

ORIGINAL

Decision No. 43157

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

United States of America,)
Complainant,)

vs.)

Southern Pacific Company,)
Defendant.)

Case No. 4925

Appearances

Colin A. Smith, James C. Moore and
Lyle L. Jones, for complainant.
James E. Lyons and Charles W. Burkett, Jr.,
for defendant.

O P I N I O N

By this complaint, as amended, the United States of America alleges that the rates and charges assessed and collected by Southern Pacific Company for the transportation of carload shipments of cement from Permanente to Coram and Redding during the period from May 1940 to February 1946, inclusive, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act. ¹ Reparation is sought. Rates for the future are not involved.

Public hearings were had before Commissioner Rowell and Examiner Mulgrew. Briefs were filed.

The mill which produced the cement is situated at Permanente, a point 19 miles west of San Jose. Redding is at the upper end of the Sacramento Valley. Coram is several miles north of Redding. The cement was used by the Bureau of Reclamation in building Shasta Dam and other structures of the Central Valley Project.

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The original complaint was filed against Southern Pacific Company, a Kentucky corporation. Its amendment made Southern Pacific Company, a Delaware corporation which subsequently acquired the property and assumed the obligations of the Kentucky corporation, a defendant.

More than 22,000 carloads were shipped. The aggregate weight was more than 2,500,000,000 pounds. The average weight per car exceeded 110,000 pounds. The preponderant movement was bulk cement to Coram. Some 300 carloads were delivered at Redding. Less than 50 carloads contained sacked cement. Most of the shipments consisted of multiple-car lots. Generally, not more than 30 cars per day were forwarded.

Defendant's tariffs did not provide multiple-car rates. Until April 24, 1942, its carload rates on cement were 25½ cents to Coram and 24 cents to Redding.² On that date, they were increased to 27 and 25 cents, respectively. The 25½ and 24-cent rates were reinstated on May 15, 1943.³ All of these rates were subject to minimum carload weights of 60,000 pounds on bulk cement and 38,000 pounds on sacked cement. Land grant deductions from the tariff rates applied until December 28, 1940, when defendant was released from its land grant obligations on other than military traffic. Approximately 2,000 carloads of cement moved to Coram during the applicability of such deductions. The land grant rate for these shipments was 18.954 cents. No shipments were made to Redding while the land grant deductions were in effect. Upon the restriction of the land grant rates to military traffic, defendant established for the remainder of complainant's shipments a reduced rate of 21 cents, minimum carload weight 100,000 pounds, applicable to shipments from Permanente to both Coram and Redding. This action was taken after a request was made by the government for a special rate lower than the published tariff rates. Under the provisions of Section 17(a)⁴ of the Public Utilities Act common carriers are authorized to transport property for the United States, state, county or municipal governments at free or reduced rates. The government first asked that land grant rates be voluntarily continued. Subsequently it proposed a 20-cent rate.

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Throughout this opinion rates are stated in amounts per 100 pounds.

³ See Decisions Nos. 35271 (44 C.R.C. 145) and 36341 (44 C.R.C. 683) in Increased Railroad Rates, 1942.

Complainant seeks reparation to the basis of a 13½-cent rate to Coram and a 12½-cent rate to Redding, minimum carload weight 110,000 pounds. As an alternative basis, it asks that the Commission determine the extent to which defendant's rates and charges were unjust and unreasonable.

On brief, complainant contends that the charges assessed were excessive "measured by every known standard of rate making". More specifically, it urges in its briefs that these charges were excessive judged on the basis of (1) savings resulting from heavy loading, multiple-car movement, and freedom of handling; (2) earnings per car and per car mile; (3) special cement rates to government projects; and (4) the public interest involved. According to complainant's rate analyst, it has "no interest in the rate adjustments on cement or any particular rates applicable on cement based on the published carload minimum weights", but is concerned with "the absence of a reasonable rate and minimum weight fitted to the movement involved". The contention that the rates assessed and charges collected were unjust and unreasonable, the rate analyst said, was based primarily upon the following factors: "There were practically no terminal costs to the defendant in the handling of this traffic, the cars contained unusually heavy loads, the movement was in multiple carloads or trainloads and yet the rates assailed exceeded the rates on cement and other comparable commodities in California and other parts of the West." In short, complainant takes the position that circumstances and conditions peculiar to the transportation in issue justify substantially lower rates and charges.

The contentions that the cars involved contained unusually heavy loads, that there were savings resulting from such loading, and that the rate and minimum weight should be fitted to the movement will first be discussed.

Complainant calculated the average loading as 112,000 pounds per car. It pointed out that this weight substantially exceeded the 60,000-pound tariff minimum. It also pointed out that defendant would have experienced higher over-all costs had the cars been loaded only to the tariff minimum. Complainant referred to many instances where defendant maintains two or more rates for particular hauls. In each such case, the lowest rate is subject to the highest minimum weight. These facts are relied upon to demonstrate that defendant failed to follow its established practice of providing lower rates for heavier carloads.

