

DECISION NO. _____

ORIGINAL

Decision No. 2181

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

JULIUS HEYMAN COMPANY,

Complainant,

vs

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,

NORTHWESTERN PACIFIC RAILROAD COMPANY,

Defendants.

Case No. 738

- APPEARANCES -

Alexander Heyman, for Complainant,
Platt Kent, for The Atchison, Topeka & Santa Fe Railway Company.
J. J. Geary and A. S. Humphreys, for the Northwestern Pacific Railroad Company.

DEVLIN, Commissioner:

OPINION

The complainant in this case is a corporation engaged in the business of buying and selling lumber on commission. In its complaint filed December 22, 1914, it alleges that it has been damaged by reason of defendants' failure to transport to the proper destination a carload shipment of grape stakes consigned to it at Dinuba and asks this Commission to so find and award reparation accordingly.

The substantial facts are as follows: On or about January 17, 1914, the complainant instructed its Agent at Yews Spur, a point located on the Sherwood Branch of the Northwestern Pacific Railroad thirteen miles north of Willits, to ship one car of grape stakes to the complainant at Del Rey, California, a local station on the line of The Atchison, Topeka & Santa Fe Railway Company, approximately 20 miles south of Fresno. The complainant's Agent accordingly ordered a car for loading from

the Northwestern Pacific Railroad Company, specifying the character and destination of the shipment to be loaded thereinto, and upon this information that Company supplied the shipper with a car that had been furnished to it by The Atchison, Topeka & Santa Fe Railway Company. There was some delay in loading the car and on that account the complainant forwarded a car to Del Rey from another point and instructed its Agent at Yews Spur to forward the car loaded at that point to Dinuba. The bill of lading was made out accordingly and Dinuba shown as the destination of the shipment. No routing was specified in the bill of lading. The Agent of the Northwestern Pacific Railroad Company informed the shipper that the shipment would have to be transferred to a car furnished by the Southern Pacific Company if it desired the shipment transported to the destination shown in the bill of lading, the rules governing the interchange of equipment between these lines requiring that cars supplied the Northwestern Pacific Railroad Company by either The Atchison, Topeka & Santa Fe Railway Company or Southern Pacific Company be returned to the Company from which they are received and reproved the shipper for ordering a car for loading to a point on the Atchison, Topeka & Santa Fe Railway and thereafter consigning the shipment to a point on the line of the Southern Pacific Company.

After a further investigation, however, the Agent of the Northwestern Pacific Railroad Company informed the shipper that The Atchison, Topeka & Santa Fe Railway also reached Dinuba and the shipper then instructed that the car be forwarded via that line and the shipment moved accordingly. Upon arrival of the shipment at the station called Dinuba on the Atchison, Topeka & Santa Fe Railway the party to whom the shipment was sold by the complainant took delivery at that point and drayed the shipment to the incorporated town of Dinuba, approximately one and three-quarters miles distant therefrom. The drayage expense was \$12.00 and in addition two days demurrage accrued for which the carrier assessed and collected \$6.00 in accordance with its demurrage rules and the complainant now seeks to have this Commission award it damages in the sum of \$18.00, which represents, it alleges, the additional

expense to which it was put, by reason of the carrier's error in misrouting the shipment, in order to effect delivery of the shipment at Dinuba in accordance with the conditions of its sale. The complainant contends that Dinuba is located only on the line of the Southern Pacific Company and that it was improper and misleading for The Atchison, Topeka & Santa Fe Railway Company to indicate on its official map and in its station list that Dinuba was reached by its line, and further that the Agent of the Northwestern Pacific Railroad Company erred in routing the shipment via the line of The Atchison, Topeka & Santa Fe Railway Company. The Atchison, Topeka & Santa Fe Railway Company admits that its line does not reach the incorporated town of Dinuba and that the station on its line formerly called Dinuba, but which is now called North Dinuba, is in fact approximately one and three-quarters miles therefrom although Dinuba was shown on its official map and in its station list as a station on its line.

