Decision No. 23948.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

A. LEVY & J. ZENTNER CO.
SUNSET PRODUCE CO.
VALLEY PRODUCE CO.
RICKETT PRODUCE CO.
De BACK & CO.
JOHN DEMARTINI CO. INC.
L. J. HOPKINS COMPANY
TRIANGLE PRODUCE CO.
HALF MOON FRUIT & PRODUCE CO.

Complainants,

vs.

SOUTHERN PACIFIC COMPANY,
a corporation,

Defendant.

Case No. 3515.

F. W. TURCOTTE, B. H. CARMICHAEL,
M. J. McCARTHY and STANTON & BERRY,
for Complainants and Intervenors.

J. E. LYONS, for Defendant.

BY THE COMMISSION:

OPINION

Complainants allege that the rates maintained by defendant for the transportation of fresh fruits and vegetables, in carloads, from points on defendant's line south of Banning to and including Colorado and south of Niland to and including Calexico, Westmorland, Sandia and Holtville to San Francisco, Oakland, Sacramento, Santa Rosa, Petaluma and other points in Northern California were and are unjust, unreasonable, unduly prejudicial and discriminatory, in violation of Sections 13 and 19 of the Public Utilities Act. They seek reparation on all shipments made within the

two-year period immediately preceding the filing of the complaint and during the pendency of this proceeding, and rates for the future.[1]

The matter was submitted on briefs at a public hearing had before Examiner Geary at San Francisco. At the hearing defendant admitted that the rates on melons and cantaloupes were and are unreasonable to the extent they exceeded those that would have accrued on basis of the contemporaneously applicable Class "C" rates.

Complainants' shipments consisted of melons, canteloupes, lettuce, tomatoes and some mixed shipments of vegetables and grapefruit. They moved principally from the Imperial Valley[2] to San Francisco, Oakland, Stockton, Sacramento and Santa Rosa. Charges were assessed on basis of the applicable commodity rates.

Lettuce and tomatoes are rated fifth class in the Western Classification.[3] Grapefruit are rated third class. The ratings on other fresh fruits and vegetables range from third to fifth class. By exception to the Classification[4] fresh fruits and vegetables when moving in intrastate traffic within California over the line of defendant, with few exceptions, are and for some time have been rated Class "C". However, because of a restriction published in connection with the Class "C" rates, removing the application of the Exception Sheet rating on the commodities here involved, complainants' shipments are subject to the higher classification ratings. This restriction was first published on November 1, 1928,

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1 Safeway Stores, Incorporated, Modern Food Company and Triway Brokerage Company, Ltd., intervened in behalf of complainant and seek like relief. Throughout this opinion both complainants and interveners will be referred to as complainants. Rates will be stated in cents per 100 lbs., and do not include the authorized emergency charges.

2 A few shipments were also made from the Coachella Valley.

3 C.R.C. No. 517 of F. W. Gomph, Agent, and as amended.

4 Item 623 Series, Agent F. W. Gomph's Pacific Freight Tariff Bureau Exception Sheet No. 1-0, C.R.C. No. 503, or preceding issues.

concurrent with a general reduction in the class rates. At the same time rates of the volume of the former Class "C" rates were published in the form of specific commodity rates. The following table, compiled from exhibits of record, shows the distances, the present rates, and the rates sought by complainants from typical points of origin to San Francisco.

To San Francisco From	Distances Miles	Rates: Present (Commodity Rates)	Rates: Sought (Class "C")
Indio	597	55½	55
Mecca	610	57	55
Niland	654	63	55
Calipatria	662	65	55
Westmorland	674	66	58
Sandia	684	67	59
Brawley	672	66	55
Imperial	682	67	55
El Centro	686	67	55
Holtville	696	69½	59
Calexico	695	69	55
Colorado	718	67	55

Complainants compare the applicable rates (a) with a rate of 40 cents on citrus fruit in carloads from points in the Imperial Valley (Niland to Calexico) to San Francisco and other points in Northern California; (b) with lower commodity rates on fresh fruits and vegetables applicable for equi-distances between other points in this State and between points in California and points in adjoining states; and (c) with lower rates on various articles rated fifth class or higher in the Western Classification, including sugar, canned goods, paper and paper articles, and edible nuts, applicable between the same points but in the reverse direction. They assert that with the exception of the territory here involved, all fruit and vegetable producing and receiving points on defendant's line in California enjoy the benefit of the Class "C" or still lower rates. A tabulation of fresh fruit and vegetable rates from 61 representative shipping points in the various producing sections in Northern

California to the principal consuming markets shows that the applicable rates average 93% of, and in no case exceed, the contemporaneous Class "C" rates. Complainants call attention to a rule well established in this State to the effect that where both a class and commodity rate are named between two points the lower of such rates is the lawful rate.[5]

Complainants also cite numerous decisions of both this Commission and the Interstate Commerce Commission in which the Class "C" rates were found reasonable for the transportation of fresh fruits and vegetables.[6] The Interstate Commerce Commission has more recently, however, prescribed rates which in many instances exceed Class "C".[7] Moreover, the Class "C" Exception Sheet rating applicable on fresh fruits and vegetables between California and Arizona was cancelled on November 15, 1925, allowing the higher ratings provided in the Western Classification to apply.