Defendant, on the other hand, claims that charges based on minimum carload weights are the floor, not the ceiling, for reasonable per-car revenues. Average loadings generally exceed minimum weights. The 60,000-pound minimum on cement was established to accommodate the minimum sales unit of the industry. The minimum sales unit is ordinarily not involved in bulk cement sales and the average weight of carload shipments of such cement exceeds the minimum weight by a considerable amount. A statement submitted by defendant shows that the average carload weight of its commercial bulk cement shipments in northern California was approximately the same as the average of complainant's shipments. With respect to alternative rates and minimum weights, defendant showed that they are used to meet competition with other means of transportation and to develop traffic which would not otherwise be enjoyed. The charges are assertedly designed to return direct costs and to contribute towards, but not fully cover, indirect expenses. Defendant also showed that, while it maintains many alternative rates and minimum weights, single carload rates and minimum weights predominate in its tariffs.

Heavy loading of bulk cement has been shown to be a characteristic of the movement of that commodity, not a circumstance peculiar to complainant's shipments. Subnormal charges

produced by competitive alternative rates are of no value in determining whether the charges in issue here exceeded maximum reasonable levels.

Turning now to the claimed savings resulting from multiple-car movement and freedom of handling and the asserted absence of terminal costs, the extensive evidence concerning the handling of the shipments in question will be treated.

Defendant equipped box cars with the bulkheads necessary for the handling of bulk cement traffic. The cars were placarded "Return to Permanente." They were used not only in the Shasta Dam operation but also in other bulk cement operations originating at Permanente. The Shasta Dam cars were hauled via San Jose, Tracy and Roseville rather than via the shortest route over defendant's lines through San Francisco, Oakland and Woodland. From Permanente to Redding the distance is 279 miles via the short-line route and is 313 miles via the route of movement. To Coram the distances are 292 and 326 miles, respectively. The short-line route would have involved a barge operation between San Francisco and Oakland and movement over a congested line between Oakland and Woodland. It was not used for these reasons.

The empty bulk cement cars, as well as other empty and loaded cars for the cement mill, were assembled at San Jose for movement to Simla, a point some 2 miles from Permanente. This involved a branch-line operation of approximately 17 miles. Daily service was provided. Two trains per day were generally operated. Little other traffic was handled by these trains. The grade from Simla to Permanente prevented operation of full trains and several trips were required to deliver the cars to the mill. The empty cars were classified by defendant according to their intended use and so delivered. Delivery of all cars was made on interchange trackage. Defendant did

not operate beyond that trackage. The mill, in turn, delivered loaded bulk cement, sacked cement and limerock cars on the interchange tracks as they were made ready for shipment throughout the day. In making these deliveries, the mill did not segregate the Shasta Dam cement from the balance of the shipments or otherwise classify the cars. For the movement of the loaded cars to San Jose, the trains were made up at Simla. At that point, or at San Jose, the bulk cement and other cars requiring weighing were weighed. The necessary classification of the cars was also accomplished at these points. The average elapsed time from San Jose to Permanente and return was 10 hours and 16 minutes. Of this time some 5 hours was involved in the Simla-Permanente operation.

At San Jose, the Shasta Dam cars were grouped into "blocks" and were moved to Gerber in through trains, not in solid trainloads. Defendant's service between San Jose and Gerber was via intermediate terminals located at Tracy and Roseville. At the intermediate terminals, the cement cars were switched from inbound to outbound trains.

Defendant operated a Gerber-Coram local for the cement and for other materials and supplies. This train also handled empty cars for loading of ballast at one intermediate point and ore at another. Running time for the 57 miles to Coram was approximately 7½ hours. Switching of the cement and other freight at Coram accounted for about 3 hours of additional time. Track facilities for unloading the cement permitted defendant to spot 11 cars on one track and 12 on another. The contractor employed a mechanical device to unload the cement. As cars were made empty, the next car in each string was placed for unloading by the contractor with a cable arrangement. When the unloading operation was completed, defendant removed the empty cars and spotted the next strings of cement cars. Additional service was provided when necessary to meet

the contractor's requirements for cement by including cars in through trains during the period while Coram was still located on defendant's main line. After the relocation of the main line, additional branch-line service in such circumstances was provided by the Redding local which ordinarily did not serve Coram. When cement in excess of the contractor's requirements was on hand at Gerber, cars were sometimes moved to Redding and held at that point. The relatively small number of cars delivered at Redding was handled under circumstances generally attending carload deliveries.

