

Decision No. 21755.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SCHUCKL & COMPANY,
JOHN DEMARTINI CO., INC.,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY,
NORTHWESTERN PACIFIC RAILROAD COMPANY,

Defendants.

ORIGINAL

Case No. 2578.

E. W. Hollingsworth, R. T. Boyd and Bishop & Bahler, for complainants.

Palmer & Dahlquist and Chris M. Jenks, for Northwestern Pacific Railroad Company, defendant.

J. E. Lyons, for Southern Pacific Company, defendant.

Edson Abel, for California Farm Bureau Federation.

BY THE COMMISSION:

OPINION ON REHEARING

We found in this proceeding by our Decision No. 21038, dated May 2, 1929, that the rates assessed and collected on numerous carloads of fresh pears forwarded from Hopland and Ukiah to San Francisco, Niles and Sunnyvale during a statutory period of two years prior to the filing of the complaint, were unreasonable to the extent that they exceeded from Hopland to San Francisco $23\frac{1}{2}$ cents, to Niles 27 cents and to Sunnyvale 28 cents; and from Ukiah to San Francisco 26 cents, to Niles $29\frac{1}{2}$ cents and to Sunnyvale $30\frac{1}{2}$ cents. Reparation was awarded, with interest at

6 per cent. per annum. Defendants filed this petition May 13, 1929, and our order granting rehearing, limited to the award of reparation only, was issued May 24, 1929.

The rehearing was had July 30, 1929, before Examiner Geary and the proceeding is now before us on the whole record.

The gravamen of defendants' rehearing petition is contained in Paragraph III, reading:

"That the evidence in said cause is insufficient to justify an award of reparation, the record being without sufficient evidence showing that rates were unreasonable at time of the movements on account of which reparation is sought by this proceeding."

The evidence submitted by defendants in support of their rehearing petition consisted of an exhibit showing that many shipments of fruit are transported under refrigeration, the purport being to demonstrate that fancy fruit intended for market consumption also moves under the same transportation rates as the orchard run fruit in lug box pack. The testimony of defendants' witnesses was merely a reiteration and in support of the testimony at the original hearing. Complainants filed two exhibits in the nature of a composite of the rate situation as developed at the original hearing.

At the time the instant proceeding was under consideration we had before us Case 2222, California Farm Bureau Federation et al. vs. Northwestern Pacific Railroad Company, filed March 13, 1926, involving numerous commodities moving locally between points on the Northwestern Pacific. This case (No. 2222) was not set for hearing because complainants entered into negotiations with the defendant and the docketing of the case was postponed from time to time upon the suggestion that an adjustment would be arranged out of court. Under date of February 15, 1929, the California Farm Bureau Federation requested the proceeding be dismissed, advising that rates mutually agreed upon

had been published by the defendant, and a dismissal order was issued February 20, 1929.

These defendants now urge that because the rates on fruit between the points here involved were reduced effective March 25, 1929, without an order of this Commission, that no reparation should be awarded in this proceeding.

A careful analysis of all exhibits and testimony presented, consisting of many elaborate rate comparisons, indicates conclusively that the rates assessed and collected applying to these particular shipments of fresh pears between the points involved were materially higher than those assessed from orchards in the same general territory to the canneries for equidistant hauls. The rates found just and reasonable, and upon which the reparation award is based, are still materially higher than rates of the Southern Pacific Company for similar movements to the same destination points from competitive territory. The voluntary rates published as a result of the filing of Case No. 2222, supra, are merely a coincidence in connection with this adjustment and cannot be given the controlling effect that a general reduction in rates would have.

Upon consideration of all the matters presented by the defendants upon the rehearing of this case, it does not appear that the former opinion and order are in error, and the Commission adheres to its original decision.

O R D E R

It appearing that on May 2, 1929, the Commission rendered its opinion and order in the above entitled proceeding, that on May 24, 1929, this proceeding was reopened for further hearing, and such further hearing having been held on July 30, 1929, and the Commission on the date hereof having made and

filed its opinion containing its findings of facts and conclusions thereon, which said opinion is hereby referred to and made a part hereof,

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

IT IS HEREBY FURTHER ORDERED that the original order contained in our Decision No. 21038 of May 2, 1929, shall continue in full force and effect.

Dated at San Francisco, California, this 5th day of November, 1929.

Thos. J. Lantieri
C. J. Seaver
Wm. J. O'Connell
Leon A. Whelan
M. J. Curran
Commissioners.