

**ORIGINAL**

Decision No. 24286.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

R. E. HAZARD CONTRACTING COMPANY,  
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY,  
SAN DIEGO & ARIZONA RAILWAY COMPANY,  
Defendants.

Case No. 3072.

C. J. Gamble, for the complainant.

Gerald E. Duffy, for defendant The Atchison,  
Topeka and Santa Fe Railway Company.

A. Burton Mason, for defendant Southern Pacific  
Company.

Reed G. Dilworth, for defendant San Diego &  
Arizona Railway Company.

HARRIS, Commissioner:

O P I N I O N

Complainant is a corporation organized and existing under the laws of the State of California, with its principal office and place of business at San Diego. By complaint filed June 8, 1931, it alleges that the charges assessed and collected on numerous carload shipments of common earth forwarded from Tom on the Southern Pacific to Spring Valley on the San Diego & Arizona Railway were unreasonable and prejudicial, in violation of Sections 13 and 19 of the Public Utilities Act.

A hearing was held at San Diego November 4, 1931, and the proceeding submitted.

Tom is a non-agency station on the Southern Pacific narrow gauge tracks north of Owenyo, at which point the tonnage must be transferred to broad gauge cars. It is then hauled by the Southern Pacific to Los Angeles, by the Atchison, Topeka and Santa Fe to San Diego, and <sup>by</sup> the San Diego & Arizona Railway to Spring Valley. Charges were originally collected on a combination of local rates, being made up of 13 cents Tom to Los Angeles, 21½ cents Los Angeles to San Diego, and 6 cents San Diego to Spring Valley, making a total rate of 40½ cents per 100 pounds. The charges as collected were one cent per 100 pounds in excess of the tariffs, which difference has been refunded as overcharges, leaving the actual amount paid 39½ cents per 100 pounds. The complainant contends that the rate charged was unreasonable to the extent it exceeded 24 cents per 100 pounds.

Neither the complainant nor the defendants offered any testimony. After conference with the attorney for complainant the defendants agreed to publish a joint rate of 29 cents per 100 pounds, and also offered to pay reparation, without interest, to the basis of this rate. The offer was accepted by the complainant, who withdrew the allegation of discrimination.

We are of the opinion that the rate of 39½ cents charged was unreasonable to the extent that it exceeded 29 cents per 100 pounds, and also find that complainant is entitled to reparation without interest.

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

The following form of order is recommended.

O R D E R

This case having been heard and submitted, 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 defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Diego & Arizona Railway Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund without interest to complainant, R. E. Hazard Contracting Company, all charges collected in excess of 29 cents per 100 pounds for the transportation from Tom to Spring Valley of the shipments of common earth involved in this proceeding.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7<sup>th</sup> day of December, 1931.

C. Seaver  
Leon W. Hildreth  
M. J. Carr  
M. B. Harris  
Frederic H. Cleveland

Commissioners.