

ORIGINAL

Decision No.

4628

Decision No. \_\_\_\_\_

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

-----

PROXY MILLING COMPANY.)  
Complainant.)

vs.

CASE NO. 1061.

SOUTHERN PACIFIC COMPANY.)  
Defendant.)

G. J. Bradley. for Complainant.  
Geo. D. Squires. for Defendant.

BY THE COMMISSION.

O P I N I O N

Complainant is a corporation engaged in the feed and grain business at Oakland. By complaint filed March 29, 1917, it alleges that the rate of 32.5 cents per hundred pounds charged by defendant for the transportation of one carload of broom corn seed from Vina to Oakland December 2, 1915, was excessive and discriminatory to the extent that it exceeded a rate of 14.5 cents per hundred pounds. Reparation is asked for in the sum of \$54.00, with interest from May 17, 1916, the date upon which the freight bill was paid.

Shipment moved under Class A rate of 32½ cents per 100 pounds shown in Southern Pacific Company's Local Freight Tariff No. 711, C.R.C. No. 1515, governed by Western Classification No. 53, C.R.C. No. 112, F. W. Gomph. Agent.

There was contemporaneously maintained between the same points a rate of 14½ cents per 100 pounds in defendant's Local Joint

and Proportional Tariff No. 793, C.R.C.No.1761, applying on certain commodities enumerated in Rule 20-B, which, in part, reads:

"Rates named in tariff on grain and grain products (when specific reference is made to this rule), will apply on the following articles, viz:

Grain, whole, cracked, ground, chopped or rolled, not otherwise indexed by name. (not including cereal foods, flaked, puffed or toasted and cereal coffee, nor rice of any description), and articles taking grain rates, viz:"

Then follows a long list of commodities entitled to the same rate, including flaxseed, kaffir corn, milo maize, certain articles specified as poultry food and vetch seed which are used for the same purpose and compete with broom corn seed.

On February 1, 1916, this rule was cancelled by Rule 20-C and changed to read, in part:

"Grain, viz: wheat, rye, oats, barley, buckwheat and corn (including kaffir corn and milo maize, but not including pop-corn) and feterita, not otherwise indexed by name, whole, cracked, ground, chopped or rolled, (not including cereal foods, flaked, puffed or toasted and cereal coffee), and articles taking grain rates, viz:

Under the changed rule the articles taking grain rates were enlarged and made to include Egyptian corn, melilotus seed and sorghum seed. On August 1, 1916, Rule 20-D added sunflower seed.

On May 3, 1917, subsequent to the filing of this complaint, defendant reduced the rate on the commodity in question to 20 cents per 100 pounds, as per Item No.1130-1 in Local and Proportional Tariff No. 730, C.R.C.No. 1632.

Item No. 145-A, page 5, Supplement No.19 to Pacific Freight Tariff Bureau Exception Sheet No.1-E (F.W.Gomph.Agent) C.R.C.No.132, reads substantially the same as Rule 20-D heretofore referred to and rates the articles at Class C. The commodity rate of 20 cents per 100 pounds on broom corn seed, established May 3, 1917, is the Class C between Vina and Oakland, though carrier avers that this fact

was not considered when the rate was reduced, but it was made 25 cents per ton over the Chico-San Francisco commodity rate of \$3.75 per ton applying on paddy rice.

The records disclose that broom corn seed is grown in the Sacramento Valley north of Sacramento and in the San Joaquin Valley south of Stockton and that the production has decreased from 1,146,000 pounds in the year 1900 to 614,250 pounds in 1910.

The value of the shipment herein considered is given as \$20.00 per ton and complainant's witness testified that it was mixed with other articles and used as a poultry food. Defendant's witness testified that the price of broom corn seed ranged from \$20.00 to \$60.00 per ton, depending upon quality, the inferior article being used as poultry food, the superior for planting.

The records further disclose the following prices, per ton, in carload quantities, on commodities embraced in Rule 20-D:

Sorghum seed	\$100.00	Melilotus seed	\$40.00
Sunflower seed	45.00	Vetch seed	70.00
*Eastern flaxseed	40.00	Egyptian corn	45.00
Egyptian wheat	45.00	Wheat	50.00
Rye and Barley	50.00	Oats	70.00
Kaffir corn and milo maize			60.00
*Plus freight.			

As these grains are given the  $14\frac{1}{2}$  cent rate, there appears to be no good reason why broom corn seed, assuming it to be of the same or of a lesser value per ton, should be rated differently, particularly as no evidence was introduced tending to show a dissimilarity in transportation conditions.

Broom corn seed appears under the head of Seed in the Western Classification, with sorghum, millet, sunflower and vetch seed and is rated the same, Class A, in straight or mixed carloads. Therefore, as the latter commodities are taken out of the Classification and given the benefit of the commodity rate of  $14\frac{1}{2}$  cents per 100 pounds, there can be no justification in rating broom corn seed differently, for it is well established that classification

units are intended to express the relation to one another of weight, space and value.

Complainant also contends that the shipment in controversy was justly entitled to the rate of  $14\frac{1}{2}$  cents per 100 pounds, because of the fact that broom corn seed is a sorghum seed, and that sorghum seed is specifically mentioned in the articles taking this rate. Corn without qualification, is likewise included in the list under Rule 20-D and it is further contended that all kinds of corn, except pop-corn, are entitled to the  $14\frac{1}{2}$  cent rate.

Defendant admits that the rate charged was unjust and unreasonable and this not only appears in the transcript but is proven by the voluntary reduction of the rate to 20 cents per 100 pounds and the offer to make a reparation refund of \$37.50 based on rate subsequently effective.

Defendant urges that the  $14\frac{1}{2}$  cent rate is below normal, due to water influence, therefore would not be a fair measure of the reasonableness of a rate on broom corn seed. But this rate has been in effect a number of years and while it may have been originally depressed by reason of water competition, the fact remains that recently flaxseed, sunflower seed, melilotus seed, sorghum seed and vetch seed have been added to the Rule 20-D group and no evidence presented to show that water competition forced defendant to take such action.

After fully considering all the facts, we find that the rate of 32.5 cents per 100 pounds charged on the shipment involved was unreasonable and discriminatory to the extent that it exceeded the rate of  $14\frac{1}{2}$  cents per 100 pounds. We further find that complainant paid and bore the charges on the shipment in controversy at the rate herein found to be unreasonable; that it was damaged to the extent of the difference between the charges paid and the charges which would have accrued at the rate herein found reasonable and that

it is entitled to reparation in the sum of \$54.00, with interest, from May 17, 1916, the date upon which charges were paid.

O R D E R

A public hearing having been held in the above entitled case and careful consideration having been given to the evidence presented, and basing the order upon the findings of fact which appear in the opinion preceding this order.

IT IS HEREBY ORDERED that the Southern Pacific Company publish and file with this Commission, to become effective within twenty days from the date of this order, a rate of 14½ cents per 100 pounds from Vina to Oakland on broom corn seed, in carloads, minimum carload weight thirty thousand (30,000) pounds, which rate is found to be just, reasonable and non-discriminatory.

IT IS FURTHER ORDERED that the Southern Pacific Company refund to complainant the sum of \$54.00, with interest at the rate of seven per cent per annum from May 17, 1916, as reparation on account of unreasonable rate charged for the transportation of one carload of broom corn seed from Vina to Oakland.

Dated at San Francisco, California, this 8<sup>th</sup> day of Sept. 1917.

Max Ikelin

Alfred Gordon

Frank R. Derby  
Commissioners.