

Decision No. 23803.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

TWOHEY BROS. CO. & J. F. SHEA CO.,
a partnership,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

Case No. 2956.

BY THE COMMISSION:

O P I N I O N

By complaint filed November 14, 1930, complainant, a partnership, alleges that the rate assessed and collected on a crane transported from Los Altos to Clements November 13, 1928, was unreasonable and excessive in violation of the Public Utilities Act. The charges on the shipment were paid within the two-year statutory period.

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

Los Altos is on the Los Altos branch of the Southern Pacific Company 36 miles south of San Francisco; Clements is on the Lodi branch 24 miles northeast of Stockton. Charges were assessed on complainant's shipment consisting of a "Northwest Crawler" crane loaded on Car SP 40516, on basis of the Class "A" rate of 25½ cents published in Southern Pacific Company Tariff 711-C, C.R.C. 2843. At the time the shipment moved, as

well as now, there was in effect in Pacific Freight Tariff Bureau Exception Sheet I-M, C.R.C. 437 of F. W. Gomph, Agent, an item providing for the application of one half of the Class "A" rate on shipments of derricks and cranes "returned to original point of shipment over the same line or route as the original outbound movement". The shipment here involved was previously forwarded from Clements to Los Altos via defendant's line of May 8, 1928, on Car SP 72553.

Defendant admits that the applicable rate is 15 cents (one half of the Class "A" rate of 25½ cents, disposing of fractions in accordance with Rule 36 of Consolidated Freight Classification No. 5, F. W. Gomph's C.R.C. 412), 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 is inapplicable to the extent it exceeds 15 cents per 100 pounds; that complainant made the shipment as described, paid and bore the charges thereon and is entitled to reparation in amount of the difference between the rate paid and the rate here found applicable.

The exact amount of reparation due is not of record. Complainant will submit to defendant for verification a statement of the shipment made and upon the payment of 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.

O R D E R

This case being at issue upon complaint and answer on ~~the~~ ~~subject~~ ~~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, Troky Bros. Co. & J. F. Shea Co., all charges collected in excess of 13 cents per 100 pounds for the transportation from Los Altos to Clements of the shipment involved in this proceeding.

Dated at San Francisco, California, this 19th day of April, 1932.

W. C. Cavanaugh
Leon Anthony

W. H. J. Cavanaugh

W. B. Harris

Frederic A. Stewart
Commissioners.