

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

ORIGINAL

Decision No. 845

.....
 GRAYSON-OWEN COMPANY, et al.,
 Complainants,
 vs.
 SOUTHERN PACIFIC COMPANY,
 Defendant.

Case No. 295

LOVELAND, Commissioner:

SUPPLEMENTAL OPINION.

On October 3, 1912, the Commission made an order in this proceeding awarding reparation to complainants as follows:

1. Grayson-Owen Company was awarded reparation to the amount of \$16.45 upon charges collected upon carload shipments of cattle moving between July 12, 1910 and August 26, 1910, on the ground that the rate collected for these shipments was found to be unreasonable.
2. Grayson-Owen Company was awarded reparation to the amount of \$47.02 upon charges collected upon carload shipments of cattle moving between December 28, 1910 and December 22, 1911, on the ground that the rate charged was in excess of a combination of intermediate rates, the reparation being awarded on account of a violation of Rule 7a, Tariff Circular No. 1 C. R. C.
3. Comes and Casalet were awarded reparation to the amount of \$91.55 upon charges collected upon carload shipments of cattle moving between April 1, 1910 and November 2, 1910, on the ground that the rate collected for these shipments was found to be unreasonable.

4. Cames and Casalet were awarded reparation to the amount of \$106.73 upon charges collected upon carload shipments of cattle moving between December 2, 1910 and October 30, 1911. on the ground that the rate collected was in excess of a combination of intermediate rates, the reparation being awarded on account of a violation of Rule 7a, Tariff Circular No. 1 C. R. C.

This Commission in its decision in Case No. 283 - Scott, Wagner and Miller vs. Western Pacific Railway Company - rendered on April 15, 1913, decided that prior to the amendment of Section 21 of Article XII of the Constitution of this State on October 10, 1911, there was no substantive right to reparation on the ground that the rate collected was unreasonable. It becomes necessary, therefore, to amend the order made in this proceeding on October 3, 1912, in so far as that order is inconsistent with the conclusions reached by the Commission in its decision in Case No. 283.

It will be noted that in the order already made in this proceeding reparation was awarded to Grayson-Owen Company to the amount of \$16.45, and to Cames and Casalet to the amount of \$91.55, upon the ground that the rate charged was unreasonable. It will be noted also that the reparation so granted involved shipments all of which moved and the charges therefor were collected prior to October 10, 1911. The award of reparation in these two instances is inconsistent with the Commission's decision in Case No. 283, and the Commission's order in this proceeding will, therefore, have to be amended so as to eliminate therefrom these two items of reparation.

The Commission's order also awarded reparation to Grayson-Owen Company to the amount of \$47.02 and to Cames and Casalet to the amount of \$106.73, on the ground that the rate collected was in violation of Rule 7a, Tariff Circular No. 1 C. R. C., effective November 21, 1910, and reading as follows:

"In every instance where a class or commodity rate is named in a tariff between specified points, the lowest of such rates is the lawful rate; provided, that if some combination of class or commodity rates or class and commodity rates is found to be lower than the through rate, the lower combination of rates shall apply and the carrier shall immediately make its through rate to correspond to the lower combination of rates. It being the intention to give the shipper the advantage of the lowest possible rate."

This rule prescribed the legal rates which the carriers were thereafter compelled to charge. Any rate other than the one which conformed to this rule thereby became an unlawful rate. It is apparent that if in any instance a rate higher than the one prescribed by this rule was collected, the rate collected would amount to an overcharge, and the shipper paying the rate would become entitled to reparation to the amount of the difference between the rate collected and the rate prescribed by Rule 7a. In so far as the Commission's order in this proceeding awarded reparation because rates had been collected in excess of the rates prescribed by Rule 7a, the order is correct.

The parties to this proceeding have stipulated that the order heretofore made in this proceeding may be amended without further hearing, and I submit herewith the following form of order:

SUPPLEMENTAL ORDER.

IT IS HEREBY ORDERED That defendant be and it hereby is directed to pay to Grayson-Owen Company the sum of \$47.02, in accordance with Statement No. 2 attached to the order made by this Commission in this proceeding on October 3, 1912, together with interest at the rate of 7% computed on each of the items of overcharge specified in said statement, from the date of the payment thereof.

IT IS FURTHER ORDERED That defendant be and it hereby is directed to pay to F. Cames and Joseph Casalet, doing business under the firm name of Cames and Casalet, the sum of \$106.73, in accordance with Statement No. 4 attached to the order made by this Commission in this proceeding on October 3, 1912, together with interest at the

rate of 7% computed on each of the items of overcharge specified in said statement from the date of the payment thereof.

IT IS FURTHER ORDERED That the complaint in this proceeding be and the same hereby is dismissed, except as to the reparation awarded complainants in this supplemental order.

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 2nd day of August, 1913.

John W. ...

H. D. ...

Max ...

Commissioners.