

Decision No. 22288

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Shannahan Brothers, Incorporated,  
Complainant,

vs.

Union Pacific Railroad Company and  
Southern Pacific Company,  
Defendants.

ORIGINAL

Case No. 4377.

BY THE COMMISSION:

O P I N I O N

Complainant alleges that the charges assessed and collected by defendants for the transportation from Bly Quarry to Arguello, during the period from October 22, 1937, to July 28, 1938, of 39 carloads of waste rock, 53 carloads of riprap and 1 carload of granite spalls, (1) were, are and for the future will be unjust and unreasonable, in violation of Section 13 of the Public Utilities Act. It seeks reparation and rates for the future.

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

Bly Quarry is located on the Crestmore branch of the Union Pacific Railroad Company, 51 miles east of Los Angeles. Arguello is located on the coast line of the Southern Pacific Company, 161 miles northwest of Los Angeles. The shipments moved via Union Pacific to Los Angeles, thence via Southern Pacific to Arguello, a total distance of 212 miles.

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(1) Riprap consists of large pieces of rock which require the assistance of power in loading; granite spalls are smaller than riprap and generally weigh from 100 to 1,000 pounds; waste rock is scrap rock consisting of the residue resulting from blasting to obtain riprap and granite spalls.

The rates assessed were  $9\frac{1}{2}$  cents on the waste rock, all of which moved prior to April 15, 1938 (the date on which the general increase authorized by Decision No. 30784 in Application No. 21603 became effective); 11 cents on the riprap which moved prior to that date and 11.9 cents on the riprap which moved thereafter; and 10 cents on the granite spalls, which moved after April 15, 1938. (2) Complainant seeks reparation to the basis of 8 cents on the shipments which moved prior to April 15, 1938, and 9 cents on the shipments which moved thereafter. It seeks the prescription of a rate of 9 cents for the future.

The rate of 8 cents, to the basis of which reparation is sought, is that provided in the so-called unpublished southern California scale (3) for joint-line movements of from 175 to 225 miles. The rate of 9 cents gives effect to the general increase authorized by

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(2) Rates are stated in cents per 100 pounds. The rates assessed on the shipments which moved prior to April 15, 1938, were based on a combination of rates of  $2\frac{1}{2}$  cents applicable to waste rock and granite spalls and 4 cents applicable to riprap, from Bly Quarry to Los Angeles (published in Union Pacific Tariff No. 7020, C.R.C. No. 327), and a rate of 7 cents applicable to the transportation of both commodities from Los Angeles to Narlon, a point 19 miles beyond Arguello (published in Southern Pacific Tariff No. 330-F, C.R.C. No. 3112). On April 15, 1938, the  $2\frac{1}{2}$  cent rate was increased to 2.5 cents, the 4 cent rate was increased to 4.4 cents, and the 7 cent rate was increased to 7.5 cents. These rates were used in constructing combination rates on the shipments moving after that date.

(3) The unpublished southern California scale is described in Union Rock Company vs. The A. T. & S. F., et al., 27 C.R.C. 285, as follows: (Rates are stated in the quotation in cents per ton.)

"This scale is unpublished, but is used by defendants as a means of arriving at the specific point to point rates. The rates on crushed rock and gravel are established on an equal basis, but on sand the rates are 10 cents lower than the rates on crushed rock and gravel. \*\*\* For distances under 25 miles the rate on crushed rock and gravel is set at 60 cents and on sand at 50 cents. For 35 miles and over 25 miles the rate is 70 cents on crushed rock and gravel and 60 cents on sand, 10 cents being added to the latter rates for each additional block of 20 miles up to and including 75 miles, then 10 cents for each block of 25 miles until 175 miles is reached, then 10 cents for the next block of 50 miles. For distances over 225 miles, but not over 250 miles, the latter distance being the maximum limit of the scale, an additional 30 cents is added."

Joint-line rates under this scale are 20 cents per ton higher than the single-line rates.

Decision No. 30784, supra. It is contended by complainant that this scale affords a proper measure of maximum reasonableness in that (1) it has been widely employed by defendants and other rail carriers in constructing rates for the transportation throughout southern California of rock and related articles, including the commodities here involved; (2) it is higher than the scale applying in northern California for hauls said to be more difficult and expensive; and (3) it has been adopted by this Commission as a basis for awarding reparation in connection with various rock movements in southern California.

Exhibits submitted by complainant show that numerous rates applying to single-line and joint-line movements of rock and related articles (4) within southern California are of the same volume as those provided in the unpublished southern California scale for like distances. These exhibits show particularly that a large number of rates applying from Bly Quarry (the origin here involved), and Ormand (another riprap shipping point located on the Union Pacific four miles from Bly Quarry), to destinations on The Atchison, Topeka and Santa Fe and Pacific Electric Railways, and from Declezville (a riprap shipping point located on the Southern Pacific in the vicinity of Bly Quarry), to local destinations, are derived from that scale. Complainant asserts that operating conditions encountered in the movement from Bly Quarry to Arguello are no more adverse than those met in the movements covered by its rate exhibits. (5)

Complainant also compares the unpublished southern California scale with the joint-line mileage scale maintained by rail carriers

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(4) The commodity description generally used in connection with such rates is as follows: "Boulders, Crushed Rock, Disintegrated Rock, Granite Spalls, Gravel, Gutter Rock, Riprap, Rubble, Sand (except Moulding Sand), and Waste Rock."

