

Decision No. 24529.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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

ORIGINAL

Case No. 3156.

BY THE COMMISSION:

O P I N I O N

Complainant is engaged in the canning business. By complaint filed December 16, 1931, it alleges that the charges assessed and collected on 21 carloads of fresh peaches shipped from Wilson to Gridley during August and September, 1930, were unjust and unreasonable in violation of the Public Utilities Act.

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

Wilson is on the Knights Landing branch and Gridley on the main line of the Southern Pacific Company 47 and 69 miles respectively north of Sacramento. Charges were assessed and collected on complainant's shipments at the legally applicable rate of $8\frac{1}{2}$ cents named in Southern Pacific Company Tariff 817-D, C.R. C. 3338. Complainant asks for reparation on the basis of the actual Class "C" rate of $7\frac{1}{2}$ cents from Wilson to Gridley. A rate of this volume was published by defendant, effective February 10, 1932, in Tariff No. 817-D, C.R.C. 3338. The fresh fruit rates in Cali-

formia are generally equal to the Class "C" rates, subject to a minimum of $7\frac{1}{2}$ cents.

Defendant admits the allegation 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 assailed rate was unjust and unreasonable to the extent it exceeded $7\frac{1}{2}$ 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 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,

without interest, to complainant Libby, McNeill & Libby all charges collected in excess of $7\frac{1}{2}$ cents per 100 pounds for the transportation from Wilson to Gridley of the shipments of peaches involved in this proceeding.

Dated at San Francisco, California, this 29th day of February, 1932.

W. J. Curry
Leon O'Whidley
W. J. Cur
W. B. Harris
Fred G. Stewart
Commissioners.