

ORIGINAL

Decision No. 57411

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

KAISER STEEL CORPORATION, a corporation,)
 Complainant,)
 vs.)
 SOUTHERN PACIFIC COMPANY, a corporation,)
 Defendant.)

Case No. 6125

ORDER OF DISMISSAL

By this complaint filed June 4, 1958, Kaiser Steel Corporation seeks reparation in the amount of \$4,848.93 in connection with charges which it has paid to the Southern Pacific Company for the transportation of 28 carloads of steel pipe from Kaiser, California, to destinations at Ogilby, Knob and Colorado, California. It alleges that the charges, when exacted, were unjust and unreasonable in violation of Section 451 of the Public Utilities Code.

By answer filed June 26, 1958, the Southern Pacific Company admits the allegations and states its willingness to satisfy the complaint.

The complaint shows that the shipments involved were transported by defendant between the dates June 8 and June 14, 1955, inclusive. The charges for said transportation were computed in accordance with the provisions of defendant's tariffs in effect at the time the transportation was performed and total \$15,720.83. On

June 15, 1955, the Southern Pacific Company established a reduced rate for the transportation of steel pipe from Kaiser to the aforesaid destinations which, if applied to the shipments in question, would have resulted in total charges of \$10,871.90. Complainant alleges that the rate which was established on June 15, 1955, would have been the maximum reasonable rate for the transportation involved herein. The amount which it seeks by way of reparation represents the difference between the charges paid and the charges that would have applied had they been computed at a rate corresponding to that established June 15, 1955.

The complaint further shows that on or about June 14, 1957, the Southern Pacific Company filed with the Commission a voluntary and informal request (File No. 734-47) for authority to reparate to Kaiser Steel Corporation an amount as now sought by complainant in this proceeding. This request was denied by the Commission on or about August 13, 1957, without prejudice to presenting the matter for consideration in a formal proceeding.

The Southern Pacific Company has taken no further action to prosecute its request of June 14, 1957. The present filing is the first instance that Kaiser Steel Corporation has taken formally to bring the matter before the Commission.

Section 735 of the Public Utilities Code states that all complaints for damages resulting from violation of Section 451 (among others) of the Code shall be filed with the Commission "within two years from the time the cause of action accrues, and not after." Section 738 of the Code states that for the purposes of Section 735 (among others) "the cause of action shall accrue upon delivery or tender of delivery of the shipment or the performance of the service or

"the furnishing of the commodity or product with respect to which complaint is filed or claim made."

In accordance with the above-quoted portion of Section 738 the cause of action in this proceeding accrued between June 8 and June 14, 1955 or thereabouts. The filing of the complaint on June 4, 1958, almost three years after the cause of action accrued, clearly is in excess of the two-year period for filing such complaints prescribed in Section 735. The relief which complainant seeks thus is barred by the limitations of Section 735. The filing of the voluntary and informal request on or about June 14, 1957 by the Southern Pacific Company to reparate to Kaiser Steel Corporation did not operate to extend the two year period.¹ Nor does the present willingness of Southern Pacific Company to pay reparations provide basis for granting of the sought award. The statute of limitations prescribed in Section 735 bars the remedy of reparations insofar as the Commission's jurisdiction is concerned, and it cannot be waived by defendant.² The complaint should be dismissed.

O R D E R

Therefore, good cause appearing,

¹ Los Angeles and Salt Lake Railroad Commission v. Railroad Commission of the State of California, et al., 207 Cal. 123 (1929).

² Pacific Mercury Television Mfg. Corp. v. California Water & Telephone Co., 55 Cal. P.U.C. 721, 725 (1957).

IT IS HEREBY ORDERED that the above-entitled complaint in this proceeding be, and it hereby is, dismissed.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California,
this 29th day of September, 1958.

[Signature]
President

[Signature]

[Signature]

Theodore Jenner
Commissioners