

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Rivers Brothers Company, Inc., )

Complainant, )

vs. )

Southern Pacific Company, )  
a corporation, )

Defendant. )

Case No. 406

In the matter of the application of )  
Southern Pacific Company to cancel )  
certain fruit and vegetable rates )  
and publish in lieu thereof new )  
schedule. )

Application )  
No. 1700. )

In the matter of the application )  
of Atchison, Topeka and Santa Fe )  
Railway to cancel certain fruit )  
and vegetable rates and publish in )  
lieu thereof new schedule of rates. )

Application )  
No. 1727. )

Charles Clifford and Frank K. Clifford for )  
complainant )  
George D. Squires for Southern Pacific Company )  
and Atchison, Topeka and Santa Fe Railway )  
Company. )

EDGERTON, Commissioner.

O P I N I O N

The three above-entitled proceedings involving rates on fruit and vegetables from identical points were heard together, and a single opinion and order will cover all three proceedings.

The original petition in Case No. 406 was filed June 5, 1913, alleging that the rates charged for the transportation of apples in carload lots from Crafton and Beaumont to Los Angeles were illegal inasmuch as they exceeded a restricted rate of \$1.75 per ton applying on "Fresh Fruit for Canneries and Driers Only". The Commission found that the restriction

placed on this rate "for Canneries and Driers Only" was unlawful and that the legal rate applicable to apples in carloads, between the points in question, was \$1.75 per ton. Reparation was awarded of the difference between the amounts paid and what would have been paid at the rate found to be legal.

Defendant filed a petition for rehearing alleging that the Commission erred in its finding that a legal rate could be made by simply striking out of the tariff the unlawful restrictions attached to the rate, also that the evidence did not sustain an award of reparation. This petition for rehearing after having been argued was denied October 21, 1914. On May 25, 1915, complainant filed an amended complaint alleging that the rates paid on shipments of apples in carloads from Crafton and Beaumont to Los Angeles, referred to in Case No. 406, were unjust, excessive and unreasonable, and prayed that the Commission fix a just and reasonable rate. On May 28, 1915, the Commission set aside its previous orders and reopened the case for a further hearing.

Application No. 1700 of the Southern Pacific Company asks permission to amend its rates on "Fruit for Canneries and Driers Only", as shown in tariff Fruit Specials No. 4, C.R.C. 99, also to amend the rates on "Fresh Vegetables for Canneries and Driers Only", as shown in Freight Tariff No. 796, C.R.C. 1788, by cancelling certain rates which are not used at all, or seldom used, and by eliminating the unlawful restriction "For Canneries and Driers Only", substituting therefor a description of the package reading, "Fruit, Deciduous, Fresh or Green, Orchard Run in lug boxes", - "Vegetables, Fresh or Green in lug boxes".

Application No. 1727 of the Atchison, Topeka and Santa Fe Railway Company asks permission to amend its rates on fruit and vegetables carried in Tariff No. 11992, C.R.C. 323, by cancelling out of the tariff all of the rates shown on pages 32 to

43 inclusive, under which there has been no movement in the past, also to strike out the restrictive words, "Only when for Canning, Driers, Pickling or Manufacturing Purposes", substituting therefor a description of the package reading "Fruit, Deciduous, Fresh or Green, Orchard Run in lug boxes", - "Vegetables, Fresh or Green, Field Run, in lug boxes."

Application No. 1700 of the Southern Pacific Company and Application No. 1727 of the Atchison, Topeka and Santa Fe were originally filed with the Commission requesting authority informally to amend tariffs in order to eliminate the unlawful restrictions now published, and to cancel out of the tariffs certain rates which are no longer used for the transportation of unpacked fruit and vegetables moving in lug boxes.

