

Decision No. 17179

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

G. X. Wendling Company,

Complainant,

vs.

Western Pacific Railroad Company,
Southern Pacific Company,

Defendants.

Case No. 2196

ORIGINAL

A. Larson, for Complainant.

J.E. Lyons, for Southern Pacific Company, Defendant

D.A. Pearce, for Western Pacific Railroad Company, Defendant

BY THE COMMISSION:

O P I N I O N

Complainant is a company, organized under the laws of the State of Nevada with its principal place of business at San Francisco. It alleges by complaint filed November 24, 1925 that the rates assessed on 6 carloads of wooden crate material shipped during the period July 2nd to July 21, 1924 from Adelaide on the Western Pacific to Arvin on the Southern Pacific were unreasonable, preferential, prejudicial and discriminatory to the extent that they exceeded $43\frac{1}{2}$ cents per 100 pounds, a rate which was subsequently established effective March 18, 1925.

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

A public hearing was held before Examiner Geary at San Francisco May 18, 1926 and the case having been duly submitted is now ready for our opinion and order.

The rate assessed on the shipment forwarded July 2, 1924 was $51\frac{1}{2}$ cents and on the other five shipments $50\frac{1}{2}$ cents. The

former rate is a combination over Magunden, 39½ cents to Magunden and 12 cents beyond. The latter rate is a combination over Marysville, 7 cents to Marysville and 43½ cents beyond. The 50½ cent rate was in effect at the time of the first shipment, but our records do not indicate any routing by the consignor. If no specific routing was designated, this shipment was overcharged.

Adelaide is on the Western Pacific 2.3 miles south of Oroville, the latter point being on both the Western Pacific and Southern Pacific. Arvin is on a branch of the Southern Pacific approximately 362 miles from Adelaide, it is 16 miles south of Magunden, which latter point is 4 miles south of Bakersfield. At the time these shipments moved the joint rate from Adelaide-Oroville to Magunden was 39½ cents routed Western Pacific to Stockton thence Southern Pacific to destination at the same time the local rate of the Southern Pacific from Oroville to Arvin was 43½ cents. The rate of 39½ cents in effect to Magunden is a blanketed rate applying on box shock from Northern California producing points to the territory on the Southern Pacific beginning at Oil Junction and extending to Crofton. Oil Junction is 337 miles from Oroville and Crofton 580 miles making the extent of the 39½ cent blanket cover a main line territory of 243 miles. At practically all of the branch line points in this general territory the rates from Adelaide and Oroville have been on a parity, viz: to Porque 7 miles from Oil City 43 cents, Gosford 19 miles from Bakersfield 43 cents, Pentland 37 miles from Bakersfield 43 cents, while from Magunden to Arvin with a branch line haul of 16 miles the rate is 51½ cents. In other words, the arbitrary is 4 cents at all of the branch line points within the vicinity of Bakersfield except to Arvin where the arbitrary is 12 cents over the junction point of Magunden. There appears to be no

explanation for the absence of a joint rate via Western Pacific and Southern Pacific of $43\frac{1}{2}$ cents from Adelaide to Arvin the same as via the all Southern Pacific route from Oroville to Arvin except that the carriers failed to make the publication at the time the branch line to Magunden was opened for traffic in October, 1923.

The shipments involved moved in July, 1924 and the evidence shows that on August 20, 1924 an effort was made to have the $43\frac{1}{2}$ cent rate established but the tariff was not made effective until March 18, 1925. Defendant, Southern Pacific Company introduced 7 exhibits giving a history of the rate situation, comparisons of the rates and mileages, all of which have had our consideration.

Defendant, Western Pacific entered an appearance at the hearing but presented no testimony or exhibits. The Western Pacific did, however, in April, 1925, (our file I.C. 32876) signify a willingness to make reparation adjustment on the informal docket, but this could not be accomplished because of the failure to publish the tariff within six months subsequent to the date of movement, under the provisions of our General Order, Tariff Circular No. 2.

Upon consideration of all the facts of record we are of the opinion and find that the assailed rates were unjust and unreasonable to the extent that they exceeded $43\frac{1}{2}$ cents; that complainant made the shipments as described, paid and bore the charges thereon and is entitled to reparation with interest.

Complainant should submit statement to defendants for check. Should it not be possible to reach an agreement as to the amount of reparation, the matter may be referred to the Commission for further attention, and the entry of a supplemental order should such be necessary.

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 the conclusions contained in the opinion, which opinion is hereby referred to and made a part hereof;

IT IS HEREBY ORDERED, that defendants, Western Pacific Railroad Company and Southern Pacific Company, according as they participated in the transportation be, and they are, hereby authorized and directed to refund to complainant, G. X. Wendling Company, all charges they may have collected in excess of 43½ cents per 100 pounds for the transportation of 6 carloads of wooden crate material involved in this proceeding, forwarded during the month of July, 1924 from Adelaide on the Western Pacific to Arvin on the Southern Pacific.

Dated at San Francisco, California this 3d day of July, 1926.

H. B. Bondice
C. C. Seay

Leon Whitell

Commissioners.