JLA

Decision No. 22273.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

THE CHARLES NELSON CO., NORTHERN REDWOOD LUMBER COMPANY, BAYSIDE REDWOOD COMPANY, HAMMOND LUMBER COMPANY, HOLMES EUREKA LUMBER COMPANY, J. R. HANIFY CO., THE LITTLE RIVER REDWOOD CO., CHICAGO LUMBER COMPANY OF WASHINGTON, HUMBOLDT REDWOOD COMPANY, AMERICAN TANK COMPANY, ELK RIVER MILL AND LUMBER COMPANY, McKAY & CO., POPE & TALBOT, CHAS. R. McCORMICK LUMBER COMPANY OF DELAWARE, THE PACIFIC LUMBER COMPANY, Complainants, vs. THE ARCATA AND MAD RIVER RAILROAD COMPANY, NORTHWESTERN PACIFIC RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, CALIFORNIA WESTERN RAILROAD & NAVIGATION COMPANY, CENTRAL CALIFORNIA TRACTION COMPANY, PETALUMA AND SANTA ROSA RAILROAD COMPANY, PENINSULAR RAILWAY COMPANY, SACRAMENTO NORTHERN RAILWAY, SOUTHERN PACIFIC COMPANY, TIDEWATER SOUTHERN RAILWAY COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, Defendants.	Case No. 2685.
UNION LUMBER COMPANY, a corporation, Complainant, vs. CALIFORNIA WESTERN RAILROAD & NAVIGATION COMPANY, NORTHWESTERN PACIFIC RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, WESTERN PACIFIC RAILROAD COMPANY, and PETALUMA & SANTA ROSA RAILROAD COMPANY, Defendants.	Case No. 2736.

A. Larsson and R. J. Blitch, for complainants in Case No. 2685.

Sanborn, Roehl & Smith, for complainant in Case No. 2736.

James E. Lyons, A. L. Whittle, J. L. Fielding and J. J. Geary, for defendants Southern Pacific Company, Northwestern Pacific Railroad Company, Peninsular Railway Company, and other defendants not directly represented (except California Western Railroad & Navigation Company and Arcata & Mad River Railroad Company), in Case No. 2685.

James E. Lyons, A. L. Whittle, J. L. Fielding and J. J. Geary, for defendants Southern Pacific Company, Northwestern Pacific Railroad Company, Petaluma and Santa Rosa Railroad Company, and other defendants not directly represented (except California Western Railroad & Navigation Company), in Case No. 2736.

BY THE COMMISSION:

O P I N I O N

Complainants are corporations engaged in the manufacture and sale of lumber and its products.

The complaint in Case 2685, filed April 24, 1929, and amended May 22, 1929, alleges (a) that defendants in applying a rate of $5.50 per 1000 feet, board measure, for the transportation of lumber from points of production on the Northwestern Pacific Railroad and Arcata & Mad River Railroad to San Francisco, Oakland, Richmond and other bay points, or when destined to points beyond the bay district, have arbitrarily assessed this rate on an erroneous measurement of the lumber, resulting in charges which were, are, and for the future will be unjust and unreasonable, in violation of Section 13 of the Public Utilities Act, inapplicable in violation of Section 17 of the Act, prejudicial in violation of Section 19 of the Act, and in violation of the long and short haul, and aggregate of intermediate, provisions of Section 24 of the Act; and (b) that defendants have refused to apply the said rate of $5.50 per thousand feet, board measure, on various semi-manufactured articles, contrary to the

terms of their tariffs.

The complainant in Case 2736 makes the same allegations as to Sections 13, 17 and 19 of the Act with respect to defendants' alleged practice of determining the measurement of lumber on an erroneous basis in connection with a rate of $5.50 per thousand feet, board measure, applicable from Fort Bragg to San Francisco, Oakland, Richmond and other bay points.

Reparation and rates for the future are sought. Complainants in Case 2685 ask reparation on shipments on which the cause of action accrued more than two years prior to the filing of the complaint but which were registered with the Commission within the two-year statutory period by the filing of informal complaints. These shipments are barred from further consideration. (Los Angeles & Salt Lake Railroad Co. vs. Railroad Commission of California et al., 77 Cal. Dec. 594.)

While the complaints alleged numerous violations of the Public Utilities Act, the primary issue here is one of tariff interpretation.

