

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Decision No. 1519

KIRKIN-SIMPSON FRUIT COMPANY,
Complainant,

vs.

THE ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, and
NORTHWESTERN PACIFIC RAILROAD
COMPANY,

Defendants.

ORIGINAL

Case No. 524

J. D. Simpson, for complainant.

E. W. Camp and U. T. Clotfelter, for
The Atchison, Topeka & Santa Fe Railway.

Lilienthal, McKinstry & Raymond, for
Northwestern Pacific Railroad.

ESHELEMAN, Commissioner.

O P I N I O N

The complainant in this case is engaged in the wholesale fruit and produce business in the city of Los Angeles and in the conduct of its business receives shipments of eggs in carload lots from Petaluma, California, and also from the Middle West States both east and west of the Missouri River.

In its complaint the complainant alleges that the refrigeration charges exacted by the defendant railroads on carload shipments of eggs from Petaluma to Los Angeles of \$35.00 per car is excessive and unreasonable. Prior to April 14, 1913, the refrigeration charges on a carload of eggs from Petaluma to Los Angeles was \$40.00 but on the date above mentioned the rate was reduced to \$35.00.

The complainant calls attention to the fact that under the provisions of Santa Fe Refrigeration Tariff No. 8123-G, C.R.C. No. 238, shipments of less than carloads of perishable articles may be made and the carriers parties to the tariff furnish free refrigeration on

less than carload shipments, the minimum charge for cars so furnished being 10,000 pounds at second class rate. It is alleged that under these provisions it is possible to ship less than carload lots for which carriers furnish the refrigeration without cost at a less charge per case than if a carload were shipped and the shipper paid for the refrigeration. The defendants contend that this provision does not apply from Petaluma inasmuch as the Northwestern Pacific Railroad is specifically excepted from participating therein.

The provision appearing in the original tariff No. 8123-G, C.R.C. No. 238, which tariff is effective February 24, 1913, is as follows:

"The freight charges on L.C.L. Perishable Freight shipped in regular or special schedule cars will be the same as in ordinary cars.

Where shippers cannot avail themselves of regular schedule refrigerator car service, refrigerator cars may be furnished for less-than-carload shipments of freight at the less-than-carload rates. The minimum charge for cars so furnished will be the charge applicable on 10,000 lbs. at the 2nd class rate from point of origin to point of final destination, but not less than \$30.00 per car. No charge will be made for initial icing or re-icing.

NOTE— Will not apply in connection with Arizona Eastern R.R.

EXCEPTION— Will not apply on peddler cars."

No mention is made in this item of the Northwestern Pacific Railroad not being a party to this provision but we find that on August 21, 1913, a supplement was issued to this tariff and Item 15 of the original tariff is canceled by Item 15-A to which supplement is added a notation that the provisions of the item will not apply on traffic over the Northwestern Pacific Railroad. This provision clearly advances the rates on less than carload shipments of eggs and other perishable commodities under refrigeration from points on the Northwestern Pacific Railroad and should have been preceded with a symbol indicating such an advance to which the consent of this Commission was necessary before the advance could become effective. No symbol indicating an advance appears in the tariff as required by the rules of this Commission and no permission has been given to make the advance as required by law. The restriction therefore which eliminates the Northwestern Pacific Railroad from the provisions of this item is clearly unlawful and must be cancelled.

We are not passing on whether the restriction is reasonable or otherwise but carriers may as well understand now as later that they will not be permitted to increase rates, by failing to comply with the law and rules of the Commission, by simply amending tariffs, taking a chance that it will not be discovered. This is not the first time we have discovered carriers amending tariffs so as to bring about an increase in rates and failing properly to designate the same and obtain permission of the Commission and we wish to serve notice at this time on all public utilities that such evasions will not be lightly dealt with in the future.

The complainant contends that a rate of \$15.00 per car for refrigeration charges would be amply remunerative to the carriers and also that the shippers should be permitted to furnish the initial icing and that any further ice necessary properly to protect the shipment should be furnished by the carrier at \$2.50 per ton. The complainant bases its contention for such rates and provisions on the fact that the refrigeration charge from the Missouri River to Los Angeles and San Francisco is \$25.00 per car. The provision for icing shipments of eggs from Missouri River points to Los Angeles at \$25.00 per car covers only the re-icing service, the initial icing being performed by the shipper. There is a provision, however, that if the ice is furnished by the carrier for the original icing it will be charged for at the rate of \$2.50 per ton, including salt and labor. From Missouri River points to Portland, Oregon, via the Chicago, Burlington and Quincy to Billings, Montana, thence via the Northern Pacific or via the Union Pacific, Oregon Short Line and Oregon, Washington Railroad & Navigation Company the reicing charge is but \$15.00 and as in the case of shipments from Missouri River to Los Angeles and San Francisco, initial icing may be performed by either the shipper or carrier.

