

Decision No. 26383.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

DURKEE FAMOUS FOODS, INCORPORATED,  
Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY,  
Defendant.

Case No. 3567.

ORIGINAL

L. M. Fites, for complainant.

G. E. Duffy and E. C. Pierre, for defendant.

Edwin G. Wilcox, as interested party.

BY THE COMMISSION:

O P I N I O N

By this complaint, as amended at the hearing, it is alleged that a rate of 38½ cents per 100 pounds assessed and collected on four shipments of crude walnut oil transported in tank cars from Los Angeles to Oakland, ~~was~~ unreasonable in violation of Section 13 of the Public Utilities Act, and unduly discriminatory and prejudicial in violation of Section 19 of the Act. Defendant by answer, as amended at the hearing, denies that the rate assessed was in violation of Section 13 of the Act, admits that it was in violation of Section 19, but denies that complainant was damaged thereby.

A public hearing was had September 21, 1933, before Examiner Brown at San Francisco.

The rate assessed on the shipments was the fifth class rate of 38½ cents. At the time of movement defendant concurrently

maintained a rate of 31½ cents on cotton seed oil. Both the fifth class rate of 38½ cents and the 31½ cent rate on cotton seed oil were nonintermediate in application and were thus presumably less than the maximum reasonable rate. There was no evidence presented by complainant which would rebut this presumption.

Complainant markets a salad oil produced from crude walnut oil in competition with manufacturers of a salad oil made from cotton seed oil. The transportation characteristics of cotton seed oil and walnut oil are substantially similar. Both commodities should move under equal rates. The 38½ cent rate was unduly prejudicial to complainant to the extent it exceeded the cotton seed oil rate.

The undue prejudice has been removed for the future, as shortly after the shipments were transported defendant established the 31½ cent rate on crude walnut oil. Complainant asks for reparation on the four shipments made at the 38½ cent rate. However there is no evidence in this record to show that by reason of the 31½ cent rate granted shippers of cotton seed oil complainant was damaged thereby. In the absence of <sup>the</sup> concrete showing of actual damages reparation must be denied. (Los Angeles County vs. Pacific Electric Railway, 28 C.R.C. 143. Penn. Railroad vs. International Coal Co., 230 U.S. 184.) The complaint should be dismissed.

O R D E R

This case having been duly heard and submitted,

IT IS HEREBY ORDERED that the complaint in the above proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 2nd day of October, 1933.

P. C. Leary  
Leon A. Kelly  
M. D. B.  
M. B. Harris  
COMMISSIONERS.