

Decision No. 17663

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Jacobs, Malcolm & Burt,)
Complainant,)

vs.)

The Atchison, Topeka & Santa Fe)
Railway Company.)

Defendant.)

CASE NO. 2269

E. A. Bishop, for Complainant.
Berne Levy, for Defendant.

BY THE COMMISSION:

O P I N I O N

Complainants are Albert P. Jacobs and Joseph Moyses, copartners, dealing in fruits and vegetables under the fictitious name of Jacobs, Malcolm & Burt. By complaint filed August 17, 1926 it is alleged that the rate of 47½ cents per 100 pounds assessed and collected on 81 carloads of citrus fruits moved from Rialto, East Highlands, Highlands, Casa Blanca, Arlington, Corona, Mentone, San Bernardino, Riverside, Highgrove and Redlands to San Francisco during the period from July 15, 1924 to May 15, 1926, inclusive, was inapplicable and unlawful to the extent it exceeded a rate of 46½ cents per 100 pounds.

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

A public hearing was held October 19, 1926 before

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Examiner Geary at San Francisco and the proceeding having been duly submitted is now ready for an opinion and order.

Redlands, Montone, Highlands and East Highlands are located on a branch line of the defendant known as the Redlands Loop. Arlington, Casa Blanca, Corona, Highgrove and Riverside are located on the line running from San Bernardino to Los Angeles via Fullerton. Rialto and San Bernardino are located on the main line between Los Angeles and Barstow.

The complaint was not presented to the Commission informally, therefore the statute of limitation has run against the shipments moved prior to August 17, 1924 and they will not be considered. Charges on the shipments moved subsequent to August 17, 1924 were assessed on the basis of $47\frac{1}{2}$ cents rate shown in Atchison, Topeka & Santa Fe Railway Tariffs 11992-D and 11992-E, C.R.C. Nos. 512 and 550. The former tariff was cancelled August 10, 1925, but no change was made in the rate item which applied on citrus fruits, carloads, between various points on defendant's line in Southern California, including those referred to above on the one hand, and San Francisco, Oakland, Stockton and points between on the other hand.

Complainant contends that the lawful rate was $46\frac{1}{2}$ cents, made by using the Los Angeles to Burnham Class C rate of $38\frac{1}{2}$ cents, plus a commodity rate of 8 cents beyond. The former rate is shown on page 12 of Atchison, Topeka & Santa Fe Railway Tariff 9885-E, C.R.C. 504, and applies between Los Angeles (only), Nadeau (only), Wingfoot (only) and Burnham.

On October 10, 1925 the stations of Nadeau and Wingfoot were eliminated from the tariff for the reason that defendant amended its Terminal Tariff by including these points within the Los Angeles yard limits. Redondo Beach, Wilmington and Torrance

were added at the same time. Rates from these points were inapplicable from intermediate points.

Page 12 carries a foot note stating that "rates apply between points named only. Issued under authority of the Railroad Commission of the State of California No.24(a)-171 of December 8,1916".

The 8 cent commodity rate applying from Burnham to San Francisco was published in Atchison, Topeka & Santa Fe Railway Tariff C.R.C. Nos.512 and 550.

Witness for complainant introduced exhibits consisting of photostatic copies of pages 11 and 12 of Santa Fe Tariff C.R.C.504 and testified that under the provisions of note 1, page 11, the Los Angeles to Burnham rate was applicable from intermediate points. Note 1 reads as follows:

"Rates shown on pages 12, 13, 14, 15, 16 and 17 apply from or to points named only, except to or from directly intermediate stations located between Burnham, Cal., and Bakersfield, Cal., inclusive, and which have no specific rates, the rate to apply will be the rate from or to the next more distant point on the same line from or to which a specific rate is published."

Witness for defendant introduced an exhibit similar to complainant's Exhibit No.1, which is a reproduction of page 11 Santa Fe Tariff C.R.C.504 and testified that the intermediate application referred to in note 1 applied at unnamed points located directly between Bakersfield and Burnham only. He also testified that the points located on the Redlands Loop were not intermediate between Los Angeles and San Francisco from either an operating or tariff standpoint.

Defendant shows beyond question that the intermediate

application was not intended to operate in the manner contended for by complainant.

Note 1, shown on page 12 of the tariff in question, is not ambiguous, as it provides that rates shown apply from and to the points named only, except between certain points and which points have no specific rates. Specific rates are published from each point of origin involved to Burnham in section 1, part 3, of the tariff, therefore the Class C rate of 38½ cents named from Los Angeles only to Burnham, is not applicable from the points involved.

In Case 362, C.R.C.607, Golden Gate Brick Company vs. Western Pacific Railway Company, Commissioner Eshleman said:

"I am not at all in sympathy with the practice of carriers in putting tortured construction upon a tariff provision so that the same may yield them more revenue, and I certainly am no more in sympathy with the same practice when indulged in by shippers with a view to securing less rates. Tariffs should be clear and unambiguous, and when there is an ambiguity by reason of which a shipper has suffered, the carrier being responsible for the ambiguity should certainly be required to sustain the loss, but where, as here, the shipper shows no loss whatsoever and the construction sought is contrary to the plain intent of the tariff, I think such shipper should have no standing before this Commission."

Defendant was authorized by this Commission in Case 214-B, Decision No.3437, dated June 19,1916 to establish lower rates from Los Angeles to points in Northern California than the applicable rates from intermediate points due to active water competition. The rate assessed was that

specifically named in a tariff issued by defendant and was, therefore, applicable on complainant's shipments and we so find. An order will be entered dismissing the complaint.

O R D E R

This case being at issue upon complaint and answer on file, having been duly heard by the interested parties, 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 the complaint in this proceeding be and the same hereby is dismissed.

Dated at San Francisco, California, this 27th
day of November, 1926.

H. B. Brundage
C. A. Seaver
Ernest J. ...
Leon ...
Thos. S. ...
Commissioners.