

Decision No. 21687.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PICKERING LUMBER COMPANY,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
SIERRA RAILWAY COMPANY OF CALIFORNIA,
THE WESTERN PACIFIC RAILROAD COMPANY,

Defendants.

ORIGINAL

Case No. 2753.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation with its principal place of business at Kansas City, Missouri. By complaint filed September 3, 1929, it is alleged that the rate assessed and collected on two carloads of box shooks moving from Tuolumne to Brack on or about July 5 and 16, 1928, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act.

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

Tuolumne is on the Sierra Railway 57 miles northeast of Oakdale; Brack is on the Western Pacific 16 miles north of Stockton. Complainant's shipments were routed Sierra Railway Company of California to Oakdale, Southern Pacific Company to Stockton, thence Western Pacific Railroad to destination. The lawfully applicable rate from Tuolumne to Brack, a distance of 104 miles, at the time the shipments moved was 22 cents, made by use of a joint commodity rate of 16 cents published in Pacific

Freight Tariff Bureau Tariff 48-K, C.R.C. No. 418, applying from Tuolumne to Stockton, plus a local rate of 6 cents published in Western Pacific Railroad Company's Tariff 36-F, C.R.C. 257, applying from Stockton to Brack.

Effective July 7, 1929, in Supplement 23 to P.F.T.B. Tariff 48-K, Supplement 22 to C.R.C. 418 defendants published a through commodity rate of 17½ cents for the movement here involved and it is on the basis of this subsequently established rate that complainant seeks reparation.

Defendants admit the allegations of the complaint and have signified a willingness to make a reparation adjustment, therefore under the issues as they now stand a formal hearing will not be necessary.

Upon consideration of all the facts of record we are of the opinion and find that the assailed rate was unjust and unreasonable to the extent it exceeded the subsequently established rate of 17½ cents; that complainant made the shipments as described, paid and bore the charges thereon and is entitled to reparation without interest. Complainant specifically waived the payment of interest.

Complainant will submit statement of shipments 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 precedes this order,

IT IS HEREBY ORDERED that defendants Southern Pacific Company, Sierra Railway Company of California and The Western Pacific Railroad Company according as they participated in the transportation be and they are hereby authorized and directed to refund to complainant, Pickering Lumber Company, all charges collected in excess of $17\frac{1}{2}$ cents per 100 pounds for the transportation from Tuolumne to Brack of shipments of box shooks involved in this proceeding.

Dated at San Francisco, California, this 17th day of October, 1929.

Thomas D. Smith

C. S. Seaver

Edward J. Quinn

Leon Whitehall

Alfred
Commissioners.