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Decision No. 16432

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

CALIFORNIA PACKING CORPORATION, Complainant, vs. SOUTHERN PACIFIC COMPANY, Defendant.	Case No. 2146.
STEWART FRUIT COMPANY, Complainant, vs. SOUTHERN PACIFIC COMPANY, NORTHWESTERN PACIFIC RAILWAY COMPANY and SIERRA RAILWAY COMPANY, Defendants.	Case No. 2133.
H. G. PRINCE & COMPANY and HUNT BROTHERS PACKING COMPANY, Complainants, vs. SOUTHERN PACIFIC COMPANY, Defendant.	Case No. 2028.

E. W. Hollingsworth, for Complainants in Case No.2028.
McCutchen, Olney, Mannon & Greene, by Allan P.Matthew, for Complainants in Cases 2133 and 2146.
B. H. Carmichael, H. W. Glensor and F. W. Turcotte, for Carmichael Traffic Company, Gilmore Oil Company, A. F. Gilmore Company, Hercules Gasoline Company, O'Donnell-Gillette Refining Company, Vernon Oil Refining Company, Wilshire Oil Company, East-West Refining Company, California Refining Company, Independent Petroleum Marketers' Association, Intervenors.
James S. Moore, for Western Pacific Railroad Company.

Platt Kent and Bern Levy for The Atchison, Topeka and Santa Fe Railway Company.
Stanley Moore and N. P. Palmer, by H. B. Brown, for Northwestern Pacific Railway Company.
E. E. Bennett, for Los Angeles and Salt Lake Railroad Company.
J. E. Lyons, A. W. Whittle and F. W. Mielke, for Southern Pacific Company, Defendant.
W. C. Banks, for Standard Oil Company.

BY THE COMMISSION:

OPINION ON REHEARING.

This Commission, by its Decision No. 15472, rendered on September 26, 1925, in the above-entitled Case No. 2146, found that a rate of 8¢ per 100 pounds assessed by the Southern Pacific Company for the transportation of 31 carloads of canned goods moving from San Jose to Milpitas during the period from July 9, to July 25, 1924, inclusive, was unreasonable to the extent that it exceeded a rate of 3¢ per 100 pounds, and by order, directed the said defendant company to refund as reparation to the complainant, California Packing Corporation, all charges it collected in excess of 3¢ per 100 pounds minimum carload, weight 80,000 pounds, on account of said unreasonable rate collected.

The Southern Pacific Company filed with the Commission a petition for rehearing in said proceeding, in which it was urged that the Commission was without jurisdiction to award reparation as provided in said order by virtue of the provisions of section 71 of the Public Utilities Act as amended in 1925. In this connection it was further urged that this Commission, by a formal finding made in Decision No. 7983, dated August 17, 1920, Application No. 5728, did declare a rate of 11¢ on the same commodity between the same points, to be reasonable. It was the prayer of said petitioner that the said order of September 26, 1925, be vacated in so

far as it directed defendant to pay reparation to complainant.

By its Decision No. 15643, rendered on November 14,1925, in the above-entitled Case No. 2133, the Commission found that a rate of 38½¢ per 100 pounds assessed by defendants, Southern Pacific Company, Northwestern Pacific Railroad Company and Sierra Railway Company, for the transportation of ten carloads of box shook moving from Standard to Hopland and Ukiah during the period from July 18, 1923, to September 20, 1923, both dates inclusive, was unreasonable to the extent that it exceeded a rate of 37¢ per 100 pounds, and by order directed the said defendants, according as they participated in the transportation, to refund to complainant, Stewart Fruit Company, $70.15 as reparation on account of said unreasonable rate collected.

Within the statutory period, the defendant, Southern Pacific Company, filed with the Commission a petition for rehearing in said proceeding, in which it was argued that the Commission was without jurisdiction to award reparation as provided in said order, by virtue of the provisions of section 71 of the Public Utilities Act as amended in 1925. In this connection it was further contended that this Commission, by a formal finding made in its Decision No. 7983, dated August 17, 1920, Application No. 5728, prescribed a rate of 41¢ as reasonable between the same points and on the same commodity. It was the prayer of said petition that the said order of the Commission of November 14, 1925, be vacated in so far as it directed defendants to pay reparation to complainant.

