

ORIGINAL

Decision No. 58852

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
SOUTHERN PACIFIC COMPANY for an order)	Application No. 40614
authorizing payment of special repa-)	
ration to Kaiser Steel Corporation.)	

Charles W. Burkett, Jr., for applicant.
Kenneth M. Robinson, for Kaiser Steel Corporation,
interested party.
Karl K. Roos, for the Commission's staff.

O P I N I O N

This application seeks Commission authorization for Southern Pacific Company to pay special reparations to Kaiser Steel Corporation.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis, in San Francisco, on March 17, 1959. The matter was submitted subject to the filing of briefs and a late-filed exhibit, which have been received.

The facts are not in dispute. In the latter part of 1954, shippers of iron and steel articles located in San Francisco and Los Angeles requested that the common carriers by rail change their rate structure with respect to iron and steel articles transported between those metropolitan areas and the San Joaquin and Imperial Valleys and to Yuma, Arizona. The railroads, with the hope of obtaining additional business, sought to comply with the request. Southern Pacific published new rates from San Francisco and Los Angeles to the points requested. The new rates to the points in the San Joaquin and Imperial Valleys became effective on March 19, 1955. The new rates to Yuma, Arizona, became effective on May 15, 1955. The new rates published for the San Joaquin and Imperial

Valleys named only known consuming points or points to which potential movements were likely. The most easterly California point named in the new rates was Niland. At all times herein pertinent, Southern Pacific did not have in its tariff any provision that Yuma, Arizona, rates would hold as maximum for points intermediate to it from San Francisco and Los Angeles. The shipments here involved were from Kaiser, California (Los Angeles area) to Ogilby, Knob, and Colorado, California. These latter points are located between Niland and Yuma. The new rates which became effective on March 19, 1955 and May 15, 1955 did not encompass Ogilby, Knob, and Colorado.

The 28 shipments here involved were shipped by Kaiser Steel between June 8, 1955 and June 14, 1955 over the lines of Southern Pacific. The shipments arrived at their respective destinations between June 10, 1955 and June 16, 1955.

Southern Pacific and Kaiser Steel became aware of the discrepancy in rates to Ogilby, Knob, and Colorado shortly before the transportation in question took place. On June 9, 1955, Southern Pacific sought from this Commission short-notice authority to publish rates to Ogilby, Knob, and Colorado consonant with the rates to Niland and Yuma. Permission was granted. The new rates, however, did not go into effect until June 15, 1955.

It is a well-settled principle that a change of the rate in force after the contract of shipment becomes complete by execution and delivery of the bill of lading, or after the shipment begins to move, will not be applied to the shipment. (13 C.J.S. p. 722.) Since all of the shipments here involved began to move prior to June 15, the old rates to Ogilby, Knob, and Colorado controlled. The applicable combination rates which were applied to these shipments were as follows:

<u>From</u>	<u>To</u>	<u>Rate in Cents Per Hundred Pounds</u>
Kaiser, California	Ogilby, California	41
Kaiser, California	Knob, California	43
Kaiser, California	Colorado, California	43

At the time the transportation took place, the rate from Kaiser to Niland was 24 cents and the rate to Yuma, Arizona, was 30 cents. Under the new rates to Ogilby, Knob, and Colorado, which went into effect on June 15, 1955, the rate to each of these points is 29 cents.

On June 14, 1957, Southern Pacific filed an informal application with this Commission seeking authority to refund to Kaiser Steel an amount equal to the difference between the rates actually charged and the new rates which went into effect on June 15, 1955. The informal application was denied on June 25, 1957. A request for reconsideration of the denial was also denied. On June 4, 1958, Kaiser Steel filed with this Commission a formal complaint seeking reparations against Southern Pacific for said amount. The Commission, in Decision No. 57411, dismissed the complaint on the ground that the running of the statute of limitations set forth in Public Utilities Code Section 735 had extinguished the right to reparations, if such right existed. Kaiser Steel did not petition the California Supreme Court for a writ of review in connection with the order dismissing the complaint.

Southern Pacific filed the present application on November 21, 1958. The application alleges that the rates in effect, and charged with respect to the shipments here involved, were unreasonable. Southern Pacific seeks authority to refund to Kaiser Steel the difference between the rates charged and the alleged reasonable rate - the 29 cent rate which went into effect on June 15, 1955.

We assume for the purposes of this proceeding that Southern Pacific is correct in contending that the rates charged were unreasonable. The application must be denied, however, because the relief herein sought is barred by Public Utilities Code Section 735.

Section 735 of the Public Utilities Code provides that proceedings such as this one must be brought "within two years from the time the cause of action accrues, and not after." This Commission has consistently held that the running of Section 735 extinguishes the right, as contrasted to the usual statute of limitations which bars only the remedy. (James Mills Sacramento Valley Orchard and Citrus Fruit Company v. Southern Pacific Company, et al., 9 C.R.C. 80; Eason v. Beaumont Land and Water Co., et al., 10 C.R.C. 686; Pac. Mercury Television Mfg. Corp., et al., v. Cal. Water & Tel. Co., 55 Cal. P.U.C. 721, 725.) This holding has been approved by the California Supreme Court (Los Angeles etc. R.R. Co. v. Railroad Com., 207 Cal. 123, 129) and is consonant with holdings of the United States Supreme Court construing similar statutory language under the Interstate Commerce Act (Phillips v. Grand Trunk Ry., 236 U.S. 662; Midstate Co. v. Penna R. Co., 320 U.S. 356.)

The last of the shipments here involved was delivered to the consignee on June 16, 1955. Therefore, June 16, 1957 was the last day upon which a cause of action for reparations could accrue with respect to these shipments. (Public Utilities Code Section 738; Navassa Guano Co. v. Chicago Milwaukee & St. Paul Ry. Co., et al., 39 I.C.C. 171.) This application was filed on November 21, 1958, more than two years after delivery of the last shipment.

Southern Pacific argues that, although Kaiser Steel may have been barred by Public Utilities Code Section 735 from bringing

a complaint for reparations, this Commission may permit the payment of reparations by voluntary action on its part. This position is contrary to law. As indicated, the running of Section 735 extinguishes the right of action. To permit a carrier in a particular case to voluntarily make reparations after the right thereto has been extinguished would permit discrimination which is prohibited by the Constitution and the laws of this State. (Cal. Const., Art. XII, Sec. 21; Public Utilities Code Secs. 453, 494, 532.) "The obligation of the carrier ... to treat all shippers alike would have made it illegal for the carriers, either by silence or express waiver, to preserve ... a right of action which the statute required should be asserted within a fixed period." (Phillips v. Grand Trunk Ry., 236 U.S. 662, 667; see also Palo Alto Gas Co. v. Pacific Gas and Electric Co., 15 C.R.C. 618, 626; Midstate Co. v. Penna R. Co., 320 U.S. 356, 364, et seq.)

O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED that this application be, and it hereby is, denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 4th day of August, 1959.

Everett R. Boye
President
Michael D. ...
E. ...
Theodore ...

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioners