

Decision No. 19320.**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MODESTO PACKING COMPANY,
a corporation,

Complainant,

vs.

MODESTO AND EMPIRE TRACTION COMPANY,
a corporation, THE ATCHISON, TOPEKA
AND SANTA FE RAILWAY COMPANY, a cor-
poration,

Defendants.

Case No. 2457.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation organized under the laws of the State of California with its principal place of business at Modesto, California. By complaint filed December 13, 1927, it alleges that the rate charged for the transportation of five carloads of cattle from Merced to Modesto during the months of April, May and October, 1926, was unreasonable to the extent it exceeded \$25.00 per car.

Reparation only is sought. Rates will be stated in dollars per 36-foot car.

Merced is on The Atchison, Topeka and Santa Fe Railway 15 miles north of Le Grand and 33 miles south of Empire, the junction point with the Modesto and Empire Traction Company; Modesto is on the Modesto and Empire Traction Company approximately 5½ miles from Empire. The origin and destination points are also served by the Southern Pacific Company.

At the time the shipments in question moved no specific rate was published on cattle from Merced to Modesto via these defendants' lines and charges were assessed and collected on the basis of \$34.00, the specific rate named from Le Grand to Modesto and held as maximum at Merced, such point being directly intermediate to Le Grand. The rate published by the Southern Pacific Company from and to the points involved was \$25.00 and these defendants voluntarily established effective August 15, 1927, a rate of the same volume.

Complainant bases its plea for reparation upon the subsequently established rate. Defendants admit the allegations of the complaint and have 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 find that the rate assailed was unreasonable to the extent it exceeded \$25.00 per car; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation.

Complainant will submit statement of shipments 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 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, Modesto and Empire Traction Company and The Atchison, Topeka and Santa Fe Railway Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund to complainant, Modesto Packing Company, all charges they may have collected in the amount of the difference between the freight charges paid and those that would have accrued at \$25.00 per 36-foot car on the shipments of cattle involved in this proceeding and moved from Merced to Modesto during April, May and October, 1926.

Dated at San Francisco, California, this 6th day of February, 1928.

Leon Whipple

Ch. Seaver

Emmery

Thos. Shurt

M. A. C.
Commissioners.