

Decision No. 37914

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

R. R. HENDERSON,)
Complainant,)

vs.

Case No. 4694

PACIFIC MOTOR TRUCKING COM-)
PANY, a corporation, and)
SOUTHERN PACIFIC COMPANY, a)
corporation,)
Defendants)

ORIGINAL

BY THE COMMISSION:

Appearances

ARLO D. POE, for complainant

E.L.H. BISSINGER, for Pacific Motor Trucking
Company and Southern Pacific Company,
defendants.

O P I N I O N

Complainant in this proceeding alleges that freight charges demanded by defendants for transportation of 15 carload shipments of cement, in sacks, from Monolith to Upper Scheelite, California, during the period February 17, to July 10, 1941, are unjust and unreasonable in violation of Section 13 (a) of the Public Utilities Act. Rates for the future are not involved.

Public hearing was had before Examiner Bryant at Los Angeles complainant subsequently filed a memorandum of points and authorities, and the matter is ready for decision.

The shipments originated at the plant of Monolith Portland Cement Company, located on the rails of Southern Pacific Company in Kern County, approximately 15 miles northwest of Mojave. They were transported by Southern Pacific some 155 miles by rail to Lone Pine, which is located on the Owenyo branch line in Inyo County. At

Lone Pine the shipments were transferred to motor vehicle equipment of Pacific Motor Trucking Company, a subsidiary of Southern Pacific Company, and moved by that carrier the remaining 83 road miles to Upper Scheelite. Upper Scheelite is approximately 25 miles northwest of Bishop, in the Sierra Nevada Mountains of northern Inyo County.

There is no dispute as to the facts in this case. The evidence shows that complainant was awarded a contract in November, 1940, to furnish cement for construction of a mill at Upper Scheelite. Complainant tendered the first shipments of cement for the mill to highway contract carriers, who transported it from Monolith to Upper Scheelite at a rate of 16 cents per sack.¹ The applicable combination rate via defendants' lines was 25½ cents per 100 pounds, minimum weight 36,000 pounds. In order to compete with the highway carriers, defendants published a through rate of 16½ cents per 100 pounds,² minimum weight 80,000. This rate became effective November 16, 1940, and was published to expire with February 15, 1941, when it was expected that the movement of cement would be completed.

Construction work on the mill was delayed by adverse weather conditions, and only nine carloads moved between November 16, 1940, and February 15, 1941. The 15 carload shipments here in issue moved between February 16, and July 10, 1941, when the movement ended.

¹ The rate of 16 cents per sack is equivalent to a rate of approximately 16.84 cents per 100 pounds. A sack of cement weighs 95 pounds.

² The through rate of 25½ cents per 100 pounds, minimum weight 36,000 pounds, was composed of combination Class "C" rates of 14½ cents per 100 pounds from Monolith to Lone Pine and 11 cents per 100 pounds from Lone Pine to Upper Schoelite, as provided in Pacific Freight Tariff Bureau Tariff No. 255-A, C.R.C. No. 30, of J. P. Haynes, Agent, republished effective January 15, 1941, in Pacific Freight Tariff Bureau Tariff No. 255-B, C.R.C. No. 60, of J. P. Haynes, Agent, and Pacific Motor Trucking Company Local, Joint, and Proportional Freight Tariff No. 49-A, C.R.C. No. 43. The 16½-cent rate was published in Southern Pacific Company's Special Joint Freight Tariff No. 3179, C.R.C.No.3685, under Authorities Nos. 15-24395 and 63-16233.

Through oversight, the rate of 16½ cents per 100 pounds was allowed to expire as scheduled, and the rate of 25½ cents was the applicable rate on the shipments in issue. There was no change in the transportation performed before and after the expiration date, except that operating conditions after February 15 were somewhat more favorable than in the earlier period.

Due to a combination of circumstances, the shipments transported after February 15, 1941, were billed at 16½ cents per 100 pounds. Defendants discovered their error approximately a year after the transportation was completed and brought suit to recover undercharges in the amount of \$1282.50 on the basis of the applicable rate of 25½ cents per 100 pounds. In the proceeding now before this Commission they filed an answer denying the material allegations of the complaint but did not otherwise resist the granting of the relief sought.

It is clear that defendants intended to make a rate of 16½ cents per 100 pounds applicable to all shipments of cement required for construction of the mill at Upper Scheelite; that failure to do so was the result of an oversight; that operating conditions before and after the expiration date were comparable; and that the shipments weighed greatly in excess of the applicable tariff minimum.³

However, the Commission's power to award reparation or authorize waiver of undercharges, as derived from Section 71 of the Public Utilities Act, may be exercised only when the Commission has found, after investigation, that the carriers have charged an unreasonable, excessive, or discriminatory amount. Ordinarily, a rate made by combining class rates might be considered high for a relatively

³ As hereinbefore indicated, the combination rate of 25½ cents was subject to a minimum weight of 36,000 pounds. With only one exception, the shipments in issue weighed 95,000 pounds or more.

heavy movement. Here, however, the record shows that the transportation involved a branch-line rail haul and physical transfer of the lading from rail car to highway vehicle, and that a portion of the truck haul required hazardous operations under winter conditions over a severe mountain road reaching elevations in excess of 8,000 feet. No probative evidence was offered to show that the sought rate would be a maximum reasonable rate for the transportation involved. Since we are unable to find from the evidence of record that the applicable rate was excessive or unreasonable, the complaint must be dismissed. (See Decision No. 37898 of May 15, 1945 in The Coca-Cola Company v. Southern Pacific Company and cases cited therein.)

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 this complaint be and it is hereby dismissed.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at Los Angeles, California, this 22nd day of May, 1945.

Harold Ordway
Justice F. Casper
Richard L. Baker
Frank W. Clark
Frank D. Powell
Commissioners