Decision No. 27247.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

BALFOUR GUTHRIE AND CO. LTD., Complainant, vs. SOUTHERN PACIFIC COMPANY, Defendant.	Case No. 3601.

ORIGINAL

BY THE COMMISSION:

O P I N I O N

Complainant alleges that the charges assessed and collected by defendants for the transportation of numerous carload shipments of fresh fruits and fresh vegetables, including melons, 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, Stockton and other points on defendant's line in the same destination rate group were, are and for the future will be unjust, unreasonable, unduly discriminatory, preferential and prejudicial, in violation of Sections 13 and 19 of the Public Utilities Act.

The prayer is for an order requiring defendant to cease and desist from the alleged violations of the Public Utilities Act and to pay to complainant by way of reparation the difference between the charges collected and those which the Commission shall find proper and lawful.

Charges were assessed and collected on complainant's shipments on basis of specific commodity rates ranging from 59½ cents to

69 cents per 100 pounds. Rates for the future and reparation are sought on basis of lower Class "C" rates then and now maintained by defendant in its Tariff 711-C, C.R.C. No. 2843. In a number of instances commodity rates either of the same or of a lesser volume than those sought have since been established.

For many years rates predicated on the Class "C" rates have been considered as the maximum reasonable rates for the transportation of fresh fruits and vegetables within California.[1] Pacific Freight Tariff Bureau Exception Sheet No. 1 Series[2], to which defendant is a party, provides the Class "C" rating for the intrastate transportation of carload shipments of fresh fruits and vegetables between points in California, Arizona and Nevada. The Class "C" rates applying between the points here involved however have been restricted so that they will not apply on fresh fruits and vegetables.

In Case 3515, A. Levy and J. Zentner Co. et al. vs. S.P.Co., the same issue was presented. In that proceeding the Commission after hearing found that the rates applying between points in this same territory for the transportation of fresh fruits and vegetables were unreasonable to the extent they exceeded the Class "C" rates but that they had not been shown to be or to have been unduly discriminatory, prejudicial or preferential.[3] A like finding should be made here.

Upon consideration of all the facts of record and the Com-

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[1] Case 3515, A.Levy and J.Zentner Co.et al. vs. Southern Pacific Co., unreported. Consolidated Produce Co. vs. Southern Pacific Co., 36 C. R.C. 706, and cases cited therein.

[2] C.R.C. No. 448 of F.E.Gomph, Agent, and successive issues thereof.

[3] On August 20, 1934, a petition for rehearing filed by defendant was denied in so far as it involved the reasonableness of the rates. On December 4, 1934, a second petition filed by defendant for an order (1) vacating and setting aside the order entered by the Commission August 20, 1934, granting a limited rehearing, (2) granting a rehearing on the merits of the proceeding in lieu of said limited rehearing, and (3) assigning the case for oral argument before the Commission en banc, was also denied.

mission's decision in A. Levy and J. Zentner Co. et al. vs. S.P.Co., supra, 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 and now do exceed the Class "C" rates but that they have not been shown to have been unduly discriminatory, prejudicial or preferential. We further find that upon proper proof that complainant paid or bore the charges on the shipments in question it is entitled to reparation with interest at six (6) per cent. per annum.

The exact amount of reparation due is not of record. Complainant will submit to defendant for verification a statement of the shipments made and upon 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 being at issue upon complaint and answer 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 defendant Southern Pacific Company be and it is hereby ordered 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 the shipments of fresh fruits and fresh vegetables involved in this proceeding in excess of those found reasonable in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that upon proper proof that

complainant paid or bore the charges on the shipments in question, defendant Southern Pacific Company be and it is hereby authorized and directed to refund to complainant Balfour Guthrie and Co. Ltd. with interest at six (6) per cent. per annum, all charges collected for the transportation during the statutory period of the shipments of fresh fruits and fresh vegetables involved in this proceeding 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 7th day of January, 1935.

Commissioners.