

Nos. 2513 and 2514.

G. LIEBOLD, DOING BUSINESS UNDER THE NAME AND
STYLE OF G. LIEBOLD COMPANY,

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY ET AL.

No. 2526.

JOHNSTON-LOCKE MERCANTILE COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

No. 2542.

THE LOUVRE

v.

SAME.

No. 2832.

GOLDBERG-BOWEN & COMPANY

v.

WABASH RAILROAD COMPANY ET AL.

Submitted February 11, 1910. Decided February 14, 1910.

Reparation denied to shippers of beer in carloads from Mississippi River and Atlantic coast points while an advance of 10 cents per 100 pounds in a long-established rate to San Francisco, Cal., was in effect.

J. O. Bracken for complainants.

E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

F. C. Dillard, P. F. Dunne, and C. W. Durbrow for Southern Pacific Company.

17 I. C. C. Rep.

REPORT OF THE COMMISSION.

KNAPP, *Chairman*:

It is alleged in these complaints that the charge by defendants of \$1.10 per 100 pounds for the transportation of beer in carloads from points on and east of the Mississippi River to San Francisco, Cal., was unreasonable and unjust to the extent that it exceeded \$1. Reparation is asked in each of the proceedings. Although the shipments moved over different routes the questions involved are common to all the cases; they were heard together and will be disposed of in one report.

Prior to January 1, 1909, for a period of at least fourteen years, the rate on beer in carloads to San Francisco was \$1 per 100 pounds from points on the Mississippi River and points east thereof to the Atlantic seaboard. January 1, 1909, this rate was raised to \$1.10, and on June 5, 1909, the rate of \$1 was restored.

To sustain their demand for reparation complainants rely upon the fact that the \$1 rate had been maintained for a long period; that it was raised for about five months and then reduced; and that, as they allege, there were no changes in the transportation conditions affecting this commodity during the time the increased rate was in effect.

The tariffs show that when the old rate was restored on June 5, 1909, the minimum applicable was increased from 24,000 pounds, which had been maintained for many years, to 30,000 pounds. Under this higher minimum carload earnings are more at the \$1 rate than they were at the \$1.10 rate with the lower minimum.

The evidence shows that when the rate was increased dealers in beer at San Francisco protested and that a conference was held with representatives of defendants. It was finally agreed that the old rate should be restored, the shippers consenting that the minimum be raised to 30,000 pounds. It does not appear, however, that either of the complainants took part in these negotiations.

The rate on beer from Atlantic seaboard points to San Francisco by water is 75 cents per 100 pounds, and it was stated to defendants at the conference in question that if the rate was maintained at \$1.10 shipments would take the water route; and it appears that at least one shipment was made by water from New York to San Francisco.

The rate of \$1 per 100 pounds on beer is blanketed from the Atlantic coast to all points as far west as the Mississippi River, and must be regarded as low in comparison with rates on analogous traffic transported under similar conditions. Beer in carloads is usually fifth class in the three principal classifications of the country. The transcontinental fifth class rate is \$1.65 per 100 pounds.

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Taking into consideration all the facts and circumstances, the character of the traffic, the fact that the rate extends from the Mississippi River to the Atlantic coast, and that it is lower than the fifth class rate applied to beer shipments generally throughout the country, we do not feel that a case has been made which warrants us in awarding reparation.

These cases are clearly distinguishable from that class of cases where a rate long in force is advanced, maintained at the higher figure for a short time, and then voluntarily reduced to the former basis, without satisfactory explanation of the advance. In this case the restoration of the old rate per 100 pounds was accompanied with an increase of the carload minimum which operates to give greater carload earnings than the \$1.10 rate applied to the former minimum. The basis of reparation must be a finding of fact that the rate actually charged was unreasonable, and we are not prepared to make such a finding upon the record in these cases.

The complaints will therefore be dismissed.

17 I. C. C. Rep.