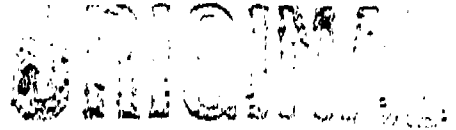


Decision No. 22245.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

LIBBY, McNEILL & LIBBY,
 Complainant,
 vs.
 SOUTHERN PACIFIC COMPANY,
 Defendant.



Case No. 2759.

BY THE COMMISSION:

OPINION

Complainant is a corporation with its principal place of business at San Francisco. By complaint filed September 21, 1929, it is alleged that the rate assessed and collected on four carloads of tomatoes moving from Sacramento to Walnut Grove Wharf on September 15 and 16, 1927, was unjust and unreasonable in violation of Section 13 of the Public Utilities Act.

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

Walnut Grove Wharf is on the Walnut Grove branch of the Southern Pacific Company 22 miles south of Sacramento. The lawfully applicable rate at the time shipments moved was the Class "C" rate protecting the 5th class minimum of 11 cents. Effective December 19, 1928, on page 57 of Southern Pacific Company Tariff 817-C, C.R.C. 2865, defendant published a commodity rate of 7½ cents and it is upon the basis of this subsequently established rate that complainant seeks 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 rate was unjust and unreasonable to the extent it exceeded the subsequently established rate of $7\frac{1}{2}$ 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 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, Southern Pacific Company, be and it is hereby authorized and directed to refund to complainant, Libby, McNeill & Libby, all charges collected in excess of $7\frac{1}{2}$ cents per 100 pounds for the transportation from Sacramento to Walnut Grove Wharf of the shipments of tomatoes involved in this proceeding.

Dated at San Francisco, California, this 21st day of March, 1930.

[Signature]

[Signature]

[Signature]

Commissioners.