

Decision No. 15514

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Union Lumber Company,
Complainant,

vs.

Southern Pacific Company,
Northwestern Pacific Railroad Company,
California Western Railroad and Navigation Company,
Defendants.

CASE NO. 2071.

A. Larsson, for Complainant.
J.E. Lyons, for Defendant, Southern Pacific Company.
J.J. Geary, for Defendant, Northwestern Pacific
Railroad Company.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation existing under and by virtue of the laws of the State of California and is engaged in the manufacture and sale of lumber and its products.

It is alleged by complaint filed November 20, 1924 that the rates assessed by the defendants for the transportation of lumber and its products moving during the years 1921, 1922 and 1923 from Fort Bragg to El Verano were unjust, unreasonable, discriminatory and also in violation of Section 24(a) of the Public Utilities Act to the extent they exceeded 25 cents per 100 pounds prior to July 1, 1922 and 22½ cents per 100 pounds thereafter.

The Statute of Limitation was stayed on the shipments involved herein under the Commission's Files I.C. 28053 of July 25 and August 20, 1923, and I.C. 30594 of June 17, 1924.

A public hearing was held on August 11, 1925 before Examiner Geary at San Francisco and the case having been duly submitted is now ready for our opinion and order.

Reparation only is sought. Rates will be stated in cents per 100 pounds.

Fort Bragg is a point on the California Western Railroad and Navigation Company located forty miles west of Willits, which is the interchange point with the Northwestern Pacific Railroad. El Verano is on the Santa Rosa branch of the Southern Pacific Company situated five miles northwest of Shellville Junction, the latter being the interchange point with the Northwestern Pacific Railroad. The Northwestern Pacific Railroad acted only as the intermediary carrier.

The shipments herein involved destined to El Verano consisted of 20 carloads of lumber and the charges were assessed under tariff rates applicable via California Western Railroad and Navigation Company to Willits, Northwestern Pacific Railroad to Shellville Junction, and Southern Pacific Company to destination, a total distance of 175 miles. The movements, however, were actually made via the short route, Northwestern Pacific Railroad to Santa Rosa, thence Southern Pacific Company, a distance of 146 miles. Of the 20 carloads, 13 moved prior to July 1, 1922 and 7 thereafter. The lawfully applicable rate prior to July 1, 1922 was 34 cents, made by combination on Shellville Junction. The factor from Fort Bragg to Shellville Junction was a commodity rate of 25 cents and the factor from the latter point to El Verano was the minimum Class B rate of 9 cents. Effective July 1, 1922 the commodity rate factor

of 25 cents was reduced to $22\frac{1}{2}$ cents, making the through rate in effect on and after that date $31\frac{1}{2}$ cents. This combination rate remained in effect until February 1, 1923, when the so-called Minimum Class Scale rule in Pacific Freight Tariff Bureau Exception Sheet No. 1-E, C.R.C. 254 was amended to provide that the minimum Class B rate would be observed only when the combined class and commodity rates were less than 9 cents. Prior to that time the operation of the Minimum Class Scale was dependent solely upon class rates. As the actual Class B rate from Shellville Junction to El Verano was $4\frac{1}{2}$ cents the through rate, using the commodity rate of $22\frac{1}{2}$ cents to Shellville Junction, plus the Class B rate beyond, was 27 cents on and after February 1, 1923. Thus, during the period here involved, defendants maintained three rates, namely, 34 cents prior to July 1, 1922; $31\frac{1}{2}$ cents from July 1, 1922 to February 1, 1923 and 27 cents thereafter. Defendants assessed and collected a 34 cent rate on 13 shipments, a $31\frac{1}{2}$ cent rate on one shipment and a rate of $29\frac{1}{2}$ cents on 6 shipments. The latter rate of $29\frac{1}{2}$ cents applied to the 6 shipments moved subsequent to February 1, 1923 was in error and resulted in a straight overcharge of $2\frac{1}{2}$ cents per 100 pounds.

At the time these shipments moved defendants concurrently maintained rates of 25 cents prior to July 1, 1922 and $22\frac{1}{2}$ cents thereafter from Fort Bragg to Santa Rosa, a distance of 126 miles, and to Shellville Junction via Ignacio, a distance of 170 miles; to Union 185 miles; to Sacramento 233 miles; to Stockton 282 miles; to San Francisco 244 miles and to San Jose 280 miles. These rates were maximum in application and applied at directly intermediate points on the main lines of defendants.

Effective August 7, 1924 carriers voluntarily established the 22½ cent rate from Fort Bragg to El Verano routed via the long line, 175 miles through Shellville Junction, and on December 30, 1924 this rate was made to apply via the short line, 146 miles through Santa Rosa, thence via Southern Pacific Company. Complainant maintains that the rates of 25 cents in effect prior to July 1, 1922 and 22½ cents thereafter should also have been in effect to El Verano in view of the wide blanketed area to which these rates applied and the additional fact that Santa Rosa on the west, and Shellville Junction and points beyond on the east, of El Verano enjoyed the blanketed rates. Great stress is laid by complainant upon the fact that defendants actually transferred these shipments from the Northwestern Pacific Railroad to the Southern Pacific Company at Santa Rosa, which involved via that route a haul of only 146 miles as compared with a haul of 175 miles had the shipments traveled via the route over which the tariff rates applied.

