

Decision No. 38480

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SWIFT & COMPANY
Complainant,

vs.

SOUTHERN PACIFIC COMPANY
Defendant

Case No. 3833

SEVIER COMMISSION COMPANY
STANDARD PACKING COMPANY
COAST PACKING COMPANY
DISTRIBUTORS PACKING COMPANY
UNION PACKING COMPANY
MERCHANTS PACKING COMPANY
NEWMARKET COMPANY
GLOBE PACKING COMPANY
HAUSER PACKING COMPANY
ASSOCIATED MEAT COMPANY
PEERLESS PACKING COMPANY
WILSON & CO. INC. OF CALIFORNIA
CORNELIUS BROTHERS, LTD.
STERLING MEAT COMPANY
THE CUDAHY PACKING COMPANY
SWIFT & COMPANY
WESTERN MEAT COMPANY
JAMES ALLAN & SONS
E. MOFFAT COMPANY
ROTH BLUM PACKING COMPANY
WM. TAFFEE & COMPANY
UNION SHEEP COMPANY
WASEBURN & CONDON
SOUTHWEST COMMISSION COMPANY
HEINIE HOLM COMMISSION COMPANY
Complainants

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY
SOUTHERN PACIFIC COMPANY
Defendants

WASEBURN AND CONDON
THE CUDAHY PACKING COMPANY
Complainants

vs.

SOUTHERN PACIFIC COMPANY
NORTHWESTERN PACIFIC RAILROAD COMPANY
Defendants.

Case No. 3846

ORIGINAL

Case No. 3849

NEWMARKET COMPANY
STANDARD PACKING COMPANY
COAST PACKING COMPANY
DISTRIBUTORS PACKING COMPANY
UNION PACKING COMPANY
MERCHANTS PACKING COMPANY
GLOBE PACKING COMPANY
HAUSER PACKING COMPANY
ASSOCIATED MEAT COMPANY
PEERLESS PACKING COMPANY
CORNELIUS BROS., LTD.
STERLING MEAT COMPANY

THE CUDAHY PACKING COMPANY
SWIFT & COMPANY
UNITED DRESSED BEEF COMPANY
WASHBURN & CONDON
SOUTHWEST COMMISSION COMPANY
CALIFORNIA LIVESTOCK COMMISSION COMPANY

Complainants

vs.

SOUTHERN PACIFIC COMPANY
Defendant

Case No. 3850

SOUTHWEST COMMISSION COMPANY
JAMES ALLAN & SONS
H. MOFFAT COMPANY
UNION SHEEP COMPANY
ROTH BLUM PACKING COMPANY
WM. TAAFFE & COMPANY
WESTERN MEAT COMPANY
SWIFT & COMPANY
WASHBURN & CONDON
HEINIE HOLM COMMISSION COMPANY
SEVIER COMMISSION COMPANY

Complainants

vs.

SOUTHERN PACIFIC COMPANY
Defendant

Case No. 3854

MERCHANTS PACKING COMPANY
THE CUDAHY PACKING COMPANY
STANDARD PACKING COMPANY
COAST PACKING COMPANY
DISTRIBUTORS PACKING COMPANY
UNION PACKING COMPANY
GLOBE PACKING COMPANY
NEWMARKET COMPANY
HAUSER PACKING COMPANY
STERLING MEAT COMPANY
UNITED DRESSED BEEF COMPANY
CORNELIUS BROTHERS, LTD.
WASHBURN & CONDON
ASSOCIATED MEAT COMPANY

Complainants

vs.

ATCHISON TOPEKA & SANTA FE RAILWAY CO.
INDIAN VALLEY RAILROAD
SACRAMENTO NORTHERN RAILWAY COMPANY
SOUTHERN PACIFIC COMPANY
WESTERN PACIFIC RAILROAD COMPANY
Defendants.

Case No. 3959

APPEARANCES

RICHARD T. EDDY for Complainants.

J.E. LYONS for Southern Pacific Company and Northwestern Pacific Railroad Company, Defendants.

L.N. BRADSEAW, for Indian Valley Railroad, Sacramento Northern Railway and Western Pacific Railroad Company, Defendants, in Case 3959.

GERALD E. DUFFY and BERNE LEVY for The Atchison, Topeka & Santa Fe Railway Company, Defendant in Case 3959.

BY THE COMMISSION:

O P I N I O N

These proceedings involve rates on shipments of sheep originating at various points within California and transported by defendants to Los Angeles, San Francisco or South San Francisco. ¹ Complainants and

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The various complaints embrace the following territories and movements:

Case No. 3833. To Los Angeles, from the following points on the Southern Pacific Company: Middle Creek to Deetz, Rocklyn to Spruce, Davis to Elmira, Elmira to Rumsey, Elmira to Suisun-Fairfield, Suisun-Fairfield to Napa Jct.- Calistoga- Santa Rosa-Wingo, Suisun-Fairfield to Avon (via Port Costa), Avon to Janney, Avon to Radum to Medal, Port Costa to San Francisco via Oakland, San Francisco to Alvarado, Alvarado to Niles (via Halvern and via Newark), Elmhurst to Halvern, Niles to Pleasanton, all main and branch line points on Coast Division San Francisco to Ventura.

