

Decision No. 22184.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

A. LEVY & J. ZENTNER COMPANY,
 EARL FRUIT COMPANY,
 CUNNINGHAM & THOMAS,
 SUNSET PRODUCE COMPANY,
 CALIFORNIA ORCHARD PRODUCTS COMPANY,

Complainants,

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY,

Defendant.

Case No. 2815.

BY THE COMMISSION:

O P I N I O N

Complainants, A. Levy & J. Zentner Company, Earl Fruit Company, Sunset Produce Company and California Orchard Products Company, are corporations with their principal places of business at San Francisco; Cunningham & Thomas is a corporation with its principal place of business at Ukiah. By complaint filed January 29, 1930, it is alleged that the rates assessed and collected on numerous carloads of fresh pears shipped from Hopland and Ukiah to San Francisco within the two-year period immediately preceding the filing of this complaint were unjust and unreasonable in violation of the Public Utilities Act.

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

Hopland and Ukiah are on the Northwestern Pacific Railroad 99 and 112 miles respectively north of San Francisco. The charges on complainants' shipments consisting of 32 carloads of fresh pears from Hopland and 7 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 Ukiah, named in Northwestern Pacific Tariff 38-G, C.R.C. 325. Effective March 25, 1929, in Northwestern Pacific Tariff 38-E, C.R.C. 336, defendant published rates of 23½ cents from Hopland and 26 cents from Ukiah. 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 complainants seek reparation.

Defendant admits the allegations of the complaint and has 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 complainants made the shipments as described, paid and bore the charges thereon and are entitled to reparation without interest. Complainants specifically waive the payment of interest.

The exact amount of reparation due is not of record. Complainants will submit to defendant for verification a statement of the shipments made and upon payment of reparation defendant 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 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 without interest to complainants, I. Levy & J. Zentner Company, Earl Fruit Company, Cunningham & Thomas, Sunset Produce Company and California Orchard Products Company, according as their interests may appear, all charges collected for the transportation of fresh pears involved in this proceeding, in excess of 23½ cents per 100 pounds from Hopland to San Francisco and 26 cents per 100 pounds* from Ukiah to San Francisco.

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

Chas. J. ...

John ...
Paul ...

M. J. ...
Commissioners.