

Decision No. 40683

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

A. D. SCHADER,

Complainant,

v.

THE ATCHISON, TOPEKA AND SANTA
FE RAILWAY COMPANY, SOUTHERN
PACIFIC COMPANY,

Defendants.

Case No. 4354

ORIGINAL

Appearances

Frank Loughran, for complainant.

J. M. Souby, Jr., J. E. Lyons and
George T. Hurst, for defendants.

OPINION

By complaint, filed October 3, 1946, A. D. Schader, a dealer in railway materials, alleges that the rates charged by defendants for transporting carload shipments of second-hand rails and fastenings from Merced to San Francisco were and are unjust and unreasonable in violation of Section 13(a) of the Public Utilities Act. An order is sought awarding reparation on such shipments as moved since January 1, 1946, including shipments moving pendente lite, and prescribing a just and reasonable rate for the future. The defendants in their answer deny the essential allegations of the complaint. A hearing was held before Examiner Bradshaw at San Francisco. Briefs have been filed.

According to the testimony, the rails and fastenings which comprised the shipments on which reparation is sought were purchased by complainant following the abandonment of the Yosemite Valley

Railroad, which extended from Merced to El Portal. Exhibits of record disclose that the shipments began to move on January 25, 1946, and between that date and January 27, 1947, 227 carloads, aggregating slightly over 12,000 net tons were shipped. The average weight per carload was stated to have been 106,663 pounds, although certain shipments consisting of straight carloads of fastenings averaged 98,944 pounds. Complainant's sales manager testified that complainant paid the transportation charges on the shipments in question. He anticipates that in the future a few additional shipments of second-hand rails obtained from other sources will be made from either Merced or Atwater.

Prior to May 8, 1946, an 18-cent rate,¹ minimum weight 40,000 pounds, was applicable from Merced to San Francisco on various iron and steel articles, including rails and fastenings. On that date a rate of 15 cents, minimum weight 80,000 pounds, was established on second-hand rails in straight carloads or in mixed carloads with second-hand rail fastenings. As the result of general state-wide rate increases,² the 18-cent rate was advanced to 19 cents effective July 1, 1946, and to 22 cents effective January 1, 1947. On the same dates the 15-cent rate became 16 cents and 18 cents, respectively. It was published as a temporary arrangement and expired on March 31, 1947.

Complainant contends that these rates were and are unjust and unreasonable to the extent that they exceeded or exceed lower rates contemporaneously in effect from San Francisco to Merced on numerous iron and steel articles, including new or second-hand

1

Rates are stated herein in amounts per 100 pounds.

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See Decision No. 39154 in Application No. 24670 (46 C.R.C. 53) and Decision No. 39785 in Application No. 27446 (47 Cal.P.U.C. 67).

rails and fastenings.³

In the following tabulation, compiled from an exhibit of record, the revenue derived from the assailed rates in effect prior to July 1, 1946, is contrasted with the revenue which would have accrued under the contemporaneous southbound rate between the same points:⁴

	Rate (Cents)	Average Revenue Per		Ton-Mile (mills)
		Carload (a)	Car-Mile (a)	
Northbound Prior to May 8, 1946	18	\$191.99	\$1.34	25.1
May 8 to June 30, 1946, inclusive	(15 18(b))	159.99 178.10(b)	1.12 1.24(b)	21.0 25.1
Southbound	11	117.38	.82	15.4

(a) Based on 106,663 pounds per car, except as otherwise indicated.

(b) Rate in effect on straight carloads of fastenings. The earnings shown are predicated on an average weight per car of 98,944 pounds, instead of 106,663 pounds as used in the exhibit.