Public hearings were held before Examiner Geary at San Francisco September 11, 12 and 13, 1929, and the proceedings having been submitted and briefs filed are now ready for a decision. By stipulation both cases were heard upon a common record and will be disposed of in one decision.

In 1924 defendants, to meet the competition of lumber schooners, published a rate of $5.50 per thousand feet, board measure, on "lumber, viz., the products of saw and planing mill plants not further advanced in manufacture than by sawing, resawing and placing lengthwise through a standard planing machine, cross-cut to length and ends matched". This rate applied from points of origin on the Arcata & Mad River Railroad, Northwestern Pacific Railroad and California Western Railroad & Navigation

Company to the San Francisco Bay district. The joint rates were contained in Pacific Freight Tariff Bureau Tariff 117-H, C.R.C. No. 389, or preceding issues, and the local rate of the Northwestern Pacific in that line's Local Tariff 12-C, C.R.C. No. 272, or preceding issues. The joint tariff contained no provision for determining the number of board feet in the shipment. The Local Tariff however in Item 9 thereof provided that lumber less than one half inch in thickness would be considered as one half inch, and when over one half inch and not over one inch it would be considered as one inch. In applying these tariffs defendants have computed the charges upon the basis of the measurement of the rough lumber, as shown by complainants' invoices to the buyer. In many cases the lumber has been surfaced before being shipped, so that the dimensions thereof are less than those of the rough boards. Complainants contend that on all such lumber the actual number of board feet in the shipment should be used to compute the charges, rather than the quantity in the board before it was surfaced.

A board foot is defined in Webster's International Dictionary as

> "A volume equal to that of a board one foot by one foot by one inch, or 144 cubic inches, used in measuring lumber."

And in a publication known as The Practical Lumberman, published by Bernard Brereton, it is stated:

> "The unit of board measure is the board foot, one foot square and one inch in thickness, and the number of board feet in any given material that is being measured according to this standard is obtained by dividing this standard volume of a board foot into the net standard volume of the material to be measured. This rule applies whether the material be one inch in thickness or some greater or less thickness."

Complainants contend that these technical definitions of a board foot should be used to measure the lumber in their shipments, although they are contrary to the long-established

custom prevalent in this territory to compute a "board foot" of finished lumber upon the dimensions of the rough lumber before it was surfaced and trimmed.

It is the practice when an order for finished lumber is received, to take the rough lumber from the pile, tally and invoice, and run it through a planing machine to surface to the desired size and pattern. An additional charge is made for this further process of manufacture, but the lumber when it is sold is based not upon the number of board feet in the finished product but upon the number of feet before the lumber was surfaced. This custom is sanctioned by the United States Department of Commerce in a booklet issued by it and entitled, "Elimination of Waste, Simplified Practice, Lumber", revised July 1, 1926, wherein it is stated:

> "Lumber of standard size shall be tallied board measure. On lumber of standard thickness less than 1 inch (board measure) the board-foot measurement shall be based on the surface dimensions."
>
> "The board measurement of dressed lumber of standard sizes shall be based upon the corresponding nominal dimensions of rough green lumber."

This rule was adopted in toto February 8, 1927, as "Standard Specifications for Eastern Grades of California Redwood Lumber" by the California Redwood Association, of which complainants are members. Likewise the steamer lines operating from and to the Redwood Belt, creators of the competition defendants endeavored to meet when they established the rate of $5.50, compute their transportation charges for dressed lumber upon the dimensions of the rough green lumber before it was surfaced.

While the record shows that this practice is not universally followed, differing in various localities, the record leaves no doubt that the prevailing custom and one which had been followed for years by both complainants and defendants, was to determine the number of board feet in dressed lumber by the

use of the dimensions of the rough lumber. Indeed it was not until the latter part of 1927 that defendants received any complaints from the lumber industry, as theretofore it had been conceded that this was the proper way of determining the number of feet in the shipment. But in 1927 a traffic representative of some of the lumber interests apparently discovered that a technical interpretation of the meaning of the term "board foot" would produce lower transportation charges. Thereafter claims were filed with the carriers, and shippers were advised to show on their invoices not only the gross measurement of the shipments upon which they were reimbursed by the buyer, but also the net measurement which they contended the carriers should use in computing the freight charges.

