

Decision No. 25400

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

R. J. Clifford,)
Complainant,)

vs.)

California Western Railroad and)
Navigation Company, Northwestern)
Pacific Railroad Company,)
Southern Pacific Company,)
Defendants.)

Case No. 4598

BY THE COMMISSION:

Appearances

- L. H. Stewart, for Complainant.
- Clair W. MacLeod and A. T. Nelson, for California Western Railroad and Navigation Company, Defendant.
- J. E. Lyons, for Northwestern Pacific Railroad Company and Southern Pacific Company, Defendants.

O P I N I O N

R. J. Clifford, complainant herein, alleges that freight charges assessed and collected by the Northwestern Pacific Railroad Company and the California Western Railroad and Navigation Company for the transportation of carload shipments of sand, crushed rock and gravel from Bailhache to Fort Bragg, and by the Southern Pacific Company for the transportation of carload shipments of sand, crushed rock and gravel from Redding to Pollock, were during the two-year period immediately preceding the filing of his complaint, are now, and for the future will be unjust and unreasonable in violation of Section 13 of the Public Utilities Act. Reparation and rates for the future are sought.

A public hearing was had before Examiner Knapp at San Francisco, briefs were filed, and the matter is now ready for decision.

Bailhache is located on the Northwestern Pacific 72.5 miles south of Willits, the junction point between the Northwestern Pacific and the California Western Railroad. Fort Bragg is the western terminus of the latter railroad and is located 40 miles west of Willits. Hence, shipments which moved from Bailhache to Fort Bragg involved a joint-line haul of 112.5 miles. Redding is located at the head of the Sacramento Valley on the Southern Pacific Company's main line; Pollock is on the same line, 29.4 miles north of Redding.

The Bailhache-Fort Bragg shipments which moved prior to December 13, 1939, were transported at a published tariff rate of $8\frac{1}{2}$ cents,¹ minimum weight 80,000 pounds. Effective December 13, 1939, the applicable rate was reduced to $7\frac{1}{2}$ cents, and the balance of the shipments here involved were transported at the latter rate. The Redding-Pollock shipments were transported at a published tariff rate of $3\frac{1}{2}$ cents, minimum weight 60,000 pounds.²

Reparation and rates for the future are sought on the basis of a rate of 6 cents on shipments from Bailhache to Fort Bragg and

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Rates are stated in cents per 100 pounds.

2 Rates for transportation of sand, crushed rock and gravel from Bailhache to Fort Bragg are published on a point-to-point basis in Item No. 2505 series of Pacific Freight Tariff Bureau Tariff No. 166-E, C.R.C. No. 628. The reduction from $8\frac{1}{2}$ cents to $7\frac{1}{2}$ cents was provided for in Supplement 20-B, effective December 13, 1939, and represented a removal of increased rates and charges previously authorized and provided for in Tariff of Increased Rates and Charges No. X-123, Agent J. P. Haynes' C.R.C. No. 7. Rates for the transportation of sand, crushed rock and gravel from Redding to Pollock are published on a mileage scale basis in Southern Pacific Company Tariff No. 330-F, C.R.C. No. 3112. That tariff provides that "In determining mileages to be observed in constructing distance rates, 150 per cent of actual mileage shall be applied in the territory north of Red Bluff, Cal."

2-3/4 cents on shipments from Redding to Pollock, minimum weight in both instances 60,000 pounds.³ These rates are of the volume of the northern California distance rate scale applying to sand, crushed rock and gravel for the actual rail distances involved.⁴

Complainant contends that the northern California scale is an appropriate measure of the maximum reasonableness of rates for the transportation here involved. Counsel for complainant, testifying as a rate witness, recognized that the scale does not apply to points on the Northwestern Pacific or the California Western Railroad but stated that it had been generally applied by the Southern Pacific and other California railroads for single and joint-line hauls in other territory north of Santa Margarita and Caliente over a long period of years. The witness pointed out that the Northwestern Pacific is a subsidiary of the Southern Pacific, and asserted that for rate-making purposes both lines should be treated as a single entity. So treated, he stated, it is only logical that the northern California scale be made applicable for single and joint-line hauls in the territory served by the Northwestern Pacific and the California Western

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In its brief complainant requests that if the Commission concludes a rate in excess of 6 cents to be not unreasonable for transportation from Bailhache to Fort Bragg, that it then consider the propriety of awarding reparation and establishing a rate for the future on the basis of 6 1/2 cents, the 1/2 cent to accrue to the California Western Railroad as a rate arbitrary for transportation over the latter railroad.

