

No. 11362.

IN THE MATTER OF THE INLAND RAILWAY COMPANY.

Submitted February 17, 1923. Decided March 5, 1923.

The Inland Railway Company found not to be a common carrier subject to the interstate commerce act entitled to receive divisions of joint rates.

H. W. Prickett and L. Clayton for Inland Railway Company and Inland Crystal Salt Company.

Bagley, Fabian, Clendennin & Judge for Salt Lake, Garfield & Western Railway Company.

J. V. Lyle for Oregon Short Line Railway Company and Denver & Rio Grande Railroad Company.

REPORT OF THE COMMISSION.

HALL, Commissioner:

Exceptions were filed by respondent Inland Railway Company to the report proposed by the examiner.

In the past the rates, rules, and practices governing the transportation of salt from Saltair, Utah, and other points on the line of the Inland Railway Company to interstate destinations have been the subject of formal and informal complaints. On April 5, 1920, we instituted on our own motion this proceeding of inquiry and investigation into and concerning these rates, rules, and practices. It includes ascertainment of the relationship between the Inland Crystal Salt Company, the Inland Railway Company, and the Salt Lake, Garfield & Western Railway Company, hereinafter termed respectively the salt company, the Inland, and the Garfield; the character of the services performed by the Inland; and the propriety and reasonableness of the divisions, switching charges, and allowances which it receives for switching and hauling freight traffic. The three companies named and the Denver & Rio Grande, Oregon Short Line, Western Pacific, and Los Angeles & Salt Lake were made respondents. The accompanying map shows the location of the salt company and the lines of the Inland and the Garfield.

During the summer season water which contains about 17 per cent salt is pumped from Great Salt Lake to a settling pond south of the Inland's tracks. It remains there until the brine reaches a density of about 25 per cent salt. It is then run into so-called har-
78 I. C. C.

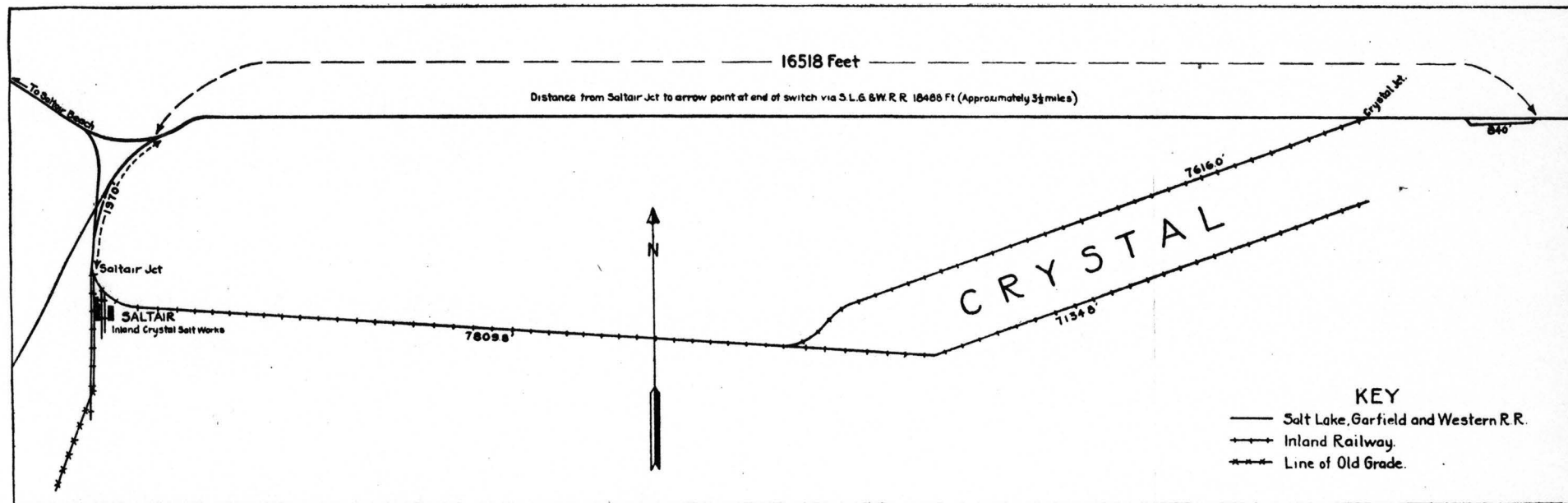
vesting ponds. These cover several hundred acres of land naturally adapted to the production of salt by the process of solar evaporation, lying north and south of the tracks in the vicinity of Crystal, shown on the map. About September 1 the water is drained off the salt is plowed, and gathered into piles each containing from 600 to 800 tons. The piles are located close to the rails of the Inland. This crude salt constitutes the supply for the salt company. Some is shipped out in bulk as roasting, stock, or crude salt, and the rest is put through a milling process at the salt works and shipped as ice cream, No. 2, No. 1, table, or dairy salt, or in compressed blocks.

