

Decision No. 28855.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Boyle Manufacturing Company, Inc. }

Complainant

vs.

Case No. 3925

Southern Pacific Company

Defendant }

ORIGINAL

BY THE COMMISSION:

O P I N I O N

Complainant alleges that the charges assessed and collected for the transportation of numerous carload shipments of new iron and steel oil drums from Alameda to Avon and Martinez on and after October 30, 1932, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act and that those assessed and collected on the shipments moving on and after October 30, 1933, were also inapplicable in violation of Section 17 (a) of the Act. An order prescribing just and reasonable rates for the future and awarding reparation is sought.

The matter was submitted upon agreed statement of facts. Except where otherwise indicated rates will be stated in cents per 100 pounds.

Alameda is a substation of Oakland and is generally accorded Oakland rates. Martinez and Avon are located 30 and 34 miles east of Oakland respectively.

The charges originally assessed and collected for the transportation of the shipments involved in this proceeding were based upon a commodity rate of 10¢, minimum weight 20,000 pounds applicable to "all freight", with certain exceptions from Oakland to Stockton, to which latter point Martinez and Avon are intermediate.

Subsequent to the filing of the complaint, defendant refunded to complainant the charges assessed and collected on all but some 26 or 27 of the shipments moving on and after October 30, 1933, in excess of the charges accruing under the legally applicable rate of 9 cents estab-

lished on that date on oil drums, iron or steel fabricated of material, gauge 17 to 19 in thickness.

The evidence indicates that the 26 or 27 shipments on which no refund was made consisted of carloads of new iron or steel oil drums, the sides of which were constructed of material 18 gauge in thickness while the ends were of 16 gauge material. The barrels and drums in the other shipments were constructed of 17 to 19 gauge material. On and after October 30, 1933, the Class B rate of 9 cents applied on new barrels or drums, "gauge 17 to 19 inclusive", subject to a minimum weight of 21,060 pounds. The same rate was applicable to drums and barrels 16 gauge and thicker, subject however to a minimum weight of 25,920 pounds. The Class B rate of 9 cents, minimum weight 25,920 pounds (applicable to drums 16 gauge or thicker) produces higher charges than the "all freight" rate of 10 cents, minimum weight 20,000 pounds, on shipments weighing 23,324 pounds or less. Of the 26 or 27 shipments in question, it appears that 5 shipments weighed in excess of 23,324 pounds and have been overcharged in violation of Section 17 of the Act.

In support of its contention that the Class B rate of 9 cents, minimum weight 21,060, was applicable to the shipments of drums with 18 gauge sides and 16 gauge ends, complainant argues that the Western Classification properly classifies drums by reference to the thickness of the sides without regard to the thickness of the ends. It points out that the sides of its drums contain 2520 square inches of 18 gauge material compared to but 454 square inches comprising the ends.

The Class B rating on drums is provided in Items 360 and 365 of Pacific Freight Tariff Bureau Exception Sheet 1-0, C.R.C. No. 503 of F.W.Gomph, Agent. By the plain language of these items minimum weights of 21,060 and 25,920 pounds are provided to apply to carload ship-

¹ The shipments in question moved in 50-foot cars, and unless otherwise stated minimum weights applicable to 50-foot cars are used in this opinion.

ments of oil drums of "gauges 17 to 19" and "16 gauge or thicker", respectively. All of complainant's shipments here involved fall within the latter classification. It must be concluded that the charges assessed and collected on all but the five shipments already considered, were legally applicable.

Complainant contends that the 9¢ rate was never authorized by the Commission and that the "evolved Class B rate" is 8½ cents. This contention is without merit. Effective March 4, 1917, defendant established a Class B rate of 6 cents between the points here involved.² As increased and decreased during the period of federal control and thereafter this rate would become 8½ cents. However, by General Order 28, issued by the Director-General of Railroads, effective June 25, 1918, the class rates of defendant were made subject to a minimum scale. Under this scale, the minimum Class B rate became 9 cents. The general rate increases made pursuant to General Order 28 as well as those subsequently effected in August, 1920,³ were approved and ratified by this Commission in Case No. 5728. Thus, the Class B rate of 6 cents, prescribed by the Commission in Case 485, supra, increased and subsequently reduced, became subject to a minimum rate of 9 cents.

In support of its allegation of unreasonableness, complainant compared the assailed rates with rates on second-hand drums returning, carriers (beverage), empty returning, wooden hampers, machinery and electrical appliances for comparable hauls. Based on minimum weights, the rates on these latter commodities yield per-car earnings ranging from \$15.00 to \$24.00. The assailed rates yield per-car earnings of approximately

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A complete scale of class rates was published pursuant to the order of the Commission in Case 485, San Francisco Chamber of Commerce vs. S.P. Co. et al., 11 CRC 867.

3 Decision No. 7983, August 17, 1920, In the Matter of the Application of Steam and Electric Interurban Railroads et al. to Increase Freight and Passenger Rates and Fares, 18 CRC 646.

\$19.00 to \$21.00. Moreover, the record shows that in many instances, the commodities selected by complainant for comparison load in excess of the tariff minima and produce per-car revenues of \$20.00 to \$33.00. Mere comparisons of earnings based on minimum weights are of little probative value. Complainant also compares the per-car earnings under the assailed rates with those accruing from the hauling of kitchen or bunk-cars at a rate of 14 cents per car mile, minimum charge \$5.85 per car. The cars which might move under this latter rate would be of private ownership and defendant would have no investment therein; it would merely furnish the power with which to haul the cars. Manifestly there is no sound basis for such a comparison.

Upon consideration of all the facts adduced in this proceeding it must be concluded that the rates herein assailed have not been shown to be or to have been unjust or unreasonable.

O R D E R

This matter having been duly submitted,

IT IS HEREBY ORDERED that defendant be and it is hereby directed to refund to complainant all charges assessed and collected in excess of those accruing under the Class B rate of 9 cents, minimum weight 25,920 pounds applicable to shipments of oil drums constructed in whole or in part of 16 guage material moving on and after October 30, 1933.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint be and it is hereby dismissed.

Dated at San Francisco, California this 1st day of June, 1936.

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Commissioners.