

Decision No. 28574.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

WOODWARD-BENNETT PACKING COMPANY,
STANDARD PACKING COMPANY,
COAST PACKING COMPANY,
DISTRIBUTORS PACKING COMPANY,
UNION PACKING COMPANY,
MERCHANTS PACKING COMPANY,
NEWMARKET COMPANY,
GLOBE PACKING COMPANY,
HAUSER PACKING COMPANY,
LOS ANGELES PACKING COMPANY,
ASSOCIATED MEAT COMPANY,
ASSOCIATED MEAT COMPANY OF CALIFORNIA,
UNITED DRESSED BEEF COMPANY,
PEERLESS PACKING COMPANY,
THE CUDAHY PACKING COMPANY,
W. E. GOODNO,
D. H. LILLYWHITE,
WASEBURN & CONDON,
SOUTHWEST COMMISSION COMPANY,
CALIFORNIA LIVE STOCK COMMISSION COMPANY, INC.,
Complainants,

vs.

SOUTHERN PACIFIC COMPANY,
THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
Defendants.

CALIFORNIA CATTLEMEN'S ASSOCIATION,
CALIFORNIA WOOL GROWERS' ASSOCIATION,
Complainants,

vs.

SOUTHERN PACIFIC COMPANY,
NORTHWESTERN PACIFIC RAILROAD COMPANY,
Defendants.

JAMES ALLAN & SONS,
ALPERT PACKING COMPANY,
J. C. JOHNSON, INC.,
HENRY LEVY COMPANY,
H. MOREAT COMPANY,
QUINTO RANCH COMPANY,
ROTH BLUM PACKING COMPANY,
WAL. TAFFE & COMPANY,
UNION SHEEP COMPANY,
WESTERN MEAT COMPANY,
OAKLAND MEAT & PACKING COMPANY,

ORIGINAL

Case No. 2900.

Case No. 2927.

Case No. 3110.

CALIFORNIA LIVESTOCK COMMISSION COMPANY, INC.,
SOUTHWEST COMMISSION COMPANY,
SEVIER COMMISSION COMPANY,
HOLM COMMISSION COMPANY,
WASHEURN & CONDON, Complainants,

vs.

SOUTHERN PACIFIC COMPANY,
NORTHWESTERN PACIFIC RAILROAD COMPANY,
Defendants.

CERRICAHUA RANCHES COMPANY,
J. W. FISHER,
DOYLE CATTLE COMPANY, Complainants,

vs.

SOUTHERN PACIFIC COMPANY,
Defendant.

THE CUDAHY PACKING COMPANY,
Complainant,

vs.

THE WESTERN PACIFIC RAILROAD COMPANY,
SACRAMENTO NORTHERN RAILWAY,
SOUTHERN PACIFIC COMPANY,
Defendants.

DISTRIBUTORS PACKING COMPANY,
CORNELIUS BROS. LTD.,
GLOBE PACKING COMPANY,
MERCHANTS PACKING COMPANY,
NEWMARKET COMPANY,
PEERLESS PACKING COMPANY,
STANDARD PACKING COMPANY,
UNION PACKING COMPANY,
UNITED DRESSED BEEF COMPANY,
WOODWARD BENNETT PACKING COMPANY,
WILSON & COMPANY INC. OF CALIFORNIA,
CALIFORNIA LIVE STOCK COMMISSION COMPANY,
W. E. GOODNO,
D. H. LILLYWHITE,
SOUTHWEST COMMISSION COMPANY,
WASHEURN & CONDON,
Complainants,

vs.

McCLOUD RIVER RAILROAD COMPANY,
SOUTHERN PACIFIC COMPANY,
THE WESTERN PACIFIC RAILROAD COMPANY,
Defendants.

Case No. 3126.

Case No. 3273.

Case No. 3310.

THE CUDAHY PACKING COMPANY,
Complainant,
vs.

Case No. 3404.

SOUTHERN PACIFIC COMPANY,
THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,
Defendants.

CALIFORNIA CATTLEMEN'S ASSOCIATION,
WALTI SCHILLING COMPANY,
Complainants,
vs.

Case No. 3489.

SOUTHERN PACIFIC COMPANY,
Defendant.

SEVIER COMMISSION COMPANY,
WASEBURN AND CONDON,
Complainants,
vs.

Case No. 3490.

MCLOUD RIVER RAILROAD COMPANY,
SOUTHERN PACIFIC COMPANY,
Defendants.

John Curry, for California Cattlemen's Association, California Wool Growers' Association and Walti Schilling Company, complainants.

