

Decision No. 20602 .

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA CATTLEMEN'S ASSOCIATION,
CALIFORNIA WOOL GROWERS' ASSOCIATION,
Complainants,

vs.

MINARETS AND WESTERN RAILWAY COMPANY,
SOUTHERN PACIFIC COMPANY,

Defendants.

Case No. 2494.

ORIGINAL

John Curry, for complainants.

J. L. Fielding, J. E. Lyons and A. B. Mason, for
Southern Pacific Company, defendant.

C. S. Thomas, for Minarets and Western Railway
Company, defendant.

E. G. Wilcox, for Oakland Chamber of Commerce.

BY THE COMMISSION:

OPINION ON REHEARING

By our Decision No. 19890, dated June 13, 1928, we found the rates maintained by defendants on cattle and sheep, carloads, from North Fork on the Minarets and Western Railway Company to San Francisco, Oakland, San Jose, Swanston and Los Angeles on the Southern Pacific Company, not unreasonable, unjustly discriminatory or unduly prejudicial. Upon petition for rehearing filed by complainants, the proceeding was reopened for the presentation of further evidence and testimony. A rehearing was held before Examiner Geary at San Francisco September 28, 1928, and the case having been duly submitted and briefs filed is now ready for an opinion

and order.

The essential facts in this proceeding are set forth in our Decision No. 19890 of June 13, 1928, but may be briefly summarized here as follows:

North Fork is on the Minarets and Western Railway Company, hereafter referred to as the Western, 35 miles north of Friant, the interchange point with the Southern Pacific. There are no through joint rates on cattle or sheep from the former point to San Francisco, Oakland, San Jose, Swanston and Los Angeles, the rates being made combination on Friant, using the full local rates of \$29 per 36-foot single-deck car on cattle and \$32 per 36-foot double-deck car on sheep from North Fork to Friant, plus the local rates of the Southern Pacific from the latter point to destination. Complainants contend they should be accorded through rates on cattle and sheep comparable with those now maintained by the Southern Pacific in connection with other short line carriers in California and adjacent states.

The Western was constructed primarily to tap the lumber resources of the Sugar Pine Lumber Company in the territory north of Friant. Approximately 80 per cent. of its carload traffic consists of logs moving into the mill of the lumber company at Pinedale; about 16 per cent. comprises lumber and lumber products moving from Pinedale to various destinations in California and other states, and the balance of the tonnage is miscellaneous freight. Both the railroad and the Sugar Pine Lumber Company are owned by the same financial interests. The road was constructed in 1923 and has not earned a profit since the commencement of operations.

In our Decision No. 19890, supra, we stated on page 3 of the typewritten report that -

"The annual reports on file with this Commission show that the Western has failed to earn its fixed charges, depreciation and other expenses any

year since operations were commenced, in July, 1923, the total deficit as of December 31, 1927, being \$141,121.94. Its exceptional situation and exceptional circumstances make rate comparisons per mile with the movement of live stock over standard trunk lines in Arizona, Nevada, New Mexico and other sections of California wholly out of the question."

And on page 4 of the typewritten report we said:

"The matter of rates from points on short or weak lines has been considered by the Interstate Commerce Commission in many cases. In Cotton Mills Products Company vs. A. & V., 120 I.C.C. 473, the sixth-class rate of 75¢ cents per 100 pounds was not unreasonable as compared with the rate of 56 cents per 100 pounds for similar distances prescribed in Southern Class Rate Investigation, 100 I.C.C. 513. The Federal Commission said that the Burlington and Southern Railway was a weak line, therefore entitled to special rate treatment."

Complainant now contends the poor financial condition of the Western is due to its favoring the controlling industry, the Sugar Pine Lumber Company, in the matter of rates. As previously stated, about 80 per cent. of the traffic handled by this line consists of logs moving from Wishon to Pinedale. At the time of the original hearing the rate for this movement was \$5.00 per thousand feet board measure, but subsequent to the hearing the rate was reduced (effective May 18, 1928), to \$3.00 per thousand feet, board measure. Following the publication of the lower rate an informal application, No. 39629, was submitted by the Western to the Commission to refund \$37,036.59 to the Sugar Pine Lumber Company, this sum representing the difference between the charges assessed on the season's movement of logs prior to May 18, 1928, and the charges that would have accrued at the rate subsequently established. The application was denied.

Defendants contend the reduction in the log rate was necessary to stimulate the movement of logs, but it is extremely doubtful whether the traffic will be increased sufficiently to offset the loss of revenue resulting from a 40 per cent. reduction in rates. In fact the evidence shows that for the three months' period immediately following the publication of the \$3.00 rate,

viz., June, July and August, the revenue from the log traffic was \$145,033.42 as compared with \$200,302.26 for the corresponding months of 1927, a loss in revenue of 27.5 per cent.

If, as the Western contends, a reduced rate was essential to stimulate the log traffic of its controlling company, the same consideration should be extended to these complainants, for the record shows that the latter are now driving their cattle and sheep to Friant to avoid paying the local rates of the railroad. It is apparent upon this record that if lower through rates were established the practice of driving cattle would be discontinued and the shipments transported entirely by rail, thus affording the Western an opportunity to obtain additional revenue.

The evidence adduced at the rehearing also shows that the combination of local rates on cattle and sheep assessed complainants results in higher charges than defendant, Southern Pacific Company, maintains for comparable distances in connection with other short line railroads in California and Nevada.

After careful consideration of all the facts of record, in the light of the new evidence and testimony submitted at the rehearing, we are of the opinion and so find that the rates on cattle in single-deck cars 36'6" in length and on sheep in double-deck cars 36'6" in length from North Fork to San Francisco, Oakland, San Jose, Swanston and Los Angeles, are and for the future will be unjust and unreasonable to the extent they exceed the following:

From	To	Rate per 36'6" car	
		Cattle : Single-Deck	Sheep : Double-Deck
	(San Francisco	\$97.00	\$106.00
	(Oakland	94.00	103.00
North Fork	(San Jose	94.00	103.00
	(Swanston	90.00	99.00
	(Los Angeles	115.00	126.00

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 contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendants, Minarets and Western Railway Company and Southern Pacific Company, according as they participate in the transportation, be and they are hereby required to cease and desist on or before forty (40) days after the effective date of this order and thereafter to abstain from publishing, maintaining or assessing rates on cattle in single-deck cars and sheep in double-deck cars from North Fork to San Francisco, Oakland, San Jose, Swanston and Los Angeles which shall exceed the rates set forth in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that defendants, Minarets and Western Railway Company and Southern Pacific Company, according as they participate in the transportation, be and they are hereby notified and required to establish on or before forty (40) days from the effective date of this order, upon notice to this Commission and to the general public by not less than five (5) days' filing and posting in the manner prescribed in Section 14 of the Public Utilities Act, rates on cattle in single-deck cars and on sheep in double-deck cars from North Fork to San Francisco, Oakland, San Jose, Swanston and Los Angeles, prescribed in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that our Order of Dismissal entered in the above entitled proceeding on June 13, 1928, be

and it is hereby vacated and set aside.

Dated at San Francisco, California, this 14th day
of December, 1928.

C. J. ...

Francisco

James D. ...

Commissioners.