

ORIGINAL

Decision No. ✓

Decision No. 1896

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

RIVERS BROTHERS COMPANY,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

Case No. 406

Charles Clifford for complainant  
George D. Squires for defendant

EDGERTON, Commissioner.

O P I N I O N

This is an application for rehearing by defendant, Southern Pacific Company. The contention of defendant is, that where this Commission found the restriction placed on a certain rate for fruit in the following words "for canneries and driers only" to be illegal, it could not order these words stricken out, leaving the rate to stand without the restriction, and apply it on past shipments made by plaintiff. It is contended that we must go into the question of the reasonableness of the rate which should have been charged.

I cannot agree with this contention. It must be admitted that it is unfair to grant a lower rate because of the particular use to which the commodity is to be put. In fact, it is now generally conceded that this method of differentiating as to rates on given commodities is not fair and is discriminatory.

This being true, the restriction is illegal and if it is now illegal, it was illegal during all of the times

mentioned in the order.

It is argued that if the restriction falls the whole rate must fall, but this contention cannot be sustained. With the illegal restriction eliminated the rate is legal, and certainly justice requires that it stand, at least as to past shipments.

It is obvious that if the whole rate is declared illegal, and upon a showing of reasonableness a higher rate is fixed, the railroad might collect from the shipper who shipped to canneries and driers, the difference between the rate voluntarily established by the railroad and the rate fixed by the Commission later as reasonable.

This would bring about the ridiculous result that in voluntarily establishing a discriminatory rate railroads would not only escape punishment for their act, but would actually profit thereby.

I recommend that the application be denied and submit herewith the following form of order:

#### ORDER

Application having been made by Southern Pacific Company for a rehearing in the above entitled matter, and it appearing to the Commission that said application should be denied,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that the application for rehearing herein be and the same hereby is denied.

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 21st  
day of October, 1914.

H. Howard

Max Shellen

Edwin O. Edgerton

Commissioners.