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Complainants,)

VS.

Defendant.

Case No. 295.

J. O. Bracken, for complainants.
C. W. Durbrow, George D. Squires
for defendant.

LOVELAND, Commissioner:

C I H N O N.

This is an action to recover alleged overcharges on carload shipments of cattle, sheep and hogs, between points within the State of California over the lines of defendant, the Southern Pacific Company, such shipments moving between April 1, 1910, and December 22, 1911.

Complainants allege that the defendant applied through commodity rates to the shipments involved instead of a lower combination of intermediate rates made by using class rates from points of origin to West Berkeley, a point intermediate to the point of destination, plus a switching rate from West Berkeley to Stock Yards, the destination of the shipments, and that the rates so charged were unjust and unreasonable in so far as they exceeded the combination of the intermediate rates; and that complainants suffered thereby to the extent of the difference between the rates charged and those which complainants claim should have been charged.

At the hearing it was stipulated by counsel that the case should be submitted on the evidence offered in Cases Nos. 226, 230 and 248, heretofore heard and decided by this Commission, and a rather careful analysis of the decisions in those

cases is therefore in order.

In Case No. 226, the complainant questioned the right of the defendant carrier to apply to live stock shipments a through commodity rate which was higher than the through class B rate under which live stock moves "when not otherwise provided for" or a combination of class and commodity rates.

The Commission held in this case that the through class rate was inapplicable for the reason that rates on live stock were otherwise provided for by through commodity rates between points of origin and destination involved. The Commission held also in this case as it had held in Case No. 222, that as to shipments moving prior to November 21, 1910, the through commodity rate must govern regardless of the possible lower combination of intermediate rates (See Tariff Circular No. 1, Rule 7 a), but as to shipments moving subsequent to November 21, 1910, the provision of Rule 7a as amended by Supplement to Tariff Circular No. 1 would govern and the lowest combination of intermediate rates would apply.

In Case No. 230, the complaint went directly to the reasonableness of a through rate which was in excess of a combination of intermediate rates, and the Commission decided that the through rate was unreasonable in so far as it exceeded the aggregate of the intermediate rates.

In Case No. 248, the question at issue was in no way similar to the matter under consideration. We regard the issue in Case No. 248 as but another phase of one of the questions presented in Case No. 226, namely, as to whether a through commodity rate on live stock took precedence over a through class rate which was restricted in the tariff of defendant carrier, so as to apply only when commodity rates were not otherwise provided for. The decision therefore in Case No. 248 is but a corollary of the Commission's decision in Case No. 226. The issue in the case at bar is the same as that presented in Case No. 226, namely, whether the shipper is entitled to the benefit of the

combination of the intermediate rates either class or commodity when such are found lower than the through commodity rate, for we cannot agree with the contention of defendant that "only by the widest stretch of imagination can the rate of charge for switching be called a rate" nor can we agree with the defendant's contention that by reason of this Commission's decision in Case No. 226, all rates whether combination or otherwise applicable to live stock shipments between points of origin and destination here involved were superseded by the publication of through commodity rates on live stock between said points. The only rates which are superseded by the publication of through commodity rates on live stock between the several points of origin here involved and Stock Yards, the point of destination, are the through class rates between the points of origin and Stock Yards and then in so far only as they might be applicable to live stock shipments.

As the Commission said in Case No. 226, supra, the through commodity rate does not supersede nor prevent a combination of intermediate class and commodity rates in accordance with Rule 7 (a) of this Commission's Tariff Circular No. 1, as amended in Supplement No. 2, which has been reaffirmed as Rule 8 (a) of this Commission's Tariff Circular No. 2.

As to the defendant's contention that it is improper to base a combination of rates on an intermediate point such as West Berkeley where there are no facilities maintained for unloading live stock, we can but reaffirm the opinion expressed in Case No. 226, supra, that although stock shipments are rarely ever made to West Berkeley, nevertheless, the defendant in publishing the class rate to West Berkeley has opened the way for the application of the combination rate and such combination rate is the rate that should have been applied by defendant as to those shipments which moved subsequent to November 21, 1910.

