

Decision No. 24460.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CHARLES R. MCCORMICK LUMBER COMPANY,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

Case No. 2999.

ORIGINAL

BY THE COMMISSION:

O P I N I O N

By complaint filed January 27, 1931, and as amended it is alleged that the charges assessed and collected on numerous carloads of lumber and lath shipped from San Francisco to San Mateo, San Carlos, Redwood City, Palo Alto and Mountain View during the period June 19, 1929 to December 4, 1929 inclusive were in violation of the long and short haul provisions of Section 24 of the Public Utilities Act.

Reparation only is sought.

Complainant's shipments originated at San Francisco on the Western Pacific Railroad and were line-hauled from San Francisco to the various destinations by the Southern Pacific Company. Charges were assessed and collected on basis of a line haul rate of $4\frac{1}{2}$ cents per 100 pounds plus a switching charge of \$2.70 per car. A like rate was contemporaneously in effect from San Francisco to San Jose, a point on the Southern Pacific Company beyond the destinations here involved. San Jose, however, is a competi-

tive point, and the \$2.70 switching charge of the Western Pacific Railroad is absorbed by the Southern Pacific Company under the provisions of Item 295 of its Terminal Tariff 230-J, C.R.C. 3183. Because of this absorption at the more distant point and defendant's failure to make corresponding absorptions in connection with shipments to intermediate points on the same line or route, a greater charge is assessed for a shorter than for a longer distance, the shorter being contained within the longer, in violation of Section 24(a) of the Public Utilities Act. At the time complainant's shipments moved such departures from the provisions of Section 24(a) of the Act were unauthorized.¹

Defendant admits the charges assessed and collected were in violation of the long and short haul provisions of the Public Utilities Act, and has signified its 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 charges on complainant's shipments were assessed and collected in violation of Section 24(a) of the Public Utilities Act. We further find that complainant made the shipments as described, paid and bore the charges thereon, and is entitled to reparation without interest 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. Atchison, Topeka and Santa Fe Railway, 179 Cal. 140; San Francisco Milling Co. vs. Southern Pacific Co., 34 C.R.C. 453.) Complainant specifically waived the payment of interest.

¹ The Commission subsequently authorized the long and short haul departures. In Re Application of F. W. Gomph, etc., 35 C.R.C. 46.

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

IT IS HEREBY ORDERED that defendant Southern Pacific Company be and it is hereby authorized and directed to refund without interest to complainant Charles R. McCormick Lumber Company all charges collected in excess of $4\frac{1}{2}$ cents per 100 pounds for the transportation from San Francisco to San Mateo, San Carlos, Redwood City, Palo Alto and Mountain View of the shipments of forest products involved in this proceeding.

Dated at San Francisco, California, this 5th day of February, 1932.

C. L. ...
Leon ...
M. J. ...
W. B. ...
Frederic G. ...
Commissioners.