Case No. 3846. From all points on the Northwestern Pacific Railroad Company to Los Angeles and from points Willits and north thereof on the line of the same carrier to San Francisco and South San Francisco.

Case No. 3849. To Los Angeles, from points on the Northwestern Pacific Railroad Company, Ignacio to Glen Ellen inclusive.

Case No. 3850. To Los Angeles, from the following points on the Southern Pacific Company: Magunden to Mojave, Mojave to Owenyo, Arvin to Magunden, Giffin Junction to Giffin, Arvin to Vacarro.

Case No. 3854. To San Francisco and South San Francisco, from the following points on the Southern Pacific Company: Cape Horn to Calvada, Middle Creek to Dorris (via Black Butte), Graham to Cole, main branch line points Santa Margarita to Watsonville Junction, points on the Tres Pinos Branch, Fep to Tres Pinos, Watsonville Junction to Santa Cruz, Santa Cruz to Los Gatos.

Case No. 3959. To Los Angeles, from points on the Western Pacific Railroad Company, Doyle to Sacramento, in connection with the Southern Pacific Company at Stockton, all stations on the same carrier, Doyle to Paxton, via Atchison, Topeka & Santa Fe Railroad Company at Stockton, all stations on the Sacramento Northern Railway prior to February 12, 1934, routed via Atchison, Topeka & Santa Fe Railway Company via authorized junctions and all stations on the Indian Valley Railroad.

interveners allege that the charges assessed or to be assessed on shipments moving within the statutory period preceding the filing of the complaints or during the pendency of these proceedings, were, are and for the future will be unjust, unreasonable and discriminatory, in violation of Sections 13 and 19 of the Public Utilities Act. They seek reparation and rates for the future.

Public hearings were held in Los Angeles. The matters were submitted on briefs.

The charges assessed were based generally upon the so-called "California intrastate scale." The history of that scale was set forth in detail in Decision No. 26414 of October 9, 1933, in Case No. 2900 and related cases, and need not be repeated here. In that decision charges based upon the California intrastate scale were condemned as unjust and unreasonable and a new scale of rates, hereinafter referred to as the "26414 scale", was prescribed for the territories there involved.

Complainants ask that reparation and rates for the future be based upon the 26414 scale, except that for shipments in single deck cars they suggest that a basis 25 per cent in excess of the prescribed double deck

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Swift and Company intervened in Case No. 3959.

The following intervened in Case No. 3833:

Cudahy Packing Company, Standard Packing Company, Coast Packing Company, Distributors Packing Company, Union Packing Company, Merchants Packing Company, Globe Packing Company, Newmarket Company, Hauser Packing Company, Associated Meat Company, Peerless Packing Company, Wilson Co. Inc. of California, Cornelius Bros. Ltd., Washburn & Condon, D.J. Metzger.

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The cases and territories involved in Decision No. 26414 were as follows:

Case No. 2900: From points on the Southern Pacific Company, Redding on the north, Roseville on the east and Bakersfield on the south to Los Angeles;

Case No. 3110: From points on the Southern Pacific Company, Redding on the north, Bakersfield on the south and Colfax on the east to San Francisco and South San Francisco.

Case No. 3273: From Moy on the Western Pacific Railroad, Greendale and Argenta on the Sacramento Northern Railway to Los Angeles.

Case No. 3310: From points on the Southern Pacific Company, Soda Springs and east to Calvada, Black Butte to Dorris and Black Butte to Cole, to Los Angeles.

Case No. 3404: From Olancha, Inyokern and Cantil to San Diego.

Case No. 3490: From points on the McCloud River Railroad to San Francisco, South San Francisco and Los Angeles.

scale be adopted.⁴

The record in Case No. 2900 and related cases, upon which Decision No. 26414 was rendered, was incorporated by reference into the present record. Complainants introduced numerous comparative rate studies, but in the main they rest upon the Commission's findings in that decision, claiming that the territories here involved are similar and the issues identical.

Defendants introduced little evidence in direct defense of the rates assailed. For the most part they rely upon the following contentions:

1. That Decision No. 26414, supra, was erroneous in its conclusions⁵ and should not be determinative of the issues here.

2. That insofar as shipments from points on the Northwestern Pacific are concerned, rates higher than those assailed have been found reasonable in California Cattlemen's Association vs. N.W.P., et al. 32 C.R.C. 466, and that under Section 71 of the Public Utilities Act the Commission is precluded from awarding reparation as to that territory.

⁴ The single deck scale prescribed in Decision No. 26414 does not bear a uniform relationship to the double deck scale. For ten miles and under it is 158 percent and for 200 miles it is 126 percent of the double deck scale. Thereafter, it closely approximates 125 percent.

