

Decision No. 35703

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

BASICH BROTHERS,  
Complainant,  
vs.  
SOUTHERN PACIFIC COMPANY,  
Defendant.

Case No. 4548

ORIGINAL

BY THE COMMISSION:

Appearances

L. H. Stewart, for complainant,  
E.L.H. Bissinger, for defendant.

O P I N I O N

Complainant alleges that freight charges assessed and collected by defendant for transportation of carload shipments of crushed rock from Crushton to Cartago and Lone Pine were and for the future will be unjust and unreasonable in violation of Section 13 of the Public Utilities Act.<sup>1</sup> Reparation and reduced rates for the future are sought.

Public hearing was had before Examiner Bryant at Los Angeles, briefs have been filed, and the matter is ready for decision.

The assailed rate is 12 cents per 100 pounds. The rates sought are 8½ cents to Cartago and 9 cents to Lone Pine, based upon

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Crushton is located on defendant's Covina Branch, 19.5 rail miles east of Los Angeles. Cartago and Lone Pine are located on the Owenyo Branch, 238.9 and 260 miles respectively north of Crushton. The shipments upon which reparation is sought consisted of 14 carloads transported to Cartago and 25 carloads transported to Lone Pine.

a so-called "unpublished southern California scale."<sup>2</sup> A witness for complainant asserted that defendant and other California railroads have for many years observed the scale as a maximum basis in publishing point-to-point commodity rates for the movement of crushed rock and related articles between points in southern California. He declared that substantially all of the rates maintained for this traffic were on this level or lower, and that the rate complained of is among the very few in southern California which exceed the scale. He gave numerous examples of point-to-point rates published on the scale basis from Crushton and other rock producing points to destinations throughout southern California, including several destinations located on the Owenyo Branch south of Cartago.

The witness asserted that the unpublished scale is a proper measure of maximum reasonableness for the traffic in question, and expressed the opinion that any higher rate for transportation of crushed rock between points in southern California is prima facie unjust and unreasonable. In support of this opinion, he cited a number of cases in which the Commission had authorized or directed rail lines to refund charges collected for the transportation of crushed rock, sand, or gravel at rates higher than the scale.<sup>3</sup> To

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The filed complaint refers to sought rates of 5 cents to Cartago and 10 cents to Lone Pine, but it developed at the hearing that the unpublished scale would produce rates of 8½ cents and 9 cents for the distances involved. Subsequent to submission of this proceeding rail rates on crushed rock in California were increased generally 3 per cent as part of a nationwide adjustment. Due to disposition of fractions the assailed rate was not affected, although the sought rates, if thus increased, would be advanced to 9 cents and 9½ cents, respectively. All rates cited herein are subject to a minimum weight of 80,000 pounds, unless otherwise indicated. The present rates are published in Southern Pacific Company Local, Joint, and Proportional Freight Tariff No. 330-F, C.R.C. No. 3112.

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Southern California Edison Co. v. A.T. & S.F. Ry. et al. (28 C.R.C. 309); H. E. Dillon et al. v. A.T. & S.F. Ry., Decision No. 22733 of August 4, 1930, in Case No. 2872 (unreported); United Concrete Pipe Corp. v. P. E. Ry. et al., Decision No. 23153 of December 10, 1930, in Case No. 2891 (unreported); Will F. Peck et al. v. S.P.Co. (37 C.R.C. 250); Macco Lumber Company v. S.P.Co. (37 C.R.C. 254); Jahn and Bressi Construction Co. v. Holton Inter-Urban Ry. et al. (38 C.R.C. 54); E. T. Carter v. S. P. Co. (38 C.R.C. 791).

show that the assailed rate produced earnings considerably higher than would rates based upon the scale for comparable hauls, the witness compared earnings per car and per car mile under the assailed rate with earnings under rock rates between other points.

The witness declared that although the destinations here involved are located on a branch line, and in a mountainous area, these factors should not be considered as justifying higher rates on crushed rock. He stated that the rail lines ordinarily made no distinction between branch-line and main-line points in publishing rates on this commodity, and submitted examples in support of this assertion. He introduced also an exhibit setting forth rates maintained by Southern Pacific on several other commodities for the purpose of showing that defendant frequently published rates from and to points in mountain territory, including the destination territory here involved, without applying a penalty because of the nature of the line.

Complainant's general manager testified that the shipments upon which reparation is sought were made as alleged; that his company paid the transportation charges thereon; that the material had been sold pursuant to a competitive bid in which the rates had been considered; that his company had not requested a rate reduction prior to the movement; and that any refund authorized in this proceeding would accrue to complainant.

Defendant denied the material allegations of the complaint. An assistant general freight agent explained that the unpublished scale originated approximately 22 years ago, when rail lines serving southern California voluntarily published a general "run-out" of commodity rates upon the scale basis. He stated that the scale has been employed simply as a working basis for the purpose of establishing specific point-to-point commodity rates, and at no time has defendant considered it a maximum reasonable level if there were conditions justifying a different basis. The witness asserted that there had

been a substantial decrease in recent years in the movement of crushed rock and like commodities between points in southern California by his company, and expressed the opinion that under present conditions the scale more nearly represented a minimum than a maximum reasonable level. He conceded that for the years 1938 and 1939 less than 2 per cent of the tonnage moved at rates higher than the scale.<sup>4</sup>

The witness explained that the assailed rate was based upon the unpublished southern California scale for 365 miles, this being determined by using the rail distance from Crushton to Saugus and 150 per cent of the rail distance from Saugus to Lone Pine.<sup>5</sup> He stated that the mileage factor of 150 per cent was also used by his company in the publication of rates for transportation between Red Bluff and Calor, on the coast route between Chualar and Grover, and to certain points in the Imperial Valley. The witness said that transportation to Cartago and Lone Pine was comparable from an operating standpoint to that north of Red Bluff, and suggested that the use of constructive mileage was further justified in the present case by the fact that two branch lines were involved. He said that in mountainous territory where operating conditions justified it, his company had used and intended to use constructive mileage whenever competitive conditions permitted.

