

Decision No. 24458.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

UNION LUMBER COMPANY,
 a corporation,
 Complainant,
 vs.
 SOUTHERN PACIFIC COMPANY,
 a corporation, and
 THE WESTERN PACIFIC RAILROAD COMPANY,
 a corporation,
 Defendants.

ORIGINAL

Case No. 2752.

BY THE COMMISSION:

O P I N I O N

By complaint filed September 3, 1929, complainant alleges that the charges assessed and collected during the two-year period immediately preceding the filing of the complaint, for the transportation of numerous carloads of lumber from Oakland to Santa Clara, were in violation of Sections 17(2) and 24(a) of the Public Utilities Act and of Section 21 Article XIII of the State Constitution.

Reparation only is sought.

Complainant's shipments originated at Oakland on the Western Pacific Railroad and were line-hauled from Oakland to Santa Clara by the Southern Pacific Company. Charges were assessed and collected on basis of a line haul rate of 4½ cents per 100 pounds plus a switching charge of \$2.70 per car. A like rate was contemporaneously in effect from the same point of origin to San

Jose, a point on the Southern Pacific Company 2½ miles beyond Santa Clara. San Jose however is a competitive point and the \$2.70 switching charge of the Western Pacific Railroad is absorbed by the Southern Pacific Company under the provision of Item 295 of its Terminal Tariff 230-J, C.R.C. 3183. On a movement from Oakland to San Jose Santa Clara is an intermediate point and the movement to that station is over the same line or route as that to the more distant station of San Jose.

Defendants admitted that the charges were assessed and collected in violation of the long and short haul provisions of the Public Utilities Act and of the State Constitution and have signified their willingness to make a reparation adjustment. The allegation that the charges were also in violation of Section 17 of the Act has been withdrawn. 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 charges on complainant's shipments were assessed and collected in violation of the long and short haul provisions of Section 24 of the Public Utilities Act and of Section 21 Article XII of the State Constitution. We further find that complainant made the shipments as described, paid and bore the charges thereon, and is entitled to reparation with interest at six per cent. per annum in the amount of the difference between the charges paid and the charges concurrently in effect to the more distant point. (California Adjustment Co. vs. A.T.& S.F.Ry., 179 Cal. 140; San Francisco Milling Co. vs. Southern Pacific Co., 34 C.R.C. 453.)

The exact amount of reparation due is not of record. Complainant will submit to defendants for verification a statement of the shipments made and upon payment of the reparation

defendants will notify the Commission the amount thereof. Should it not be possible to reach an agreement as to the reparation award, 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 answers 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 preceding opinion,

IT IS HEREBY ORDERED that defendants Southern Pacific Company 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, Union Lumber Company, with interest at six (6) per cent. per annum, all charges collected in excess of $4\frac{1}{2}$ cents per 100 pounds for the transportation from Oakland to Santa Clara of the shipments of lumber involved in this proceeding.

Dated at San Francisco, California, this 8th day of February, 1932.

C. L. King
Leon A. Whittell
W. H. King
W. B. Harris
Fred G. Stewart
Commissioners.