

Decision No.

21435

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

HUNT BROS. PACKING COMPANY,
a corporation,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
Defendant.

Case No. 2672.

Gwyn E. Baker, for complainant.

A. B. Mason, for defendant.

BY THE COMMISSION:

O P I N I O N

Complainant, Hunt Bros. Packing Company, a Delaware corporation, by complaint filed April 3, 1929, alleges that the rate assessed and collected for the transportation of grapes in carloads from Visalia to Hayward is and for the two-year period immediately preceding the filing of this complaint has been unlawful and in violation of the Public Utilities Act.

Reparation and a rate for the future are sought. Rates are stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at San Francisco June 4, 1929, and the case having been submitted is now ready for an opinion and order.

Complainant's shipments were assessed the Class "C" rate on fresh fruits and vegetables, including grapes, of 28½

cents published in Southern Pacific Tariff 711-C, C.R.C. No. 2843, and as provided for by Classification Item No. 620 in Pacific Freight Tariff Bureau Exception Sheet L-M, C.R.C. No. 4370. It is contended that the grapes here involved are of the same kind and quality as those which by the use of Item No. 640 of the same exception sheet are given a classification of 80% of Class "C" under the commodity description of wine grapes, and that even though wine is not actually made from the grapes the 80% of Class "C", or a rate of 23 cents, should have been assessed.

This complainant is a quality packer of fruits and vegetables, and the shipments here at issue consisted of Muscat grapes of the best standards purchasable for canning purposes. They were preserved as fruit and not used in the manufacture of wine. The average value of Muscat grapes in the San Francisco produce markets as shown by Exhibit No. 5 was in October 1927, for table grapes \$120 and for wine grapes \$42 per ton. In November 1927 the value was \$80 for table grapes and \$32 for wine grapes. This clearly illustrates that there is a decided distinction recognized by the trade marts as between table and wine grapes.

For a great many years carriers have had in effect commodity rates on fresh fruits and fresh vegetables without qualifications. They have also published innumerable commodity rates for the different grades, and as illustrative, there are rates on wine grapes, cull apples and damaged apples, lemon culls, citrus fruit culls, citrus fruit orchard run, fresh vegetables field run, and many others with similar limitations.

The testimony shows that the rating of 80% of Class "C" for wine grapes was first established by this defendant in August 1907, and that instructions are issued to agents from time to time outlining the manner in which the different varieties classify as to juice or wine grapes. The mere fact that a table grape may also

be used in the making of wine does not actually make the table grape a wine grape in a commercial sense; and it is a well established practice that even though there is competition between two somewhat similar articles, the transportation charges thereon need not be the same if their characteristics and value permit of a fairly substantial proof of the differences for rate making purposes. There is no claim here that the rate assessed was per se unreasonable, the only issue being that these grapes could also be classified as wine grapes. The proof however in this proceeding is to the effect that the grapes under consideration were not wine grapes and therefore there has been no violation of Section 17 of the Public Utilities Act.

Defendant has applied the tariff in the generally understood and commercially accepted manner, and any different construction would have to be a very strained one. We find that the applicable tariff rate was charged and it has not been shown to be unreasonable. The complaint will be dismissed.

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 contained in the preceding opinion,

IT IS HEREBY ORDERED that the complaint in this proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 8th day of August, 1929.

David L. Smith

Al Seaver

Leon A. Whisell