

Decision No. 32749

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

HOLMES & WING,

Complainants,

vs.

THE WESTERN PACIFIC RAILROAD
CO., SOUTHERN PACIFIC COMPANY,
SACRAMENTO NORTHERN RAILWAY,

Defendants.

Case No. 4148

ORIGINAL

BY THE COMMISSION:

John Curry, for complainants.
A. L. Whittle and J. E. Lyons, for Southern Pacific
Company, defendant.

O P I N I O N

By this complaint C. Fred Holmes and E. V. Wing, co-partners doing business as Holmes and Wing, allege that the charges assessed on 14 double deck carloads and 1 single deck carload of feeder sheep and 1 carload of sheep camp equipment, transported from Proberta to Bieber during May 1933, and on 9 double deck carloads of feeder sheep transported from Hambone to Shippee during August 1934, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act, to the extent they exceeded the charges paid. An order directing defendants to waive collection of undercharges is sought.

A public hearing was had before Examiner E. S. Williams at San Francisco and the matter was submitted on briefs.

Proberta is located on the Southern Pacific¹ 4 miles

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Defendants Southern Pacific Company, The Western Pacific Railroad Company and Sacramento Northern Railway are referred to throughout this opinion as Southern Pacific, Western Pacific and Sacramento Northern, respectively.

north of Tehama. Bieber and Hambone are located on the Western Pacific 114 and 159 miles, respectively, north of Keddie. Shippee is located on the Sacramento Northern 8 miles west of Oroville. The shipments from Proberta moved via the Southern Pacific to Marysville, thence via the Western Pacific to Bieber, a through distance of 290 miles. The shipments from Hambone moved via the Western Pacific to Oroville, thence via the Sacramento Northern to Shippee, a through distance of 242 miles.

At the time the shipments moved, the applicable rates from Proberta to Bieber were \$108.00 each for the double deck cars of feeder sheep and for the car of sheep camp equipment, and \$80.20 for the single deck car of feeder sheep. The applicable rate from Hambone to Shippee was \$75.00 for each double deck car of feeder sheep.² Complainants paid on the shipments from Proberta to Bieber \$75.50 for each double deck car and for the car of sheep camp equipment, and \$55.40 for the single deck car. On the shipments from Hambone to Shippee they paid \$56.00 for each double deck car.

Complainants contended that reasonable rates for the transportation of the shipments from Hambone to Shippee were those which would have accrued on basis of the so-called Docket 17000 scale, prescribed by the Interstate Commerce Commission in Docket 17000, Part 9, Livestock-Western District Rates, 176 I.C.C. 1 (decided June 8, 1931), for interstate application throughout the

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The applicable rates from Proberta to Bieber were constructed by combining per car rates of \$43.00 and \$31.00 on double deck and single deck cars, respectively, from Proberta to Marysville as provided in Southern Pacific Tariff No. 645-D, C.R.C. No. 3118, with per car rates of \$65.00 and \$49.20 on double deck and single deck cars from Marysville to Bieber, as provided in Western Pacific Tariff No. 71-H, C.R.C. No. 313. The tariffs involved provided for the application of the rates on feeder sheep in double deck cars to sheep camp outfits which accompany such shipments. The applicable rate from Hambone to Shippee on double deck cars was published jointly by the Western Pacific and Sacramento Northern in Pacific Freight Tariff Bureau Tariff No. 221, C.R.C. No. 528.

Mountain Pacific territory, of which California is a part.

On the shipments from Proberta to Bieber, complainants contended that reasonable rates were those which would have accrued on the basis of 85 per cent of the so-called 26414 scale, prescribed by this Commission in Woodward-Bennett Packing Company vs. Southern Pacific Co., (Decision No. 26414 of October 9, 1933, in Case No. 2900, and related cases) for application to intrastate traffic between various points and territories in California.³ As justification for seeking rates based upon 85 per cent of the 26414 scale, complainants pointed out that the Interstate Commerce Commission had adopted that relationship between fat and feeder rates in the Docket 17000 scale and in the so-called Concho scale.⁴

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Decision No. 26414 prescribed a scale of mileage rates to apply on sheep in single and double deck cars. The scale was published in cents per 100 pounds for single line movements. For joint hauls an additional charge of 2½ cents per 100 pounds was prescribed. On feeder sheep this scale alternated with the so-called California intrastate scale. (A history of the latter scale is contained in Decision No. 26414.) The cases and territories involved in Decision No. 26414 were as follows:

Case No. 2900: From points on the Southern Pacific, Redding on the north, Roseville on the east and Bakersfield on the south to Los Angeles;

Case No. 3110: From points on the Southern Pacific, Redding on the north, Bakersfield on the south and Colfax on the east to San Francisco and South San Francisco;

Case No. 3273: From Moy on the Western Pacific, Greendale and Argenta on the Sacramento Northern to Los Angeles;

Case No. 3310: From points on the Southern Pacific, Soda Springs and east to Calvada, Black Butte to Dorris and Black Butte to Cole, to Los Angeles;

Case No. 3404: From Olancha, Inyokern and Cantil to San Diego;

Case No. 3490: From points on the McCloud River Railroad to San Francisco, South San Francisco and Los Angeles.