It seems unnecessary to state that such a practice is improper and serves to mislead shippers and agents in the routing of shipments; thus the Agent of the Northwestern Pacific Railroad Company was misled and erroneously instructed the shipper that Dinuba was located on the line of the Atchison, Topeka & Santa Fe Railway and induced the shipper to give his verbal instructions to forward the shipment by that line. As the destination shown in the bill of lading was not located on the line of the Atchison, Topeka & Santa Fe Railway and as the bill of lading did not specify routing via the line of the Atchison, Topeka & Santa Fe Railway, the Agent of the Northwestern Pacific Railroad Company misrouted the shipment via the latter line and the conclusion follows that the complainant is entitled to an award of damages equal to the amount of the additional expense to which complainant was put to effect delivery in Dinuba by reason of such misrouting. That expense would include, it appears from the record, the expense of the drayage from the Atchison, Topeka & Santa Fe Railway station called Dinuba to the town of Dinuba proper but as it does not appear from the record that the demurrage accrued solely because of the fact that shipment was improperly routed

and delivered at the station called Dinuba on the Atchison, Topeka & Santa Fe Railway instead of at the incorporated town of Dinuba the charge therefor should not be included. It appears from the record that notification of arrival of the shipment was duly received and delivery of same taken by the Agent of the consignee. In this connection the record shows that the shipment arrived at the point called Dinuba on the Atchison, Topeka & Santa Fe Railway on February 10, 1914, at 12:18 P.M. and that the consignee or the party to whom the consignee had instructed that delivery be made was notified by telephone of the arrival of the shipment at 2:00 P.M. on the same day and that the car was actually placed for unloading at 7:00 A.M. on February 11, 1914, but was not released until February 16, 1914, at 3:00 P.M. It appears, therefore, that the shipment was not unloaded within the first 48 hours following the placement of the car and after notification of arrival had been given to the consignee or his Agent and that in fact the car was not released until 96 hours after the shipper was notified of its arrival and the car was placed for unloading. The complainant introduced no evidence in explanation of the delay in unloading and releasing the car and in the absence of an affirmative showing by the complainant that the demurrage actually accrued for reasons other than its own negligence in unloading, it would be improper to require the carrier to refund the demurrage collected. The demurrage might have accrued if the shipment had been forwarded by the Southern Pacific Company to Dinuba and in the absence of a showing that it accrued solely because of the misrouting of the shipment I am of the opinion that the complainant is not entitled to a refund of the demurrage charges. It is my opinion that the originating carrier should not be charged with the responsibility for the misrouting of this shipment but that responsibility^{therefor} should rest upon The Atchison, Topeka & Santa Fe Railway Company, which line improperly included in its official list of stations the town of Dinuba and showed that point as being located on its line on its official map and thereby led the Agent of the Northwestern Pacific Railroad Company to erroneously forward the shipment via its line and it is my opinion that the

Atchison, Topeka & Santa Fe Railway Company should refund to the shipper the additional expense to which it was put by reason of carriers' error in misrouting this shipment.

While I am of the opinion that the complainant is entitled to refund of the additional drayage charges which were incurred in order to effect the proper delivery of this misrouted shipment in Dinuba in accordance with the terms of its sale, the Public Utilities Act does not give to the Commission power in cases such as this to award damages, and recovery thereof must be sought in court. Section 71 of that Act empowers the Commission to award reparation where an excessive or discriminatory rate has been charged but in this case no such claim is made nor does it appear that such a rate has been imposed, and it follows that the complaint will have to be dismissed.

In the original complaint filed in this proceeding The Atchison, Topeka & Santa Fe Railway Company only was shown as a defendant. At the hearing, however, a representative of the Northwestern Pacific Railroad Company appeared and accepted service of the complaint and waived notice of hearing. The complaint was therefore accordingly amended and the Northwestern Pacific Railroad Company made a co-defendant.

I submit the following form of order:

O R D E R .

A public hearing having been held in the above entitled proceeding and a full investigation of the matters and things involved having been had and being apprised in the premises,

IT IS HEREBY ORDERED that the complaint be and it is hereby dismissed.

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 27th of
February, 1915.

Alfred W. ...
Edwin O. ...
Frank R. ...

Commissioners.