

Decision No. 21009.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

LIBBY, McNEILL & LIBBY,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
Defendant.

Case No. 2667.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation with its principal place of business at San Francisco. By complaint filed March 27, 1929, it is alleged that the rates assessed and collected on 12 carloads of fresh fruits and vegetables shipped from Sacramento to Walnut Grove wharf and from Dantoni to Sacramento during August and September, 1927, were unjust and unreasonable.

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

Complainant's shipments consisted of 9 carloads of pears and one carload of tomatoes from Sacramento to Walnut Grove wharf, a point on the Walnut Grove branch of the Southern Pacific Company 22 miles south of Sacramento, and two carloads of peaches from Dantoni, a point on the Dantoni branch 55 miles north of Sacramento, to Sacramento. The charges lawfully applicable and assessed were the Class "C" rates, subject to the fifth class

minimum rate of 11 cents on the pears and tomatoes and the third class minimum rate of $17\frac{1}{2}$ cents on the peaches.

Effective June 27, 1928, defendant published in its Tariff No. 817-C, C.R.C. 2865, a commodity rate of $7\frac{1}{2}$ cents on fresh fruits and vegetables from Sacramento to Walnut Grove and a commodity rate of 10 cents on fresh fruits from Dantoni to Sacramento. It is on the basis of these rates that complainant seeks reparation.

Defendant admits the allegations of the complaint and has signified a willingness to make a 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 are of the opinion and so find that the assailed rates were unjust and unreasonable to the extent they exceeded the subsequently established rates of $7\frac{1}{2}$ cents applying on pears and tomatoes from Sacramento to Walnut Grove and of 10 cents on peaches from Dantoni to Sacramento; that complainant paid and bore the charges on the shipments in question and has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable, and is entitled to reparation without interest. Complainant specifically waived the payment of interest.

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 precedes this order,

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be and it is hereby authorized and directed to refund without interest to complainant, Libby, McNeill & Libby, all charges collected in excess of $7\frac{1}{2}$ cents per 100 pounds for the transportation from Sacramento to Walnut Grove wharf of pears and tomatoes, in carloads, and of 10 cents per 100 pounds for the transportation from Dantoni to Sacramento of peaches, in carloads, involved in this proceeding.

Dated at San Francisco, California, this 24th day of April, 1929.

David S. Powell

C. S. Seamy

Leon Whitell

M. A. Carr
Commissioners.