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The historical development of the scale and its application to sand, crushed rock and gravel shipments in northern California are reviewed in Union Rock Company v. A. T. & S. F. Ry., et al., 27 C.R.C. 285, 294. It is there pointed out that the scale was initially developed to meet water competition existing on the inland waters as far north as Red Bluff and was later extended to inland points to permit shippers to meet market competition. The scale was formulated in 1907 or 1908; it remained as an unpublished mileage formula until 1923 when it was published by the Southern Pacific Company as a distance rate scale for the transportation of sand, crushed rock and gravel.

Railroad, including the joint-line haul from Bailhache to Fort Bragg. Rates in excess of the scale level, he said, must be concluded to be in excess of a maximum reasonable level. An exhibit submitted in evidence shows that certain rates maintained by the Northwestern Pacific for the transportation of sand, crushed rock and gravel over single and joint-line hauls are of the level of the northern California scale for the actual distances involved. One of the joint-line rates shown (there were seven) was with the California Western Railroad; it was 1 cent under the scale level and involved a haul of less than five miles over the latter railroad. The General Manager of the California Western Railroad stated that the rate had been published to permit the movement of ballast materials in the event weather conditions foreclosed movement from other points but that no shipments had ever moved under the rate. Other joint-line rates shown in the exhibit apply in connection with the Southern Pacific and the Petaluma and Santa Rosa Railroad. The extent of movement under these rates, if any, was not shown.

Referring to the transportation from Redding to Pollock, the witness explained that the assailed rate was the applicable rate under the northern California scale for 150 per cent of the actual mileage involved. He stated that the provision for expanding mileages applies only to sand, crushed rock and gravel traffic, that it is not justified by transportation conditions, and that it represents the measure of unreasonableness of the Redding-Pollock rate of which complaint is here made. Actual mileages, the witness testified, should be utilized in applying the scale, at least as to the traffic involved in this proceeding.

Exhibits were submitted to corroborate the foregoing testimony. One of these exhibits discloses that the Southern Pacific maintains rates on sand, crushed rock and gravel for transportation between certain points in the Redding-Pollock area at the level of the northern California scale but that these rates are subject to minimum weights of 100,000 pounds whereas the minimum weight applicable in connection with the scale is 60,000 pounds.⁵ The record shows that complainant obtained some of his materials from Cottonwood and utilized a rate of 3½ cents, minimum weight 100,000 pounds, published by the Southern Pacific to apply for transportation of sand, crushed rock and gravel from Cottonwood to Pollock. Another exhibit discloses that the Southern Pacific published class rates for the transportation of commodities generally and commodity rates for the transportation of livestock, vegetable oil, cake and meal, fertilizer, water in tank cars, fuel oil, cement, and grain and grain products from various northern and central California points to points as far north as Redding and in certain instances to points north thereof wherein constructive mileage was not employed as a rate-making factor.

Earnings resulting from the rates herein assailed for transportation from Bailhache to Fort Bragg and from Redding to Pollock were compared with those which would result from the rates sought by complainant. In the submitted comparison earning data for the assailed rates were computed only on the basis of revenues which would result under average loadings experienced with shipments

⁵ Six out of ten rates cited were for transportation from points south of Redding to points north thereof, involving hauls of from 30 to 75 miles. They embraced transportation from Cottonwood to Coram, Pollock, Antler, and Delta; from Kegg to Montague; and from Red Bluff to Antler.

upon which reparation is sought, which loadings were substantially greater in weight than the minimum weights required to be observed in utilizing the assailed rates. Accordingly, earnings calculated on the latter basis have been added to the comparison and the combined data are set forth below:

