

ORIGINALDecision No. 52031

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA PORTLAND CEMENT COMPANY,)
a corporation,)

Complainant,)

vs.)

Case No. 5614

UNION PACIFIC RAILROAD COMPANY,)
a corporation,)

Defendant.)

Wallace K. Downey, for California Portland
Cement Company, complainant.
Donald M. Ladd, Jr., for Union Pacific
Railroad Company, defendant.

O P I N I O N

By complaint filed January 28, 1955, California Portland Cement Company assails a rate maintained by the Union Pacific Railroad Company for the transportation of iron ore from Basin to Colton as being unduly preferential, prejudicial and discriminatory in relation to a lower rate which said railroad company maintains with the Southern Pacific Company and with The Atchison, Topeka and Santa Fe Railway Company for similar transportation from Dunn to Kaiser. Complainant seeks removal of the alleged preference, prejudice and discrimination, and reparation for alleged damages.

Public hearing of the complaint was held before Examiner C. S. Abernathy at Los Angeles on May 19, 1955, at which time evidence was submitted by complainant's assistant secretary and by its manager of purchases, and by defendant's general freight agent. Briefs and reply briefs have been filed. The matter is ready for decision.

The California Portland Cement Company operates a mill for the manufacture of cement at Colton. One of the materials which it uses in its manufacturing processes is iron ore which it obtains from a mine at Basin, a point about 132 miles east of Colton on the line of defendant railroad. According to evidence presented by complainant's witnesses, complainant has obtained iron ore from Basin for a long period of time. The volume of ore from that source has approximated 15,000 tons annually. However, the company does not ship this quantity regularly each year. In order to avail itself of economies resulting from large scale operations, it has followed the practice of limiting its mining to infrequent intervals and then mining and shipping sufficient ore to meet its needs for the ensuing two or three years.

During the period January 20, 1955, through February 24, 1955, complainant shipped 47,375 long tons of ore from Basin to its Colton mill, via the line of defendant carrier. For this transportation it paid defendant line-haul charges which were computed at a rate of \$1.9824 per long ton, minimum weight per car 100,000 pounds and minimum weight per shipment 1,000 long tons. During this same period defendant maintained, in conjunction with the Southern Pacific Company and with The Atchison, Topeka and Santa Fe Railway Company, a joint rate of \$1.736 per long ton, minimum weights 100,000 pounds per car and 1,000 long tons per shipment, for the transportation of iron ore from Dunn to Kaiser. Dunn is located on defendant's line about $9\frac{1}{2}$ miles west of Basin. Kaiser is located on the line of the Southern Pacific Company about 11 miles west of Colton and on the line of The Atchison, Topeka and Santa Fe Railway Company about the same distance west of San Bernardino. The distance between Dunn and Kaiser via Colton, the point of interchange between defendant and the Southern Pacific

Company, is 133.5 miles. The distance between Dunn and Kaiser via San Bernardino, the point of interchange between defendant and The Atchison, Topeka and Santa Fe Railway Company, is 130 miles.

In assailing the rate from Basin to Colton as unduly prejudicial and discriminatory in relation to the lower rate from Dunn to Kaiser, complainant contends that virtually identical transportation is involved in either case. It points out that the distance between Basin and Colton is almost the same as that between Dunn and Kaiser and that the transportation in both instances is over approximately 120 miles of the same track. The transportation of ore from Dunn to Kaiser, it asserts, obviously entails greater expense than does like transportation from Basin to Colton inasmuch as the former involves movements over two rail lines with transfers at the junction points, whereas the latter is a single line movement.

Complainant's claim for reparation is for the difference between the charges which it paid at the applicable rate to Colton and the charges which it would have paid had the lower rate which is maintained to Kaiser been applied to its shipments. The amount involved is \$12,009.87. Complainant declares that it has been damaged to this extent by the maintenance of the lower rates to Kaiser.

