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Decision No. 24213.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

GENFIRE STEEL COMPANY,

Complainant,

vs.

LOS ANGELES JUNCTION RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY,

Defendants.

Case No. 2950.

V. O. Conaway, for complainant.

A. Burton Mason, for defendant Southern Pacific Company.

BY THE COMMISSION:

OPINION ON REHEARING

By our Decision No. 23842 of June 29, 1931, we found that the freight charges assessed and collected on one carload of structural steel originating on the Los Angeles Junction Railway Company at Los Angeles, transported to Ione and subsequently returned to the point of origin, Los Angeles, were unreasonable, and awarded complainant reparation in the amount of $109.70 with interest. Upon petition of defendant Southern Pacific Company the proceeding was reopened for further hearing September 17, 1931, before Examiner Geary at Los Angeles.

The complaint was filed in the name of the Genfire Steel Company, a fictitious name for a division of the Truscon Steel Company. Defendant Southern Pacific Company moved to

dismiss the complaint on the grounds that the proper party defendant was not before us, and moreover that if the Truscon Steel Company was the proper complainant, its right to recover reparation was barred by the provision in Section 71 of the Public Utilities Act prohibiting the assignment of a reparation claim. In view of our conclusions herein it will not be necessary to pass upon defendant's motion.

As previously stated, reparation was awarded upon the grounds that an unreasonable charge had been made against the shipments. The complaint however raised only one issue, and that was whether or not the charges were properly assessed in accordance with the tariff as required by Section 17 of the Public Utilities Act. Consideration will be given here to the issue of tariff interpretation.

The facts as developed at the original hearing and on rehearing may be briefly summarized as follows:

The Genfire Steel Company shipped a carload of structural steel from Los Angeles to Ione upon which defendant assessed a 5th class rate of 54½ cents. This rate was legally applicable and is not here in issue. Upon arrival of the car at Ione consignee removed a portion of the consignment and ordered the balance returned to complainant at Los Angeles. Under the provisions of Rule 135 of Pacific Freight Tariff Bureau Exception Sheet 1-M, C.R.C. 437, of F. W. Comph, Agent, one half the outbound rate is applicable on a returned shipment if certain provisions in the rule are complied with. One provision requires that a notation be made on the bill of lading showing reference to the outbound shipment and waybill. Complainant complied with all the terms of Rule 135 except the one to which reference has just been made. Because all the requirements of Rule

135 had not been complied with, defendant assessed the full local rate from Ione to Los Angeles.

The consignee of the outbound shipment from Los Angeles to Ione was the shipper from Ione to Los Angeles, and he signed the bill of lading. The agent at Ione actually filled out the document upon instructions from the shipper. However there is nothing in the original record in this proceeding nor on rehearing which indicates that he was instructed to endorse the bill of lading to show reference to the outbound shipment and waybill as required by Rule 135, or that he was informed that the shipment was one coming within the provisions of Rule 135. It is a well-established principle that a shipper is charged with a knowledge of the tariff and the burden was upon him to see that the bill of lading contained the proper notations to obtain the benefit of one half the outbound rate. Inasmuch as the requirements of Rule 135 were not complied with, one half the outbound rate was not applicable.

Upon further consideration of the record in the original hearing and upon rehearing we are of the opinion and so find that the complaint should be dismissed and our Decision No. 23842 of June 29, 1931, annulled and set aside.

O R D E R

This case having been reheard, 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 preceding opinion,

IT IS HEREBY ORDERED that Decision No. 23842 of June 29, 1931, be and it is hereby annulled and set aside.

IT IS HEREBY FURTHER ORDERED that this proceeding be and it is hereby dismissed.

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

C. E. Henney

M. B. Harris

Fred E. Stewart

Commissioners.