was the Central Pacific, which operated a short distance out of Roseville in June, 1869, reached 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 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 so pronounced and the rail carriers having made arrangements to have the grain hauled to the rail lines, it was necessary for the water carriers to adopt the plan of purchasing the grain outright in order to secure any business.

"In the early 90's grain sold from $1. to $1.10 per hundred pounds; in 1896 and 1897 the price of wheat was as low as 60 cents per 100 pounds; so low, in fact, that the farmers along the river considered it not worth shipping. Thus it was the contention of the defendants that the grain rates then in effect and which were the basis for the present grain rates, were abnormally low and on account of the present rail and water competition it has been impossible to adjust these grain rates upward to a reasonable basis.

The subject of the reasonableness of the grain rates is not a question now before the Commission, therefore their reasonableness is not passed upon in this proceeding.

""In considering rate structures and rate relationships existing today the Commission can neither condemn nor justify such rates on the basis of their origin or upon the traffic conditions prevailing in the past.

"The Commission frequently inquires into the origin and history of rate schedules in order to clearly understand the existence of such rates and to interpret their significance, but in dealing with present day rates they must be considered entirely on the basis of current prevailing conditions.

"The testimony shows that the growth of the rice industry in California has been constant since its be-

"ginning. 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, 15,000 acres; in 1915, 29,000 acres; 1916, 72,000 acres; 1918, 120,000 acres; 1919, 140,000 acres and in 1920, 170,000 acres. The same witness testified that there are 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. 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. 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 per cent 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."

Evidence in this case shows the present day price of paddy rice around $1.80 per hundred weight, pre-rain rice, while the average price of barley, the principal grain grown in the State, is an average of $1.00 per hundred weight, and barley is practically the only grain grown in the Sacramento Valley.

Rice is not included by any of the carriers in their grain group - nor is rice classified the same as grain in the Consolidated Classification.

In Decision No. 2783 on Case No. 831, September 28,1915,

the Commission said:

> "It may be true that strict dictionary definition classifies paddy rice as a grain, but it is evident that both the railroads and the shippers considered paddy rice as a different commodity, justifying a different rate than grain, such as wheat, barley, oats, etc., and so the commodity rate was established by agreement and paid without protest, and there can be no question from the evidence in this case that both the railroads and the shippers proceeded upon the theory that paddy rice should be given a rate higher than that provided for grain".

Interstate Commerce Commission in its Decision in Docket No. 9515, to be found 47 I.C.C. 572, said:

> "Unlike corn and wheat, the production of rice is confined to limited territories, and the consuming markets for the product of each locality must cover a more extensive portion of the country. This, defendants urge, is an inherent condition that differentiates rice from other cereals and cereal products."

Testimony presented pertaining to the financial condition of the rice industry indicates that the rice industry is in a serious condition and, generally speaking, the bankers seem to be carrying the rice man; however, considering all the circumstances, these conditions are natural to a period of liquidation and deflation. Present relatively low prices may be due, and probably are due, to the damaged condition of the crop, as well as possible over-supply on the market, the heavy production in all rice growing territories, resultant from previous high prices, etc., and now the decreased demand is making itself felt.

The defendant witness for the Sacramento Navigation Company testified his company handled in 1919 approximately 40,000 tons of rice out of a total produced in the Sacramento Valley of 200,000 tons, or about 20% of the total. The same witness stated his company operated in 1920 at a loss of about $35,000.00.

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The annual report to the Commission filed by the Sacramento Navigation Company shows for 1920 gross revenue $122,129.06; operating expenses $145,182.34, a deficit of $23,053.28. This same witness testified that if rice rates were reduced to the basis of grain rates a loss in revenue would result to his line of from $20.000. minimum to $40,000. maximum per annum.

The President of the Sacramento Northern Railroad testified his line carried a considerable quantity of rice; also that his company in the past six months had not earned its interest or its operating expenses. The annual report of this carrier for 1920 filed with the Commission, showed that it operated at a deficit of $22,166.34 for that period.

