

Decision No. 19037.**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA PACKING CORPORATION,

Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY,

Defendant.

Case No. 2408.

BY THE COMMISSION:

O P I N I O N

Complainant, a corporation organized under the laws of the State of New York, with its principal place of business at San Francisco, is engaged in the packing of dried fruits and canned goods.

By complaint filed September 7, 1927, it alleges that the rate assessed and collected on 31 carloads of second-hand empty boxes, returned or shipped for a return paying load from Hanford to Calpack during the period from July 1 to September 2, 1926, inclusive was unreasonable and in violation of Section 13 of the Public Utilities Act to the extent it exceeded a rate of  $2\frac{1}{2}$  cents per 100 pounds.

Calpack is a non-agency station 80 miles north of Hanford and two miles south of Tuttle; however, during the period that the shipments involved in this proceeding moved, it was not shown in defendant's tariff or distance table.

Charges were assessed and collected on the basis of  $10\frac{1}{2}$  cents, the Class "E" rate, shown in defendant's Tariff 9885-E, C.R.C. 504, the distance rate for 82 miles. Defendant published

effective July 20, 1927, Supplement No. 45 to its Distance Table C.R.C. No. 60 and Calpack was shown therein. The distance from Hanford to Calpack is 80 miles and the Class "E" rate for this distance is 8½ cents, shown on page 302 of defendant's Tariff 9885-E, C.R.C. 504.

Complainant bases its plea for reparation upon the lawful rate applicable on empty boxes, returning, for distances not exceeding 80 miles, which was and is the exact distance between the points involved in this proceeding. Defendant admits the allegation of the complaint and has 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 rate assailed was unreasonable to the extent it exceeded a rate of 8½ cents; that complainant made the shipments as described, paid and bore the charges thereon and is entitled to reparation in the sum of \$73.20 with interest at the rate of 6 per cent. per annum.

Complainant will submit statement to defendant 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 defendant, The Atchison, Topeka and Santa Fe Railway Company, be and it is hereby authorized and directed to refund with interest at the rate of 6 per cent. per annum to complainant, California Packing Corporation of San Francisco, California, all charges it may have collected in excess of 8½ cents per 100 pounds for the transportation of 31 carloads of second-hand empty boxes moved from Hanford to Calpack during the period from July 1 to September 2, 1926, inclusive.

Dated at San Francisco, California, this 12<sup>th</sup> day of November, 1927.

Edmund Sedgwick  
Clarence  
Leon Whittell  
Thos B. Powell  
M. J. [unclear]  
Commissioners.