

Decision No. 19100.**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA PACKING CORPORATION,
Complainant,

vs.

Case No. 2434.

THE ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY and SOUTHERN
PACIFIC COMPANY,
Defendants.

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, California, is engaged in the packing of dried fruits and canned goods.

By complaint filed October 20, 1927, it alleges that the rates applicable on fresh fruit, carload, from Calpack and Planada to Kingsburg during the period from August 7 to September 9, 1926, both dates inclusive, were unjust and unreasonable to the extent they exceeded a rate of 15½ cents.

We are asked to award reparation on 24 carloads of fresh fruit and to authorize defendants to waive uncollected charges of \$5.35 on three carloads moved from Planada to Kingsburg. Rates are stated in cents per 100 pounds.

Calpack and Planada are on The Atchison, Topeka and Santa Fe Railway between Tuttle and Fresno; Kingsburg is on the Southern Pacific Company 20 miles southeast of Fresno and 26 miles

northeast of Hanford. Of the shipments 23 moved from Calpack and 4 from Planada, and the lawfully applicable combination rates of 17½ cents from Calpack and 16 cents from Planada to Kingsburg were charged on all shipments except on three cars moved from Planada August 7, 1926, against which an erroneous rate of 15½ cents was assessed.

The rate from Planada is made 8½ cents to Fresno and 7½ cents beyond. The former is shown in The Atchison, Topeka and Santa Fe Railway Tariff 11992-E, C.R.C. 550; and the latter, applicable from Fresno to Hanford and held as maximum on shipments destined to Kingsburg, is shown in Southern Pacific Company's Tariff 817-C, C.R.C. 2865. The rate from Calpack to Kingsburg is the 3rd class rate, Item 30-H of Atchison, Topeka and Santa Fe Railway Tariff 9865-E, C.R.C. No. 504, and Item 65-G of Southern Pacific Company Tariff 711-C, C.R.C. 2843.

It is the usual practice of rail carriers to establish commodity rates on fresh fruits, carload, not exceeding the Class "C" rates. The combination Class "C" rate between the points involved in this proceeding was 15½ cents, and a joint commodity rate of the same volume applicable to the transportation hereinbefore described was established May 3, 1927.

Complainant bases its plea for reparation upon the subsequently established rate. Defendants admit the applicable rates were unjust and unreasonable and have signified a willingness to make reparation adjustment to the basis of the subsequently established rate, 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 rates assailed were unjust and unreasonable to the extent they exceeded the subsequently established rate; that complainant made the shipments as described.

paid and bore the charges thereon and is entitled to reparation of all charges collected in excess of 15½ cents.

Complainant will submit statement to defendants 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 answers 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, The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund to complainant, California Packing Corporation of San Francisco, California, all charges they may have collected in excess of 15½ cents per 100 pounds for the transportation of 24 carloads of fresh fruit moved during the period from August 7 to September 9, 1926, inclusive, from Calpack and Planada to Kingsburg and waive uncollected charges of \$5.35 on three carloads of fresh fruit moved from Planada to Kingsburg August 7, 1926.

Dated at San Francisco, California, this 2d day of December, 1927.

Emmert
Deaney
Leon
Thos. R. Curtis
W. J. Gann
3. Commissioners.