In the beginning it was shown by the defendants in previous cases that rice rates are the result of an agreement between rice growers and the carriers and that rice rates were established based, generally, on 150% of the grain rates, since which time there have been some adjustments, including two horizontal increases in all rates, and any percentage increase in rates is bound to augment differentials. This condition, however, was alleviated to a considerable extent by the substantial reductions in rice rates brought about by the Commission's decision in Cases 1432 and 1437, in which cases we established rates for paddy rice 125% of the grain rates.

Complainant brought no evidence before the Commission to show that the rates, per se, charged on paddy rice are unreasonable, neither does it show that the grain rates are or are not reasonable per se.

No exhibits were filed and this case was submitted entirely on oral testimony. The urge of the complainants was directed more toward the conditions of the rice industry and its

need for relief than to an attack on freight rates.

The Interstate Commerce Commission, in its decision in Docket 2834, Ponchatoula Farmers Association vs Illinois Central Railroad Company, 19 I.C.C.515, said:

> "Several witnesses, members of complainant organization, engaged in producing vegetables at Ponchatoula, testified as to the poor financial returns they were deriving from their business and alleged that their condition was due to absorption of profits by freight rates. These shippers apparently entirely misconceive the powers of the Commission in fixing a reasonable rate. The Commission cannot lawfully base rates upon the profits derived in a particular business. It might be that in a favorable season the farmers of Ponchatoula would receive large and generous returns from their labors, but this fact would not justify the carriers in charging for transporting the vegetables to market more than a reasonable rate for the service performed. In another season the market prices might be such that there would be little or no profit in the business, yet such fact would not justify the Commission in requiring the carriers to transport the produce at a less rate than would be reasonable for the service performed. The law does not require the carriers to regulate the price of transportation upon the basis of profits to the shipper, and in authorizing the Commission to fix reasonable rates the law presumes that the measure of reasonableness will be based upon all the many elements of the particular traffic involved.
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> "The conditions complained of are directly due to the competition in the early vegetable business, which extends from Texas to the Atlantic Coast. Large areas that were formerly not cultivated or were given over to the culture of single staples such as cane, cotton, or corn, are now devoted to vegetable culture. While it is within the power of the Commission to guard the public against unreasonable charges, or unduly discriminatory practices on the part of a particular carrier, the vicissitudes of competition among shippers cannot be compensated for in the freight rate".

Later on, in the case of Railroad Commissioners of the State of Florida vs Southern Express Company (28 I.C.C.-p.635, Docket 3184) the Interstate Commerce Commission repeated the first

paragraph of the above quotation and commented upon it in the following language:

> "The carriers are entitled to a reasonable compensation for the services they render; yet this compensation might require the establishment of rates upon which shippers could not do business at a profit, and in such a case the Commission could not lawfully prescribe rates unremunerative to the carrier. A similar contention to the one here made has been advanced in other cases where producers seek lower rates. The contention is so unsound and yet so persistently urged that we deem it advisable to repeat what we have said in a similar case."

It is the function of the Commission to establish just and reasonable rates, and no evidence was produced in this proceeding to prove that the rates established by the Commission in the previous cases were more than just and reasonable, and certainly the financial conditions of some of these carriers, defendant, is such that the Commission must give grave consideration before any changes in rates are ordered. Rates that are reasonable per se can not be reduced or changed solely to meet temporary economic requirements or fluctuating market conditions.

It is apparent that the complaint in this proceeding has not proven that the rates assailed on paddy rice are unreasonable, and, therefore, this complaint should be dismissed.

The following form of order is recommended:

O R D E R

Complaint having been made by Pacific Rice Growers Association against freight rates on paddy rice applying within the State of California on the lines of the Atchison, Topeka &

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Santa Fe Railway Company, et al., a public hearing having been held, testimony taken and an investigation made, the Commission being fully apprised in the premises, and basing its conclusion on the findings of fact in the opinion preceding this order,

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

The forefoing 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 24th day of August, 1921.

H. A. Bunting
H. D. Loveland

Clyde L. Seavey
[signature]

Commissioners.

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