

DECISION NO. 16581

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
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E. J. Heinz Corporation,
Complainant,

vs.

Southern Pacific Company,
Defendant.

CASE NO. 2191

F. W. Mielke, for Defendant.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation with its principal place of business at Pittsburgh, Pa. By complaint filed October 31, 1925 it is alleged that the Fourth Class rate of 51 cents per 100 pounds assessed by defendant for the transportation of 9 carloads of empty tin cans moving from San Francisco to Corning during the period November 4, 1922 to January 9, 1924 was unreasonable to the extent it exceeded a commodity rate of 37 cents per 100 pounds subsequently established. The statute of limitation was stayed against 7 of the carloads by informal action under this Commission's file I.C. 32835, dated May 11, 1925, but 2 of the carloads mentioned in the complaint, being outlawed, need not be considered in this decision.

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

ORIGINAL

A public hearing was held before Examiner Geary March 23, 1926 at San Francisco and the matter having been duly submitted is now ready for our opinion and order.

Complainant did not appear at the hearing and no evidence was offered in its behalf; however, on March 20, 1926 it submitted a brief and a comparison of the rates charged with other rates on tin cans between points in the immediate vicinity and also a recital of the correspondence conducted with the Traffic Department of this defendant.

Defendant introduced testimony through its Assistant General Freight Agent and a special representative of its Operating Department and presented exhibits giving comparisons of the rates charged with those of similar commodities moving approximately the same distances. There was also testimony outlining the physical operations necessary in the movement of carload freight from Oakland to Corning.

Defendants contend that the 51 cent rate assessed during the years 1922-23-24 was not unreasonable and that only a limited number of cars moved. Its Exhibit No. 2 shows there were forwarded to Corning 12 carloads in the year 1922; 14 in 1923 and 12 in 1924.

Effective August 11, 1924 the Southern Pacific Company published in its Tariff 750-C, C.R.C. 2904, a rate of 37 cents on tin cans, carloads, from San Francisco to Corning. This publication was in response to a request made by the complainant and appears to have adjusted the rate situation for the future.

No question is here involved except the payment of reparation. Complainant did not appear at the hearing and no testimony was presented in its behalf. The mere fact that the

rate has been reduced, subsequent to the movement, does not establish the unreasonableness of the rate formerly in effect. The obligation rests upon the complainant to prosecute his case in open court and prove the damage claimed to have been sustained.

Upon the facts in this record the complaint must be dismissed.

O R D E R

This case being at issue upon complaint and answer on file, having been duly heard and submitted and the Commission on the date hereof having made and filed its opinion containing the findings of fact and the conclusions thereon, which said opinion is hereby referred to and made a part hereof,

IT IS HEREBY ORDERED that the complaint in this proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 26th day of April, 1926.

H. H. Brundage
C. A. Seaver

Leon Whitell

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