Richard T. Eddy, J. P. Quigley and Alex Gould, for all complainants in Case 2900 (except The Cudahy Packing Company), and Case 3310.

Richard T. Eddy, for all complainants in Case 3110, and for The Cudahy Packing Company, complainant in Cases 2900, 3273 and 3404 and intervener in Case 3310; also for Swift & Company and Holmes & Wing, interveners.

Charles E. Blaine, for Chiricahua Ranches Company, J. W. Fisher and Doyle Cattle Company, complainants.

James E. Lyons, A. L. Whittle, Frank C. Nelson, Burton Mason and E. H. McElroy, for Southern Pacific Company and Northwestern Pacific Railroad Company, defendants.

Gerald E. Duffy, E. C. Pierre and Berne Levy, for The Atchison, Topeka and Santa Fe Railway Company, defendant.

L. N. Bradshaw and J. P. Haynes, for The Western Pacific Railroad Company and Sacramento Northern Railway, defendants.

James E. Lyons, D. M. Swobe and J. C. Orlowski, for McCloud River Railroad Company, defendant.

John M. Furlong and Charles E. Blaine, for Arizona Cattle Growers' Association and the American National Livestock Association, interveners.

BY THE COMMISSION:

O P I N I O N

Complainants are individuals, partnerships, corporations or associations engaged in the livestock commission business, the purchase, sale and slaughter of livestock, the packing of meats, or the rendering of services to California livestock men. They allege in these proceedings that the rates maintained by defendants for the transportation of sheep and cattle, both feeder and fat, between the points hereinafter designated were and are unjust and unreasonable, in violation of Section 13 of the Public Utilities Act, and in certain instances unduly discriminatory, in violation of Section 19 of the Act.¹

¹ In Case 2900, as amended, it is alleged that the rates on sheep in double deck cars from main and branch line points of the Southern Pacific Company, Redding on the north, Roseville on the east and Bakersfield on the south to Los Angeles, were and are unjust and unreasonable in violation of Section 13 of the Public Utilities Act. The Atchison, Topeka and Santa Fe Railway Company was originally named as a defendant but was later eliminated. It thereupon intervened in opposition to the complaint.

In Case 2927, as amended, rates on feeder cattle and feeder sheep for local and joint hauls between points in California on the Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, The Western Pacific Railroad Company and Northwestern Pacific Railroad Company are alleged to be unjust, unreasonable and discriminatory, in violation of Sections 13 and 19 of the Act. The American National Livestock and Arizona Cattle Growers' Associations intervened in behalf of complainants.

Case 3110, as amended, involves rates on sheep in double deck cars from all main and branch line points on the Southern Pacific Company, Redding on the north, Bakersfield on the south, and Colfax on the east, to San Francisco and South San Francisco. It is alleged that the charges paid were and are unreasonable in violation of Section 13 of the Act. The Atchison, Topeka and Santa Fe Railway Company intervened.

Case 3126 assails as unreasonable the rates on feeder cattle Inyokern to Brewley.

In Case 2927 rates for the future only are sought. In each of the other proceedings the prayer is for both reparation and rates for the future. There are also outstanding undercharges in Cases 3126 and 3489 which complainants seek to have waived.

Public hearings in Case 2927 were held at San Francisco and in the other cases at Los Angeles before Examiner Geary. Thereafter all of the proceedings were orally argued before the Commission en banc. The hearing in Case 3310 was had jointly with the Interstate Commerce Commission (Docket 25459, Distributors' Packing Co. et al. vs. Great Northern Railway Company et al.).

Stock raising is one of California's major industries, the state ranking tenth in the production of cattle, second in the production of sheep, and third in the production of wool. Approximately 500,000 lambs are shipped to Eastern markets each year. By far the greater portion of this stock is produced in the territory

In Case 3273 it is alleged that the rates on sheep, single and double deck, from Moy on the Western Pacific Railroad, Greendale and Argenta on the Sacramento Northern Railway, to Los Angeles were and are unjust and unreasonable in violation of Section 13. Washburn & Condon and Wilson & Company made shipments from intermediate points, and intervened on behalf of complainants.

In Case 3310 as amended, rates on sheep double deck originating at Southern Pacific Company stations Soda Springs and east to Calvada, Black Butte to Dorris, and Black Butte to Cole destined to Los Angeles are alleged to be and to have been unjust, unreasonable and unduly prejudicial, in violation of Sections 13 and 19 of the Act. The Western Pacific Railroad Company and the Cudahy Packing Company intervened.

In Case 3404 as amended, rates on fat sheep in double deck cars from Olanche, Inyokern and Cantil to San Diego, and from Alpaugh to Los Angeles, are alleged to be and to have been unreasonable in violation of Section 13.

