

Decision No. 21774

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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ORIGINAL

IN RE)

EAST-WEST REFINING CO.)

Case No. 2723.

F. W. Turcotte, for Complainant

E. E. Bennett, for Defendant.

BY THE COMMISSION:

O P I N I O N

On September 30, 1925, the Commission received a letter, over the signature of Carmicheal Traffic Corporation, by G. A. Olson, representing East-West Refining Company. Papers attached described certain carload shipments of gasoline, crude oil, fuel oil, distillate and gas oil, shipped from Hynes, via the Los Angeles and Salt Lake Railroad Company, and delivered by the Atchison Topeka & Santa Fe Railway Company to consignee's industry track at Los Angeles.

The Commission was requested to "register our complaint to prevent the operation of the statute of limitations and if they refer the matter to the L. A. & S. L. R.R.Co. for an expression of their attitude toward adjustment on the informal docket, or return one copy of our claim in order that we may handle with the carrier direct". This communication was given the file number I. C. (Informal Complaint) 33795 and was acknowledged by the Commission on October 3, 1925.

On April 26, 1929, the Supreme Court of California rendered its decision in Los Angeles and Salt Lake Railroad Company v. Railroad Commission, S. F. No. 13152, 77 Cal. Dec. 594 (commonly referred to as the "Van Camp Case".)

Under date of May 16, 1929, counsel for East-West Refining Company submitted an additional copy of the letter of September 30, 1925, requesting that it be served upon Los Angeles and Salt Lake Railroad Company. Thereupon the letter was given the file number "Case 2723", and a copy transmitted to the carrier on July 15, 1929. On July 17, 1929, the carrier protested the receipt of such document as a formal complaint, and the matter was set for oral argument as to the jurisdiction of the Commission to proceed. Argument was had before Examiner Geary at Los Angeles and the matter now stands submitted.

It is the position of counsel for the carrier that consideration of this matter by the Commission is precluded by the ruling of the Court in the Van Camp Case, supra. Exhibit No. 1, introduced at the argument, is a comparison, paragraph by paragraph, of the letter in the Van Camp Case with that in the present proceeding. Both letters were written within a week of each other and signed by a representative of the Carmichael Traffic Corporation.

Counsel for East-West Refining Company contends that the two letters are materially different, and that the letter in this proceeding contains a demand or claim for refund, alleges certain violations of the Public Utilities Act, and constitutes a formal complaint. A careful analysis of the two letters shows that while the language of the East-West letter may, in

some respects, differ from the language of the Van Camp letter, both were written with the intent and purpose of staying the operation of the statute.

It is particularly significant that after receipt of the letter had been acknowledged by the Commission on October 3, 1925, no further word respecting this matter was received by the Commission until some three and a half years later, when counsel forwarded an additional copy and requested that service be made upon the carrier. This request came shortly after the decision of the Court in the Van Camp Case. In the language of that decision "It probably never occurred to the Commission to treat said letter as a complaint or else no doubt it would have followed the provisions of the statute and would have taken steps to hold a hearing thereon". Nor was the Commission requested so to do until after the decision of the Court had been rendered.

The record shows that the letter of September 30, 1925, was treated in like manner as the Van Camp letter of September 18, 1925, and it appears that both were written for the sole purpose of staying the statute. We are of the opinion that the Railroad Commission has no power to proceed further in this matter and the "complaint" will, accordingly, be dismissed.

O R D E R

Oral argument having been had as to the jurisdiction of the Railroad Commission to proceed in the above entitled

matter, the Commission having considered the arguments of counsel and the record herein, and basing its order on the findings and conclusions above expressed,

IT IS HEREBY ORDERED that said complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 12th day of November, 1929.

Thos J. Lott
Chase
Edmund
Leon
M. J. C.
Commissioners