Case No. 4706 - H.M.

Decision No. 37537

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

The Coca-Cola Company,
Complainant,

vs.

Southern Pacific Company
Defendant.

ORIGINAL

Case No. 4706

BY THE COMMISSION:

O P I N I O N

Complainant alleges that defendant's applicable rates for the transportation of 75 carloads of sugar from Crockett to Pinedale and from Pinedale to Los Angeles, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act.[1] An order is sought authorizing defendant to waive collection of undercharges amounting to $9,824.70.

The matter was submitted upon complainant's written Memorandum of Facts and Argument. Defendant has signified its willingness to waive collection of the undercharges.

The shipments moved to Pinedale for storage between April 4 and May 7, 1940, and were reshipped to Los Angeles between April 7 and June 13, 1941. Charges were assessed at the local rates of 15 cents from Crockett to Pinedale and 25 cents from Pinedale to Los Angeles.[2]

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[1] Crockett is a main line station 25 miles east of Oakland. Pinedale is located on a branch line 15 miles north of Fresno.

[2] Rates are stated in cents per 100 pounds.

At the time the shipments were forwarded from Crockett, defendant's tariff provided that sugar originating at Crockett and certain other points on its lines at which sugar refineries are located could be stored in transit at Pinedale for a period of one year and reshipped to Los Angeles at the through rate from point of origin to Los Angeles, plus a charge of $5 per car. Thus, if complainant's shipments had not been stored at Pinedale for more than one year a rate of 25 cents, plus $5 per car, would have been applicable for the combined inbound and outbound movements. It is to this basis that reparation is sought.

Complainant cites a number of instances in which defendant, prior and subsequent to the movement of the shipments covered by the complaint, extended the time limit for the storage of sugar at Pinedale under the through rates and $5 per car charge. Defendant agreed to make a similar extension here, but neglected to do so. In addition, complainant calls attention to the fact that while its shipments were at Pinedale, in four other instances one of which involved sugar, the transit period was extended.[3] While not contending that the rates charged were intrinsically unreasonable, it alleges that under the circumstances the failure of defendant to extend the normal storage period of one year to the shipments embraced in the complaint subjected it to "relatively" unreasonable charges.

Defendant has admitted the allegations of the complaint and does not dispute the assertion that the applicable charges were "relatively" unreasonable when applied to the particular shipments under consideration.

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[3] The other commodities involved were cotton; brandy, vermouth and wine; and nuts and nut meats.

It is well established that in proceedings of this nature where there is no issue between the parties the proof must nevertheless measure up to that which would be required in the event that the defendant opposed the relief sought.[4]

Where, as here, complainants have relied upon their inability to comply with tariff provisions requiring reshipment of articles from transit points within a specified period of time to establish the unreasonableness of assailed rates, the Interstate Commerce Commission has denied reparation. For example, in Eagle Pass Lumber Co. v. G.H. & S.A. Ry. Co., 48 I.C.C. 693, the I.C.C. held:

> "Complainant introduced no evidence to show that the rates assailed were or are unreasonable per se. What it is in fact seeking is the retroactive application of a transit service. In National Lumber & Creosoting Co. v. T. & Ft. S. Ry. Co., 42 I.C.C. 35, we considered a somewhat analogous situation and declined to apply an extension of a transit period retroactively. We have repeatedly refused to give retroactive effect to a transit service unless to remove an unlawful discrimination, and we are of the opinion that the facts in the instant case do not justify a different conclusion herein."

See also Wilson & Co., Inc. v. Chicago M. St.P. & P.R. Co., 172 I.C.C. 347.

The record in the instant proceeding does not indicate that defendant's failure to extend the storage period resulted in unreasonable rates to complainant.

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 have been unjust or unreasonable in violation of Section 13 of the Public Utilities Act. The complaint will be dismissed.

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[4] Johns Manville Prods. Corp. v. S.P.Co. 45 C.R.C. 449; Mettler v. S.P. Co. 43 C.R.C. 469; Rosenberg Bros. & Co. v. S.P. Co., 43 C.R.C. 301; Krieger Oil Co. v. P.E. Ry. Co., 41 C.R.C. 521; Salinas Valley Ice Co., v. W.P.R.R. Co., 41 C.R.C. 79.

O R D E R

This case being at issue upon a complaint and answer on file, full investigation of the matters 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 14 day of December, 1944.

Commissioners