

Decision No. 25872.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SYLMAR PACKING CORPORATION,

Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY,  
SOUTHERN PACIFIC COMPANY,

Defendants.

Case No. 2558.

ORIGINAL

Ward Chapman, for complainant.

J. A. Jones and F. C. Nelson, for Southern Pacific  
Company and The Atchison, Topeka and Santa Fe  
Railway Company, defendants.

BY THE COMMISSION:

FURTHER OPINION AND ORDER

By Decision No. 21894 of December 10, 1929, the Commission dismissed without hearing the complaint filed June 18, 1928, in the above entitled proceeding. This action was taken on the assumption that the complaint was barred by the provisions of Section 71(b) of the Public Utilities Act as construed by the Supreme Court of California in L.A. & S.L.R.R. Co. vs. Railroad Commission, S.F. 13152, 77 Cal. Dec. 594.

Upon petition of complainant the matter was reopened. A hearing was had before Examiner Geary at Los Angeles.

Complainant seeks reparation and relief from the payment of undercharges in connection with eight carload shipments of

olives transported from Cairns, Reedley and Visalia to Sylmar during the period December 1, 1925, to January 31, 1926. The charges lawfully applicable aggregate \$2,143.38. On basis of the rates sought they would have amounted to \$1,150.22. Based on the rates sought there are outstanding undercharges of \$84.21 on four shipments and an overcollection of \$139.66 on three shipments. The charges on all the shipments were paid in part during or prior to January, 1926.

Defendants admit that the applicable charges were unjust and unreasonable to the extent they exceed \$1,150.22. This amount is obtained by use of rates of 31 cents per 100 pounds from Reedley, 49½ cents from Visalia and 38 cents from Cairns, all of which rates were subsequently established. Defendants are willing to grant the relief sought provided the shipments are not barred by the statute of limitations.

Reparation cannot be awarded under the provisions of Section 71(b) of the Public Utilities Act on the shipments here involved where the charges paid were in excess of those accruing at the rates here sought. However the statute has not run against the charges that were unpaid on August 14, 1931, when Section 71(b) of the Act was amended, and which in fact are still outstanding. (Hercules Gasoline Co. vs. A.T. & S.F. Ry. Co. et al., 34 C.R.C. 451. L.A. & S.L.R.R. Co. vs. Railroad Commission, supra.)

Upon consideration of all the facts of record we are of the opinion and find that the charges applicable on complainant's shipments are unjust and unreasonable to the extent they exceed charges based on rates of 31 cents per 100 pounds from Reedley, 49½ cents from Visalia and 38 cents from Cairns; that upon collection of these unreasonable charges complainant would be damaged to the extent of the difference between the charges paid and

those herein found reasonable. The collection of the outstanding undercharges to the basis of the rates sought will be waived.

(San Francisco Milling Co. Ltd. vs. Southern Pacific Co., 34 C. R.C. 453.)

O R D E R

This proceeding having been duly 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 preceding opinion,

IT IS HEREBY ORDERED that defendants The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company, according as they participated in the transportation, be and they are hereby ordered and directed to cease and desist from demanding from complainant Sylmar Packing Corporation charges for the transportation of the shipments of olives involved in this proceeding in excess of those herein found reasonable.

IT IS HEREBY FURTHER ORDERED that defendants The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company be and they are hereby authorized and directed to waive collection of the charges outstanding on complainant's shipments in excess of those herein found reasonable.

IT IS HEREBY FURTHER ORDERED that in so far as our findings herein are inconsistent with Decision No. 21894 of December 10, 1929, that decision be and it is hereby annulled and set aside.

IT IS HEREBY FURTHER ORDERED that in all other respects this proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 27<sup>th</sup> day of February, 1933.

O. S. Brown  
Leon D. Dwyer  
M. A. Carr  
W. B. Harbo  
W. H. Moore  
Commissioners.