

ORIGINALDecision No. 21403.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

AMERICAN REFRACTORIES COMPANY,
 a corporation, and
 THE VITREORAX COMPANY,
 a corporation,
 Complainants,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
 RAILWAY COMPANY, a corporation,
 Defendant.

Case No. 2495.

BY THE COMMISSION:

FURTHER OPINION

By our Decision No. 20134, dated August 20, 1928, in the above entitled proceeding we found that a rate of 7 cents per 100 pounds assessed on 76 carloads of crude clay shipped from San Juan Capistrano to Los Angeles during the period extending from October 16, 1924, to July 10, 1925, was unjust and unreasonable to the extent it exceeded $5\frac{1}{2}$ cents. Reparation was awarded complainants on the basis of the rate found reasonable. The cause of action on the aforesaid shipments accrued more than two years prior to the filing of the above entitled complaint. They were however a matter of record with the Commission because of the action of complainants, who filed so-called informal complaints within the two-year statutory period, which informal complaints were held by us to be sufficient to stay the statute of limitations.

Prior to the effective date of Decision No. 20134,

defendant petitioned for and was granted a rehearing for the purpose of further considering whether or not these informal proceedings were sufficient to stay the statute of limitations. The matter was held in abeyance, for the same disagreement was before the California Supreme Court on a writ of review from our decision in Van Camp Sea Food Company vs. Los Angeles & Salt Lake Railroad Company, 31 C.R.C. 837, wherein we held that the informal complaint in that proceeding stayed the statute of limitations. Our finding in the Van Camp case was held to be in error and the decision therein annulled by the California Supreme Court on April 26, 1929, in Los Angeles & Salt Lake Railroad vs. Railroad Commission et al., S.F. 13152, 77 Cal.Dec. 594.

We have given further consideration to the informal complaints submitted in this proceeding, in the light of the decision of the California Supreme Court in Los Angeles & Salt Lake Railroad vs. Railroad Commission et al., supra, and have concluded that they are substantially in the same form as those considered by the Court and are therefore without force to stay the statute of limitations. Complainants have notified the Commission in writing that they agree with this interpretation; therefore it would appear that this matter will not require a further hearing.

Upon further consideration of all the facts of record we are of the opinion and so find that the Commission is without authority to award reparation on the shipments involved in this proceeding. Our original order will therefore be annulled and the proceeding dismissed.

O R D E R

This case having been duly heard, submitted and reopened for further consideration, a 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 our order in the above entitled proceeding entered on August 20, 1928, be and it is hereby annulled and set aside.

IT IS HEREBY FURTHER ORDERED that Case 2495 be and it is hereby dismissed.

Dated at San Francisco, California, this 29th day of July - _____, 1929.

Thos. S. Boutwell

C. L. Sawyer

Leon C. Whitely

Commissioners.