

Decision No. 42793

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SINTON AND BROWN CO., a)	
corporation,)	
Complainant,)	
vs.)	Case No. 5104
SOUTHERN PACIFIC COMPANY,)	
a corporation, and SANTA MARIA)	
VALLEY RAILROAD, a corporation,)	
Defendants.)	

Appearances

Harrison Harkins, for complainant.
E. L. H. Bissinger, for defendants.

O P I N I O N

By complaint filed on July 7, 1949, Sinton and Brown Co., a California corporation, alleges that rates assessed and charges collected from it by the Southern Pacific Company and the Santa Maria Valley Railroad for the transportation of certain shipments of hay were unjust and unreasonable in violation of Section 13(a) of the Public Utilities Act. Reparation, without interest, is sought.

Public hearing of the matter was had before Examiner Abernathy at Los Angeles on November 9, 1949. A brief has been filed. The matter is ready for decision.

The essential facts involved herein, as set forth in the complaint and as disclosed by testimony of complainant's president, are not in dispute. Complainant is engaged principally in the production, purchase, and sale of livestock. In connection with its operations it acquires quantities of hay for feed purposes. Between July 7, 1947, and October 30, 1947, both dates inclusive, the company or its predecessor had 149 carloads of chopped hay in bulk shipped to it at the Betteravia Stockyards, Santa Barbara County, from San Ardo,

Monterey County.¹ The freight charges on said shipments, as initially assessed and collected by defendants herein, were based upon a rate of 14 cents per 100 pounds, minimum weight 24,000 pounds. In November, 1947, defendants submitted bills to correct their original charges to a basis of 16 cents per 100 pounds, minimum weight 30,000 pounds. In March, 1948, defendants submitted bills to correct their charges further to a basis of 18 cents per 100 pounds, minimum weight 36,000 pounds. The additional charges were all paid by complainant herein.

Complainant alleges that the rate of 18 cents per 100 pounds, which defendants ultimately assessed for transporting the 149 carloads of chopped hay, was unjust and unreasonable. It seeks to have a rate of 16 cents per 100 pounds adjudged as a reasonable rate for the transportation.² Reparation in the amount of \$3,148.85 is asked in order that the total of the freight charges which were paid to defendants be reduced to that which would have accrued had the sought rate been assessed. Complainant's president testified that his company had itself borne the full amount of the additional charges assessed by defendants. He said the livestock to which the chopped hay was fed had been sold before the additional charges were levied, and that there was no opportunity to recover the additional charges by adding them to the sale price of the livestock.

According to testimony and an exhibit of complainant's witness, the sought rate is the same as that which was applicable for the transportation of baled hay from San Ardo to Betteravia Stockyards at the time the transportation involved herein was performed. Assertedly, it corresponds to the rate which defendants established

¹ On October 1, 1947, the company succeeded to the interests of Sinton and Brown, a copartnership, which, for a number of years prior thereto, had been engaged in the business of buying and selling livestock.

² The sought 16-cent rate would be subject to minimum carload weights of 24,000 pounds for cars not over 41½ feet in length and 32,000 pounds for cars over 41½ feet but not over 50½ feet.

on May 6, 1948, for chopped hay between the same points. Complainant's witness declared that the transportation characteristics of baled hay are not more favorable than those of chopped hay in bulk, and that chopped hay can be loaded to the same minimum weight as that established for carloads of baled hay. He said that the difference between chopped and baled hay is in form only; that during the growing season chopped hay is shipped, but that subsequently the hay is baled before shipment to permit stockpiling for the winter months. The witness stated that for a number of years rail carriers have applied the same rates for the transportation of chopped hay as for baled hay between a number of other points in California. By tariff references he showed that at the time the shipments involved herein were transported, lower rates than the sought rate were maintained for the transportation of baled hay and chopped hay over greater distances than the distance between San Ardo and Betteravia Stockyards.³

Defendants admit all of the allegations of the complaint and are willing that an order of the Commission be entered awarding reparation to complainant. They asked, however, that the Commission not specify in its order the precise amount of reparation to be paid. They explained that various errors in computation have been discovered with respect to the charges which have been