Case 3489 assails as unjust, unreasonable and discriminatory the rates on fat cattle from Honcut to Orby.

Case 3490 assails as unreasonable the rates on sheep double deck from points on the McCloud River Railroad to San Francisco, South San Francisco and Los Angeles.

here involved. It is not confined however to particular localities. Extremes in topography and a wide range in climate, with frequent droughts and diverse feeding conditions in certain sections make it necessary to move stock from one region to another. While most of this transportation is by rail, a substantial amount of livestock is trucked or driven because of rail rates alleged to be unreasonably high.

The charges assessed and collected on complainants' shipments are based either on mileage rates or on specific rates stated in dollars and cents per car. For certain joint hauls no through rates have been established. The scale of mileage rates applying on the Atchison, Topeka and Santa Fe Railway, Western Pacific Railroad and Southern Pacific Company is hereinafter referred to as the California intrastate scale.² On the Northwestern Pacific Railroad a scale 15% higher than the California intrastate scale has been established on cattle, and sheep in single deck cars. On sheep in double decks the rate was 200% of the single deck rate prior to May, 1925, at which time it was reduced to 170%.

The rates complainants seek for the future are based on the Mountain-Pacific scale,³ excepting that in Case 2927 on feeder

² The California intrastate scale was published by the Southern Pacific Company effective August 5, 1924, as the result of a compromise following negotiations with The American Livestock Association, California Cattlemen's Association and California Wool Growers' Association, who sought rates of the volume of those currently maintained on Arizona intrastate traffic. In constructing this scale the carriers took the feeder cattle rates in effect at the time between Arizona and California, regraded them to iron out the blanket rates and then established rates on fat cattle which would bear a relationship of 100% to 85% fat to feeder stock. Rates on sheep were made 10% higher than those on cattle. With certain exceptions an arbitrary of \$3.50 per car was added for each branch line involved.

³ The Mountain-Pacific scale was prescribed by the Interstate Commerce Commission in Livestock - Western District Rates, 176 I.C.C. 1, and 190 I.C.C. 611, for transportation of livestock in Mountain-Pacific territory as therein defined.

cattle and feeder sheep, a basis obtained by taking 68% of the Arizona intrastate⁴ fat cattle rates is proposed for single line movements. A \$5.00 per car arbitrary is suggested for joint hauls. No reparation is sought in Case 2927, nor in Case 3110 on movements from Southern Pacific Company main line points Oakland to Sacramento inclusive prior to January 25, 1932. In all other instances reparation is sought on basis of either the Arizona-California⁵ or the Cactus-Concho⁶ scale prior to January 25, 1932, and on basis of the Mountain-Pacific scale thereafter.

Under the California intrastate scale rates on sheep in double decks are uniformly 10% higher than the rates on cattle. Certain specific rates exceed the corresponding cattle rates by as much as 60%. This relationship is peculiar to this state; in eleven western states the rates on sheep are the same as or lower than

⁴ The Arizona intrastate scale was prescribed by the Arizona Corporation Commission in 1912. It reflects the increases under General Order No. 28 of the Director General but not those under Ex Parte 74 nor the decreases of 20% recommended by the Interstate Commerce Commission in National Shippers' League vs. A.T. & S.F. Ry., 163 I.C.C. 107.

⁵ The Arizona-California scale, on which the California intrastate scale is based, was originally prescribed by the Interstate Commerce Commission in 1913 for application between Arizona and California points in American National Livestock Assn. vs. Southern Pacific Co., 26 I.C.C. 37. It was later affirmed in 32 I.C.C. 438, 515 and in Arizona Cattle Growers' Assn. vs. Apache R.Co., 101 I.C.C. 181.

⁶ The Cactus scale was prescribed by the Interstate Commerce Commission in Arizona Packing Co. vs. A. E. Ry.Co., 81 I.C.C. 115, decided June 27, 1923, for the transportation of cattle from interstate points in Arizona, New Mexico and Texas to Cactus, Arizona. It was later used by the Interstate Commerce Commission as a basis for the Concho scale prescribed for the transportation of fat and feeder cattle and fat and feeder sheep from points in Arizona to points in California in Concho Livestock Company et al. vs. A.T. & S.F. Ry.Co. et al., 178 I.C.C. 501. These scales will hereinafter be referred to as the Cactus-Concho scale.

