

Decision No. 27789

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

H. J. ADLER, ERNEST GUNTHER,  
ALVIN GUNTHER, co-partners do-  
ing business under the firm  
name and style of SOLANO MEAT  
COMPANY,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY,  
THE WESTERN PACIFIC RAILROAD  
COMPANY,

Defendants.

**ORIGINAL**

Case No. 3389.

E. W. Hollingsworth, for complainants.

L. N. Bradshaw and James E. Lyons, for defendants.

BY THE COMMISSION:

O P I N I O N

Complainants are wholesale butchers operating a slaughter house at Flosden. They allege that the charges maintained by defendants for the transportation to Flosden (1) of sheep in single and double deck cars from points on the lines of the Southern Pacific Company in the area bounded by Bakersfield and Santa Barbara on the south, San Francisco on the west, Mystic on the east, and Cole and Dorris on the north, including branches, and (2) of fat cattle in single deck cars and fat sheep in single and double deck cars from points on the lines of the Western Pacific Railroad Company in the area bounded by Pleasant Grove on the west and by Peavine and Bieber on the east and north, including branches, were at the time the shipments moved, are now, and for the future will be un-

just and unreasonable in violation of the Public Utilities Act. Reparation on all shipments moving during the statutory period and during the pendency of this proceeding, and rates for the future, are sought.

A public hearing was had before Examiner Geary at San Francisco. The matter was submitted on briefs.

Flosden is on the Napa Branch of the Southern Pacific Company four miles north of South Vallejo.

The charges applicable to shipments moving exclusively over the line of the Southern Pacific Company are obtained by use of either mileage or specific rates published in Southern Pacific Company Tariff 645-D, C.R.C. No. 3118.<sup>1</sup> On shipments originating on the line of the Western Pacific Railroad they are made by combining the local rates of the two defendants to and from Sacramento. The bases on which reparation and rates for the future are sought are as follows: On fat sheep from points on the Southern Pacific Company, rates of the volume of those prescribed by this Commission in Decision 26414, Woodward-Bennett Packing Co. et al. vs. Southern Pacific Co. et al., hereinafter referred to as the 26414 scale, for single line hauls; on fat sheep from points on the Western Pacific Railroad Company rates not exceeding by more than \$5 per car the so-called California Mileage scale, observing as maximum the 26414 scale; on fat cattle rates not exceeding by more than \$5 per car the California Intrastate Mileage scale.<sup>2</sup>

In support of their contention of unreasonableness with respect to the rates on sheep, complainants contrasted (1) the California Intrastate scale with the 26414 scale converted into dollars and

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<sup>1</sup> Specific rates to Flosden are published from San Francisco, Oakland, San Jose, Stockton, Sacramento, Swanston, Perkins and Los Angeles.

<sup>2</sup> Rates based on this scale are published on pages 184, 185 and 185-A of Southern Pacific Company Tariff 645-D, C.R.C. No. 3118.

cents per car on basis of minimum weights; (2) the rates here involved with the California Intrastate and the 26414 scales; and (3) the applicable rates from points on the Western Pacific Railroad Company to Flosden with rates from the same points of origin to San Francisco and Stockton. Based on minimum weights the 26414 scale results in rates generally lower than the per car rates under the California Intrastate scale.<sup>3</sup> There are in effect, however, many specific rates which are lower than the California Intrastate scale. The rates for the joint hauls over the Western Pacific and Southern Pacific railroads are in all instances higher than the California Intrastate scale, even after adding \$5 for the joint haul and \$3.50 for the branch line, and are substantially higher than the rates to San Francisco, although the distance to San Francisco is materially greater. To Stockton, where the distance is slightly less, the rates are from \$24.50 to \$41.50 per car less.

Defendants presented no evidence with respect to the rates on sheep.

Complainants compared the rates on fat cattle from the Western Pacific points to Flosden with those applying to San Francisco and Stockton, with the California scale, and with rates applying between California and Nevada and California and Arizona. It showed that a substantial number of both single and joint line rates to San Francisco and other points are lower than the California scale.

As in the case of sheep, the rates on fat cattle from Western Pacific points to San Francisco are, in general, substantially lower than those to Flosden, although the distance is from 80 to 90

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<sup>3</sup> This is particularly true of movements in double decks for distances of over 65 miles, and in single decks over 125 miles. The difference increases as the mileage increases. At 400 miles it is \$26 per double deck and \$17 per single deck car. If as here the movement is over a branch line the difference between the two scales is \$3.50 per branch greater.

miles greater. To Stockton, where the distance is but slightly less, the rates are from \$14.50 to \$27.50 per car less. The rates applicable are likewise substantially in excess of those that would apply if either the California Intrastate or the California-Nevada scale were used. A comparison of 900 rates from 150 points on the Southern Pacific Company to six destinations shows that rates resulting from the use of the California Intrastate scale are on an average of 108.1% of the rates specifically published between these points. Likewise a number of joint line rates are less than the California Intrastate scale for single line hauls.

Defendants' only exhibit shows the charges paid by complainants on their shipments from Bieber, Norvell and Westwood and compares these charges with those that would have accrued by use of the Concho scale, adding  $2\frac{1}{2}$  cents per 100 pounds for joint hauls.<sup>4</sup>

Based on average weights of 25,676 pounds<sup>5</sup> there is little difference between the charges assessed on the cattle shipped by complainants and those that would have accrued under the Concho scale. However, based on the actual weights of the shipments the charges assessed were with few exceptions substantially lower than those the Concho scale would have produced.

