Decision No. 26278

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CHAMBERLIN STEAMSHIP CO., LTD., CHRISTENSON RAYMOND LINE, LOS ANGELES-SAN FRANCISCO NAVIGATION COMPANY, LTD., LOS ANGELES STEAMSHIP COMPANY, INC., McCORMICK STEAMSHIP COMPANY, NELSON STEAMSHIP COMPANY and PACIFIC STEAMSHIP CO.,

Complainants,

vs.

SAN DIEGO-SAN FRANCISCO STEAMSHIP COMPANY, LOS ANGELES-LONG BEACH DESPATCH LINE, SOUTH COAST STEAMSHIP COMPANY, SUDDEN STEAMSHIP LINE and ISLAND TRANSPORTATION CO.,

Defendants.

ORIGINAL

Case No. 3332.

F.M. Chandler, for Certain-teed Products Co., Armstrong Cork Co., Bird and Son, East Walpole, Mass., Delaware Floor Products, Inc., Wilmington, Delaware and Sandura, Inc. of Philadelphia and Paulsboro, New Jersey.

E. L. Read and E. W. Henderson, for Pacific Coastwise Conference.

J. J. Geary, for complainants.

A. W. Brown, for Paraffine Companies, Inc.

SEAVEY, Commissioner.

OPINION ON REHEARING

By Decision No. 25936 of May 22, 1933, in the above entitled proceeding it was held that it was improper to mix in unrestricted quantities linoleum and other floor covering on which the tariff provided a carload rate of 40 cents per 100 pounds and roofing and building material rated at 17 cents per 100 pounds for transportation at the lower roofing and

building material rate.[1] The Commission accordingly ordered both complainants and defendants to amend their tariffs by restricting to not to exceed 15% the amount of floor covering that might be included with carload shipments of roofing and building material and articles grouped therewith at the carload roofing and building material rate. A rehearing of the proceedings in so far as it involved rates on those commodities was sought by Paraffine Companies, Inc., an intervener.[2]

The petition was granted and a rehearing had at San Francisco August 11 and 12, 1933.

Throughout the rehearing the carriers maintained a position of neutrality. Petitioner was opposed by Armstrong Cork Company, Congoleum-Nairn, Inc., Sloane-Blabon Corporation, Certain-teed Products Corporation, El Rey Products Company, Pioneer Paper Company, Johns-Manville Corporation, interveners in the original proceeding, and by Bird & Son, Delaware Floor Products, Inc., and Sandura Products Company.[3]

Petitioner introduced testimony to show that it was not necessary to include any roofing in a carload of floor covering in order to enjoy the lower roofing and building material rate, but that on the other hand the lower rate applied on both straight and mixed carloads of roofing and building material and

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[1] The rates given are representative; between certain points and via certain of the lines they were somewhat different.

[2] In support of its petition intervener alleged that the record made did not embrace the full facts in the matter and that the order would require it to engage other means of transportation.

[3] For the purpose of this decision Paraffine Companies, Inc., will be referred to as petitioner and the opposing parties designated as interveners.

floor covering. It contended that roofing was more readily subject to damage than floor covering and that its value was approximately one half that of floor covering, instead of one fourth as had heretofore been shown. Petitioner also attempted to show that no one was actually damaged by the unrestricted mixture of these commodities.

The interveners vigorously challenged the testimony that roofing was more liable to damage than floor covering and that it was worth only approximately one half as much. They pointed out that although the assailed rate was ostensibly open to any one who chose to employ it, petitioner was the only concern in this territory shipping both roofing and floor covering. For this reason they argued that it constituted a special privilege whereby their competitor was enabled to obtain carload ratings on articles moving in less than straight carload lots. They contended that the articles were non-analogous, that their mixture was unnatural and improper, and that it worked to their serious disadvantage.

Since 1931 substantially all of petitioner's shipments moving between the points here involved have been transported by rail and truck. The restriction of the articles forwarded in mixed carloads, therefore, under these rates has but a minor effect on its business. Petitioner's admitted purpose in seeking a modification of our original order was to forestall any effect it might have upon a proceeding now pending before the U.S. Shipping Board involving rates between California and points in Oregon and Washington. The interveners likewise have made comparatively few shipments over the lines of these carriers. Undoubtedly their interest also lies largely in the effect the decision may have on other rates.

The record shows that if not fully four-fold, floor covering on an average is much more valuable than roofing. Whether or not, for this or for any other reason, a rate of 40 cents as compared with one of 17 cents on roofing, is justified the record does not show. The volume of the rate however is not assailed. Assuming that 40 cents was proper on straight carloads of floor covering and 17 cents on straight carloads of roofing, it is certainly improper to permit such highly rated articles as floor covering to move in unrestricted quantities at the low roofing rate. To do so obviously defeats the higher rate and removes its application.

Our original decision should be affirmed. The following form of order is recommended:

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that Decision No. 25956 of May 22, 1933 in Case 3332, be and it is hereby affirmed.

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 21st day of August 1933.

C. E. Jeans

Leon O. Whitsell

Will A. Carr

M. B. Harris

COMMISSIONERS.