those on cattle in all but California. This is also true of the Santa Fe rates from Ripley to numerous California points, and of the Southern Pacific Company rates from Imperial Valley points to Los Angeles. In the latter instance rates on sheep double deck the same as on cattle were ordered by this Commission in California Livestock Commission Co. et al. vs. Southern Pacific Co. et al., 35 C.R.C. 31. Effective December 31, 1932, the Southern Pacific Company voluntarily made further reductions in the sheep rates for the purpose of meeting truck competition without making corresponding reductions on cattle. Complainants contend that with few exceptions interstate rates on sheep in western territory likewise have always been the same as or lower than those on cattle.⁷ Since January 25, 1932, at which time the Mountain-Pacific scale became effective, interstate rates on sheep in cents per 100 pounds have been of the same volume as those on cattle. The former, however, are subject to a carload minimum of 20,000 pounds as against 24,000 pounds for the latter. Complainants state that in only two cases has the Interstate Commerce Commission approved rates on sheep higher than the rates on cattle between the same points and that the conditions surrounding both these proceedings were materially different from those here involved.⁸

The California intrastate scale provides for the addition of an arbitrary of \$3.50 per car for each branch line haul involved in the movement. This addition however is not made by the Western

⁷ Exhibit No. 4 in Case 2900, Sheets 2 and 3, lists 17 proceedings in which the Interstate Commerce Commission prescribed rates on sheep the same as, or lower than, on cattle.

⁸ Slater vs. Southern Pacific Co., 64 I.C.C. 647, decided December 6, 1921, and Swanston vs. Western Pacific Railroad Co., 148 I.C.C. 152, decided October 16, 1923.

Pacific, Sacramento Northern, Northwestern Pacific or Los Angeles & Salt Lake, nor by the Southern Pacific and the Santa Fe where the branch line point is competitive or treated as a main line point. In no case since 1927 has a branch line arbitrary been added to the intrastate rates within eleven western states, nor to interstate rates within Mountain-Pacific territory since January 25, 1932. An arbitrary allowed by the Interstate Commerce Commission in 1913 in American National Livestock Assn., supra, wherein it prescribed the Arizona-California scale, was removed in 1925 in the Arizona Cattle Growers' Association Case, supra. Complainants emphasize that although the California-Nevada and California-Oregon⁹ scales are in effect extensions of the California intrastate scale, they make no such addition nor was any allowed in the rates established by this Commission in the California Livestock Commission Company Case, supra.

Complainants contend that California intrastate rates are on an exceptionally high or disproportionate basis for the following reasons:

(1) Assuming that one car of sheep moved to Los Angeles from each of 652 stations here involved, the charges accruing at the specific rates would be 108.9%, 114.3%, 117.7% and 139.2% respectively of those accruing under the Oregon Cattle Raisers, Arizona-California, Concho and Mountain-Pacific scales. A similar calculation based on rates on sheep from 30 different points to San Francisco shows that while the specifically published rates are 2% below the California intrastate scale, they are 10% in excess of the Arizona-California, 12.56% in excess of the Cactus-

⁹ The Nevada-California and California-Oregon scales are voluntary extensions of the California intrastate scale made by the carriers, effective May 7, 1927.

Concho, and 32% in excess of the Mountain-Pacific scale.¹⁰

(2) The Arizona-California scale was prescribed or approved by the Interstate Commerce Commission for application generally between Arizona and California points in four formal proceedings;¹¹ it was used by the carriers on two occasions in proceedings before the Interstate Commerce Commission involving movements between El Paso, New Mexico and Arizona points;¹² it was prescribed on livestock between El Paso and New Mexico points and points on the Arizona Eastern line of the Southern Pacific Company;¹³ it was used as a basis for reparation between Southern Pacific points in Arizona and Western Pacific points in California;¹⁴ and was used by this Commission as a measure of reasonableness from points in the Imperial Valley to Los Angeles.¹⁵ Moreover, prior to January 25, 1932, when it was superseded by the lower Mountain-Pacific scale the Arizona-California scale applied as a maximum between all points in Arizona and all points in California and over every mile of track involved in these proceedings. The Cactus-Concho scale applies for joint movements and is said to have been used by the Interstate Commerce Commission for reparation purposes in no less than 15 cases.

¹⁰ These calculations are based on minimum weights of 20,000 lbs. Since the average loading is in excess of 20,000 lbs. the use of actual weights would reduce somewhat the two percentages last stated. The California intrastate and Arizona-California scales are published in dollars and cents per car. Based on actual weights the revenue per car on the Cactus-Concho basis undoubtedly exceeds that under the Arizona-California scale.

¹¹ American National Livestock Assn. vs. Sou.Pac.Co., 26 I.C.C. 37, 32 I.C.C. 438, 515, and Arizona Cattle Growers' Assn. vs. Apache R.Co., 101 I.C.C. 181.