In reply, defendant asserts that the element of mileage is not necessarily the controlling factor in the level of a rate; that the transportation to Kaiser is subject to rate making considerations which do not apply to the transportation to Colton; and that in light of these other factors there has been no discrimination in favor of ore shipments to Kaiser as against like shipments to Colton. Defendant's witness testified that the rate to Kaiser has been influenced by the fact that a steel mill is located at that

point; he stated that, historically, rates for the transportation of iron ore to steel mill destinations have been relatively low, reflecting the large and continuous movements of ore to the mills. He said, moreover, that the rates for ore movements to steel producing destinations are inter-related because of competition among the mills. These factors, he indicated, are not present to a like degree with respect to ore transported to other destinations and that as a consequence there is no specific relationship between the rates for ore movements to steel producing destinations and the rates to other destinations.

With reference to the circumstances that led to the establishment of the specific rates involved herein, defendant's witness testified that the rate to Colton became effective in 1942 by reason of intermediate application of a rate which was then established for iron ore moving from Kelso to Kaiser; that the lower rate from Dunn to Kaiser was established in 1953 on a temporary basis to accommodate a test movement of ore to Kaiser from an iron ore deposit northeast of Baker; that it was then anticipated that the initial test would involve a total movement of 50,000 tons and that if the test proved satisfactory there would be further movements of about 20,000 tons per month on a regular basis. Defendant's witness also testified that the temporary rate expired in October, 1954, but that it was extended without expiration date at the request of the steel company at Kaiser which stated that the test of the ore had not been completed. He said that the total volume of the shipments from Dunn to Kaiser since the rate was established has approximated 36,450 long tons. Regarding the level of the rate from Dunn to Kaiser, he said that it is at a higher level than rates to other steel producing destinations because the rate was made subject to a lesser minimum weight in

view of the experimental nature of the movement and in order to assist the steel company in minimizing construction costs incurred in connection with the test shipments. He said, also, that should the test prove satisfactory and the anticipated movements develop, it is likely that the rate will be adjusted for the future to relate it more closely to ore rates to steel producing points; in the event that the test does not prove satisfactory, it may be anticipated that the steel company will have no further interest in the rate and that the rate will be cancelled.

The preference, prejudice and discrimination, of which the California Portland Cement Company complains, assertedly constitutes preference, prejudice and discrimination in violation of Sections 453 of the Public Utilities Code and 21 of Article XII of the State Constitution.¹ It is well established that for preference or prejudice to be unlawful, the preference or prejudice must be unjust or undue. To be undue, the preference or prejudice must be shown to be a source of advantage to the parties or traffic allegedly favored and a detriment to the other parties or traffic. In this instance it does not appear that the maintenance of lower

1

Section 453, Public Utilities Code reads:

No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or between classes of service. The Commission may determine any question of fact arising under this Section.

Article XII, Section 21, reads (in part):

No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this state.

rates to Kaiser than to Colton gives the steel company an advantage over complainant or that it places complainant at a disadvantage in relation to the steel company. The evidence is clear that complainant and the steel company are not competitors. The rate to Kaiser apparently could as well be half or twice what it is without there being any effect upon the business and operations of complainant. In the circumstances shown, it is concluded that complainant's allegations of undue preference and prejudice have not been established as fact.

In the matter of discrimination the record is not persuasive that the assailed differential between the rate to Colton and the rates to Kaiser is not justified by transportation conditions. The evidence is clear that in so far as the transportation to Colton is concerned, the movements have been relatively sporadic. In contrast, the rate to Kaiser was established in contemplation of a regular movement of a volume substantially greater than that shipped by complainant. The anticipated volume and the regularity of the anticipated shipments are factors which distinguish the transportation to Kaiser from that to Colton. Although it appears that the operating circumstances which apply to the transportation of iron ore from Basin to Colton and from Dunn to Kaiser are otherwise substantially similar, the differences noted are sufficient to substantiate a difference in rates to the two destinations. It is concluded, therefore, and the Commission so finds, that the assailed differential has not been shown to be unduly discriminatory. In view of this finding and that heretofore made with respect to the allegations of undue preference and prejudice, the complaint will be dismissed.

O R D E R

Based on the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that the complaint as amended in this proceeding be and it is hereby dismissed.

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

Dated at San Francisco, California, this 5th day of December, 1955.

John E. McMill
President

Justin J. Casner

Roy L. Esterline

Marion D. Dole

R. V. H. H. H.

Commissioners