The Coram local hauled the empty cement cars to Gerber on return trips. From that point they moved on various through trains to San Jose. At San Jose they were inspected by defendant. Cars in good condition were sent to Permanente. Minor repairs were frequently made there. Missing bulkheads were replaced and other repairs made at San Jose. Heavy repair work such as re-laying floors and replacing badly damaged sheathing was done at Bayshore. The incidence of the repair work was greater than in other bulk cement operations. Defendant attributed this to the use of the mechanical unloading device at Coram.

The sheer volume of the traffic in question and its movement in multiple-car lots were circumstances generally favorable to defendant in connection with both line-haul and terminal operations. It does not necessarily follow as alleged, however, that over-all "savings" to defendant accrued as a matter of course or that "practically no terminal costs" were incurred. Movements of property in blocks of cars in line-haul and terminal operations are commonplace in the transportation of various commodities. Special rates with multiple-car minima are rare. They were said to be resorted to as a means of overcoming a strong competitive disadvantage.

Calculations of claimed savings in the cement operations stem from Interstate Commerce Commission staff studies of average territorial costs and, more specifically, from those developed for territory west of the Mississippi River. The studies were prepared for, and introduced in, that Commission's Docket No. 28300, Class Rate Investigation, 1939. The decision in that matter, 262 ICC 447 (1945), pointed out that the studies depicted relative costs of territorial groups of carriers and that ascertainment of the costs of transporting a particular commodity over a single railroad obviously required more refinement. The witness through whom the studies were presented to that Commission also testified in this complaint case. He readily and completely agreed with the need for refinement of his average costs in ascertaining costs for a movement such as that under consideration here. Complainant's calculations based on the studies of average costs for western territory are, therefore, without adequate foundation. Moreover, there were adverse conditions created by the character of the service rendered, the branch-line operations involved and the manner in which the equipment was furnished and used. While the effects of such adverse conditions cannot be precisely determined, they are sufficiently important to cast further doubt upon the soundness of complainant's showing in regard to the alleged "savings." Similarly, under the conditions encountered here, certain operations usually conducted at terminal points were necessarily performed elsewhere. Complainant has not substantiated the contention that there were "practically no terminal costs."

Consideration will next be given to the claimed unreasonableness of defendant's rates and charges as judged on the basis of earnings per car and per car mile. Complainant showed the revenues which would be produced by commodity rates and minimum carload weights for a wide variety of articles. The rates were not chosen because the commodities had values, densities or

other transportation characteristics similar to cement. Rather, they were selected at random from certain of defendant's tariffs. They involve hauls of from 5 miles to over 3,000 miles, minimum carload weights of from 14,000 pounds to over 100,000 pounds, and rates of from 1½ cents to over 60 cents. No attempt was made to demonstrate that any of the compared rates were maximum reasonable rates. Many of them were shown by defendant to be depressed rates established to meet truck, vessel and market competition. In such circumstances, complainant's rate and earning comparisons are without compelling force.

For like reasons, complainant's comparisons of cement rates to government projects lower than the tariff rates for such transportation are of little significance. Most of these rates were applicable between points not served by defendant. Certain of them were established in the face of strong truck competition. The extent of the similarity or dissimilarity of transportation conditions has not been satisfactorily disclosed. Rates from Redwood City to Coram and Redding of approximately the same volume as the sought rates from Permanente were extended to the government by defendant to meet competition with barge movement of cement from Redwood City to Sacramento. The special cement rate comparisons submitted by complainant afford no basis for concluding that the assailed rates and charges were unreasonably high.

The contention that the rates and charges in issue were excessive judged on the basis of the public interest involved rests on the bare statement of this proposition and on an outline of the history and importance of the Shasta Dam project. It has not been shown that these are material considerations in determining reasonable rates and charges for the traffic in question.

This completes the discussion of the principal elements of complainant's case. Various details and ramifications embodied in the voluminous testimony and extensive briefs have not been specifically mentioned because they rest upon the insecure foundation of the main issues or are palpably incompetent or unimportant ^{here.} to the determinations to be made/ Their discussion would serve no useful purpose. It is sufficient to say that all of the evidence and argument has been carefully weighed.

Complainant has failed to sustain the burden of proof by producing persuasive evidence that the assailed rates and charges were in excess of maximum reasonable rates and charges. The infirmities of the cost and rate showings are particularly apparent. The record does not afford any basis for awarding reparation. In the circumstances, more extensive treatment of defendant's position, including such matters as its argument that reparation is barred by statutory limitation, is not necessary.

Upon consideration of all the facts of record, we are of the opinion and hereby find that the assailed rates and charges have not been shown to be unjust or unreasonable in violation of Section 13 of the Public Utilities Act. 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 on the findings of fact and on 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.

This order shall become effective thirty (30) days after
the date hereof.

Dated at San Francisco, California, this 26th day
of July, 1949.

R. Z. Zimmerman
Justice J. C. Casper
Robert H. Hill
Harold H. Hill
Thomas H. Potter
Commissioners