

Decision No. 18670.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

UNION OIL COMPANY OF CALIFORNIA,
a corporation,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a cor-
poration, TIDEWATER SOUTHERN RAILWAY
COMPANY, a corporation,
Defendants.

ORIGINAL

Case No. 2242.

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 May 18, 1926, it is alleged that the rate charged on three carloads of gasoline moving from Ora and Coal- inga to Aurora during the period April 3d to 26th, 1920, was unreasonable to the extent it exceeded a rate of $41\frac{1}{2}$ cents per 100 pounds. The statute of limitation was tolled by registering the complaint with this Commission under date of October 17, 1921, our informal complaint file No. 19935.

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

On October 18, 1926, this Commission filed its Order of Dismissal in the above entitled matter (28 C.R.C. 664), dismissing the proceeding without prejudice upon the conclusion that

a state commission had no authority under the provisions of Section 208 (a) of the Transportation Act to award reparation on shipments moved during the guaranty period, operative March 1, 1920, to August 31, 1920. This action in dismissing the case was based upon the decision of the Supreme Court of the United States in *New York Central Railroad Company vs. New York and Pennsylvania Company*, 271 U.S., 124, decided April 26, 1926, which held in substance that a payment of reparation during the federal guaranty period could not be made upon an order of a state commission unless the award had first been approved by the Interstate Commerce Commission.

Following this decision of the Supreme Court the Interstate Commerce Commission instituted an investigation, "In the Matter of the Authority of the Commission to approve after August 31, 1920, a reduction in rate or an award of reparation by state authority on intrastate traffic which moved during the period March 1 to August 31, 1920", and by decision rendered February 7, 1927, in Ex Parte No. 88 (122 I.C.C. 443) said:

"Subject to certain exceptions not here pertinent, our jurisdiction over intrastate rates terminated on February 29, 1920, with the termination of Federal control. On that date jurisdiction over such rates passed to the State authorities, subject to the sole limitation that no rates should be reduced prior to September 1, 1920, unless the reductions were approved by us. It appears, therefore, that we were, and are, without power to require reductions in rates or to award reparation on intrastate shipments during the guaranty period and that the only order we can lawfully make as to such shipments is one of a permissive character." (448)

The instant case, No. 2242, was reopened June 9, 1927, upon request of the complainants, for further consideration.

The shipments in question consisted of 3 carloads of gasoline moving on Coalina waybill S.P. 14 of April 3, 1920, and Ora waybills S.P. 34 and 116 of April 6 and 26, 1920, respectively, consigned to complainant at Aurora, and aggregated

a weight of 219,674 pounds. The rate lawfully applicable was 43½ cents, made by a combination of 32 cents to Turlock and fifth class rate of 7 cents beyond, plus 4½ cents as authorized by General Order No. 28 of the Director General, and resulted in a total charge of \$955.22, of which amount \$938.96 was collected and retained by the carriers, leaving an undercharge of \$16.62.

The rate of 32 cents applying from Ora or Coalinga to Turlock is found in S.P. Tariff 711-A, C.R.C. 2434, and the factor of 7 cents beyond in Tidewater Southern Tariff 3-D, C.R.C. 18.

Complainant bases its plea for reparation upon the grounds that prior to the movement of the shipments in question the factor via the Tidewater Southern Railway from Turlock to Aurora was 5 cents per 100 pounds fifth class by reason of the fact that the rate to Chastine, a more distant point, applied as maximum at Aurora. Immediately prior to the date of shipment the tariff carrying the Chastine rate was reissued and the station of Chastine was unintentionally dropped from the tariff, resulting in the rate of 7 cents to Standiford being applied as maximum at Aurora. On August 10, 1921, the fifth class rate of 5 cents plus the war time increases was published in Tidewater Southern Tariff 3-D, C.R.C. 18, Supplement No. 2, from Turlock to Aurora.

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 43½ cents was unreasonable to the extent it exceeded the subsequently established rate of 41½ 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 \$27.31 and relief from the payment of the undercollection of \$16.62.

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 Tidewater Southern Railway 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 \$27.31 and to waive the collection of undercharges in the sum of \$16.62 account excessive and unreasonable charges for the transportation of 3 carloads of gasoline involved in this proceeding, forwarded during the period from April 3 to April 26, 1920, inclusive, from Ora and Coalinga to Aurora.

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 2nd day of July, 1927.

Ernest A. Smith

Clarence

Thos. S. Powell
Commissioners.