Decision No. 26725

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA PORTLAND CEMENT COMPANY,

Complainanant,

vs.

SOUTHERN PACIFIC COMPANY,
PACIFIC ELECTRIC RAILWAY COMPANY,

Defendants.

Case No.3142

ORIGINAL

Asa Call, William Guthrie and Sanborn, Roehl & Brookman, by H. H. Sanborn, for Complainant.
James E. Lyons, for Southern Pacific Company, Defendant.
C. W. Cornell, for Pacific Electric Railway Company, Defendant.
C. K. Adams and G. E. Duffy, for The Atchison, Topeka & Santa Fe Railway Company, Intervenor.
Coy J. Burnett, W. D. Burnett and Waldo A. Gillette, for Monolith Portland Cement Company, Intervenor.
O'Melveny, Tuller & Myers, by William W. Clary, for Riverside Portland Cement Company.

BY THE COMMISSION -

O P I N I O N

Complainant alleges that the rates maintained by defendants for the transportation of cement in carloads from Monolith to Anaheim, West Orange, Santa Ana, Orange and Fullerton have been established unlawfully and are inapplicable, in violation of Sections 15 and 17 of the Public Utilities Act, and that they are unduly prejudicial to complainant and preferential of its competitor at Monolith, in violation of Section 19 of the Act and Section 21, Article XII of the Constitution of the State of California. It seeks an order directing defendants to cancel the assailed rates and requiring them to cease and desist from publishing and maintaining rates which are preferential, prejudicial or discriminatory. Defendants deny that the rates were established in violation of Section 15 of the Public Utilities

Act or that they are in any manner unlawful.

A public hearing was had before Examiner Geary at Los Angeles, at which the Monolith Portland Cement Company and the Riverside Cement Company were permitted to intervene.[1] The matter was submitted on briefs.

On April 28, 1931, by schedules filed April 22, 1931, defendants established reduced rates of 8½ cents per 100 pounds for the transportation of cement from Monolith to Anaheim, West Orange, Santa Ana, Orange and Fullerton.[2] These reduced rates bear a notation reading "Issued on five days' notice in compliance with order of the Railroad Commission of State of California in Decision No.23476, Case No.2663, March 9, 1931."

Complainants contend that these rates were not published in compliance with the Commission's order in Case No.2663 and that they were therefore established in violation of Section 15 of the Public Utilities Act.[3]

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1 The Monolith Portland Cement Company intervened in opposition to the complainant; throughout this decision it will be referred to as the intervenor. The Riverside Cement Company concurred in the position taken by the complainant; together they will be referred to as complainants. Defendants submitted no evidence and offered no testimony. They did, however, file a brief.

2 Tenth Revised Page 32 of Southern Pacific Company's Tariff No.584-D, C.R.C. No.2861, and Supplement 20 to Pacific Freight Tariff Bureau Tariff No.88-M, C.R.C. No.456. Prior to April 28, 1931, the rates from Monolith to Anaheim, West Orange and Santa Ana were 10 cents and to Orange and Fullerton 11½ cents.

3 The pertinent portion of Section 15 of the Act reads as follows: "Unless the commission otherwise orders, no change shall be made by any public utility in any rate * * * except after thirty days' notice to the Commission and to the public as herein provided." Whether or not this provision of the Act has been violated depends, therefore, on whether or not the Commission has ordered that these rates be published on less than thirty days' notice.

The portion of Decision No.23476[4] which defendants construed as authorizing them to publish these rates on less than statutory notice reads: "That the rates from Victorville and Monolith to points beyond Los Angeles,where the rates are based over the Los Angeles rates, are unduly preferential to Colton and Crestmore and unduly prejudicial to Victorville and Monolith to the extent that such rates exceed for comparable distances the amounts contemporaneously added to the rates from Colton and Crestmore."

Complainants contend, and the record shows, that the rates to Anaheim, West Orange, Santa Ana, Orange and Fullerton were not "based over" the Los Angeles rates. From Victorville, Colton and Crestmore they are constructed via the short line of The Atchison, Topeka & Santa Fe Railway, which does not pass through Los Angeles. Nor is there anything "added" to the rates from Colton and Crestmore to Los Angeles to make the rate to the points here involved. It follows, therefore, that the publication of the assailed rates was not authorized by the finding in Decision No.23476, just referred to. It does not appear, however, that defendants intentionally and deliberately violated the provisions of Section 15 of the Public Utilities Act. They contend that the rates from Monolith were reduced to avoid what they considered a maladjustment and in the belief that they were complying both with the letter and with the spirit of the Commission's order. Under the circumstances no attempt will be made to exact from defendants the penalties provided for violations of the Act, nor will they be required to cancel the rates unless it is shown that they are inherently unlawful.

The contention that because they have been unlawfully established the assailed rates are inapplicable in violation of Section 17 of the Act does not find support in law. The Act provides, and Commissions and courts alike have consistently held, that a carrier's published and filed rates are the lawful

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[4] California Portland Cement Co. et al. v. S.P.Co. et al., 35 C.R.C. 904.

rates, from which there can be no deviation.[5] Complainants' reasoning, if followed to its logical conclusion, would preclude one from relying upon an established rate unless he had first developed that it was published and filed in strict compliance, not only with Section 15 of the Act, but with all statutory provisions, including those requiring that rates must be just, reasonable and free from unlawful discrimination. The imposition of such a burden would destroy wholly the usefulness of filed tariffs.

The record deals almost entirely with the questions of whether or not the rates were lawfully established and whether they are applicable. The portion treating with undue preference and prejudice is too meager to justify a finding for complainants. The complaint will therefore be dismissed.

O R D E R

This matter having been duly heard and submitted on briefs and being now ready for a decision,

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[5] Section 17 (a)2of the Public Utilities Act reads: "No common carrier shall charge, demand, collect or receive a greater or less or different compensation for the transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time * * * ." See also Green Cananea Copper Co. vs. C.R.I. & P.Ry. Co., 88 I.C.C. 225. Brown & Sons Lumber Co. vs. L. & N. R.R.Co., 37 I.C.C. 507. Pennsylvania R.R. Co. vs. International Coal Co., 230 U.S. 184. San Francisco Milling Co. Ltd. vs. S.P. Co., 34 C.R.C. 453.

IT IS HEREBY ORDERED that the complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 15th day of January, 1934.

COMMISSIONERS.