By its Decision No. 15923, rendered on February 3, 1926, in the above-entitled Case No. 2028, the Commission found that a rate of 7¢ per 100 pounds assessed by the defendant, Southern Pacific Company, for the transportation of canned goods in car-

loads from Hayward and San Leandro to Oakland moving during the period from July 30, 1922, to July 30, 1924, was unreasonable to the extent that it exceeded a rate of 5¢ per 100 pounds, and by order directed the defendant, Southern Pacific Company, to establish on or before February 25, 1926, and thereafter to maintain and apply to the transportation of canned goods in carloads from Hayward to Oakland a rate of 5¢ per 100 pounds, and to refund, with interest, to complainant, H. G. Prince & Company, all charges it may have collected in excess of 5¢ per 100 pounds for the transportation of the canned goods involved in this proceeding.

Within the statutory period, the Southern Pacific Company filed with the Commission a petition for rehearing in said proceeding, in which it was contended that the Commission erred in finding a rate of 7¢ per 100 pounds for the transportation of canned goods in carloads from Hayward and San Leandro to Oakland to be unreasonable; that the Commission was without jurisdiction to award reparation in said proceeding by virtue of the provisions of section 71 of the Public Utilities Act as amended in 1925; that this Commission, by formal finding (Decision No.7983), dated August 17, 1920, Application No. 5728, did declare a rate of 7½¢ per 100 pounds on the same commodity between the same points, to be reasonable. It was the prayer of said petition that the said order of February 3, 1926, be vacated and the complaint dismissed.

The respective petitions for rehearing filed in each of the three above-numbered cases were granted for the purpose of considering the allegations contained in said petitions to the effect that the Commission was without jurisdiction to award reparation in said cases by virtue of the provisions of section 71 of the Public Utilities Act as amended. The cases were consolidated for further hearing, and heard on March 15,

and 16, 1926, at the conclusion of which the cases were submitted for final decision.

At the rehearing counsel for the defendant carriers, in support of their contention that the Commission had exceeded its jurisdiction in awarding reparation in the three above-entitled cases, argued the following propositions:

One: That the Railroad Commission, prior to the effective date of the 1925 amendment to section 71 of the Public Utilities Act, was without jurisdiction to award reparation for the collection of an unreasonable rate--where the rate collected was the rate stated in the published tariff.

Two: That even if the Railroad Commission did possess such jurisdiction under section 71 of the Public Utilities Act as it existed prior to the 1925 amendment, the second provision of the amendment operated as a repeal or restriction so as to preclude its exercise in any case, which had not been reduced to final order at the time the amendment became effective, July 23, 1925, wherein the rate charged had been declared by the Commission by "formal finding" to be reasonable.

Three: That the findings of the Commission in its Decision No. 7983, dated August 17, 1920, Application No. 5782, reported in 18 R.C.D. 646, are "formal findings" within the meaning of the amended section 71 of the Public Utilities Act; that the rates charged by the carriers, and involved in the three reparation cases under consideration, were found to be reasonable by said alleged "formal findings" in that decision.

Section 71 of the Public Utilities Act of 1911, as reenacted in the Act of 1915, and as it existed until the amendment of 1925, provided as follows:

"Sec. 71(a). When complaint has been made to the Commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection; provided, no discrimination will result from such reparation.

"(b). If the public utility does not comply with the order for the payment of reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover the same. All complaints concerning excessive or discriminatory charges shall be filed with the commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the commission. The remedy in this section provided shall be cumulative and in addition to any other remedy or remedies in this act provided in case of failure of a public utility to obey an order or decision of the commission."

Section 71 of the Public Utilities Act, as amended in 1925, is as follows:

"Sec. 71(a). When complaint has been made to the commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an unreasonable, excessive or discriminatory amount for such product, commodity or service, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection; provided, no discrimination will result from such reparation; and provided further, that no order for the payment of reparation upon the ground of unreasonableness shall be made by the commission in any instance wherein the rate, fare, toll, rental, or charge in question has, by formal finding, been declared by the commission to be reasonable; and provided further, that no assignment of a reparation claim shall be recognized by the commission except assignments by operation of law as in cases of death, insanity, bankruptcy, receivership or order of court.

