

**ORIGINAL**

Decision No. 74468

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ANCHOR HOCKING GLASS CORPORATION,  
a corporation, CONTINENTAL CAN CO.,  
INC., a corporation,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY, a  
corporation,

Defendant.

Case No. 8616  
(As amended, May 14, 1968) ✓

RULING ON MOTION TO DISMISS  
SECOND CAUSE OF ACTION

This complaint of Anchor Hocking Glass Corporation and Continental Can Co., Inc., as originally filed on March 30, 1967, seeks recovery of alleged overcharges from the defendant, Southern Pacific Company, in connection with the intrastate rail movement of some 127 carloads of a commodity for which charges were assessed and collected by defendant based upon an alleged rail rate for feldspar; whereas complainants allege that, at the time of movement, a lower lawful rail rate for sand was applicable to the movements involved.

On May 14, 1968, complainants amended their joint complaint by the submission of a second cause of action. In addition to seeking the recovery of alleged overcharges under Sections 494, 532 and 736 of the Public Utilities Code, complainants now seek recovery of damages resulting from the alleged application of an unjust and unreasonable rate or charges in violation of Sections 451 and 735 of the Public Utilities Code.

Section 736 of the Code provides, in part, that all complaints for damages resulting from the violation of any provision of Sections 494 or 532 shall be filed with the Commission within three years from the time the cause of action accrues, and not thereafter. If claim for asserted damages has been presented in writing to the public utility concerned within the three-year period, said period is extended to include six months from the date notice in writing is given by the public utility to the claimant of the disallowance of the claim.

Section 735 of the Code provides, in part, that all complaints for damages resulting from a violation of any provision of the Public Utilities Act, except Sections 494 and 532, shall be filed with the Commission within two years from the time the cause of action accrues, and not after.

On May 22, 1968, the defendant Southern Pacific Company filed a motion to dismiss complainants' second cause of action on the ground that said cause of action is barred under and by virtue of the provisions of Section 735 of the Public Utilities Code. A public hearing on the Motion to Dismiss the Second Cause of Action was held in San Francisco on June 19, 1968, before Examiner Gagnon.

The Southern Pacific Company introduced in evidence a Memorandum of Points and Authorities in Support of Motion to Dismiss. Complainants' counsel, upon review of defendant's afore-said memorandum conceded that complainants' second cause of action was barred by the two-year statute of limitations provisions of Section 735 of the Code.

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IT IS ORDERED that Southern Pacific Company's Motion to Dismiss Complainants' Second Cause of Action is hereby granted. This matter will be set for further public hearing.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 30<sup>th</sup> day of JULY, 1968.

William Synovis  
President  
William W. Bennett

Fred P. Monsey  
Commissioners

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

Commissioner A. W. Gatev, being necessarily absent, did not participate in the disposition of this proceeding.