As to the shipments which moved prior to November 21, 1910, the rate in effect and operation at that time was a through commodity rate which was the rate applied. As to this rate, the complainants have specifically pleaded that it was an unjust and unreasonable rate and on the facts presented in the case, the Commission finds that the through commodity rate between the several points of origin here involved and Stock Yards, which is the destination, applied to the shipments in question which moved prior to November 21, 1910, was unjust and unreasonable and that a just and reasonable rate would not have exceeded the aggregate of the class rates to West Berkeley plus the switching charge of \$2.50 per car West Berkeley to Stock Yards.

I therefore recommend that the following Order be issued.

O R D E R.

Complainants, the Grayson-Owen Company, a corporation, and F. Gemes and Joseph Casalet, doing business under the name and style of Gemes & Casalet, having complained to this Commission that the application of certain rates on live stock from and to points in California published by defendant carrier were wrong and that said rates were unjust and unreasonable in that the through commodity rate exceeded the combination of the rate to an intermediate point plus the switching charge to destination, and a hearing having been duly held and the matters and things set forth in the complaint and answer and developed by the testimony having been duly considered, and the Commission finding that on certain of the shipments comprehended in the complaint the through commodity rate was charged and collected where the class rate to an intermediate point plus a switching charge to destination making less than the through commodity rate should have been charged and collected, and also that on other shipments comprehended in the complaint which moved prior to November 21, 1910, the rate was unjust and unreasonable to the extent that

the through commodity rate exceeded the sum of intermediate rates.

NOW, THEREFORE, IT IS ORDERED, that the defendant, the Southern Pacific Company, pay to the complainants, Grayson-Owen Company, the amount of the difference between the through commodity rate and the sum of the intermediate rates on shipments which moved prior to November 21, 1910, said shipments being set forth in statement No. 1 attached and said sum amounting to Sixteen and 45/100 (16.45) Dollars, and that the said defendant, the Southern Pacific Company, pay to said complainants, the amount of the difference between the through commodity rate from points of origin to destination at Stock Yards and the class rate from same points of origin to West Berkeley plus the switching rate from West Berkeley to destination at Stock Yards of \$2.50 per car on shipments which moved subsequent to November 21, 1910, said shipments being set forth in statement No. 2 attached and said sum amounting to Forty-seven and 2/100 (47.02) Dollars;

AND IT IS FURTHER ORDERED that the said defendant, the Southern Pacific Company, pay to said complainants, F. Games and Joseph Casalet, doing business as Games and Casalet, the amount of the difference between the through commodity rate and sum of the intermediate rates on shipments which moved prior to November 21, 1910, said shipments being set forth in statement No. 3 attached and said sum amounting to Ninety-one and 55/100 (91.55) Dollars and that the said defendant, the Southern Pacific Company, pay to said complainants the amount of the difference between the through commodity rate from points of origin to destination at Stock Yards and the class rates from same points of origin to West Berkeley, plus the switching rate from West Berkeley to destination at Stock Yards of \$2.50 per car on shipments which moved subsequent to November 21, 1910, said shipments being

set forth in statement No. 4 attached and said sum amounting to One hundred and six and 73/100 (106.73) Dollars.

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 3rd day of October, 1912.

John M. Eschman
W. B. Loveland
W. Gordon

Commissioners.

STATEMENT NO. 1.

Shipments to Grayson-Owens Company prior to November 21st, 1910.

From	To	Waybill Reference	Car	Length of Car	Charges	Should be Class B	Charges
Crows Landing	Stock Yards	869 July 12, 1910	OSL 14056	36 feet	\$33.04	1-36 ft. car 118% of \$23.50----- 1 car @ \$2.50 per car -----	\$27.73 2.50
Banta	"	126 Aug. 26, 1910	SP 76272	35 feet	\$23.00	1-35 ft. car 115% of \$12.00-----	13.80
"	"	127 " " "	UP 60524	36 feet	\$23.60 \$79.64	1-36 ft. car 118% of \$12.00----- 2 cars @ \$2.50 per car-----	14.16 5.00 \$68.19
Overcharge							16.45

STATEMENT NO. 2.

Shipments to Grayson-Owens Company Subsequent to November 21, 1910.