In addition to the before-mentioned provisions there is also a provision for a re-icing charge of \$25.00 on shipments from the Missouri River to Portland via San Francisco in connection with

various steamship lines, providing special arrangement is made with the steamship company, and also for the movement from Missouri River via El Paso, Deming, Bakersfield, Fresno or Stockton, thence via the Southern Pacific Company, Pacific System, and lines in Oregon to Portland. In all of these instances the shipper has the privilege of furnishing the initial icing and in addition thereto has the right of delivering the car under ice with specific notice to the carriers that it is not to be re-iced in transit and in such cases no additional charge will be made. Therefore, the shipper of eggs in carload lots from the Missouri River destined Los Angeles or San Francisco may ice the car himself initially or the railroad will do so at a cost of \$2.50 per ton and the shipper has the choice of either paying \$25.00 for the privilege of having the car reiced in transit or he may direct that no more ice be placed in the bunkers, and thereby save the reicing charge of \$25.00.

We are unable to understand why the Trans-Continental railroads make a reicing charge of but \$15.00 from the Missouri River to Portland and at the same time exact \$25.00 per car from the Missouri River to Los Angeles. The same reicing charge of \$25.00 will apply directly through Los Angeles to Portland and if it is reasonable to Portland, it would seem to be a lucrative rate to Los Angeles. The reicing rate of \$25.00 from Missouri River points to Portland via El Paso and the Southern Pacific ~~System~~ lines thence to destination can hardly be claimed to be a competitive rate in view of the fact that the rate via the Union Pacific and Oregon Short Line to Portland is but \$15.00, and no apparent attempt appears to have been made to meet this competition.

All of this may appear to be outside the question and the matter is dealt with because of the reliance placed by the complainant on these conditions as justifying its contention that the Petaluma to Los Angeles refrigeration rate is excessive.

Considering now the real point in issue, namely, the refrigeration rates from Petaluma to Los Angeles on a carload of eggs and taking up first the contention of the complainant that it

is cheaper to ship eggs in less than carload lots and permit carriers to do the icing without cost to the shipper than to load a full carload - the refrigeration charge being borne by the shipper. The present carload freight rate on eggs from Petaluma to Los Angeles is 49½ cents per hundred pounds and based on a minimum weight of 20,000 pounds the freight charges would amount to \$99.00. Adding to this the refrigeration rate of \$35.00 per car we have a total charge of \$134.00 for moving a carload of eggs under refrigeration from Petaluma to Los Angeles. Under the provisions of Santa Fe Tariff No. 8123-G, C.R.C. No. 238, before it was amended August 21, 1913, and which we hold is still legally in effect, a shipper may divide this same carload of eggs weighing 20,000 pounds into two lots of 10,000 pounds and the freight charges will amount to \$115.00 for which the railroads furnish refrigeration free.

This certainly furnishes a ridiculous rate adjustment on its face but it is partially explained from the fact that eggs in carload lots move at 3rd Class and at less than carload rates at 2nd Class but because of the slight difference in classification and rates the result appears absurd. At the same time it must be remembered that the provision for handling less than carload lots under refrigeration applies to all classes of perishable commodities and it will be hardly possible to find any other commodities which could be shipped in less than carloads under refrigeration at a less aggregate charge than would obtain on a carload of the same commodity, which will be found to be due to the fact that the difference in classification and rates on such carload and less than carload commodities as fruit and vegetables is very much greater than on eggs.

Referring now to the complainant's contention that the refrigeration charge of \$35.00 per car on eggs from Petaluma to Los Angeles is excessive. The defendants introduced evidence to the effect that the actual cost of furnishing ice for five cars of eggs moved from Petaluma to Los Angeles was as follows:

S.F.R.D.	1324	-----	\$30.17
"	3802	-----	34.66
"	4066	-----	33.81
"	2130	-----	36.71
"	5638	-----	34.57

Against the cost of furnishing this ice the defendants collected \$35.00 for refrigeration service and it would not appear from this record that in view of this actual cost of ice that a charge of \$35.00 per car is unreasonable. In each of these cars 9,000 pounds of ice was loaded at Petaluma and it was testified to that this was the average amount loaded in a car, it being the aim of the carriers to furnish a car with bunkers of that capacity.

