

Decision No. 85346

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

UNITED STATES BORAX AND
CHEMICAL CORPORATION,

Complainant,

vs.

THE ATCHISON, TOPEKA & SANTA
FE RAILWAY COMPANY,

Defendant.

Case No. 9990
(Filed October 14, 1975)

O P I N I O N

This is a complaint by United States Borax and Chemical Corporation alleging that The Atchison, Topeka, and Santa Fe Railway Company has charged, assessed, and collected unjust and unreasonable intrastate demurrage charges in the amount of \$8,720.00 on 10 private tank cars held on complainant's private tracks within its refinery at Boron, California from October 22, 1973 to December 14, 1973.

Complainant is a mining and chemical refining company which has private railroad tracks located within and adjacent to the area of its refinery at Boron. Complainant has at times held private tank cars on its private tracks for unloading. Pursuant to the provisions of defendant's tariff, B. B. Maurer's Freight Tariff 4-J, ICC H-59, effective April 1, 1973, defendant assessed demurrage to complainant on the 10 private tank cars while held by complainant on its private tracks. Complainant contends that certain tariff provisions which impose conditions in order for private cars held on private tracks to be exempt from California intrastate demurrage charges are unjust and unreasonable.

Defendant, by its answer filed November 4, 1975, admits the factual allegations of the complaint. Defendant asserts that complainant has raised issues only under Section 735 of the Public Utilities Code; that no issue of applicability of the tariff is pleaded by complainant; that the charges assessed and collected were those applicable under the tariff duly filed with this Commission; and that defendant was under a duty to assess and collect the applicable charges.

Defendant agrees that the Commission should find that the provisions of the tariff resulted in unjust and unreasonable intra-state demurrage charges as applied to the cars subject to the complaint. Defendant further agrees that the Commission should order refund to complainant.

The provisions of the tariff pertinent to the issues here have heretofore been held by the Commission to be unjust and unreasonable to the extent that those provisions provide for the assessment and collection of demurrage charges on private cars held on private tracks. (Bethlehem Pacific Coast Steel Corporation v Pacific Electric Railway Company, et al. (1952) 51 CPUC 722, and 51 CPUC 743; Standard Oil Company of California v The Atchison, Topeka, and Santa Fe Railway Company, Decisions Nos. 83545 and 83738 (1974); and Standard Oil Company of California v Southern Pacific Transportation Company, Decisions Nos. 83544 and 83737 (1974).)

On July 18, 1975, Pacific Car Demurrage Bureau, on behalf of complainant, filed a special tariff docket request, No. STD-8499, concerning the same subject matter of this complaint. The request was dismissed without prejudice on August 12, 1975 for the reason that the request was considered to be of a nature not suitable for processing on the special docket.

Complainant prays that the Commission order defendant to refund to complainant unreasonable demurrage in the amount of \$8,720, without interest, assessed by defendant and paid by complainant during the period October 22, 1973 to December 14, 1973.

Findings

1. Defendant has assessed and has collected from complainant demurrage charges prescribed in its tariff on private tank cars held for unloading on complainant's private tracks.

2. The rates and rules in defendant's tariff governing the application of the demurrage charges assessed have not been found by the Commission to be reasonable, but, in fact, heretofore have been found to be unjust and unreasonable when applied to private cars held on private tracks. ✓

3. The demurrage charges of \$8,720 assessed and collected from October 22, 1973 to December 14, 1973 for the 10 tank cars involved are unjust and unreasonable.

4. The complaint was noticed on the Commission's Daily Calendar of October 15, 1975. A public hearing is not necessary.

Conclusions

1. Defendant, a railroad corporation as defined in Section 230 of the Public Utilities Code, received unjust and unreasonable charges from complainant in violation of Section 451 of the Public Utilities Code.

2. Complainant is entitled to recover, and defendant should be ordered to pay, reparations in the amount of the unjust and unreasonable charges for demurrage it collected from complainant.

O R D E R

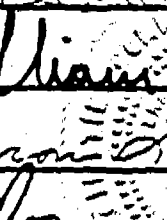
IT IS ORDERED that:

1. Defendant, The Atchison, Topeka, and Santa Fe Railway Company, shall pay to complainant as reparations the sum of \$8,720, without interest, it had collected from complainant from October 22, 1973 to December 14, 1973 for demurrage on private cars held on the private tracks of complainant at its refinery at Boron.

2. Defendant shall notify the Commission in writing of the date of payment to complainant pursuant to this order.

The Executive Director of the Commission is directed to cause a copy of this decision to be served upon United States Borax and Chemical Corporation and The Atchison, Topeka, and Santa Fe Railway Company, and the effective date of this order shall be twenty days after the date of service on The Atchison, Topeka, and Santa Fe Railway Company.

Dated at San Francisco, California, this 13th day of JANUARY, 1976.


William J. Lyons President
Vernon L. Sturgeon
John H. ...
Paul H. ... Commissioners