

ORIGINAL

Decision No. 30573

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

California Vinegar Company
Coffee Products of America, Inc. Ltd.
Crown Products Corporation
Walker Manufacturing Company

Complainants

vs.

Southern Pacific Company
(Pacific Lines)

Defendant

Case No. 4177

V. O. Conaway, Benjamin S. Cooper and J. E. Billington,
for complainants.
R. E. Wedekind, for defendant.

BY THE COMMISSION:

O P I N I O N

Complainants seek reparation on numerous shipments of vinegar in tank cars, transported by defendant from San Francisco, Oakland, Melrose, Hayward and Watsonville to Los Angeles during the period April 10, 1933 to December 5, 1934, and on shipments transported during the pendency of this proceeding. They allege that the charges assessed and collected by defendant were excessive in violation of Section 17(2) of the Public Utilities Act.

The matter was submitted at a public hearing had before Examiner Freas at Los Angeles. Rates are stated in cents per 100 pounds.

With but few exceptions the charges assessed and collected were based on a rate of 31½ cents, as published in Items 2050 and 2060 series of Southern Pacific Company Tariff No. 730-D, C.R.C.

No. 3353.¹ Complainants seek reparation to a basis of 26 cents from San Francisco, Oakland, Melrose and Hayward and 22 cents from Watsonville. These rates are published in Item 1620 of the same tariff.

The 31½ cent rates assessed apply specifically to shipments of vinegar in tank cars. The 26 cent and 22 cent rates to the basis of which reparation is sought apply for the transportation of canned goods, including vinegar in barrels, from the points here involved to Los Angeles, and also to Whittier, a point beyond Los Angeles.

Complainants contend that under Rule 5 of Western Classification No. 62, C.R.C. No. 517 of F. W. Gomph, agent, supplements thereto and reissues thereof, the rates published for the transportation of vinegar in barrels to Whittier will also apply on shipments of vinegar in tank cars, and that under the intermediate application of the tariff said rates will apply as maximum on shipments of vinegar in tank cars to Los Angeles. Although Item 1620 specifically names rates to Los Angeles for the transportation of vinegar in barrels, complainants have chosen to use the Whittier rates, which are identical in volume, as a basis for computing the tank car rates to Los Angeles. Apparently this has been done under the assumption that the absence of a specific commodity rate on vinegar in tank cars to Whittier would cause Rule 5 of the Classification to become operative.

Complainants introduced copies of letters containing rulings of the Transcontinental Freight Bureau, a carrier organization. One

1 The exceptions follow:—

Shipments moving prior to October 1, 1933 (31½ cents plus 2 cents emergency charge)	33½ cents
Hayward to Los Angeles - February 27, 1934	35 cents
Watsonville to Los Angeles - March 13 & 20, 1936	28½ cents

of these letters is reproduced in part in the footnote.² They also called as a witness a rate clerk employed by defendant who testified that in his opinion the lower rates sought were properly applicable after shipments had moved. He stated, however, that prior to movement he would have quoted 31½ cents as the applicable rate.

Defendant contends that the portion of Rule 5 of the Western Classification here involved applies only when articles are in containers of a kind or a shipping form of a kind, which is not specifically provided for in the description for such articles, that a fifth class rating on vinegar in tank cars is specifically provided in the description for such article in the classification, and that, therefore, Rule 5 is not applicable here.

As hereinbefore indicated, no specific commodity rate is published to Whittier for shipments of vinegar in tank cars. However, vinegar in tank cars is rated at fifth class in the Western Classification and class rates are named to Whittier. Hence, a means of rating tank car shipments to such point without resorting to the penalty provisions of Rule 5 of the Western Classification is available. The selection of Whittier as a more distant point to which to compute charges would not, therefore, seem to place complainants in a stronger position than they would have enjoyed had they elected to stand on the Los Angeles rate.

2

"Item 3826 of Tariff 3-Z provides for rate on paint or varnish reducing compounds in packages as prescribed in current Western Classification, which has the effect of removing package specifications as provided in that tariff. The reference to packages as provided in current Western Classification includes shipments in tank cars when that method of shipping is provided in connection with the Classification item referred to.

The Standing Rate Committee rules that commodity items in Trans Continental freight tariffs containing reference to Western Classification description 'in packages as prescribed ***' means meeting the shipping requirements of the Classification so far as containers are concerned."

Rule 5 provides a basis for the assessing of charges on shipments which come into the carriers' possession in a form for which charges would not otherwise be provided. It seems clear that it is not a rule intended to broaden the shipping requirements of articles for which rates are elsewhere maintained when moved in the identical form. When articles are in containers of a kind or a shipping form of a kind which is not specifically provided for in the description for such articles, they are to be refused for transportation. However, if they do come into the carriers' possession inadvertently, some basis for assessing charges thereon must be provided and this, as we understand it, is the purpose and effect of Rule 5.

The circumstances involved in the Transcontinental Freight Bureau's rulings hereinbefore referred to are not analogous to those here in issue. There, the item naming the rate sought and found applicable provided that it would apply on shipments "in packages as prescribed in current Western Classification"; here the kind of packages is specifically set forth.

The position taken by the rate clerk called by complainant rests upon the premise that the penalty provisions of Rule 5 are applicable but that they may not be used as a basis for quoting rates in advance of movement. Upon such a premise one rate would be quoted as applicable prior to the movement of the shipment, but another (and lower) rate would be assessed thereafter. The anomalous result reached by this reasoning further supports the conclusion that Rule 5 should not be applied where rates for the article in the form in which it was shipped are elsewhere provided.

Since in this case there were in effect in tariffs lawfully on file with the Commission commodity rates for the transportation of vinegar in tank cars from the points involved to Los Angeles and also class rates for similar transportation to Whittier, the more distant point, we are of the opinion and find that the lower commodity rates named for the transportation of vinegar in bulk in barrels were not applicable in connection with shipments in tank cars, either to Whittier or to Los Angeles. The complaint will be dismissed.

O R D E R

This matter having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing this order on the findings and the conclusions set forth in the preceding opinion,

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

Dated at San Francisco, California, this 31st day of January, 1938.

John A. Sullivan
Leon A. Sullivan
Braun R. Sullivan

Robert C. Riley
Commissioners