

Decision No. 2900

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

WOODWARD-BENNETT PACKING COMPANY,  
STANDARD PACKING COMPANY,  
COAST PACKING COMPANY,  
DISTRIBUTORS PACKING COMPANY,  
UNION PACKING COMPANY,  
MERCHANTS PACKING COMPANY,  
NEWMARKET COMPANY,  
GLOBE PACKING COMPANY,  
HAUSER PACKING COMPANY,  
LOS ANGELES PACKING COMPANY,  
ASSOCIATED MEAT COMPANY,  
ASSOCIATED MEAT COMPANY OF CALIFORNIA,  
UNITED DRESSED BEEF COMPANY,  
PEERLESS PACKING COMPANY,  
THE CUDAHY PACKING COMPANY,  
W. E. COODNO,  
D. H. LILLYWHITE,  
WASHEBURN & CONDON,  
SOUTHWEST COMMISSION COMPANY,  
CALIFORNIA LIVE STOCK COMMISSION  
COMPANY, INC.,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY,  
THE ATCHISON, TOPEKA & SANTA FE  
RAILWAY COMPANY,

Defendants.

ORIGINAL

Case No. 2900

JAMES ALLAN & SONS,  
ALPERT PACKING COMPANY,  
J. C. JOHNSON, INC.,  
HENRY LEVY COMPANY,  
H. MOFFAT COMPANY,  
QUINTO RANCH COMPANY,  
ROTH BLUM PACKING COMPANY,  
WM. TAFFET & COMPANY,  
UNION SHEEP COMPANY,  
WESTERN MEAT COMPANY,  
OAKLAND MEAT & PACKING COMPANY,  
CALIFORNIA LIVESTOCK COMMISSION  
COMPANY, INC.,  
SOUTHWEST COMMISSION COMPANY,  
SEVIER COMMISSION COMPANY,  
HOLM COMMISSION COMPANY,  
WASHEBURN & CONDON,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY,  
NORTHWESTERN PACIFIC RAILROAD COMPANY,

Defendants.

Case No. 3110

DISTRIBUTORS PACKING COMPANY,  
CORNELIUS BROS. LTD.,  
GLOBE PACKING COMPANY,  
MERCHANTS PACKING COMPANY,  
NEWMARKET COMPANY,  
PEERLESS PACKING COMPANY,  
STANDARD PACKING COMPANY,  
UNION PACKING COMPANY,  
UNITED DRESSED BEEF COMPANY,  
WOODWARD-BENNETT PACKING COMPANY,  
WILSON & COMPANY INC. OF CALIFORNIA,  
CALIFORNIA LIVE STOCK COMMISSION COMPANY,  
W. H. GOODNO,  
D. E. LILLYWHITE,  
SOUTHWEST COMMISSION COMPANY,  
WASHEURN & CONDON,

Complainants,

vs.

McCLOUD RIVER RAILROAD COMPANY,  
SOUTHERN PACIFIC COMPANY,  
THE WESTERN PACIFIC RAILROAD COMPANY,  
Defendants.

Case No. 3310

ADDITIONAL APPEARANCES

Richard T. Eddy, for the complainants.

James E. Lyons, for the defendants.

Gerald E. Duffy, for The Atchison, Topeka & Santa  
Fe Railway Company, as its interests may appear.

BY THE COMMISSION:

SUPPLEMENTAL OPINION

By Decision No. 26414, as amended, the Commission found that certain rates were unreasonable, prescribed future rates, and found that complainants were entitled to reparation. Complainants were directed to submit to the carriers a statement of shipments for verification, and the carriers were directed to notify the Commission of the amount of reparations paid. Should the parties be unable to agree on the amount, it was indicated that the matter could be referred to the Commission for further attention and entry of a supple-

mental order. Rehearing, sought by Southern Pacific Company, was denied (Decision No. 26528). Thereafter, because of failure of the parties to agree, the proceedings were reopened "for the purpose of determining the amount of reparation." After hearing the matter was submitted upon briefs.

The further hearing referred to was had before Examiner Geary, now deceased. A conflict of opinion developed as to the right of the Commission to award reparation on certain shipments, particularly those which moved subsequent to the filing of the complaints. Because of various corrections made in the exhibits presented, we find that upon the record then made we can not determine the exact amount of reparation due. However, by expressing our conclusion upon the legal issues presented, it may be that the parties may themselves agree upon the amount due and thus obviate the necessity for a reopening of the proceedings.

Southern Pacific Company has not paid the reparation award on three classes of shipments, declining payment upon the following grounds:

1. The Commission is without jurisdiction to award reparation on shipments moving subsequent to the dates on which the complaints were filed.
2. Complainants in Case 2900 are not entitled to reparation upon shipments from points west of Davis and Tracy because such shipments are not within the scope of the amended complaint.
3. Reparation may not be awarded to "commission firms" which paid but did not bear the charges.

Shipments Moving during Pendency  
of the Proceedings

Case 2900 is illustrative of situations where reparation pendente lite is sought. The complaint (filed August 11, 1930) alleged that shipments had moved within two years and that rates

were and are unjust and unreasonable. Reparation was asked, as well as the establishment of reasonable rates for the future. Alleging that "shipments are now being made and will continue to be made during the pendency of this proceeding, and complainants have been, are now, and will continue to be damaged by reason of the violations of the Public Utilities Act," the complaint prayed "for reparation also on shipments moving during the pendency of this proceeding." The decision found that the rates "were and are" unreasonable, and that complainants were entitled to reparation on shipments which moved subsequent to July 9, 1930.

The complaints specifically sought reparations on shipments moving during the pendency of the proceedings looking toward a reduction of rates, and the carriers were fully apprised of the issues. We are of the opinion that this Commission has jurisdiction to award reparations upon complaints of this character on shipments moving pendente lite (L. & N. R. Co. vs. Sloss-Sheffield, etc., 295 Fed. 53; 269 U.S. 242).

Shipments from Points west of  
Davis and Tracy

Southern Pacific Company declined to pay reparations ordered by Decision 26414 on shipments which moved from points west of Davis and Tracy upon the ground that such shipments were not within the scope of the complaint in Case 2900. That complaint described the territory in general terms without specific reference to the western boundary. The case was tried and the decision was rendered upon evidence showing that the western boundary of the territory in question embraced points west of Davis and Tracy, and Decision No. 26414 contemplated that reparations be paid on such shipments.

Reparation to "Commission Firms" which paid  
but did not Bear the Charges

The order in Decision No. 26414 directs defendants "to refund to complainants and interveners in Cases 2900, 3110, \* 3310 \*\*\* according as their interests may appear, all charges collected on the shipments here involved in excess of those herein found reasonable \*\*\*." It does not direct the payment of reparation to any undisclosed parties, but provides that all charges "collected" from "complainants and interveners" in excess of those found reasonable shall be refunded to them.

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For the reasons heretofore stated no further order will be made at this time. Should the parties still be unable to agree on the amount of reparations to be paid under Decision No. 26414, a petition for reopening may be filed. However, in view of the foregoing discussion, such procedure should not be necessary.

Dated at San Francisco, California, this 13<sup>th</sup> day of September, 1937.

Walter H. Hays

Frank D. Dineen

Ray & Scully  
Commissioners.