

Decision No. 23791

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

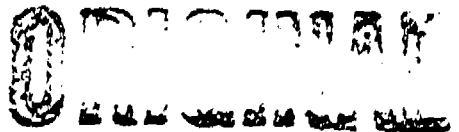
ROSENBERG BROTHERS AND COMPANY,

Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

Defendant.



Case No. 2889.

E. W. Hollingsworth and Bishop & Bahler, for
complainant.

G. E. Duffy, for defendant.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation with its principal place of business at San Francisco. By complaint filed July 12, 1930, and as amended July 24, 1930, it is alleged that the charges assessed and collected by defendant for the transportation of dried fruit in carloads from Parlier and Del Rey to Fresno and from Oakley to San Francisco during the two-year period immediately preceding the filing of this complaint were greater than those concurrently applicable for a longer haul over the same route in the same direction, the shorter being included within the longer haul.

Reparation only is sought.

A public hearing was held before Examiner Geary at San Francisco, and the case having been duly heard and submitted is now ready for an opinion and order.

The line haul movement on complainant's shipments was over the Atchison, Topeka and Santa Fe Railway. At destination the cars were switched from the Atchison, Topeka and Santa Fe interchange tracks to industry tracks on the Southern Pacific Company.

Defendant assessed and collected line haul rates of 7 cents from Parlier and Del Rey to Fresno and 8 cents from Oakley to San Francisco plus in each instance a switching charge of \$2.70 per car for the movement from defendant's interchange to industry tracks on the Southern Pacific Company at destination.

At the time the shipments moved defendant maintained rates of 7 cents from Reedley to Fresno and 8 cents from Stockton to San Francisco. Parlier and Del Rey are directly intermediate to Reedley in the movement to Fresno, and Oakley is directly intermediate to Stockton in the movement to San Francisco. Both Reedley and Stockton are competitive points as that term is defined in defendant's terminal tariff and therefore the Southern Pacific Company's switching charge of \$2.70 per car is absorbed at Fresno and San Francisco. The line haul rates from these points being the same as from Parlier and Del Rey to Fresno and from Oakley to Stockton, the absorption of the switching charges resulted in a departure from the long and short haul restrictions of Section 21 of Article XII of the State Constitution and Section 24(a) of the Public Utilities Act. When complainant's shipments moved defendant was without authority of this Commission to create these departures. Defendant does not deny that the charges were collected in violation of the long and short haul restrictions.

In San Francisco Milling Company vs. Southern Pacific Company, 34 C.R.C. 453, and Chamberlain Co. Inc. et al. vs. A.T. & S.F.Ry. et al., 35 C.R.C. 63, we held that a shipper who had been assessed a rate maintained in violation of the long and short haul provisions of the State Constitution and the Public Utilities Act was damaged in the amount of the difference between the rate assessed and the lower rate in effect from or to a more distant point and was entitled to reparation. Our jurisdiction to award damages in such cases was upheld by the California Supreme Court in A.T. & S.F.Ry. et al. vs. Railroad Commission et al. (April 27, 1931), 81 Cal. Dec. 667.

Upon consideration of all the facts of record we are of the opinion and find that the charges on complainant's shipments were assessed and collected in violation of Section 24(a) of the Public Utilities Act and of Section 21, Article XIII of the State Constitution. We further find that complainant paid and bore the charges on the shipments in question, that it has been damaged to the extent of the difference between the charges paid and those in effect from the more distant point, and that it is entitled to reparation, with interest at 6% per annum.

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

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 defendant, The Atchison, Topeka and Santa Fe Railway Company, be and it is hereby authorized and directed to refund to complainant, Rosenberg Brothers and Company, together with interest at six (6) per cent. per annum, all charges collected in excess of 7 cents per 100 pounds for the transportation from Del Rey and Parlier to Fresno and 8 cents per 100 pounds for the transportation from Oakley to San Francisco of the shipments of dried fruit involved in this proceeding.

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

C. Seavey
Leon Whitwell
M. A. Cunn
W. B. Harris
Frank G. Stewart
Commissioners.