Decision No. 28366

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

ROSENBERG BROS. & CO., a corporation, Complainant, vs. SOUTHERN PACIFIC COMPANY, a corporation, Defendant.	Case No. 4498

BY THE COMMISSION:

O P I N I O N

In the above entitled complaint, Rosenberg Bros. & Co. seeks reparation in connection with 11 carloads of paddy rice transported by Southern Pacific Company from Cromir to San Francisco during the period extending from October 31 to November 16, 1938. The matter was submitted upon written statements of fact and argument. Rates will be stated in cents per 100 pounds.

Cromir is a point on defendant's Tracy to Fresno (west side) line, 89 miles south of Tracy. Charges were assessed and collected on complainant's shipments at the rate of 14 cents, minimum carload weight 40,000 pounds, published in defendant's Tariff No. 730-D, C.R.C. No. 3353, except in the case of one carload on which the actual weight of 39,880 pounds was used in place of the minimum weight provided by the tariff. Complainant urges that it be awarded reparation in the sum of $248.39 on the basis of a rate of 10½ cents, minimum carload weight 60,000 pounds; or on the basis of 125 per cent of the grain rate contemporaneously maintained by defendant between the points in issue.

In support of the sought rate of 10½ cents it was represented that the production of rice in the vicinity of Cromir commenced in 1938; that a rate of 10½ cents, minimum weight 60,000

pounds, was published from that point to San Francisco, effective January 21, 1939, after defendant's attention had been called to the new production area; and that at the time the shipments in question moved a 10½-cent rate, minimum weight 60,000 pounds, was maintained by defendant for the transportation of paddy rice from Firebaugh, a point 5 miles north of Cromir, to San Francisco. In further support of the sought rate it was contended that defendant's Tariff No. 659-F, C.R.C. No. 3353, provided a rate of 10½ cents for the transportation of whole grains from Cromir to San Francisco during the time that the paddy rice involved in the complaint was shipped; and that inasmuch as defendant had generally maintained rates of the same volume for transportation of paddy rice and whole grains between the same points, charges on the shipments here in issue should be adjusted to the whole grain rate level.

With respect to the sought alternative basis of 125 per cent of the grain rate, it was pointed out that in Rosenberg Bros. and Company, et al. vs. The Atchison, Topeka and Santa Fe Railway Company, et al. (22 C.R.C. 184) the Commission ordered the defendant herein to abstain, after September 23, 1922, from publishing, demanding or collecting rates for the transportation of paddy rice, carloads, which exceed by more than 25 per cent the rate contemporaneously applicable on whole grains; and that on this basis charges should have been collected at the rate of 13 cents.

Defendant has signified its willingness to make a reparation adjustment to either of the sought bases on order of the Commission. Under the circumstances it appears that a public hearing is not necessary.

Aside from the showing that the sought 10½-cent rate was voluntarily established subsequent to the forwarding of the shipments here involved, and that when these shipments moved rates of like volume were maintained on whole grains from Cromir and on paddy rice

from Firebaugh there is nothing in this record from which to conclude that a rate of 10½ cents is reasonable. The Commission has repeatedly held that in instances where there is no issue between the actual parties the proof necessary to justify reparation should, nevertheless, measure up to that required had defendants opposed the proposed reparation award, and that when rates are voluntarily reduced it does not necessarily follow that reparation should be awarded on shipments forwarded before the reduced rates were made effective. (Krieger Oil Co. and Riverside Cement Co. vs. P.E.R.Co. and U.P.R.R., 41 C.R.C. 521, and Salinas Valley Ice Co. vs. W.P.R.R. and S.P. Co., 41 C.R.C. 79.)

Upon consideration of all the facts of record we are of the opinion and here find that the charges assessed are unjust and unreasonable to the extent that they exceed those accruing at a rate of 13 cents, but that the record fails to substantiate the reasonableness of a rate lower than 13 cents. Reparation will be awarded on the basis of a 13-cent rate.

The exact amount of reparation is not of record. Complainant will submit to defendant for verification a statement of the shipments made and upon payment of the reparation defendant will notify the Commission of the amount thereof. Should it not be possible to reach an agreement as to the reparation award, the matter may be referred to the Commission for further attention and the entry of a supplemental order, should such be found necessary.

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 contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendant Southern Pacific Company be and it is hereby authorized and directed to refund, with interest at 6 per cent per annum, to complainant Rosenberg Bros. & Co. all charges collected for the transportation of the carload shipments of paddy rice involved in this proceeding in excess of those accruing at a rate of 13 cents per 100 pounds.

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

Dated at San Francisco, California, this 4TH day of February, 1941.

Commissioners