C.5102 - MG*

17

Decision No. 43756

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

California Cotton Oil Corporation, Complainant,	)	
vs.	)	Case No. 5102
Southern California Freight Forwarders Corporation (Express Corporation), Defendant.	)	

ORIGINAL

O P I N I O N

Complainant alleges that a rate of 25 cents applied by defendant on various shipments of cottonseed transported from Coachella to Vernon during the period from September 15, 1948 to February 10, 1949, was unjust and unreasonable in violation of Section 13 of the Public Utilities Act to the extent that it exceeded 18 cents.[1] An order is sought authorizing defendant to waive collection of undercharges. Rates for the future are not involved.

The matter was submitted upon complainant's written memorandum of facts and argument and upon defendant's answer thereto.

The assailed rate is defendant's Class "B" rate for transportation between Coachella and Vernon. The Class "B" rating applicable to cottonseed is subject to a minimum weight of 30,000 pounds per shipment. For shipments of lesser weight, 4th class rates apply. These rates range upward from 30 cents, minimum weight 20,000 pounds, to 83 cents for quantities of less than 4,000 pounds. Defendant maintains 18-cent commodity rates between the points in issue on cottonseed cake or meal and on cottonseed hulls. It also maintains an 18-cent commodity rate on cottonseed and animal or poultry feed in mixed shipments where the cottonseed does not exceed 70 per cent of the total weight. Each of these commodity rates is subject to a

---

[1] Throughout this opinion rates are stated in cents per 100 pounds.

minimum weight of 30,000 pounds per shipment. These class and commodity rates and minimum weights were applicable during the period covered by this complaint. No commodity rate was applicable to straight shipments of cottonseed over defendant's line during that period.

Complainant states that in prior years virtually all of its Coachella-to-Vernon cottonseed shipments were moved by railroad and that defendant solicited the movement for the 1948-1949 shipping season amounting to approximately 1,200 tons. It claims that it gained the impression and general understanding that defendant proposed to handle the traffic at rates equal to and competitive with the rail rate of 18 cents. After the first several shipments had moved and freight bills had been paid on the basis of an 18-cent rate, defendant advised complainant that this rate was not applicable and that the applicable rate was 25 cents. Complainant continued to ship over defendant's line and to pay charges on an 18-cent rate. Balance due bills were issued raising the charges to a 25-cent rate basis, at actual weight, except on shipments covered by bills of lading dated February 9 and 10, 1949, on which defendant raised the charges to a 30-cent rate basis.[2]

While the movement was still underway, complainant urged defendant to establish an 18-cent rate and to seek special permission from the Commission to apply that rate on shipments handled prior to its effectiveness. This defendant refused to do. After the shipping season had ended, rail rates generally, including the 18-cent

---

[2] Complainant's memorandum of facts and argument lists a shipment weighing 11,700 pounds as having been transported under a bill of lading dated February 14, 1949. This shipment is not covered by the complaint in which the period involved terminated with February 10, 1949. On this shipment defendant's balance due bill raised the charges to its 4th class rate of 37 cents subject to a minimum weight of 10,000 pounds.

cottonseed rate from Coachella to Vernon, were increased by a 4 per cent surcharge established effective May 2, 1949, pursuant to Decision No. 42715 of April 12, 1949 (Increased Rail Rates, 1949, 48 Cal.P.U.C. 633). The rail cottonseed rate is subject to a minimum weight of 50,000 pounds per shipment. Defendant established the identical rate, minimum weight and surcharge in its tariffs for cottonseed from Coachella to Vernon, nonintermediate in application, effective June 15, 1949.

Defendant's memorandum answer states that it does not dispute the points made by complainant and that it is willing to waive collection of the undercharges involved. The answer goes no further. Defendant does not reconcile its present willingness to adjust the charges with its previous refusal to accede to complainant's request that it ask the Commission for authority to waive undercollections.

Complainant's memorandum of facts and argument shows that numerous shipments were made on which the actual weight was considerably below even the 30,000 minimum provided in connection with the applicable Class "B" 25-cent rate and substantially below the 50,000 minimum of the subsequently established cottonseed commodity rate. In many instances only the aggregate weight of two shipments made on the same day is shown. The highest single shipment weight disclosed in the memorandum is 45,020 pounds; the highest aggregate weight for two shipments is 47,460 pounds. In seeking reparation complainant urges adjustment to an actual weight basis, notwithstanding minimum weight provisions governing the application of the rail rate and of defendant's similar rate established subsequent to the movement of the shipments in question.

