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Decision No. ✓

ORIGINAL

Decision No. 3574

BEFORE THE RAILROAD COMMISSION OF
THE STATE OF CALIFORNIA

J. B. Culpepper,

Complainant,

v.

Southern Pacific Company,
a corporation,

Defendant.

Case No. 897.

Walter C. Davison for Complainant.
George D. Squires for Defendant.

BY THE COMMISSION.

O P I N I O N

This is an action brought by J. B. Culpepper, complainant, against the Southern Pacific Company for reparation on alleged excess freight charges collected by defendant from complainant and his assignor in the total sum of \$454.66, together with interest upon the same.

A public hearing was held in Riverside on March 3, 1916. At the close of the hearing the matter was submitted upon briefs to be filed by the respective parties. These briefs have now been filed and the case is ready for decision.

From the evidence it appears that complainant has been for some time past engaged in the business of buying manure in the back country and having it shipped to him at Riverside, where he sells it to various orange growers. Between March 1914 and February 1915, inclusive, complainant or his assignor shipped to Riverside, via defendant's railroad, twenty-three cars of manure from El Centro and two cars of manure from Calexico, upon which he or his assignor paid the freight.

There are two tariffs under which complainant might have had the commodity shipped, one under the heading of manure, upon which the rate from El Centro to Riverside is \$2.18 per ton, with a minimum carload weight of 40,000 pounds; the other under the heading of fertilizer, upon which the rate between the points above mentioned is \$3.04 per ton, with a minimum carload weight of 39,888 pounds;

Complainant forwarded the consignments as manure under the provisions of Item 47 of Southern Pacific Company Local Freight Tariff No. 726, C.R.C. No. 1613, which specifies a minimum carload weight of 40,000 pounds. This tariff is governed by Pacific

Freight Tariff Bureau Exception Sheet No. 1-D, and when cars are furnished at variance with shippers' orders at carriers convenience, Rule No. 6 applies. This rule, subdivision No. "D", reads as follows:

"(APPLIES ON BULK FREIGHT ONLY - i.e., FREIGHT WHICH CARRIERS WILL NOT ACCEPT IN BULK FOR LESS CARLOAD SHIPMENT.) When car of smaller dimensions or capacity is furnished and loaded to its full visible capacity, actual weight will apply, if not provided by tariffs lawfully on file with the Interstate Commerce Commission and State Railroad Commissions, but not to exceed the marked weight capacity of car, will apply, unless actual weight is greater."

In each case it appears that shipper ordered from defendant 40 foot gondola cars, the largest car available for this class of freight used by carriers operating west of Chicago. In all but six cases defendant supplied a car of the size ordered or a larger car and there is no question but that under the provisions of the tariff and of Rule 6 of the Exception Sheet, that the freight charges for the six small cars should have been based upon the actual weight of the manure and not on the minimum weight of 40,000 pounds per car.

The excessive freight charges paid by complainant or his assignor over the rate based upon the actual weights amounted in all to \$121.26, and to this amount we find that complainant is entitled to reparation, together with interest thereon at the rate of seven (7%) per cent. per annum from date of

payment of bills.

A segregated statement of the reparation due is as set forth below:

No.	Length of Car	Minimum Weight	Rate	Amount Charged	Actual Weight	Correct Charge	Over Charge
S.P.-57243	36' 4"	40,000	*2.27	\$45.40	24,900	\$28.26	\$17.14
S.P.-52449	35' 9"	40,000	2.18	43.60	22,820	24.87	18.73
LSMS-28632	33' 6"	40,000	2.18	43.60	18,020	19.64	23.96
LSMS-38885	36' 6"	40,000	2.18	43.60	24,060	26.23	17.37
S.P.-64394	36' 0"	40,000	2.18	43.60	23,120	25.20	18.40
G.E.-40273	34' 7 $\frac{1}{2}$ "	40,000	2.18	43.60	16,460	17.94	25.66
Total	-	-	-	\$263.40	-	\$142.14	\$121.26

*From Calexico - other cars from El Centro.

As to the remainder of the shipments, we find that defendant collected only the legal rate as established by its tariff on file with this Commission. This proceeding is brought solely upon the theory of overcharge and no question of the reasonableness of the rate or of the minimum weight of 40,000 pounds is raised by the pleadings. Even if this question were properly in issue we doubt whether, under all the conditions, this Commission would be justified in requiring the defendant to establish a lower carload minimum.

This case is a hard one from complainant's point of view as, according to testimony, he would not have made these shipments had he known that the charges were to be computed on the basis of actual weight. This may well be a case where the railroad

company cannot afford to haul the freight at a low enough rate to justify complainant continuing in the business of shipping manure to Riverside from the Imperial Valley points, but the Commission has ~~unavoidably~~ come to the conclusion that it can give Mr. Culpepper no further relief.

O R D E R

A public hearing having been held in the above entitled case and oral and documentary evidence having been introduced and the matter having been duly submitted upon briefs of the respective parties, and being now ready for decision,

The Railroad Commission hereby finds as a fact that defendant charged and received from complainant for carload shipments of manure forwarded from Calexico and El Centro to Riverside between March 1, 1914, and February 5, 1915, inclusive, the sum of \$121.26 in excess of the lawful charges which defendant should have collected.

Basing our conclusions on the foregoing findings of fact and on the further findings of fact contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be, and it is hereby, authorized and directed to pay unto complainant, J. B. Culpepper,

the sum of One Hundred Twenty-one and 26/100 (\$121.26) Dollars, with interest thereon at the rate of seven (7%) per cent. per annum from the dates upon which the overcharges were collected, as reparation on account of rates charged for the transportation of manure from Calexico and El Centro to Riverside, which rates so charged have been found to be unlawful.

Dated at San Francisco, California, this 12th day of August, 1916.

Max Thelen
F. S. Cleveland
W. G. Gordon
Frank P. DeWitt

Commissioners.