(5) The physical characteristics of the transportation from Bly Quarry are described in detail in complainant's statement. It is pointed out that only 3 miles of branch-line movement are involved, that other industries are located on the same branch line and that Declezville, the comparative point on the Southern Pacific, is itself located on a branch line.

for transportation of rock and related articles in the territory north of Bakersfield and Santa Barbara, showing that the latter scale is the lower. It points out that 27½ per cent of the distance from Bly Quarry to Arguello is north of Santa Barbara territory, and that the northern California scale applies to movements from Southern Pacific points to points on the Northwestern Pacific Railroad Company which involve barging across San Francisco Bay. Complainant does not contend that the northern California scale should be used as an absolute measure of maximum reasonable rates for southern California territory, but advances the comparison as an additional reason for its claim that the unpublished southern California scale should not be exceeded.

Several decisions are cited by complainant as being conclusive that the unpublished southern California scale is a proper measure of maximum reasonableness for the transportation here involved. These decisions are Dillon vs. A. T. & S. F. Ry. Co., (unreported), (Decision No. 22733, August 4, 1930, in Case No. 2872), in which defendants were authorized to waive existing undercharges on shipments of crushed rock from Kincaid to Newberry, based on their admission that charges assessed in excess of the unpublished southern California scale were unreasonable; United Concrete Pipe Corporation vs. P. E. Ry., et al., (unreported) (Decision No. 23153 of December 10, 1930, in Case No. 2891), in which reparation was awarded to the level of the unpublished southern California scale upon defendants' admission that the higher rates assessed were unreasonable; Jahn and Bressi Construction Co. vs. H. I. Ry., et al., (38 C.R.C. 54), in which reparation was awarded to the basis of the single-line rate under the unpublished southern California scale on shipments of gravel from Frink to Holtville, the joint-line rate under that scale having been assessed originally; and Carter vs. S. P. Co., (38 C.R.C. 791), in which reparation was awarded to the basis of the unpublished southern California scale on shipments of rock, sand and gravel moving from Fillmore to Santa Barbara, Goleta and Orella.

While conceding that the commodities involved in the decisions cited, as well as those which actually move under many of the rates shown on its exhibits, are ordinary gravel, crushed rock and sand, complainant asserts that there is no justification for maintaining higher rates on waste rock, riprap or granite spalls. In addition to pointing out that defendants and other rail carriers have usually grouped all of these commodities at equal rates for many years in this state, as well as in Nevada and Arizona, and from Texas to New Mexico, complainant states that all of the several kinds of rock are used for common purposes, and that the value of riprap does not exceed that of ordinary crushed rock by more than 33 cents per ton. It states, moreover, that specially equipped cars were not used for the shipments here involved. (6)

In further support of its contention that the assessed rates were unreasonable, complainant points out that a rate of 10 cents, applicable to the regular rock grouping, was established by defendants on October 10, 1938, (less than 3 months after the last shipment here involved moved) for transportation from Ormand to Arlight, a point 2 miles beyond Arguello.

Complainant admits that for transportation from Bly Quarry to Los Angeles the Union Pacific has maintained a higher rate on riprap than on other commodities in the rock group. It points out, however, that the riprap rate is based on the unpublished southern California scale and argues that the lower rate on the other commodities was induced by truck competition. It calls attention to the fact, moreover, that forty of the shipments here involved consisted of waste rock and granite spalls, to which the lower rate was applicable.

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(6) Sixty of the ninety-three shipments involved in this complaint were transported in ordinary steel gondola cars; the balance being transported in flat cars. Complainant asserts that the flat cars were not provided with double floors or otherwise specially equipped. This assertion is supported by a statement showing that the cars involved had not been sent to the shop for reflooring or floor repairs since 1935.

The principal defense raised is that the unpublished southern California scale was designed for use in constructing rates on ordinary gravel, crushed rock and sand, and that waste rock, riprap and granite spalls have transportation characteristics which entitle them to higher rates. It is asserted in this connection that the latter commodities move sporadically; that riprap ranges in value from 95 cents to 150 cents per ton, whereas the value of ordinary gravel, crushed rock and sand is, it is claimed, approximately 60 cents per ton;<sup>(7)</sup> and that waste rock, riprap and granite spalls require specially equipped cars.<sup>(8)</sup> The inclusion of all of these commodities in the rock grouping is explained as being merely an expedient to simplify the tariff publication.

Transportation from Bly Quarry to Arguello, through the Los Angeles terminal, is said to be unusually expensive to perform and operating practices are described in detail to support this claim.

