ORIGINAL

Decision No. 41265

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| California Cotton Oil Corporation, and Pacific Nut Oil Company, Complainants | Case No. 4914 |
| vs. | |
| Southern Pacific Company, Defendant | |

L. H. Stewart, for complainants

William Meinhold, for the defendant

## O P I N I O N

Complainants allege that charges assessed and collected by defendant railroad company for the transportation of certain shipments of flaxseed have been and are in excess of those specified in the applicable tariffs, in violation of Section 17 of the Public Utilities Act. They seek reparation in the amount of the claimed overcharges.

Public hearing was had before Examiner Bryant at Los Angeles on November 14, 1947, when evidence was presented and the matter submitted for decision.

The issue in this proceeding is one of tariff interpretation as to the applicable rates, at time of movement, on 200 to 300 carloads of flaxseed which defendant transported to Los Angeles

from various points of origin in the San Joaquin Valley.[1] Questions as to the reasonableness of the rates, either for the past or for the future, are not involved. The issue centers on the applicability of certain rate-increase tables which were separately provided for rates (a) for flaxseed and (b) for grain, grain products, and grain by-products. These tables, although based upon the same percentages of increase, reflected different provisions for the disposition of fractions. As a result, the tables for flaxseed provided, with respect to base rates of given volume, increased rates which were sometimes higher than, sometimes lower than, and sometimes the same as, the rates which the tables for grain correspondingly provided. In determining the charges to be assessed for the transportation herein involved, defendant interpreted its tariff rates as being "grain rates" and accordingly employed the tables applicable thereto.[2] Complainants contend that the tariff provided specific rates for flaxseed and that the flaxseed rate-increase tables should have been applied. Should complainants' view prevail, the total transportation charges on the particular shipments herein involved would be less than those assessed and collected by defendant.

Complainants' traffic manager, appearing as a witness, submitted exhibits to show applicable tariff provisions. Excerpts so submitted from defendant's freight tariff No. 659-F show rates

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1 The rates were set forth in defendant's freight tariff No. 659-F, C.R.C. 3552. They were subject to increase provisions set forth in Tariff of Increased Rates and Charges No. X-148, Cal. P.U.C. No. 84, and in Tariff of Increased Rates and Charges No. X-162, Cal. P.U.C. No. 136, issued by J. P. Haynes, Agent. Applicable commodity descriptions, and carload minimum weights were provided in Tariff No. 240-G, Cal. P.U.C. No. 103, issued by the Pacific Freight Tariff Bureau, J. P. Haynes, Agent.

2 The terms "grain rates" and "flaxseed rates" are used herein as a matter of convenience. The more complete headings as used in the tariff are "Grain, Grain Products or Grain By-Products" and "Flaxseed, Flaxseed Ground, and Flaxseed Screenings."

listed under two separate column headings. Although different rates were thereby indicated, the same rate figures were provided for each column. Commodity descriptions, under the heading "Flour, Grain and other articles," referred to six different commodity lists in another tariff, tariff No. 240-G. These lists included a large number of articles. Flaxseed was included in one of the lists under the heading "Seed, viz.: Broom Corn Seed.....Flaxseed." Complainants' witness believed that the inclusion of flaxseed under a general heading was done as a matter of convenience in tariff publication. He declared that this method of publication did not result in identifying the rates for flaxseed as "grain rates." He asserted that the fact that the carrier published rates of the same volume for other grains was a coincidence, and was not in itself determinative of the nature of the rates applicable to flaxseed. As evidence that the rates on flaxseed were not grain rates he pointed out that the minimum carload weight for flaxseed was different from that provided for other grains.

On behalf of defendant, a witness, experienced in the construction and interpretation of tariffs, introduced exhibits to show the tariff provisions at issue. He declared that the tariff terminology, "Flour, Grain and other articles," was such as to bring the rates thereunder within the classification of "Grain, Grain Products or Grain By-Products." It was his opinion that the rates which had been assessed were in accord with the applicable tariff provisions. He explained that the tariff provisions had been amended effective September 1, 1947, and that since that time the rates for the transportation of flaxseed have been subject to the increase table contended for the complainants.[3]

[3] The effect of the tariff revision of September 1, 1947, was not considered in preparing the complaint. In view of the tariff revision it appears that this complaint does not now involve rates for the future.

The contentions of the opposing parties herein have been carefully considered; the pertinent tariff provisions have been analyzed; and all factors have been weighed. In view of the diversity of the articles included in the separate commodity lists, the captions of the separate lists, and the number of the lists included under the general heading "Flour, Grain and other articles," it is our conclusion that such general heading does not nullify the more specific rates set forth in this tariff for the movement of flaxseed. We conclude and find, therefore, that the applicable rates for the transportation in question were, in fact, flaxseed rates, and as such were subject to the rate-increase tables applicable to rates for "Flaxseed, Flaxseed ground, and Flaxseed Screenings." Defendant has assessed rates and has collected charges from complainants in excess of those prescribed by its tariffs. Upon proper proof that complainants paid the charges on the shipments herein involved, we find that they are entitled to reparation.

The exact amount of reparation due is not of record. Complainants will submit to defendant for verification statements of the shipments made. Upon payment of the reparation, defendant will notify the Commission of the amounts thereof. Should it not be possible to reach an agreement as to the reparation awards, 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 upon proper proof ~~that~~ that complainants paid the charges on the shipments in question, defendant Southern Pacific Company be and it is hereby authorized and directed to refund to complainants California Cotton Oil Corporation and Pacific Nut Oil Company, within one hundred and eighty (180) days from the effective date of this order, all charges collected for the transportation of the shipments involved in this proceeding in excess of those accruing under the basis found lawful in the preceding opinion.

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

Dated at San Francisco, California, this 2nd day of March, 1948.

Commissioners