

Decision No. 26084.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

E. T. CARTER,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
a corporation,

Defendant.

Case No. 3428.

F. W. Turcotte, B. H. Carmichael and G. O. Olson,
for complainant.

James E. Lyons and A. Burton Mason, for defendant.

BY THE COMMISSION:

O P I N I O N

Complainant E. T. Carter is an individual, with offices at Santa Barbara, and among other activities is engaged in marketing rock, sand and gravel. It is alleged in this proceeding that defendant charged and collected for the transportation of certain carloads of crushed rock, sand and gravel shipped from Fillmore to Santa Barbara, Goleta and Orella during the period November 29, 1930, to September 14, 1931, rates which were unjust and unreasonable in violation of Section 13 of the Public Utilities Act. The proceeding involves only the payment of reparation. Rates will be stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at Los Angeles February 9, 1933, and the matter submitted.

The actual shipments consisted of 83 carloads; 80 moved to Santa Barbara, one to Goleta and two to Orella. The rates assessed were $4\frac{1}{2}$ cents to Santa Barbara, 5 cents to Goleta and $5\frac{1}{2}$ cents to Orella. Complainant is demanding reparation based on rates of 4 cents to Santa Barbara, $4\frac{1}{2}$ cents to Goleta and 5 cents to Orella, which rates became effective September 16, 1931, in Southern Pacific Company Tariff No. 330-F, C.R.C. 3112.

Fillmore, the shipping point, is located on the line of the Southern Pacific Company between Montalvo and Saugus, while the rates assessed in every instance were those applying from the head line point of Pacoima, a station 36 miles east of Fillmore and south of Saugus on the Southern Pacific Company's valley route through Mojave. The actual distance from Fillmore to Santa Barbara is 54 miles, to Goleta 62 miles, and to Orella 76 miles. The mileage from Pacoima, the basic point for the rates used, was as heretofore stated 36 miles more distant than from Fillmore, the actual shipping point of the rock. The rates sought by complainant are based upon the unpublished mileage scale used in Southern California to determine the commodity rate on crushed rock, sand and gravel, and the rates which were actually published effective September 16, 1931, are the scale rates herein contended for. It would seem from this record that complainant in his activities was in competition with others handling the same quality of rock and found that the material could not be purchased at satisfactory prices from quarries in the immediate vicinity. This situation resulted in the construction of the plant at Fillmore. It is of record that prior to the movement of this tonnage the complainant endeavored to secure the publication from defendant of the Southern California standard rock scale.

Defendant, other than reciting the chronological history of the rates between the points involved, made no effort to show that the rates when assessed during the period November 29, 1930, to September 14, 1931, were just and reasonable rates.

A motion was entered by defendant for a dismissal of the complaint upon the grounds and for the reason that this Commission has no jurisdiction to award reparation by virtue of Section 71(a) of the Public Utilities Act, which Section declares in substance that no order for the payment of reparation upon the grounds of unreasonableness shall be made in any instance wherein the rate in question has by former finding been declared by the Commission to be reasonable. This motion is predicated upon the following finding in County of Los Angeles et al. vs. A.T. & S.F. Ry. Co., Los Angeles & Salt Lake Railroad Co. and Southern Pacific Co. (32 C.R.C. 296-306):

"After a careful consideration of the testimony and exhibits of record in this proceeding, I do not find sufficient evidence to lead me to conclude that the rates here under attack are unjust or unreasonable, in violation of Section 13 of the Act, or unduly discriminatory, prejudicial or preferential, in violation of Section 19 of the Act."

The cited proceeding involved rates on crushed rock, sand and gravel in the territory south of Caliente and Santa Margarita. The points involved in the instant proceeding are embraced in this same territory. The County of Los Angeles case involved rates in a general territory. While the Commission found that the record did not support a finding that they were unjust or unreasonable, this finding cannot be presumed to be a finding that any particular rates were reasonable per se. Rates from Fillmore to Santa Barbara, Goleta and Orella in a proceeding bringing them directly in issue, might have been found at the time, 1928, either unreasonably high or unreasonably low, but certainly they were not adjudicated by the County

of Los Angeles case. The motion to dismiss must therefore be denied.

Our Decision No. 24530, Case No. 3167, February 29, 1932, Macco Lumber Company vs. Southern Pacific Company, authorized the defendant to make reparation adjustments of the charges collected for the transportation of 89 carloads of crushed rock and sand from Fillmore to La Patera, moved during the period November 1, 1930, to June 24, 1931. This destination station is located between Coleta and Orilla, and the rate of $4\frac{1}{2}$ cents upon which reparation was authorized is the same as that sought in this proceeding for the movement from Fillmore to Coleta. The adjustment in Case No. 3167 was upon formal answer, wherein defendant admitted that the rate assessed was unreasonable to the extent it exceeded $4\frac{1}{2}$ cents, and signified a desire to make the reparation adjustment; and the authority was granted by this Commission. It must also be noted that the voluntary reparation given to the shipments moving from Fillmore to La Patera November 1, 1930, to June 24, 1931, is included in the same period involved in the instant proceeding, which period, as heretofore stated, covers the time November 29, 1930, to September 14, 1931, the latter being the date when the rates were regularly published in defendant's tariff. Defendant's opposition to the payment of reparation in the face of these facts would certainly result in unlawful discrimination as between shippers. In the first proceeding, Case No. 3167, the reparation was paid without contest, while in the case now before us defendant resists the adjustment. When the rock crushing plant was established at Fillmore, the request of this complainant for the publication of the uniform rates should have had the prompt consideration of defendant.

Upon a study of all the facts of record we are of the opinion and find that the rates assailed were unjust and unreas-

onable, that complainant made the shipments as described, paid and bore the charges thereon, and is entitled to reparation with interest, of an amount equal to the difference between the charges paid and those that would have accrued at rates from Fillmore of 4 cents to Santa Barbara, $4\frac{1}{2}$ cents to Goleta and 5 cents to Orella.

The exact amount of reparation due is not of record. Complainant will submit to defendant for verification a statement of the shipments made and upon payment of the reparation defendant will notify the Commission of the amount thereof. Should it not be possible to reach an agreement as to the reparation award, the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

O R D E R

This case having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the preceding opinion,

IT IS HEREBY ORDERED that defendant Southern Pacific Company be and it is hereby authorized and directed to refund with interest to complainant E. T. Carter all charges collected in excess of rates from Fillmore of 4 cents per 100 pounds to Santa Barbara, $4\frac{1}{2}$ cents per 100 pounds to Goleta and 5 cents per 100 pounds to Orella for the transportation of the shipments of rock, sand and gravel involved in this proceeding.

Dated at San Francisco, California, this 19th day of

June, 1933.

C. C. Leavelle
Leon A. Williams
W. A. Carr
W. B. Harris
William H. Moore
Commissioners.