The record indicates that the manufacture of salt in the vicinity of Saltair started about 1884; that the business was incorporated in 1889 under the name of the Inland Salt Company; that the refinery was located a few hundred feet south of the present refinery; that its ponds were a short distance south and east of the refinery; that at first the salt was hauled by team about 3 miles to the old narrow-gauge line of the Oregon Short Line, hereafter termed the Short Line, which ran between Salt Lake City and Garfield; and that later the Short Line built a branch to the refinery and in addition to hauling the salt from the refinery switched cars between the refinery and the ponds and made no charge other than the line-haul rate. The Short Line ceased to serve the refinery in 1898.

The Salt Lake & Los Angeles was constructed from Salt Lake City to Saltair Beach during 1891 or 1892. It is now known as the Salt Lake, Garfield & Western and is an electric line. At about the same time the Intermountain Salt Company began to manufacture crude salt near the point on the map designated as Crystal Junction. A spur was constructed from that point to the ponds of the Intermountain Company, and its salt was hauled by the Garfield to Salt Lake City, where it was refined in transit under joint through rates from point of origin to final destination.

The Inland Salt Company and the Intermountain Salt Company were consolidated in 1898 and became the Inland Crystal Salt Company. After the consolidation the salt manufactured at the points near Crystal Junction was transported over the spur to Crystal Junction, thence west by the Garfield to the refinery near Saltair and there refined. It was then transported east by the Garfield to Salt Lake City for delivery to the various trunk lines. The Garfield performed all switching at the ponds and at the refinery. In 1907 the salt company built tracks connecting its refinery with the salt ponds, and the Garfield used these in hauling the crude salt to the refinery. For its services the Garfield received out of the joint rates a division of 5 cents per 100 pounds which was equal to the local

78 I. C. C.



rate to Salt Lake City, but nothing was paid the salt company for the use of its tracks.

In 1910, on account of certain differences with the Garfield, the salt company purchased an oil-burning locomotive and performed its own switching between the ponds and the refinery. The record is not clear as to where the salt company delivered loaded cars to the Garfield or received empties from the Garfield. For its services the salt company received 50 per cent of the revenue accruing to the Garfield. No tariff provision was made for this allowance.

The Inland was incorporated on March 27, 1916, under the laws of the State of Utah. Shortly thereafter it acquired the railway trackage, right of way, rolling stock, and other railway property of the salt company, the consideration being \$50,000, represented by a promissory note for that amount dated April 1, 1916, payable to the salt company five years after date, with interest at 6 per cent per annum. The salt company also holds a first mortgage, dated April 12, 1916, on the property of the Inland to secure the note.

The capital stock of the Inland consists of 100 shares of common stock with a par value of \$100 per share. This stock is held in equal amounts by five persons, four of whom are limited holders of stock in the salt company. Ten per cent in cash was paid for this stock as required by the Utah statute, the balance being represented by demand notes dated March 27, 1916. These notes were outstanding at the time of the hearing, August 9, 1920, and no interest had been paid thereon.

Shares of the common and preferred stocks of the salt company have equal voting rights. The majority of the total number of shares of both kinds are held in the name of Heber J. Grant, trustee, in trust for the beneficial interest of the Church of Jesus Christ of Latter Day Saints.

The Inland owned and operated, according to its annual report for the year ended December 31, 1919, 3.06 miles of single or main track and 2.14 miles of yard track and sidings. The tracks are laid with 60-pound rails, and are said to be in such condition as to permit the operation of standard equipment and locomotives. It owned 1 locomotive, 22 box cars of 40,000 pounds capacity, and 6 gondola cars of 60,000 pounds capacity. These cars never leave the rails of the Inland and are used exclusively in carrying salt from the harvesting ponds to the refinery. It has no mail, express, or passenger business and does not handle less-than-carload shipments. Such shipments consigned to the salt company are unloaded from cars of the Garfield at Saltair Junction. The Inland serves no shippers other than the salt company. Its entire outbound traffic consists of

78 I. C. C.

salt shipped by the salt company and its inbound traffic of coal, machinery, and supplies consigned to the salt company. While it holds itself out as a common carrier, the record shows that since it began operations the only traffic it has handled in addition to that of the salt company consisted of two cars of junk shipped by two employees of the salt company. Whether they were interstate or intrastate shipments does not appear. In 1919 the Inland handled 1,673 carloads of salt. The salt company is said to ship six or seven cars a day. The inbound tonnage for 1919 is not shown, but for 1918 it was 987 tons.

The distance from Crystal Junction to Saltair over the rails of the Inland is about 3 miles. The distance from the end of the branch south of Crystal to Saltair Junction is about 500 feet less. As stated before, salt piles are located near both tracks at Crystal. Empty cars are placed by the Inland at the piles for loading. When loaded they are hauled to the refinery, if the salt is to be refined. If the salt is to be shipped as roasting, crude, or stock salt the cars placed for loading are foreign-line cars. In the morning the empties are picked up at the refinery and placed at the salt piles at Crystal. The cars which have been loaded on the day previous are then hauled to the refinery. The cars which are loaded with refined salt at the refinery, together with cars of crude salt direct from Crystal, are then hauled by the Inland over the rails of the Garfield to switch marked 840, where they are picked up by the Garfield. Empty cars and inbound loads are picked up at switch 840 and hauled back by the Inland over the rails of the Garfield to the refinery. There is no written agreement between the Inland and Garfield under which the former operates over the tracks of the Garfield between Saltair Junction and switch 840.

