

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

ORIGINAL
Decision No. 847

.....
LIVERMORE WAREHOUSE COMPANY, et al.,
Complainants,
vs.
SOUTHERN PACIFIC COMPANY,
Defendant.
.....

Case No. 296

J. O. Bracken for Complainants.
George D. Squires for Defendant.

LOVELAND, Commissioner:

O P I N I O N .

This is a complaint for reparation of charges collected on carload shipments of hay originating at points west of Tracy on the Niles and Livermore line of defendant and destined to Oakland, San Francisco and San Jose. The shipments involved in this proceeding moved between November 15, 1910 and June 25, 1912. The complaint asks that reparation be awarded to the amount of \$3,614.61, this amount being the difference between the charges collected and the rate from Tracy to the points of destination.

The facts of this case and the allegations in the complaint are practically similar to those presented in Case No. 228, being the case of Scott, Wagner & Miller, et al. vs. Southern Pacific Company. These two cases were consolidated for hearing, and I shall refer to the supplemental opinion rendered in Case No. 228 on August 2, 1913, as deciding most of the questions involved in this proceeding.

It will be noted that the claim to reparation in this proceeding is based upon an alleged violation of the long and short haul clause found in Section 21 of Article XII of the Constitution of this State, prior to its amendment on October 10, 1911. The long and short haul clause of the Constitution does not include a case where the lower rate is "from a more distant point." The claim to reparation in this proceeding is based upon the fact that the rate from Tracy to point of destination is lower than the rate from intermediate points to destination. The claim is obviously based upon a lower rate "from a more distant point," and so is not included within the provisions of the long and short haul clause of the Constitution. This conclusion is explained in detail in the opinion in Case No. 228.

I recommend that the complaint in this proceeding as far as it is based upon the alleged violations of the long and short haul clause of the Constitution be dismissed.

The complaint also alleges that the rates under which the shipments moved in this proceeding were unreasonable, and asks reparation upon this ground. Of course, this allegation would apply only to charges collected subsequent to October 10, 1911, for prior to the amendment of the Constitution of this State, on October 10, 1911, the rates fixed by the Commission were conclusively just and reasonable. I am of the opinion, however, that the complainants in this case have failed to substantiate their allegation that the rates under which the shipments moved in this proceeding were unreasonably high. Complainants introduced testimony to show that the conditions surrounding a "Class C" rate upon hay of \$1.15 per ton from Tracy to Oakland, San Francisco and San Jose were not different from conditions surrounding shipments at a greater rate from points west of Tracy to the same points of destination. In this way complainants endeavored to show that there was no justification for a higher intermediate rate.

I desire to call attention to the fact that the Commission in its decision in the San Joaquin rate case permitted an increase in the "Class C" rate from Tracy to the same points of destination from

\$1.15 to \$1.55, and that the lowest rate now existing upon shipments of hay between these points is the commodity rate of \$1.45 per ton. The Commission found that the rate of \$1.15, upon which complainants rely, was unreasonably low. Of course, complainants cannot establish that an existing rate is unreasonably high solely by comparing this rate with a rate which has been found to be unreasonably low.

I recommend, therefore, that in this particular also the complaint be dismissed, and submit herewith the following form of order:

O R D E R .

The above entitled proceeding having come on regularly for hearing, and it appearing that the complainants are not entitled to the reparation requested,

IT IS HEREBY ORDERED That the complaint in the above entitled proceeding be and the same hereby is dismissed.

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 M. Goshlin

H. S. Loveland

Max Thelen

Commissioners.