Assailed Rates and Sought Rates			Revenue per car (Dollars)	Revenue per Car-Mile (Cents)	Revenue per Ton-Mile (Mills)
(Bailhache to Fort Bragg, 112.5 miles)					
Assailed rate	8 ³ / ₄ ¢	(a)	\$ 94.35	84.47	15.11
"	"	7 ³ / ₄ ¢ (a)	83.25	74.00	13.33
"	"	8 ³ / ₄ ¢ (b)	68.00	60.44	15.11
"	"	7 ³ / ₄ ¢ (b)	60.00	53.33	13.33
Sought rate	6 ¢	(a)	66.60	59.29	10.67
"	"	6 ¢ (c)	36.00	32.00	10.67
(Redding to Pollock, 29.4 miles)					
Assailed rate	3 ³ / ₄ ¢	(d)	40.62	138.1	22.11
"	"	3 ³ / ₄ ¢ (e)	19.50	66.32	22.11
Sought rate	2-3/4¢	(d)	34.38	116.9	18.71
"	"	2-3/4¢ (e)	16.50	56.1	18.71
(a) Earnings based on average shipping weight of 55.5 tons per car. (b) Earnings based on tariff minimum weight of 80 tons per car. (c) Earnings based on tariff minimum weight of 30 tons per car. (d) Earnings based on average shipping weight of 62.5 tons per car. (e) Earnings based on tariff minimum weight of 30 tons per car.					

In his brief complainant's counsel pointed out that as a result of rate adjustments made over a period of years the northern California scale is now 36 per cent higher in volume than when it was first applied as an unpublished rate formula. Rates taken from the scale for the movements here involved, he stated, would produce

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The average loadings referred to were 55.5 tons on the Bailhache-Fort Bragg shipments and 62.5 tons on the Redding-Pollock shipments, as compared with minima of 40 tons (80,000 pounds) and 30 tons (60,000 pounds), respectively, applying in connection with each of the assailed rates.

greater earnings than those currently resulting from rates published by defendants for the transportation of livestock between the same points.⁷

Counsel asserted, moreover, that the Commission had observed the northern California scale as a basis for awarding reparation on sand, crushed rock and gravel shipments in the past and should do so at this time.⁸ Numerous cases were cited, almost all of which involved an admission of unreasonableness by the railroads. Counsel argued that the constructive mileage provision utilized in developing the Redding-Pollock rate of $3\frac{1}{2}$ cents was originally prescribed to apply in connection with class rates for railroad transportation in northern California for the purpose of removing discriminations then existing between persons and localities and that subsequent rate adjustments have made the provision no longer essential.

Defendants denied the material allegations of the complaint. The Commerce Agent for the Southern Pacific referred to the competitive circumstances surrounding the development of the northern California scale and stated that these circumstances still exist to some extent, with the consequence that the scale has been maintained at a relatively low level. He compared the northern California scale with the mileage scale applying in southern California and with scales applying in

⁷ Counsel's statement was predicated upon earnings resulting from average weight loadings of sand, crushed rock and gravel experienced by the complainant as contrasted with livestock earnings resulting from minimum weight requirements applying in connection with railroad tariffs. Car earnings compared on the basis of the tariff rates and applicable minimum weights discloses that for hauls from Bailhache to Fort Bragg the assailed rate would produce greater earnings than the applicable livestock rate but that for transportation from Redding to Pollock the reverse would be true.

⁸ He called attention also to reparation awards in southern California territory on the same commodities wherein the so-called southern California distance rate scale (described in Union Rock case, supra) had been observed as a maximum reasonable level and stated that the assailed rates for transportation from Bailhache to Fort Bragg exceed rates applicable under the southern California scale for a comparable length of haul.

other parts of the United States for railroad transportation of 100 miles or less of sand, crushed rock and gravel.⁹ This comparison shows that with but one minor exception the northern California scale is lower in volume than the compared scales.

The Commerce Agent testified that the 150 per cent mileage factor was regularly employed in developing rates for transportation north of Red Bluff unless competitive circumstances interfered. Commodity rates referred to by complainant's counsel, he said, were constructed without the use of the mileage factor mainly because of truck competition. He testified, moreover, that rates on sand, crushed rock and gravel from Cottonwood to Pollock, referred to by complainant's witness, had been published not only because of competitive circumstances but at complainant's specific request.

