

Decision No. 17176

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Cowell Portland Cement Company,
Complainant,

vs.

Bay Point and Clayton Railroad Company,
The Atchison, Topeka & Santa Fe Railway
Company,
Central California Traction Company,
The Western Pacific Railroad Company,
Defendants.

CASE NO. 2248

ORIGINAL

BY THE COMMISSION:

O P I N I O N

Complainant, a corporation organized under the laws of the State of California, with its principal place of business at San Francisco, is engaged in the manufacture and sale of cement.

By complaint duly filed it is alleged that the rate assessed and collected on three carloads of cement moved November 28, 1923, January 10 and March 12, 1924 from Cowell to Las Plumas was unreasonable to the extent it exceeded a rate of 19½ cents per 100 pounds. The statute of limitation was tolled on the shipments involved by registering the claim with this Commission July 25, 1925 under informal complaint No. 33314.

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

Cowell is located on the Bay Point and Clayton Railroad and Las Plumas on the Western Pacific Railroad. The shipments moved over the Bay Point and Clayton to Bay Point; Atchison, Topeka & Santa Fe to Stockton; Central California Traction Company to Sacramento and Western Pacific beyond.

Charges on the shipments were assessed on the basis of the lawfully applicable rate of $21\frac{1}{2}$ cents, made by combination of commodity rates over Sacramento. The factor of the through rate was 8 cents to Sacramento as published in Pacific Freight Tariff Bureau Tariff 88-G, C.R.C.303, and $13\frac{1}{2}$ cents per 100 pounds Sacramento to Las Plumas, as published in Western Pacific Railroad Tariff 36-F, C.R.C.257.

Prior to September 1, 1923 there was a rate of $19\frac{1}{2}$ cents via route of movement from Cowell to Las Plumas, made by using the rates of 8 cents and $13\frac{1}{2}$ cents, and treating these rate factors in accordance with the combination provisions then in effect in section 1 of Central Freight Association Bureau Tariff 228, C.R.C. 1. Effective October 25, 1925 defendants voluntarily re-established this $19\frac{1}{2}$ cent rate as published in Supplement 2 to Pacific Freight Tariff Bureau Tariff 88-I, C.R.C.364.

Complainant bases its plea for reparation upon the joint rate subsequently established.

Defendants admit the allegation of the complaint and have signified a willingness to make reparation adjustment; therefore, under the issues as they now stand a formal hearing will not be necessary.

Upon consideration of all the facts of record we are of the opinion and find that the assailed rate was unreason-

able to the extent it exceeded the subsequently established rate of 19½ cents; that complainant made the shipments as described, paid and bore the charges thereon and is entitled to reparation.

Complainant will submit statement to defendants for check. Should it not be possible to reach an agreement as to the amount of reparation the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

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, Bay Point and Clayton Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, Central California Traction Company and Western Pacific Railroad Company, according as they participated in the transportation be, and they are, hereby authorized and directed to refund to complainant, Cowell Portland Cement Company of San Francisco, California, all charges they may have collected in excess of 19½ cents per 100 pounds for the transportation of three carloads of cement involved in this proceeding, forwarded November 28, 1923, January 10 and March 12, 1924 from Cowell to Las Plumas.

Dated at San Francisco, California, this 31st day of July, 1926.

W. B. ...
Chairman

Leon ...
Thomas ...
Commissioners.