

Decision No. 19035.**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SAN JOAQUIN GROCERY COMPANY,
Complainant,

vs.

Case No. 2347.

SOUTHERN PACIFIC COMPANY, a corporation,
THE ATCHISON, TOPEKA
AND SANTA FE RAILWAY COMPANY, a corporation,
Defendants.

Gwyn H. Baker and F. M. Hill, for complainant.

Platt Kent and Berne Levy, for The Atchison,
Topeka and Santa Fe Railway Company, defendant.

F. W. Mielke and L. N. Bradshaw, for Southern Pacific
Company, defendant.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation engaged in the manufacture and sale of merchandise and among the commodities dealt in are paper fruit trays. By complaint filed April 7, 1927, it alleges that the defendants erroneously classified certain shipments claimed to be fruit trays as wrapping paper, and that therefore the charges exacted on 43 carloads shipped during the period July 8, 1925, to August 18, 1926, inclusive, from Los Angeles to various destinations in the State of California, were unjust, unreasonable and excessive and in violation of the Public Utilities Act of the State of California and Section 13 thereof.

Reparation and just and reasonable rates for the future

are sought. Rates will be stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at San Francisco October 7, 1927, and the case having been submitted is now ready for an opinion and order.

The shipments in question consisted of a chemically treated and sized paper used for drying fruits, especially grapes, and moved in carload lots from Los Angeles to destinations in the San Joaquin Valley on rates ranging from 48 to 62 cents according to destination. The article was invoiced as "Kraft Tray Paper" and the bills of lading prepared by the consignor show the following various descriptions: Wrapping Paper; Raisin Tray Paper and also Kraft Tray Paper. Of the shipments 26 moved over the Southern Pacific and 17 over The Atchison, Topeka and Santa Fe. Commodity rates shown in Item 6640 of Southern Pacific Tariff 730-C, C.R.C. 2904 and Item 1822 of The Atchison, Topeka and Santa Fe Tariff 12375-F, C.R.C. 546 and reissue thereof were assessed. The commodity descriptions of the above items are identical and read: Paper, wrapping, minimum weight 40,000 pounds.

Defendants are parties to Pacific Freight Tariff Bureau Exception Sheet 1-Series which provides for Class "B" rating on "Trays, fruit, carload minimum weight 20,000 pounds".

Complainant contends that the shipments were trays and not wrapping paper; that the process of manufacture, the procedure of packing and the purpose for which used distinguishes the article entirely from any relation to wrapping paper and that the Class "B" rating defined in the Exception Sheet is the proper basis for assessing charges.

The commodity in question consists of paper cut in sheets 24 by 36 inches and when shipped is packed flat in bundles comprising 960 sheets and weighing 70 pounds per bundle. It is sold by weight and when used the sheets are spread out on the ground and

the fresh grapes or other fruits are placed thereon for the purpose of drying.

A witness for complainant testified that the so-called paper trays have been used in the raisin business for approximate-30 years; that the shipments involved in this proceeding were manufactured from Swedish pulp and that paper made from such pulp is stronger and more durable than paper manufactured from Oregon or Washington pulp. A sample of what comprised complainant's shipments was submitted as Exhibit No. 1, and this exhibit was in appearance simply a piece of strong wrapping paper.

A witness called in behalf of defendants testified there was no material difference between the paper involved in this proceeding and the Kraft Tray Paper manufactured from Oregon or Washington pulp, that the paper used for drying fruits can be used for general wrapping purposes and when shipped is put up in either bundles or rolls.

Witness for defendant, Southern Pacific, read into the records a letter dated February 13, 1924, and signed by complainant's traffic manager requesting a commodity rate of 51½ cents on wrapping paper, carload, from Los Angeles to Fresno. This request was investigated and complainant's representative stated that the wrapping paper referred to was to be used for drying raisins.

Prior to June 20, 1924, complainant paid the fifth class rates of 61 cents and 62 cents respectively to Fresno and Riverdale from Los Angeles on carload shipments of the so-called paper trays, and on and after that date commodity rates on wrapping paper of 48 cents to Fresno and 50 cents to Riverdale were assessed.

The complaint does not allege the rates on wrapping paper are unreasonable per se but maintains the commodity is not wrapping paper but is in fact paper fruit trays, therefore sub-

ject to the Exception Sheet Class "B" rates.

Webster's dictionary defines trays as follows:

"A shallow wooden trough or bowl or a basket for domestic purposes. Hence: Any shallow receptacle for holding or carrying articles: as, a peddler's tray, a tray of diamonds, a trunk tray, a flat plate, as of tin, silver, or papier-mache, with a low rim; as a pin, tea, or ash tray."

In Docket No. 15666, Chase Companies vs. Director General, as Agent, 61 I.C.C. 207, the Federal Commission in considering the class rates applicable on brass cartridge cases, said:

"Under its contract these articles were valuable to complainant as scrap brass and for remelting purposes only. But it is the character of an article from a transportation standpoint, and not the use to which parties may contract that it shall be put, that determines the rate or rating applicable."

Defendants point out that the Western Classification does not provide any rating on fruit trays and that a Class "B" rating to cover this commodity has been carried in Pacific Freight Tariff Bureau Exception Sheet since November 26, 1909, for the purpose of providing for wooden fruit trays the same rates as apply to box shoo and other forest products. The evidence and exhibits are not persuasive that the shipments here involved should have moved under the Class "B" rates. Effective July 1, 1927, defendants established specific commodity rates from Los Angeles to San Joaquin Valley points on "paper, fruit drying, carload, minimum weight 40,000 pounds", applicable on the commodity involved in this proceeding, therefore no order for the future will be required.

After giving consideration to all of the evidence, exhibits and briefs we find that the shipments involved in this proceeding fall within the description "wrapping paper" or "fruit drying paper". We further find that the rates charged were applicable and were not excessive, unjust or unreasonable. The complaint will be dismissed.

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 is hereby dismissed.

Dated at San Francisco, California, this 12th day of November, 1927.

Edmund C. O'Sullivan
Charles J. O'Sullivan
Leon A. O'Sullivan
Thomas J. O'Sullivan
W. J. O'Sullivan
Commissioners.