

Decision No. 23788.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

BOLIVER PACKING COMPANY,
 C. M. GIFFORD & SONS,
 OLD MISSION CANNERIES, INC.,

Complainants,

vs.

THE MITCHELSON, TOPEKA AND SANTA FE
 RAILWAY COMPANY,

Defendant.

ORIGINAL

Case No. 2848.

F. A. Jones and C. J. Gamble, for complainants.

Berne Levy and G. E. Duffy, for defendant.

BY THE COMMISSION:

OPINION

Complainants are engaged in packing and canning olives at San Diego. By complaint filed April 8, 1930, it is alleged that the rates assessed and collected by defendant for the transportation of olives, in tanks or vats, in brine, from Fresno, Lindsay, Orange Cove and related points to San Diego were since April 1, 1928, are now and for the future will be unjust, unreasonable, excessive, unduly discriminatory and prejudicial in violation of Sections 13, 17 and 19 of the Public Utilities Act. Reparation and rates for the future are sought. Rates are stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at San Diego, and the matter having been submitted and briefs filed

is now ready for an opinion and order.

Complainants' shipments consisted of 49 cars of "orchard run" olives in brine, 27 of which originated at Lindsay and 22 at Hanford. All of them were destined to San Diego. The olives were shipped in tanks in a solution of salt and water. The brine is used solely as a preservative and the olives in this state are inedible. Upon arrival at destination they were processed and then sold as edible olives.

The handling accorded these shipments is decidedly different from that encountered in the transportation of ordinary freight. The record shows that at the beginning of the season (about October of each year) complainants order flat cars from the carriers and install thereon at their own expense large tanks or vats especially designed for the transportation of olives. The tanks are of steel or wood construction and are of such size that four of them are placed on an ordinary flat car. The cars so equipped are light-weighted and this weight is used as the tare until the close of the season in January or February. Thereupon the cars are dismantled and again placed in service as flat cars while the tanks are returned to the custody of their owners. During the time the equipment is used by complainants it may not be used for any other purpose, thus obviously requiring an empty haul of approximately 100 per cent. The vats are emptied by means of an outlet valve which must of necessity be on the side from which unloading is done. This frequently necessitates an extra switch movement.

Defendant has been assessing a rate of $38\frac{1}{2}$ cents, minimum 24,000 pounds, as provided in Items 80 and 570 of A.T. & S. F.Ry.Co. Tariff 11992-G, Cal.R.C. 620. This rate is blanketed from Stockton to Barstow in the origin territory. Based on the

average loading of complainants' shipments (47,591 pounds) the 38½-cent rate from Lindsay to San Diego, as typical, produced a per car mile revenue of 42.34 cents and a per ton mile revenue of 17.7 mills. As already stated, there is an empty haul of approximately 100%. While complainants attack the 38½-cent rate as being unreasonable, discriminatory and inapplicable under the tariff, the evidence was devoted mainly to the last named issue. The record does not sustain the allegation that the rate was unreasonable or discriminatory.

Complainants attack the 38½-cent rate as being inapplicable to the extent it exceeded 31½ cents. The latter rate is the so-called canned goods rate in defendant's Tariff 17375-K, and applies on some 50 articles ordinarily classed as canned goods. The articles, listed under the generic heading "Canned goods, pickles, preserves in earthenware, glass or metal cans, boxed; or in metal cans, pails or tubs, crated; or in bulk, in barrels or kegs", include "Olives in packages named; or in bulk, in kits, pails or tubs".

In Boliver Packing Co. et al. vs. A.T. & S.F. Ry., 34 C.R.C. 733, we held that the canned goods rate applied on inedible olives, in barrels. Complainants contend that inasmuch as the 31½-cent rate applies on olives, in barrels, then by virtue of Rule 5 of the Western Classification, F. W. Comph's C.R.C. 412, the barrel rate also applies on shipments in tank cars. Rule 5 however cannot here be invoked as it applies only as a basis for computing charges on shipments not conforming to established packing requirements but which have come into the carriers' possession inadvertently and for which no rate or rating would otherwise be provided. As the 38½-cent rate assessed on complainants' shipments was unrestricted as to packing requirements there was a specific rate on olives in the form shipped.

This specific rate cannot be nullified by Rule 5.

After consideration of all the facts of record we are of the opinion and so find the complaint should be dismissed.

O R D E R

This case having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing the order on the findings of fact and the conclusions contained in the preceding opinion,

IT IS HEREBY ORDERED that Case 2848 be and it is hereby dismissed.

Dated at San Francisco, California, this 15th day of June, 1931.

C. J. Seaver
Leon Whittell
M. A. Curran
M. B. Harvey
Fred G. Stewart
Commissioners.