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Decision No. 48016

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Southwest Steel Rolling Mills, Complainant	)	
vs.	)	Case No. 5319
Southern Pacific Company, Defendant	)	

O P I N I O N

By this complaint, as amended at the hearing, Southwest Steel Rolling Mills seeks reparation from Southern Pacific Company of assertedly unreasonable charges assessed for the transportation of 18 carloads of secondhand rail which moved from Erle to Los Angeles in August and September, 1948.[1]

Public hearing was held before Examiner Bryant at Los Angeles on November 5, 1952. The matter is ready for decision.

By its complaint as filed, Southwest Steel Rolling Mills sought reparation to the basis of the rates concurrently in effect from and to the same points on certain scrap iron or steel suitable only for remelting, as hereinafter specified. It alleged that the assessed rates were inapplicable under Section 532, unreasonable under Section 451, and prejudicial under Section 453 of the Public Utilities Code. Defendant denied all of the essential allegations of

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[1] Erle, the point of origin, is located on the line of Southern Pacific Company approximately ten miles south of Marysville.

the complaint. Prior to the submission of the case, however, the parties reached an agreement under which complainant modified its allegations and defendant entered into certain stipulations.

As the matter now stands, complainant alleges only that the assailed rates were unreasonable to the extent that they exceeded 110 percent of the concurrently applicable rates on the indicated scrap. It seeks reparation to this basis. Rates for the future are not in issue. Defendant offers no objection to the entering of a reparation order on the agreed basis. Defendant stipulated that complainant paid and bore the charges on the shipments listed in the complaint.

Complainant's shipments consisted of worn-out rail, no longer usable as railroad rail but of value to complainant for manufacture into other articles. Upon receipt by complainant at Los Angeles the rails were sorted. Those found suitable were cut into convenient lengths, heated almost to the melting point, split into the head, web, and base, run through a rolling mill, and thus formed into commercial merchant bars, angle irons, and fence posts. Rails unsuitable for the rolling process, and the various unusable pieces, were sold to remelting plants as scrap. The rates charged by defendant were those applicable on so-called "rerolling" rail, described in defendant's tariff as "rail, iron or steel scrap, having value only for manufacture by heating and rolling into articles other than rail." Complainant paid a rate of 53 cents on the first carload and 47 cents on the subsequent shipments.[2] The 53-cent rate was a

[2] Rates stated herein are in cents per 100 pounds.

combination of class and commodity rates. The 47-cent rate was a commodity rate published by defendant specifically for the movements herein involved.

Contemporaneously the defendant maintained lower rates on scrap iron or steel suitable for remelting purposes only, and on iron or steel articles in their original form having no recognized commercial use or value except for the recovery of their ferrous-metal content. On these commodities the rate was 9½ cents from Erle to Sacramento and 30 cents from Sacramento to Los Angeles, resulting in a through combination of rates from Erle to Los Angeles of 39½ cents.

The compromise agreement which was reached between the complainant and defendant in this proceeding apparently was based in part upon recent findings of the Interstate Commerce Commission to which both parties referred. That Commission found that rates on rerolling rail, from origins in intermountain and Pacific Coast states to Los Angeles, were unreasonable to the extent that they exceeded by more than 10 percent the rates concurrently applicable upon scrap iron or steel (including rail) having value only for remelting purposes. Reparation on the interstate shipments was awarded accordingly.[3] The complainant herein urges, and the defendant agrees, that the same basis should be used as a measure

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[3] I.C.C. Docket No. 30225, Southwest Steel Rolling Mills v. Apache Railway Company et al., 1950, 278 I.C.C. 333 and (on reconsideration) 279 I.C.C. 485. The Interstate Commerce Commission found also that, for the future, the assailed rates on rerolling rail would be unreasonable to the extent that they may exceed the rates concurrently maintained on old rail having no recognized commercial use or value except for the recovery of the ferrous-metal content thereof. As hereinbefore stated, rates for the future are not in issue in the instant proceeding.

for requiring the payment of reparation on the California intrastate shipments involved in the instant proceeding.

The rates paid by complainant exceeded the rate concurrently applicable on remelting rail by 134 percent on one shipment and 119 percent on the remaining shipments. It is clear from the evidence that there is little tangible distinction between the rail shipped by complainant and the "remelting" rail for which the lower rates applied. As stated by the Interstate Commerce Commission, "similarity of the respective shipments is so close that adequate policing of shipments destined to receivers using the remelting process is impracticable." (278 I.C.C. 383) According to the evidence, "rerolling" rail and "remelting" rail differ only in their degree of wear. Badly worn or damaged rail cannot be rerolled. However, the line between the two classes of used rail is not readily drawn, and even good rerolling rail includes many pieces and parts which have value for remelting only. Generally speaking, the less-worn rail brings a higher price, although the values of all used rail fluctuate with the supply and demand.

Under all of the circumstances of record it is concluded that reparation should be awarded as sought by complainant. We find as a fact that the rates assessed and collected by defendant on the shipments listed in the complaint were unjust and unreasonable to the extent that they exceeded 43½ cents per 100 pounds. The exact amount of reparation is not of record. Should the parties be unable 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 defendant, Southern Pacific Company, be and it is hereby ordered and directed to refund to complainant, Southwest Steel Rolling Mills, within ninety (90) days after the effective date of this order, all charges collected on the shipments listed in Exhibit A of the complaint in excess of the charges which would have accrued on the basis of a rate of 43½ cents per 100 pounds, together with interest at six (6) percent per annum.

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

Dated at San Francisco, California, this 9th day of December, 1952.

President

Commissioners