

Decision No. 21267.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

WESTERN MEAT COMPANY,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

Case No. 2593.

BY THE COMMISSION:

**ORIGINAL**

O P I N I O N

Complainant is a corporation engaged among other things in the shipping of packing house products, including butter substitutes. Its principal place of business is at South San Francisco. By complaint filed August 25, 1928, it is alleged that a refrigeration charge of \$8.00 per car assessed on complainant's shipments consisting of 38 carloads of packing house products including butter substitutes, moving from South San Francisco to Los Angeles from July 1926 to August 1927 inclusive, was unjust and unreasonable. The line haul charges are not in issue.

The shipments involved in this proceeding moving more than two years prior to the filing of the complaint, although registered with the Commission within the two years' statutory period for the purpose of tolling the statute of limitations, are barred from further consideration by reason of the decision of the California Supreme Court rendered April 26, 1929, in Los Angeles & Salt Lake Railroad vs. Railroad Commission of California et al., S.F. No. 13152, 77 Cal.Dec. 594.

Reparation only is sought. Complainant's shipments which are not barred from further consideration consisted of 31 carloads of packing house products, including butter substitutes, which were initially iced only and were not re-iced in transit. A charge of \$8.00 per car was made for the refrigeration service as provided in Rule 240 of Agent Dearborn's Perishable Protective Tariff No. 3, C. R.C. No. 2. This charge was not applicable to shipments of fresh meats and packing house products, but did apply on butter and butter substitutes in straight or mixed carloads. Effective September 10, 1927, this charge was removed on shipments of butter by our order in Pacific States Butter, Egg, Cheese and Poultry Association vs. Southern Pacific et al., 30 C.R.C. 133, 31 C.R.C. 282, and reparation was awarded on past shipments. Effective January 1, 1928, in Supplement No. 18 to the Perishable Protective Tariff defendant voluntarily removed this charge on butter substitutes, thus placing both commodities on an equal basis. The complainant contends that the charge was unreasonable to the extent it exceeded the refrigeration charge contemporaneously exacted on butter.

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 charge was unjust and unreasonable; that complainant paid and bore the charges on the shipments in question and has been damaged to the extent of the amount of the refrigeration charges collected and is entitled to reparation without interest. Complainant specifically waived the payment of interest. Complainant will submit a 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, Western Meat Company, the refrigeration charge of \$8.00 per car assessed and collected for the transportation of packing house products including butter substitutes from South San Francisco to Los Angeles, provided this award shall apply only to the shipments here involved upon which the cause of action accrued within the two-year period immediately preceding the filing of this complaint.

Dated at San Francisco, California, this 21<sup>st</sup> day of June, 1929.

Thos D. Lovitt

W. C. Seavey

Leon Whitely

W. J. Carr  
Commissioners.