Decision No. 30558

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SALINAS VALLEY ICE COMPANY, LTD., a corporation,
Complainant,

vs.

THE WESTERN PACIFIC RAILROAD COMPANY, a corporation,
SOUTHERN PACIFIC COMPANY, a corporation,
Defendants.

Case No. 4245

ORIGINAL

A. J. Zamb and R. E. Myers, for Salinas Valley Ice Company, Ltd.

J. E. Lyons and F. C. Nelson, for defendant Southern Pacific Company.

BY THE COMMISSION:

O P I N I O N

By complaint filed August 27, 1937, complainant alleges that freight charges assessed and collected by defendants for the transportation of 123 carloads of ice shipped from Stockton to Salinas during the period May 4, 1936, to July 1, 1936, were unjust and unreasonable in violation of Section 13(a) of the Public Utilities Act. Reparation only is sought. Rates are stated in cents per 100 pounds.

A public hearing was held before Examiner Bryant at San Francisco on January 10, 1938, and the matter taken under submission.

The shipments moved via Western Pacific Railroad from Stockton to San Jose, thence via Southern Pacific Company to Salinas. The applicable through rate at the time of movement

was 12½ cents, constructed by a combination of a 6½ cent rate, minimum 50,000 pounds, from Stockton to San Jose, published by the Western Pacific Railroad, and a rate of 6 cents, minimum 42,000 pounds, from San Jose to Salinas, published by the Southern Pacific Company. Complainant alleges that the charges assessed on the basis of this combination were unreasonable to the extent they exceeded charges based on a subsequently established combination of 11½ cents, minimum weight 42,000 pounds, created by the publication by Western Pacific Railroad of a proportional rate from Stockton to San Jose of 5½ cents, minimum 42,000 pounds, applicable only on shipments destined to Salinas.[1]

Defendant Western Pacific Railroad admits the allegations of the complaint and is agreeable to joining in the payment of reparation. Defendant Southern Pacific Company failed to answer the complaint, and offered no testimony.

Complainant offered no evidence to establish the unreasonableness of the charges assessed, beyond introducing exhibits comparing them with charges under various local and joint rates for the transportation of ice in carloads for similar distances in California and between interstate points. The exhibits fail to establish the unreasonableness of the rates complained of, for the compared rates produce car-mile and ton-mile earnings both lower and higher than those assessed. Moreover, no attempt was made to show the reasonableness of the rates used for comparison, or to show a similarity of transportation conditions under the various rates. In submitting rate comparisons, it is incumbent upon the party offering such comparisons to show that they are a fair measure of the reasonableness of the rates in issue. (Lavensaler v. Kuppinger, 29 C.R.C. 77, 83.)

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[1] Effective July 25, 1936, in W.P.R.R. Tariff C.F.D. No. 36-F, C.R.C. No. 257, Item 2980-H.

When a carrier voluntarily reduces a rate it does not necessarily follow that reparation is proper against shipments moving before the lower rates became effective, nor is the admission by a carrier that a rate was unreasonable sufficient grounds upon which to base an award of reparation. This is a salutary principle long followed by this Commission, by other regulatory bodies, and by the courts. While there may be no issue as between the actual parties it is essential that the Commission carefully scrutinize the proofs in support of the complaint, lest by granting a petition it lends its sanction and approval to what in substance and in effect is a rebate, and what may well result in unlawful discrimination and the disruption of a rate structure. The proof necessary to justify reparation should measure up to that which would be required had defendants opposed the relief sought. (See Gilliland Oil Co. vs. A.T. & S.F. Ry. Co. et al., 161 I.C.C. 87.)

Complainant has failed to assume the burden of proving that the charges under attack were unreasonable, and in the absence of affirmative proof the complaint must be dismissed. (Nestles Food Company, Inc. vs. N.W.P.R.R. Co. and S. P. Co. 33 C.R.C. 450).

O R D E R

This case being at issue upon a complaint on file, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and conclusions contained in the opinion which precedes this order,

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

Dated at San Francisco, California, this 26th day of January, 1938.

Commissioners