From	To	Waybill Reference	Car	Length of Car	Charges	Should be Class B	Charges
Livingston	Stock Yards	660 Dec. 28, 1910	UP 60251	36 feet	\$38.94		
"	"	4 Jan. 3, 1911	OSL 12088	36 feet	\$38.94	4-36 ft. cars 118% of \$26.50 per car	
"	"	10 Jan. 9, 1911	OSL 12907	36 feet	\$38.94	or \$31.27 each -----	\$125.08
"	"	14 Jan. 16, 1911	OSL 12710	36 feet	\$38.94	4 cars @ \$2.50 each ---	10.00
Milton	"	172 June 22, 1911	MLT 14393	36 feet	\$29.50	1-36 ft. car 118% of \$18.00-----	21.24
						1 car @ \$2.50 -----	2.50
Tracy	"	276 June 26, 1911	UP 62225	36 feet	\$22.60	1-36 ft. car 118% of \$12.00-----	14.16
						1 car @ \$2.50-----	2.50
Modesto	"	4866 Nov. 22, 1911	OWRN 40132	36 feet	\$30.68	1-36 ft. car 118% of \$18.00-----	21.24
"	"	5364 Dec. 22, 1911	SP 76128	35 feet	\$29.90 \$269.44	1-35 ft. car 115% of \$18.00-----	20.70
						2 cars @ \$2.50 each ---	5.00
							\$222.42
						Overcharge	\$47.02

STATEMENT NO. 3.

Shipments to F. Comes and Joseph Casalet prior to November 21, 1910.

From	To	Waybill reference	Car	Length of car	Charges	Should be Class B	Charges
Athlone	Stook Yards	39 Apr. 1, 1910	OSL 13391	36 foot	\$43.66		
"	"	40 " " "	SP 77726	36 foot	43.66		
"	"	17 May 4, 1910	JW 13931	36 foot	43.66		
"	"	18 May 4, 1910	SP 77457	35 foot	42.55	8-36 ft. cars 118% of	
"	"	153 May 21, 1910	GH 14643	36 foot	43.66	\$34.00 per car or \$40.12	
"	"	192 June 7, 1910	SP 75899	35 foot	42.55	each -----	\$320.96
"	"	307 Aug. 1, 1910	SP 76515	35 foot	42.55		
"	"	308 Aug 3, 1910	GH 14704	36 foot	43.66	5-35 ft. cars 115% of	
"	"	308 Aug 3, 1910	SP 75598	35 foot	42.55	\$34.00 per car or \$39.10	
"	"	308 Aug 3, 1910	SP 75106	36 foot	43.66	each -----	195.50
"	"	308 Aug 3, 1910	OSL 13893	36 foot	43.66		
"	"	335 Aug 11 1910	SP 75514	35 foot	42.55	13 cars @ \$2.50 each -----	32.50
"	"	347 Aug 29 1910	MLT 14131	36 foot	43.66		
					\$562.03		\$548.96
						Overcharge	13.07
Livingston	Stook Yards	205 June 10 1910	OSL 12586	36 feet	38.94		
"	"	206 June 10 1910	GH 14771	36 feet	38.94	9-36 ft. cars 118% of	
"	"	226 June 21 1910	SP 76176	35 foot	37.95	\$26.50 per car or	
"	"	227 June 21 1910	UP 60605	36 feet	38.94	\$31.27 each -----	\$281.43
"	"	228 June 21 1910	OSL 13161	36 feet	38.94		
"	"	229 June 21 1910	UP 60548	36 feet	38.94	2-35 ft. cars 115% of	
"	"	262 July 13 1910	SP 76338	35 feet	37.95	\$26.50 per car or	
"	"	263 July 13 1910	SP 75929	35 feet	37.95	\$30.48 each -----	60.96
"	"	264 July 13 1910	UP 62257	36 feet	38.94		
"	"	265 July 13 1910	SP 77637	35 feet	37.95	11 cars @ \$2.50 each -----	27.50
"	"	336 Aug. 15 1910	MLT 14373	36 feet	38.94		
					\$424.38		\$369.89
						Overcharge	\$ 54.49

STATEMENT NO. 3 (Cont'd)

Shipments to F. Camos and Joseph Casalet prior to November 21, 1910.