An engineering witness testified extensively concerning the physical operations involved in connection with Southern Pacific and Northwestern Pacific hauls under the assailed rates as did the General Manager of the California Western Railroad concerning operations over the latter railroad. The record developed by these witnesses shows that, unlike hauls in what was termed typical valley territory (Chico to Bakersfield), the operations here involved are, by comparison, over high percentages of curved track and ascending grades. Trains regularly require engine helper service. While the Redding-Pollock haul is in the less mountainous sector of the Southern Pacific's operations north of Red Bluff, the characteristics and requirements

9. Compared scales included, in addition to the Southern California scale, the (1) Southwestern Scale, applying between points in Arkansas, Kansas, Missouri, Oklahoma, Texas, and Louisiana; (2) Central Territory Scale, applying from points in Pennsylvania to points in Ohio, New York, and West Virginia; and (3) Southeastern Scale, applying between points in Georgia, and between points in Georgia and other states in Southern Territory except Florida; all prescribed as maximum single-line scales by the Interstate Commerce Commission.

of railroad mountain operation were shown to be present. According to the testimony, hauls from Bailhache to Fort Bragg are pulled from an elevation of about 100 feet at Bailhache, taken to an elevation in excess of 1,900 feet, and then moved down to about 1,300 feet at Willits. From Willits they are taken to an elevation of 1,700 feet in 4.8 miles and then moved down grade to Fort Bragg, situated about 80 feet above sea level. The California Western Railroad's operations, it was stated, are more unfavorable than those encountered over any other railroad in California.

Witnesses representing the Northwestern Pacific and California Western Railroad submitted certain income and cost statistics in evidence. These statistics disclose that for the five-year period ending with 1940 the California Western Railroad earned less than 2 per cent annually on its investment and that the Northwestern Pacific experienced a deficit in all years but 1936, when it earned but .39 per cent. The California Western Railroad witness testified that based upon average loadings of 55 tons per car, 1939 and 1940 estimated costs of transporting gravel from Willits to Fort Bragg were 8.14 cents and 7.07 cents per 100 pounds, respectively. These single-line costs were compared with the joint-line rates herein assailed of $8\frac{1}{2}$ and $7\frac{1}{2}$ cents for transportation from Bailhache to Fort Bragg to show that the rates were not excessive from a cost standpoint.

Rate and earning comparisons afford a means of testing the lawfulness and propriety of individual rates. Their value for testing purposes, of course, is contingent upon a preliminary showing that the rates from which the comparisons are extracted are subject to the same transportation characteristics and conditions as the assailed rates and also that such rates are themselves reasonable. These requisites were not established by complainant. To the

contrary, defendants' claim that many of the rates utilized in complainant's comparisons were established below a maximum reasonable level for competitive reasons remains unchallenged on the record.

The earning statistics set forth herein are of little evidentiary value in that the northern California scale used by complainant for comparative purposes does not apply for movements wholly within the territories covered by the assailed rates. While the per-car, per-car-mile and per-ton-mile earnings produced by the assailed rates may be higher than would be justified in other territories, they have not been shown to be excessive for hauling sand, crushed rock and gravel in the mountain districts here prevailing. For example, the rate of $8\frac{1}{2}$ cents produces high ton-mile earnings for the 112-mile haul from Bailhache to Fort Bragg, but, on a record which shows the cost of transporting the shipments but 40 of the 112 miles to be 8.14 cents, it certainly cannot be said to be unreasonable.

Upon consideration of all the facts of record we are of the opinion and find that the rates assailed in this proceeding have not been shown to be or to have been unreasonable or unlawful in violation of Section 13 of the Public Utilities Act. The complaint will be dismissed.

O R D E R

This case being at issue upon complaint and answers on file, full investigation of the matters and things involved having been had, and the Commission being fully advised,

IT IS HEREBY ORDERED that the complaint in Case No. 4598
be and it is hereby dismissed.

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

Dated at San Francisco, California, this 31st day of
March, 1942.

Ray H. Cress
W. B. K. K.
Francis R. Havenner
Richard L. Jackson
Commissioners