⁵ More particularly, defendants argue:

(a) That in prescribing sheep rates the contemporaneous rates on cattle were disregarded;

(b) That the assumption in said decision that the assailed rates were materially higher than those accruing under various compared scales was incorrect;

(c) That the assumption that on actual weights the per car revenue under the Cactus-Concho scale (upon which the 26414 scale was based) exceeds that under the Arizona-California scale (a scale prescribed by the Interstate Commerce Commission for application between points in Arizona and California) was erroneous;

(d) That the Arizona-California scale was never extended beyond the territory for which it was originally prescribed, nor used by the Interstate Commerce Commission for reparation purposes;

(e) That this Commission was influenced by a misleading assertion of counsel that the Cactus-Concho scale had been referred to by the Interstate Commerce Commission as probably the highest basis of rates on livestock that Commission had ever prescribed or approved;

(f) That reparation awarded by Decision No. 26414 was not based upon a minimum weight of 23,000 pounds;

(g) That single line rates were prescribed for N.W.P.-S.P. joint-line hauls.

3. That complainants have failed to sustain the burden of showing payment and bearing of charges.

The 26414 scale was developed upon a comprehensive record and was prescribed for many hauls which do not appear to differ substantially from those here involved. It has been used subsequently as a basis for reparation and for adjustment of rates for the transportation of sheep from various points throughout the State to San Francisco, Los Angeles, San Diego, Swanston and Flosden. Defendants' allegations of error are the same as those advanced on petition for rehearing in Decision No. 26414, supra, and were there deemed insufficient to warrant reopening the proceedings or changing the original findings. No reason to depart from previous findings has been made to appear on this record.

The Commission is of the opinion and finds that the charges herein assailed for the transportation of sheep in single and double deck cars were, are and for the future will be unjust and unreasonable to the extent they exceed charges which would have accrued on basis of the rates prescribed by Decision No. 26414 and as amended, in Case No. 2900 and related cases, except that 6 $\frac{1}{2}$ cents per 100 pounds shall be added to such 26414 scale for shipments originating at points on the Indian Valley Railroad Company.⁶

The prohibition against awards of reparation below rates previously found to be reasonable is definite.⁷ Reparation below rates found to be reasonable in California Cattlemen's Association vs. N.W.P., et al, supra, will not be ordered.

⁶ In Decision No. 27420 of October 8, 1934, in Case No. 3803, an arbitrary of 6 $\frac{1}{2}$ cents per 100 pounds was prescribed to be added to the Decision No. 26414 scale on shipments from Veramont (a point on the Indian Valley Railroad Company) to Swanston.

⁷ Section 71 of the Public Utilities Act provides in part as follows: "and provided further, that no order for the payment of reparation upon the grounds of unreasonableness shall be made by the Commission in any instance wherein the rate, fare, toll, rental or charge in question has, by formal finding, been declared by the Commission to be reasonable;"

Sixteen of the complainants and interveners failed to present any evidence concerning payment or bearing of charges.⁸ The record shows, however, that all parties agreed to submit to defendants' claim statements covering the shipments involved in these proceedings, with supporting proof.

The exact amount of reparation due is not of record. Complainants and interveners will submit to defendants for verification a statement of the shipments made together with proof that they paid or bore the charges. Upon payment of reparation defendants will notify the Commission the amount thereof. Should it not be possible to reach an agreement as to the reparation award, the matter may again be referred to the Commission.

O R D E R

Public hearings having been held in the above entitled proceedings and based upon the evidence received at the hearings and UPON the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that defendants be and they are hereby ordered and directed to cease and desist on or before sixty (60) days from the effective date of this order, on not less than five (5) days' notice to the Commission and the public, and thereafter abstain from demanding, collecting, charging or receiving for the transportation of sheep between the points involved in these proceedings, charges in excess of those herein found reasonable.

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Those on whose behalf no evidence as to payment and bearing of charges was introduced are:

Sevier Commission Co.
Coast Packing Co.
Globe Packing Co.
Associated Meat Co.
Peerless Packing Co.
Western Meat Co.
James Allan & Sons
H. Moffatt & Co.

Roth Blum Packing Co.
Wm. Taaffee & Co.
Union Sheep Co.
Washburn & Condon
Southwest Commission Co.
Heinie Holm Commission Co.
United Dressed Beef Co.
California Livestock Commission

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Wm. Taaffee & Co.
Union Sheep Co.
Washburn & Condon
Southwest Commission Co.
Heinie Holm Commission Co.
United Dressed Beef Co.
California Livestock Commission

IT IS HEREBY FURTHER ORDERED that defendants be and they are hereby ordered and directed to cancel, on or before sixty (60) days from the effective date of this order, on not less than five (5) days' notice to the Commission and the public, all rates higher in volume or effect than those herein found reasonable, and to establish in their stead rates no higher in volume or effect than those herein found reasonable.

IT IS HEREBY FURTHER ORDERED that defendants, according as they participated in the transportation, be and they are hereby authorized and directed to refund to complainants and interveners according as their interests may appear, all charges collected on the shipments here involved (other than on shipments between points between which rates were found reasonable or were prescribed in California Cattlemen's Association vs. N.W.P. et al, 32 C.R.C. 466) in excess of those herein found reasonable, together with interest at six (6) per cent per annum.

Dated at San Francisco, California, this 3rd day of

Jan., 1938.

Walter M. Mearns
Leon A. Whittell
Frank R. Whittell
Robert A. Whittell
Ray L. Bailey
Commissioners.