

Decision No. 23209.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

HAUSER PACKING COMPANY,

Complainant,

vs.

THE WESTERN PACIFIC RAILROAD COMPANY,
SOUTHERN PACIFIC COMPANY,

Defendants.

ORIGINAL

Case No. 2781.

R. S. Sawyer, for the complainant.

J. E. Lyons and E. E. McElroy, for Southern
Pacific Company, one of the defendants.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation with its principal place of business at Los Angeles. By complaint filed November 4, 1929, and as amended, it is alleged that the rates assessed and collected on seven double-deck cars of sheep moving from Spring Garden, Hawley and Loyalton to Guadalupe during the period July 25 to December 2, 1927, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act.

Reparation and rates for the future are sought. Rates are stated in dollars per double-deck car.

Spring Garden and Hawley are on the main line of the Western Pacific Railroad 158 and 190 miles respectively east of Sacramento. Loyalton is on the Loyalton branch 12 miles south of Hawley. Complainant's shipments consisted of two double-deck cars of sheep moving from Spring Garden August 18, 1927, four

double-decks from Hawley moving July 25 and August 18, 1927, and one double-deck from Loyalton moving September 6, 1927. While all of the shipments were originally billed to Guadalupe, a point on the Coast Route of the Southern Pacific Company 197 miles north of Los Angeles, they were later reshipped to Los Angeles. For the original movement to Guadalupe and the subsequent one from there to Los Angeles defendants assessed and collected the local rates for each movement.

After the complaint was filed defendants informed the Commission that they were willing to establish joint rates of \$125.50 per car on sheep from Spring Garden and Hawley and \$148.00 from Loyalton to Guadalupe, and to pay reparation to complainant to this basis provided the statute of limitations had not run against the shipments. The \$125.50 rate is the same as the rate from Flanigan, Nevada, to Guadalupe. The rate of \$148.00 is the proposed rate from Hawley plus the local rate of \$22.50 from Loyalton to Hawley. Complainant stated the proposed adjustment would satisfy the complaint.

A public hearing was held before Examiner Geary at Los Angeles, primarily to determine whether or not the statute of limitations had run against the shipments.

Complainant purchased the cars of livestock here at issue, at Guadalupe. The Los Angeles paid freight bills showed that the stock originally came from Spring Garden, Hawley and Loyalton, but the record does not show who the original shippers were nor the purpose for which the stock was sent to Guadalupe. Presumably it was to be fed and fattened before being sold for slaughter in some one of the primary markets. The shipments to Guadalupe were made under separate billing and the freight charges paid at Guadalupe. The date of payment was more

than two years prior to the filing of the complaint. After complainant purchased the stock at Guadalupe it was shipped to Los Angeles under separate billing and the freight charges for the haul from Guadalupe were paid at Los Angeles within the two-year statutory period. Complainant contends that the movement from Guadalupe to Los Angeles was part of a through movement from Spring Garden, Hawley and Loyaltan and therefore the cause of action did not accrue until the final freight charges were paid at Los Angeles.

At the time of movement to Guadalupe there were no through rates nor specific transit arrangements in effect via the route of movement from Spring Garden, Hawley and Loyaltan to Los Angeles. The only material evidence in the record to support complainant's contention is the Los Angeles paid freight bills, showing that the shipments originated at points beyond Guadalupe. However this, standing alone, is insufficient to establish a continuity of movement from the points of origin to Los Angeles. The burden of proof is upon complainant to show affirmatively that at the time the shipments left the points of origin Guadalupe was not intended to be the final destination; that the stoppage of cars at that point was purely an incident of an intended through movement, and that the intention of the shipper was finally carried out. In the absence of such an affirmative showing we must conclude that the movement to Guadalupe was separate and distinct from the movement from Guadalupe to Los Angeles. (see Baltimore and O.S.W.Co. vs. Settle, 260 U.S. 186). As the cause of action on the shipments to Guadalupe accrued more than two years prior to the filing of the complaint, the Commission is without authority under the provisions of Section 72 of the Public Utilities Act to award reparation to the basis proposed by defendants.

Subsequent to the hearing in this proceeding complainant discovered that 17 additional cars from points contiguous to Spring Garden and Hawley had moved to Guadalupe and Baroda and were subsequently reshipped to Los Angeles. Four of these cars moved from Portola to Guadalupe on August 2, 1922, five moved from Blairsden to Baroda on August 20th, and eight from Portola to Baroda on August 23th. Complainant requested permission to include these cars within the original complaint. Defendants did not oppose the inclusion of these cars in this proceeding, and were willing to reparate to the basis of the proposed rates. The amendment to the complaint was received by the Commission August 6, 1930. While some of the cars moved more than two years prior to the date, the freight charges on all 17 were paid within the two-year statutory period. In Hercules Gasoline Co. et al. vs. A.T. & S.F. Ry. et al., 34 C.R.C. 451, we held that the cause of action accrues upon the date the freight charges are paid. Reparation may properly be paid upon these 17 cars.

The record does not show whether or not complainant paid and bore the freight charges on these 17 cars to Guadalupe and Baroda, referred to above. Our order therefore will authorize and direct defendants to pay the reparation, subject to the condition that a verified statement is filed with the Commission and the defendants within 30 days from the date hereof, showing that complainant paid and bore the charges on the shipments in question, and the amount thereof. Should it not be possible to reach an agreement as to the amount of reparation, the matter may then be referred to us for further consideration and the entry of a supplemental order should this be necessary. An order will be entered accordingly.

O R D E R

This case having been duly heard and submitted, full

