

Decision No. 28122

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

-000-

MERRITT-CHAPMAN & SCOTT CORPORATION,
a corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
a corporation,

Defendant.

)

)

) Case No. 3989

)

)

)

ORIGINAL

BY THE COMMISSION:

FIRST SUPPLEMENTAL OPINION AND ORDER

On March 2, 1936, by Decision No. 28610, the Commission found that the complainant herein was entitled to reparation on certain shipments of gravel and sand which moved over defendant's lines during the two year period preceding the filing of the complaint.

The complainant now asks the Commission to render a supplemental decision determining the exact date upon which its complaint shall be taken as "filed" within the meaning of Section 71 of the Public Utilities Act, thereby fixing the two year period limited by that section for the filing of complaints of this character.

It appears that some of the shipments on which reparations are claimed were tendered for delivery on March 24, 1933, and though the complaint was received at the Los Angeles Office of the Commission on Saturday, March 23, 1935, it was not received at the San Francisco Office until Monday, March 25, 1935.

It is provided in the statute that complaints of this character shall be filed "within two years from the time the cause of action accrues," and that "the cause of action shall be deemed to accrue

upon the delivery or tender of delivery of the shipment." It is the established law of this state, as expressed in both the Political Code and the Code of Civil Procedure, that when computing the time so limited by statute for the filing of a complaint, the first day shall be excluded and the last day included, unless the last day is a Sunday or holiday in which case it also is excluded.

The shipments here involved were delivered or tendered for delivery on March 24, 1933. It follows that the two year period limited for the filing of a complaint alleging an overcharge on such shipments would have expired on March 24, 1935, had that day not been a Sunday. It being conceded that the complaint was filed not later than Monday, March 25, 1935, its filing was within the time permitted by the statute.

It is therefore unnecessary for us to determine whether the complaint may be deemed to have been legally filed when delivered to the Los Angeles Office of the Commission on March 23, 1935. Certainly, it has long been the Commission's practice to there receive all papers tendered for formal filing, and it has been assumed that their receipt at that office constituted a "filing" in compliance with any statutory provision limiting the time within which filings might be made.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that the second paragraph of the Order contained in Decision No. 28610, issued on March 2, 1936, in this proceeding, be and is hereby amended to read as follows:

"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 4-1/2 cents per 100 pounds (exclusive of the emergency charge of 6 cents per ton) for the

transportation of the shipments of gravel and sand involved in this proceeding which were delivered or tendered for delivery on and after March 24, 1933."

IT IS HEREBY FURTHER ORDERED that in all other respects Decision No. 28610 shall remain in full force and effect.

Dated at San Francisco, California, this 21st day of September 1936.

M B Lewis
Leon Overman
N J Carr
W H H. H. H.
Commissioners