Decision No. _____

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Albers Bros. Milling Co., a corporation, Complainant, vs. Southern Pacific Company, a corporation, Defendant.	)	Case No. 4235

ORIGINAL

BY THE COMMISSION:

O P I N I O N

Albers Bros. Milling Co., complainant herein, seeks an order requiring defendant Southern Pacific Company to waive uncollected undercharges amounting to $64.15, due on two carload shipments of whole wheat transported by said defendant from Paso Robles to Ravenswood on August 10 and 13, 1935. It alleges that charges accruing under the applicable tariff rate were unjust, unreasonable and unduly discriminatory in violation of Sections 13 and 17 of the Public Utilities Act to the extent they exceeded the charges paid.

The matter was submitted upon complainant's written memorandum of facts and argument and upon defendant's verified answer to the complaint.

Rates are stated in cents per 100 pounds.

Paso Robles, the point of origin of these two shipments, is located on the coast line of defendant, 165.6 rail miles south of San Jose. North of San Jose, defendant operates two main lines to Oakland and points north thereof, one by way of Santa Clara and Newark, the other by way of Niles. Another main line is operated from San Jose to San Francisco by way of Redwood City. Ravenswood,

the destination point in issue, is situated approximately midway between Redwood City and Newark on a cross line connecting the Oakland and San Francisco main lines. The distance from Paso Robles to Ravenswood is 188.7 rail miles.

At the time these shipments moved, the applicable rate from Paso Robles to Ravenswood was 17 cents, constructed by combining a rate of 12½ cents from Paso Robles to Redwood City with a 4½ cent rate from Redwood City to Ravenswood. However, defendant assessed and collected charges based upon the erroneous assumption that a temporary rate of 12½ cents in effect between Paso Robles and San Francisco, Oakland and Richmond, would apply to Ravenswood under the maximum application provisions of the tariff.[1]

In support of its request, complainant compared the applicable rate of 17 cents from Paso Robles to Ravenswood with the temporary rate of 12½ cents, which applied to a territory roughly bounded by Luther on the south and San Francisco and Richmond on the north. It argued that in as much as the 12½ cent rate applied to points farther distant, situated in the same general territory, the maintenance of a higher rate at Ravenswood was unreasonable. It further argued that the addition of the 4½ cent factor from Redwood City to Ravenswood, a distance of 5.5 rail miles, was excessive, pointing out that the 12½ cent rate from Paso Robles to Oakland would include a switching movement from West Oakland to East Oakland, a distance of 3.4 rail miles.

---

1 The 12½ cent factor was published in Southern Pacific Company Tariff No. 659-F, C.R.C. No. 3552. It was published to expire May 31, 1936. The expiration date was later extended to May 31, 1938. The 4½ cent factor was the Class "C" rate, published in Southern Pacific Company Tariff No. 917-D, C.R.C. No. 2929. Under routing provisions of defendant's tariffs, neither the rate to San Francisco nor to Oakland would apply via Ravenswood. Effective April 22, 1936, the rate to Ravenswood was voluntarily reduced to 12½ cents, such reduced rate being similarly published as a temporary rate, to expire May 31, 1938.

Complainant further stated that these shipments were sold F.O.B. Ravenswood, and that a margin of 50 cents per ton to cover overhead expense and profit was added to freight charges computed on the 12½ cent rate. It asserted that even if the 50 cents were figured as net profit, it would suffer a net loss of 40 cents per ton if it were now to be required to pay outstanding undercharges of 90 cents per ton.

Defendant by its answer admitted that the 17 cent rate was relatively unjust and unreasonable and that it was unduly discriminatory. It denied, however, that said rate was unjust or unreasonable per se. No facts nor argument were advanced by defendant in support of this position.

Complainant appears to be relying solely on the fact that a rate of 17 cents was applicable to Ravenswood, whereas a 12½ cent rate was applicable to the surrounding territory. However, it has failed to show that this 12½ cent rate was itself a reasonable rate. As a matter of fact, such 12½ cent rate was a depressed rate published for a temporary period only to meet motor truck competition.[2] Moreover, the 12½ cent rate to Ravenswood, subsequently published by defendant, was also published as a temporary rate to expire May 31, 1938, the published permanent rate being 18½ cents. Comparison with this depressed temporary rate is not sufficient, standing alone, to establish that rate in excess of 12½ cents would be unreasonably high.

---

[2] In its Decision No. 30640, dated February 14, 1938, Cases Nos. 4088, Part "F" and 4118 (41 C.R.C. 133), the Commission held this temporary rate to be unreasonably low and insufficient. Specifically, it found:

> "(2) That temporary rates maintained by common carriers which are lower in volume or effect than the rates established by the order herein as minimum for highway carriers, are unreasonably low, insufficient and not justified by transportation conditions *** and should be discontinued. ****

Complainant offered no evidence to show whether or not the rate disparity existing at Ravenswood at the time the shipments moved resulted in undue discrimination.

The admission of a defendant cannot be accepted as conclusive in reparation proceedings (Swift & Company vs. Chicago & Alton Railroad Company, 16 I.C.C. 426). It must be supported with evidence of probative value, lest by its admission defendant might be permitted to accomplish what would in effect amount to an unlawful rebating of transportation charges.

From the foregoing facts and circumstances it must be concluded that the assailed rate has not been shown to be unjust, unreasonable, nor unduly discriminatory. The complaint will 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 9th day of May, 1938.

COMMISSIONERS