

Decision No. 21038 .

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SCHUCKL & COMPANY,
JOHN DEMARTINI CO., INC.,
Complainants,

vs.

SOUTHERN PACIFIC COMPANY,
NORTHWESTERN PACIFIC RAILROAD
COMPANY,
Defendants.

ORIGINAL

Case No. 2578.

E. W. Hollingsworth, R. T. Boyd and Bishop &
Bahler, for complainants.

J. E. Lyons, for Southern Pacific Company,
defendant.

Palmer & Dahlquist and Chris M. Jenks, for
Northwestern Pacific Railroad Company,
defendant.

BY THE COMMISSION:

O P I N I O N

Complainants are corporations with their principal place of business at San Francisco. By complaint filed July 28, 1928, it is alleged that the rates assessed and collected on numerous carloads of pears shipped from Hopland and Ukiah to San Francisco, Niles and Sunnyvale were for the two-year period immediately preceding the filing of this complaint, are now, and for the future will be, unjust and unreasonable, in violation of Section 15 of the Public Utilities Act.

Reparation and rates for the future are sought. Rates

will be stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at San Francisco February 15, 1929, and the case having been submitted is now ready for our opinion and order.

Hopland and Ukiah are on the main line of the Northwestern Pacific Railroad 99 miles and 112 miles respectively north of San Francisco, the latter point being the southern terminus of the Northwestern Pacific Railroad. Niles is on the Western Division of the Southern Pacific Company, 23.6 miles south of Oakland, and Sunnyvale is on the Coast Division of the Southern Pacific Company 38.8 miles south of San Francisco.

The rates assessed and collected on complainants' shipments were, from Hopland to San Francisco $29\frac{1}{2}$ cents until July 19, 1927, and 25 cents thereafter; from Ukiah to San Francisco $35\frac{1}{2}$ cents until July 27, 1927, and 31 cents thereafter; from Hopland to Niles $36\frac{1}{2}$ cents prior to October 1, 1926, $35\frac{1}{2}$ cents during the period October 1, 1926, to July 27, 1927, and $28\frac{1}{2}$ cents subsequent to the latter date; and from Hopland to Sunnyvale $36\frac{1}{2}$ cents until July 28, 1927, and $29\frac{1}{2}$ cents thereafter. The rates assessed on the shipments from Ukiah to Niles and Sunnyvale were 6 cents higher than those contemporaneously in effect from Hopland.

Complainants are here seeking specific commodity rates based approximately 30 per cent. of the applicable first class rates. This basis, they contend, will result in rates substantially those maintained on fresh fruits by the major rail lines in California. Pears in carloads are rated Class "C" by all the principal rail carriers in California except that for application on the Northwestern Pacific Railroad pears and other fresh fruits are rated 5th class. Complainants however are not here urging the Class "C" basis, inasmuch as the present Class "C" rates of the Northwestern Pacific Railroad are approximately 53.2 to 59.6%

of the first class rates, while throughout California on other lines the Class "C" rates are generally about 30% of the first class rates. Complainants refer to decisions of this Commission and the Interstate Commerce Commission, especially to *Traffic Bureau Merchants Exchange vs. Southern Pacific*, 1 C.R.C. 95; *Geo. A. Long et al. vs. Southern Pacific*, 1 C.R.C. 114; the Sacramento Valley Rate Case, 11 C.R.C. 867; *Board of Supervisors of Imperial County vs. Southern Pacific*, 22 C.R.C. 93; *Klamath County Chamber of Commerce vs. Southern Pacific et al.*, 74 I.C.C. 207; and *Arizona Corporation Commission vs. Arizona Eastern Railroad et al.*, 113 I.C.C. 53, wherein the Class "C" rates found reasonable were approximately 30% of the first class rate. They also refer to the fact that the rates assessed on the pears exceeded those applicable on dried fruits from Hopland and Ukiah to San Francisco, whereas generally throughout California the situation is reversed and the rates on dried fruits are higher than those applicable on fresh fruits. Complainants also compare the rates here at issue and the earnings thereon with lower rates and earnings on fresh fruit, including pears, applicable between various points in California on the Southern Pacific Company. The following compiled from complainants' exhibits is illustrative:

FROM	TO	Mileage	Rate (cents)	Revenue Per Ton Mile (cents)
<u>RATES ASSAILED</u>				
Hopland	San Francisco	99	*25	5.1
	Niles	128	*28½	4.5
	Sunnyvale	137	*29½	4.3
Ukiah	San Francisco	112	*31	5.5
	Niles	142	*34½	4.9
	Sunnyvale	151	*35½	4.7

* Rates shown are the lowest applied on complainants' shipments.