The practice of maintaining lower southbound rates on iron and steel articles than in effect between the same points in the opposite direction extends throughout the San Joaquin Valley. As testified by complainant's rate witness, the 18-cent northbound rate exceeded the contemporaneous southbound rate to Merced by a greater amount than the difference between the north and southbound rates at all other points as far south as Bakersfield. He stressed the fact that the 18-cent rate was the same in amount as the rate from San Francisco to Tipton, although the distance is 110 miles greater than, or almost twice that, from Merced to San Francisco. It was also

³ The rates from San Francisco to Merced were and are subject to a carload minimum weight of 40,000 pounds. Complainant suggests that a minimum of 80,000 pounds be applied in connection with any rates which may be prescribed herein.

⁴ Similar differences occur in the earnings accruing under the north and southbound rates which became effective July 1, 1946 and subsequently as a result of state-wide increases.

pointed out that the 15-cent rate from Merced to San Francisco was 2 cents higher than the rate from San Francisco to Fresno and 2 cents lower than published to Tulare. The distances to these points are 55 and 100 miles, respectively, greater than between Merced and San Francisco.

The assailed rates were also compared with a number of rates on new or old rails and various iron and steel articles between other points involving similar as well as greater distant hauls, including a few transcontinental movements. The rates shown for distances comparable to that from Merced to San Francisco (143 miles) and the per-car earnings thereon appear in the following table:

<u>From</u>	<u>To</u>	<u>Miles</u>	<u>Rate</u> <u>(Cents)</u>	<u>Average Rev-</u> <u>enue Per Car</u>
Terrance	Gaviota	149.8	12	\$128.00
Fresno	Oakdale	153.5)		
Kaiser	San Diego	153.0)-	13	138.66
Pittsburg	Fresno	156.6)		

In addition, complainant's rate witness compared the assailed rates with those on canned goods, brandy and wine, barley and dried fruit from various San Joaquin Valley points to San Francisco. It was shown that the 18 and 15-cent rates complained of exceeded the rates from and to the same points on these commodities. An 18-cent rate applied to San Francisco on canned goods from Kingsburg, on dried fruit from Coshon Junction, and on brandy and wine from Delano.⁵ The rates on barley from all of the Valley points were less than 18 cents. A 15-cent rate applied on dried fruit from Athlone and on brandy and wine from Tulare.⁶ The barley rates were less than 15 cents from stations as far south as Earlimart.⁷

⁵ These points are located 75, 89 and 130 miles, respectively, south of Merced.

⁶ Athlone and Tulare are 10 and 100 miles, respectively, south of Merced.

⁷ Located 122 miles south of Merced.

Evidence was presented to indicate that claims for loss or damage frequently arise in connection with the transportation of canned goods, brandy and wine, barley and dried fruit, while rails and fastenings are not susceptible to loss or damage in transit. Data were also submitted to show that the value of complainant's shipments was considerably less per ton than new rails, new fastenings or the other commodities mentioned.

Defendants' evidence discloses that the rate on iron and steel articles from Merced to San Francisco was reduced from 32 cents (fifth class rate) to 19 cents on August 7, 1939, because a rate of that volume was prescribed as the minimum rate for transportation by highway carriers.⁸ The rail rate became 18 cents effective April 20, 1942, under the intermediate application of the tariff,⁹ when a rate of that amount was published from Huron⁹ and Hanford. It is claimed that this action was taken in order to secure a large quantity of iron and steel, principally pipe, to be shipped from the Kettleman Hills area to Richmond and San Pablo, which otherwise would be transported by truck. The reduction to 15 cents on May 8, 1946, according to the testimony, was in response to a request by complainant that the rate from Merced be reduced to 11 cents, and upon a representation that a rate of that volume was necessary to permit the marketing of the rails of the abandoned Yosemite Valley Railroad.

In explanation of the lower rates in the opposite direction, one of defendants' witnesses stated that the rate to Merced was reduced from 20 cents to 12 cents on April 25, 1932, and again to 10 cents on December 5, 1934,¹⁰ as a part of a readjustment of iron and steel rates from the San Francisco and Los Angeles areas to San

⁸ Decision No. 31606 in Case No. 4246 (41 C.R.C. 671).

⁹ Huron is located 100 miles beyond Merced.