Complainants do not concede that the rates prescribed by this Commission in Decision No. 26414 for the transportation of sheep in double deck cars are proper for the transportation of cattle, and point out that in the proceeding in which that scale was prescribed

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<sup>4</sup> The Concho scale is a scale prescribed by the Interstate Commerce Commission for the transportation of fat and feeder cattle and fat and feeder sheep from points in Arizona to points in California in Concho Live Stock Co. et al. vs. A.T.& A.F.Ry.Co. et al., 178 I.C.C.501. It is of the volume of that prescribed by this Commission for the transportation of fat sheep in double deck cars in Decision 26414.

<sup>5</sup> This average was obtained by weighing 164 cars of fat cattle moving from territory between Westwood and Alturas on the Southern Pacific Co. destined to public slaughter points in Northern California during six alternate months of 1933.

the defendant Southern Pacific Company urged that they were not.<sup>6</sup> They argue that their request is moderate and conservative in view of the fact that the California Intrastate scale is a maximum scale which exceeds the general level of rates on fat cattle from Northern California points by approximately 2%, and that they are allowing \$5 per car to compensate for the joint haul and are not challenging the \$3.50 branch line arbitrary.

Rates of the volume of those which complainants seek for the transportation of sheep to Floden were prescribed by this Commission for the transportation of sheep from main and branch line points on the Southern Pacific Company, Redding on the north and Bakersfield on the south to Los Angeles, San Francisco and South San Francisco, from Moy on the Western Pacific Railroad, Greendale and Argenta on the Sacramento Northern Railway to Los Angeles, from Soda Springs and east, Black Butte and north to Los Angeles from Olancho, Inyokern and Cantil to San Diego, and from Alpaugh to Los Angeles. This scale has moreover been used as the basis for adjustments in numerous other proceedings involving rates on sheep from various points to San Francisco, South San Francisco, Los Angeles, San Diego and Swanston, in which defendants admitted the allegations of the complaint.<sup>7</sup>

<sup>6</sup> The Southern Pacific Company's position as shown by Decision 26414 was as follows: "The 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."

<sup>7</sup> Case 3795; Noble & Company vs. Southern Pacific Co.  
Case 3803; C. Swanston & Son vs. Southern Pacific Co.  
Case 3834; Swift & Company vs. Southern Pacific Co.  
Case 3855; Swift & Company vs. Southern Pacific Co.  
Case 3841; Hampton Livestock Commission Co. vs. Southern Pacific Co.  
Case 3880; Hampton Livestock Commission Co. vs. Southern Pacific Co.  
Case 3938; Cudahy Packing Co. vs. A.T. & S.F. Ry. Co., and  
Case 3952; C. Swanston & Son vs. Southern Pacific Co.

No rates on fat cattle were established in Decision 26414 nor have any been prescribed by this Commission since. Cattle rates in California are published in dollars and cents per car. Under the California Intrastate scale they are generally lower than those on sheep, double deck, and as before stated defendant Southern Pacific Company urged that rates on sheep double deck should be 110% of those on cattle. Here they argue that they should be the same in cents per 100 pounds, which because of the prevailing lower minimum on sheep would make the minimum per car charge on cattle actually higher than on sheep. The record does not justify prescribing rates on cattle in cents per 100 pounds. However, so long as the rates on cattle throughout this State are maintained in dollars and cents per car, complainants are entitled to reasonable rates on this basis.

Upon consideration of all the facts of record we are of the opinion and find that the rates on fat sheep from the points on the Southern Pacific Company here involved were and are unjust and unreasonable to the extent they exceeded and now do exceed the charges based on the 26414 scale, and that those from the points on the Western Pacific Railroad were and are unreasonable to the extent they exceed the same scale, allowing 2½ cents per 100 pounds for joint hauls. We further find that to the extent the charges on the shipments of cattle here involved exceeded and now do exceed charges based on the California Intrastate scale plus \$5 per car for the joint haul, they were and are unreasonable. This finding as to the rates on cattle is made without prejudice to any other or different finding that may be reached on a more comprehensive record. We further find that complainants made the shipments as described, paid and bore the charges thereon, and are entitled to reparation with interest at six per cent. per annum.

Mileages for joint hauls shall be figured via the shortest route available without transfer of lading, except that for reparation purposes on shipments routed by the shipper the distance shall be computed via the route specified.

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

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that defendants Southern Pacific Company and The Western Pacific Railroad Company be and they are hereby ordered and directed 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, to establish and thereafter to maintain for the transportation of sheep and cattle from the points involved in this proceeding to Floden rates not in excess of those found reasonable in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that defendants Southern Pacific Company and The Western Pacific Railroad Company, according as they participated in the transportation, be and they are hereby ordered and directed to refund to complainants, together with interest at six (6) per cent. per annum, all charges collected for the trans-

portation of the shipments of sheep involved in this proceeding in excess of those herein found reasonable.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 4<sup>th</sup> day of March, 1935.

Leon C. White

W. H. Lee

M. B. Lewis

W. H. Moore

Commissioners.