

Decision No. 30064

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CARL G. BLISS, doing business as
PIONEER CONSTRUCTION CO.,
HARNISCHFEGER SALES CORPORATION,
a corporation,
Complainants,
vs.
SOUTHERN PACIFIC COMPANY,
a corporation,
Defendant.

Case No. 3954

ORIGINAL

BY THE COMMISSION:

O P I N I O N

Complainants seek reparation on three carload shipments of power shovels transported by defendant from Los Angeles to Garnet and one transported from Los Angeles to Indio during the period January 9, 1933, to January 8, 1934, inclusive. They allege that the charges assessed and collected by defendant were excessive, unjust and unreasonable in violation of Section 13 of the Public Utilities Act to the extent they exceeded those which would have accrued under a rate of 30 cents.¹

The matter was submitted upon written statements of fact.

Garnet and Indio are respectively 106 and 129 miles east of Los Angeles. Charges on the shipments to Garnet were assessed on a combination rate of 36½ cents, composed of an "all freight" commodity rate of 12 cents from Los Angeles to Colton and the Class A rate of 24½ cents from Colton to Garnet. The through Class A rate

¹ Rates are stated in cents per 100 pounds and do not include emergency charges, which are not in issue.

of 43 cents was assessed on the shipment from Los Angeles to Indio.

In support of their allegation complainants compare the ton-mile earnings of 67 to 69 mills accruing under the assessed rates with earnings ranging from 23 to 53 mills accruing under rates maintained by defendant for the transportation of power shovels, contractors' outfits, machinery and machines, oil well outfits and supplies and roadmaking implements between various points in California, and for varying distances. They point out that the Commission has awarded reparation to the basis of 30 cents on a crane shipped from El Monte to Thermal (123 miles) and on a stone crusher shipped from El Monte to Indio (116 miles);² and that defendant has published a rate of 30 cents for the transportation of cranes from El Monte to Thermal and for the transportation of stone crushers from Los Angeles to Indio, Coachella and Thermal (129, 133 and 136 miles respectively).³ According to complainants, the transportation characteristics of cranes and stone crushers are similar in all essential respects to those of power shovels.

Complainants also argue that by reason of the intermediate application rule of Pacific Freight Tariff Bureau Tariff 26-Q, C. R.C. No. 518 and I.C.C. No. 1123 of F. W. Comph, Agent, an "all freight" rate of 30 cents established therein July 10, 1933, for interstate application from Los Angeles to Yuma, Arizona, is legally applicable to intrastate shipments from Los Angeles to Garnet and Indio. Failure to observe tariff rates is not alleged, however, and is not in issue in this proceeding.

² Awarded in informal complaint No. 47091 and in Case No. 3903, respectively. The respective shipments were made on December 7, 1932, and February 25, 1933.

³ Effective February 15, 1933, and December 15, 1933. Published in Tariff No. 730-D, C.R.C. No. 3353.

In defense of the assailed rates defendant argues that a complaint attacking the reasonableness of a class rate implies either (a) that the article is improperly classified, (b) that the class rate as such is too high, or (c) that the article moves in sufficient volume to entitle it to a commodity rate.⁴ It contends that complainants have made no attempt to establish that the Class A rating is improper for power shovels. It asserts that the class rates involved are lower than class rates approved by this Commission for application from and to the same points⁵ and that the movement of four carloads would not justify a commodity rate. Defendant describes the circumstances and conditions surrounding the publication of each of the commodity rates with which complainants make comparison, and indicates that such rates were influenced by the presence of motor truck competition.

The principle is well established that rate comparisons are of little probative value unless it be shown that the factors influencing the volume of the rates compared are similar.⁶ The burden of establishing the similarity of transportation conditions is upon the party relying upon such comparisons. In the present instance complainants have invited comparison with various truck-compelled rates but have failed to sustain the burden of showing a similarity of competitive conditions.

While it appears that defendant has followed the practice

⁴ In support of this position defendant refers to the following decisions of the Interstate Commerce Commission:

Atlas Refinery vs. P.R.R.Co., 188 I.C.C. 321.
Burson Knitting Co. vs. B. & O.R.R.Co., 92 I.C.C. 607.
Arkansas Light & Power Co. vs. A. & S.R.R.Co., 136 I.C.C. 423.

⁵ George A. Long et al. vs. Southern Pacific Co., 1 C.R.C. 114.
San Pedro Chamber of Commerce et al. vs. A.T. & S.F.Ry.Co. et al.,
34 C.R.C. 341.

⁶ Grayson-Owen vs. S.P., 1 C.R.C. 195.
Hunt Bros. vs. S.P., 2 C.R.C. 346.
Richfield Oil Co. vs. Sunset Railway Co., 24 C.R.C. 729.
Jacobs vs. Berkeley Transportation Co., 25 C.R.C. 18.

of according special commodity rates for isolated movements of power shovels and similar commodities for the purpose of meeting the competition of motor carriers, a carrier cannot be required to meet such competition in the absence of a showing of discrimination.

We are of the opinion that the rates assailed have not been shown to be unreasonable and that the complaint should be dismissed.

O R D E R

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and the Commission being fully advised,

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

Dated at San Francisco, California, this 23^d day of August, 1937.

William H. Ware
Leon A. Whelan
Frank R. Brown
John A. Swabner
Raymond H. Kelly
Commissioners.