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, and SOUTHERN PACIFIC COMPANY, a corporation, Defendants	Case No. 4245

ORIGINAL

W.H. Kessler for Salinas Valley Ice Company, Ltd.

BY THE COMMISSION:

OPINION ON REHEARING

By its Decision No. 30558, dated January 26, 1938, in the above entitled proceeding, the Commission dismissed the complaint of the Salinas Valley Ice Company, Ltd., wherein reparation was sought on 123 carloads of ice moving from Stockton via The Western Pacific Railroad Company to San Jose,

thence Southern Pacific Company to Salinas.[1] Thereafter complainant filed its petition for rehearing which was granted.

Rehearing was had before Examiner W.S. Johnson at San Francisco , May 23, 1938.

In support of its contention that charges paid were unreasonable to the extent they exceeded charges computed on a rate of 11½ cents, complainant upon rehearing introduced an exhibit showing the history of the assailed rate and a comparison of the assailed rate with rates on ice for varying lengths of haul. According to this exhibit a commodity rate was first established on ice from Stockton to Salinas via the route of movement on May 16, 1925. This was a rate of 14 cents. Thereafter this rate was successively reduced to 12½ cents and 11½ cents. Complainant asserts that these reductions were voluntarily made and that neither was published to meet motor truck competition. The witness introducing the exhibit had no knowledge of whether there was a movement under the compared rates, nor was any evidence offered as to the reasonableness of such rates.

Thus complainant on rehearing, as on the original hearing, rests upon (a) an admission of unreasonableness by one of

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[1] A combination rate of 12½ cents per 100 pounds was assessed on the shipments in issue. It was made up of a 6½ cent factor, minimum weight 50,000 pounds, from Stockton to San Jose via the Western Pacific, plus a 6 cent factor, minimum weight 42,000 pounds, from San Jose to Salinas via the Southern Pacific. Subsecuent to the movement of these shipments, the Western Pacific published a proportional rate of 5½ cents, minimum weight 42,000 pounds, thereby producing a through rate of 11½ cents. Complainant then assailed the 12½ cent rate as being unjust and unreasonable in violation of Section 13 of the Public Utilities Act to the extent it exceeded 11½ cents. Defendant Western Pacific by its answer admitted the

the defendants, (b) the fact that the sought rate of 11½ cents was voluntarily established, and (c) comparisons with rates on ice between other points. Commenting on the sufficiency of such a showing in the original order, in this proceeding the Commission said:

> "** 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.) 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.)
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> 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.430)."

Furthermore, the evidence on rehearing shows that during the period the shipments involved in this proceeding moved, there was in effect from Stockton to Salinas via Southern Pacific a rate of 11 cents per 100 pounds which, subject to a switching charge of $2.70 per car, was available to complainant had it not chosen a higher rated joint route. The 11½ cent rate applying via the route of movement and established subsequent thereto through the medium

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1 (concluded)
assailed rate to be unreasonable, and expressed a willingness to join in payment of reparation. Defendant Southern Pacific failed to answer the complaint. To sustain its allegation of unreasonableness, complainant relied on (a) the admission of defendant Western Pacific, (b) comparison with certain other rates, and (c) the fact that the sought rate had subsequently been established.

of the publication by defendant Western Pacific of a proportional rate beyond San Jose is one obviously compelled by the competition of the Southern Pacific local rate of 11 cents in order to place the Western Pacific in a position to participate in the movement of ice from Stockton to Salinas. In view of these circumstances, the admission of unreasonableness on the part of defendant Western Pacific loses much of its force.

Although complainant stated in its petition for rehearing that it intended to present additional evidence in support of its allegation of unreasonableness, the evidence actually submitted is largely cumulative and still contains the infirmities which the Commission discussed in the original order. 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 23rd day of June, 1938.

Commissioners