

Decision No. 28592.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SUTTER PACKING COMPANY,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
SACRAMENTO NORTHERN RAILWAY,
THE WESTERN PACIFIC RAILROAD
COMPANY,

Defendants.

Case No. 4061.

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 carload shipments of fresh peaches in lug boxes moving from Paloro and Nuestro to Mayfield during the period August 10, 1933, to and including September 17, 1933, were unjust and unreasonable, in violation of Section 13 of the Public Utilities Act.

Reparation only is sought. Rates are stated in cents per 100 pounds.

Paloro and Nuestro are on the Sacramento Northern Railway. Paloro is within the Yuba City switching limits; Nuestro is located about five miles north thereof. Mayfield is a station on the Southern Pacific Company approximately 15 miles north of San Jose. The shipments in question moved via Sacramento Northern Railway to Sacramento, Western Pacific to San Jose, thence Southern Pacific to destination.

Charges were assessed and collected on basis of the minimum third class rate of $17\frac{1}{2}$ cents.

During the period within which the shipments moved there was in effect from Berg, a point on the Southern Pacific competitive with Nuestro, and from Yuba City to Mayfield when routed via the Southern Pacific Company a rate of 17 cents. A rate of this same volume would also be obtained by combining a proportional rate of 12 cents applying via Sacramento Northern and Western Pacific from Paloro and Nuestro to San Jose, with the Class C rate of 5 cents in effect from San Jose to Mayfield via Southern Pacific. These factors were published in Pacific Freight Tariff Bureau Tariff 65-I, C.R.C. No. 523, Supplement No. 18, and Southern Pacific Company Tariff 917-D, C.R.C. No. 2929, respectively. The 17-cent combination rate could not be applied however, due to the application of a rule which provided a minimum rate of $17\frac{1}{2}$ cents per 100 pounds. Effective October 30, 1933, as the result of an amendment to Pacific Freight Tariff Bureau Exception Sheet 1-0, C.R.C. 503, the application of the $17\frac{1}{2}$ -cent minimum rate was removed, rendering the 17-cent combination rate applicable on and after that date. It is on basis of this 17-cent rate in effect via the Southern Pacific Company at the time the shipments moved and via the route the shipments were transported on and after October 30, 1933, that complainant seeks reparation.

Defendants admit the allegations of the complaint and have signified their willingness to make a reparation adjustment. Therefore under the issues as they now stand a formal hearing will not be necessary.

Upon consideration of all the facts of record we are of the opinion and find that the charges assessed and collected on the shipments here involved were unjust and unreasonable to the extent

they exceeded the combination rate of 17 cents per 100 pounds applicable on and after October 30, 1933. We further find that complainant paid and/or bore the charges on the shipments involved, and is entitled to reparation without interest on all shipments moving during the statutory period. Complainant specifically waived the payment of interest.

The exact amount of reparation due is not of record. Complainant 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 case being at issue upon complaint and answers 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 defendants Southern Pacific Company, Sacramento Northern Railway and The Western Pacific Railroad Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund to complainant, Sutter Packing Company, all charges collected in excess of 17 cents per 100 pounds for the transportation during the statutory period of the shipments of fresh peaches involved in this proceeding.

Dated at San Francisco, California, this 24th day of February, 1936.

M. B. Hansen
Samuel A. Whelan
M. A. Linn
Robert L. Linn
Walter R. Linn
Commissioners.