It is stated by defendants that in recent years there has been a substantial reduction in the volume of rock traffic moving by rail, and it is urged that this fact be given recognition in determining the reasonableness of the rates here in issue. A fair measure of maximum reasonableness is said to be the scale prescribed by this Commission in Decision No. 28625, as amended, in Case No. 4087, as minimum for the transportation of sand, rock and building materials.

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(7) This assertion is supported by a comparison of bids submitted to the United States Government for the furnishing of gravel, crushed rock and sand with those submitted for the furnishing of "derrick stone" (riprap). The net prices for sand, rock and gravel shown are 50 cents and 61 cents per ton, and on "derrick stone" are 95 cents, 105 cents and 120 cents per ton. Defendants state that the Southern Pacific paid 150 cents per ton for five cars of riprap appropriated by it.

(8) It is stated by defendants that the flat cars used to carry the riprap were provided with a double floor at an estimated expense of \$20.00 per car. It is not explained, however, whether or not this double flooring was provided especially for the shipments here involved or whether these cars were already so equipped.

in dump trucks by highway carriers. The latter rates are considerably in excess of those here sought. The assailed rates are also compared by defendants with rates prescribed by the Interstate Commerce Commission in Docket No. 17000, Part II (155 I.C.C. 247), for the transportation of similar commodities for an equal distance within Southwestern Territory, as increased by differentials said to be commonly accorded Mountain-Pacific Territory over such rates. (9)

In addition to the foregoing, defendants advance numerous defenses of a technical nature which do not appear to be sufficiently meritorious to warrant discussion.

It appears clear that under the circumstances here shown the unpublished southern California scale is a proper measure of the maximum reasonableness of rates for the transportation of ordinary gravel, crushed rock and sand, within the territory and between the points here involved. The principal issue to be determined, then, is whether or not waste rock, riprap and granite spalls possess such transportation characteristics as to entitle them to higher rates than the maximum reasonable rates for gravel, crushed rock and sand. The record indicates on the one hand that waste rock, riprap and granite spalls sometimes require cars with special decking and that they are somewhat more valuable than ordinary gravel, crushed rock and sand. It shows, on the other hand, that, with isolated exceptions, defendants have grouped all of these commodities at equal rates for many years; that the difference in value of the several commodities,

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(9) The term "Mountain-Pacific Territory" includes, among other areas, the entire State of California. The rate prescribed in Docket 17000, Part II, supra, for a joint-line haul of 212 miles within Southwestern Territory is 8½ cents. According to defendants, rates prescribed by the Interstate Commerce Commission in general proceedings for Mountain-Pacific Territory are ordinarily 10 to 35 per cent higher than rates prescribed for Southwestern Territory.

under ordinary circumstances, is probably less than 60 cents per ton;<sup>(10)</sup> and that special decking is not required for each individual movement but remains on cars assigned to this service over a considerable period of time. These asserted differences in transportation characteristics do not appear to be substantial enough to warrant disturbing the long established grouping. The maintenance of rates for waste rock, riprap and granite spalls higher than those accruing under the unpublished southern California scale, is not justified in this record.

We are of the opinion and find that the rates assailed were unjust and unreasonable, in violation of Section 13 of the Public Utilities Act, to the extent they exceeded a rate of 8 cents on shipments moving prior to April 15, 1938, and were and are unreasonable to the extent they exceeded and exceed a rate of 9 cents on shipments moving thereafter. We further find that a rate in excess of 9 cents will be unreasonable for this transportation in the future.

Defendants point out that payment and bearing of charges has not been proved. Complainant will submit to defendants for verification a statement of the shipments made, together with proof that it paid or bore the charges thereon. Upon payment of the reparation, defendants will notify the Commission of the amount thereof. Should it not be possible to reach an agreement as to the amount of reparation due, the matter may be referred to the Commission for further attention.

#### 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 basing this order on the findings of fact and the conclusions

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(10) As previously pointed out, defendants claim that the value of sand, rock, and gravel is approximately 60 cents per ton and that of riprap from 95 to 120 cents per ton.



contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendants Southern Pacific Company and Union Pacific Railroad Company, according as they participated in the transportation here involved, be and they are hereby ordered and directed to refund to complainant, Shannahan Brothers, Incorporated, all charges collected in excess of those found reasonable in the preceding opinion, together with interest at 6 per cent per annum.

IT IS HEREBY FURTHER ORDERED that said defendants be and they are hereby ordered and directed to establish on or before thirty (30) days from the effective date of this order, on not less than five (5) days' notice to the Commission and to the public, and thereafter to maintain, for the transportation of riprap, waste rock and granite spalls from Bly Quarry to Arguello, a rate of not to exceed 9 cents per 100 pounds.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 30<sup>th</sup> day of August, 1939.

Robert A. Shannahan  
Shannahan Brothers, Incorporated

Justus J. Calmes  
Commissioners.