

Decision No. 26666.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

A. TEICHERT & SON, INC.,
Complainant,

vs.

THE ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY,
SIERRA RAILWAY COMPANY OF CALI-
FORNIA,
SOUTHERN PACIFIC COMPANY,
YOSEMITE VALLEY RAILROAD COMPANY,
Defendants.

ORIGINAL

Case No. 3539.

BY THE COMMISSION:

O P I N I O N

By complaint filed July 3, 1933, it is alleged that the charges assessed and collected on 39 carload shipments of rock screenings transported from Atlas Spur, California, to El Portal, California, during the period June 26 to July 16, 1931, inclusive were unjust and unreasonable in violation of Section 13 of the Public Utilities Act. Shipments made by complainant on which the cause of action accrued more than two years prior to the filing of the complaint are barred from consideration under the provisions of Section 71 of the Public Utilities Act.

Reparation only is sought. Rates are stated in cents per 100 pounds.

Atlas Spur is on the Sierra Railway of California (hereinafter referred to as the Sierra Railway) approximately 3 miles

northeast of Oakdale. El Portal is on the Yosemite Valley Railroad Company 78 miles east of Merced. Complainant's shipments moved via the Sierra Railway to Oakdale, thence via the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the Santa Fe) or the Southern Pacific Company to Merced, thence over the line of the Yosemite Valley Railroad Company to destination. Charges were assessed and collected on basis of a joint rate of $9\frac{1}{2}$ cents, minimum carload weight 60,000 pounds, named in Pacific Freight Tariff Bureau Tariff 166-E, C.R.C. No. 479, applicable from Atlas. Effective July 17, 1931, in Supplement No. 5 of the same tariff defendants established a rate of $8\frac{1}{2}$ cents, minimum carload weight 60,000 pounds, from Oakdale. The charge made by the Sierra Railway for transporting freight regardless of classification from Atlas Spur to the interchange track with the Santa Fe or Southern Pacific Company at Oakdale is \$5.00 per car as provided in Item 346 of Sierra Railway Tariff 22, C.R.C. 123. However this charge is absorbed by the Santa Fe or Southern Pacific Company on line haul shipments of rock screenings as provided by Item 2396 of Supplement 30 to Santa Fe Terminal Tariff 3117-M, C.R.C. No. 629, or Item 267-B of Southern Pacific Company Terminal Tariff 230-J, C.R.C. 3183, thus in effect extending the $8\frac{1}{2}$ cent rate to apply from Atlas Spur. It is upon the basis of this subsequently established rate that complainant seeks reparation.

Defendants admit the allegations of the complaint and have signified their willingness to make a reparation adjustment, therefore under the issues as they now stand a formal hearing will not be necessary.

Upon consideration of all the facts of record we are of the opinion and find that the assailed rate was unjust and unreasonable to the extent it exceeded $8\frac{1}{2}$ cents, minimum carload weight

60,000 pounds. 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 answers 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 opinion which precedes this order,

IT IS HEREBY ORDERED that defendants, The Atchison, Topeka and Santa Fe Railway Company, Sierra Railway Company of California, Southern Pacific Company and Yosemite Valley Railroad Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund without interest to complainant, A. Teichert & Son, Inc., all charges collected in excess of $8\frac{1}{2}$ cents per 100 pounds, minimum carload weight 60,000 pounds, for the transportation from Atlas Spur,

California, to El Portal, California, of the shipments of rock screenings involved in this proceeding on which the cause of action accrued within the statutory period.

Dated at San Francisco, California, this 18th day of December, 1933.

C. H. Tracy
L. O. White
W. A. Carr
M. B. Harris
M. H. [unclear]
Commissioners.