

ORIGINAL

Decision No. 17872BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
- - - - -E. K. Loosely,
Complainant,

vs.

Southern Pacific Company,
Defendant.

CASE NO. 2237

Fabius T. Finch, for Complainant.

A.L. Whittle and James E. Lyons, for Defendant.

BY THE COMMISSION:

O P I N I O N

Complainant is an individual engaged in the logging and lumbering business in Siskiyou County, California. By complaint filed May 4, 1926 and amended May 17, 1926, it is alleged that the rate assessed and collected on various carload shipments of logs moved during the period from April 21, 1925 to September 26, 1925 from Morrison to Barnard was unjust and unreasonable to the extent it exceeded \$12.50 per car.

Reparation only is sought. Unless otherwise specifically noted stations named herein are in California.

A public hearing was held before Examiner Geary at San Francisco, California, June 25, 1926 and the case having been duly submitted and briefs filed, the last one on October 11, 1926,

is now ready for our opinion and order.

The shipments here at issue, consisting of 268 cars, moved from Morrison on the Klamath Falls Branch of defendant, to Barnard on defendant's main line, a distance of 31 miles. The territory in which the shipments moved and that contiguous thereto will be hereafter referred to as the Klamath Falls district.

Charges were assessed on the basis of the lawfully applicable rate of \$18.50 per car, this rate being in effect from Pineland to Barnard and held as maximum from Morrison to Barnard under the provisions of the intermediate application of Rule 5-B, Southern Pacific Tariff 360-L, C.R.C.2839.

Subsequent to the date of movement, viz., March 13, 1926, defendant voluntarily established on logs, from Morrison to Barnard, rate of \$12.50 per car and it is upon the basis of this lower rate that complainant seeks reparation.

In support of the allegation that the assailed rate was unreasonable complainant relies upon a comparison of the rates in effect in the same general territory, the subsequently established rate of \$12.50 per car, and the mileage scale predicated on 31 cents per car mile, with a minimum charge of \$12.50 per car now used by defendant as a measure in establishing rates on logs in the Klamath Falls district.

Defendant maintains that the mileage scale referred to by complainant is on an abnormally low basis and was adopted in the latter part of 1925, about the time complainant's last shipments moved, as a measure for the rates on logs between points in the Klamath Falls district, solely for the purpose of enabling the Northern California lumber mills to enlarge the scope of their log supply. The rates published under this

scale, it is claimed, are less than reasonable, but their establishment was necessary in order that the finished lumber manufactured in the Klamath Falls district could be profitably marketed in California, Arizona and New Mexico in competition with lumber shipped from Oregon, Washington and British Columbia to California ports by water and distributed to interior stations by rail and auto track. Defendant strenuously contends that the present rates barely cover the out-of-pocket costs of operation, but in order to foster the lumber industry and to secure a subsequent haul of the manufactured article and a consequential haul of other commodities it is necessary to maintain some rates that, per se, are less than reasonable.

It is alleged by defendant that the normal basis for log rates in the Klamath Falls district should be predicated on what is commonly known as the Klamath Falls Logging Scale. Prior to June 25, 1918 the rates under this scale for a haul of 31 miles was \$1.50 per thousand feet, board measure, subject to a minimum load of 8800 feet. Due to the general war-time increases this rate was successively increased to \$1.87½ (General Order 28 of Director General), and \$2.34½ (18 C.R.C.646), and effective July 1, 1922 was reduced to \$2.11 (Reduced Rates 1922, 68 I.C.C.676). The latter factor was used in establishing the \$18.50 per car rate from Morrison to Barnard.