¹⁰ Effective April 15, 1938, this rate became 11 cents as a result of state-wide increases authorized by Decision No. 30784 in Application No. 21603 (41 C.R.C. 215).

Joaquin Valley points to meet the competition of highway carriers not then subject to regulation. The witness asserted that these rates were not published from the San Joaquin Valley to the Bay area because they were "badly depressed" and that "there was no production and relatively little movement from that area." It is asserted that no truck competition had been encountered on northbound iron and steel and that the movement in that direction of complainant's rails and fastenings was very unusual.

The rates on canned goods and the other commodities included in complainant's rate comparisons were likewise declared to be depressed as a result of truck competition prior to the enactment of the Highway Carriers' Act (Statutes 1935, Ch. 223). According to the testimony, these commodities move in heavy volume to the Bay area.

The assailed rates were contrasted with (1) rates on iron and steel found not unreasonable on certain shipments from the Los Angeles area to Santa Barbara, Lompoc and Santa Maria in Consolidated Steel Corporation, Ltd., vs. Santa Maria Valley R. Co., (1933) Decision No. 26277, Case No. 3298, (not printed); (2) the rate on the same articles from Los Angeles to Yuma, Arizona, found not unreasonable by the Interstate Commerce Commission in Los Angeles Chamber of Commerce vs. Atchison T. & S.F.R.Co., (1932) 182 I.C.C. 141; and (3) a rate approved by the same Commission in Track Material, Calif. to Calexico, Calif., (1939) 232 I.C.C. 652, on railway track material from San Diego and Los Angeles Harbor to Calexico for export into Mexico. With the exception of the haul from Los Angeles to Santa Barbara, the distances between these points are greater than from Merced to San Francisco, although the compared rates (as modified by subsequent general increases) produce higher car-mile and ton-mile earnings than accrued under the assailed rates. Attention was called to the maxim that ordinarily car-mile and ton-mile earnings should decrease as the distance increases.

Several rate bases prescribed by the Interstate Commerce Commission on iron and steel in other territories were also referred to by defendants.¹¹ Computations were made indicating that, as compared with the assailed rates of 18 and 15 cents prior to July 1, 1946, and 16 cents from that date to and including December 31, 1946, the resultant rates under these bases for the distance from Merced to San Francisco would be:

	<u>Prior to July 1, 1946</u>	<u>July 1, 1946 to and including December 31, 1946</u>
	<u>Cents</u>	<u>Cents</u>
Consolidated Southwestern 32½ per cent Scale	35	37
Western Trunk-Line 32½ per cent Scale	28	30
28 per cent Official-W.T.L. Scale	24	25
Official territory Scale	21	23

The extent to which any traffic moves by rail upon the rate levels indicated for distances comparable to that from Merced to San Francisco, or the conditions surrounding any such transportation, were not disclosed.

11

The bases mentioned were (1) 32½ per cent of the 1st class rates for interstate traffic prescribed (a) from, to and within Oklahoma, Texas, Arkansas and Louisiana west of the Mississippi River in Consolidated Southwestern Cases, 123 I.C.C. 203, and (b) within the area comprising roughly the northern peninsula of Michigan, southeastern Minnesota, Wisconsin, Iowa and northern Missouri in Western Trunk-Line Class Rates, 204 I.C.C. 595; (2) 28 per cent of 1st class from points in Official territory and from certain points in Western Trunk-Line territory to destinations in Minnesota, Nebraska, North Dakota and South Dakota and to certain destinations in Iowa, prescribed in Iron and Steel to Iowa, Minn., Mich. and Wis., 263 I.C.C. 361; and (3) a so-called basic distance scale of iron and steel rates in Official territory established in Iron and Steel Articles, 155 I.C.C. 517.

