

ORIGINAL

Decision No. 54756

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BRUMLEY-DONALDSON CO.
Complainant

vs.

SOUTHERN PACIFIC COMPANY
Defendant

Case No. 5715

AMERICAN BRASS & ALUMINUM FOUNDRY
BARKER FOUNDRY SUPPLY CO.
COMMERCIAL ENAMELING CO.
FAIRBANKS MORSE & CO.
FOOD MACHINERY & CHEMICAL CORP.
GRANT & CO.
INDEPENDENT FOUNDRY SUPPLY CO.
LAYNE & BOWLER PUMP CO.
LINCOLN FOUNDRY CORPORATION
O'KEEFE & MERRITT CO.
RELIABLE IRON FOUNDRY INC.
RELIANCE REGULATOR
REPCAL BRASS MANUFACTURING CO.
SNYDER FOUNDRY SUPPLY CO.

Complainants

vs.

SOUTHERN PACIFIC COMPANY
Defendant

Case No. 5728

D. H. Marken, for complainants.
Charles W. Burkett, Jr., and E. L. H. Bissinger,
for defendant.

O P I N I O N

Complainants seek reparation for asserted overcharges assessed and collected by defendant in connection with the transportation of certain shipments of sand from Lake Majella and Seaside,

Monterey County, to points of destination in Los Angeles County during the period from April, 1952, to April 26, 1954.

Public hearing on the matters was held before Examiner C. S. Abernathy at Los Angeles on June 26, 1956.

The actions herein arise from the fact that during the period when the transportation involved was being performed defendant assessed one level of rates for the transportation of sand generally and a lower level of rates for the transportation of sand, the principal value of which is its lime, silica or mineral content. The assailed charges were levied on the basis of the rates applicable to sand generally. Complainants contend that the lower rates should have been assessed for reasons that (a) the transportation performed was that of sand valued principally for its silica and mineral content and (b) the higher rates were assessed as a consequence of improper application of certain rate increase provisions governing defendant's tariffs.

The record shows that the sand in question is used principally in foundry operations. To some extent it is also used for sand blasting. According to an expert on foundry practices who was called on complainants' behalf, the sand possesses properties that make it particularly suitable for cores for castings. Such properties, he said, include a silica and mineral content of such proportions that the sand will not fuse under the heat of molten metal; proper grain shape and grain size; and only a small proportion of clay. The silica and mineral content, the witness declared, are the principal elements of the sand's value for foundry use. Similar testimony concerning the value of the silica and mineral content of the sand was submitted by a foundry superintendent of one of the complainant companies.

A rate witness for defendant presented testimony to the effect that the assailed charges had been assessed on the basis of the rates for sand generally because the sand does not possess sufficient silica content to qualify it for rates named in defendant's tariffs for sand "the principal value of which is its lime, silica or mineral content." He said that he had been informed that the silica content of the sand averages about 83 per cent. He asserted that the quoted tariff provisions were designed and established to apply to sand such as that technically identified as silica sand and having a silica content of 95 per cent or more.

The record herein is clear that the sand in question is a select type of sand. It appears that for complainants' purposes the sand's value is derived from a combination of several factors, - its silica content, the fineness and shape of its grains, its uniformity, its cleanliness, and its low clay content. Although complainants stress the silica as being the principal element of the sand's value, it appears that the other factors are of as great if not greater importance; that without the presence of these other factors the sand would have little value for complainants' purposes; and that in fact they are the factors that set the sand apart from common sand. On the basis of silica content it appears that the sand involved herein differs but little, if at all, from common sand.^{1/}

Complainants' other contentions herein, namely, that defendant's charges reflect an improper application of certain rate

^{1/} Generally speaking, common sand has a silica content of less than 85 per cent with grains graded from fine to gravel size and with sizes coarser than No. 30 predominating. No. 30 grains will pass through a screen containing 30 openings to the linear inch. Confer, Smith & Co. v. Reading Co., 297 I.C.C. 217, 218 (1955). Industrial Sand Cases, 1930, 20+ I.C.C. 159, 163-64 (1934).

increase provisions, are based on the fact that those rate increase provisions are designated in the tariffs "to apply to line-haul car-load rates on Rock, Sand, Gravel and other articles named in Item 260 series of P.F.T.B. Tariff No. 166-G, Agent J. P. Haynes' Cal. P.U.C. No. 105"; that rates to which Item 260 applies are rates which make specific reference to this item; and that the rates which were assessed for the transportation involved are contained in an item which makes no reference to Item 260. Complainants assert that since the assessed rates were not subject to Item 260 they likewise were not subject to the increase provisions indicated.

In reaching their conclusions in this respect, complainants apparently misconstrue the applicable tariff provisions. Item 260 of P.F.T.B. Tariff No. 166-G is a descriptive item which lists various articles for which rates in the tariff are provided. No rates as such are named in the item. The quoted reference to Item 260 clearly is designed to utilize the listing of articles set forth in the item and so to specify the articles to which the rate increases in question apply. Its effect is not, as complainants contend, to limit the increases to only the rates in P.F.T.B. Tariff No. 166-G which refer specifically to Item No. 260.

Careful consideration of the record in these matters leads to the conclusion, and we so find, that complainants have not proved their allegations that the principal value of the sand in question is the silica or mineral content thereof and that the assessed rates were improper. The complaints will be dismissed.

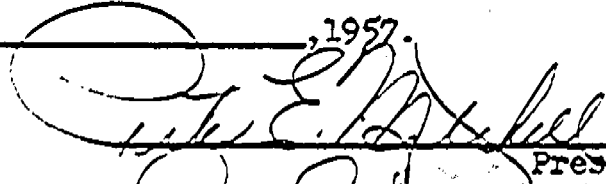
ORDER

These cases being at issue upon complaints and answers on file, a hearing thereon having been held, and basing this order upon the findings and conclusions contained in the preceding opinion,

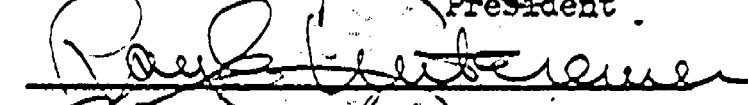
IT IS HEREBY ORDERED that the above-entitled complaints be and they hereby are dismissed.

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

Dated at Los Angeles, California, this 26th day of MARCH, 1957.

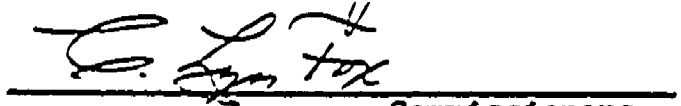


President









Commissioners