

Decision No. 22266.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

EMPIRE CHINA COMPANY, a corporation,  
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

ORIGINAL

Case No. 2832.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation engaged in the business of manufacturing china ware, pottery and various clay products. Its principal place of business is at Burbank. By complaint filed February 25, 1930, and as amended it is alleged that the rate assessed and collected on two carloads of crude clay shipped from Lignite and Carbondale to Burbank February 15 and April 14, 1928, respectively, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act. The freight charges on the shipment made February 15, 1928, were paid within the two-year period prior to the filing of the complaint.

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

Lignite and Carbondale are on the Ione branch of the Southern Pacific Company 21.3 and 20.6 miles respectively east of Galt. Burbank is on the main line of the Southern Pacific Company 10 miles north of Los Angeles. The rate legally applicable to the transportation here involved at the time the shipments

moved was a commodity rate of 21½ cents, minimum carload weight 60,000 pounds, published in Southern Pacific Company Tariff 825-D, C.R.C. 3168, holding the rate to Los Angeles as maximum at Burbank. Prior to October 24, 1927, there was in effect from Lincoln, a point on the Southern Pacific lines 28 miles northeast of Sacramento, to Los Angeles a rate of the same volume. However, effective October 24, 1927, defendant established a rate of 18 cents, minimum 80,000 pounds, on crude clay from Lincoln to Los Angeles without making a corresponding reduction in the rate from Lignite and Carbondale until May 9, 1928. Complainant contends that it has been the customary practice to maintain rates on clay from these points to Los Angeles on a parity and that failing to do so in connection with the shipments in question resulted in the collection of charges which were unjust and unreasonable to the extent they exceeded those that would have accrued at a rate of 18 cents, minimum carload weight 80,000 pounds.

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 rate subsequently established; 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 the 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, Southern Pacific Company, be and it is hereby authorized and directed to refund to complainant, Empire China Company, without interest, all charges collected in excess of those that would have accrued on basis of a rate of 18 cents per 100 pounds, minimum carload weight 80,000 pounds, for the transportation from Lignite and Carbondale to Burbank of the shipments of crude clay involved in this proceeding.

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

C. S. Sawyer

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Thomas D. Lewis

M. J. Con  
Commissioners.