Witnesses for both applicants testified that the restricted rates were established when such rates were common ~~xxxx~~ and were put into effect for the purpose of assisting in building up the canning and preserving industries. They claim the rates were made unusually low for both carload, and less than carload, because of the kind of fruit and vegetables shipped and the manner of handling, it being shown that these commodities in lug boxes can be transported in any kind of equipment, are promptly unloaded from cars, and are not subject to damage as is the ~~xxxxxxxx~~ carefully packed fruit forwarded direct to the market for consumption.

The practice of assessing different rates for fruits, vegetables and other commodities dependent upon the kind of packages employed is not unusual, and as the principal reason for making the changes in these tariffs is to remove the unlawful restrictions, I believe these applications should in part be granted. The order herein provides that the carriers may cancel the rates upon which traffic has ceased to move but are not authorized to increase any active rates at present in

effect on either citrus or deciduous fruits.

Complainant, Rivers Brothers Company, Inc., in support of its amended complaint contending that the present rates on apples from Crafton and Beaumont to Los Angeles are excessive and unreasonable, offered a number of exhibits comparing the rates per ton, per ton mile, and per car mile with the rates on fruit obtaining between points in other parts of the State. The distance from Crafton to Los Angeles is 69.6 miles, the rate \$2.75 per ton, making a rate of 4 cents per ton mile; the distance from Beaumont to Los Angeles is 80.2 miles, the rate \$1.75 per ton, plus \$5.00 per car, making a rate of approximately 2.6 cents per ton mile. Particular attention is called to the fact that the rate on Oranges and Lemons, Crafton and Beaumont to Los Angeles, is \$1.75 per ton. There also is a rate of \$1.75 per ton on fruit Montalvo to Los Angeles, a distance of 79 miles, and the same rate from Benning to Pasadena, a distance of 85 miles. Attention is drawn to the rates applying into San Francisco, Sacramento, Stockton and Fresno. In practically all of these exhibits the present Crafton-Beaumont to Los Angeles apple rates yield the greatest earnings.

In another exhibit it is shown that if a rate of \$1.75 per ton were established on apples from both Crafton and Beaumont to Los Angeles the earnings would be 2.52 cents per ton mile from Crafton, a branch line point, and 2.19 cents per ton mile from Beaumont, a main line point; also, that as the shipments load approximately 35,000 pounds per car the earning per car mile is 43.8 cents from Crafton and 38.3 cents per car mile from Beaumont.

It was testified that refrigerator cars are freely used during the apple shipping season in Southern California for the transportation of all kinds of freight, both carload and less than carloads, the reason being that after the citrus and de-

ciduous fruit crops have moved there is but little demand for this kind of equipment, which is therefore used for local traffic, and defendant is accordingly put to no additional expense in furnishing refrigerator cars for the transportation of apples.

A witness for defendant sought to analyze the comparisons of rates in an endeavor to prove that none were of any value in determining the reasonableness of the apple rates. The history of some of the rates was explained but no positive evidence introduced to prove that the rates shown in the exhibits, many of which had been in use for a great number of years, were unremunerative, or to show any material difference in transportation conditions.

A careful consideration of all the evidence shows that a rate of \$1.75 per ton is a just and reasonable rate for the transportation of apples, in carloads, minimum weight 24,000 pounds, from Crafton and Beaumont to Los Angeles.

The original decision in Case No. 405 ordered the payment of reparation on the theory that the restriction placed on the rate of \$1.75 per ton making it apply on "Fresh Fruit for Canneries and Driers Only" was an illegal restriction, and, therefore, the rate of \$1.75 was an open rate applicable to all fruit.

A careful review of the authorities, however, has convinced me that this determination was contrary to the decisions of the Supreme Court of the United States, and, therefore, cannot stand.

This Commission has held notably in Cases Numbers 596, 669 and 672- Steiger Terra Cotta and Pottery Works and other complainants v. Southern Pacific Company- that to justify reparation damage to complainant as a result of paying the rate found by the Commission to be unreasonable must be shown.

