

Decision No. 15207

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Standard Paving Company,
Complainant,

vs.

CASE NO. 2123

Atchison, Topeka & Santa Fe Rail-
way Company,
Modesto & Empire Traction Company,
Defendants.

BY THE COMMISSION:

O P I N I O N

The complainant, Standard Paving Company, is a corporation, with its principal place of business at Modesto, and is engaged in the business of street paving.

It is alleged by complaint filed April 16, 1925 that the rate assessed by defendants for the transportation of nine carloads of sand moving during the period April 28, 1923 to August 13, 1923, inclusive, from Antioch to Modesto, was excessive to the extent it exceeded 4 cents per 100 pounds.

Reparation only is sought. Rates will be stated in cents per 100 pounds.

The rate assessed by defendants was $4\frac{1}{2}$ cents, as published in Item 400 of Atchison, Topeka & Santa Fe Railway Joint Freight Tariff CRC No. 489.

The shipments involved moved via the Atchison, Topeka & Santa Fe Railway to Empire, thence Modesto & Empire Traction Company to Modesto. At the same time there was in effect a rate of 4 cents applicable via The Atchison, Topeka & Santa Fe Railway to Stockton, California, thence Southern Pacific Company to Modesto. This rate was made up of a combination of commodity rates over Stockton, the factors being $2\frac{1}{2}$ cents from Antioch to Stockton and $2\frac{1}{2}$ cents from Stockton to Modesto, as published in Item 60 of Atchison, Topeka & Santa Fe Railway Tariff CRC 461, and First Revised Page 33 of Southern Pacific Tariff CRC 2673, respectively, and both factors were subject to the provisions of Agent W.J. Kelly's Combination Tariff No. 228, CRC. No. 1.

Under the impression that the rates were the same via both routes, complainant forwarded the shipments involved in this proceeding via the Atchison, Topeka & Santa Fe Railway to Empire, thence via the Modesto & Empire Traction Company to Modesto. Failure to publish the same rate via that route as concurrently in effect via the route of the Atchison, Topeka & Santa Fe Railway to Stockton, thence via the Southern Pacific Company, appears to have been an oversight on the part of defendant carriers. Effective March 30, 1924 defendants established the 4 cent rate via the route over which the shipments moved.

Defendants admit the allegations of the complaint and have signified a willingness to make a reparation adjustment upon presentation to the Commission of suitable proof that the freight charges were paid and borne by complainant. Such proof in the form of a statement certified to by the secretary of complainant has been furnished the Commission, hence under the issues as they now stand a formal hearing will be unnecessary.

We find as a fact that the rate of $4\frac{1}{2}$ cents per 100 pounds for the transportation of sand from Antioch to Modesto via the route of the Atchison, Topeka & Santa Fe Railway to Empire, thence Modesto & Empire Traction Company to destination, in connection with the nine cars involved in this proceeding, was excessive to the extent it exceeded the subsequently established rate of 4 cents per 100 pounds; that the complainant paid and bore the charges on the shipments in question; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable and that it is entitled to reparation in the sum of \$51.90.

O R D E R

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion, which said opinion is hereby referred to and made a part hereof,

IT IS HEREBY ORDERED that defendants, Modesto & Empire Traction Company, a corporation, and The Atchison, Topeka & Santa Fe Railway Company, a corporation, according

as they participated in the transportation, be and they are hereby authorized and directed to pay unto complainant, Standard Paving Company, a corporation, the sum of \$51.90 as reparation on account of the excessive rate exacted for the transportation of nine carloads of sand from Antioch to Modesto involved in this proceeding.

Dated at San Francisco, California, this 23rd
day of July, 1925.

H. A. Brundage

C. C. Leavelle

George D. Squires

Commissioners.