

ORIGINAL

Decision No. 1898

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

NAVARRO LUMBER COMPANY,
a corporation,

Complainant,

-vs-

NORTHWESTERN PACIFIC RAILROAD
COMPANY, a corporation,

Defendant.

Case No. 1147.

Sanborn & Boehl, for Navarro Lumber Company,
complainant
Stanley Moore, for Northwestern Pacific
Railroad Company, defendant
Elmer Westlake and George D. Squires, for
Southern Pacific Company and
Albion Lumber Company

LOVELAND, Commissioner:

O P I N I O N .

In this proceeding Navarro Lumber Company asks the Railroad Commission to require the Northwestern Pacific Railroad Company to place in service a vessel for the transportation of freight between Albion, Mendocino County, and San Francisco, and between Albion and southern California points, in accordance with the terms of a certain contract executed on May 17, 1907, between the Stearns Lumber Company, a predecessor of the complainant and Northwestern Pacific Railroad Company, and to establish just and reasonable rates for such transportation. The defendant has filed

a motion to dismiss the complaint on the ground that it is not engaged in any such ocean transportation as is contemplated in the complaint, and that accordingly the relief requested is beyond the jurisdiction of the Railroad Commission to grant.

The contract referred to in the complaint relates to the through shipment by rail and water from Wendling to San Francisco and southern California points, of the products of the mills of Stearns Lumber Company. Shipments were made under this contract with certain modifications from time to time until January 1, 1914. Since that time no shipments have been made thereunder, and apparently it is only recently that complainant has attempted to assert any rights thereunder.

The complaint is based entirely upon this contract and is, in effect, an attempt through this Commission to obtain a specific performance of the same. I do not believe that under the circumstances surrounding this case this contract establishes any public undertaking on the part of defendant to, at this time, enter into ocean transportation business. I believe that complainant's remedy, if any, on the contract is a matter for the courts, and not for this Commission. I am, accordingly, of the opinion that defendant's motion to dismiss the complaint is proper and should be granted, and submit the following form of order:

O R D E R

This case having come on regularly for hearing and the defendant having filed a motion to dismiss the complaint

the Railroad Commission finding
for lack of jurisdiction, and/that the same is well founded,

IT IS ~~EXERBY~~ ORDERED that the complaint herein be, and
the same is hereby dismissed.

The foregoing opinion and order are hereby approved
and ordered filed as the opinion and order of the Railroad
Commission of the State of California.

Dated at San Francisco, California, this 27th day
of November, 1917.

Max Shuler

H. D. Howard

Edwin O. Edgerton

Commissioners.