

Decision No. 23485.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

C. SWANSTON & SON,

Complainant,

vs.

THE WESTERN PACIFIC RAILROAD COMPANY,
SACRAMENTO NORTHERN RAILWAY,

Defendants.

Case No. 2965.

BY THE COMMISSION:

ORIGINALO P I N I O N

Complainant is a corporation with its principal place of business at Sacramento. By complaint filed November 28, 1930, and as amended January 7, 1931, it is alleged that the charges assessed and collected for the transportation of two cars of cattle forwarded from Hawley to Sacramento January 17, 1929, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act. Reparation, with interest, is sought. Rates are stated in dollars per car.

Hawley is on The Western Pacific Railroad and Swanston on the Sacramento Northern Railway 190 and 9 miles respectively east of Sacramento. Charges were assessed and collected on complainant's shipments on basis of the legally applicable rate of \$71.00 published in Pacific Freight Tariff Bureau Livestock Tariff 193-B, C.R.C. 432, plus a bedding charge of \$1.00. The latter charge however is not in issue. Effective April 15, 1930, in Supplement 27 to the tariff just mentioned defendants published

a rate of \$65.00 from Hawley to Swanston and it is on the basis of this subsequently established rate that complainant seeks reparation.

Defendants admitted the allegations of the complaint and signified their 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 is unjust and unreasonable to the extent it exceeded \$65.00 per car; that complainant made the shipments as described, paid and bore the charges thereon and is entitled to reparation with interest at 6% per annum. This finding is without prejudice to any different conclusions which may be reached in proceedings now pending before the Commission and involving the level of rates on live stock.

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 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 defendants The Western Pacific Railroad Company and Sacramento Northern Railway according as they participated in the transportation, be and they are hereby authorized and directed to refund, with interest at six (6) per cent. per annum, to complainant, C. Swanston & Son, all charges collected in excess of \$65.00 per car for the transportation from Hawley to Swanston of the shipments of cattle involved in this proceeding.

Dated at San Francisco, California, this 9th day of March, 1931.

Cl. Scammon

Leon C. Whittier

M. A. Carr

M. B. Harris

Frederic S. Pleasent
Commissioners.