From	To	Waybill reference	Car	Length of car	Charges	Should be Class B	Charges
Morood	Stock Yards	490 Apr 16 1910	OSL 13843	36 feet	\$42.48	6-36 ft. cars 118% of	
"	"	1777 Apr 30 1910	UP 62123	36 feet	42.48	\$31.00 per car or	
"	"	1778 Apr 30 1910	SP 77523	36 feet	41.40	\$36.58 each -----	\$219.48
"	"	1779 Apr 30 1910	SP 77547	36 feet	41.40	1-35 ft car 115% of	
"	"	1780 Apr 30 1910	UP 60697	36 feet	42.48	\$31.00 per car or	
"	"	2028 May 14 1910	SP 77374	35 feet	41.40	\$35.65 each -----	35.65
"	"	2600 June 23 1910	UP 60019	36 feet	42.48	7 cars @ \$2.50 per car--	17.50
					\$294.12		<u>\$278.63</u>
						Overcharge	21.49
Newman	Stock Yards	2877 Nov 2 1910	SP 76581	30 feet	\$31.00	1-30 ft. car -----	26.00
						1 car @ \$2.50 -----	2.50
							<u>28.50</u>
						Overcharge	2.50
						Total Overcharge -----	91.55

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From	To	Waybill reference	Car	Length of car	Charges	Should be Class B	Charges
Athlone	Stock Yards	452 Dec 2 1910	UP 62331	36 feet	\$43.66	3-36 ft. cars 118% of	
"	"					\$34.00 per car or	
"	"	245 June 21 1911	SP 74537	36 feet	43.66	\$40.12 each -----	\$120.36
"	"	246 June 21 1911	SP 76164	35 feet	42.55	1-36 ft. car 115% of	
"	"					\$34.00 per car or	
"	"	247 June 21 1911	UP 62037	36 feet	43.66	\$39.10 -----	39.10
						4 cars @ \$2.50 per car -	10.00
					\$173.53		\$169.46
						Overcharge	4.07
Newman	"	3245 Dec 21 1910	UP 62279	36 feet	36.58	1-36 ft. car 118% of	
						\$26.00 per car or	
						\$30.68 -----	30.68
						1 car @ \$2.50 -----	2.50
							\$33.18
						Overcharge	3.40
Milton	"	201 July 6 1911	SP 76614	35 feet	28.75	1-35 ft. car 115% of	
"	"					\$18.00 per car or	
"	"	202 July 6 1911	UP 60951	36 feet	29.50	\$20.70 -----	20.70
"	"	203 July 6 1911	UP 62519	36 feet	29.50	3-36 ft. cars 118% of	
"	"					\$18.00 per car or	
"	"	204 July 6 1911	ORN 13193	36 feet	29.50	\$21.24 each -----	63.72
						4 cars @ \$2.50 per car -	10.00
					\$117.25		\$94.42
						Overcharge	22.82

STATEMENT NO. 4 (Cont'd)

Shipments to F. Games and Joseph Casalet Subsequent to November 21, 1910.

From	To	Waybill reference	Car	Length of car	Charges	Should be Class B	Charges
Livingston Stock Yards	"	333 July 11 1911	OSL	14115	36 feet	\$38.94	6-36 ft. cars 118% of
"	"	336 July 12 1911	SP	77301	36 feet	37.95	\$26.50 per car or
"	"	352 Aug. 28 1911	OSL	12972	36 feet	38.94	\$31.27 each ----- \$187.62
"	"	420 Sept 5 1911	SP	77340	36 feet	37.95	
"	"	421 Sept 5 1911	OSL	12541	36 feet	38.94	6-36 ft. cars 115% of
"	"	439 Sept 11 1911	OSL	14061	36 feet	38.94	\$26.50 per car or
"	"	440 Sept 11 1911	OSL	14106	36 feet	38.94	\$30.48 each ----- 152.40
"	"	441 Sept 11 1911	OH	13517	36 feet	37.95	
"	"	623 Oct 30 1911	SP	77302	36 feet	35.65	11 cars @ \$2.50 per car - 27.50
"	"	624 Oct 30 1911	SP	77449	36 feet	35.65	
"	"	625 Oct 30 1911	OSL	13229	36 feet	36.58	
					\$416.43		\$367.52
						Overcharge	48.91
Tracy	"	641 July 26 1911	OSL	13847	36 feet	23.60	3-36 ft. cars 118% of
"	"	642 July 26 1911	SP	77232	35 feet	23.00	\$12.00 per car or
"	"	96 Aug 7 1911	OSL	14054	36 feet	23.60	\$14.16 each ----- 42.48
"	"	96 Aug 7 1911	SP	74614	36 feet	23.60	1-36 ft. car 115% of
					\$93.80	\$12.00 ----- 13.80	
						4 cars @ \$2.50 per car	10.00
							\$66.28
						Overcharge	27.52
						Total Overcharge -----	106.73