

Decision No. 22162.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SYLMAR PACKING CORPORATION,

Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,
SOUTHERN PACIFIC COMPANY,

Defendants.

Case No. 2783.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation with its principal place of business at Los Angeles. By complaint filed November 15, 1929, and as amended December 5, 1929, it is alleged that the rate assessed and collected on nine carloads of fresh olives shipped from Escalon to Sylmar during December 1927 was, is, and for the future will be excessive, unjust and unreasonable in violation of Section 13 of the Public Utilities Act and unduly prejudicial and discriminatory in violation of Section 19 of the Act.

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

Escalon is on the Atchison, Topeka and Santa Fe Railway and on the Tidewater Southern Railway 20 and 22 miles south of Stockton respectively. The shipments here involved originated at Escalon on the Atchison, Topeka and Santa Fe Railway and were destined to Sylmar on the Southern Pacific Company, 23 miles north of Los Angeles. Charges were assessed on the basis of the

legally applicable rate of $41\frac{1}{2}$ cents made by use of the Class "C" rate of 6 cents, published in Atchison, Topeka and Santa Fe Railway Local, Joint and Proportional Tariff 9885-F, C.R.C. No. 619, applying from Escalon to Stockton, plus a commodity rate of $35\frac{1}{2}$ cents published in Southern Pacific Company Local, Joint and Proportional Tariff 817-C, C.R.C. 2865, from Stockton to Los Angeles and applying as maximum at Sylmar.

Complainant contends that defendants not only contemporaneously maintained and applied joint rates lower than $41\frac{1}{2}$ cents for the transportation of fresh olives between various points in California for comparable distances and under similar and less favorable transportation conditions, but that during the time these shipments moved defendant Southern Pacific Company in connection with the Tidewater Southern Railway Company maintained in Pacific Freight Tariff Bureau Tariff 65-G, C.R.C. No. 404, a joint rate of $35\frac{1}{2}$ cents applying between these same points. It is on the basis of the $35\frac{1}{2}$ cent rate now in effect between comparable points as well as between the points here involved when routed via the Tidewater Southern Railway and Southern Pacific Company that complainant seeks reparation and a rate for the future.

Defendants admit the allegations of the complaint and have signified a willingness to make a reparation adjustment and to establish a rate for the future, 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 rate was, and for the future will be, unjust, unreasonable, unduly prejudicial and discriminatory to the extent it exceeded a rate of $35\frac{1}{2}$ cents; that complainant made the shipments as described, paid and bore

the charges thereon and is entitled to reparation without interest. Complainant specifically waived the payment of interest.

The exact amount of reparation due is not of record. Complainant will submit to defendants for verification a statement of the shipments made and upon payment of the reparation defendants will notify the Commission 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 answers 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 defendants, The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company, according as they participate in the transportation, be and they are hereby directed to cease and desist and thereafter to abstain from applying, demanding and collecting rates which shall exceed 55½ cents per 100 pounds for the transportation of fresh olives from Escalon to Sylmar.

IT IS HEREBY FURTHER ORDERED that defendants, The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company, according as they participate in the transportation, be and they are hereby directed to establish on or before thirty (30) days from the effective date of this order upon not less than five (5) days' notice to the Commission and the public a rate not to exceed 35½ cents per 100 pounds for the transportation of fresh olives from Escalon to Sylmar.

IT IS ~~HEREBY~~ FURTHER ORDERED that defendants, The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund without interest to complainant, Sylmar Packing Corporation, all charges collected in excess of 35½ cents per 100 pounds for the transportation from Escalon to Sylmar of the shipments of fresh olives involved in this proceeding.

Dated at San Francisco, California, this 26th day of February, 1930.

O. C. Weaver

Leon A. White
Max B. Lott

W. H. Lewis
Commissioners.