

Decision No. 23796.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

STANDARD PACKING COMPANY,
WOODWARD-BENNETT PACKING COMPANY,
COAST PACKING COMPANY,
DISTRIBUTORS PACKING COMPANY,
UNION PACKING COMPANY,
MERCHANTS PACKING COMPANY,
NEWMARKET COMPANY,
GLOBE PACKING COMPANY,
LOS ANGELES PACKING COMPANY,
ASSOCIATED MEAT COMPANY,
ASSOCIATED MEAT COMPANY OF CALIFORNIA,
SAN ANTONIO MEAT COMPANY,
PEERLESS PACKING COMPANY,
W. H. GOODNO,
D. H. LILLYWHITE,
WASEBURN & CONDON,
SOUTHWEST COMMISSION COMPANY,
CALIFORNIA LIVE STOCK COMMISSION
COMPANY, INC.,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY,
HOLTON INTER-URBAN RAILWAY COMPANY,

Defendants.

Case No. 3040.

Richard T. Eddy, for complainants and The Cudahy
Packing Company, intervener.

James E. Lyons and H. H. McElroy, by H. H.
McElroy, for defendants.

CARR, Commissioner:

O P I N I O N

On April 6, 1931, Standard Packing Company and seven-
teen other complainants filed their complaint alleging the defend-
ant carriers had misapplied their tariffs on various live stock
shipments moving from Imperial Valley branch line points and from

points on the Chowchilla, Springville and Lompoc branches of the Southern Pacific Company to Pomona and Los Angeles, and also that its charges assessed and collected were unreasonable and unduly prejudicial. The Cudahy Packing Company intervened as a complainant.

At the hearing the issue was by stipulation narrowed to one of overcharge only, under an erroneous tariff interpretation.

Mileage rates on live stock are published by the carriers (Sec.D of Southern Pacific Tariff 645-D, C.R.C. 3118). These rates apply in the absence of, or when lower than, the specific point to point rates in Sections A, B and C of the same tariff. This tariff, as it affects mileage rates, carries two notes as follows:

"Note 1. - In computing rates between any two points located on the same branch, or to, from or via branch line points (other than those referred to in Note 3), add \$3.50 per car (regardless of length), for each branch line haul to rates obtained by use of distance scale shown on pages 184 and 185 (for list of branch lines see page 190). Points on Holton Inter-Urban Ry. Co. will be considered as branch line points in obtaining rates by use of distance scale shown on pages 184 and 185. In computing rates to or from points on the Perru Branch, the Springville Branch and the Perru Branch will be considered as one branch line."

"Note 2. - (Applies on Intrastate Traffic only.) Rates must be constructed and applied via short line mileage except as provided in paragraph (c) of Exceptions, or when addition of \$3.50 per car (as provided in Note 1) makes a higher rate than can be obtained via the longer route, apply the lower rate via the long line route.

(Applies on Interstate Traffic only.) Rates must be constructed and applied via short line mileage except as provided in paragraph (c) of Exceptions."

Note 2, it is claimed by the complainants, is to be construed as calling for the application of the long-line mileage rate without the addition of any branch-line arbitrary of \$3.50 per car when a lower rate results than from the use of the short-line mileage plus the arbitrary. Charges assessed under this construction of the tariff, it is contended, are what

complainants should be called upon to pay.

The defendant carriers, on the other hand, urged that the note does not say that the arbitrary should not be added to the long-line mileage, that Note 2 was inserted to meet a peculiar condition involving shipments over the San Ramon Branch of the Southern Pacific Company, where carriage over an intermediate branch resulted in a shorter mileage than over the main line route over which traffic moved, and that Note 2 has no application to movements such as were here involved.

If the purpose of the note were as claimed by the carriers their choice of language was singularly inept. The most that may be said for them is that the tariff is ambiguous, in which case, under the well-established rules, it is to be construed against them unless an unreasonable result should follow. (Golden Gate Brick Company vs. Western Pacific Railroad, 2 C.R.C. 607. In the Matter of the Suspension of Rule 85-A, 30 C.R.C. 372. San Francisco Milling Company vs. Southern Pacific, 33 C.R.C. 178. Pacific Coast Shippers Assn. vs. A.C. & Y.R.Co., 112 I.C.C. 527.) Here the construction urged by the complainants does not produce unreasonable rates but rather rates in accord with the basis now in effect from Imperial Valley points under finding and order of the Commission in California Livestock Commission Co. et al. vs. Southern Pacific et al., 35 C.R.C. 31, and in harmony with the so-called Arizona-California Live Stock Scale as established by the Interstate Commerce Commission. (Arizona Cattle Growers Assn. vs. A. Ry. Co., 101 I.C.C. 181.)

Defendants should refund to complainants the amount assessed and borne by them within two years of the date of filing the complaint (and to intervener within two years of the date when its intervention was filed herein), from points in the Imperial Valley and on the Springville and Lompoc Branches

and on and after March 26, 1930, from points on the Chowchilla Branch, in excess of the amount lawfully applicable on the basis of long-line mileage, without addition of a branch-line arbitrary.

I recommend the following form of order:

O R D E R

A public hearing in the above entitled matter having been duly had and the matter having been submitted,

IT IS HEREBY ORDERED that the defendant carriers refund to the complainants overcharges assessed to and borne by complainants and intervenors as indicated in the opinion preceding this order. If the amount of the overcharges cannot be agreed upon between the parties, complainants may ask to have the case set down for further hearing, for a determination of the precise amounts to be refunded.

The effective date of this order shall be twenty (20) days from the date hereof.

The foregoing opinion and order are hereby adopted as the opinion and order of the Commission.

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

C. C. Seaver
Leon Whitney
M. J. Lee
W. B. Harris
Fred G. Stewart
Commissioners.