

Decision No. 21127.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

VALLEY LUMBER COMPANY, Consignee,)
and)
SERVICE ROCK COMPANY, Consignor,)
Complainants,)

vs.)

ATCHISON, TOPEKA AND SANTA FE RAILWAY)
COMPANY, and)
SOUTHERN PACIFIC COMPANY,)

Defendants.)

Case No. 2664.

BY THE COMMISSION:

ORIGINAL

O P I N I O N

Complainants, Valley Lumber Company and Service Rock Company, are corporations engaged in the sale of lumber and building materials and the manufacture and sale of washed gravel, crushed rock and sand. By complaint filed March 14, 1929, and as amended March 28, 1929, it is alleged that the rate assessed and collected on numerous carloads of rock and sand moving from Rockfield to Hanford during March, April and May, 1928, was published in error and was excessive to the extent that it exceeded $3\frac{1}{2}$ cents per 100 pounds.

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

Complainants' shipments, consisting of 13 cars of rock and sand, originated at Rockfield, a point on the Clovis Branch of the Southern Pacific Company 20 miles north of Fresno, and were

destined to Hanford, a point on the Atchison, Topeka and Santa Fe Railway 30 miles south of Fresno. Charges were assessed on basis of a rate of 4 cents, named in Pacific Freight Tariff Bureau Tariff 166-C, C.R.C. 401, for a distance of 51 miles. Complainants however contend that the correct distance is 50.3 miles, which under the same tariff results in a rate of $3\frac{1}{2}$ cents. It is upon the basis of this $3\frac{1}{2}$ cent rate, which is now specifically published effective November 5, 1928, in Supplement 19 of this same tariff, that complainants seek reparation.

Defendants admit the allegations of the complaint and have 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 rate was excessive to the extent it exceeded $3\frac{1}{2}$ cents; that complainants paid and bore the charges on the shipments in question and have been damaged to the extent of the difference between the charges paid and those that would have accrued on basis of a rate of $3\frac{1}{2}$ cents and are entitled to reparation, without interest. Complainants specifically waived the payment of interest.

Complainants will submit statement of shipments 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 being at issue upon complaint and answers 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 defendants, The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund, without interest, to complainants, Valley Lumber Company and Service Rock Company, according as their interests may appear, all charges collected in excess of $3\frac{1}{2}$ cents per 100 pounds for the transportation from Rockfield to Hanford of the shipments of rock and sand involved in this proceeding.

Dated at San Francisco, California, this 20th day of May, 1929.

Thos. J. Paulin
Chas. J. ...
Francis ...
Leon ...
M. A. ...
Commissioners.