¹² Livestock in Arizona, New Mexico and Texas, 100 I.C.C. 4; Livestock between Arizona and New Mexico points, 161 I.C.C. 169.

¹³ Peyton Packing Co. vs. A.E.R.R., 100 I.C.C. 4.

¹⁴ Quinto Ranch Co. vs. Sou.Pac.Co., 165 I.C.C. 46.

¹⁵ California Livestock Commission Co. vs. S.P.Co., 35 C.R.C. 31.

since it was originally prescribed.¹⁶

(3) The rates to Los Angeles in many instances are and for a long time have been the same as or higher than those to Yuma, Arizona, a point 251 miles beyond Los Angeles.

(4) Because of the higher intrastate basis, many intrastate rates exceed those from much more distant points in Arizona, Nevada and Oregon, moving over the same line or route in the same direction.¹⁷

(5) It is in many instances possible to defeat the intrastate rates between two points by combining the lower interstate rates to and from a point outside the State of California.

(6) The rates to Los Angeles are on a higher basis than those applying to numerous other primary markets.

Defendants' defense rests upon the following grounds:

1. The California intrastate scale was adopted following a conference had with California livestock interests and these interests concurred therein. The scale resulted in substantial reductions in a large number of rates, and in those instances in which lower rates were already in effect they were not increased to the new basis.

¹⁶ Arizona Packing Co. vs. A.E.Ry.Co., 81 I.C.C. 115. California Dressed Beef Co. et al. vs. A.T.& S.F.Ry.Co. et al., 128 I.C.C. 607. Lane vs. A.T.& S.F.Ry.Co. et al., 159 I.C.C. 431. Associated Meat Co. vs. T.& P.Ry.Co. et al., consolidated with Docket 17000, Part 9, Livestock Western District Rates, 176 I.C.C. 1, 137. Standard Packing Co. et al. vs. U.P.R.R.Co. et al., 178 I.C.C. 203. Concho Live Stock Company et al. vs. A.T.& S.F.Ry.Co. et al., 178 I.C.C. 501. Romeo Stores Co. et al. vs. U.P.R.R., 179 I.C.C. 503. J.P. Strader et al. vs. A.T.& S.F.Ry.Co. et al., 179 I.C.C. 635. Shaw Bros. et al. vs. Apache Ry.Co. et al., 179 I.C.C. 734, 737. Hansen Packing Co. vs. C.M.& St.P.Ry.Co. et al., 123 I.C.C. 550. Armour & Co. vs. C.B.& Q.Ry.Co. et al., 123 I.C.C. 253. Hill vs. A.T.& S.F.Ry.Co., 126 I.C.C. 23. Russ Market Co. et al. vs. A.T.& S.F.Ry.Co. et al., 128 I.C.C. 77. Clear Creek Cattle Co. et al. vs. A.T. & S.F.Ry.Co. et al., 128 I.C.C. 531. Arizona Wool Growers' Assn. et al. vs. A.T.& S.F.Ry.Co. et al., 128 I.C.C. 475. Associated Meat Co. vs. T.& P.Ry., Docket 19785.

2. Livestock is moving freely at the present rates, and it is not now bearing its full share of the expense of maintaining the railroads.¹⁸

3. The transportation of livestock requires special equipment and the furnishing of expedited service and closer personal attention than other traffic. It necessitates the construction and maintenance of special side tracks to facilitate loading and unloading, and of stock corrals, loading pens and chutes. It involves free transportation of care takers, the stopping of trains and consequent disruption of schedules, incidental switching to or from corrals or pens for feed, water and rest, observation of state, county and federal requirements, the absorption of unloading charges at private corrals and the payment of 50 cents per single deck car for off-car weights.

4. Livestock traffic produces little collateral traffic and the percentage of empty return haul is exceptionally high, in many cases amounting to 100% of the loaded movement. In the case of sheep in double deck cars, two single decks must usually be furnished for each double deck ordered. Transit privileges are allowed at \$5.85 per car as compared with a charge of \$11.50 on interstate traffic.

5. Whenever disease, drought or other calamity afflicts the livestock industry, the shippers always turn to the rail lines for the establishment of emergency rates, which is seldom if ever refused.

¹⁷ For example, the rate from Gregory, Oregon, to Los Angeles, a distance of 761 miles, is 52½¢, minimum 20,000 pounds, or \$117.00 per car. The rate from Dixon, an intermediate point, to Los Angeles, a distance of but 468 miles, is \$131.00. This is the rate to Yuma, 719 miles from Dixon, held maximum at Los Angeles.

