

Decision No. 28195.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

TAYLOR MILLING CORPORATION,
a corporation,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
NORTHWESTERN PACIFIC RAILROAD
COMPANY,
Defendants.

ORIGINAL

Case No. 3481.

BY THE COMMISSION:

O P I N I O N

By complaint filed January 27, 1933, as amended, it is alleged that the charges assessed on complainant's shipments transported during the period January 6, 1930, to May 9, 1930, inclusive, were unjust and unreasonable, in violation of Section 13 of the Public Utilities Act. Reparation and an order authorizing the waiving of undercharges are sought. Rates are stated in cents per 100 pounds.

Complainant's shipments consisted of 53 carloads of non-transit poultry feed tonnage originating at Stockton, and grain and grain products originating at Sacramento, Davis and Woodland, California, and at points outside the State of California, milled in transit at Stockton. They were transported to Petaluma and Santa Rosa via the Southern Pacific Company and the Northwestern Pacific Railroad Company. Charges were assessed on the non-transit

portion of said shipments originating at Stockton at rates of 9½ and 12 cents per 100 pounds, and on the shipments originating at Sacramento, Davis and Woodland, transited at Stockton, at rates ranging from 12 to 17 cents.

Prior to May 9, 1930, the non-transit rate on grain and grain products from Stockton to Petaluma and Santa Rosa via Bay Point was 9½ cents and via Sacramento and Dixon 12 cents, both rates being named in Item 186 of Pacific Freight Tariff Bureau Tariff 16-L, C.R.C. 452. In order to obtain the transit privilege on the tonnage originating at Sacramento, Davis and Woodland it was necessary to move the traffic via Sacramento and Dixon and to assess the rate of 12 cents in effect via this route on the non-transit tonnage, or in the event a lower aggregate charge would result, to cancel the Sacramento Valley transit billing surrendered and apply the 9½-cent rate via Bay Point on the entire tonnage.

Effective May 9, 1930, in Item 476 of Supplement No. 10 to the tariff heretofore referred to, the rate from Stockton to Petaluma and Santa Rosa via Sacramento and Dixon was reduced to 9½ cents, the volume of the rate applicable via Bay Point. It is on the basis of this subsequently established rate applied to the non-transit portion of the shipments and reinstating the transit rates applicable via Sacramento and Dixon on the tonnage surrendered, that complainant seeks reparation and an order authorizing the waiving of the undercharges.

Defendants admit the allegations of the complaint; they also agree that it was seasonably filed¹ and have signified their

¹ Charges on certain of the shipments here involved were paid more than two years prior to the filing of the complaint. On the second day of November, 1932, defendant Southern Pacific Company commenced an action against complainant in the Municipal Court of the City of Los Angeles (Case No. 291,556) for the recovery of undercharges on each of the shipments involved. However, the complaint before us was filed within 90 days from the commencement of said action under the provisions of Section 71(d) of the Public Utilities Act.

willingness to make a reparation adjustment.

Upon consideration of all the facts of record we are of the opinion and find that the assailed rates were unreasonable to the extent they exceeded those that would have applied had the subsequently established rate been in effect. We further find that complainant made the shipments as described, paid and bore the charges thereon, and is entitled to reparation without interest. Complainant specifically waived the payment of interest.

The exact amount of reparation due is not of record. Complainant will submit to defendants for verification a statement of the shipments made and upon payment of the reparation defendants will notify the Commission of the amount thereof. Should it not be possible to reach an agreement as to the reparation award, the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

O R D E R

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the preceding opinion,

IT IS HEREBY ORDERED that defendants Southern Pacific Company and Northwestern Pacific Railroad Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund without interest to complainant Taylor Milling Corporation all charges collected for the transportation of the shipments of grain and grain products involved in

this proceeding in excess of those herein found reasonable.

IT IS HEREBY FURTHER ORDERED that defendants Southern Pacific Company and Northwestern Pacific Railroad Company be and they are hereby authorized and directed to waive the collection of charges applicable on complainant's shipments of grain and grain products involved in this proceeding in excess of those herein found reasonable.

Dated at San Francisco, California, this 21st
day of July, 1933.

C. L. Seavey
Leon Wheeler

W. J. Cunn
W. B. Lewis

Commissioners.