

Decision No. 25595.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

THE BECKWITH COMPANY,
PACIFIC GRAPE PRODUCTS COMPANY,
RIVERBANK CANNING COMPANY,
SON GARDEN CANNING COMPANY,
LORENZO ZERILLO (an individual doing
business as Riverbank Canning Com-
pany),

Complainants,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,
CENTRAL CALIFORNIA TRACTION COMPANY,
MODESTO AND EMPIRE TRACTION COMPANY,
SOUTHERN PACIFIC COMPANY,
TIDEWATER SOUTHERN RAILWAY COMPANY,
THE WESTERN PACIFIC RAILROAD COMPANY,

Defendants.

ORIGINAL

Case No. 3168

MANTEGA CANNING COMPANY,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
TIDEWATER SOUTHERN RAILWAY COMPANY,
THE WESTERN PACIFIC RAILROAD COMPANY,

Defendants.

Case No. 3197

H. M. Avey and V. O. Conoway, for complainants.

James E. Lyons and A. L. Whittle, for defendant Southern Pacific Company, and Central California Traction Company in Case 3168.

V. C. Pierre and G. E. Duffy, for The Atchison, Topeka and Santa Fe Railway Company, Modesto and Empire Traction Company and Central California Traction Company in Case 3168.

L. N. Bradshaw, for The Western Pacific Railroad Company, Tidewater Southern Railway Company and Central California Traction Company.

BY THE COMMISSION:

O P I N I O N

Complainants in Case 3168 allege that the charges assessed and collected on numerous carloads of tin cans transported from San Francisco, Oakland, Fruitvale, Melrose, Sacramento and San Jose to Modesto, Planada, Reedley, Riverbank and McHenry were during the two-year period immediately preceding the filing of the complaint, are now, and for the future will be, unjust, unreasonable and unduly prejudicial in violation of Sections 13 and 19 of the Public Utilities Act, and that on the shipments to Riverbank and McHenry the charges were collected in violation of the long and short haul provisions of Section 24 of the Act.

In Case 3197 it is alleged that the charges on like shipments from the same points of origin to Manteca were, are, and for the future will be, unjust, unreasonable and unduly prejudicial in violation of Sections 13 and 19 of the Act.

Reparation and rates for the future are sought. Rates are stated in cents per 100 pounds.

Public hearings were held in both proceedings before Examiner Geary at Stockton, and the matters submitted on briefs. They will be disposed of in one decision.

The shipments to Manteca were routed Southern Pacific Company; those to Reedley and Planada, via Atchison, Topeka and Santa Fe Railway Company (hereinafter called the Santa Fe), or Central California Traction Company to Stockton, thence Santa Fe; those to Riverbank, via Santa Fe or Western Pacific Railroad Company to Stockton, thence Santa Fe; those to McHenry Western Pacific to Stockton, thence Tidewater Southern Railway. Modesto is on the

Southern Pacific Company, Tidewater Southern Railway, and Modesto and Empire Traction Company; the record does not show how these shipments were routed.

The following table shows the mileage, rates charged and those sought.

<u>From</u>	<u>To</u>	<u>Average Mileage</u>	<u>Rate (2) Charged (3)</u>	<u>Rate (2) Sought</u>
San Francisco	Modesto	91	20¢	17½¢ @ 14,000 lbs.
	Planada	141	32¢	25¢ @ 14,000 "
Oakland ⁽¹⁾	Reedley	209	35½¢	34¢ @ 14,000 " (17½¢ @ 14,000 "
Sacramento	Riverbank	98	20¢	(15½¢ @ 20,000 "
San Jose	McHenry	93	20¢	17½¢ @ 14,000 "
	Manteca ⁽⁴⁾	77	18½¢	15½¢ @ 14,000 "

- (1) Fruitvale and Melrose are substations of Oakland.
- (2) The emergency increase which became effective Jan'y. 22, 1932, is not included.
- (3) A switching charge of \$2.70 per car is also assessed on shipments on which a switching service is performed by a carrier not participating in the line haul.
- (4) A rate of 18¢ was established March 18, 1931, from San Jose.

The rate applicable from San Jose to Manteca is a commodity rate. From all points of origin to Planada the rate was made combination over Merced, using a commodity rate of 25 cents to Merced and a 4th class rate of 7 cents beyond. All other effective rates were 4th class. Those sought are based upon 125% of the Class "C" rates, subject to a minimum weight of 14,000 pounds per 36-foot car, except that to Riverbank a lower rate with a higher carload minimum is also requested.

In order to foster the canning industry in California the rail lines many years ago established the Class "C" rates on carload shipments of tin cans. This basis however proved to be too low in

many instances¹ and the carriers sought authority to change the classification from Class "C" to 4th class. With the proviso that specific commodity rates would be published in instances where the increases sought were not fully justified the application was granted.² The increased rates became effective January 1, 1917, and except for the general increases and reductions have continued unchanged.

