

DECISION NO. 32051

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

In the Matter of the Establishment of maximum or minimum, or maximum and minimum rates, rules and regulations of all Radial Highway Common Carriers and Highway Contract Carriers, operating motor vehicles over the public highways of the State of California, pursuant to Chapter 223, Statutes of 1935, for the transportation for compensation or hire of any and all commodities and accessorial services incident to such transportation.)

Case No. 4088
Part "F"

In the Matter of the Investigation and Establishment of rates, charges, classifications, rules, regulations, contracts and practices, or any thereof, of Common Carriers of property.)

Case No. 4145

In the Matter of the Establishment of maximum and minimum, or maximum or minimum rates, rules and regulations of all common carriers, as defined in the Public Utilities Act of the State of California, as amended, and all highway carriers, as defined in Statutes 1935, Chapter 223, as amended, for the transportation, for compensation or hire, of any and all agricultural products.)

Case No. 4293

Additional Appearances

Arthur Glanz, for Leo Turner, petitioner

Wallace K. Downey and C. G. Anthony, for Pacific Freight Lines and Keystone Express System

William Meinhold, for Southern Pacific Company

E. J. Forman, for Globe Grain and Milling Company

L. H. Stewart and Malcolm E. Stewart, for California Cotton Oil Corporation, J. G. Boswell Company and Producers Cotton Oil Company

mills served by rail. Petitioner alleges that as a result of this rate disadvantage he has lost all of his flaxseed cleaning business, and is threatened with loss of his entire investment in the cleaning mill of approximately \$20,000. He testified that his mill is conveniently located on a paved street near the center of the town of Imperial, close to the main highway, on a site which, except for the lack of rail track facilities, is in every way equal or superior to sites occupied by other cleaning mills. He explained that he is neither a shipper nor a carrier, and is interested in the flaxseed only to the extent that he cleans it for others.

It appears that in each year since 1934 Turner's mill has operated at capacity during the flaxseed season, which normally is concentrated into a period of about six weeks. Petitioner had been assured by growers that a large quantity of flaxseed would be given him for cleaning during the 1939 season, and recently enlarged his mill upon this assurance. When the movement started, about a week before the date of the present hearing, growers advised Turner that they would be unable to give him any business because of the rate disadvantage against shipments moving through his mill. It was at that time that he first learned of the unfavorable rate differential. At the time of the hearing the mill was closed for want of business, and Turner estimated that for each day it remained closed during the peak of the season his loss in gross revenue would be approximately \$90.00.

Turner testified that the prevailing charge for cleaning flaxseed in the Imperial Valley during the current season is \$2.50 per ton. He explained that he knew from past experience that the expense of operating his mill was not less than \$2.00 per ton, and therefore it would be economically impossible for

BY THE COMMISSION:

FIFTH SUPPLEMENTAL OPINION

By prior orders in these proceedings, the Commission established minimum rates for the transportation of grain, grain products and related articles, including flaxseed, by for-hire highway carriers throughout the State of California. By petition for modification filed May 23, 1939, Leo Turner, an individual conducting a cleaning mill in the city of Imperial, seeks amendment to the orders to permit milling and cleaning of flaxseed in transit at Imperial, or, in the alternative, to permit highway carriers to apply rail rates from points in Imperial situated within one-half mile of rail facilities.

A further hearing for the purpose of receiving evidence relative to this petition was had at Los Angeles on May 27 and 29, 1939, before Examiner Bryant. From the petition, and from the evidence adduced at the public hearing, it appears that Turner's cleaning mill is located about five city blocks distant from the nearest rail facility, whereas other flaxseed cleaning mills within the Imperial Valley, about four in number, are all served by rail spur. Shipments moving by highway carriers from petitioner's mill to destinations in the metropolitan Los Angeles area are subject, under the present orders, to a minimum rate of 16-1/2 cents,¹ whereas shipments from mills located on rail facilities enjoy a minimum truck rate of 13 cents, thus creating a differential of 3-1/2 cents per 100 pounds in favor of shippers using cleaning

1 All rates are stated herein in cents per 100 pounds, and are subject to a minimum weight of 30,000 pounds when predicated upon the overhead truck scale alone, and to a minimum weight of 40,000 pounds when the rail rate is a factor in computing the rate. The rate situation will be further explained hereinafter.

