

Decision No. 5230

Decision No. _____ ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

BRAY LUMBER & BOX COMPANY,)
PACIFIC SHINGLE & BOX COMPANY,)
MacARTHUR & KAUFFMAN,)
Complainants.)
vs.)
SOUTHERN PACIFIC COMPANY,)
Defendant.)

CASE NO. 1079.

A. W. Knox, for Complainants.

Frank B. Austin, for Defendant.

BY THE COMMISSION:

O P I N I O N

Complainants, the Bray Lumber & Box Company of Bray, the Pacific Shingle & Box Company of San Jose, and MacArthur & Kauffman of San Francisco, are engaged in the lumber and fuel wood business and by complaint filed May 14, 1917, allege that the rates on mill refuse from points in California, north of Red Bluff, including Weed, Cole and Dorris, to Sacramento, Stockton, San Jose, San Francisco and the intermediate territory.

are discriminatory when compared with rates on the same commodity from Westwood to the same destinations. The Commission is asked to award reparation in the sum of \$945.20 on shipments moved on and after January 25, 1915 and to remove the discrimination in rates.

Defendant denies the rates attacked are discriminatory or that damages in the sum of \$945.20, or any part thereof, have been sustained by complainants and avers that the complaint being predicated upon a comparison with interstate rates leaves this Commission without jurisdiction.

To this latter defense the Commission can give no consideration, for the test of unjust discrimination between competing points is found in the rates applicable from those points rather than the different authorities by which the rates were established. When rates are alleged to be discriminatory it must be shown in connection with rates used in comparison that the transportation conditions are substantially similar and in this proceeding it is entirely proper to compare the intrastate rates with the interstate rates between the competitive points.

The following table shows a comparison of the rates from Boca, Westwood, Hilt and Dorris to certain California destinations on lumber and mill refuse:

| From | B O O A | | | W E S T W O O D | | | H I L T | | | D O R R I S | | |
|-------------------------|---------|------------|-------------|-----------------|--------|----------|---------|-------------|------------|-------------|--------|-------------|
| | To | Rates | | Miles | Rates | | Miles | Rates | | Miles | Rates | |
| Miles | | Lumber | Mill Refuse | | Miles | Lumber | | Mill Refuse | Miles | | Lumber | Mill Refuse |
| | | (1) | (2) | | (3) | (4) | | (5) | (6) | | (7) | (8) |
| Sacramento | 127.5 | (A) \$2.00 | \$ 1.95 | 323.0 | \$2.00 | \$ 1.95 | 313.0 | (D) \$2.00 | (F) \$2.00 | 323.0 | \$2.00 | (H) \$2.00 |
| Stockton | 169.8 | (B) 3.10 | 1.95 | 365.3 | 3.10 | 1.95 | 355.3 | (E) 3.10 | 2.25 | 365.3 | 3.10 | 2.50 |
| Oakland (Kirkham St) | 212.1 | 3.10 | 1.95 | 407.6 | 3.10 | 1.95 | 372.2 | 3.10 | 2.25 | 382.2 | 3.10 | 2.50 |
| San Francisco | 216.3 | 3.10 | 1.95 | 411.8 | 3.10 | (G) 1.95 | 376.4 | 3.10 | 2.25 | 386.4 | 3.10 | 2.50 |
| San Jose | 249.1 | 3.10 | 1.95 | 444.6 | 3.10 | 1.95 | 412.2 | 3.10 | (G) 2.50 | 422.2 | 3.10 | (I) 2.50 |

- (1) Effective: June 29, 1910, except (A) February 6, 1911, and (B) September 18, 1910.
- (2) Effective: December 25, 1911.
- (3) Effective: December 18, 1913.
- (4) Effective: December 14, 1914, except (G) November 21, 1914.
- (5) Effective: June 29, 1910, except (D) May 25, 1915 and (E) September 27, 1913.
- (6) Effective: September 29, 1911, except (F) May 25, 1915, and (G) December 25, 1911.
- (7) Effective: May 25, 1915.
- (8) Effective: December 30, 1914, except (H) May 25, 1915, and (I) March 15, 1915.

NOTE: The dates shown above are the effective dates of the rates appearing in tariffs filed with the Commission, and are not in all instances the dates upon which the rates were originally established.