¹⁸ Exhibits 34 and 42 in Case 2900 compare rates and earnings on sheep with those on numerous other commodities.

6. Rates on sheep should be 10% higher than on cattle because the movement is mainly in single deck cars, requiring the hauling of twice the number of cars and in many cases the absorption of additional switching and weighing charges. Double deck cars represent a specialized type of equipment which cannot be used for any other purpose, whereas single decks are utilized for the transportation of numerous commodities such as lumber, fruit, company material, empty containers and other so-called dead freight. Livestock movements on the Southern Pacific Company are not sufficiently concentrated to justify the acquisition of double deck cars.¹⁹ There is also testimony to the effect that shippers let it be known that they prefer single deck cars even though they order double decks.

7. The 110% relationship between sheep double deck and cattle was approved and prescribed by the Interstate Commerce Commission in the Slater Case, supra, decided shortly before the California scale was published. The Interstate Commerce Commission did not find rates on sheep unreasonable in the Swanston Case, (supra) involving shipments between California and Nevada and between California and California via interstate routes, although the double deck sheep rates there involved were 110% of the cattle rates and were, except for a branch line arbitrary, the same as the California intrastate scale. The Interstate Commerce Commission again approved rates based on the California scale in Vail Company vs. Southern Pacific Co., 152 I.C.C. 437, involving feeder

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The Southern Pacific Company has an abundance of single deck cars, but in May 1930 had only 216 double decks. To fill all double deck orders during that month it would have had to acquire 527 additional cars at a cost of \$2,050 each, involving a capital investment of over \$1,000,000. During the other eleven months of the year 488 of these double decks would have remained idle.

sheep from Nevada to California. More recently in Docket 19068, Northwestern Livestock Shippers' Traffic League vs. Great Northern Railway Co., 176 I.C.C. 128, it found not unreasonable in the past rates on sheep both single and double deck from all points in California north of and including Merced to North Portland, Oregon, which were equal to the California scale with sheep at 110% of the cattle basis. This basis was also employed by this Commission in California Cattlemen's Assn. et al. vs. Northwestern Pacific Railroad Co. et al., 32 C.R.C. 466, and in California Cattlemen's Assn. et al. vs. Minarets and Western Railway Company et al., 32 C.R.C. 511. The value of a double deck car of sheep as compared with that of a car of cattle is also stressed.

8. Branch line transportation, because of infrequent service due to low volume of traffic, is much more expensive than main line transportation, in many cases exceeding it by approximately 200%.²⁰ Additional charges to compensate for branch line service were allowed by the Interstate Commerce Commission in the Swanston and Weil cases, supra, and by this Commission in the California Cattlemen's Association Cases, supra. While no such charge is made in connection with many movements to which complainants refer, those movements involve on an average substantially greater distances than those for which the assailed rates apply.

Aside from their objection to the volume of the rates defendants object to the Arizona-California scale for use in California on the ground that it is distorted. They also prefer to have intrastate rates converted to cents per 100 pounds for the

²⁰ This was challenged by complainants, who requested the figures upon which the calculation was based. These figures were not furnished.

sake of uniformity.²¹ They assail complainants' comparisons of rates under the various scales with a showing that on 2985 decks of fat sheep constituting 39% of the total movement involved in Case 3310 during a two-year period the charges actually collected were but 2% in excess of those that would have accrued under the Arizona-California scale.

Only three cars are involved in Case 3489, the average weight of which was 32,072 pounds. Because of this heavy loading the charges applicable on these three cars are approximately \$40 and \$85 respectively less than those that would have accrued under the Mountain-Pacific and Cactus-Concho scales.

We turn now to the question of rates on feeder cattle and sheep. Aside from the fact that lower rates on feeder than on fat stock have long prevailed and have frequently been prescribed by the Interstate Commerce Commission and other Commissions, there is nothing in this record to show how much lower than the rates on fat stock feeder rates should be in this territory and under existing conditions.

Reparation

Complainants, with the exceptions heretofore noted, contend that the assailed rates were unreasonable during the two-year period immediately preceding the filing of these complaints, and that they are entitled to a reparation award. They point out that the basis sought on the shipments moving prior to January 25, 1932, has been used by the Interstate Commerce Commission in at least 15 proceedings for the purpose of awarding reparation, and that rates of substanti-

²¹ Rates under the Arizona-California scale are stated in dollars per car.

ally the same volume were found reasonable by this Commission in 1930 in California Livestock Commission Co., supra.