him to absorb the rate differential of $3\frac{1}{2}$ cents per 100 pounds, or 70 cents per ton. He said also that it would be impossible to move his machinery to a location on rail facility in order to obtain the benefit of railhead rates, as it would cost in excess of \$15,000 to duplicate his buildings on another site, and this amount was more than he could afford. He stated that to the best of his knowledge and belief the granting of his petition would not work injury upon any other interest in the Imperial Valley, but that to the contrary it would work to the benefit of growers and shippers.²

A rate and traffic expert, testifying in Turner's behalf, suggested two methods of removing the rate disadvantage against shipments moving through Turner's mill. Under the first of these, highway carriers would be permitted, in using common carrier rates under the alternative provisions of the orders, to apply such rates from points of origin within one-half mile of the common carrier team track or established depot at the city of Imperial. Under the second proposal, highway carriers transporting shipments under the minimum rate of $3\frac{1}{2}$ cents established for local transportation within the Imperial Valley would be permitted to stop such shipments in transit at Imperial

2 The witness explained that even with his mill in operation the cleaning facilities in the Imperial Valley were sufficient to accommodate only a small proportion of the flaxseed produced there, and that the farmers benefit in several ways by having the seed cleaned before shipping it to final destination for sale.

for cleaning, without additional charge.³ The witness stated that in his opinion the first proposal was the more desirable of the two. He said that he had been unable to devise any other plan which he considered feasible, practicable and workable. It was not intended under either proposal to restrict the relief to flaxseed, but rather to make it applicable to all commodities that would fit the circumstances.

This witness stated that in working out the two proposals his aim had been to provide some method whereby Turner might be competitive from a rate standpoint with other parties who might be served by rail facility. He testified that he had given consideration to the possible effect which adoption of either of his proposals might have on the general rate structure, and had come to the conclusion that the circumstances surrounding Turner's operation were unique and peculiar, and therefore warranted special consideration. He was unable to point to any specific peculiarities which would distinguish Turner's situation from that of other shippers or consignees whose plants were not served by rail, except that he believed Turner's predicament to be more critical. The witness had made no study of the cost of performing the truck transportation, the loading and unloading, or of any of the other services involved, and he made no attempt

3 The proposed rules are as follows:

1st (To be added as Note 3 to Item 85 of Appendix A to Decision No. 30640)

"(Applies only at Imperial, California). Under the provisions of this rule the lowest common carrier rate may be used from points of origin within one-half mile of the team track or established depot from which such common carrier rate applies."

2nd (To be added as a note or reference to the rate of 3½ cents per 100 pounds provided in Appendix A-1 to Decision No. 31328)

"Shipments moving from point of production under the rates provided for herein may be stopped in transit at Imperial, California for cleaning, without additional charge."

to justify his proposals from a cost standpoint.

The proposed modifications were opposed by Southern Pacific Company, Pacific Freight Lines, Keystone Express System, and Globe Grain and Milling Company.

A rate witness for Southern Pacific Company testified that in his opinion the evidence offered by petitioner did not contain sufficient information to properly portray the competitive rate situation existing between the various mills. He believed that the rate differential complained of by Turner might be partially or wholly offset by other advantages, such as closer proximity to the center of flax production in the Imperial Valley. He thought also that Turner might reduce the differential by arranging to have the flaxseed transported from his mill to rail team track at a cost of less than $3\frac{1}{2}$ cents per 100 pounds. This witness believed that the proposed rules would be prejudicial to his company, and would possibly result in undue prejudice to other mills. He pointed out that the rail lines have found it necessary to provide quite elaborate rules to govern transit privileges, and he said that in his opinion the transit rule suggested by petitioner would be wholly inadequate for the purpose for which it was intended.

Witness for Globe Grain and Milling Company expressed the fear that if the proposed rules were adopted other mills, and other shippers and consignees, would deem it advisable to seek similar treatment for their own account, with the result that the grain rate structure of the state would soon be seriously disturbed and many of the advantages of rate stabilization would be lost. He said that if the suggested transit rule were placed in effect his company would consider it necessary to apply

immediately for similar provisions to govern movements from Los Angeles to all rail stations in the Imperial Valley, and if the rule were adopted at Imperial he saw no reason why the same privilege should not be extended at Los Angeles. This witness also expressed the belief that the proposed transit rule was ambiguous as well as insufficient; and he argued that transit is a privilege to be granted by the carrier to the shipper, and not to be established by a regulatory body in the manner here suggested.

