

Decision No. 25066.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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

ORIGINAL

Case No. 3106.

BY THE COMMISSION:

O P I N I O N

In this proceeding it is alleged that the refrigeration charges assessed and collected on three carloads of green apricots shipped on July 21, 1929, from Sunnyvale to Gridley and subsequently diverted to Sacramento, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act.

Reparation only is sought. Charges are stated in dollars per car.

Sunnyvale and Gridley are on the Southern Pacific Company eight miles north of San Jose and seventeen miles north of Marysville, respectively. Complainant's shipments were originally consigned from Sunnyvale to Gridley but were reconsigned or diverted upon arrival at Roseville to Sacramento, requiring a back haul. Refrigeration charges were assessed and collected in addition to the line haul rates on basis of two standard refrigeration charges of \$40.00 (or a total of \$80.00 on each car) named in Item 1970 of

of R. C. Dearborn's Perishable Protective Tariff No. 4, C.R.C. No. 3. Complainant seeks reparation on basis of a rate of \$55.00. The approximate cost of performing the service obtained by adding together the cost of ice and salt, the cost of hauling the ice, bunker damage, supervision, switching and an allowance for profit and hazard on a representative car is \$55.34.

Defendant admits that the assailed charges were unjust and unreasonable to the extent they exceeded \$55.00 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 refrigeration charges assessed and collected on complainant's shipments were unreasonable to the extent they exceeded \$55.00 per car. This finding is without prejudice to any different conclusions that may be reached on a more comprehensive record. 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 without interest to complainant Libby, McNeill & Libby all charges collected in excess of \$55.00 per car for the refrigeration service performed in connection with the three carloads of green apricots involved in this proceeding, transported from Sunnyvale to Roseville and reconsigned or diverted to Sacramento.

Dated at San Francisco, California, this 15th
day of August, 1932.

O. Searcy

Leon [unclear]

M. A. [unclear]

M. B. [unclear]

Fred G. [unclear]
COMMISSIONERS.