The Class "C" rating provided by the Exception Sheet applicable to the movement of fresh fruits and vegetables within California was established many years ago, not, defendant declares, because it was considered proper for the movement of these commodities but to provide an easy and convenient basis of rates for the heavy seasonal movement of fresh fruit from orchards to nearby canneries, which movement was in box or stock cars and involved comparatively short hauls. It was never intended to apply to selected fruits and vegetables moving in refrigerator cars under refrigeration to distant markets.

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5 Rule 8(a) of Tariff Circular No. 2 reads in part as follows:
Each tariff that contains class or commodity rates shall also contain a rule as follows:
"Whenever a class rate and a commodity rate are named between specified points the lower of such rates is the lawful rate unless some combination of class rates or of commodity rates or of class and commodity rates makes a lower through rate."

6 Among them are, Board of Supervisors of Imperial County v. SP Co., 22 CRC 93; California Packing Corpn. vs. SPCo., 30 CRC 746; Murray & Layne vs. Director General, 59 ICC 552.

7 Arizona Corporation Commn. vs. A.E.R.R., 147 ICC 391. Bergin-Price Co., vs. AT&SFRy.Co., 152 ICC 519.

Lettuce and tomatoes move in refrigerator cars under refrigeration and require expedited service. In the case of lettuce, ice is placed in the crates as well as in the bunkers of the car. The actual weight of the lettuce furthermore is greatly in excess of that upon which freight charges are assessed,[8] and moneys paid on loss and damage claims are said to be substantial. It is contended by defendant that the rates sought are well below those applicable for comparable interstate hauls and that they are unreasonably low.

The class rates between Imperial Valley points and San Francisco Bay points were established concurrently with an adjustment in the class rates between Arizona and San Francisco and other Northern California points made in conformity with a decision of the Interstate Commerce Commission in Docket 14999, Arizona Corporation Commission vs. A.E.R.R., 113 ICC 52, 142 ICC 61. Due to the existence of water competition between the Los Angeles Harbor and San Francisco the rates however were not based on the Docket 14999 scale applied to the actual distance, but are made by adding to the rates between Imperial Valley points and Los Angeles an arbitrary scale of class rates related to the rates of the water lines. It is accordingly contended by defendant that the through rates are on a depressed basis and are less than maximum reasonable rates. Many of the rates used by complainants for comparative purposes, defendant states, were established to meet water or truck competition or with relation thereto and do not therefore reflect a proper measure of the reasonableness of the rates here in issue.

Rates predicated on the Class "C" rates have for many years been considered as the maximum reasonable rates for the

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[8] The average actual weight during the seasons of 1931 and 1932, including the ice in the crates, was 103.61 lbs. per crate. Charges were assessed however on basis of published estimated weights of 76 lbs. per crate.

transportation of fresh fruits and vegetables within California. (Consolidated Produce Co. vs. SP Co., 36 CRC 706 and cases cited therein.) On this record we are convinced that this basis is proper, provided, of course, that the applicable Class "C" rates are in themselves reasonable. The fact that certain factors taken into consideration in establishing through rates may be depressed does not prove that the through rates themselves are unreasonably low. On the contrary the Class "C" rates from the Imperial Valley to the destination points here involved are on a basis substantially higher than that prescribed by this Commission between San Francisco and San Joaquin Valley points and between San Francisco and points north thereof to the Oregon state line. (Traffic Bureau of the Merchants Exchange vs. SP Co., 1 CRC 95, and S.F. Chamber of Commerce et al. vs. SP Co. et al., 11 CRC 867.)

Complainants have not shown that the applicable rates have resulted, or now do result, in an undue disadvantage to them or that they are a source of advantage to their competitors. Under such circumstances a finding of unjust discrimination or undue preference and prejudice is not justified.[9]

Upon consideration of all the facts of record we are of the opinion and find that the assailed rates were, are and for the future will be unjust and unreasonable to the extent they exceeded, exceed or may exceed the Class "C" rates but that they have not been shown to be or to have been unduly discriminatory, prejudicial or preferential. We further find that complainants made certain shipments within the two-year period immediately preceding the filing of this complaint and during the pendency of this proceeding on which they paid the transportation charges, and that on them they

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California Milling Corpn. vs. AT&SF Ry.Co. et al., 37 CRC 309; Milwaukee Sewerage Commission et al. vs. A.& R.R.R.Co., 190 ICC 601, and cases cited therein.

are entitled to reparation with interest at 6 per cent per annum.

The exact amount of reparation due is not of record. Complainants will submit to defendant for verification a statement of the shipments made and upon the payment of the reparation defendant will notify the Commission 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 having been duly heard and submitted, full investigation of the matters therein 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 defendant Southern Pacific Company be and it is hereby required and directed to cease and desist on or before thirty (30) 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 fresh fruits and vegetables, in carloads, from and to the points involved in this proceeding in excess of those found reasonable in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that defendant Southern Pacific Company be and it is hereby required and directed to refund with interest at six (6) per cent per annum to complainants and interveners, according as their interests may appear, all charges collected from them for the transportation of the shipments of fresh fruits and vegetables involved in this proceeding, on which the

cause of action accrued within the two-year period immediately preceding the filing of the complaint and during the pendency of this action, in excess of those found reasonable in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 16th day of April, 1934.

C. L. Seavey

Leon Whitsell

Wm. J. Carr

M. B. Harris

Wallace Ware

Commissioners.