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The Concho scale arose out of I.C.C. Docket 20549, Concho Livestock Company, et al., vs. A.T. & S.F. Ry. Co., et al., 178 I.C.C. 501 (decided September 19, 1931). That proceeding involved claims for reparation on livestock moving between Arizona and California. The Interstate Commerce Commission provided rates for feeder sheep at 85 per cent of the fat sheep scale.

A witness for complainants testified that none of the shipments involved were weighed and that weights were not available and could not now be determined. In the absence of actual weights complainants contended that charges should be computed at the rates and on the minimum weights prescribed in the proceedings to which references were made.⁵

By their answer to the complaint, the Western Pacific and Sacramento Northern admitted the allegations of complainants in so far as they participated in the transportation. The Southern Pacific denied that the assailed rates on the shipments from Proberta to Bieber were unjust or unreasonable.

In defending the assailed rates from Proberta to Bieber, a witness for Southern Pacific testified that the shipments in issue represented the first movement of feeder sheep between those points for approximately 5 years and that it was not customary to publish joint rates for such an isolated movement. He asserted that the reasonableness of the rates charged on the Proberta to Bieber shipments should, therefore, be measured by a comparison of such rates with combinations of rates based on the 26414 scale, or with those found reasonable in Docket 18764, C. Swanston & Sons vs. Western Pacific Railroad Company, et al., (148 I.C.C. 159), computed on the separate distances of the Southern Pacific to, and the Western

⁵ The minimum weights prescribed on sheep on both Docket 17000, supra, and Case No. 2900, supra, were 20,000 pounds for double deck cars and 12,000 pounds for single deck cars. Based on these minimum weights the charges at the rates claimed by complainants to have been reasonable on the shipments involved would be \$56.00 for each double deck car moved from Hambone to Shippee and \$74.00 for each double deck car and \$55.20 for each single deck car moved from Proberta to Bieber.

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Pacific from, Marysville.

In addition, this witness claimed that the perishable nature of livestock; its need for special handling and special loading and unloading facilities; its seasonable movement; and the unusually high empty return car mileage of stock cars experienced because of the inadaptability of such cars to loading of other commodities, entitled livestock to higher rates than rates on non-perishable commodities.

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Excepting for reference to the fact that the 17000 scale was prescribed by the Interstate Commerce Commission for interstate shipments between points in the Mountain Pacific territory, complainants did not support their allegation that the scale would provide a just and reasonable basis for computing charges for intrastate shipments moving from Hambone to Shippee. Likewise, their allegation that the shipments from Proberta to Bieber should be accorded rates based on 85 per cent of the 26414 scale prescribed by this Commission in Case No. 2900 and related cases, supra, was supported only by their statement that in the 17000 and Concho scales,

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In Docket 18764, decided October 16, 1928 by the Interstate Commerce Commission, shipments of fat sheep between California and Nevada and between California points via interstate routes, were found not unreasonable. It has since been superseded by the Docket 17000, Part 9, decision.

Based on the Marysville combination, the charges accruing under the 26414 scale were said to be \$118.00 and \$92.40 per double and single deck car, respectively, and at the scale found reasonable in Docket 18764, supra, were said to be \$137.00 and \$84.00 per double and single deck car, respectively, as compared with the assailed rates of \$108.00 and \$80.20.

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The witness compared the assailed per car rates with revenues accruing on certain nonperishable commodities moving from Los Angeles Harbor to Fresno. He also compared the Western Pacific factor of the assailed rates with earnings accruing on certain nonperishable commodities between the same points. According to the comparisons, all of the compared commodities produced revenues substantially in excess of those which would have accrued on the movement from Proberta to Bieber at the applicable rates.

feeder rates were based on 85 per cent of the contemporaneous fat sheep rates. Mere reference to scales prescribed by the Interstate Commerce Commission does not establish the reasonableness of those scales for intrastate transportation within California. Neither is the willingness of the Western Pacific and Sacramento Northern to waive outstanding undercharges sufficient to justify a finding that the applicable rates were unreasonable (see Salinas Valley Ice Co. Ltd. vs. Western Pacific Railroad Company, 41 C.R.C. 79).

