

**ORIGINAL**

Decision No. 60683

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Holly Sugar Corporation, a corporation, )  
Complainant,

vs.

Santa Maria Valley Railroad Company  
and Southern Pacific Company, railroad  
corporations,

Defendants.

Case No. 6371  
(Filed October 26, 1959)

O P I N I O N

Complainant alleges that freight charges which it has paid defendants for the transportation of 21 carloads of sugar from Betteravia to Dyer during the period from October 30, 1957, to and including November 13, 1957, are unjust and unreasonable, in violation of Section 451 of the Public Utilities Code. It seeks reparation in the amount of \$1,443.83.

The complaint states that at the time that the aforesaid transportation was performed defendants did not maintain a through, one-factor commodity rate for the movement of sugar from Betteravia to Dyer. The charges which defendants assessed and collected were computed on the basis of the applicable carload rate from Betteravia to Long Beach plus the applicable less-carload commodity rate (as a maximum) from Long Beach to Dyer. This combination of rates resulted in charges equivalent to those that would have resulted from a through rate of 35.375 cents per 100 pounds for the

shipments that moved prior to November 4, 1957, and of 34.5 cents per 100 pounds for the shipments that moved during the period from November 4 to November 13, 1957.

At the time that the shipments were moving, complainant entered into negotiations with defendant Southern Pacific Company for the establishment of a carload rate of 28 cents per 100 pounds, minimum weight 80,000 pounds, for the transportation of sugar from Betteravia to Dyer. As a consequence of these negotiations defendants established a through rate of 30 cents per 100 pounds, subject to a 5 percent surcharge, which rate became effective February 28, 1958. As established, the rate included rate increases which became effective after the aforesaid shipments had been delivered. Adjustment of this rate to eliminate the effect of said rate increases would result in a rate of 28 cents per 100 pounds. It is on the basis of the 28-cent rate that complainant alleges that the rates which were assessed were unjust and unreasonable. The amount of \$1,443.83 which complainant seeks as reparation represents the difference between the total of the charges that were paid and the total of the charges that would have applied had the rate of 28 cents been assessed.

Defendant carriers admit the allegations of the complaint and pray that the Commission authorize them to make reparation as herein sought.

Pursuant to written request of complainant that this matter be disposed of without public hearing thereon, and on the allegations of the complaint and on defendants' reply thereto, this matter has been so taken under submission for decision. In the circumstances public hearing on the complaint is not necessary.

In order for reparation to be awarded in this proceeding in the amount which complainant seeks, a finding must first be made that the rate of 28 cents per 100 pounds upon which such an award would be based would constitute the maximum reasonable rate for the transportation involved at the time and in the circumstances in which the transportation was performed. Complainant apparently assumes that such a finding may be made upon defendants' admission that the assailed charges were unreasonable to the extent that they exceeded the charges that would result under the 28-cent rate. As further basis for such a finding, complainant apparently relies on the fact that subsequent to the performance of said transportation defendants published a through rate for the transportation of sugar from Betteravia to Dyer which corresponds, on an adjusted basis, to the 28-cent rate.

It does not necessarily follow, however, that when a carrier has voluntarily established a reduced rate reparation is proper against shipments which moved before the lower rate became effective. Neither is the admission of defendant carriers that the assailed rates are unreasonable sufficient grounds upon which to base an award of reparation. The proof necessary to justify reparation in these circumstances is not less than that which would be required had defendants opposed the sought relief. This principle is one that has long been followed by this Commission.

Although there may be no issue as between the actual parties, it is essential that the Commission carefully scrutinize the proof in support of the complaint and determine that the proof measures up to the relief sought, lest by granting the petition it sanctions what in substance and effect is a rebate, and what may result in unlawful discrimination.<sup>1</sup>

Complainant has not submitted any evidence in the form of rate comparisons, revenue comparisons, and other probative data which would establish that the assailed charges were unreasonable and that the sought rate of 28 cents per 100 pounds would have been the maximum reasonable rate for the transportation involved in this matter. In the absence of such affirmative proof, the complaint must be dismissed.

O R D E R

This case being at issue upon complaint and answer on file, full consideration of the matters and things involved having been had, and the Commission being fully advised,

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<sup>1</sup> Reparation may not be awarded when discrimination results.

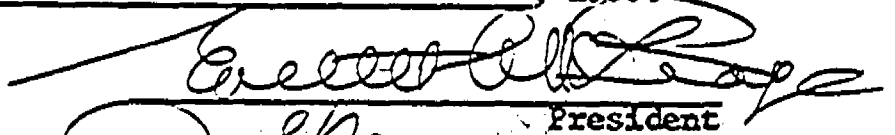
" ... the Commission may order that the public utility make due reparation to the complainant therefor ... if no discrimination will result from such reparation ..."


Section 734, Public Utilities Code

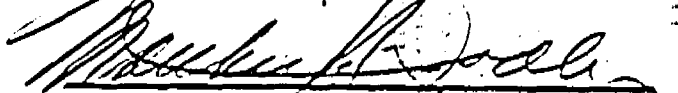
IT IS HEREBY ORDERED that this complaint be and it hereby is dismissed.

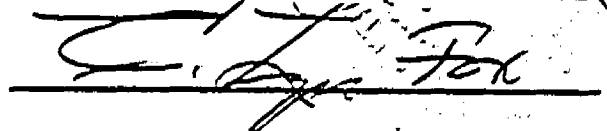
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California,  
this 1st day of SEPTEMBER, 1960.

  
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President

  
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Commissioners