FROM	TO	Mileage	Rate (cents)	Revenue Per Ton Mile (cents)
------	----	---------	--------------	------------------------------

RATES COMPARED

Arbuckle	Stockton	99	16	3.2
Turlock	Kingsburg	99	16	3.2
Gridley	Stockton	112	16	2.9
Winters	San Jose	112	17	3.0
Morrano	Kingsburg	127	18½	2.9
Merced	Luther	131	17½	2.7
Marysville	Turlock	137	21½	3.1
Lingard	Luther	137	18	2.6
Roseville	San Jose	139	16	2.3
Kingsburg	Stockton	142	21½	3.0
Oroville	Modesto	150	23	3.1
Loomis	Sunnyvale	152	23½	3.1
Penryn	Sunnyvale	153	24	3.1
Merced	Gilroy	158	24	3.0

Defendants contend the rates on fresh fruits in California are on an abnormally low basis, originally published for the principal purpose of moving fruit from the fields to the canneries, and that the Class "C" rating was established to obviate the necessity of publishing specific point to point seasonal rates. They claim the fresh fruit rates should normally be higher than 30% of first class and in support thereof refer to decisions of the Interstate Commerce Commission in Railroad Commissioners of the State of Florida vs. Aberdeen and Rockfish Railroad, 144 I.C.C. 603; Georgia Peach Growers Exchange vs. Alabama Great Southern R.R., 139 I.C.C. 143; and Consolidated Southwestern Cases, 125 I.C.C. 203, 139 I.C.C. 535, where rates on fresh fruits were prescribed varying from 38% to 50% of the first class rate. The record indicates however that these rates were prescribed for fresh fruits under refrigeration to the markets and are not comparable to the movement of field-run fruits to the canneries, for which the Class "C" rates in California were primarily established.

Defendants also contend that the relatively light density of traffic on the Northwestern Pacific Railroad, the adverse financial condition of that line, and the fact that the haul to San Francisco involves an expensive bay transfer and to Niles and Sunnyvale a two-line haul requiring the use of the State Belt Railroad as an intermediary carrier, do not justify using the rates submitted by complainants for comparative purposes as the measure for the rates here at issue. They further claim that the present rates were voluntarily established to meet the competition of truck lines and are now lower than normal rates.

The record indicates, however, that effective March 25, 1929, the Northwestern Pacific, following negotiations with the California Farm Bureau Federation, reduced the rates on pears from Hopland and Ukiah to San Francisco to $23\frac{1}{2}$ cents and 26 cents respectively, the same as the Class "C" rates, and that it was also proposed to reduce the rates to Niles and Sunnyvale by observing the same differential over San Francisco as now exists in connection with the present rates. The record does not warrant defendants in assessing rates during the period covered by this complaint, higher than those subsequently established to San Francisco and those proposed to Niles and Sunnyvale.

Upon consideration of all the facts of record we are of the opinion and so find that the rates assailed were, are, and for the future will be unreasonable to the extent they exceeded, exceed or may exceed from Hopland to San Francisco $23\frac{1}{2}$ cents, to Niles 27 cents, and to Sunnyvale 28 cents; and from Ukiah to San Francisco 26 cents, to Niles $29\frac{1}{2}$ cents, and to Sunnyvale $30\frac{1}{2}$ cents; that the shipments as described were made and complainants paid and bore the charges thereon at the rates herein found unreasonable; that they have been damaged thereby in the amount of the difference between the freight charges paid and those which

would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest.

Complainants will submit statements to defendants 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 having been duly heard and submitted, 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 the defendants, Northwestern Pacific Railroad Company and Southern Pacific Company, be and they are hereby notified and required to cease and desist on or before forty-five (45) days from the effective date of this order and thereafter to abstain from publishing, demanding or collecting rates for the transportation of pears in carloads from Hopland and Ukiah to Niles and Sunnyvale not in accordance with the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that defendants, Northwestern Pacific Railroad Company and Southern Pacific Company, be and they are hereby notified and required to establish on or before forty-five (45) days from the effective date of this order on not less than five (5) days' notice to the Commission and the public, and thereafter to apply to the transportation of pears in carloads from Hopland and Ukiah to Niles and Sunnyvale rates as set forth in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that the defendants,

Northwestern Pacific Railroad Company and Southern Pacific Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund, with interest at six (6) per cent. per annum to complainants, Schuckl & Company and John Demartini Company, Incorporated, according as their interests may appear, all charges they may have collected in the amount of the difference between the freight charges paid and those which would have accrued at the rates found to be reasonable in the opinion which precedes this order, for the transportation of complainants' shipments of pears from Hopland and Ukiah to San Francisco, Niles and Sunnyvale, provided all such shipments come within the purview of Section 71 of the Public Utilities Act.

Dated at San Francisco, California, this 2nd day of May, 1929.

W. S. Lott

Chas. E. ...

George ...

W. P. ...
Commissioners.