

Decision No. 28120

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA FRUIT GROWERS EXCHANGE,)

Complainant,)

vs.)

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,
SOUTHERN PACIFIC COMPANY,)

Defendants.)

Case No. 2912.

ORIGINAL

BY THE COMMISSION:

O P I N I O N

Complainant is a voluntary unincorporated, non-profit association engaged in the production and marketing of citrus fruits. By complaint filed September 10, 1930, and as amended October 10, 1930, it is alleged that the rates assessed and collected on two cars of citrus fruit moving from Upland to Watsonville during March 1929 were unreasonable in violation of Section 13 of the Public Utilities Act. Reparation only is sought.

Upland is situated on The Atchison, Topeka and Santa Fe Railway 40 miles east of Los Angeles. Watsonville is on the Southern Pacific Company 51 miles south of San Jose. Charges were assessed on complainant's shipments on basis of a rate of 46 cents per 100 pounds plus \$7.20 per car. The 46-cent rate is made by use of a class rate of 10½ cents from Upland to Colton plus a commodity rate of 35½ cents from Colton to Los Angeles. The \$7.20 charge applies on freight regardless of classification from Watsonville Junction to Watsonville. These rates are pub-

lished in A.T. & S.F. Ry. Tariff C.R.C. 619, S.P.Co. C.R.C. 2865 and S.P.Co. C.R.C. 2904 respectively. Effective November 12, 1929, in Supplement 2 to Pacific Freight Tariff Bureau Tariff 65-A, C.R.C. 453, there is published a joint rate of 35½ cents per 100 pounds applying from Upland to Watsonville Junction when routed via Los Angeles. Complainant seeks reparation to the basis of the 35½-cent rate to Watsonville Junction plus the \$7.20 per car charge from Watsonville Junction to Watsonville.

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.

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 35½ cents per 100 pounds plus \$7.20 per car; that complainant made these 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 defendants for verification a statement of the shipments made and upon the payment of the 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 The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund without interest to complainant California Fruit Growers Exchange all charges collected in excess of 35½ cents per 100 pounds plus \$7.20 per car for the transportation from Upland to Watsonville of the shipments of citrus fruit involved in this proceeding.

Dated at San Francisco, California, this 24th day of November, 1930.

Al Sweeney
Emmert

Thos. S. Green

Commissioners.