Complainant takes the position that, while a rate in one direction is not necessarily a measure of the reasonableness of the rate in the opposite direction, it is incumbent upon carriers to justify a substantial difference in such rates. This, it is claimed, defendants have failed to do. The contention is advanced that, regardless of the circumstances which may have prompted defendants to establish southbound iron and steel rates upon their present level, the record does not disclose that such rates are now depressed. It is urged that, by reason of the prescription of minimum rates for highway carriers upon higher levels than maintained by the rail lines on carload traffic, the latter have been in a position since 1932 to take steps to increase rates which had previously been reduced. Defendants' failure to do so in this instance, complainant argues, is a clear indication that they do not regard these rates as depressed but recognize them as reflecting the reasonable rate level they desire to maintain. The rates found not unreasonable in the cases cited by defendants, as well as the rate levels in other territories, are characterized as inappropriate tests of the reasonableness of the assailed rates, because of (a) the circumstances under which the compared rates were approved and (b) differences in transportation and other conditions.

Defendants contend that complainant's rate evidence lacks probative value. They claim that the existence of the lower southbound rates is justified by the greater volume and regular movement of southbound iron and steel traffic, as well as by the former unregulated truck competition which lead to the reductions in the rates. It is also argued that the reasonableness of the assailed rates has been demonstrated by defendants' rate evidence. The assailed rate in effect when complainant's shipments began to move is referred to as in itself a depressed rate, because it had

been reduced from the fifth class basis to the minimum prescribed for highway carriers and was again reduced to the rate established to meet a trucking competitive situation at Huron. The failure to attempt to increase "low spot" rate adjustments following the prescription of minimum highway carrier rates is attributed to the necessity on defendants' part of concentrating their efforts towards solving problems imposed during the recent war.

The record does not indicate the volume of iron and steel moving under the southbound rates, the average loading per car or the rates of competing carriers which the defendants undertook to meet when the rail rates were reduced in 1932 and 1934. While the practice of maintaining different rates, depending upon the direction of movement, is often justified, it appears that the difference in the north and southbound rates on rails and fastenings between Merced and San Francisco was unusually great. Every shipper is entitled to just and reasonable rates even on sporadic shipments.

Although the evidence discloses some dissimilarities in the circumstances and conditions under which the north and southbound traffic moves, no showing has been presented which justifies a rate in one direction as high as that in the opposite direction for almost twice the distance. Nor are the rate levels in other territories or approved in the cases cited by defendants conclusive in determining a just and reasonable rate for traffic moving over main lines of railroads in areas such as traversed between Merced and San Francisco. When judged by the earnings which accrued under the assailed rates, those contemporaneously in effect in the opposite direction and on other commodities, and the rate voluntarily established from Huron to Richmond and San Pablo, it is our opinion and we find that the rates at issue have been shown to have been unjust and unreasonable to the extent that they exceeded 15 cents prior to

July 1, 1946, 16 cents between July 1, 1946 and December 31, 1946 inclusive, and 18 cents thereafter, subject to a carload minimum weight of 80,000 pounds. In view of the absence of a definite showing of the probability of future shipments, our findings of unreasonableness will be limited to the past. Compare Williams Bros. Inc. v. Missouri-K-T-R.Co., 200 I.C.C. 201, 204; Montana-Dakota Power Co. v. Chicago and N. W. Ry. Co., 198 I.C.C. 557, 565.

The exact amount of reparation due is not of record. Complainant will submit to defendants for verification a statement of the shipments made, and upon payment of the reparation, defendants will notify the Commission of the amount thereof. Should it not be possible to reach an agreement as to the reparation award, the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

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 defendants, The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company, be and they are hereby ordered and directed to refund to complainant, A. D. Schader, all charges collected on the shipments of second-hand rails and fastenings in straight or mixed carloads here involved in excess of those which would have accrued on the basis of the

rates found just and reasonable in the preceding opinion, together with interest at six (6) per cent per annum.

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

Dated at Los Angeles, California, this 10th day of September, 1947.

Harold H. Kula

James F. Garner

Walter L. Linnell

R. J. Dwyer

Commissioners