

Decision No. 35680

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

UNION SHEEP COMPANY,)
 Complainant,)
 vs.)
 THE WESTERN PACIFIC RAILROAD)
 COMPANY, (P.M. Schumacher and)
 Sidney M. Ehrman, Trustees),)
 Defendant.)

Case No. 4546

ORIGINAL

BY THE COMMISSION:

O P I N I O N

By this complaint, as amended, Union Sheep Company alleges that the rates assessed and collected on numerous double-deck car-loads of fat sheep transported by The Western Pacific Railroad Company from Blairsden and Portola to San Francisco during the two years immediately preceding the filing of the complaint were unjust and unreasonable in violation of Section 13 of the Public Utilities Act. Reparation only is sought. The matter was submitted upon written statements of fact and argument.

Blairsden and Portola are located on defendant's line, 105 and 116 miles, respectively, east of Oroville. Charges were assessed and collected on complainant's shipments at the applicable rate of \$95.55 per double-deck car, published in defendant's Local Joint and Proportional Freight Tariff G.F.D. No. 71-H, C.R.C. No. 313. Complainant seeks reparation on the basis of the rates provided by the so-called "26414 scale," prescribed by this Commission in Woodward-Bennett Packing Company et al. vs. Southern Pacific Company et

al., (Decision No. 26414 of October 9, 1933, in Case No. 2900, and
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related cases).

Complainant contends that the transportation in issue is comparable in all important respects to the transportation of fat sheep for like distances between points for which the 26414 scale of rates was prescribed; that the shipments involved moved during a period when defendant and other rail lines maintained rates from and to various California points based on that scale; and that the scale has been used as the basis for reparation on numerous double-dock movements of fat sheep between points located in the same general
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territory as the points involved herein.

Defendant has signified its willingness to make a reparation adjustment to the basis sought by complainant.

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The decision awarded reparation and established rates for the future. The cases and territories involved follow:

Case No. 2900: From points on the Southern Pacific, 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, 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, Greendale and Argenta on the Sacramento Northern to Los Angeles;

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

Case No. 3404: From Olancho, Inyokern and Cantil on the Southern Pacific to San Diego;

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

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In support of this latter contention complainant cited C. Swanson & Son vs. Southern Pacific Company, et al., Decision No. 27420 in Case No. 3803, Swift & Company vs. Southern Pacific Company, et al., Decision No. 30480, as amended, in Case No. 3833, and related cases, and H. J. Adlor, et al. vs. Southern Pacific Company, Decision No. 27789, in Case No. 3889.

The 26414 scale was developed upon a comprehensive record and was prescribed for transportation which appears to be substantially similar to that here involved. It was subsequently used as a basis for reparation in connection with other like transportation. Under the circumstances, we are of the opinion and find that the applicable rate on the shipments involved in this proceeding was unjust and unreasonable to the extent that it exceeded rates based on the 26414 scale.

The exact amount of reparation due is not of record. Complainant will submit to defendant for verification a statement of the shipments made and upon payment of the reparation defendant will notify the Commission of the amount thereof. Should it not be possible to reach an agreement as to the reparation award, the matter may be referred to the Commission for further attention and the entry of a supplemental order, should such be necessary.

O R D E R

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 defendant, The Western Pacific Railroad Company, be and it is hereby ordered and directed to refund to complainant, Union Sheep Company, all charges collected on

the shipments here involved in excess of those which would have accrued on the basis of the rates found reasonable in the preceding opinion, together with interest at six (6) per cent per annum.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 17th day of August, 1942.

Matthew F. Owens
W. H. Baker
Francis R. Hayden
Richard Jackson

Commissioners