

Decision No. 34515.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

EM. H. METTLER, COMPLAINANT )  
 )  
VS. )  
 )  
SOUTHERN PACIFIC COMPANY, (Pacific )  
Lines), )  
 )  
DEFENDANT )

Case No. 4485

Appearances

Em. H. Mettler, in propria persona, complainant  
J.E. Lyons, for Southern Pacific Company, defendant

BY THE COMMISSION:

O P I N I O N

By this complaint Em. H. Mettler alleges that freight charges assessed and collected by Southern Pacific Company for the transportation of thirty-six carloads of potatoes, in sacks, from Bromela to Los Angeles during the period from February 17 to March 6, 1938, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act. Complainant asks that the defendant be directed to pay as reparation the sum of \$493.78, representing the difference between the charges collected at the assailed rate of 22 cents and those which would have accrued at a subsequently established rate of 17½ cents.<sup>1</sup> Rates for the future are not involved in this proceeding.

Public hearing was had at Los Angeles before Examiner Bryant, and the matter is now ready for decision.

Complainant testified that prior to making the shipments

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<sup>1</sup> Rates are stated herein in cents per 100 pounds. The applicable rate of 22 cents, minimum weight 20,000 pounds, was published on 10th Revised Page 93-A, Index No. 6540, of defendant's tariff No. 817-D, C.R.C. No. 3338. The rate of 17½ cents, minimum weight 30,000 pounds, was published effective March 11, 1938, on 12th Revised Page 128, Index No. 6550 of the same tariff.

here involved he had regularly shipped potatoes from Santa Maria to Los Angeles at a rate of 17½ cents, and had assumed that the rate from Bromela would be no higher. He pointed out that the rail distance from Santa Maria to Los Angeles is five miles greater than that from Bromela, and that the Santa Maria movement requires a two-line haul whereas that from Bromela is entirely over the main line of defendant.<sup>2</sup> He pointed out also by way of comparison that defendant had in effect at the time of movement a rate of 17½ cents for transportation of potatoes from Delano to Los Angeles, a distance the same as that from Bromela, and said that Delano and the Bromela region are competing shipping areas. He stated that if he had been aware of the higher rate applicable from Bromela he could, and would, have shipped the potatoes by for-hire motor carriers at a rate no greater than 17½ cents. The record shows that the freight charges were paid by the consignee but actually borne by complainant.

Southern Pacific Company in answer to the complaint admits "that a just and reasonable rate to be applied to the shipments described in the complaint is 17½ cents per 100 pounds," and offers to pay to complainant the sought award.

The Commission has repeatedly held that in instances where there is no issue between the parties the proof necessary to justify reparation should nevertheless measure up to that required had defendant opposed the proposed reparation award, and that when rates are voluntarily reduced it does not necessarily follow that reparation should be awarded on shipments forwarded before the reduced rates were made effective.<sup>3</sup>

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Bromela is located on the main line of Southern Pacific Company in southern San Luis Obispo County a few miles northwest of Santa Maria and 201 rail miles from Los Angeles.

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(Rosenberg Bros. & Co. vs. Southern Pacific Company 43 C.R.C. 301; Krieger Oil Co. and Riverside Cement Co. vs. P. E. R. Co. and U. P. R. R., 41 C.R.C. 521; and Salinas Valley Ice Co. vs. W. P. R. R. and S. P. Co., 41 C.R.C. 79.)

Under Section 71 of the Public Utilities Act, by which this Commission derives its power to direct public utilities to make reparation to complainants, the reparation award may be ordered only when the Commission has found, after investigation, that the public utility has charged an unreasonable, excessive, or discriminatory amount.

No attempt was made to show the reasonableness of the rates used for comparison, or to show a similarity of transportation conditions under the various rates. In submitting rate comparisons, it is incumbent upon the party offering such comparisons to show that they are a fair measure of the reasonableness of the rates in issue (Salinas Valley Ice Co. vs. W.P. R.R. and S.P. Co., 41 C.R.C. 79). The rates relied upon by complainant for comparison were admittedly established to meet motor truck competition. Defendant's offer to satisfy the complaint cannot be construed as an admission, much less proof, that any rate in excess of the subsequently established rate of 17½ cents was unreasonably high. Thus the record is devoid of evidence that the rate assessed exceeded a maximum reasonable rate. Discrimination was not alleged. Under these circumstances it is clear that the record in this proceeding is not one upon which the Commission may authorize or direct defendant to pay reparation as sought by complainant.

The complaint will be dismissed.

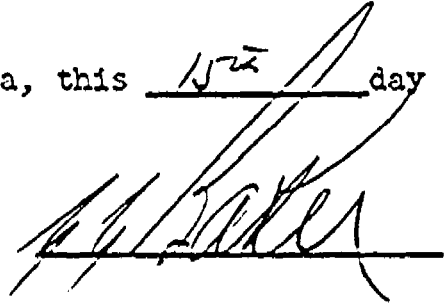
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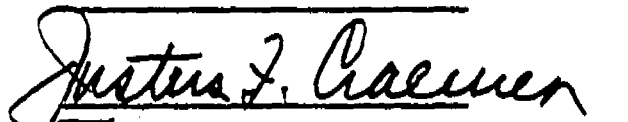

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having

been had, and the Commission being fully advised,

IT IS HEREBY ORDERED that this complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 15<sup>th</sup> day of April, 1941

  
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Commissioners