Defendants point out that Section 71 of the Public Utilities Act, under which this Commission obtains its power to award reparation, is merely permissive, and argue that in view of the circumstances attending the establishing of these rates, reparation should not here be awarded. They also point out that in the California Livestock Commission Company Case, supra, in which this Commission prescribed lower rates for the future, reparation was denied, and that a higher scale was allowed by the Interstate Commerce Commission in the Swanston and Vail Cases. They urge that these proceedings constitute a general adjustment and that in such cases it has consistently been the practice of this Commission to deny reparation.

This Commission has frequently refused to award reparation when general adjustments involving both increases and decreases in rates were made, on the ground that since the increases were not made retroactive it would be unfair to compel carriers to pay reparation in the cases where lower rates were subsequently established. This principle however is not applicable here for no increases are being authorized, nor does the record show that any substantial number would occur if the bases herein prescribed were adopted uniformly on California intrastate traffic. By Decision 22651 in the California Livestock Commission Company Case, supra, decided July 2, 1930, the Commission condemned as unreasonably high rates on fat cattle and sheep in double deck cars from points in the Imperial Valley to Los Angeles, based on the California intrastate scale. Although reparation was denied, defendants, as to this territory at least, were given due notice that for the future

the California scale was excessive. The rates established for the future, while on a dollar and cents per car basis, were very nearly those herein found reasonable. In fact the record shows that considering the 20,000-pound loadings the rates there prescribed produce less revenue than those used herein.

Upon consideration of all the facts of record we are of the opinion and find:

1. That the rates herein assailed on fat sheep in double deck cars were and are unjust and unreasonable to the extent they exceeded and now exceed those that would have accrued on basis of the rates and at the minimum weights ²² shown in Appendix I hereof;
2. That on this record the charges applicable on the three carloads of fat cattle involved in Case 3489 have not been shown to be or to have been unlawful;
3. That the rates on feeder sheep and feeder cattle have not been shown to be or to have been unreasonable or otherwise unlawful except to the extent that they exceed those herein found reasonable for the transportation of fat sheep in double deck cars, or that they exceed those that would accrue on basis of the California intrastate scale allowing \$5 per car for joint hauls; ²³

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Average weights shown in this record are as follows:

| | | | | | |
|-----|-------------------|------------------|-------|--------|--------|
| 961 | double deck sheep | involved in Case | 2900, | 20,987 | lbs. |
| | " | " | " | 3110, | 20,532 |
| 47 | " | " | " | 3273, | 21,866 |
| 138 | " | " | " | 3310, | 21,077 |
| 15 | " | " | " | 3404, | 18,082 |
| 5 | " | " | " | 3404, | 21,700 |
| 25 | " | " | " | 3490, | 22,209 |
| 17 | " | " | " | 3490, | 19,600 |

No weights are shown on the feeder stock.

23 For the purpose of this decision the Northwestern Pacific Railroad Company and Southern Pacific Company will be considered as a single line. Mileages for joint hauls shall be figured by the shortest route available without transfer lading.

4. That complainants or those they represent made the shipments here described and are entitled to reparation, together with interest at six per cent. per annum on all cars moving subsequent to July 9, 1930, on which they paid and bore the charges, excepting those on which no reparation is sought and those moving under rates heretofore found reasonable by this Commission.

Feeder stock has long been on a lower basis than fat stock, and it may be that a more comprehensive record would require that a lower basis of feeder rates be established. The conclusions here reached, therefore, are without prejudice to any other or different conclusion that may be justified in the future. The foregoing must not be interpreted as a formal finding that rates on feeder stock of the volume here allowed are reasonable.

Defendant Southern Pacific Company contended that an award of reparation on the shipments involved in Case 3126 which moved in September 1929 was barred by the Statute of Limitations. In view of our findings this question is immaterial.

The exact amount of reparation due is not of record. Complainants 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

These matters having been duly heard and submitted,
IT IS HEREBY ORDERED that defendants be and they are hereby ordered and directed to cease and desist on or before sixty (60)

days from the effective date of this order, on not less than five (5) days' notice to the Commission and the public, from demanding, collecting or receiving charges for the transportation of cattle and sheep between the points involved in these proceedings in excess of those herein found reasonable.

IT IS HEREBY FURTHER ORDERED that defendants according as they participated in the transportation, be and they are hereby ordered and directed to refund to complainants and interveners in Cases 2900, 3110, 3273, 3310, 3404 and 3490, according as their interests may appear, all charges collected on the shipments here involved in excess of those herein found reasonable, together with interest at six (6) per cent. per annum.

IT IS HEREBY FURTHER ORDERED that in all other respects these proceedings be and they are hereby dismissed.

Dated at San Francisco, California, this 9th day of October, 1933.

