

Decision No. 22216.**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

HERCULES GASOLINE COMPANY, a corporation,
EXPORT REFINING CORPORATION, a corporation,
PAULEY OIL COMPANY, a corporation,
VERNON OIL REFINING COMPANY, a corporation,
EAST-WEST REFINING COMPANY, a corporation,
MacMILLAN PETROLEUM PRODUCTS COMPANY, a corporation,
GOREHAM-DURBROW OIL COMPANY, a corporation,
ITALO-AMERICAN PETROLEUM CORPORATION, a corporation,
SEABOARD PETROLEUM CORPORATION, a corporation,
SIERRA REFINING COMPANY, a corporation,
MARINE REFINING CORPORATION, a corporation,
TARR & McCOMB CORPORATION, a corporation,
GILMORE OIL COMPANY, a corporation,
J. W. JAMESON CORPORATION, a corporation,
CALIFORNIA REFINING COMPANY, a corporation, and
JOSEPH SCOTT and E. L. CARNAHAN, as receivers of the
Julian Petroleum Corporation, a corporation,

Case

No. 2496.

Complainants,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
SOUTHERN PACIFIC COMPANY, LOS ANGELES & SALT LAKE
RAILROAD COMPANY, and PACIFIC ELECTRIC RAILWAY
COMPANY,

Defendants.

B. E. Carmichael and F. W. Turcotte, for Hercules Gasoline Company, complainant.

G. E. Duffy, for The Atchison, Topeka and Santa Fe Railway Company, defendant.

BY THE COMMISSION:

FURTHER OPINION AND ORDER ON REHEARING

Upon petition of complainant Hercules Gasoline Company this proceeding was reopened for the purpose of determining the amount of reparation, if any, due on 56 carloads of petroleum gas oil transported from Los Angeles to El Segundo during the period extending from May 11, 1925, to September 16, 1925, upon

which defendant The Atchison, Topeka and Santa Fe Railway Company assessed charges subsequently found to be unreasonable by our Decision No. 20128 rendered August 17, 1928, in the above entitled proceeding.

A further hearing was held before Examiner Geary at Los Angeles January 30, 1930, and the matter at that time submitted.

There is no dispute as to the facts regarding these shipments. By Decision 20128 we held that a rate of 4 cents per 100 pounds subject to an estimated weight of 7.75 pounds per gallon from Los Angeles to El Segundo was unjust and unreasonable to the extent it exceeded a rate of 3 cents per 100 pounds and that complainant was entitled to reparation on all shipments upon which the cause of action accrued within two years prior to the filing of the formal complaint or were registered within the statutory period by the filing of an informal complaint. Subsequent to this decision the Supreme Court of the State of California in L.A. & S.L.R.R. vs. Railroad Commission et al., 77 Cal. Dec. 594, held that an informal complaint such as there considered did not stay the running of the statute of limitations. The informal complaints of record in this proceeding were similar to those considered by the Supreme Court, and consequently our original Decision 20128 was modified by Decision 21399 to limit the award of reparation only to shipments on which the cause of action accrued within two years prior to the filing of the formal complaint.

Defendant originally collected freight charges based on a rate of 4 cents per 100 pounds, at an estimated weight of 6.6 pounds per gallon. Under the tariff this estimated weight applied only to refined oils, the correct estimated weight for gas oil being 7.75 pounds per gallon. The error in the charges

was not discovered until the early part of 1928, when balance due bills amounting to \$257.34 were sent complainant. The undercharges were paid on May 18, 1928, during the pendency of this proceeding.

Our Decision No. 20128 held that the 4-cent rate charged on gas oil from Los Angeles to El Segundo was unreasonable to the extent it exceeded 3 cents, and that reparation should be awarded. The rate of 3 cents would have entitled complainant to a total refund of \$433.81 on the shipments now under consideration, but as already stated supplemental Decision 21399 modified the reparation award to apply only to shipments on which the cause of action accrued within two years prior to the filing of the formal complaint. Complainant is here seeking reparation on the basis of the rate found reasonable by Decision 20128 in the sum of the charges paid on May 18, 1928, and only asks for a refund of moneys paid within the statutory period. Thus the sole question here for consideration is when complainant's cause of action to recover the \$257.34 accrued. If it accrued on the date the shipments were delivered or tendered for delivery, complainant is barred from recovering, but if it accrued on the date the freight charges were paid complainant is entitled to a refund.

We believe that the cause of action accrued under our statute when the charges in question were paid. The United States Supreme Court in United States Ex Rel., Louisville C.Co. vs. Interstate Commerce Commission, 246 U.S. 638, in construing the Interstate Commerce Act as it existed prior to the Transportation Act of 1920, held that a cause of action to recover reparation because of unreasonable charges accrued when the freight charges were paid and not when the shipments moved. At that time the Interstate Commerce Act in so far as it related to the statute

of limitations was substantially the same as Section 71(b) of the Public Utilities Act.

We are of the opinion and so find that complainant's cause of action accrued on the date the freight charges were paid, and that it is entitled to reparation in the amount of \$257.34, with interest at 6 per cent. per annum.

O R D E R

A further hearing in this proceeding having been had, full investigation of the matters and things involved having been made, and basing this order on the findings of fact contained in the preceding opinion,

IT IS HEREBY ORDERED that defendant, The Atchison, Topeka and Santa Fe Railway Company, be and it is hereby authorized and directed to refund to complainant, Hercules Gasoline Company, the sum of \$257.34, with interest at six (6) per cent. per annum, as reparation for unreasonable charges collected on 56 carloads of petroleum gas oil transported from Los Angeles to El Segundo during the period extending from May 11, 1925, to September 16, 1925, both dates inclusive.

Dated at San Francisco, California, this 18th day of March, 1930.

C. S. Lewis

John A. Whittell
Thos. S. Lovett

W. J. Cunn
Commissioners.