Decision No. 37345

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Johns-Manville Products Corporation, Complainant, vs. Southern Pacific Company, Defendant.	)	Case No. 4696

ORIGINAL

BY THE COMMISSION:

O P I N I O N

Complainant alleges that the charges assessed and collected on 43 carloads of 5-gallon tin cans and tin can tops transported from Los Angeles to White Hills during the period August 6, to December 15, 1941, were unreasonable in violation of Section 13 of the Public Utilities Act. Reparation only is sought.[1]

White Hills is on a branch line 14 miles east of Surf, the point where the branch connects with defendants main coast line. Charges were assessed and collected on the basis of a rate of 44 cents, which is the 55 per cent of 1st class rate contained in Pacific Freight Tariff Bureau Tariff No. 255-B, C.R.C. No. 60 of J. P. Haynes, Agent.[2] It is subject to minimum carload weights varying according to the length of the car.[3] All of complainant's

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1 Undercharges in the aggregate sum of $717.91 have been collected since the filing of the complaint. An authorization to waive undercharges, as first sought by complainant, is thus no longer involved.

2 Throughout this opinion rates are stated in cents per 100 pounds.

3 On cars up to and including 40 feet 7 inches the minimum is 14,000 pounds; on cars over 40 feet 7 inches and not over 50 feet, 6 inches it is 22,680 pounds; on cars over 50 feet 6 inches it is 28,000 pounds.

shipments were loaded in 50-foot cars, the minimum for which is 22,680 pounds. The weights of the shipments ranged from 13,130 to 16,270 pounds and averaged 14,961 pounds.

Subsequent to the movement of the shipments in issue defendant voluntarily established for like transportation a commodity rate of 44 cents. For cars of the length of those used in transporting the shipments in question this rate is subject to a minimum weight of 18,200 pounds. It is on the basis of the subsequently established rate that complainant seeks reparation.

Defendant first denied that the charges collected were unreasonable. Subsequently, however, it admitted that, under all the circumstances and conditions existing at the time the shipments in issue moved, the rate of 44 cents, minimum carload weight 22,680 pounds, was excessive and unreasonable to the extent that charges thereunder exceeded those which would have accrued on the basis of a like rate subject to a minimum weight of 18,200 pounds. Defendant has expressed its willingness to pay reparation on that basis. The matter has been submitted on a written statement filed by complainant.

Complainant contends that "there is an unreasonable disparity between the minimum weight for a car 40 feet 7 inches in length and the minimum weight for a car 50 feet 6 inches in length because the minimum weight is increased 8,680 pounds or 62% although the available loading space is increased only 30%." Had the shipments involved been made in 40-foot cars, charges would have been based on the 44-cent rate and a 14,000-pound minimum weight. The average loading of 40-foot cars, complainant represents, would have

been 11,508 pounds and the applicable charges would have equalled 53½ cents at actual weight. This 53½-cent rate complainant contrasts with a 66.7-cent rate at actual weight which is the equivalent of the applicable rate at the 22,680-pound minimum for the 50-foot cars used. All of these cars are said to have been loaded to their capacities.

It is well established that the minimum weight is a part of the carload rate and that both must be considered in determining a reasonable charge (Jacob Liptzer v. Pennsylvania Railroad Company, et al., 234 I.C.C. 752; Abrasive Company v. Erie Railroad Company, et al., 183 I.C.C. 103). It is likewise well settled that where there is no issue between the actual parties the proof necessary to justify reparation must measure up to that required had defendant opposed the reparation award, and that where charges are voluntarily reduced it does not necessarily follow that reparation should be awarded on shipments forwarded before the reduced rates became effective (Rosenberg Bros. & Co. v. S.P. Co., 43 C.R.C. 301; Krieger Oil Co. and Riverside Cement Co. v. P.E. Ry. Co. and U.P.R.R., 41 C.R.C. 521).

The basis of determining charges assailed in this complaint is the same as that prescribed by the Interstate Commerce Commission in Rates and Minimum Weights on Metal Containers, 191 I.C.C. 761. An extensive group of metal containers was involved in that proceeding. It included cans of the type and size embraced by this complaint. In the Metal Containers Case consideration was given to the fact that the prescribed minimum weights would in some instances exceed the weight which could be loaded in cars of the sizes specified in connection with the designated minima. It was held, however,

that in dealing with a group of commodities varying widely in their loading possibilities such would be the result regardless of what minimum weights might be selected. It was also held that "The shipper after all can have no real quarrel with the method of computing his freight charges so long as the amount demanded is reasonable."

Complainant's showing that somewhat lower charges could have been secured had the property involved been forwarded in smaller cars, and that the minimum weight applicable at the time the shipments were moved exceeded the weight which could be loaded in cars of the size used is inadequate. As a matter of fact, on the basis sought and now in effect the minimum weight exceeds the carrying capacity of the cars. Moreover, the assailed rate was applicable to a wide variety of containers, small and large, with widely varying loading characteristics. Complainant's showing is confined to the proposition that the minimum weights observed in determining the charges were improper. The minimum weight is only one factor used in ascertaining the charges. No showing was made with respect to the rate or the charges produced by the minimum weight and rate involved. The record fails to demonstrate that the charges collected were excessive or unreasonable.

Upon consideration of all the facts of record we are of the opinion and find that the assailed charges have not been shown to be unreasonable. 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 the order upon the findings of fact and the conclusions contained in the opinion which precedes this order,

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

Dated at San Francisco, California, this 26th day of September, 1944.

Commissioners