C. S. Sawyer
Leon Williams
W. A. Linn
M. B. Harris
Walter ...
Commissioners.

APPENDIX

Rates in cents per 100 pounds

| | | | | Distance | Sheep Double Deck | : Sheep Single Deck |
|------|----------|------|-------|--------------------|----------------------|------------------------|
| | | | | 10 miles and under | 12 | 19 |
| Over | 10 miles | to & | Incl. | 15 | 13 | 20.5 |
| " | 15 | " | " | 20 | 14 | 21.5 |
| " | 20 | " | " | 25 | 15 | 23 |
| " | 25 | " | " | 30 | 16 | 24.5 |
| " | 30 | " | " | 35 | 17 | 25.5 |
| " | 35 | " | " | 40 | 18 | 27 |
| " | 40 | " | " | 45 | 19 | 28.5 |
| " | 45 | " | " | 50 | 20 | 29.5 |
| " | 50 | " | " | 60 | 22 | 31 |
| " | 60 | " | " | 70 | 23 | 32 |
| " | 70 | " | " | 80 | 24 | 33 |
| " | 80 | " | " | 90 | 25 | 34 |
| " | 90 | " | " | 100 | 26 | 35 |
| " | 100 | " | " | 115 | 28 | 37 |
| " | 115 | " | " | 130 | 29 | 38 |
| " | 130 | " | " | 145 | 30 | 39 |
| " | 145 | " | " | 160 | 31 | 40 |
| " | 160 | " | " | 175 | 32 | 41 |
| " | 175 | " | " | 190 | 33 | 42 |
| " | 190 | " | " | 205 | 34 | 43 |
| " | 205 | " | " | 220 | 35 | 44 |
| " | 220 | " | " | 240 | 37 | 46.5 |
| " | 240 | " | " | 260 | 38 | 47.5 |
| " | 260 | " | " | 280 | 40 | 50 |
| " | 280 | " | " | 300 | 41 | 51.5 |
| " | 300 | " | " | 320 | 42 | 52.5 |
| " | 320 | " | " | 340 | 44 | 55 |
| " | 340 | " | " | 360 | 45 | 56.5 |
| " | 360 | " | " | 380 | 46 | 57.5 |
| " | 380 | " | " | 400 | 48 | 60 |
| " | 400 | " | " | 420 | 49 | 61.5 |
| " | 420 | " | " | 440 | 50 | 62.5 |
| " | 440 | " | " | 460 | 52 | 65 |
| " | 460 | " | " | 480 | 53 | 66.5 |
| " | 480 | " | " | 500 | 54 | 67.5 |
| " | 500 | " | " | 525 | 55 | 69 |
| " | 525 | " | " | 550 | 56 | 70 |
| " | 550 | " | " | 575 | 57 | 71.5 |
| " | 575 | " | " | 600 | 58 | 72.5 |
| " | 600 | " | " | 625 | 59 | 74 |
| " | 625 | " | " | 650 | 60 | 75 |
| " | 650 | " | " | 675 | 61 | 76.5 |
| " | 675 | " | " | 700 | 62 | 77.5 |
| " | 700 | " | " | 725 | 63 | 79 |
| " | 725 | " | " | 750 | 64 | 80 |
| " | 750 | " | " | 775 | 65 | 81.5 |
| " | 775 | " | " | 800 | 66 | 82.5 |
| " | 800 | " | " | 825 | 67 | 84 |
| " | 825 | " | " | 850 | 68 | 85 |
| " | 850 | " | " | 875 | 69 | 86.5 |
| " | 875 | " | " | 900 | 70 | 87.5 |
| " | 900 | " | " | 925 | 71 | 89 |
| " | 925 | " | " | 950 | 72 | 90 |
| " | 950 | " | " | 975 | 73 | 91.5 |
| " | 975 | " | " | 1000 | 74 | 92.5 |

Rates shown are for single line movement. For joint hauls add 2½¢ per 100 pounds. For the purpose of this decision the N.W.Pac. R.R.Co. and S.P.Co. will be considered as a single line. Mileages for joint hauls shall be figured by the shortest route available without transfer of lading.

Minima per standard car of 36 feet 7 inches

Sheep. 12,000 pounds, single deck.
 Do. 20,000 pounds, double deck.

When the minimum for a standard
 36-foot 7-inch car is - - -

: To determine mini-
 : mum for cars of
 : larger size, add
 : for each addition-
 : al foot or fraction
 : thereof over 36 feet
 : 7 inches

| | Pounds |
|-------------------------|--------|
| 12,000 pounds | 325 |
| 20,000 pounds | 525 |