

Decision No. 31037

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

THE CUDAHY PACKING COMPANY,)

Complainant,)

vs.)

SOUTHERN PACIFIC COMPANY,)
SAN DIEGO & ARIZONA EASTERN RAIL-)
WAY COMPANY,)

Defendants.)

Case No. 4211

BY THE COMMISSION:

O P I N I O N

Complainant seeks a waiver of undercharges and payment of reparation in connection with 10 double deck carloads of feeder sheep transported by the San Diego & Arizona Eastern Railway Company from Seeley to Jacumba Hot Springs on May 18, 1935; 3 double deck carloads moving over the joint route of the Southern Pacific Company and San Diego & Arizona Eastern Railway Company from Calexico to Jacumba Hot Springs via El Centro on the same date; and 13 double deck carloads moving over such joint route from Jacumba Hot Springs to Calexico on October 9, 1935.¹ It alleges that charges assessed were unjust and unreasonable in violation of Section 13 of the Public Utilities Act.

The matter was submitted upon the allegations of the complaint and upon complainant's written statement of facts and argument.

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Although double deck cars were ordered in each instance, the shipments actually moved in single deck cars. The tariff provided that double deck rates might be applied where single deck cars were furnished at carrier's convenience.

Calexico is located on the line of the Southern Pacific Company 9.1 rail miles south of El Centro, the junction point with the line of the San Diego & Arizona Eastern Railway Company; Seeley is situated 8.3 rail miles west of El Centro on the line of the San Diego & Arizona Eastern Railway Company; and Jacumba Hot Springs is located on the same line 46.9 rail miles west of Seeley.

Charges were originally assessed and collected on the basis of \$45.00 per double deck car from Seeley to Jacumba Hot Springs, \$52.00 per double deck car from Calexico to Jacumba Hot Springs and \$52.00 per double deck car from Jacumba Hot Springs to Calexico. Balance due bills were later presented on the shipments moving from and to Calexico, on the basis of \$64.00 per car, payment of which was refused.² Complainant now seeks a waiver of the undercharges and payment of reparation to the basis of charges that would have accrued under a rate of \$75.00 per car for the movements from Calexico and Seeley to Jacumba Hot Springs and return to Calexico.

Complainant alleges that the sheep moving from Jacumba Hot Springs to Calexico were the same sheep that had previously been moved into that point from Seeley and Calexico. It states that prior to the time the first movement was made defendant had agreed to establish a round-trip rate of \$75.00 per car and that such rate was actually established later, but that due to drought conditions it became necessary to move the stock before the rate

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The \$64.00 per car rate assessed is a combination of the local rate between Calexico and El Centro of \$20.00 per car, published in Southern Pacific Tariff No. 645-D, C.R.C. No. 3118, and the local rate of \$44.00 per car between El Centro and Jacumba Hot Springs, published in San Diego & Arizona Eastern Tariff No. 21-A, C.R.C. No. 68.

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was made effective.

Complainant compares the rates assessed with single line mileage rates maintained by the Southern Pacific Company and with certain joint line mileage rates maintained by that company and railroads other than the San Diego & Arizona Eastern Railway Company. It points out that under such single line and joint line mileage scales rates of \$76.00 and \$86.00, respectively, would be produced for the round-trip movement from Calexico to Jacumba Hot Springs and return, (computed separately to and from the feeding point) as compared with the applicable charges for the two-way haul of \$109.00 per car on the shipments originating at Seeley and \$128.00 per car on those originating at Calexico. If round-trip mileage from Calexico were used the single line and joint line scales would have produced rates of \$55.00 and \$60.00 per car, respectively.

In further support of its plea for reparation complainant shows that at the time of movement there was in effect from Calexico to San Diego, situated beyond Jacumba Hot Springs, a rate of \$52.00 per car ⁴ and, also, that a round-trip truck rate of \$70.00 per car is available from Calexico to Jacumba Hot Springs and return.

As hereinbefore indicated complainant has attacked the reasonableness of the aggregate charges assessed on the round-trip movements and has not assailed the one-way rates. However, the

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The rate of \$75.00 per car was published in Southern Pacific Company Tariff No. 976-D, C.R.C. No. 3215, to become effective May 30, 1935, on one day's notice.

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The \$52.00 per car rate was published in Southern Pacific Company Tariff No. 976-D, C.R.C. No. 3215 for application from Calexico to San Diego on interstate traffic moving through the Republic of Mexico.

according of a lower rate for round-trip movements than would be applicable for each one-way movement, computed separately, is in the nature of a transit privilege and is not a concession which the carriers should, under ordinary circumstances and in the absence of a showing of undue discrimination, be required to offer. The reasonableness of the through charges on the shipments here involved must therefore be determined by testing the reasonableness of the one-way factors.

In any event, whether the single line and joint line mileage scales be compared with the aggregate rates assessed for the round-trip movement or with the one-way factors, they are of little value in measuring reasonableness in the absence of a showing that they are applicable for hauls in which transportation conditions are similar. Insofar as the interstate rate in effect from Calexico to San Diego is concerned, complainant made no attempt to establish that it was a reasonable rate or that the characteristics of the movement from and to those points were similar. "Going" truck rates are of course of little value in measuring the reasonableness of rail rates for reparation purposes.

It is apparent from complainant's memorandum that it is relying principally on the fact that defendants had agreed to publish the sought rate but that due to drought conditions it became necessary to move the stock before this was accomplished. That complainant recognizes that the sought rate may be below a maximum reasonable level is evidenced by its citation of various cases holding that the carriers have the privilege of establishing rates less than maximum reasonable rates to meet particular situations. (Western Trunk Lines Class Rates, 173 I.C.C. 637 and Railroad Commissioners of Florida vs. A. & R. R., 177 I.C.C. 735.) However, under the Public Utilities Act the Commission may not

award reparation below a maximum reasonable basis even though a rate somewhat lower than a maximum reasonable rate may appear desirable in particular situations. Carriers should not be required to maintain rates less than maximum reasonable rates (see Railroad Commissioners of Florida vs. A. & R. R., supra, cited by complainant).

Upon consideration of all the facts of record the Commission is of the opinion and finds that complainant has relied on comparisons with rates which were not themselves shown to be reasonable or applicable for movements of this nature and has failed to establish that charges assessed on the one-way movements, or on the two-way movements in the aggregate, were unreasonable. Reparation will be denied and the complaint dismissed.

O R D E R

This case being at issue upon complaint and upon complainant's written statement of memorandum of facts and argument, a 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 27th day of

June, 1938.

Walter H. Brown
Leon C. Whittell
Frank A. Allen
Paul W. Whipple
Ray C. Riley
COMMISSIONERS