Decision No. 32176

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

KRIEGER OIL COMPANY OF CALIFORNIA, a copartnership, and RIVERSIDE CEMENT COMPANY, a corporation,

Complainants,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY and UNION PACIFIC RAILROAD COMPANY,

Defendants.

ORIGINAL

Case No. 4289.

Additional Appearances

O. T. Helping and Jules J. Covey, for complainants.

BY THE COMMISSION:

OPINION ON REHEARING

By its Decision No. 31137, dated August 1, 1938, in the above entitled proceeding, the Commission dismissed the complaint of Krioger Oil Company of California and Riverside Cement Company, wherein reparation was sought on 27 tank carloads of fuel oil shipped from Crutcher via Pacific Electric Railway Company to Los Angeles, thence via Union Pacific Railroad Company to Crestmore. The dismissal was based upon the Commission's finding that complainants had failed to assume the burden of proving that the charges under attack were unreasonable. Thereafter complainants filed their petition for rehearing, alleging that they had additional evidence to present.

The petition was granted, and rehearing was had before Examiner Bryant at Los Angeles.

On 15 carloads which moved prior to May 15, 1937, charges were based on a rate of 12 cents per 100 pounds, and on 12 which moved thereafter on a rate of 9 cents per 100 pounds.[1] Complainants originally alleged that these charges were unreasonable to the extent they exceeded charges based on a joint through rate of 6 cents per 100 pounds established May 22, 1937.[2] By amended complaint filed at the rehearing, they allege also that the charges assessed were prejudicial and discriminatory in violation of Section 19 of the Public Utilities Act. Defendant carriers originally admitted the principal allegations of the first complaint, but at the rehearing denied that the rates assessed were either unreasonable in violation of Section 13 of the Public Utilities Act or prejudicial and discriminatory in violation of Section 19 of the Act.[3]

The original record shows that the shipments originated on a spur track which had recently been constructed, and that at the time shipments were made the subsequently established 6 cent rate was being negotiated but had not been made effective. The fuel oil was sold and shipped on the basis of complainants' understanding that the 6 cent rate applicable from other Los Angeles Basin points would be protected. The evidence adduced at the original hearing dealt with the number of cars shipped and the amount of reparation due under the sought basis, and with details of the negotiations for construction

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[1] The 12 cent rate was made by combining a local rate of 6 cents per 100 pounds named by Pacific Electric from Crutcher to Watts, with a rate of 6 cents per 100 pounds named by Union Pacific from Watts to Crestmore; the 9 cent rate was made by combining a rate of 3 cents per 100 pounds, published effective May 15, 1937, from Crutcher to Los Angeles, with a 6 cent rate applicable via Union Pacific from Los Angeles to Crestmore.

[2] Supplement No. 38 to Pacific Freight Tariff Bureau Tariff No. 167-L, C.R.C. No. 586, of L. F. Potter, alternate agent.

[3] During the rehearing, counsel for defendants explained that it was not their intention originally to admit that the rates were unreasonable per se, but only that they were improper under the particular circumstances here involved.

of the spur track and for establishment of joint rates. No attempt was made, by means of rate comparisons or otherwise, to show the sought rate to be a maximum reasonable rate; and no evidence was offered to establish the unreasonableness of the charges assessed.

The evidence offered at the rehearing consisted of the introduction and explanation of exhibits which compared the rates charged on the shipments here involved with carload rates published by defendants and other rail carriers for transportation of the same commodity from other Los Angeles Basin points to the same destination, and with rates published for the transportation of other commodities in tank cars between other points in southern California.[4] These statements show that at the time the shipments moved, defendants had in effect a rate of 6 cents per 100 pounds for the transportation of fuel oil from other points in the Los Angeles Basin to Crestmore for distances comparable to or greater than that from Crutcher to Crestmore, and that for the transportation of other commodities in tank cars between southern California points defendant Pacific Electric had in effect rates substantially lower than the 6 cent local rate assessed by it for the transportation of 15 of the cars involved in this complaint, although the distances were materially greater.

The circumstances under which the rates used for comparison were established were not shown, nor was any attempt made to show that they were reasonable. It was claimed that the rates assessed were "relatively" unreasonable, rather than unreasonable per se.

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[4] The other commodities used for comparison were sulphuric acid, calcium chloride, palm oil, animal tallard, caustic soda, stearine cotton seed, silicate of sodium, tallow and mineral water.

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. (Salinas Valley Ice Co. vs. Western Pacific Railroad and Southern Pacific Co., Decision No. 30977 in Case No. 4245, unreported.) Moreover, as pointed out in Decision No. 31137, supra, when a carrier voluntarily reduces a rate it does not necessarily follow that reparation is proper in connection with shipments moving before the lower rate became effective. Under the circumstances, it must be found that complainants have failed to show that the charges under attack were unreasonable in violation of Section 13 of the Public Utilities Act, and reparation on that ground must be denied.

So far as the allegation of undue discrimination is concerned, complainants claim that they suffered damages to the extent of the difference between the charges assessed and those which would have accrued at the subsequently established rate of 6 cents per 100 pounds, but offered no evidence to support this contention. The Interstate Commerce Commission, the Supreme Court of the United States and this Commission have held, in discrimination proceedings, that the damages suffered, if any, are not necessarily an amount equal to the difference in rates. The fact of the damage and the amount thereof must be definitely established, the same as is required in a court of law. (Penn R.R. vs. International Coal Co., 230 U.S. 184; Calif. P.C. Co. vs. Southern Pacific Company, 39 C.R.C. 17, 23, and cases cited therein.)

Rates for the future are not involved in this proceeding.

The complaint will be dismissed.

ORDER ON REHEARING

Petition for rehearing in the above entitled proceeding having been granted and publicly held, the matter having been duly submitted and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that this complaint be and it is hereby dismissed.

Dated at Los Angeles, California, this 26 day of September, 1939.

Commissioners.