

Decision No. 27933.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Adohr Milk Farms, Inc.  
Borden's Farm Products Co. of Calif., Inc.  
California Milk Producers Assn.  
Carnation Company of Calif.  
Cloverdale Creamery Co.  
Colnbrook Creamery  
Compton Cheese Co.  
Edgemar Farms Dairies  
Golden State Co. Ltd.  
Lakeview Dairy Farms  
Lucerne Butter & Cream Co.  
(Modern Food Co.)  
Mountain View Dairies, Inc.  
Our Own Dairies, Inc.  
Pellessier Dairies  
Producers Arbitration Committee  
Southland Creamery Co.  
Western Dairy Products, Inc.  
G. Bouna  
Select Independent Creamery  
Challenge Cream & Butter Assn.  
Standard Creamery Co.  
Knudsen Creamery Co.

Complainants,

vs.

California Milk Transport, Inc.  
Joe Bozoff (Milk Route)

Defendants.

Hugh Gordon, for California Milk Transport,  
Inc. and Joe Bozoff, defendants.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Commission is asked to authorize the waiving of undercharges aggregating \$19,525.57 in connection with shipments of milk transported by California Milk Transport,

ORIGINAL

I.C. No. 48986

Inc. and Joe Bozoff (Milk Route) during the period February 1, 1934, to February 10, 1935, inclusive.<sup>1</sup>

A public hearing was had at Los Angeles April 24, 1935, before Examiner Gorman.

The circumstances respecting the transportation by these two carriers are substantially similar. One witness, the president of the one carrier and the manager of the other, testified on behalf of both. No shipper witnesses were called.

By Decision 26709 of January 8, 1934, in Application 19149 and related proceedings these carriers, together with certain others, were authorized to increase from 10 to 11 cents per can the rates here involved. The carriers involved in the instant proceeding amended their tariffs, effective February 1, 1934, so as to provide for the increase; the others did not. Thereafter certain interested parties filed a petition for rehearing. This was had, but petitioners presented no evidence and the original order was affirmed. According to the testimony here the carriers agreed with the protestants that the increases authorized would not be put into effect until conditions in the milk industry improved.

As heretofore stated, however, in so far as California Milk Transport, Inc. and Joe Bozoff (Milk Route) were concerned, the increased rates had already been published and it was not until February 11, 1935, that those previously in effect and on basis of which charges were assessed, were restored. It is through the failure to apply these increased rates that the undercharges accrued. According to the testimony these carriers regarded the increased

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<sup>1</sup> The proceeding was brought under Section 71 of the Public Utilities Act. This was changed at the hearing to Section 7½ of the Auto Truck Transportation Act.

rates as maxima only. They proposed to apply them whenever conditions warranted.

It is not contended that the filed rates were not lawfully applicable at the time the shipments moved or that they were unreasonable or excessive when viewed from the standpoint of the return to the carriers. It is urged however that they were established or at least continued in effect through inadvertence; that the price of milk decreased following the rehearing in Application 19149, supra, and that while conditions in the milk industry remain as they now are it is absolutely impossible to secure the business at rates in excess of those charged. The attempt to assess the higher rates was met by a threat to discontinue shipping over these lines. Creameries to which the milk is destined are in many instances in a position to do their own hauling, and other carriers are said to be ready and able to transport this milk for 10 cents per can or less.

Rates of 11 cents per can were in effect several years ago but were reduced to 9 cents because of a depressed condition then prevailing in the milk industry. At the time the reduction was made the carriers informed the Commission that it was their intention to restore the former rates as soon as conditions would permit. They were subsequently increased to 10 cents per can, and later in the case of these two carriers to 11 cents, although the 11-cent rates were never assessed. Since February 11, 1935, they have again been 10 cents.

The record is convincing that 10 cents per can is the most that could be obtained under the circumstances as they existed during the period here involved, and that any attempt to collect charges in excess thereof would deprive these carriers of the business, which comprises practically all the traffic they transport. Rates in excess of 10 cents per can would be "paper rates" only and would ob-

viously be unreasonable under prevailing conditions. The authority to waive collection of the outstanding charges should be granted.

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that California Milk Transport, Inc. and Joe Bozoff (Milk Route) be and they are hereby authorized to waive the collection of all charges in excess of 10 cents per can outstanding for the transportation during the period February 1, 1934, to February 10, 1935 inclusive, of the shipments of milk involved in this proceeding.

Dated at San Francisco, California, this 6th day of May, 1935.

Leon Whitell

M. J. Lee

M. B. Harris

Walter M. ...

Frank R. Dewey  
Commissioners.