In Case No. 2900, supra, (upon which record the 26414 scale was prescribed) the Commission had before it for consideration the question of establishing feeder rates differentially lower than fat rates. The interstate scales relied upon herein by complainants likewise had the Commission's attention in those proceedings, but it was found that the assailed feeder rates had not been shown to be unreasonable except to the extent they exceeded the rates prescribed as maximum for fat sheep or rates based on the so-called "California intrastate scale." The record in Case 2900, supra, was considerably more extensive than that here before us and embraced wide territories throughout the state. The basis prescribed as a result of that record was used subsequently as a basis for reparation and adjustment of rates for the transportation of sheep between many additional points

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The California intrastate scale is described in Decision No. 26414 in Case No. 2900 as follows:

"The California intrastate scale was published by the Southern Pacific Company effective August 5, 1924, as the result of a compromise following negotiations with The American Livestock Association, California Cattlemen's Association and California Wool Growers' Association, who sought rates of the volume of those concurrently maintained on Arizona intrastate traffic. In constructing this scale the carriers took the feeder cattle rates in effect at the time between Arizona and California, regraded them to iron out the blanket rates and then established rates on fat cattle which would bear a relationship of 100% to 85% fat to feeder stock. Rates on sheep were made 10% higher than those on cattle. With certain exceptions an arbitrary of \$3.50 per car was added for each branch line involved."

in the state.⁹ Many of the hauls involved in those proceedings were through the same general territories as those in which the points of origin and destination of the movements here under consideration are located. Moreover, the shipments involved in the instant proceeding moved during the same period of time as those in connection with which reparation was awarded in Case No. 2900, supra, and subsequent proceedings based thereon. Under these circumstances the findings and conclusions in the latter proceedings appear equally applicable here.

In recent proceedings involving the general level of livestock rates within California, this Commission, by Decision No. 31924 of April 11, 1939, as amended, in Case No. 4293, and related proceedings, prescribed rates on fat and feeder sheep on a level different from that prescribed in Case No. 2900, supra. Subject to certain exceptions and limitations, the Docket 17000, Mountain-Pacific fat and feeder scales, as increased under Ex Parte 123, were prescribed as maximum for rail transportation of fat and feeder livestock, respectively, in California. In these same proceedings, rail carriers were authorized to increase certain specific rates maintained by the Commission at a level lower than these scales. No reparation was asked and none was awarded, the rates being prescribed for the future only. The Commission has generally refused to award reparation when general adjustments involving both increases and reductions were made, on the ground that, since the increases were not made retroactive, it would be unfair to compel carriers to pay reparation in the cases where lower rates were subsequently established.¹⁰

⁹ Swift & Company vs. Southern Pacific Company, Decision No. 30480, as amended, in Case No. 3833 and related cases, H. J. Adler et al. vs. Southern Pacific Company, Decision No. 27289 in Case No. 3889, C. Swanston & Sons vs. Southern Pacific Company, Decision No. 27771 in Case No. 3952; and other cases.

¹⁰ Los Angeles Lumber Products Co. vs. Southern Pacific Company, et al., 26 C.R.C. 217, Boswell Co. vs. A.T. & S.F. Ry., 33 C.R.C. 308, 321.

Upon consideration of the facts of record, the Commission is of the opinion and finds that the applicable rates on the shipments from Proberta to Bieber involved in this proceeding were unjust and unreasonable to the extent that they exceeded rates based on the 26414 scale. The rates lawfully applicable on the shipments from Hambone to Shippoc are lower than those which would accrue under the basis prescribed in Decision No. 26414 and, hence, cannot be said on the record here to have been unreasonable. An order authorizing the waiver of undercharges to the extent indicated will be entered.

O R D E R

This case having been duly heard and submitted,

IT IS HEREBY ORDERED that defendants Southern Pacific Company and The Western Pacific Railroad Company, according as they participated in the transportation, be and they are hereby ordered and directed to waive collection from complainants, Holmes and Wing, of undercharges outstanding against the shipments from Proberta to Bieber involved in this proceeding, in the amount of the difference between the lawfully applicable charges and those which would have accrued on the basis of the mileage rates prescribed by Decision No. 26414 in Case No. 2900.

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

Dated at Los Angeles, California, this 23rd day of January, 1940.

W. L. Rice
James B. Kelly
Raymond H. ...

Justin D. ...
Commissioners