

Decision No. 28610

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MERRITT-CHAPMAN & SCOTT CORPORATION,
a corporation,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
a corporation,
Defendant

ORIGINAL

Case No. 3939

BY THE COMMISSION:

OPINION

Complainant alleges that the charges assessed and collected on eighteen (18) carload shipments of gravel and sand (except moulding sand) shipped from Rockbank to Ellwood during the period March 23, 1933, to April 4, 1933, both dates inclusive, were and are unjust and unreasonable in violation of Section 13 of the Public Utilities Act.¹

Reparation only is sought. Rates stated are in cents per 100 pounds and do not include the authorized emergency charge of 6 cents per ton which is not in issue.

Rockbank is a point near Fillmore on defendant's Santa Paula Branch; Ellwood is on the Coast Line 12 miles west of Santa Barbara. Charges were assessed and collected on complainant's shipments at a rate of 5½ cents applying from Pacoima, a point 29 miles east of Rockbank to Ellwood. Reparation is sought on basis of a rate of 4½ cents established April 25, 1933, in defendant's Tariff No. 330-F, CRC No. 3112. This rate is based on an unpublished mileage scale used in Southern

1.

The original complaint embraced also shipments of contractors' equipment and a power shovel transported from Davenport to Los Angeles Harbor. These shipments were eliminated by amendment dated January 15, 1936.

California to determine commodity rates on crushed rock, sand and gravel.

In E.T. Carter vs. Southern Pacific Company, 38 CRC 803, this Commission after hearing found that rates for the transportation of crushed rock, sand and gravel within the same general territory² were unreasonable to the extent they exceeded those that would accrue on basis of the unpublished mileage scale hereinbefore mentioned. Reparation was awarded with interest.³

Defendant does not admit that the Commission has jurisdiction of the subject matter, but concedes that the situation as to the facts is similar to that presented in the Carter Case supra. It states that if the Commission will undertake to make an award of reparation it will offer no opposition. Any doubt as to the Commission's jurisdiction in the premises was removed in the Carter Case.

Upon consideration of all the facts of record and the Commission's decision in the Carter Case, supra, we are of the opinion and find that the assailed rate was unjust and unreasonable to the extent it exceeded 4½ cents. We further find that complainant paid and/or bore the charges on the shipments in question and is entitled to reparation with interest at six (6) per cent. per annum on the shipments moving during the statutory period.

Q 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,

2.

The Carter Case involved rates on crushed rock, gravel and sand from Fillmore to Santa Barbara, Goleta and Orella. Goleta is intermediate to and Orella more distant than Ellwood.

3.

The Commission's order was contested but was finally sustained by a judgment of the District Court of Appeals, Second District (Case No. 10397) which the California Supreme Court declined to review.

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 authorized and directed to refund to complainant Merritt-Chapman & Scott Corporation, with interest at six (6) per cent. per annum, all charges collected in excess of $4\frac{1}{2}$ cents per 100 pounds (exclusive of the emergency charge of 6 cents per ton) for the transportation during the statutory period of the shipments of gravel and sand involved in this proceeding.

Dated at San Francisco, California this 22nd day of March, 1936.

W B Davis

Leon Whitely

W A Cain

Walter H. ...

Drew R. ...

Commissioners