

Decision No. 22462.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

ALBERS BROS MILLING CO., a corporation,)
Complainant,)
vs.)
SOUTHERN PACIFIC CO., a corporation,)
Defendant.)

Case No. 2820.

C. S. Connolly, for the complainant.

James E. Lyons, A. L. Whittle and M. G. Smith,
for the defendant.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation engaged in buying, selling and manufacturing grain and grain products. By complaint filed February 4, 1930, it is alleged that the rate assessed on empty molasses drums, returning, from Sacramento to Oakland was inapplicable under the tariff and collected in violation of Section 17(2) of the Public Utilities Act.

We are asked to award reparation to complainant for the alleged overcharge. Rates will be stated in cents per 100 pounds.

A public hearing was held before Examiner Geary in San Francisco April 15, 1930, and the case having been submitted is now ready for an opinion and order.

Complainant's shipments, consisting of two carloads of empty molasses drums, were returned from Sacramento to Oakland

after the drums had previously moved under load via the Southern Pacific Company from complainant's plant at Oakland to Sacramento. For the return movement defendant assessed the minimum scale 4th class rate of 15 cents, minimum weight 12,000 pounds, subject to the graduated weights for cars over 36 feet 6 inches in length as provided in Section 6 of Rule 34 of Western Classification No. 60, C.R.C. 412.

At the time the shipments moved Pacific Freight Tariff Bureau Exception Sheet I-L, C.R.C. 403, provided three alternative rates for the transportation of empty carriers, carloads, returning to original point of shipment after having been transported under load via the carrier over which the shipment is returned. These rates were Class "B"; or one half of 4th class, with minimum weight 12,000 pounds, subject to Section 6 of Rule 34 of the Western Classification, and Class "E", minimum weight 30,000 pounds. The Class "B" rate from Sacramento to Oakland at the time of movement was 17 cents, one half of 4th class rate was $11\frac{1}{2}$ cents, and the Class "E" rate $10\frac{1}{2}$ cents. On complainant's shipments the lowest per car charge resulted from the use of one half of 4th class, subject to the prescribed minimum.

Defendant does not deny that these rates are applicable on empty molasses drums, returning, but contends that they are also subject to the minimum scale of rates published in its Tariff 917-D, C.R.C. 2929. Rule 30-E of this tariff provides a minimum scale of class rates ranging from 25 cents for first class to 5 cents for Class "E", subject to a provision reading as follows:

"No rates shall be applied on any traffic moving under class rates lower than the amount in cents per 100 pounds for the respective classes as shown below in the current Western Classification. The minimum rate on any article shall be the rate for the class at which the article is rated in the current Western Classification, subject, however, to the minimum weights, rules and regulations - but

not ratings - as are published as exceptions to the Western Classification in schedules lawfully on file with the Railroad Commission of the State of California, also to Exceptions 1 to 6 inclusive, as shown below."

It is defendant's position that under the foregoing provision of Rule 30-E the minimum rate for shipments of empty drums must be determined by the current Western Classification, and as empty drums are rated 4th class therein, the rates provided in the Exception Sheet when lower than the minimum 4th class rate of 15 cents from Sacramento to Oakland, were inoperative. Defendant however has failed to give full significance to Exception 2 contained in Rule 30-E, supra, which states:

"On shipments of carriers, second-hand, empty, returned * * * carloads, the minimum class rate will be determined by Class 'B', minimum carload weight 12,000 pounds, subject to Rule 34 of current Western Classification and subject to a minimum charge of \$10.80 per car, or Class 'E', subject to minimum carload weight of 30,000 pounds." (Underscoring ours.)

This exception has the effect of nullifying the general provisions of Rule 30-E that the minimum class rate will be determined by the current Western Classification, and specifically provides that the minimum rate on empty molasses drums, returning, will be either Class "B" or Class "E". As both the minimum Class "B" and the Class "E" rate, subject to their respective minimum weights, were lower than one half of the 4th class rate from Sacramento to Oakland, it was not necessary to protect the minimum scale and therefore the actual rates provided by the Exception Sheet should have been applied.

After consideration of all the facts of record we are of the opinion and so find that the lawfully applicable rate on the shipments at issue was $11\frac{1}{2}$ cents, minimum carload weight of 12,000 pounds, subject to Section 6 of Rule 34 of the current Western Classification. We further find that the shipments were overcharged; that complainant made the shipments as described,

paid and bore the charges thereon, and is entitled to reparation with interest at the rate of 6 per cent. per annum in the amount of the difference between the charges assessed and collected and those herein found applicable.

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 having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing this order on the findings of fact contained in the preceding opinion,

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, refund with interest at six (6) per cent. per annum to complainant, Albers Bros. Milling Company, all charges collected for the transportation of the two carloads of empty molasses drums, returning, involved in this complaint, in excess of those herein found applicable.

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

C. S. Seney
Emmott

W. D. Curtis

Commissioners.