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Decision No. 86634

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern Pacific
Transportation Company for Authority
to Waive the Penalty Portion of
Demurrage Charges for Certain Cars
Detained at Consignee's Premises by
Flood Waters.

Application No. 56536
(Filed June 7, 1976)

O P I N I O N

By this application Southern Pacific Transportation Company (SP) requests authority to waive \$5,640 in penalty demurrage charges in connection with 16 carloads of bulk cement delivered to the Ideal Cement Company's (Ideal) facility in Redwood City from Kentucky House during January 1973. The total of the demurrage charges, including penalties, owed by Ideal is \$8,700. The total of the basic demurrage charges which SP would collect is \$3,060.

Demurrage rules and charges for California intrastate traffic are set forth in Tariff of General Car Demurrage Rules and Charges Freight Tariff 4-J, B. B. Maurer, Agent. The demurrage charges increase with the length of time cars are held beyond the expiration of free time. The increase is a penalty element designed to discourage customers from holding the carrier's equipment out of service. The basic demurrage charge, applicable after the expiration of free time, was, during the time in issue, \$10 per day, and higher demurrage charges of \$20 and \$30 were applicable for longer periods of time.

The application states as follows: From January 8 to 21, 1973, heavy rains fell at Redwood City daily with the exception of January 13 and 20. Particularly heavy rainfall was recorded on January 16, 17, and 18, when a total of 4.36 inches fell. During this period, the 16 cars of cement were delivered to Ideal at Redwood City. The first group of eight cars were placed on constructive

placement January 18, 1973 because the cement company's tracks were flooded and could not receive the cars. The receiving tracks also included underground conveyor facilities for unloading bulk cement from the rail cars, and the underground system was also flooded. On January 19, 1973, the second group of eight cars was likewise placed on constructive placement because of the receiver's inability to take and unload the cars. It was not until January 24, 1973 that the flood waters receded sufficiently to allow SP to spot these 16 cars. However, the receiver was not then able to unload the cars because the flood waters had extensively damaged the electric motors, switch gear, and screw conveyors which formed part of the unloading system. Ideal's personnel worked diligently to repair and clean the unloading equipment, but it was not partially operable until February 12, 1973. As soon as the unloading facilities were operable, the cars were unloaded and released to the carrier. In five cases difficulty was encountered in operating the car doors, there were further delays while SP's personnel repaired them, and the demurrage allowance authorized by the tariff was credited for this delay. The demurrage charges required to be assessed under the tariff include eight days at \$10 per day, thirty-two days at \$20 per day, and two hundred sixty-six days at \$30 per day for a total of \$8,700. The proposed adjusted charge would be for three hundred and six days at \$10 per day or \$3,060. Although the circumstances involved do not constitute an Act of God or other excuse recognized by the tariff as a basis for reducing demurrage charges to the level of the basic charge, the circumstances present a compelling equitable basis for waiving collection of charges in excess of the basic charge. To the best of applicant's knowledge no other consignor or consignee was similarly affected by the heavy rainfall of January 1973.

There have been no protests to the application. We are of the opinion that, based on the extenuating facts and circumstances, it should be granted.

Findings

1. During January 1973, SP delivered 16 carloads of cement to Ideal at its facility in Redwood City. There were substantially heavy rains during this period which caused flooding of Ideal's tracks and damage to its underground unloading facilities. As a result, there was delay in placing the cars, and they could not be unloaded until the unloading facilities were repaired. Ideal's personnel worked diligently to repair the damage and as soon as the unloading facilities were operable the cars were unloaded and released to the carrier.

2. Because of the delays referred to in Finding 1, demurrage charges in the total amount of \$8,700 accrued, including \$3,060 in basic charges and \$5,640 in penalties.

3. Although it has not been established that the circumstances involved constitute an Act of God or other excuse recognized by the applicable demurrage tariff as a basis for reducing demurrage charges to the level of the basic charge, the circumstances clearly establish a reasonable basis for waiving collection of charges in excess of the basic demurrage charges for the 16 cars.

Conclusion

The application should be granted.

O R D E R


IT IS ORDERED that the Southern Pacific Transportation Company shall collect \$3,060 in basic demurrage charges from the Ideal Cement Company for holding the sixteen rail cars of cement identified in the application at its facility in Redwood City beyond

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the authorized free time during January and February 1973, and shall waive the collection of demurrage penalty charges of \$5,640 in connection therewith.

The effective date of this order shall be twenty days after the date hereof.


Dated at San Francisco, California, this 16th day of NOVEMBER, 1976.



President



Commissioner



Commissioners

Commissioner William Syrens, Jr., being necessarily absent, did not participate in the disposition of this proceeding.