Proper understanding of the problem here presented for disposition requires a brief explanation of the bases upon which minimum rates were established for transportation of the commodities involved. By Decision No. 30640 of February 14, 1938, in Case No. 4088, Part "F", and Case No. 4118, the Commission prescribed minimum truck rates predicated upon studies of the cost of truck operation introduced in evidence by a Commission engineer, by shipper witnesses, and by a witness for an association of truck owners. These rates, which vary with the weight of the shipment and the length of haul, were designed to reflect the cost of truck transportation as developed by the cost studies of record, and will sometimes be referred to herein as the "overhead" truck rates.⁴ By the same decision, rules were provided under which the highway carriers may use common carrier rates, or combinations of common carrier

4 In Decision No. 30640, supra, the Commission said, "each of the cost studies available in the record contributes valuable information concerning truck operating costs, and all of them, taken collectively would seem to indicate the approximate level of rates necessary under ordinary conditions to return to efficient operators the reasonable minimum cost of performing the service."

rates and the overhead truck rates, when such rates or combinations of rates result in lower charges for the same transportation between the same points of origin and destination. By subsequent amendment (Decision No. 31828 of March 13, 1939) the Imperial Valley was given the benefit of uniform, average rates by the addition of provisions that rates from points lying within the Imperial Valley Irrigation District should be those computed from the city of Imperial; and that rates for transportation within said district for distances of 10 miles or less, or for distances of more than 10 miles when movement is to a team track or to an established depot, should be blanketed at $3\frac{1}{2}$ cents per 100 pounds on a minimum weight of 30,000 pounds.

Under these rate bases the overhead truck-cost rate from any point in the Imperial Valley to the industrial area of Los Angeles is 19 cents. However, this rate seldom comes into play because the present carload rail rate from Imperial Valley points to Los Angeles is only 13 cents.⁵ Thus, for transportation from rail points in the valley to rail points in Los Angeles the highway carriers may charge 13 cents; for transportation from off-rail points in the valley to rail points in Los Angeles they may charge $16\frac{1}{2}$ cents, being the combination of the rates of 13 cents and $3\frac{1}{2}$ cents. In this manner is created the $3\frac{1}{2}$ cent differential which shipments moving through Turner's mill (an off-rail point) pay in comparison with shipments moving through a mill served by rail facilities.⁶ It will be seen that the differential is not created by a difference in truck costs. Rather, the

5 Southern Pacific Company's Tariff No. 659-F, C. R. C. No. 3352, Index No. 5875, First Revised Page No. 190.

6 Rates to Los Angeles were selected by petitioner as examples. The situation with respect to the rate differential would be similar to other destinations.

highway carrier is permitted to charge less than the overhead truck-cost rate in order to meet the competition of another agency of transportation, and, in final analysis, the differential represents nothing more or less than the approximate difference in the degree and character of competition at the two points.

It will be seen that either of the modifications proposed by petitioner is in effect a proposal that highway carriers be permitted to charge less than the overhead truck-cost rates, and also less than the rates necessary to meet the competition of common carriers. No attempt was made on the present record to justify the suggested modifications from the standpoint of the cost of performing the transportation or accessorial services. The proposals were motivated frankly and solely by Turner's desire to place his mill upon a transportation rate equality with competing mills. Under the circumstances here presented, no justifiable basis appears for granting the petition in whole or in part.

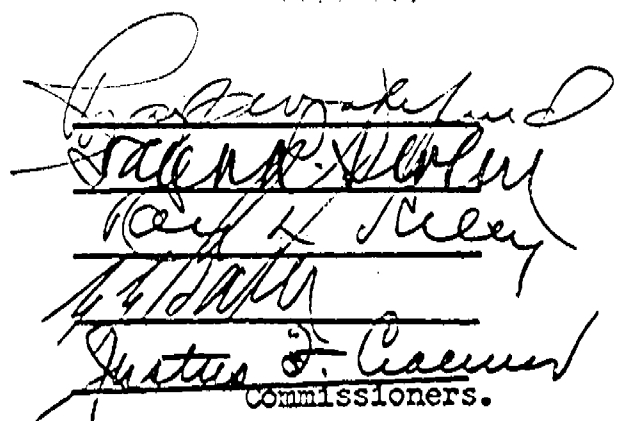
The petition will be denied.

O R D E R

Public hearings having been held in the above entitled proceedings, and based upon the evidence received at the hearings and upon the conclusions set forth in the preceding opinion,

IT IS HEREBY ORDERED that the petition for modification filed in Case No. 4088 by Leo Turner on May 23, 1939, be and it is hereby denied.

Dated at San Francisco, California, this 31st day of May, 1939.


Commissioners.