

Decision No. \_\_\_\_\_

ORIGINAL

Decision No. 5175

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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NAVARRO LUMBER COMPANY, a corporation  
Complainant

-vs-

SOUTHERN PACIFIC COMPANY, a corporation,  
THE ATCHISON, TOPEKA & SANTA FE RAILWAY  
COMPANY, a corporation, NORTHWESTERN  
PACIFIC RAILROAD COMPANY, a corporation,  
and CALIFORNIA WESTERN RAILROAD & NAVI-  
GATION COMPANY, a corporation  
Defendants.

Case  
No. 1080

Sanborn & Roehl, for complainant.  
Stanley Moore, for Northwestern Pacific  
Railroad Company.  
Elmer Westlake, for Southern Pacific  
Company.  
G. H. Baker, for The Atchison, Topeka &  
Santa Fe Railway Company.

LOVELAND, Commissioner:

O P I N I O N

Complainant is engaged in logging opera-  
tions and in the manufacture of lumber and forest  
products in Mendocino County at and adjacent to the  
station of Navarro on the line of Northwestern Pa-  
cific Railroad Company, which runs from Christine,

in Mendocino County, to the port of Albion on the Pacific coast. The defendants have in effect certain joint rates for the transportation of lumber and forest products from Eureka, Willits, Fort Bragg, Arcata, Samoa, South Bay, Carlotta, Little River Junction and Scotia to points in the Sacramento and San Joaquin valleys. Complainant alleges that these joint rates are unduly discriminatory and preferential in favor of the mills located at the points named, and prejudicial to the interests of the complainant, and asks that the Commission require the defendants to desist from charging and collecting these discriminatory and preferential joint rates.

The defendants have made a motion to dismiss the complaint on the ground that a cause of action, in which this Commission would have jurisdiction to grant relief, has not been stated.

We believe that the contention of defendants is correct and that the motion to dismiss should be granted.

The basis of the complaint is an alleged discrimination, claimed to be in violation of section 19 of the Public Utilities Act, which provides:

"Sec. 19. No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any cor-

poration or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service. The commission shall have the power to determine any question of fact arising under this section."

This section of the act provides that no public utility shall grant any preference or advantage to any corporation or person, or subject any corporation or person to any prejudice or disadvantage. Neither shall any public utility establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service. Complainant here contends that the joint rates from Eureka and the other points above named to the Sacramento and San Joaquin valleys are discriminatory and prejudicial to its interests. We find as a fact, that the movement of traffic from complainant's mill is not a movement comparable for the purpose of establishing discrimination, to the movement covered by the joint rates of defendants. Traffic from complainant's mill is moved on a line of the Northwestern Pacific Railroad Company to the port of Albion. The traffic is then carried in complainant's own boats to the port of San Francisco. From this port a local rail shipment is again made

to the point of destination. There is no through route carriage of complainant's traffic, such as exists with the traffic to which the joint through rates alleged to be discriminatory apply. Complainant's traffic is moved by a local rail shipment to Albion, where complainant again receives it and holds it until it is turned over for another local rail shipment from San Francisco or some other port to the place of destination in the interior.

In our opinion, a "prejudice", "disadvantage" or "unreasonable difference", as contemplated in section 19 of the Public Utilities Act can only be established when comparison is made between situations which are comparable. We find as a fact that the transportation of traffic from complainant's mill to points in the interior via San Francisco is not, for the purpose of establishing discrimination, comparable with the all rail through route and joint rate movement of defendants.

#### O R D E R

This case having come on regularly for hearing and it appearing to the Commission that complainant has failed to state a cause of action in which the Commission has jurisdiction to grant relief,

IT IS HEREBY ORDERED that the motion of  
defendants that the complaint herein be dismissed  
be and the same is hereby granted.

Dated at San Francisco, California this  
2nd day of March, 1918.

Max Thelen  
H. S. Loveland  
Alex Gordon  
Edwin O. Edgerton  
Franz R. Devlin  
Commissioners.