

Decision No. 29752.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

HOLMES & HUGHES,  
THE CUDAHY PACKING COMPANY,

Complainants,

vs.

McCLOUD RIVER RAILROAD COMPANY,  
SOUTHERN PACIFIC COMPANY,

Defendants.

Case 3937.

**ORIGINAL**

BY THE COMMISSION:

O P I N I O N

Complainants allege that the charges assessed and collected by defendants on three shipments of sheep in double deck cars transported from Bartle to Chandler, there fed in transit and subsequently reforwarded to Los Angeles, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act.

The matter was submitted on agreed statements of facts. Reparation only is sought.

Bartle is a station on the McCloud River Railroad Company approximately 36 miles east of Mount Shasta, the junction point with Southern Pacific Company. The shipments here involved were shipped via McCloud River Railroad Company to Mount Shasta, thence via Southern Pacific Company to Chandler for feeding. Thereafter they were reshipped via Southern Pacific Company to Los Angeles. Charges for the movement from Bartle to Chandler were paid by complainant Holmes & Hughes on the basis of a rate of \$123.00 per car. For the movement from Chandler to Los Angeles charges were paid by complainant The Cudahy Packing Company on the basis of the difference between the charges paid by Holmes & Hughes and the through charges on fat sheep from Bartle to Los Angeles

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of \$204.12 per car.

Complainants allege that the through charges assessed from Bartle to Los Angeles were unreasonable to the extent they exceeded those which would have accrued under a rate of 69½ cents per 100 pounds, prescribed by the Commission in Decision No. 26913 of April 2, 1934, in Sevier Commission Co. et al. vs. McCloud River R.R.Co. et al., Case No. 3490 (unreported) for the movement of sheep in double deck cars from and to the same points.

Defendants contend that a transfer of ownership took place at Chandler without proper observance of the tariff rule governing such a transaction;<sup>2</sup> and that under these circumstances the shipments in issue were actually undercharged \$54.65, as charges should have been assessed on the basis of a combination of rates to and from Chandler. Citing Alabama Grocery Co. et al. vs. A.T. & S-F. Ry. Co., (204 I.C.C. 195) defendants also argue that there is no legal authority for prorating reparation on transit shipments to joint complainants where neither party to the complaint has paid or borne the through charges.

By Decision No. 26913 dated April 2, 1934, supra, the Commission found that rates assessed on shipments of sheep in double deck cars from Bartle to Los Angeles were and for the future would be unjust and unreasonable to the extent they exceeded 69½ cents per 100 pounds, and awarded reparation on shipments which were delivered or tendered for

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Charges for the movement from Bartle to Chandler were originally collected on basis of an inapplicable rate of \$130.12 per car, and the overcharge of \$7.12 per car was subsequently refunded. This refund was apparently overlooked in computing the charges from Chandler to Los Angeles, resulting in an undercharge of \$7.12 per car which has not been collected. Charges for stopping at Chandler and for bedding of cars were collected, but are not in issue here.

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Pacific Freight Tariff Bureau Tariff 198-D, C.R.C. No. 493 of F.W.Gomph, Agent, Item 400 governing such transfers, read as follows: "Shipments may be transferred from one party to another at transit point. Transferring of freight bills covering same is permissible but this must be accomplished by formal assignment or order endorsed on back of freight bill giving the date and method of transfer. Freight bills so transferred must be re-submitted to the representative of the carrier who will debit the original account, credit the new account and endorse the freight bill by writing or stamping thereon, 'Transfer of transit livestock recorded' date, and sign the endorsement."

delivery on and after February 1, 1931. The shipments of sheep here involved were transported from Bartle to Chandler and thence to Los Angeles during the period for which reparation was awarded in the Sevier Case, supra.

It is not alleged that the combination of rates from Bartle to Chandler and from Chandler to Los Angeles is unreasonable or otherwise unlawful. Therefore, in order to bring the shipments here involved within the purview of the Commission's findings in the Sevier Case, supra, upon which complainants solely rely, it must be shown that the through rate of \$204.12 from Bartle to Los Angeles was legally applicable on the shipments in issue. To sustain a finding that this rate was legally applicable it was incumbent upon the complainants to establish that all of the conditions of the transit tariff had been met. In failing to show that the ownership of the shipments had not been transferred at Chandler, as charged by defendants, or that if title had passed from Holmes & Hughes to The Cudahy Packing Company at Chandler, the provisions in the transit tariff concerning such transactions had been complied with, complainants have not sustained the burden of proof that the \$204.12 per car rate was legally applicable.

Under these circumstances it must be found that the shipments here involved have not been shown to be within the scope of the Sevier Case, supra.

In view of the foregoing it becomes unnecessary to treat the contention advanced by defendants that reparation may not be awarded where neither complainant has paid or borne the entire transportation charge.

The complaint will be dismissed.

ORDER

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 the above entitled complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 10<sup>th</sup> day of May, 1937.

William H. ...  
Leon ...  
Francis R. ...  
Raymond ...  
Ray L. ...  
Commissioners.