This contention of defendant loses much of its force by reason of the fact that it has maintained rates for a considerable length of time between other points in the

Klamath Falls district materially less than the rates made by use of the Klamath Falls Scale, and in some cases predicated on the mileage scale of 31 cents per car mile now used to make the rates on logs. These rates were \$12.50 per car from Kirk, Oregon to Algoma, Oregon, 32 miles; from Mt. Hebron to Klamath Falls, Oregon, 35 miles; from Kirk, Oregon to Klamath Falls, Oregon, 41 miles and from Meva (Now Braymill) to Klamath Falls, Oregon, 32 miles; \$15.50 per car from Chinchalo, Oregon to Klamath Falls, Oregon, and \$16.50 per car from Lenz, Oregon to Klamath Falls, Oregon, 54 miles. The \$12.50 per car rate from Kirk and Mt. Hebron was established in 1917; from Meva the rate was published effective May 6, 1922, and the last two named rates became effective July 23, 1924. Many of the Oregon rates, it is alleged, were originally established for the movement of logs in minimum train loads of 20 cars over 22 feet in length, or 40 cars less than 22 feet in length. The Interstate Commerce Commission, in 1918, found that rates predicated on trainload minimum were discriminatory as between the large and small shipper and ordered them discontinued, and while defendant discontinued the trainload provision in connection with the \$12.50 per car rate the volume of the rate was not increased upon the theory that the logs would continue to move in trainload lots.

Complainant also refers to rates on logs of \$9.50 per car from Weed to Morrison, 17 miles, and \$12.50 per car from Weed to Penoyer, 33 miles. Defendant testified the latter rate was published prior to the year 1909 by the California Northeastern Railway when that company operated from Bray to Weed and that when the defendant purchased the line a part of the consideration paid therefor was an agreement to maintain

the log rates then in effect. Aside from the fact that such an agreement has no weight in determining the reasonableness of the rate, per se, it is significant to note that the rate established by the California Northeastern Railway, and which was in effect when defendant purchased that line, was \$8.80 per car and not \$12.50 per car. The former rate was increased to \$11.00 on June 24, 1918 (General Order No. 28), was further increased to \$14.00 on August 26, 1920 (18 C.R.C. 646) and subsequently reduced to its present level on July 1, 1922 (Reduced Rates 1922, 68 I.C.C. 676). Thus this contention of defendant's falls of its own weight, for the agreement entered into at the time of the purchase of California Northeastern Railway apparently was abrogated when the original rate of \$8.80 per car was increased to \$11.00 per car in 1918.

Defendant urges that the operating conditions in the territory extending from Morrison to Barnard are extremely severe. The record shows that the haul of 31 miles between the latter two points is over 2.92 miles of grade, varying from 1 to 2 per cent, with a total of 17.22 miles of curved track, necessitating the use of locomotive helper service for 14.5 miles. However, the record also shows that in the haul from Weed to Morrison and from Weed to Penoyer, where defendant has voluntarily established and now maintains rates of \$9.50 and \$12.50 per car, respectively, the operating difficulties encountered are equally as severe as those encountered in the haul from Morrison to Barnard.

After careful consideration of all the exhibits, evidence and testimony of record in this proceeding, we are of the opinion and find that the assailed rate was, during the period April 21, 1925 to September 26, 1925, excessive and unreasonable to

the extent it exceeded the \$12.50 per car charge. We further find complainant paid and bore the charges on the shipments in question and has been damaged to the extent of the difference between the charges paid and those that would have accrued at the subsequently established rate of \$12.50 per car and is entitled to reparation, with interest.

The exact amount of reparation due cannot be determined upon this record. Complainant will submit a statement of the shipments to defendant for check and should it not be possible to reach an agreement as to the amount of reparation, the matter may be called to our attention for further consideration.

O R D E R

This case being at issue upon complaint, 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 preceding this order,

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be and it is hereby authorized and directed to refund to complainant, E.K. Loosely, all charges it may have collected in excess of \$12.50 per car for the transportation of 268 carloads of logs, involved in this proceeding, moving from Morrison to Barnard, during the period extending from April 21, 1925 to September 26, 1925, both dates inclusive.

Dated at San Francisco, California, this 17th day of January, 1927.

Edward W. East
John B. Brundage
C. L. Seawick
Leon White
John D. H. Smith
 Commissioners.