I find in this case, No. 406, Rivers Brothers Company, Inc., have shown that they were damaged to the extent of the difference between the rate which they paid and the rate of \$1.75 herein found to be reasonable from the time they filed their original complaint on June 5, 1913.

The evidence shows that plaintiff sold its apples in competitive markets and that it was impossible to add to the price of its apples in such markets the freight rate. Hence any rate above a reasonable rate which it paid for transporting these apples to the competitive market by that much reduced its return on these apples whether it made a profit or not. It seems to me that under all the facts shown by the evidence in this case it is only just that reparation be allowed this plaintiff from the time it complained of the rate to the time of the going into effect of the rates herein found to be reasonable.

I recommend the following form of order:

O R D E R

Rivers Brothers Company, Inc., having complained that the rates of the Southern Pacific Company for the transportation of apples, carloads, from Crafton and Beaumont to Los Angeles are excessive and unreasonable, and Southern Pacific Company having made application to cancel certain fruit and vegetable rates and publish in lieu thereof new schedules of rates, and the Atchison, Topeka and Santa Fe Railway Company having made application to cancel certain fruit and vegetable rates and publish in lieu thereof new schedules of rates, and a public hearing having been had in all three of such matters and the same having been submitted and being now ready for decision, and the Commission being fully apprised in the premises,

IT IS HEREBY FOUND AS A FACT that the rate of \$1.75 per ton on apples, carloads, minimum weight 24,000 pounds, from Crafton and Beaumont to Los Angeles is a just and reasonable rate to be charged by Southern Pacific Company.

IT IS HEREBY FURTHER FOUND AS A FACT that Rivers Brothers Company, Inc., has been damaged in a sum equal to the difference between the rate paid for shipments of apples by said company over the lines of Southern Pacific Company from June 5, 1913, and the rate of \$1.75 herein found to be the just and reasonable rate, and that said Rivers Brothers Company, Inc., is entitled to reparation in said amount.

Basing its order on the foregoing findings of fact and the further findings of fact set out in the opinion preceding this order,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that Southern Pacific Company publish and file with this Commission on or before twenty days from the date of service of this order, a rate of \$1.75 per ton on apples, carloads, minimum weight 24,000 pounds, from Crafton and Beaumont to Los Angeles.

IT IS HEREBY FURTHER ORDERED that Southern Pacific Company pay by way of reparation to Rivers Brothers Company, Inc., a sum equal to the difference between the rate paid for the shipment of apples by Rivers Brothers Company, Inc. over the lines of Southern Pacific Company from Crafton and Beaumont to Los Angeles from June 5, 1913, and the rate of \$1.75 herein found to be reasonable for such shipments.

IT IS HEREBY FURTHER ORDERED that if within a period of sixty days from the date of this order Rivers Brothers Company, Inc., and Southern Pacific Company cannot agree upon an amount of reparation due under this order, said parties, or either of them, may appear before the Commission and submit proof, whereupon the

Commission will determine the amount of reparation due. If said parties within said period of sixty days agree upon the amount of reparation due under this order, report shall be made to this Commission of the amount agreed upon, whereupon a Supplemental Order will be issued ordering Southern Pacific Company to pay said amount to Rivers Brothers Company, Inc.

IT IS HEREBY FURTHER ORDERED that Southern Pacific Company is hereby authorized to amend certain items in its tariff Fruit Specials No. 4, C.R.C. 99 and certain items in its Freight Tariff No. 796, C.R.C. 1788, as set out in its Application No. 1700, except that said company is not authorized to make any changes which will bring about increases in rates.

IT IS HEREBY FURTHER ORDERED that the Atchison, Topeka and Santa Fe Railway Company is hereby authorized to amend certain items in its Tariff No. 11992, C.R.C. 523, as set out in its Application No. 1727, except that said company is not authorized to make any changes which will bring about an increase in rates.

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 28<sup>th</sup> day of September, 1915.

*Max Shelden*

*Alex Gordon*

*Edwin O. Edgerton*

Commissioners.