

Decision No. 22070.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

LIBBY, McNEILL & LIBBY,)

Complainant,)

vs.)

SOUTHERN PACIFIC COMPANY,)

Defendant.)

Case No. 2908.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation with its principal place of business at San Francisco. By complaint filed August 27, 1930, it is alleged that the rate assessed and collected on numerous carloads of peaches shipped from Waterford to Stockton August 24 and 25, 1928, was unjust and unreasonable. The charges on all of the shipments were paid within the two-year statutory period.

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

Waterford is on the Oakdale branch of the Southern Pacific Company 42 miles south of Stockton. Charges were assessed on complainant's shipments consisting of seven cars of fresh peaches on basis of the legally applicable rate of $8\frac{1}{2}$ cents. Complainant contends that fresh fruit rates in California are generally equal to the actual Class "C" rates, subject to a minimum of $7\frac{1}{2}$ cents, and seeks reparation to that basis. After the shipments moved a rate of $7\frac{1}{2}$ cents was specifically published in Southern Pacific Local, Joint and Proportional Freight Tariff

817-C, C.R.C. 2865.

Defendant admits that the rate assessed was unreasonable to the extent it exceeded $7\frac{1}{2}$ cents and has signified its 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 $7\frac{1}{2}$ 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 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.

C 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 Waterford to Stockton of the shipments of peaches involved in this proceeding.

Dated at San Francisco, California, this 16th day of October, 1930.

W. J. Weaver
Emmeline H. H.
Leon C. H. H.

Commissioners.