

Decision No. 18657

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Union Oil Company of California,  
a corporation,

Complainant,

vs.

Southern Pacific Company,  
a corporation,  
Northwestern Pacific Railroad Company,  
a corporation,

Defendants.

Case No. 2234.

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 Los Angeles, is engaged in producing, refining and marketing petroleum and petroleum products.

By complaint filed April 19, 1926 and amended May 5, 1926 it is alleged that the rate charged on 7 carloads of petroleum fuel oil moving from Oleum to San Rafael during the period April 29th to August 25, 1920, inclusive, was unreasonable to the extent it exceeded a rate of 11 cents. The statute of limitation was tolled by registering the complaint with this Commission under date of May 1, 1922 our informal complaint No. 24696. Reparation only is sought. Rates will be stated in cents per 100 pounds.

On October 18, 1926 the Commission filed its order of dismissal in the above entitled matter, (28 C.R.C. 663) dismissing the proceeding without prejudice upon the conclusion that a state Commission had no authority under the provisions of Section

ORIGINAL

208(a) of the Transportation Act to award reparation on shipments moving during the guaranty period, operative March 1 to August 31, 1920. This action was based upon the decision of the Supreme Court of the United States in New York Central Railroad Company vs. New York and Penna., 271 U.S. 124, dated April 26, 1926.

This proceeding was reopened June 9, 1927, for the reasons fully set forth in our decision rendered this date in Case 2242.

The rate lawfully in effect at the time of shipment was 12 cents as published in Pacific Freight Tariff Bureau Tariff 16-D, C.R.C. 211 of F. W. Gomph, Agent, Item 1455. Charges were collected in the amount of \$643.42, which resulted in a straight overcharge of \$12.00 plus war tax, due to an erroneous weight being used on the car moving July 13, 1920. The overcharge should be immediately refunded.

At the time the shipments moved there was contemporaneously in effect a rate of 11 cents applicable on distillate from Oleum to San Rafael and it is complainant's contention that the concurrently effective rate on distillate, a refined oil product, should not exceed that applicable on fuel oil.

Subsequent to the date of movement defendants established, and now maintain, a rate of 11 cents on fuel oil from Oleum to San Rafael.

Defendants admit all of the allegations of the complaint and signify 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 of 12 cents was unreasonable to the extent it exceeded 11 cents; that complainant made the shipments as described, paid and bore the charges thereon, and that it is entitled to reparation in the sum of \$51.08. This award is subject to the approval of the Interstate Commerce

Commission under Section 208(a) of the Transportation Act of 1920.

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, Southern Pacific Company and Northwestern Pacific Railroad Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund to complainant, Union Oil Company of California, reparation in the sum of \$51.08 account excessive and unreasonable charges for the transportation of 7 carloads of fuel oil involved in this proceeding forwarded during the period from April 29th to August 25, 1920, inclusive, from Oleum to San Rafael.

IT IS HEREBY FURTHER ORDERED that this order shall become effective only upon approval of the Interstate Commerce Commission under Section 208(a) of the Transportation Act of 1920.

Dated at San Francisco, California, this 21<sup>st</sup> day of July 1927.

Emmett

Chase

Thos & Rowland  
COMMISSIONERS.