C.5102 - MG

Decision No. 45037

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

OPINION ON FURTHER CONSIDERATION

In this proceeding complainant assails a rate of 25 cents applied by defendant to shipments of cottonseed transported from Coachella to Vernon during the period from September 15, 1948 to February 10, 1949.[1] It contends that this rate was unjust and unreasonable in violation of Section 13 of the Public Utilities Act to the extent that it exceeded 18 cents. The matter was submitted upon complainant's written memorandum of facts and argument and upon defendant's answer. The Commission found that the assailed rate had not been shown to be unjust or unreasonable and dismissed the complaint (Decision No. 43756 of February 1, 1950).

Complainant petitioned for reopening of the proceeding, requesting an opportunity to submit "case citations supporting the rate comparisons now of record together with additional rates and authorities bearing on the issue of unreasonableness of the assailed rate." The petition was supported by defendant. It was granted. The matter was resubmitted upon complainant's further memorandum of

[1] Rates are stated in cents per 100 pounds throughout this opinion.

facts and argument. Defendant did not file an answer to this memorandum, having previously admitted the unreasonableness of the rate under attack.

Notwithstanding complainant's specific request for an opportunity to offer "case citations" supporting its rate comparisons, it refers in the further memorandum of facts and argument to only one case, Cottonseed, Its Products, and Related Articles, 188 ICC 605 (1932). In that proceeding the Interstate Commerce Commission prescribed, for the future, certain maximum carload rail rates for cottonseed and cottonseed products based upon percentages of first class rates. Because the percentage of first class there prescribed for cottonseed cake and meal was the same as, and that prescribed for cottonseed hulls lower than, the percentage of first class prescribed for cottonseed, complainant argues that defendant's cottonseed rate for the operations over the highways here involved should likewise not exceed defendant's rates on the above-enumerated cottonseed products. This does not necessarily follow. In any event, Decision No. 43756 held that the value of rail rate comparisons for the highway operation here involved had not been established. Nothing contained in complainant's further memorandum indicates the value of these comparisons.

Similarly no "additional rates and authorities" have been submitted in the further memorandum, despite complainant's request for the opportunity to submit them. Instead, complainant states that it has the "impression" that its previous rate comparisons "have not been appraised in the same light and manner as intended." The rate comparisons of record were carefully and fully considered before Decision No. 43756, supra, was issued. The Commission's views thereon are expressed in that decision and need not be repeated here.

In other respects the further memorandum deals only with defendant's admission that the 25-cent rate was unreasonable and with the question of the minimum weights governing determination of charges under the assailed and sought rates.

Defendant's outright admission of unreasonableness is not of controlling importance. Where there is no issue between the parties the proof must nevertheless measure up to that which would be required had defendant opposed the sought reparation award.

With respect to the minimum weight question, it is not clear just what arrangements were made with defendant for the carriage of this cottonseed. No opinion is here expressed as to whether charges based on actual weights may properly be applied under the applicable tariff provisions. It is expected, of course, that final settlement of the charges will be made in full compliance with the governing tariff.

Upon consideration of all the facts and circumstances of record, we are of the opinion and hereby find that the assailed rate has 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, 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 twenty (20) days after the date hereof.

Dated at San Francisco, California, this 21st day of November, 1950.

R. J. Trainor

Justus F. Craemer

Peter E. Mitchell

Harold P. Huls

Thomas Potter

Commissioners