To establish the unreasonableness of the assailed rates by comparison with other rates, complainant relies (1) on 18-cent commodity rates applicable over defendant's line on cottonseed cake or meal, on cottonseed hulls, and on mixed shipments of animal or poultry feed and cottonseed when the cottonseed does not exceed 70 per cent of the total weight of the shipment, minimum weight 30,000 pounds per shipment, and (2) on various railroad commodity rates on cottonseed, minimum weight 50,000 pounds, and on cottonseed cake or meal and cottonseed hulls, minimum weight 40,000 pounds. It claims that the hauling involved here "is the only instance of record wherein class rates have been charged" on complainant's cottonseed movements to its Vernon plant. It also claims that class rates have not been applied to its competitors' movements from San Joaquin Valley points. It asserts that the exacting of a higher rate on straight shipments of cottonseed than on mixed shipments including cottonseed is "an unreasonable arrangement" and that "the charges on the former are as a consequence unreasonable to the extent that they exceed the latter." It points out that in the rail rates it uses for comparison the cottonseed rates do not exceed the rates on the cottonseed products.

As previously indicated herein, defendant has signified its willingness to satisfy the complaint and has not raised any issue in the matter. It has repeatedly been pointed out, however, that the proof necessary to justify reparation in instances where there is no issue between the actual parties must measure up to that required had defendants opposed the sought award (General Chemical Co. v. P.E.Ry. and S. P. Co., 45 C.R.C. 483 (1944) and cases cited therein). Defendant has not admitted that rates in excess of the subsequently established rate of 18 cents were unreasonably high. It has merely stated

that it is now willing to waive undercollections.

It is also well-settled that when a carrier voluntarily reduces a rate it does not necessarily follow that reparation is proper against shipments moving before the lower rate becomes effective. (See, for example, Johns-Manville Products Corp. v. S. P. Co., 45 C.R.C. 449 (1944).) Defendant's reduced rate was evidently established so that its highway service would be competitive with rail service. Rates primarily founded on the meeting of competition are not a proper or controlling measure of maximum reasonable rates (General Chemical Co. v. P. E. Ry. and S. P. Co., supra). Complainant has not given effect to the minimum weight provisions of defendant's and the rail lines' tariffs. The minimum weight is a part of the rate and both must be considered in determining a reasonable charge (Johns-Manville Corp. v. S. P. Co., supra).

It is likewise well-settled, with respect to rate comparisons generally, that when they are submitted in complaint proceedings it is incumbent upon the party offering the comparisons to show that they are a fair measure of the reasonableness of the rates in issue (Sunshine Biscuits, Inc. v. A.T.&S.F. Ry., et al., 49 Cal. P.U.C. 155 (1949) and cases cited therein). The evidentiary value of rate comparisons is also contingent upon a preliminary showing that the compared rates are themselves reasonable (R. J. Clifford v. C.W.R.& N. Co., et al., 44 C.R.C. 100 (1942)). No such showing was made with respect to the rates relied upon by complainant. The value of rail rate comparisons in this proceeding involving reparation on shipments transported over the public highways has not been established. Moreover, neither transportation under the rail rates on cottonseed or cottonseed products, nor transportation under defendant's rates on

cottonseed products or on cottonseed in mixed shipments with feed, has been shown to involve shipments where there is substantial similarity in the characteristics of the commodities or in the conditions under which they are moved by the carriers.

In reparation proceedings, the burden of proof is upon the complainant. In the absence of affirmative proof, the complainant must be dismissed (Sunshine Biscuits, Inc. v. A.T.&S.F. Ry., et al. and Pillsbury Mills, Inc. v. S. P. Co., supra). In the case at hand there is no persuasive evidence that defendant's tariff rates and charges for the transportation in issue exceed maximum reasonable rates and charges. A class rate is not unreasonable merely because the article shipped is ordinarily transported under commodity rates. The fact that there are higher rates on a commodity than those on certain of its products, standing alone, is not a sufficient ground for concluding that the article should take a rate no higher than the products' rates.

Upon consideration of all the facts and circumstances 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.

17

ORDER

This case being at issue upon complaint, and upon complainant's verified memorandum of facts and answer thereto 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.

Dated at Los Angeles, California, this 1st day of February, 1950.

R. E. [illegible]
Justus F. Craemer
Ira H. Rowell
Harold P. Huls
Kenneth Potter
Commissioners