

Decision No. 22055.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

UNITED STATES PRODUCTS CORPORATION,

Complainant,

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY,

Defendant.

Case No. 2731.

BY THE COMMISSION:

**ORIGINAL**

O P I N I O N

Complainant is a corporation with its principal place of business at San Jose. By complaint filed July 26, 1929, it is alleged that the rates assessed and collected on numerous carloads of fresh pears shipped from Hopland, Henry and Ukiah to San Francisco between August 3, 1928 and August 20, 1928, both inclusive, were unreasonable, excessive and in violation of the Public Utilities Act.

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

Hopland, Henry and Ukiah are on the Northwestern Pacific Railroad 99, 104 and 112 miles respectively north of San Francisco. The charges on complainant's shipments, consisting of one carload of fresh pears from Hopland, 7 from Henry and 8 from Ukiah, all of which were destined to San Francisco, were assessed on basis of rates of 25 cents from Hopland and 31 cents

from Henry and Ukiah, named in Northwestern Pacific Tariff 38-G, C.R.C. No. 325. Effective March 25, 1929, in Northwestern Pacific Tariff 38-H, C.R.C. No. 336, defendant published rates of 23½ cents from Hopland and 26 cents from Ukiah, which latter rate also applies as a maximum at Henry to San Francisco. This adjustment was made in compliance with our orders in Case 2578, Schuckl & Company et al. vs. Southern Pacific Company et al., 33 C.R.C. 3; 33 C.R.C. 729. It is on the basis of these subsequently established rates that complainant seeks reparation.

Defendant originally denied the allegations of the complaint, but following our decision in the Schuckl case withdrew its denial and signified a willingness to make a reparation adjustment. Therefore under the issues as they now stand a formal hearing will not be necessary.

Upon consideration of all the facts of record we are of the opinion and find that the assailed rates were unjust and unreasonable to the extent they exceeded the subsequently established rates; that complainant made the shipments as described, paid and bore the charges thereon and is entitled to reparation with interest at six (6) per cent. per annum.

The exact amount of reparation due is not of record. Complainant will submit to defendant for verification a statement of the shipments made, and upon payment of the reparation defendant will notify the Commission of the amount thereof. Should it not be possible to reach an agreement as to the reparation award, the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

#### 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 and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendant, Northwestern Pacific Railroad Company, be and it is hereby authorized and directed to refund with interest at six (6) per cent. per annum to complainant, United States Products Corporation, all charges collected in excess of  $23\frac{1}{2}$  cents per 100 pounds for the transportation from Hopland to San Francisco and 26 cents per 100 pounds for the transportation from Henry and Ukiah to San Francisco of the shipments of fresh pears involved in this proceeding.

Dated at San Francisco, California, this 29th day of January, 1930.

C. L. Scammy  
Emmett  
Leon Whiteley  
Wm. B. Smith

Commissioners.