

ORIGINAL

Decision No. 83738

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Standard Oil Company of California,

Complainant,

vs.

The Atchison, Topeka & Santa Fe  
Railway Company,

Defendant.

Case No. 9695  
(Petition for Modification  
filed October 25, 1974)

OPINION AND ORDER MODIFYING DECISION NO. 83545

By Decision No. 83545 dated October 8, 1974 in this complaint the Commission ordered The Atchison, Topeka & Santa Fe Railway Company to pay to complainant as reparations the sum of the amounts it had collected from complainant from and including January 4, 1972 to the date of the decision for demurrage on private cars owned or leased by complainant and held on the private tracks of complainant at its refineries in Richmond and El Segundo, together with interest at seven percent. Complainant by its petition for modification asserts that the award of reparations granted to it does not conform to the relief sought by the complaint in two respects: it covers only the demurrage paid by complainant on private cars owned or leased by it, whereas the relief sought covers demurrage it had paid to defendant on all private cars held on its private tracks, and the order awarded interest on the reparations granted although complainant did not request interest. Complainant requests that the award of reparation be amended accordingly. Defendant agrees with complainant.

Charges assessed for demurrage on private cars held on private tracks even though the cars are not owned by or leased by complainant are unjust and unreasonable. The legal principle is well-established that generally demurrage charges embrace two distinct elements: (1) compensation for the use of the car and the tracks, and (2) a penalty designed to prevent undue detention of the cars and insure their prompt return to public service. Where private cars are detained on private tracks, the element of compensation is not present since the carriers have not financially invested in either the cars or the tracks; further, since the public has no right to the use of the private cars, the element of a demurrage penalty cannot be justified. ✓

Decision No. 83545 should be modified as requested.

Therefore, IT IS ORDERED that:

1. Decision No. 83545 is amended by substituting for paragraph 1 of the order the following:

"1. Defendant, The Atchison, Topeka and Santa Fe Railway Company, a corporation, shall pay to complainant as reparations the sum of the amounts it has collected from complainant from and including January 4, 1972 to the date of this order for demurrage on private cars held on the private tracks of complainant at its refineries in Richmond and El Segundo."

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2. In all other respects the order in Decision No. 83545 shall remain in full force and effect.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 19<sup>th</sup> day of NOVEMBER, 1974.

William J. Lynskey President  
[Signature]  
[Signature]  
Robert E. McElroy Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.