

Decision No. 22676

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

LIBBY, McNEILL & LIBBY,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
THE WESTERN PACIFIC COMPANY,
THE TIDEWATER SOUTHERN RAILWAY COMPANY,
Defendants.

Case No. 2852.

BY THE COMMISSION:

ORIGINALO P I N I O N

Complainant is a corporation located at San Francisco. By complaint filed April 16, 1930 and as amended it is alleged that the rates assessed and collected on numerous carloads of fresh fruit moving from Waterford, Romain, Stewart and Stockton to Sunnyvale during July, August and September, 1928 were 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.

Waterford is on the Oakdale branch and Romain (now known as Solyc) is on the main line of the Southern Pacific Company 42 and 33 miles respectively south of Stockton. Stewart is on the Tidewater Southern Railway 26 miles south of Stockton, and Sunnyvale is on the Coast Division of the Southern Pacific Company 8 miles north of San Jose. Complainant's shipments of peaches to Sunnyvale consisted of 29 carloads from Waterford, 34 from Romain,

21 from Stockton and 56 from Stewart. The shipments from Waterford, Romain and Stockton moved via the Southern Pacific direct. Of the 56 cars from Stewart 20 were routed via the Tidewater Southern Railway to Stockton thence Southern Pacific and 36 were routed via the Tidewater Southern Railway to Stockton, Western Pacific Railroad to San Jose thence Southern Pacific.

The legally applicable rates at the time the shipments moved were the Class "C" rates subject however to the third class minimum rate of $17\frac{1}{2}$ cents. The latter rate in all cases was in excess of the actual Class "C" rates.

Complainant asks for reparation to the basis of the actual Class "C" rates except with respect to the 36 cars from Stewart to Sunnyvale routed via the Tidewater Southern Railway to Stockton, Western Pacific to San Jose, thence Southern Pacific. On the latter shipments complainant asks for reparation to the basis of the Class "C" rate of 17 cents from Stewart to Sunnyvale applicable via the Tidewater Southern, Stockton, thence Southern Pacific.

Defendants admit the allegations of the complaint and have signified a willingness to make a reparation adjustment, therefore under the issues as they now stand a formal hearing will not be necessary. Defendants should publish specific commodity rates of the volume of the rates hereinafter found reasonable.

After consideration of all the facts of record we are of the opinion and find that the assailed rates to Sunnyvale were unjust and unreasonable to the extent they exceeded 17 cents from Waterford and Stewart, 15 cents from Romain and $12\frac{1}{2}$ cents from Stockton to Sunnyvale; that complainant paid and bore the charges on the shipments in question and has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable and is entitled to reparation without interest. Complainant specifically waived

the payment of interest.

The exact amount of reparation is not of record. Complainant will submit to defendant for verification a statement of the shipments made and upon the payment of reparation defendants 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 answers 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 defendants Southern Pacific Company, The Western Pacific Railroad Company and The Tidewater Southern Railway according as they participated in the transportation be and they are hereby authorized and directed to refund to complainant, Libby, McNeill & Libby without interest all charges collected in excess of those that would have accrued at rates of 17 cents from Waterford and Stewart, 15 cents from Romain and 12½ cents from Stockton for the transportation to Sunnyvale of the shipments of fresh peaches involved in this proceeding.

Dated at San Francisco, California, this 14th day of July 1930..

C. Searcy
Leon W. Wood
Thos. J. Lewis
COMMISSIONERS.