Defendants contend that the blanketed rates were predicated upon water competition. They testified that at the time the Northwestern Pacific Railroad completed its line to Eureka the water rate from Eureka and Fort Bragg to San Francisco was \$2.50 per 1000 feet, board measure. The lumber shipped varied in weight from two to four pounds per board foot. To meet the competition of the steamer lines an arbitrary rate of 10 cents was established for the rail haul to San Francisco and to that arbitrary was added the local rate then in effect, of 6 cents, from San Francisco to Stockton, the latter being arbitrarily used as a base point. The through rate of 16 cents thus made was then blanketed to embrace the territory hereinbefore described. The present rate of 22½ cents is an outgrowth of the general increases effective June 25, 1918 (General Order 28 of

the Director General of Railroads), and August 26, 1920 (18 CRC 646-654) and the 10 per cent reduction effective July 1, 1922 (68, I.C.C. 676).

Defendants urge that it is not unusual to observe at branch line points in the contiguous territory to which blanketed rates apply a differential over the main line points, and they presented an exhibit showing that from Fort Bragg and other lumber producing points to branches of the Southern Pacific Company they have in effect rates ranging from $\frac{1}{2}$ cent to $6\frac{1}{2}$ cents higher than the rates in effect at the main line junction points. It is contended that the differentials maintained to El Verano over the main line rates were not unreasonable or unusual, especially in view of the fact that the haul involved a three line movement, which, from comparisons shown by exhibits with rates in other parts of the State seem to be the fact, except with respect to the 9 cent differential in effect from July 1, 1922 to February 1, 1923.

Complainant's allegation that the assailed rates were in violation of Section 24(a) of the Public Utilities Act is predicated upon the fact that the actual movement of the shipments herein involved was via Santa Rosa, thence Southern Pacific, and is coupled with the assumption that shipments made under the 25 cent rate, in effect prior to July 1, 1922 and $22\frac{1}{2}$ cents thereafter, to Shellville Junction, Union, Sacramento, Stockton and other main line points similarly located, also moved via that route. Manifestly, if the rates to those points and to El Verano had been applicable, under the tariffs, via Santa Rosa thence Southern Pacific, the concurrently effective rates to El Verano if higher would have been in violation of the long and short haul clause. However, both complainant and defendants agree that under the tariff routing the rates did not apply via the Santa Rosa-Southern Pacific gateway.

We do not think it can be successfully contended that when, for operating convenience, a shipment moves by some other

route than the route over which the rates apply, there is a violation of the long and short haul provisions of the Public Utilities Act. Such violations relate to rates and not to the traveled routes of operation, the shipper having ordinarily no interest in the actual movement unless he chooses for his own reasons to prescribe the particular route, in which event the prescribed route irrespective of rates must be followed. There were no routing instructions in these cases and, therefore, so long as the carriers applied the lowest rates in effect they were lawfully entitled to move the shipments via the most convenient route.

At the time these shipments moved there were no joint rates through Santa Rosa and Southern Pacific Company to El Verano and had they been routed that way and the rates applicable to the actual route of movement been charged, the shipper would have been assessed the Class B rate from Santa Rosa to El Verano, 7 cents, instead of $4\frac{1}{2}$ cents, the Class B rate from Shellville Junction. Complainant's contention, therefore, that the rates actually applied violated Section 24(a) of the Public Utilities Act is not sustained. (National Magnesia Manufacturing Co. vs. So. Pac. Co., 23 C.R.C. 805.)

Upon consideration of all the facts of record we are of the opinion and find that the assailed rates were not unreasonable prior to July 1, 1922 or on and after February 1, 1923, but we do find that the assailed rate of $31\frac{1}{2}$ cents, in effect from July 1, 1922 to January 31, 1923, both dates inclusive, was unreasonable to the extent it exceeded 27 cents.

We further find that the assailed rates were at all times herein involved unduly discriminatory to complainant.

The undue discrimination found to exist was voluntarily removed by defendants August 7, 1924 by the publication of the 22½ cent rate, and there is no evidence that the rates in effect to other consuming points resulted in any actual pecuniary loss to complainant.

Reparation, therefore, should be denied except on the one shipment moving January 23, 1923, on which defendants assessed and collected the rate of 31½ cents found by us to have been unreasonable. Complainant paid and bore the charges on the shipment in question and is entitled to reparation in the amount of the difference between the charges paid and those that would have accrued at 27 cents.

O R D E R

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had and basing this order on the findings of fact and conclusions contained in said opinion, which is hereby referred to and made a part hereof,

IT IS HEREBY ORDERED that defendants, Southern Pacific Company, Northwestern Pacific Railroad Company and California Western Railroad and Navigation Company, according as they par-

anticipated in the traffic, be and they are hereby authorized and directed to pay, with interest, to complainant, Union Lumber Company, all charges they may have collected in excess of 27 cents per 100 pounds for the transportation of one carload of lumber and its products, involved in this proceeding, shipped from Fort Bragg to El Verano on January 23, 1923.

IT IS HEREBY FURTHER ORDERED that as to all other matters the complaint in this proceeding be, and the same is, hereby dismissed.

Dated at San Francisco, California, this 9th day of October, 1925.

H. B. Brundage

C. Leary

George D. Iguins

Leon A. Whitall
Commissioners.