The table demonstrates that the Boca rates on lumber were in effect in the year 1910 and on mill refuse in 1911 and they were extended to apply from Westwood on lumber in 1913 and on mill refuse in 1914, thus placing these producing points on a rate equality, notwithstanding the fact that the distance from Westwood to the points in question is 195 miles greater.

The Hilt and Dorris rates on lumber to Sacramento were reduced to \$2.00 per ton May 25, 1915 to conform to the rates in effect from Boca-Westwood, indicating defendant's intention, so far as lumber was concerned, to place these producing points on a parity, but the rates on mill refuse were not equalized, therefore Westwood has, to the different destinations, preferential rates on the mill refuse ranging from 5 cents to 55 cents per ton.

It is to be noted that from Hilt and Dorris to Sacramento the mill refuse rates are the same, \$2.00 per ton, or 5 cents higher than from the Boca-Westwood group; to Stockton, Oakland and San Francisco, Hilt has an advantage of 25 cents per ton over Dorris and is at a disadvantage of 30 cents per ton over Boca-Westwood; to San Jose from Hilt and Dorris the rates are the same, but are 55 cents per ton higher than from Boca-Westwood.

All the originating points are located in the mountainous districts of northern and northeastern California. The mountain haul from Hilt and Dorris to Red Bluff is a distance of 180 and 190 miles respectively, while from Westwood to Roseville, within the distance of 305 miles, the tonnage passes over two mountain ranges, with approximately 170 miles of mountain haul. Dorris and Westwood involve branch line service of 63 miles from the first named point and 169 miles from the second. The transportation from Boca, Hilt and Dorris is entirely intrastate, that from Westwood is interstate, passing through Fernley, Nevada.

Defendant contends that the reason for extending the Boca rates to Westwood, California via the long and difficult route through Fernley, Nevada was occasioned by the building of the Western Pacific, which company contemplated the construction of a branch line from Keddie to Westwood and had agreed with the lumber company to extend the Keddie rates, corresponding to the Southern Pacific Boca rates, to the Westwood tonnage. To forestall this threatened competition into the Westwood timber belt the rates to California points were reduced to the Boca-Keddie basis then in effect.

Had the branch line been constructed and actual competition created this defendant could have sought relief under the long and short haul provisions of the State Constitution, but since the Western Pacific never built into Westwood and no actual competition was ever created the action of the Southern Pacific in cutting the rates cannot be used as a justification for the discriminatory situation now existing. The mileage from Westwood, Hilt and Dorris to the consuming centers is practically the same with the mountain hauls, and branch line conditions materially in favor of Hilt and Dorris and as defendant equalized the lumber rates it should not continue a discrimination in favor of Westwood in the publication of rates on mill refuse.

We find that the rates assailed are unduly prejudicial to complainants, preferential to complainants' competitors at Westwood and unjustly discriminatory. Defendant will be expected to file tariffs, within thirty days from the date of this order, removing the discrimination.

The sole question remaining for determination is whether these complainants are entitled to reparation. The testimony of

record shows they purchased mill refuse indiscriminately at Westwood, Hilt, Weed and the other mills, and that the selling mills equalized the freight charge from the point of origin, hence I find that complainants are not entitled to reparation.

ORDER

Complaint having been made by the Bray Lumber Company, Pacific Shingle & Box Company and MacArthur & Kauffman, complainants, versus the Southern Pacific Company, defendant, alleging discrimination in the rates on mill refuse from various producing points north of Red Bluff, to Sacramento, Stockton, San Jose, San Francisco and intermediate points, and a hearing having been held and the Commission being fully advised in the premises, it is hereby found as a fact that the rates charged by defendant for the transportation of mill refuse from the points north of Red Bluff to Sacramento, Stockton, San Jose

San Francisco and intermediate points are unjust and unduly discriminatory as compared with the rates from Westwood, California to the same destinations, and basing its order on this finding of fact and the further findings of fact found in the foregoing opinion.

IT IS HEREBY ORDERED that the Southern Pacific Company within thirty (30) days from the date of this order submit, for the approval of this Commission, a tariff removing the discrimination found to exist.

Dated at San Francisco, California, this 25th day of March 1918.

Max Thelen
H. D. Howard

Edwin O. Edgerton
Frank R. DeLoe
Commissioners.