

Decision No. 40570

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Bressi & Bevanda, Constructors, Inc.  
A. Tiechert & Son, Inc.

Complainants

vs.

The Atchison, Topeka and Santa Fe Railway Company  
Southern Pacific Company  
The Western Pacific Railroad Company  
(T. M. Schumacher and Sidney M. Ehrman, Trustees)

Defendants.

**ORIGINAL**

Case No. 4756

Appearances

E. M. Cox, for complainants.

J. M. Souby, Jr., J. E. Hennessy, and  
William Meinhold, for defendants.

O P I N I O N

Complainants allege that the charges assessed and collected by defendants for the transportation in March, 1942 of several carload shipments of contractors' equipment "were and are excessive, unjust and unreasonable, in excess of the published tariff rates, in violation of Section 17 of the Public Utilities Act of the State of California; in violation of the long and short haul provision of Section 24 of said Act in that the shorter haul of complainants' shipments is within a longer haul with lower published rates and the complainants have been damaged thereby." Defendants deny the material allegations of the complaint.

Public hearing was held before Examiner Bryant at Los Angeles, and the matter is ready for decision.

The evidence introduced by complainants consisted of oral testimony of a traffic representative who briefly stated the tariff

provisions in effect at the time of movement, and shortly thereafter. No exhibits were offered. Defendants did not introduce evidence but rested their defense upon oral argument and citation of authorities.

The complaint involves seven carloads of contractors' equipment transported from Goleta to Hackstaff, and nine carloads transported from Victorville to Hackstaff. All of the shipments were delivered in March, 1942 and the original complaint was filed on March 5, 1945. It is agreed that the complaint was filed within three years, but after two years, from the time the cause of action accrued. At the hearing the defendants pointed out, and complainants conceded, that this complaint is barred by Section 71(b) of the Public Utilities Act except to the extent that it may involve damages resulting from any violation of the provisions of Section 17(a)2 or 17(b). For this reason the Victorville shipments, which involve only alleged violation of Section 24, will not be further discussed.

The remaining shipments were transported by Southern Pacific Company from Goleta to Sacramento, where they were interchanged with the Western Pacific Railroad Company which transported them to destination at Hackstaff. According to the testimony, a "Class A" rate of  $76\frac{1}{2}$  cents per 100 pounds was assessed, being a combination of the rate of 47 cents from Goleta to Sacramento and the rate of  $29\frac{1}{2}$  cents from Sacramento to Hackstaff. A few days after the shipments were delivered the latter rate was reduced to  $27\frac{1}{2}$  cents, making the combination thereafter  $74\frac{1}{2}$  cents. At the time of movement there was available a lower combination of Class A rates, being 34 cents from Goleta to Richmond and  $38\frac{1}{2}$  cents from Richmond to destination, making a through rate of  $72\frac{1}{2}$  cents. Richmond was not an interchange point, but the tariff assertedly provided that the latter combination of rates would apply on shipments interchanged at Marysville. The shipments were actually interchanged at Sacramento. It was

stipulated at the hearing that no junction point was specified by the shipper at time of shipment.<sup>1</sup>

Complainants contend that, regardless of actual point of interchange, the lowest combination of rates, namely 72½ cents per 100 pounds, should have been assessed under the tariff; and that, overcharges being prohibited under Section 17 of the Public Utilities Act, reparation should be awarded to the basis of 72½ cents per 100 pounds.

Defendants argue, however, that the applicable tariff rates were those named to and from the junction point via which the cars actually moved. For purposes of this proceeding they concede that the cars were tendered to them without specific routing instructions, that the lowest-rated route was not followed, and that higher charges resulted thereby. They declare that such higher rates are not rates in excess of the tariff, within the meaning of Section 17 of the Act, and that the question in such cases is solely one of reasonableness within the meaning of Section 13. Since the instant complaint was filed too late to toll the statute of limitations in so far as relief under Section 13 is concerned, defendants ask that the complaint be dismissed.

Complainants did not cite any specific tariff provision or other authority in support of their contention that the tariff required protection of the lowest combination of rates via any junction point or points regardless of the actual point of interchange. In the absence of authority for this contention, it appears from the record that the rates assessed and collected were those specified in the tariffs and in effect at the time of shipment for

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Complainant referred also to a lower combination of rates from San Fernando or San Fernando Mission to Hackstaff, and said that he was unable to find any 24th Section authority for maintenance of the higher rate from Goleta. As hereinbefore indicated, relief under the 24th Section is barred by the statute of limitations.

transportation to and from the junction point at which the cars were interchanged. While it is the duty of the initial carrier in the absence of shipper routing instructions to forward shipment by a reasonable route giving the lowest combination of rates, carrier misrouting within itself does not constitute a violation of Section 17 of the Act. It does not appear, therefore, that there was any tariff overcharge within the meaning of Section 17. If the shipments were tendered to the carriers without specific routing instructions, and if unreasonable charges within the meaning of Section 13 resulted from defendants' failure to forward the cars via that reasonable and practicable route over which the lowest rates applied, it is clear that relief is now barred by the statute of limitations provided in Section 71(b).

Since complainants have not shown that the charges assessed on the shipments in issue were in violation of any of the provisions of Sections 17(a)2 or 17(b) of the Public Utilities Act, and since relief under other sections of the Act is now barred, the complaint must 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 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 San Francisco, California, this 29<sup>th</sup> day of July, 1947.

*Howard K. ...*  
*Justice F. ...*  
*... ..*

Commissioners