While we have heretofore held that the intention of the framer of the tariff was not controlling and that a tariff should be construed according to its terms provided the interpretation so placed on the tariff will not result in an absurd situation, we have also held that where in the transportation field terms have been used in their accepted commercial sense for a long period of time, neither shippers nor carriers can revert to a technical interpretation to compute the freight charges. (Capital Rice Mills vs. Southern Pacific, 8 C.R.C. 156; Gilmore Oil Company vs. A.T.& S.F.Ry., 28 C.R.C. 878.) The Interstate Commerce Commission has held to the same effect in Forbes & Sons Piano Co. vs. A.G.S.R.R.Co., 101 I.C.C. 74, and General Motors Truck Co. vs. G.T.W.Ry.Co., 118 I.C.C. 99. So far as this record indicates, the terms in the tariff "per 1000 feet" or "per 1000 feet, board measure" when applied to dressed lumber are understood by the trade to mean the number of feet contained in the rough lumber before it is surfaced and trimmed. The charges which defendants have assessed and collected are lawful under Section 17(2) of the Act.

Complainants suggest that the rate of $5.50 per thousand feet be converted to a cents-per-100-pound basis as a more satisfactory method or computing the charges and one which would eliminate any chance of dispute. They suggest a rate of 16 cents per 100 pounds, claiming it would be approximately the equivalent of the present rate. However, in this particular instance it is impracticable to change the rate to a per-100-pound basis. Redwood lumber varies in weight from 2 to 4 pounds per foot, depending upon the duration of the drying. A 16-cent rate would be equivalent to $6.40 per thousand feet on lumber weighing 4 pounds per foot and $3.20 per thousand feet on lumber weighing 2 pounds per foot. As the present rate of $5.50 per thousand feet was established to meet the competition of water carriers it is apparent defendants would under the proposed adjustment obtain none of the heavier lumber and would be forced to carry the lighter weight lumber at charges materially less than they are now receiving under the present rate.

There is nothing here before us to indicate that the accepted method of determining the measurement of dressed lumber has resulted in unreasonable, prejudicial or preferential charges or charges which were in excess of the aggregate of intermediate rates. On the contrary the preponderance of evidence leads us to conclude that the present charges are exceptionally low due to the competition of water carriers.

Complainants did however call attention to possible violations of the long and short haul provisions of Section 24(a) of the Act, for theoretically under the provisions of Rule 9 of Northwestern Pacific Tariff 12-C, C.R.C. 272, the charges from Eureka to San Francisco could be higher than those provided in Pacific Freight Tariff Bureau Tariff 117-H, C.R.C. 389, from Korbel, a point beyond Eureka, to San Francisco.

Complainants were unable to show that any shipments had moved or were likely to move in violation of the long and short haul clause. However defendants should clarify their tariffs so that there would be no possibility of creating an unauthorized violation of Section 24(a).

There now remains for consideration the allegation in Case 2685 that defendants have refused to apply the rate of $5.50 per thousand feet board measure on lumber articles such as sawn stakes and shakes. The testimony of complainants' witnesses shows that these articles come within the tariff description of lumber as they are not "further advanced in manufacture than by sawing, re-sawing and by passing lengthwise through a standard planing machine, cross-cut to length, ends matched". The rate of $5.50 clearly applies on the articles mentioned. There is no evidence in this record that complainants made any shipments of sawn stakes or shakes upon which the rate of $5.50 should have been applied. If such shipments were made defendants should refund the overcharges.

Upon consideration of all the facts of record we are of the opinion and find that the practice of defendants in refusing to apply the rate of $5.50 per thousand feet board measure on lumber products such as sawn stakes and shakes is contrary to the applicable tariff in violation of Section 17(2) of the Act. We further find that as to all other matters the complaint should be dismissed.

O R D E R

These cases having been duly heard and submitted, 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, The Arcata and Mad River Railroad Company, Northwestern Pacific Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, California Western Railroad & Navigation Company, Central California Traction Company, Petaluma and Santa Rosa Railroad Company, Peninsular Railway Company, Sacramento Northern Railway, Southern Pacific Company, Tidewater Southern Railway Company and The Western Pacific Railroad Company, according as they participated in the transportation, be and they are hereby directed to cease and desist and thereafter to abstain from applying, demanding and collecting for the transportation of sawn stakes and shakes any charge greater or less or different than that contained in the tariffs on file with this Commission.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaints be and they are hereby dismissed.

Dated at San Francisco, California, this 22nd day of April, 1930.

C. C. Leavey

Thos. E. Gritt

W. J. Carr

Commissioners.