

Decision No. 19854.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

VAN CAMP SEA FOOD COMPANY,
a corporation,
Complainant,

vs.

Case No. 2490.

LOS ANGELES & SALT LAKE RAILROAD
COMPANY, a corporation,
Defendant.

F.W.Turcotte and B.H.Carmichael, for complainant.

Fred E.Pettit, Jr., and J.P.Quigley, for defendant.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation organized under the laws of the State of California, engaged in the canning business at East San Pedro. It alleges by this complaint filed January 30, 1928, that the rate charged for the transportation of 37 carloads of canned goods shipped from Los Angeles to East San Pedro during the period from September 13 to October 24, 1923, inclusive, was unjust and unreasonable in violation of Section 13 of the Public Utilities Act to the extent it exceeded 7 cents.

Reparation only is sought. Rates are stated in cents per 100 pounds.

An informal complaint covering the shipments involved was filed September 21, 1925, and appears of record in our files

under No. I.C. 33724.

Public hearings were held at Los Angeles before Examiner Geary May 2 and 3, 1928, and the case having been duly submitted is now ready for an opinion and order.

The shipments consisted of tomato paste, tomato catsup, tomato puree, olives and grapefruit, and averaged 50,251 pounds per car. There was no commodity rate during the period these shipments moved, and the charges were assessed on the basis of the minimum scale fifth class rate of 11 cents, published in L.A. & S.L.R.R. Tariff No. 116-E, C.R.C. No. 294. The complainant points out that a rate of 7 cents was not only applicable to canned goods but it is the specific fifth class rate and applies to canned fruit and vegetables when the movement is to or from East San Pedro by water carriers. Furthermore, it applies to all commodities moving between East San Pedro and Los Angeles when the through line haul rates are made by combination over Los Angeles. The minimum scale fifth class of 11 cents is only assessed when the commodity moves locally between Los Angeles and East San Pedro. There was testimony to the effect that the commodities involved in the instant proceeding were sent to the cannery at East San Pedro to be used in the manufacture of canned fish or were for consolidation with carload lots to line haul destination points. The Consolidated Classification rates canned fruits and vegetables in carloads fifth class, minimum weight 36,000 pounds, and this same rate applies on many other canned goods, including canned milk.

The complainant seeks reparation to the basis of the subsequently established commodity rate of 7 cents, effective October 25, 1923, and compares the rate with the contemporaneous rates and earnings on canned goods between points in the same general territory, also between points in Central and Northern

California. The following table of rates on canned goods taken from exhibits of record, illustrates the situation:

From	To	Miles	Per 100 Pounds (Cents)	Earnings	
				Per Ton Mile (Mills)	Per Car Mile (Cents)
Los Angeles	East San Pedro	27	*11	81.48	204.74
Los Angeles	East San Pedro	27	** 7	51.85	130.30
Ontario	Colton	27	7	51.85	130.30
Pasadena	Pomona	42	11	52.38	131.62
Fresno	Hanford	31	7	45.16	113.48
Hanford	Visalia	20	7	70.00	175.90
Los Gatos	San Jose	11	3½	63.64	159.91
Sacramento	Stockton	48	9	37.50	94.23
Hayward	Oakland	15	5	66.66	167.53

* Rate charged.

** Rate sought.

Comparisons were also made by the complainant with rates on selected commodities from Los Angeles to East San Pedro which are on a lower level than that of the rate assailed.

In further support of its allegation of unreasonableness the complainant relies upon our decision in Case 2028, H. G. Prince & Co. vs. Southern Pacific Co., 27 C.R.C. 531. In that case we found that the rate of 7 cents on canned goods, carload, from Hayward to Oakland was unreasonable subsequent to July 30, 1922, and for the future to the extent it exceeded 5 cents, and awarded reparation. The transportation conditions between these points are similar to those between Los Angeles and East San Pedro.

Defendant maintains that the rate charged was not unreasonable and that canned goods do not move from and to East San Pedro with any degree of regularity, and therefore class rates

are provided for just such occasional movements. The record however would indicate that there is a substantial annual movement during particular months in the year to meet the necessities of the cannery at East San Pedro during the operating period.

Defendant also refers to certain commodities classified as fifth which if moved between Los Angeles and East San Pedro would take the classification rate, there being no commodity rates published. This showing however of commodities not of the same general nature, value and volume of movement is of little probative value in determining the issues here involved.

The rate comparisons submitted indicate a lack of uniformity in the rates on canned goods in the territory under discussion. The defendant urges that reparation should not be granted principally on the grounds that the rate complainant seeks was voluntarily established after the shipments moved. As a general principle, subsequent reduction of a rate over the route of movement is not in and of itself sufficient justification to warrant an award of reparation. However, every shipper is entitled to a reasonable rate, whether commodity or class, and where the prior rate is called into question the issues must be decided on their merits regardless of the fact that the rate upon which the reparation is sought may have been voluntarily established.

After giving consideration to all the testimony and exhibits we are of the opinion and find that the rate charged was unreasonable to the extent that it exceeded 7 cents; that complainant made the shipments as described and paid and bore the charges thereon at the rate found unreasonable, 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 with interest at the rate of 6 per cent. per annum.

Defendant in its answer to the complaint alleges since the transportation of the commodities involved was performed between the dates September 13, 1923, and October 24, 1923, that complainant's cause of action is barred by reason of the provisions of Section 71, sub-paragraph (b) of the Public Utilities Act, reading as follows: "All complaints concerning unreasonable, excessive or discriminatory charges shall be filed with the Commission within two years from the time the cause of action accrues". As stated in the beginning of this opinion, complainant did enter an informal complaint September 21, 1925, which complaint appears of record in our official files under number I.C. 33724. This Commission and the Interstate Commerce Commission for many years have followed the practice of considering an informal complaint as having the same force and effect as a formal complaint, and there is nothing in this record to justify a change in the practice on the part of this Commission.

Complainant will submit statement of shipments 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, Los Angeles & Salt Lake Railroad Company, be and it is hereby authorized and directed

to refund with interest at 6 per cent. to complainant, Van Camp Sea Food Company, all charges it may have collected in the amount of the difference between the freight charges paid and those that would have accrued at 7 cents per 100 pounds on the shipments involved in this proceeding and moved from Los Angeles to East San Pedro during the period from September 13th to October 24th, 1923, inclusive.

Dated at San Francisco, California, this 14th day of January, 1928.

Leon Whitell

C. L. Seaver

Ernest L. ...

John D. ...

M. J. ...

Commissioners.