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The distance between San Ardo and Betteravia Stockyards was stated as 98 miles by rail. The other rates which were submitted for comparative purposes were as follows:

<u>From</u>	<u>To</u>	<u>Rate in Cents Per 100 Pounds</u>	<u>Miles</u>
Livermore	Monterey	15	110
Corning	Sacramento	15	116
Gridley	Stockton	15	112
Peters	Marysville	15	107
Esparto	San Francisco	15	94
Subaco	Oakland	16	104
Benali	San Jose	16	127

The foregoing rates were subject to minimum weights of 24,000 or 32,000 pounds according to size of car used.

assessed, and that the exact amount of reparation which might be due complainant cannot be ascertained until such errors have been corrected.

Complainant's allegation that chopped hay in bulk was generally accorded the same rates as those applicable to baled hay appears to be well-founded. It is noted that chopped hay and baled hay were listed together and were subject to the same rates in the commodity tariff which, at the time the shipments involved herein were transported, applied between points on the lines of a number of California rail carriers. For the transportation of the chopped hay involved herein equality of rates with those applicable to baled hay would have been reasonable. The sought rate of 16 cents per 100 pounds applied to the transportation of baled hay from San Ardo to Betteravia Stockyards during the period covered by this complaint (Pacific Freight Tariff Bureau Tariff No. 255-D, Cal.P.U.C. No. 130, J. P. Haynes, Agent). It is concluded that for the transportation involved herein a rate of 16 cents per 100 pounds would have been the maximum reasonable rate.

A substantial portion of the sought reparation is related to service performed for complainant's predecessor. Under provisions of Section 71(a) of the Public Utilities Act, the Commission may not recognize assignment of reparation claims except assignments by operation of law. On brief, counsel for complainant contends that the right to reparation arises from the fact that complainant, and not its predecessor, was charged unreasonable rates, and that the matter of assignment of reparation claim is not, therefore, in issue. We agree with these contentions.

⁴ Pacific Freight Tariff Bureau Tariff No. 281, Cal.P.U.C. No. 112, J.P.Haynes, Agent. Defendant Southern Pacific Company was party to this tariff from the time it was first made effective on July 20, 1944. Defendant Santa Maria Valley Railroad did not become a party thereto until May 6, 1948, when the commodity rate on chopped hay, referred to hereinabove, to apply from San Ardo to Betteravia Stockyards, was first established.

Upon careful consideration of all of the facts and circumstances of record, we are of the opinion and find as a fact that the assailed rate of 18 cents per 100 pounds, minimum weight 36,000 pounds, and the charges based upon said rate, were unreasonable for the transportation of the 149 carloads of chopped hay involved herein. We are of the opinion and find as a fact that a reasonable rate for the transportation would have been 16 cents per 100 pounds, minimum weight 24,000 pounds for shipments which were transported in rail cars not exceeding $41\frac{1}{2}$ feet in length, inside measurement, and 32,000 pounds for shipments which were transported in rail cars over $41\frac{1}{2}$ feet but not over $50\frac{1}{2}$ feet in length, inside measurement. Reparation will be awarded accordingly. Since the exact amount which should be refunded to complainant to adjust the charges to the basis of the rate herein found reasonable is not of record, complainant and defendants will join in a determination of said amount. Upon payment to complainant of the reparation so determined, defendants will notify the Commission of the amount paid. Should it not be possible to reach an agreement as to the amount of the reparation award, the matter may be referred to the Commission for further attention.

O R D E R

This case having been duly heard and submitted, full investigation of the matters and things involved having been had, and based upon the findings of fact and conclusions contained in the preceding opinion,

IT IS HEREBY ORDERED that defendants, Southern Pacific Company and the Santa Maria Valley Railroad, be and they are hereby authorized and directed to refund to complainant, within one hundred and eighty (180) days after the effective date of this order, such amount or amounts as will establish the charges collected by them for the transportation of the 149 carloads of

chopped hay involved in this proceeding on the basis of the rate found reasonable for said transportation in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint be and it is hereby dismissed.

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

Dated at San Francisco, California, this 7th day of February, 1950.

R. F. Anderson
Justice F. Cassin
James H. ...
Harold A. ...
Herbert P. ...
Commissioners