

Decision No. 27057

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CONTINENTAL CAN COMPANY, INCORPORATED,  
NEUHOFF PACKING CORPORATION,

Complainants,

vs.

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

Defendants.

ORIGINAL

Case No. 3619.

H. M. Avey and C. A. Root for complainants.  
James E. Lyons and Burton Mason for defendant  
Southern Pacific Company.  
Gerald E. Duffy and Berne Levy and E. W. Camp  
for defendant The Atchison, Topeka and Santa  
Fe Railway Company.

BY THE COMMISSION:

O P I N I O N

In this proceeding complainants allege that the charges assessed and collected on five carloads of empty tin cans moved from Los Angeles to Porterville and reshipped from Porterville to Arlington, and one carload of empty tin cans forwarded from Los Angeles to Porterville and diverted at Mojave to Arlington, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act.

We are asked to award reparation. Rates will be stated in cents per 100 pounds.

Hearings were held at Los Angeles September 14 and December 13, 1933, before Examiner Geary and the proceeding having been duly submitted is now ready for an opinion and order.

Defendants moved for a dismissal at the hearing on September 14, 1933, upon the grounds that complainants by their oral motion had changed the issues and were calling into question the separate factors from Los Angeles to Porterville and Mojave and from Porterville and Mojave to Arlington, in lieu of the original complaint which by its pleadings indicated the issues to involve the entire movement of the shipments from Los Angeles to Arlington via Mojave and Porterville. The original complaint clearly defined the issues and the relief prayed for. The motion to dismiss on this ground is denied.

The record shows that all of the cars were originally consigned to Porterville and that five of them arrived at Porterville, the destination point, and were placed on the consignee's industrial track for unloading. They were refused by consignee for reasons not stated and after having accumulated demurrage charges were reshipped as new consignments under new bills of lading reading from Porterville to Arlington. The charges assessed and collected on the movement from Los Angeles to Porterville were based on a commodity rate of  $36\frac{1}{2}$  cents and on the movement from Porterville to Arlington on a combination rate of  $57\frac{1}{2}$  cents made up of the fourth class rate from Porterville to Los Angeles of  $42\frac{1}{2}$  cents and a commodity rate of 15 cents from Los Angeles to Arlington. The other car was diverted at Mojave to Arlington. On this shipment charges were assessed and collected on the movement from Los Angeles to Mojave on basis of a commodity rate of 34 cents and on the movement from Mojave to Arlington on a com-

combination rate of 60½ cents made up of the fourth class rate from Mojave to Los Angeles of 45½ cents and a commodity rate of 15 cents from Los Angeles to Arlington.

The record does not show that the commodity rate of 38½ cents from Los Angeles to Porterville or the 3½-cent rate from Los Angeles to Mojave was unjust and unreasonable, therefore this part of the complaint will be dismissed.

There remains for consideration the rates and charges assessed and collected for the hauls from Porterville and Mojave to Arlington, through Los Angeles. The evidence shows that there are no tin can manufacturing plants at either Porterville or Mojave and that shipments of tin cans do not normally move from these points.

In Re Application of F. W. Gough, 11 C.R.C. 21, the Commission approved the fourth class basis as proper for the movement of tin cans, in carloads, between points in California, except where there was a substantial movement commodity rates were ordered published which approximated the Class "C" rates. The fourth class rates from Porterville and Mojave to Los Angeles in effect at the time complainants' shipments moved were 62 cents and 75 cents respectively. The rates charged on complainants' shipments were thus lower than the fourth class rates. It has long been held that on sporadic shipments class rates are not unreasonable. (Federated Metals Corporation vs. Central R.R. of N.J., 142 I.C.C. 403.)

After consideration of all the facts of record we are of the opinion and so find that the rates assessed on complainants' shipments (1) from Los Angeles to Porterville and Mojave and (2) from Porterville and Mojave to Arlington were not unjust and unreasonable. The complaint will be dismissed.

O R D E R

This case having been duly heard and submitted, 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 the above proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 14th  
day of May, 1934.

C. C. Seaver  
Leon S. Sullivan  
W. A. Egan  
M. B. Lewis  
M. L. H. H. H.  
Commissioners.