Complainants point out that at the time these rates were established there were no canneries at Reedley, Planada, McHenry or Riverbank and contend that there was no occasion to prescribe specific rates to those points at that time. Whether or not there were canneries at Modesto and Manteca the record does not show. Complainants compare the assailed rates with rates on tin cans applying for movement in California as well as elsewhere in the United States, and with rates on other commodities. They stress the volume of the movement and the absence of claims. The rate to Planada they furthermore attack as unreasonable on the ground that it is made combination over Merced.

Defendants maintain that the rates in this territory are now on an exceedingly low basis and that the commodity rates prescribed were only for the longer hauls beyond the influence of the water competitive area. It is shown that at the time the 4th class rating was established there was little competition from trucks, with the result that the rail lines secured not only the movement of tin cans to the canneries but likewise the movement of the fruits, vegetables and supplies inbound and the canned goods outbound. At the present time practically all of the canned goods traffic has been

¹ In the Matter of the Application * * * for Permission to Alter Classification so as to Increase Rates and Charges, 2 C.R.C. 845, 848.

² In the Matter of the Application * * * to Cancel Item in Exception Sheet Governing the Transportation of Tin Cans. 11 C.R.C. 21.

diverted from the rail lines to the trucks.

The record shows that tin cans require expedited service and choice equipment. Cars placed for loading are rejected more frequently than in the case of ordinary freight and additional switching is thus necessitated. Moreover tin cans load exceptionally light with the result that the per car and per car mile earnings are comparatively small. On this record complainants have failed to show that the existing rates were in excess of maximum reasonable rates.

Complainants offered no proof that the assailed rates were unduly prejudicial. A mere showing that they were in excess of those paid by certain competitors, unaccompanied by evidence that complainants were placed at an unfair disadvantage thereby, does not constitute undue prejudice. (County of Los Angeles vs. The A.T.& S.F.Ry.Co. et al., 32 C.R.C. 296.)

The charges on the shipments to McHenry and Riverbank were assessed and collected in violation of the long and short haul provisions of Section 24(a) of the Public Utilities Act to the extent they exceeded a lower charge applicable from the same points of origin to Modesto, the latter a more distant point than McHenry and Riverbank on the same line or route. The line-haul rates to McHenry and Riverbank were the same as the line-haul rates to Modesto. However, the switching charge of \$2.70 per car was absorbed on traffic destined to Modesto as this was a competitive point. McHenry and Riverbank being non-competitive points defendants assessed and collected the switching charge of \$2.70 per car, resulting in a higher charge by the amount of the switching charge at these two points than in effect at Modesto. Until July 31, 1930, defendants were without authority of this Commission to create long and short haul departures by absorbing switching charges on competitive traffic while not absorbing those charges

on non-competitive traffic. (In Re Application of F. W. Gompf, etc., 35 C.R.C. 46.) On all shipments moving prior to July 31, 1930, complainants are entitled to reparation. (Albers Bros. Milling Co. vs A.T. & S.F. Ry., 36 C.R.C. 467.)

Upon consideration of all the facts of record we are of the opinion and find that the assailed rates have not been shown to be or to have been unjust, unreasonable or unduly prejudicial, but that on the shipments to McHenry and Riverbank which moved prior to July 31, 1930, the long and short haul provisions of Section 24(a) of the Public Utilities Act were contravened by the collection of charges which exceeded those concurrently applicable to like shipments destined to Modesto. We further find that complainants paid and bore the charges on these shipments and are entitled to reparation with interest at 6% per annum.

The exact amount of reparation due is not of record. Complainants 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.

O R D E R

These cases having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing its order on the findings of fact and the conclusions contained in the preceding opinion,

IT IS HEREBY ORDERED that defendants, The Atchison, Topeka and Santa Fe Railway Company, Central California Traction Company, Modesto and Empire Traction Company, Southern Pacific Company,

Midwater Southern Railway Company and The Western Pacific Railroad Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund with interest at six (6) per cent. per annum to complainants Sun Garden Canning Company and Lorenzo Zerillo, according as their interests may appear, all charges collected prior to July 31, 1930, for the transportation from San Francisco, Oakland, Fruitvale, Melrose, Sacramento and San Jose to McHenry and Riverbank, of the shipments of tin cans involved in these proceedings in excess of those concurrently applicable to the more distant station of Modesto.

IT IS HEREBY FURTHER ORDERED that in all other respects these proceedings be and they are hereby dismissed.

Dated at San Francisco, California, this 30th day of January, 1933.

C. C. [Signature]
Leon [Signature]
M. A. [Signature]
M. B. [Signature]
[Signature]
Commissioners.