Decision No. 32267

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

The Metropolitan Water District of Southern California,
Complainant

vs.

Southern Pacific Company,
Defendant

ORIGINAL

Case No. 4285

BY THE COMMISSION:

Appearances

F. W. Turcotte and L. T. Wilson, for complainant
James E. Lyons and Randolph Karr, for defendant

O P I N I O N

By this complaint The Metropolitan Water District of Southern California, a municipal corporation, alleges that the rates assessed and collected by Southern Pacific Company for the transportation of 345 carloads of lumber[1] from Los Angeles, Los Angeles Harbor and Long Beach to Indio during the period from October 1933 to July 1935, inclusive, were in excess of the lawfully applicable rates, in violation of Section 17 of the Public Utilities Act. Reparation with interest at the rate of 7 per cent per annum is sought.

Public Hearings were held before Examiner Mulgrew at Los Angeles. Permission to file briefs was granted, but only defendant took advantage thereof.

Rates of 10½, 11, 12 or 16½ cents[2] were assessed and collected upon the shipments involved, individual contracts for

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1 The term "lumber" as used herein refers to laths, lumber, posts, shingles, stakes, railroad ties and rough timbers.

2 Rates are stated in cents per 100 pounds.

each movement having been entered into between complainant and defendant prior to shipment. These rates were not published by defendant nor filed with this Commission.[3] Complainant now contends that the contract rate exceeded the published tariff rate for the same transportation and that, consequently, the published tariff rate should have been charged.

During the period the shipments involved were transported defendant maintained a rate of 9½ cents for intrastate transportation of lumber from Los Angeles Harbor and Long Beach to Indio, applying intermediately from Los Angeles.[4] This rate applied only for intrastate transportation and only as a trans-shipment rate on shipments moving over the public highways beyond Indio to destinations not served by the Southern Pacific Company or The Atchison, Topeka and Santa Fe Railway Company. The principal matters to be determined, then, are (1) whether or not the shipments here involved were intrastate in character and (2) if intrastate in character, whether they met the other restrictions of the 9½ cent rate.

According to the record, all of the lumber making up these shipments was purchased by complainant f.o.b. rail cars at Los Angeles Harbor, Long Beach or Los Angeles. However, the greater part was originally shipped by vessel into Los Angeles Harbor or Long Beach from Oregon points. In some instances the lumber was transferred directly from vessels to cars and immediately reshipped, while in others it was held on the docks for temporary periods prior to reshipment. In purchasing such lumber, complainant was aware

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[3] Section 17(a)4 of the Public Utilities Act and Section 22(1) of the Interstate Commerce Act authorize common carriers subject to the provisions of said acts to transport property for municipal governments free or at rates less than the published rates.

[4] From March 8, 1933 to January 27, 1934, the 9½ cent rate was published in defendant's Tariff No. 3135, C.R.C. No. 3472. Effective January 28, 1934, the rate was republished in defendant's Tariff No. 3135-A, C.R.C. No. 3540.

that it would have to be obtained from Oregon points[5] and placed orders sufficiently in advance of construction requirements to permit of transportation to Los Angeles Harbor and Long Beach by vessel. Separate bills of lading were issued in each instance for the vessel transportation and for the rail movement. Bills of lading covering the rail transportation to Indio were issued at the harbor points by the sellers, in accordance with instructions given by complainant. In several instances complainant's written instructions specified that the bills of lading were to contain no reference to a vessel movement but, on the contrary, were to bear the reference "ex storage" or similar wording.[6]

Upon arrival at Indio the lumber was either unloaded directly from cars to trucks and reshipped to construction camps located in the San Bernardino Mountains or it was unloaded into a storage yard maintained by complainant at Indio and there held with

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5 This is clearly shown by the following examples:

In the case of the 10 carload shipments covered by complainant's purchase orders 23462-A, 23462-B and 29231, counsel stipulated that the shipments moved from Los Angeles Harbor to destination "ex steamer" as part of a continuous movement.

It was also stipulated that the invoices for the 89 carloads involved in purchase orders 18020-A and 18484-A carried the statement "no sales tax - interstate shipment. Shipped by (name of shipper) from Oregon direct to consumer."

Purchase orders 27681-B and 31401, 17 carloads, carried the statement "not subject to state sales tax a/c interstate shipment," which the complainant's assistant purchasing agent explained meant that the lumber was being purchased and delivered from a point outside the State.