It is said that shipments are handled in this way because it would greatly increase the expense to the Garfield to take the loaded cars at Saltair Junction, as its motors can haul only three cars and the haul around the curve would run up the peak load of the substation near Saltair Junction and thereby increase its power bill. But the record is clear that the loaded cars of crude salt which are not stopped at the refinery could be delivered at Crystal Junction were it not for the fact that cars of the Inland are being loaded for the refinery on what it calls its main track. The salt company observes a regular schedule of loading during the business hours of each business day. Such use of this so-called main line necessarily makes it a private siding or plant facility, as its use is subordinated to the operations of the salt company and precludes the Inland from undertaking common-carrier services which would interfere with the operations of the salt company.

78 I. C. C.

The Inland has never paid a dividend. Its accounts are kept separate from those of the salt company. That company does not receive any part of the division of the joint rates accruing to the Inland, which is still 50 per cent of the revenue accruing to the Garfield as before the incorporation of the Inland. The Inland publishes no tariffs of its own, but concurs and is shown as a participating carrier in other lines' tariffs. Its divisional arrangements are made directly with the Garfield and not with any other line.

The revenue accruing to the Inland on four cars of salt moved in June, 1920, was \$13, \$17.89, \$19.52, and \$19.50, respectively.

Prior to February 15, 1922, the Inland published no demurrage charges. On that date it became a party to Fairbanks' tariff I. C. C. No. 4. For detention of cars the Inland pays per diem to the Garfield, which in turn remits to its connection at Salt Lake City. The detention on the Inland is sometimes considerable, and, in instances when its own cars are in bad order, the Inland uses foreign-line cars to transport salt from the ponds to the refinery. Demurrage charges have never been collected by the Inland from the salt company, as the latter is said never to have detained them longer than the free period. Prior to the incorporation of the Inland car detention by the salt company was settled on a per diem rather than a demurrage basis.

At the time of the hearing all shipments of salt moving over the Inland were billed from Crystal, but no shipping order, bill of lading, or waybill was issued for the movement from the ponds to the refinery. Weight is not ascertained in the case of bulk shipments until they are delivered to the connections of the Garfield at Salt Lake City. Shipments of salt in packages are handled under agreement with the Western Weighing & Inspection Bureau. Crystal is merely a designation for a rather indefinite territory in and about the ponds.

Of the 7,500 shares of stock of the Garfield all but 4 are held by Joseph Nelson, its president and general manager, and the Saltair Beach Company. Of the 4,150 shares of the latter company Nelson holds 4,114. The shares of both companies held by Nelson are deposited with the Zion's Savings Bank & Trust Company as collateral for loans made to the Garfield. This bank has the right, which it has exercised, of voting the stock at stockholders' meetings, but it was testified that it has never interfered with the operation of the Garfield. A large part of the stock of the bank is held in trust for the church.

While the control of the Inland by the salt company is not direct, the facts strongly support the conclusion that the Inland and the salt company represent but one enterprise and that operation of the

78 I. C. C.

Inland is in the exclusive interest of the salt company. The separate incorporation of the Inland obviously did not change the status of the operations theretofore conducted by the salt company. We have said that the mere fact of incorporation can not transform a plant facility into a common carrier, and that while the extent to which the public uses the facilities of a railroad is not controlling, there must be some appreciable use of the railroad by the public or else the holding out to carry for all is merely an empty form. This is obviously the situation here, as with the exception of two carloads of junk shipped by employees of the salt company the Inland has never handled shipments for shippers other than the salt company. The territory near it is barren, and there is no immediate prospect of future traffic other than that of the salt company.

We find that the Inland Railway Company is not a common carrier subject to the interstate commerce act, but an adjunct or plant facility of the salt company; that it is therefore not entitled to receive a division of joint rates; and that the carrying of the crude salt to the refinery is merely a step in a manufacturing process and not a transportation service for which the salt company should receive compensation. This is not to say that it is unlawful for the trunk lines, including the Garfield, to pay reasonable compensation to the Inland for performing as their agent, or a reasonable allowance to the salt company under section 15 of the interstate commerce act for performing through its industrial railroad, any portion of the transportation service beyond Saltair Junction customarily included in the interstate line-haul rates which they do not elect to do for themselves. The trunk lines should file with us a full and specific statement of any arrangements entered into immediately upon their adoption.

78 I. C. C.

INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME 78

**DECISIONS OF THE
INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES**

MARCH-APRIL, 1923

REPORTED BY THE COMMISSION



**WASHINGTON
GOVERNMENT PRINTING OFFICE
1923**