

Decision No. 22498.**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

BOLIVER PACKING COMPANY,
C. M. GIFFORD & SONS,

Complainants,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

Defendant.

Case No. 2787.

F. A. Jones, C. J. Gamble for complainants and
for Old Mission Canneries, intervener.

Berne Levy and G. E. Duffy, for defendant.

C. F. Reynolds, for San Diego Chamber of Com-
merce, intervening in behalf of complainants.

BY THE COMMISSION:

O P I N I O N

Complainants are engaged in packing and canning olives at San Diego. By complaint filed November 18, 1929, it is alleged that a rate of $38\frac{1}{2}$ cents per 100 pounds, minimum weight 24,000 pounds, assessed and collected by defendant for the transportation of olives, in barrels, in drine, in carloads, from Fresno, Lindsay, Orange Cove and related points to San Diego was, is, and for the future will be unjust and unreasonable, discriminatory, preferential and prejudicial, in violation of Sections 13, 17 and 19 of the Public Utilities Act to the extent it exceeded, exceeds or may exceed $31\frac{1}{2}$ cents per 100 pounds, minimum weight 36,000 pounds.

The San Diego Chamber of Commerce and Old Mission Canneries, Incorporated, intervened on behalf of complainants.

We are asked to establish lawful rates for the future and to award reparation. Rates are stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at San Diego March 7, 1930, and the case having been submitted and briefs filed, is now ready for a decision.

In the conduct of their business complainants obtain olives from the San Joaquin Valley in the vicinity of Fresno, Lindsay and Orange Cove. It is the general practice for the buyers to furnish barrels to the olive growers so that when the fruit is picked it may be placed in a salt water solution until a sufficient quantity has been accumulated for shipment. The olives are further processed at complainants' plants before they are edible.

Complainants' shipments, consisting of approximately 41 cars of olives, in brine, in barrels, originated at Orange Cove, Porterville, Lindsay, Cutler, Hanford and Del Rey and were destined to San Diego. There were no shipments of record moving from Fresno. Defendant assessed and collected the rate applicable on fresh olives of 38½ cents, subject to a minimum carload weight of 24,000 pounds, as published in Atchison, Topeka and Santa Fe Railway Tariff 11992-G, C.R.C. 620, or preceding issues. At the time of movement defendant maintained in Item 50 of its Tariff 12375-K, C.R.C. 622, hereafter referred to as the canned goods item, a list of canned goods and other articles upon which a rate of 31½ cents, minimum weight 36,000 pounds, applied from and to the points here involved. The canned goods item contained approximately 50 commodities listed under the general heading of "canned goods, pickles, preserves in earthenware, glass or metal cans, boxed; or in metal cans, pails or tubs, crated, or in bulk in barrels or kegs". The list included "olives, in packages named; or in bulk in kits, pails or tubs". Complainants contend that

olives, in barrels, in brine, are included in the canned goods item and that their shipments were overcharged to the extent the rate assessed and collected exceeded the canned goods rate of 31½ cents.

Defendant on the other hand claims the rate of 31½ cents does not apply on olives, in brine, in barrels, because in this form olives are not considered "canned goods", as they require a further process before they are fit for human consumption. While defendant's contention may be technically correct, it has lost sight of the fact that the general heading over the list of articles embraced in the item is to some extent a misnomer. The canned goods item includes not only those commodities ordinarily referred to as canned goods but is intended to and does include numerous articles such as catsup, ground chili in boxes, salad dressing, vinegar in bulk in kits, pails or tubs, which in a technical sense are not canned goods.

The record shows that a similar item published in Transcontinental Freight Bureau Eastbound Tariff No. 3-1 was construed by the traffic officials of The Atchison, Topeka and Santa Fe Railway, Southern Pacific Company, Union Pacific System, Chicago & Northwestern Railroad Company and the Transcontinental Freight Bureau to include inedible olives, in brine, in barrels. Moreover defendant's Freight Traffic Manager located at Chicago, Illinois, in a letter to complainants' representative, expressed the opinion that the canned goods item in its Tariff 12375-K would include inedible olives, in barrels, in brine, and that the 31½-cent rate was applicable from and to the points here involved. Apparently the only reason this complaint was not adjusted on the basis of a straight overcharge was because the traffic officials of defendant in this territory placed a different interpretation upon the canned goods item.

Upon consideration of all the facts of record we are of the opinion and so find that the rate of 38½ cents assessed on complainants' shipments was inapplicable under the tariffs and was collected in violation of Section 17 of the Act. We further find that the lawful rate was 31½ cents, minimum weight 36,000 pounds; that complainants made the shipments as described, paid and bore the charges thereon and are entitled to reparation, with interest at 6 per cent., in the amount of the difference between the rate charged and the rate here found applicable.

In view of this obvious interpretation of the tariff the cause for the other allegations of the complaint has been removed.

O R D E R

This case being at issue upon complaint, full investigation of the matters and things involved having been had, and basing this order upon 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 ordered to cease and desist and thereafter to abstain from applying, demanding, collecting or receiving for the transportation of olives, in brine, in barrels, in carloads, from Fresno, Lindsay, Orange Cove, Porterville, Cutler, Hanford and Del Rey to San Diego a rate exceeding 31½ cents per 100 pounds, minimum carload weight 36,000 pounds.

IT IS HEREBY FURTHER ORDERED that defendant, The Atchison, Topeka and Santa Fe Railway Company, be and it is hereby authorized and directed to refund to complainants, Boliver Packing Company and C. M. Gifford & Sons, according as their interests may appear, all charges collected in excess of 31½ cents per 100

pounds, minimum carload weight 36,000 pounds, with interest at six (6) per cent. per annum, for the transportation of olives in brine, in barrels, involved in this proceeding, from Orange Cove, Porterville, Lindsay, Cutler, Hanford and Del Rey to San Diego.

Dated at San Francisco, California, this 3rd day of June, 1930.

W. S. Kearney

Leon Whitely
Thos B. Hoatt

Commissioners.