"(b). If the public utility does not comply with the order for payment of reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover the same. All complaints concerning unreasonable, excessive or discriminatory charges shall be filed with the commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the commission. The remedy in this section provided shall be cumulative and

in addition to any other remedy or remedies in this act provided in case of failure of a public utility to obey an order or decision of the Commission (amended Statutes 1925, Chapter 357, page 647)."

(New portions of section are underlined.)

After having carefully considered the points argued on rehearing by counsel for the defendant carriers, we are of the opinion that no errors were committed in the decisions heretofore rendered in the three above-entitled cases. More specifically, we are of the opinion that under section 71 of the Public Utilities Act as it existed prior to the amendment of 1925, the Commission was possessed of jurisdiction to award reparation for the collection of an unreasonable rate, although the rate found to be unreasonable was the rate stated in the published tariff; that section 71 of the act, as amended in 1925, which became effective July 23, 1925, did not operate to deprive the Commission of jurisdiction to award reparation on any such cause of action which accrued prior to the effective date of the amendment; that no "formal finding" of reasonableness, within the meaning of section 71 of the Public Utilities Act, as amended, was made as to the particular rates charged and involved in the three above-entitled cases, in Commission Decision No. 7983, August 17, 1920, Application No. 5782, 18 C. R. C. 646, or in any other decision.

It is the desire of the Commission to rule with finality on the contention made to the effect that Decision 7983, referred to above, embodied either in substance or effect, a "formal finding" on the question of the reasonableness of the rates therein ordered. The fact that the Commission made no effort to pass on the reasonableness of the rates therein prescribed would seem to be apparent from an examination of the decision, and, in the

decision on petition for rehearing in that case (Decision 8100, September 13, 1920, 18 C. R. C. 803), we emphasized this point and reiterated that no finding of reasonableness as to the rates had been made or undertaken. The said petition for rehearing was filed by the East Bay cities and one of the errors alleged therein was the fact that the rate increase ordered in Decision 7983 had been allowed without a finding by the Commission on the question of reasonableness. In its decision denying the application for rehearing, the Commission stated in part, at page 810:

> "To pursue the suggestion of the petitioners herein would be to inquire fully not only into all questions of differentials and relationship of rates occasioned by so-called General Order 28 of the Federal Railroad Administrator, but indeed an inquiry into the reasonableness of all rates, both freight and passenger, prior to the 25 per cent increase of the Interstate Commerce Commission, a situation which, for reasons hereinbefore stated, was and is practically impossible."

Subsequent to the submission of these cases on rehearing, the Commission received a letter from the Southern Pacific Company by its Attorney, J. E. Lyons, under date of March 29, 1926, in which it was stated that said carrier desired to withdraw, and did withdraw all claim theretofore made by it, that the decision of the Commission No. 7983, (18 C.R.C. 646) constituted a "formal finding" of reasonableness of the rates involved in the three above-numbered cases within the meaning of section 71 of the Public Utilities Act as amended. It was further stated that he was authorized to say that Messrs. James S. Moore, Jr., on behalf of the

Western Pacific Railroad Company, and R. W. Palmer, on behalf of the Northwestern Pacific Railroad Company, concurred in the withdrawal of said claim, as to the effect of Commission's Decision No. 7983.

We are, therefore, of the opinion that no errors were committed in our decisions in the three above-entitled cases.

O R D E R

Rehearings having been had in the above-entitled matters, the cases having been submitted, and no good cause having been made to appear why our former orders therein should not be affirmed,

IT IS HEREBY ORDERED that our said Decisions numbered 15472, 15643 and 15923, decided on September 26, 1925, November 14, 1925, and February 3, 1926, respectively, be, and the same are hereby affirmed.

Dated at San Francisco, California, this 9th day of April, 1926.

H. A. Brundige
C. L. Seavey
Ezra Decoto

Commissioners.

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