

Decision No. 23796

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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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.

ORIGINAL

) Case No. 3040

Complainants,

vs.

SOUTHERN PACIFIC COMPANY  
 HOLTON INTER-URBAN RAILWAY COMPANY

Defendants.

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

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

BY THE COMMISSION:

OPINION ON REHEARING

By Decision 23796, issued in the above matter on June 15, 1931, it was found that defendants had assessed and collected certain rates for the movement of live stock which rates were in excess of the published rates and reparation was awarded to complainants. On rehearing the ruling was

affirmed (Decision 24407). Thereafter, good cause appearing, the Commission issued its order reopening the matter for further consideration and argument and suspended its order issued in Decision 23796. The matter was argued before the Commission en banc on April 2, 1932, and submitted for decision.

The complaint herein alleges that defendant carriers 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 over charge only, under an erroneous tariff interpretation.

Mileage rates on live stock are published by the carriers (Section D of S.P. Tariff 645 D, C.R.C. 3118). The distance rates thus set forth in Section D of the tariff apply in the absence of, or when lower than the specified point to point rates found in Sections A, B and C of the same tariff. The provisions of Section D pertinent to the issue herein are as follows:

"Distance rates shown on pages 184 and 185 apply \* \* \* subject to \* \* \* Notes 1, 2, 3 and 4.

"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 page 184 and 185 (for list of branch lines see page 190) \* \* \*.

"Note 2. (Applies to intrastate traffic only). Rates must be constructed and applied via short line mileage except \* \* \* 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 longer route."

Under the facts presented in the instant case, it appears that complainants made numerous live stock shipments involving movements over one branch line. The rates which had been paid were those constructed in accordance with Notes 1 and 2 and had been constructed via the short line mileage with the addition of \$3.50 per car for the said branch line movement as provided in Note 1. Complainants point out that for each shipment there was an alternative route (also involving one branch line movement), which route was longer than the short line route used in the construction of the rates which were applied. Complainants contend that by applying the mileage scale to the longer route, but excluding the branch line arbitrary required under Note 1, a lesser rate could be constructed than had been constructed and applied via the short line route. The argument then proceeds that under Note 2 the carriers were obliged to construct the rate via the long line mileage, obtained by excluding the branch line arbitrary, and to the extent that the rates collected exceed the lesser rate which could thus be obtained complainants had been overcharged. Further analysis of Notes 1 and 2, the pertinent provisions of which are set forth above, shows that in computing rates between any two points \$3.50 per car should be added for each branch line haul to the rates obtained by the use of the distance scale. In constructing the rate by the use of the mileage scale plus the branch line arbitrary required under Note 1, it is provided in Note 2 that said rate must be constructed by the short line mileage except when the addition of \$3.50 per car (as provided in Note 1) makes a higher rate than could be obtained (as provided in Note 1) via the longer route. When a lower rate can thus be obtained via the longer route, it must be applied.

It thus appears that Note 2, properly construed, requires that the defendants in comparing rates via the short line mileage with rates via the long line mileage to determine

which produces the lower rate should add a branch line arbitrary for each branch line movement involved on the respective routes. There is no suggestion in Note 2 that the branch line arbitraries required by Note 1 should not be added to the mileage scale rate obtained via the longer route.

In each case presented in the instant complaint, the shipment involved one branch line movement over each of the two alternative routes. Such being the case, the rate for the longer route, constructed as required by Notes 1 and 2, was in no case less than the rate which was obtained via the short line route. The defendants, therefore, properly applied the rates constructed via the short line mileage. Under Notes 1 and 2, as we believe they should be construed, a lower rate could never be obtained via the long line route unless the route involved fewer branch line movements than were to be found via the alternative short line route. This would be the situation where the routes were practically the same in length, the short line route involving two branch line movements and the long line route involving one branch line movement, or where the short line mileage necessitated one branch line movement and the long line route was all main line movement.

We thus conclude that the defendants in the instant case properly applied their tariffs and assessed and collected the rates applicable via the short line route.

#### ORDER

Hearing on rehearing having been had and the case finally submitted and the Commission being fully advised,

IT IS HEREBY ORDERED that the original opinion and order herein (Decision No. 23796) be and the same is hereby set aside and the complaint dismissed.

Dated at San Francisco, California, this 18<sup>th</sup> day of April, 1932.

Cl. Dennis  
Leon Williams

M. B. Karpis  
Fred G. Stewart  
Commissioners