

DECISION No. 19455**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

HUNT BROTHERS PACKING COMPANY,  
 a corporation,  
 Complainant, )

vs. )

SOUTHERN PACIFIC RAILROAD COMPANY,  
 a corporation,  
 MODESTO AND EMPIRE TRACTION COMPANY,  
 a corporation,  
 Defendants. )

Case No. 2423.

J. A. Himmel and A. J. Zamb, for complainant.

W. E. Murray for Southern Pacific Company and  
 Modesto and Empire Traction Company, defendants.

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 San Francisco and is engaged in the packing, canning and marketing of canned goods. By complaint duly filed it is alleged that a 22-cent rate assessed and collected by defendants on various shipments of fresh peaches moved from Empire via the Modesto and Empire Traction Company to Modesto thence Southern Pacific to Hayward during September, 1926, was unreasonable and unduly discriminatory to the extent that such rate exceeded the subsequently established rate of 15½ cents per 100 pounds. Reparation only is sought.

Rates will be stated in cents per 100 pounds.

A public hearing was held before Examiner Geary and

the case having been duly submitted is now ready for our opinion and order.

The complainant's shipments moved from Empire to Hayward via the Modesto and Empire Traction Company to Modesto thence Southern Pacific to destination, a distance of 87 miles, and the 22-cent rate assessed on such shipments was the Modesto combination, being  $9\frac{1}{2}$  cents Empire to Modesto as shown in Item 170 of Modesto and Empire Traction Company Tariff 2-G, C.R.C. 18, plus  $12\frac{1}{2}$  cents from Modesto to Hayward as shown in Item 340 of Southern Pacific Tariff 817-C, C.R.C. 2865. A  $15\frac{1}{2}$ -cent rate was subsequently established via this route effective July 30, 1927, in Item 1709 of Supplement 14 to Pacific Freight Tariff Bureau Tariff 65-F, C.R.C. 382, which is the rate complainant seeks to have applied on shipments made by it. The rate in effect during September, 1926, from Empire to Hayward via the Santa Fe to Stockton, thence Southern Pacific to Hayward, a distance of 103 miles, was  $15\frac{1}{2}$  cents, this being made  $7\frac{1}{2}$  cents from Empire to Stockton as shown on page 13 of Atchison, Topeka and Santa Fe Tariff 11992-E, C.R.C. 550, plus 8 cents from Stockton to Hayward as shown in Item 170 of Southern Pacific Tariff 817-C, C.R.C. 2865. There was also in effect during September, 1926, a rate of  $15\frac{1}{2}$  cents from Modesto to Hayward via Modesto and Empire Traction Company to Empire, Atchison, Topeka and Santa Fe Railway to Stockton, thence Southern Pacific to Hayward, a distance of 108 miles, which is the Stockton combination, being  $7\frac{1}{2}$  cents Modesto to Stockton as shown in Item 315 of Atchison, Topeka and Santa Fe Railway Tariff 11569-J, C.R.C. 555, plus 8 cents from Stockton to Hayward as shown in Item 170 of Southern Pacific Tariff 817-C, C.R.C. 2865.

Other rates comparing favorably with the  $15\frac{1}{2}$ -cent rate herein sought were in effect from this same general territory for

comparable distances and were less than the through Class "C" rates which are usually observed in the construction of rates on fresh fruit.

In view of the relative adjustment of other fresh fruit rates from this territory we are of the opinion and so find that the 22-cent rate assessed and collected on complainant's shipments was under the circumstances unreasonable to the extent it exceeded the subsequently established rate of 15½ cents per 100 pounds; that complainant made the shipments as described, paid and bore the charges thereon, has been damaged to the extent of the difference between the freight charges paid and those that would have accrued at the rate herein found reasonable, and is entitled to reparation with interest at the rate of 6% per annum.

Complainant should submit statement of shipments to defendants for check. Should it not be possible to reach an agreement, the matter may be referred to this Commission for further consideration 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, having been duly heard and submitted by the 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 immediately preceding this order, which said opinion is hereby referred to and by reference made a part hereof,

IT IS HEREBY ORDERED that the Southern Pacific Company and the Modesto and Empire Traction Company according as they participated in the traffic, be and they are hereby authorized and directed to pay unto the complainant, Hunt Brothers Packing

Company, all charges they may have collected on shipments involved in this proceeding in excess of 15½ cents per 100 pounds, the rate herein found to be just and reasonable for the transportation of fresh peaches from Empire to Hayward via the Modesto and Empire Traction Company to Modesto, thence Southern Pacific to destination, together with interest at the rate of 6 per cent. per annum.

Dated at San Francisco, California, this 10th day  
of March, 1928.

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*C. Seaman*  
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*John D. Howard*  
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*M. J. C. [unclear]*  
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Commissioners.