

Decision No. 31294

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ITALIAN SWISS COMPANY,

Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY; NORTHWESTERN PAC-
IFIC RAILROAD COMPANY,

Defendants.

Case No. 4222

ORIGINAL

BY THE COMMISSION:

O P I N I O N

Complainant alleges that the charges maintained by defendants for the transportation of wine grapes in bulk in open cars from Exeter to Asti were, are and for the future will be unjust, unreasonable and discriminatory, in violation of Sections 13(a) and 19 of the Public Utilities Act. Reparation on 12 carloads transported during the period December 13 to December 16, 1935 and a rate for the future are sought.

The matter was submitted upon written statements of facts and argument.

Exeter is located on the lines of the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the Santa Fe) and of the Southern Pacific Company, approximately 52 miles southeast of Fresno. Asti is located on the line of the Northwestern Pacific Railroad Company (hereinafter referred to as the Northwestern) 80 miles north of San Francisco. The shipments involved moved via the Santa Fe to Tiburon and thence via the Northwestern to Asti, a distance of 324 miles. Charges were assessed and collected on complainant's shipments on the basis

of a rate of 26 cents, although the applicable rate at the time of movement was $25\frac{1}{2}$ cents.¹ This rate remains in effect, as increased by the recent general increase authority granted by Decision No. 30784 in Application No. 21603. Complainant seeks a rate of 20 cents.

At the time the shipments here involved were made there was in effect for transportation from Jovista, a point approximately 42 miles beyond Exeter, to Asti, via the Southern Pacific Company and the Northwestern, a distance of 378 miles, a rate of 20 cents. This rate, complainant contended, should not have been exceeded on its shipments. Complainant presumed that the 20 cent rate was reasonable for movements from Jovista to Asti via the Southern Pacific and the Northwestern. It pointed out that the Southern Pacific and the Santa Fe ordinarily maintain equal rates from competitive points and argued that the 20 cent rate must therefore be a reasonable rate for transportation from Jovista and the intermediate point of Exeter to Asti via the Santa Fe and the Northwestern.

Complainant submitted a statement comparing ton mile, car mile and per car earnings which would accrue under a rate of 20 cents with earnings under rates maintained by defendants and by other rail carriers for the transportation of wine grapes and other commodities between numerous points and for varying lengths of haul. According to this statement, the 20 cent rate would produce ton mile earnings of 1.17 cents and car mile earnings of 29.3 cents, whereas the compared rates yield earnings ranging from .83 cents to 3.25 cents per ton mile and from 10.6 to 48.8 cents per car mile.

¹ Rates are stated in cents per 100 pounds. The $25\frac{1}{2}$ cent rate was a combination of a rate of $7\frac{1}{2}$ cents from Exeter to Fresno (Santa Fe Local Tariff C.R.C. No. CL-1549) with a joint rate of 18 cents from Fresno to Asti (Pacific Freight Tariff Bureau Tariff No. 65-J, C.R.C. No. 578 (L.F. Potter Series). Both factors were subject to a minimum weight of 50,000 pounds.

Defendants denied that the assailed rate was or would for the future be unjust, unreasonable or discriminatory. In addition, the Northwestern asserted that the 20 cent rate from Jovista to Asti via the Southern Pacific-Northwestern route had been established pursuant to the representation made by the complainant herein and the Earl Fruit Company that a quantity of wine grapes then on hand at Jovista could not be moved to the Asti winery unless a rate of that volume was made available.

The comparisons offered by complainant do not establish that the applicable rate was or is unreasonable for the transportation here in issue. The statement covers many commodities and types of movements which differ from and have no relation to the movement here involved, and it is not shown that the compared rates are themselves reasonable.² The mere fact that a rate has been established pursuant to negotiations between a carrier and a shipper does not, in and of itself, establish such a rate as a maximum reasonable rate. Moreover, the fact that two carriers may ordinarily maintain equal rates from competitive points does not necessarily indicate that they should be required to do so in all instances.

The principle is well established that when a complainant relies on rate comparisons to establish the unreasonableness of a given rate, it must establish that the rates with which comparisons are made are themselves reasonable and that they cover movements in which the transportation characteristics are similar

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It is significant to note that in several instances the compared rates are non-intermediate in application and that in one instance a compared rate is subject to an expiration date. Rates of this nature are generally depressed rates published to meet competitive conditions.

to those encountered under the assailed rate. (Lavensaler vs. Kuppinger, 29 C.R.C. 77, 83, and Richfield Oil Co. vs. Sunset Ry. Co., 24 C.R.C. 729, 731.) This, complainant has not done; nor has it offered evidence or argument to support its allegation of discrimination. The complaint will be dismissed.

Defendants will be expected forthwith to refund to complainant all charges collected in excess of those which would have accrued under the lawfully applicable rate of 25½ cents.

O R D E R

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

IT IS HEREBY ORDERED that the above entitled complaint be and it is hereby dismissed.

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

Ray A. Wabner
Frank B. Wabner
Ray L. Riley