

JLA

Decision No. 20125.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

THE LUMBER AND BUILDERS SUPPLY COMPANY,

Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

Defendant.

ORIGINAL

Case No. 2576.

BY THE COMMISSION:

O P I N I O N

Complainant, dealing in lumber and builders' supplies at Encinitas, alleges by complaint filed July 26, 1928, that the rates charged for the transportation of one mixed carload of hollow building tile and fire brick shipped September 13, 1927, from Alberhill to Encinitas were unreasonable in violation of Section 13 of the Public Utilities Act of the State of California to the extent they exceeded the subsequently established rate of 13½ cents.

We are asked to award reparation in the amount of \$38.91. Rates are stated in cents per 100 pounds.

The shipment weighed 43,770 pounds, and charges totalling \$98.00 were collected at the applicable rates of 11 cents, minimum weight 40,000 pounds, on hollow building tile, and 13½ cents, minimum weight 40,000 pounds, on the fire brick. This latter rate shown in Item 1120 of A.T. & S.F. Ry. Tariff 9738-J, C.R.C. 558, was applicable on numerous articles manufactured from clay in mixed carloads,

but at the time the shipment involved herein moved there was no provision for the inclusion of hollow building tile and fire brick in mixed carloads and therefore the specific rates on each commodity were assessed. Effective May 20, 1928, defendant amended Item 1120 of Tariff C.R.C. 558, making same apply to hollow building tile in straight carloads or in mixed carloads with fire brick, and it is to this basis that the complainant seeks reparation.

Defendant admits that the rates charged were unreasonable and has signified a willingness to make reparation, 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 charges assessed were unjust and unreasonable to the extent they exceeded charges based on the subsequently established rate of 13½ cents at the actual weight of 43,770 pounds, that complainant made the shipment described and paid and bore the charges thereon and is entitled to reparation.

Complainant should submit a statement to defendant for check. Should it not be possible to reach an agreement as to the amount of reparation due, 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 to complainant, The Lumber and Builders Supply 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 13½ cents per 100 pounds at the actual weight of 43,770 pounds on the shipment involved in this proceeding and moved from Alberhill to Encinitas during September, 1927.

Dated at San Francisco, California, this 17th day of August, 1928.

Leon Whitall

C. J. Seaver

Frank J. ...

Paul ...

M. J. ...

Commissioners.