

Montana, Wyoming & Southern Railroad Company, Rate in Force Between October 3rd and 20th, 1909. Railroads, Rate in Force on Montana, Wyoming & Southern Between October 3rd and 20th, 1909. Rate, on Montana, Wyoming & Southern Between October 3rd and 20th, 1909.

In view of the injunction order of the federal court the proportional rate on shipments of coal over M. W. & S. Co., between October 3rd and 20th, 1909, was 45c per ton.

August 9th, 1912.

State Board of Railroad Commissioners,
Helena, Montana.

Gentlemen:

I acknowledge receipt of your letter of August 1st, stating that the Anaconda Copper Mining Company has presented its claim to the Montana, Wyoming & Southern Railroad Company for an overcharge of freight on certain cars of coal from Bear Creek to Bridger, moved between October 3rd and 20th, 1909, which claim has been refused by the M. W. & S. Co., and requesting my official opinion as to what was the legal tariff in force between the dates above referred to.

Prior to August 1st, 1909, the proportional rate on through shipments of coal in carload lots from points on the line of the M. W. & S. Co., to points beyond its line was 45c per ton. On July 9th, 1909, your commission made an order providing that on and after August 1, 1909, said railroad should accept as a proportional rate 35c per ton on coal in carload lots destined to points beyond its line. The M. W. & S. Co., thereupon made an application for a re-hearing and increase in this rate, which was, on February 14th, 1910, by your Report No. 32, denied. Thereafter, on October 3rd, 1910, a suit was commenced by the M. W. & S. Co., against the board of railroad commissioners in the Circuit Court of the United States, alleging that said Order No. 26 and Report No. 32 were illegal and void and in contravention of the Fourteenth Amendment to the Constitution, and praying that an injunction issue restraining the enforcement of said order and report. A hearing was thereupon had, and the following temporary restraining order was issued by the court on October 3rd, 1910:

"The complainant having moved upon the bill of complaint herein and various affidavits for an injunction during the pendency of this action against the defendants to restrain them

and each of them and each and every person acting under or by virtue of the authority of the acts of the legislature of the state of Montana and the order and report of the board of railroad commissioners of the State of Montana specified in the bill of complaint, from in any way enforcing the said order and said report and any provisions thereof against the complainant, and it appearing that the complainant demands and claims to be entitled to a decree against the defendants restraining the commission of the acts hereinafter enjoined upon the ground that they would result in irreparable injury to the complainant and would constitute a taking of complainant's property for public and private use without due process of law and without just compensation, and would constitute a denial to the complainant of the equal protection of the laws in violation of the 14th amendment to the constitution of the United States and would impair the obligations of the complainant's contract rights in violation of Section 10 of Article 1 of the Constitution of the United States and would result in a multiplicity of suits, and that the complainant has no adequate remedy at law for the injury which would result from the acts of the defendants, it is

ORDERED:

1. That until the entry of an order upon the said motion, the defendants and each of them, their officers, agents, servants and employees and each and every person acting under and by virtue of the authority of said Act and the said Order No. 26 and the said Report No. 32, referred to in the bill of complaint, or any of them, be and they hereby are enjoined and restrained from in any way enforcing or attempting to enforce the said act or the said order or the said report or any of the provisions thereof against the complainant.

II. That until the entry of an order upon the said motion the complainant may make the same charge for transportation of coal per ton in carload lots upon its line destined to points beyond its own line as were formerly in force prior to August 1, 1909, before the said Order No. 26 went into effect, notwithstanding the said order and the said report, provided that within five days after the date hereof it deposit in the National Bank of Montana of Helena, Montana, forthwith, the sum of One Thousand Dollars (\$1,000), to be held in said bank subject to the order of the court, as security for the prompt deposit of the difference in rate charged as hereinafter provided; and provided further that at the end of ten days from the date hereof the complainant deposit in the said bank, as set forth, to the credit of this action, to be held subject to the order of the court, the exact difference between the thirty-five cent rate per ton and the rates charged during said ten days per ton, provided that said exact difference be further de-

posited at the end of every ten days thereafter during the continuance of this order; and provided further that with said excess charge so deposited the complainant shall file with said deposit an affidavit of the number of tons of coal transported by it during each period of ten days and the amounts received for the transportation thereof and the names and addresses of each shipper thereof.

III. That the moneys so paid into the said depository shall be by it received and held as a special deposit to the credit of this action and that the same should be paid out only on the draft of the clerk of this court, countersigned by a federal judge sitting in this court.

In the event of this order being dissolved or vacated a special master will be appointed to ascertain and report as to the amount to be returned to each individual shipper and as to the identity of such shipper.

IV. That the defendants and each of them show cause at a term of this court, to be held at Helena on the 20th day of October, 1910, at 10 o'clock a. m., why this order should not continue in full force and effect until the final hearing and disposition of this case thereat, and that the defendants serve on the solicitor for the complainants affidavits which they may desire to use in opposition to complainant's said motion forty-eight hours prior to any hearing thereon.

Dated October 3rd, 1910.

CARL RASCH, Judge."

Upon the trial of the cause, the court rendered its decision and entered a judgment thereon in favor of the M. W. & S. R. R. Co., holding said Order No. 26 and Report No. 32 illegal and void in contravention of the 14th amendment of the constitution of the United States, and granting a perpetual injunction and restraining order against the enforcement of said order and report, which judgment was entered April 9th, 1912.

You state that on October 7th, 1910, the M. W. & S. Co., issued Supplement No. 3 to its tariff No. 1, to become effective October 20th, restoring the rate of 45c.

The restraining order of the court above quoted prohibited the enforcement of Order No. 26 and Report No. 32 fixing the 35c rate, and provided that the "complainant may make the same charge for transportation of coal per ton in carload lots upon its line destined to points beyond its line as were formerly in force prior to October 1st, 1909," which was 45c, and required a bond to be given to protect the shipment, which was done. This injunction was by the judgment of the court made permanent, and the 35c rate fixed by your board declared unconstitutional and void. It was impossible for any one to enforce the 35c rate, after the injunction order of October 3rd, 1910, and this injunction order has never been set aside but, on the contrary has been perpetually continued in force as against the 35c

rate. It is, therefore, apparent to me that the rate in force from the date of the injunction order, to-wit; October 3rd, 1910, was the 45c rate prevailing prior to the taking effect of Order No. 26, regardless of the Supplement No. 3, issued by the M. W. & S. R. R. Co., to become effective October 20th. In view of the order of the court it was not necessary for the M. W. & S. R. R. Co., to issue this supplement.

You are, therefore, advised that in my opinion the tariff in force between October 3rd and 20th, 1910, was the 45c rate prevailing prior to the taking effect of Order No. 26.

Yours very truly,

ALBERT J. GALEN,

Attorney General.