

Decision No. 29255

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CARNATION COMPANY OF CALIFORNIA,)
 a corporation,)
 complainant,)
 vs.)
 SOUTHERN PACIFIC COMPANY,)
 a corporation,)
 Defendant.)

Case No. 3220

BY THE COMMISSION:

ORIGINAL

O P I N I O N

By Decision No. 29317 dated November 4, 1935, in the above entitled proceeding the Commission, upon facts which appeared from the pleadings to be fully analogous to those in California Packing Corporation vs. The Western Pacific Railroad Company¹ and Albers Bros. Milling Company vs. Southern Pacific Company² issued its opinion and order making similar findings to those in the decided cases, and dismissed the complaint. Thereafter complainant alleged that it had been denied a hearing in violation of Section 60 of the Public Utilities Act and asked that the decision of the Commission be set aside and the proceeding reopened for hearing and that the matter be decided in accordance with the evidence after hearing and without regard to the findings in the prior cases, which it alleged were erroneous and unlawful. The proceeding was reopened and a hearing had before Examiner E.S. Williams at San Francisco April 6, 1936.

The record shows that the complaint was filed during the pendency of California Packing Corporation vs. The Western Pacific

¹ Decision No. 27527, dated November 13, 1934, in Cases Nos. 3161 and 3162.

² Decision No. 27982, dated May 20, 1935, in Case No. 2952, also Decision No. 28198, dated August 26, 1935, denying petition of complainant for rehearing and reconsideration.

Railroad Company, supra, and Albers Bros. Milling Company vs. Southern Pacific Company, supra, and was held in abeyance at the request of complainant awaiting their disposal. The reports in this and the prior cases set forth many facts which need not be repeated here. The evidence upon hearing shows and complainant concedes that the material facts in the instant proceeding are the same as those in the prior cases and that they differ from those in the Albers case only with respect to the name of the complainant and the particular shipments involved.³ No new facts were presented by complainant nor has it been shown that conditions have undergone a change. The shipments here considered moved during the identical period as those in the Albers case and the situation as to the future has not been shown to be different than it was at the time of the decision in that case.

The rule has long been established that when the Commission, upon a given statement of facts, reaches a conclusion regarding a certain rate, it will adhere to that conclusion in subsequent proceedings regarding the same rate, unless (a) some new facts are brought to its attention, (b) conditions have undergone a material change, or (c) it proceeded on a misconception or misapprehension. (Traffic Bureau of Nashville vs. Louisville and Nashville Railroad Company, 32 I.C.C. 366,369, and cases cited therein.) A study of the record discloses no evidence which justifies what in effect would be a reversal of the findings previously made.

This case now having been duly heard and submitted and the Commission being fully advised, we are of the opinion and find that the charge assailed was applicable, that it was not unduly prejudicial and preferential, and has not been shown to be unreasonable. The complaint will be dismissed.

³ In the Albers case the shipments consisted of various commodities from numerous points in California on the line of Southern Pacific Company to the plant of Albers Bros. Milling Company located at the southwest corner of Vallejo and Davis Streets in San Francisco, whereas in the instant case the shipments consisted only of evaporated milk from Gustine, California, on the line of the same defendant to the same spur track, known as Track No. 18.

O R D E R

Based on the foregoing opinion,

IT IS HEREBY ORDERED that the above entitled proceeding
be and it is hereby dismissed.

Dated at San Francisco, California, this 9th day of
November, 1936.

M. B. Harris
Leon A. ...
W. J. ...
William ...
Frank ...
Commissioners.