

Decision No. 28151.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

N. ANGELI,  
V. LENDUCCI,  
A. DI GRAZIA and  
L. CARDOZA, as co-partners doing business  
as such under the firm name or style of  
"EMPIRE PRODUCE CO.",

Complainants,

vs.

SOUTHERN PACIFIC COMPANY,  
a corporation,

Defendant.

Case No. 4027.

BY THE COMMISSION:

O P I N I O N

Complainants allege that the charges assessed and collected by defendant for the transportation of numerous carloads of fresh fruit and fresh vegetables shipped from points south of Banning to and including Colorado, from points south of Niland to and including Calexico, and from Westmorland, Sandia and Holtville to San Francisco, Oakland, Sacramento and Stockton were unjust and unreasonable, in violation of Section 13 of the Public Utilities Act.

Reparation only is sought.

Complainants point out that the defendant carrier generally has maintained rates not in excess of Class "C" on fresh fruit and fresh vegetables transported between California points, and it is their contention that the restriction in Southern Pacific Tariff

711-C, C.R.C. 2843, withholding Class "C" rating between the points under consideration in this complaint, was unreasonable.

Defendant has expressed its willingness to satisfy the complaint. Therefore under the issues as they now stand a formal hearing will not be necessary.

Upon consideration of all the facts of record and the Commission's Decision 26948 of April 16, 1934, in Case 3515, A. Levy and J. Zentner Co. et al. vs. Southern Pacific Company, we are of the opinion that the assailed rates are unjust and unreasonable to the extent that they exceeded Class "C" rates. We further find that upon proper proof that complainants paid or bore the charges on the shipments in question they are entitled to reparation without interest. Complainants specifically waived the payment of interest.

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 payment of the reparation defendant 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 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 upon proper proof that complainants 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 complainants, A. Angeli, V. Lenducci, A. Di Grazia and L. Cardoza, copartners doing business as such under the firm name or style of Empire Produce Co., according as their interests may appear, without interest, 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.

*August*  
~~July~~, 1935.

Dated at San Francisco, California, this 5<sup>th</sup> day of

Leon A. [Signature]  
W. B. [Signature]  
[Signature]  
[Signature]  
Commissioners.