

Decision No. 46031

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CARNATION COMPANY,
Complainant,

vs.

Case No. 5088

SOUTHERN PACIFIC COMPANY
Defendant.

Appearances

C. S. Connolly and S. W. Hartshorne, for complainant.

J. E. Lyons, for defendant.

OPINION ON FURTHER HEARING

By prior decisions in this proceeding the Commission found that defendant, in exacting a certain rate of 36 cents per 10-gallon can of milk, did so without lawful authority. Defendant was ordered to refund to complainant, with interest, all charges collected in excess of 30 cents per can. Thereafter the parties were unable to agree upon the exact amount of reparation due, and the proceeding was reopened.

Further hearing was held before Examiner Bryant at Los Angeles on May 28, 1951, for the purpose of determining the amount of reparation due from defendant to complainant. The matter is ready for decision.

The difficulty of the parties in reaching agreement upon the reparation amount is attributable entirely to a difference of opinion concerning the prior decisions herein as they relate to the statute of limitations. Complainant contends that the refund

award applies to all shipments moving within three years prior to the filing of its complaint. Defendant contends that shipments moving more than two years prior to the date of filing of the complaint are barred. At the further hearing complainant submitted exhibits showing the exact amount due under each contention. The parties stipulated that complainant had actually paid and borne the charges as claimed, and that the tariff naming the 36-cent rate had been filed with the Commission and not suspended.¹ No additional evidence or argument was offered. Complainant stated that it had already treated the question of law exhaustively in its previous pleadings. Defendant stated that the present issue is basically one of interpretation of the prior decisions, and that no briefs or argument are required because the Commission alone knows what it decided.

The Commission's award of reparation in this proceeding was made upon the basis of evidence which established that defendant's rate of 36 cents per can was filed with the Commission as an increased rate without the showing and finding required by Section 63(a) of the Public Utilities Act.² The rate, filed without lawful authority, was an excessive rate within the meaning of Section 71(a) because it was in excess of the lawful rate then existing. Under these circumstances,

¹ Defendant's stipulation concerning the charges was subject to check by its accounting department of the actual amounts claimed. No exceptions have been taken by defendant.

² Reparation was awarded by Decision No. 45162 dated December 19, 1950. Decision No. 45321, dated January 30, 1951; denied re-hearing. Decision No. 45564, dated April 10, 1951, granted further hearing.

retention of the excessive charges constitutes a violation of the provisions of Section 17(a)2 of the Act.³

Section 71(c) provides that complaints for damages resulting from violation of the provisions of Sections 17(a)2 or 17(b) shall be filed within three years from the time the cause of action accrues. It is clear that complainant is correct in its understanding and contention that it is entitled to reparation on all shipments moving within the three-year statutory period specified in Section 71(c). Upon this basis the amount of reparation due, as determined from Exhibit No. 5 herein, is \$3,845.94, plus interest at 6 percent. The amount of interest to May 31, 1951, as shown in the exhibit, is \$1,021.34.

An appropriate order will be entered accordingly.

O R D E R

Based upon all of the evidence of record and upon the findings and conclusions contained in the foregoing opinion,

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be and it is hereby ordered and directed to refund to complainant, Carnation Company, reparation in the amount of \$3,845.94 together with interest at six (6) percent per annum.

³ As stated in Decision No. 45321, supra, 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.

The Secretary is directed to cause a certified copy of this decision to be served upon Southern Pacific Company in accordance with law, and said decision shall become effective twenty (20) days after the date of said service.

Dated at San Francisco, California, this 31st day of July, 1951.

R. J. [Signature]
Justice F. Coe [Signature]
Harold P. Kula [Signature]
Frederick [Signature]
John F. [Signature]
Commissioners