

Decision No. 24246.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

LIBBY, McNEILL & LIBBY, )  
 Complainant, )  
 vs. )  
 SOUTHERN PACIFIC COMPANY, )  
 Defendant. )

ORIGINAL

Case No. 3107.

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 August 12, 1931, it is alleged that the charges assessed and collected during the two-year period immediately preceding the filing of the complaint, for the transportation from Romain and Solyo to Sacramento of numerous shipments of fresh fruit, were unjust and unreasonable in violation of the Public Utilities Act.

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

Complainant's shipments, consisting of 57 cars of peaches, originated on the line of the Southern Pacific Company 81 miles south of Sacramento at a station formerly known as Romain but subsequently renamed Solyo. Charges were assessed and collected on basis of a commodity rate of 13 cents applying from Westley, a point six miles beyond Solyo, to Sacramento. Peaches in carloads are ratable at

third class in the Western Classification, F. W. Gomp's C.R.C. No. 465, and at Class "C" in Pacific Freight Tariff Bureau Exception Sheet I-N, C.R.C. 448. Class "C" from Solyo to Sacramento is  $12\frac{1}{2}$  cents. This rate however is not applicable because of the provisions of Rule 155 of Exception Sheet I-N, providing minimum class rates to be determined by the use of the Western Classification rating. The minimum third class rate in Rule 155 is  $17\frac{1}{2}$  cents. Effective June 27, 1930, however, defendant in its Tariff 817-D, C.R. C. 3338, published specifically a rate of  $12\frac{1}{2}$  cents and it is on the basis of this subsequently established rate that complainant seeks reparation.

Defendant admits the allegations of the complaint 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 rate assessed and collected on complainant's shipments was unjust and unreasonable to the extent it exceeded  $12\frac{1}{2}$  cents. We further find that complainant made the shipments as described, paid and bore the charges thereon and is entitled to reparation without interest. Complainant specifically waived the payment of interest.

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 the 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 Southern Pacific Company be and it is hereby authorized and directed to refund to complainant, Libby, McNeill & Libby, all charges collected in excess of 12½ cents per 100 pounds for the transportation from Romain and Solyo to Sacramento of the shipments of fresh peaches involved in this proceeding.

Dated at San Francisco, California, this 23<sup>d</sup> day of November, 1931.

Clarence  
Leon  
W. J. L.  
W. B. L.  
Fred G. Stewart  
Commissioners.