

Decision No. 21436

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

NESTLE'S FOOD COMPANY, INC.,
Complainant,

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY,
SOUTHERN PACIFIC COMPANY,
Defendants.

ORIGINAL

Case No. 2683.

A. R. Woodman for complainant.

James E. Lyons for defendants.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation engaged in the manufacturing and selling of evaporated and condensed milk, with its principal place of business at San Francisco. By complaint filed April 17, 1929, it is alleged that the rate assessed and collected on eight carloads of fibreboard boxes transported from Oakland to Loleta, April 19, 1927, to September 5, 1927, was unjust and unreasonable in violation of Section 13 of the Public Utilities Act and unjustly discriminatory of other commodities similarly classified.

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

A public hearing was held before Examiner Geary July 30, 1929, and the case having been submitted is now ready for an

opinion and order.

Loleta is situated on the Northwestern Pacific 271 miles north of San Francisco and 13 miles south of Eureka. The rate assessed was 40 cents, minimum weight 50,000 lbs., published in Item 3300 of Pacific Freight Tariff Bureau Tariff 16-J, C.R.C. No. 386. Effective December 26, 1928, in Item 3290-A, Supplement No. 14 to Pacific Freight Tariff Bureau Tariff 16-K, C.R.C. No. 422, the rate was reduced to 32 cents, and it is upon the basis of this subsequently established rate that complainant seeks reparation.

The only testimony submitted by complainant consisted of a comparison of the rate of 40 cents applied to the shipments of fibreboard boxes with a rate of $35\frac{1}{2}$ cents applicable on tin cans between the same points. Tin cans are an entirely different commodity, not in competition with fibreboard boxes. They have also a greater value per 100 lbs., and therefore the comparison made cannot be accepted as controlling. Defendants by their witness presented an exhibit showing commodity rates on fibreboard boxes, practically all higher than the 40-cent rate assessed this complainant.

The 32 cents upon which the reparation is based was published in response to a request of this complainant, and in arriving at the volume of the rate defendant, in order to assist in the development of the canned milk industry, used as a basis a rate of 25 cents applying to wooden box shooek between San Francisco and Eureka, which rate is water depressed because of the tramp steamer competition, plus a 7-cent local rate from Eureka to Loleta. This 32-cent rate is clearly much lower than any in effect on this commodity for equidistant hauls in other California territory.

When a carrier voluntarily reduces rates it does not necessarily follow that reparation is proper against shipments

moving before the lower rate became effective. Manifestly each proceeding must depend upon its own facts, and complainant must assume the burden of showing that the rates when paid were unreasonable. The rate of 40 cents when assessed and collected has not been shown to be unreasonable, and the proceeding 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 9th day of August, 1929.

Thomas D. Loretto

A. Seaver

Leon Whipple

W. J. Cunniff
Commissioners.