

Decision No. 20784.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

VAN CAMP SEA FOOD COMPANY, INCORPORATED, )

Complainant, )

vs. )

Case No. 2601. )

PACIFIC ELECTRIC RAILWAY COMPANY, )

Defendant. )

BY THE COMMISSION:

**ORIGINAL**O P I N I O N

Complainant is a corporation engaged in canning and selling products of the sea. By complaint filed September 11, 1928, it is alleged that the rates charged on 27 carloads of canned fish shipped during the period from January 14, 1926, to June 1, 1928, originating on an industry track of the Southern Pacific Company at San Pedro and moved from the interchange tracks at that point via the Pacific Electric Railway Company to Wilmington, thence Los Angeles & Salt Lake Railroad to East San Pedro, and on one shipment moving in the reverse direction during the same period, were, are and for the future will be unjust and unreasonable, in violation of Section 13 of the Public Utilities Act, and unduly preferential and prejudicial, in violation of Section 19 of the Act, to the extent they exceeded, exceed or may exceed in the aggregate 4 cents per 100 pounds plus \$2.70 per car switching charge.

The freight charges on the shipments moving more than two years prior to the filing of the complaint, were paid in whole or in part within the two-year statutory period.

Reparation and rates for the future are sought. Rates will be stated in cents per 100 pounds except as otherwise

specifically noted.

The lawfully applicable rate on the cars transported during the period from January 14, 1926, to December 31, 1927, was the minimum fifth class rate of 11 cents, as published in Pacific Electric Railway Company's Local Joint and Proportional Freight Tariff No. 86-C, C.R.C. 259. Defendant however assessed on the cars moving during this period a combination rate of 8 cents per 100 pounds, made over Wilmington, using the actual fifth class rate of 6 cents for the Pacific Electric Railway haul from San Pedro to Wilmington, plus 2 cents for the Los Angeles & Salt Lake Railroad haul from Wilmington to East San Pedro, resulting in an undercharge of 3 cents per 100 pounds. Subsequent to December 31, 1927, the lawfully applicable rate was 6 cents per 100 pounds, a combination of commodity rates over Wilmington, the factor from San Pedro to Wilmington being 4 cents as published in Pacific Electric Railway Company's Tariff 120-C, C.R.C. 289, and from Wilmington to East San Pedro 2 cents, as published in Los Angeles & Salt Lake Railroad Company's Tariff 133-D, C.R.C. No. 274. On four of the cars moving after December 31, 1927, defendant assessed and collected a rate of 8 cents, resulting in a straight overcharge of 2 cents per 100 pounds, but on the balance of the shipments assessed the lawful rate of 6 cents. The foregoing rates of the Pacific Electric Railway included the absorption of the Southern Pacific Company's switching charge of \$2.70 per car at San Pedro.

During the time complainant's shipments moved the Pacific Electric Railway Company maintained in its Tariff 120-C, C. R.C. 289, a commodity rate of 2 cents per 100 pounds, subject to a minimum charge of \$7.20 per car, applicable on canned fish between San Pedro and Wilmington. This rate however was restricted to apply only between the points named and did not under the tariff apply to shipments involving a local or foreign line haul beyond

Wilmington, nor did it include the absorption of the Southern Pacific Company's switching charge of \$2.70 per car at San Pedro. It is upon the basis of this restricted rate, used in conjunction with the Los Angeles & Salt Lake Railroad's rate of 2 cents on canned fish between Wilmington and East San Pedro, plus \$2.70 per car switching charge, that complainant seeks reparation. The rate of the Los Angeles & Salt Lake Railroad between Wilmington and East San Pedro and the switching charge of the Southern Pacific at San Pedro are not at issue in this proceeding.

Defendant by formal answer has admitted the allegations of the complaint and has signified a willingness to refund all charges collected in excess of 2 cents per 100 pounds, minimum \$7.20 per car, for that portion of the haul via the Pacific Electric between San Pedro and Wilmington. 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 of the Pacific Electric Railway Company on canned fish, in carloads, between San Pedro and Wilmington on shipments originating at or destined to East San Pedro were unjust, unreasonable and unduly preferential to the extent they exceeded 2 cents per 100 pounds; that complainant paid and bore the charges thereon and is entitled to reparation, without interest, in the amount of the difference between the charges paid and the rate herein found reasonable. Complainant specifically waived the payment of interest. We are also of the opinion and so find that defendant should establish for the future a rate of 2 cents per 100 pounds, minimum \$7.20 per car, for the transportation of canned fish between San Pedro and Wilmington.

Complainant should 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. Shipments moving subsequent to the effective date of the order entered in this proceeding may be included in the reparation statement if accompanied by proof, in the form of an affidavit, that the shipments were made and the freight charges thereon paid and borne by complainant.

#### 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 precedes this order,

IT IS HEREBY ORDERED that defendant, Pacific Electric Railway Company, be and it is hereby notified and required to cease and desist within thirty (30) days from the date of this order and thereafter to abstain from applying, demanding or receiving for the transportation of canned fish between San Pedro and Wilmington when shipments are destined to or originate at East San Pedro on the Los Angeles & Salt Lake Railroad, a rate in excess of 2 cents per 100 pounds, minimum charge \$7.20 per car.

IT IS HEREBY FURTHER ORDERED that defendant, Pacific Electric Railway Company, be and it is hereby notified and required to establish on or before thirty (30) days from the date of this order, upon notice to this Commission and the general public by not less than five (5) days' filing and posting in the manner prescribed in Section 14 of the Public Utilities Act, and thereafter to maintain and apply to the transportation of canned fish in carloads between San Pedro and Wilmington when shipments are destined to or originate at East San Pedro on the Los Angeles & Salt Lake Railroad Company, a rate of 2 cents per 100 pounds,

minimum charge \$7.20 per car.

IT IS HEREBY FURTHER ORDERED that defendant, Pacific Electric Railway Company, be and it is hereby authorized and directed to refund without interest to complainant, Van Camp Sea Food Company, Incorporated, all charges that it may have collected in excess of 2 cents per 100 pounds, minimum \$7.20 per car, for the transportation of the shipments of canned fish involved in this proceeding and transported between San Pedro and Wilmington when destined to or originating at East San Pedro on the Los Angeles & Salt Lake Railroad Company on which the cause of action has accrued within the two-year period immediately preceding the filing of the complaint.

Dated at San Francisco, California, this 15<sup>th</sup> day of February, 1929.

Thos S. Lott

Ch. Deaver

Emm. J. ...

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Commissioners.