This witness pointed out a number of clerical errors in complainant's rate exhibits, but with these exceptions made no attempt to refute complainant's factual testimony. He readily conceded that his company maintained rates based on the scale in certain

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According to an exhibit submitted in evidence, defendant handled in 1938 a total of 1,160,493 tons of crushed rock and like commodities for commercial uses between points in southern California. The corresponding tonnage in 1940 was 82,230 tons. Other exhibits show that approximately 28 per cent of the 1940 traffic moved at rates equal to or higher than the scale, and that less than 9 per cent of the shipments moved in excess of 175 miles.

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The rail distances are 50.8 miles from Crushton to Saugus and 209.2 miles from Saugus to Lone Pine. The rate is applied at Cartago under intermediate application of the tariff.

mountainous territories, including points on the Owenyo Branch between Cinco and Brown, but declared that such rates were held to the scale level only because of truck or market competition.<sup>6</sup> He stated that the Cinco-Brown rates were published on short notice in 1936 for the purpose of meeting proprietary truck competition upon a particular movement, were made subject to a minimum weight of 100,000 pounds, and had been retained in the tariff after completion of the movement through oversight.

An engineering witness introduced and explained an exhibit comparing condensed profiles of the Southern Pacific lines from Saugus to Owenyo and from Red Bluff to Calor, and contrasting both of these with the line from Chico to Bakersfield, which was described as "typical valley territory." He explained that the comparison was made by equating the trackage to straight and level equivalent per actual mile of line, based upon the degree of curvature and amount of rise involved. Applying established ratios to the total curved miles of track and ascent in feet,<sup>7</sup> he calculated that the line from Saugus to Owenyo would be equivalent to 2.24 miles for each operated mile, as compared with 2.11 miles for the line from Red Bluff to Calor and 1.18 miles for the line from Chico to Bakersfield. This comparison, the witness said, shows that the two mountain lines are similar, and that for both directions of operation, the one here involved is the more difficult. This witness also submitted an exhibit setting forth the allocation of freight proportion of operating expenses to branch

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Cinco and Brown are south of Cartago.

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The witness stated that the simplest and most satisfactory method of equating these lines is by using 400 degrees of curved track or 200 feet of rise vertically as equal to one mile of straight and level track. According to the condensed profiles shown in this exhibit, hauls to Cartago and Lone Pine involve a pull from an elevation of 1165 feet at Saugus to 3691 feet at Cartago and 3672 feet at Lone Pine. The Red Bluff-to-Calor line involves a pull from an elevation of 309 feet to 5106 feet. The line between Chico and Bakersfield has a maximum elevation of 416 feet.

line and main line service for 1938 and 1940, according to which the expenses per gross ton mile for branch line service were approximately 93 per cent higher than for main line service for each of the two years.

The record shows that rates based upon the unpublished scale have been maintained by defendant generally throughout southern California for many years, and that the scale has been used as the measure of reasonableness by the Commission in a number of earlier proceedings involving complaints against particular rates. As contended by defendant, the scale has never been declared to be a maximum reasonable basis under all circumstances; and even for normal movements, this record does not afford a foundation for determining whether or not it represents the limit of reasonableness under present conditions. In so far as the traffic involved in this complaint is concerned, the record is convincing that rates higher than the unpublished southern California scale were and are justified. The evidence shows that the line from Saugus to Lone Pine is a difficult one from an operating standpoint, in that it includes high percentages of curved track and ascending grades, and engine helper service is regularly required. Furthermore, the traffic covered by this complaint encountered two branch lines in its movement from origin to destination, which according to this record tended to increase the cost of performing the service.

Complainant argued that operating conditions over the route from Crushton to Lone Pine, though undeniably severe, should not be used to justify rates higher than those maintained throughout southern California generally. With this contention we cannot agree.

Important elements affecting the cost of operation may properly be considered in passing upon particular rates. Cases cited by complainant on this subject, considered in their entirety do not support its contention to the contrary.<sup>8</sup>

Rates constructively increased 50 per cent for adverse transportation between Red Bluff and Calor have long been maintained by defendant for movement of the same commodity. This basis, although the subject of recent attack has not been condemned.<sup>9</sup> Complainant argued on brief that a review of defendant's tariffs failed to show that constructive mileage had been a consideration in the establishment of rates on southern California rock traffic, as asserted by defendant. Discussion of this contention would serve no useful purpose, since we are here concerned only with the question whether the assailed rate has been shown to be unreasonable, and not with mechanical processes by which it was developed.

Upon consideration of all the facts of record we are of the opinion and find that the assailed rate has not been shown to be unjust or unreasonable for the transportation of crushed rock from Crushton to Cartago or Lone Pine. The complaint will be dismissed.

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See Inland Empire Shippers v. Director General (59 I.C.C. 321). Cases cited by complainant were Klamath County Chamber v. S.P. et al., (74 I.C.C. 207) and Rosenwald and Kahn v. S. P. Co. (2 C.R.C. 860).

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R. J. Clifford v. California Western Railroad, et al., (Decision No. 35198 of March 31, 1942 in Case No. 4598).

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 the Commission being fully advised,

IT IS HEREBY ORDERED that the complaint filed in this proceeding be and it is hereby dismissed.

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

Dated at San Francisco, California, this 18<sup>th</sup> day of August, 1942.

Justus J. Roseman  
Ray H. Riey  
M. H. Kelly  
Francis R. Havens  
Richard H. Baker  
Commissioners