

Decision No. 45321

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CARNATION COMPANY,)
)
Complainant,)
)
vs.)
)
SOUTHERN PACIFIC COMPANY,)
)
Defendant.)

Case No. 5088

ORIGINAL

OPINION AND ORDER DENYING REHEARING

Defendant herein has filed its petition for rehearing respecting Decision No. 45162, rendered by the Commission on the 19th day of December, 1950, in the above-entitled case. We have considered the petition for rehearing and the points made in support thereof and are of the opinion that no good cause has been shown for granting said petition. Accordingly, said petition for rehearing is hereby denied.

The issues raised by defendant indicate that it has misconstrued the decision in certain respects. It claims that the decision destroys the integrity of tariffs and directs the violation of Section 17(a)2 of the Public Utilities Act prohibiting tariff departures. This is not the case. The decision in no way undermines the integrity of tariffs or the statutory requirement of strict adherence to tariff rates. Section 17(a)2 provides that a common carrier may not remit or refund any portion of the rates specified in the carrier's filed tariffs except upon order of the Commission. Section 71(a) authorizes the Commission, when a complaint has been made, to order the payment of reparation when it finds that an

excessive rate has been charged. Decision No. 45162 simply holds that the increased rate in question, published without the Commission's approval as required under Section 63(a), is an excessive rate within the meaning of Section 71(a) because in excess of the lawful rate then existing. The decision awards reparation accordingly. Tariff rates still must be observed unless and until they are successfully challenged by a proper complaint filed with the Commission, and the Commission finds that they are unreasonable, excessive or discriminatory. Decision No. 45162 reaffirms the integrity of the filed tariffs in effect by pointing up the way in which they can be successfully assailed.

Defendant also claims that the issue of excessiveness was not presented by the pleadings. It is well settled, however, that a complainant is entitled to the relief which the facts of the case warrant irrespective of the prayer of his complaint.

Dated at San Francisco, California, this 30th day of January, 1951.

R. T. Dwyer
Justice F. Calver
Harold S. Hula
Herbert L. Patten
Commissioners