

Decision No. 24718.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

HUNT & BEHRENS,  
 (a copartnership consisting of  
 Marvin L. Hunt and Carl N. Behrens)  
 Complainant,  
 vs.  
 NORTHEASTERN PACIFIC RAILROAD COMPANY,  
 Defendant.

**ORIGINAL**

Case No. 3187.

BY THE COMMISSION:

O P I N I O N

Complainant alleges by complaint filed January 26, 1932 and as amended, that the charges assessed and collected on numerous carloads of wheat, barley and beet pulp transported from Tracy, Byron and Brentwood to West Petaluma during the two-year period immediately preceding the filing of the complaint, were in violation of the long and short haul provisions of Section 24(a) of the Public Utilities Act and of Section 21 Article XII of the State Constitution.

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

Charges were assessed on complainant's shipments on basis of the line-haul rates of 9 cents from Byron and Brentwood and 9½ cents from Tracy to Petaluma named in the applicable tariffs plus a switching charge equivalent to 1½ cents for the movement between Petaluma and West Petaluma. This switching rate

was contained in Petaluma & Santa Rosa Railroad Terminal Tariff 1-E, C.R.C. 104, and was not absorbed on the shipments here involved. Under the provisions of its Terminal Tariff 4-N, C. R.C. 343, defendant absorbed the  $1\frac{1}{4}$ -cent charge in connection with competitive traffic as that term is defined in the tariff.

From Stockton to Petaluma the concurrently applicable rate was  $9\frac{1}{2}$  cents. Stockton is a more distant competitive point and the switching charge between Petaluma and West Petaluma is absorbed in connection with a shipment originating there. Thus the aggregate charges from Stockton were less than assessed on complainant's shipments moving from directly intermediate points, creating departures from the long and short haul provisions of Section 24(a) of the Act. At the time complainant's shipments moved these departures were unauthorized.

Defendant admits the allegations of the complaint 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 assessed and collected on complainant's shipments were in violation of the long and short haul provisions of Section 24(a) 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.

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 the 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 opinion which precedes this order,

IT IS HEREBY ORDERED that defendant Northwestern Pacific Railroad Company be and it is hereby authorized and directed to refund with interest at six (6) per cent. per annum to complainant Hunt & Behrens all charges collected in excess of  $9\frac{1}{2}$  cents per 100 pounds for the transportation from Byron, Brentwood and Tracy to West Petaluma of the shipments of wheat, barley and beet pulp involved in this proceeding.

Dated at San Francisco, California, this 25<sup>th</sup> day of April, 1932.

C. C. [Signature]  
Leon [Signature]  
M. A. [Signature]  
M. B. [Signature]  
Fred G. [Signature]  
Commissioners.