The best price at which the defendants claim to be able to purchase ice at Petaluma is \$6.00 per ton and it is therefore apparent that the initial icing costs the defendant \$27.00 at the point of shipment. At points where the cars were re-iced the price of ice appears to have been very much less. For instance,--the price of ice to the carriers is \$2.65 per ton at Stockton, \$2.65 per ton at Bakersfield and \$5.00 per ton at Barstow, and the apparent excessive price paid at Petaluma was explained by the fact that the carriers purchase only a comparatively small amount of ice at Petaluma - about 120 tons per annum - while at Stockton and Bakersfield they are under contract to purchase 5,000 tons per annum at each point on a ten year contract. We think it safe to say that the purchase of this large quantity of ice at Stockton and Bakersfield accounts for the ability of the defendants to secure the same at a much lower rate than at Petaluma.

To our minds it is clear that the carriers should not be required to furnish refrigeration at less than the actual cost of the ice and in this case we cannot find that the refrigeration charges on a carload of eggs from Petaluma to Los Angeles is excessive.

A larger question than this seems to be involved in this proceeding, and that is, the question of permitting the shipper to

put in as much ice as he desires in a car and directing that it be forwarded through without further icing. This practice is indulged in by the carriers in moving eggs from Middle West territory to California and beyond and no doubt works a serious discrimination against the egg producers of Petaluma. If the carriers actually pay more in some cases for the ice required properly to refrigerate a car of eggs than they receive for such services it stands to reason that they should be very glad to be relieved of this loss and if the shipper is willing to provide the initial icing and take chances on it moving through to destination without loss the carriers should be no more reluctant to grant him this privilege than they are to grant similar privileges to shippers of eggs from Middle West States.

It should be distinctly understood that I am confining this opinion to shipments of eggs and not other perishable products because we have no evidence concerning any other commodity.

After a careful review of all of the facts submitted in this case I find as a fact that complainant has not sustained its charge that the present refrigeration rate from Petaluma to Los Angeles on carload shipments of eggs is unreasonable when such service is performed by the carriers.

I further find as a fact that the present method of making rates covering re-icing service on shipments of eggs from Middle West States to San Francisco and Los Angeles is undoubtedly prejudicial and discriminatory as against shipments of eggs from Petaluma to Los Angeles and that carriers should publish provisions in their tariffs permitting the shipper to provide initial icing and direct on ~~in~~ the bill of lading whether the car is to move through to destination without further icing and that if further icing is desired the same should be furnished by the carriers at actual cost. Also, that in event shippers furnish initial icing and do not desire the car re-iced in routing they should assume all risk of damage due to improper refrigeration.

I recommend the following order:

O R D E R.

KLEIN-SIMPSON FRUIT COMPANY of Los Angeles having complained that the refrigeration rate on eggs in carload lots from Petaluma to Los Angeles is excessive and unreasonable and that the denial by the carrier to the shipper of the right to furnish his own ice for refrigeration is unreasonable, and a hearing having been held and being fully apprised in the premises,

THE COMMISSION HEREBY FINDS AS A FACT that it does not appear from the evidence that the refrigeration rate on eggs in carload lots from Petaluma to Los Angeles is excessive or unreasonable.

THE COMMISSION FURTHER FINDS AS A FACT that a provision allowing shippers to furnish the initial icing on carload shipments of eggs for transportation from Petaluma to Los Angeles and further providing that, if the shipper so directs on the bill of lading, no further ice will be furnished, or if any further ice is to be furnished at the shipper's request, the carrier involved shall furnish such ice at the actual cost to such carrier is a just and reasonable provision, and basing this order on the foregoing findings of fact;

IT IS HEREBY ORDERED that The Atchison, Topeka & Santa Fe Railway Company and the Northwestern Pacific Railroad Company publish and file with this Commission within twenty (20) days from the date hereof a tariff providing that shippers may furnish initial icing on carload shipments of eggs for transportation from Petaluma to Los Angeles and further providing that if the shipper so directs on the bill of lading, no further ice will be furnished. Or, if the shipper so directs, re-icing shall be furnished by the carrier on the shipper's request at actual cost of such ice; said tariff further to provide that on such shipments where the initial icing is performed by the shipper with directions

not to re-ice in transit, said shipper shall assume all risk due solely to improper refrigeration.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of May, 1914.

John M. Coulman

Alex Gordon

Max Thelen

Edwin O. Edgerton

Commissioners.