6 For example, a letter, issuing such instructions and dealing with purchase order 23300-B, was read into the record, (Tr. p. 295). It read:

"In billing these shipments from Los Angeles Harbor we call your attention to the fact that the rail rate is 8½¢ intrastate, and 16½¢ interstate, therefore any lumber billed by you on this order should bear reference to the Los Angeles Harbor Yard only. DO NOT BILL AS EX-STEAMER, as this lumber was purchased at the harbor."

lumber not involved in this complaint for movement to the construction camps by truck at complainant's convenience. Complainant did not keep any records to show which of the lumber involved in the complaint was reshipped immediately to the construction camps and which was unloaded into the storage yard. The average time the lumber unloaded into the storage yard was held there was four weeks. Some of it was held in the yard for a much longer time. The construction camps to which the lumber was ultimately reshipped were accessible only by road and involved passage in part over private roads and in part over public highways.[7]

It is well settled that a determination of whether a shipment is intrastate or interstate rests upon its essential character, ascertained from all pertinent facts, circumstances and conditions surrounding its transportation; not from mere accidents or incidents of billing, forms of contract or place of passing of title. It is also well settled that where there is an original and continuing intention to ship property from a point in one state to a point in another state the traffic is interstate in character; but that where there is a reshipment not intended when the original movement began, even though some further shipment was then contemplated, the continuity of interstate transportation is definitely broken and the traffic is intrastate in character when such further shipment is wholly within the same state. (Gulf C. & S. F. Co. vs. Texas, 204 U. S. 402; Railroad Commission vs. Worthington, 225 U. S. 101; Chicago M. & St. P. R. Co. vs. Iowa, 233 U. S. 334; Baltimore & O. S. W. R. R. Co. vs. Settle, 260 U. S. 166; Geo. H. Croley

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7 The distance from Indio to the construction camps via the most direct highway routes ranged from 11.8 miles to 38 miles. Via an indirect route through Garnet, it ranged from 31.5 to 60.5 miles. By these routes the total mileage traversed over public highways was not more than 1.8 miles and 23 miles, respectively, with the remainder of the distance being over private roads.

Company vs. Southern Pacific, 33 C.R.C. 565; Van Hoosear vs. Southern Pacific, 36 C.R.C. 526.)

On those shipments shown to have originated in Oregon separate bills of lading were issued for the respective water and rail movements to and from Los Angeles Harbor and Long Beach. The terms of purchase gave complainant title to the lumber at those California ports. However, it is evidence that the lumber was purchased and shipped from points in the State of Oregon with the knowledge and understanding that the ultimate destinations were the construction camps located in the San Bernardino Mountains beyond Indio. While some interruption in the movement may have been occasioned through transfer of the property from vessel to rail carriage at Los Angeles Harbor and Long Beach, it is reasonably clear that any such interruption was incidental to the through movement and in no way broke or terminated its continuity. We are of the opinion, therefore, that the shipments containing lumber originating at Oregon points were interstate in character and that, hence, the 9½ cent intrastate rate was not lawfully applicable.[8]

It was admitted that the remaining shipments originated at storage stocks in Los Angeles Harbor, Long Beach and Los Angeles and that these shipments were intrastate in character. This lumber was handled at Indio in the same manner as was the Oregon lumber, some being reshipped to the construction camps immediately and the balance being commingled with other lumber and stored at Indio for varying periods. Complainant had no records by which the intrastate lumber reshipped immediately to the camps could be iden-

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8 The record shows that shipments whichoriginated in Oregon were covered by complainant's purchase orders numbered as follows: 17056-A, 19596-A, 21763-A, 23300-B, 23301-B, 23299-B, 18484-A, 18484-C, 23462-B, 23891, 27681-B, 22862, 29231, 31401, 18020-A, 18484-B, 20251-A, 21522-B, 21761-A, 23299-C, and 23462-A.

tified.

The tariffs in which the sought intrastate rate of 9½ cents is provided designated it as a transshipment rate and limited its applicability to shipments moving beyond Indio to points not reached by the two rail lines serving the vicinity. Undoubtedly the 9½-cent rate was applicable to such shipments as may have been reshipped to the construction camps immediately after their arrival at Indio. However, these shipments, if any there are, were not identified by complainant. On the balance of the intrastate lumber the shipments were stored at Indio for varying periods of time. As to these shipments the record does not disclose whether or not they sufficiently preserved their identity as transshipments to lawfully apply the 9½-cent rate.

The complaint will be dismissed.

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 contained in the preceding opinion,

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

Dated at San Francisco, California, this 3rd day of July, 1940.

Commissioners.