

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

The Feather River Lumber Company, )  
Complainant, )

vs. )

Nevada-California-Oregon Railway, )  
Defendant. )

Case No. 1170.

A. LARSSON and H. W. Wade, for Complainant.

Sanborn & Roehl, by A. B. Roehl, for Defendant.

LOVELAND, COMMISSIONER:

O P I N I O N

Complainant is a corporation engaged in the manufacture and sale of forest products and is operating mills in Plumas County, California, in the vicinity of Clio and Delleker.

By complaint filed November 17, 1917, it alleges that the rate of 65 cents per ton on lumber in carload lots from Clio to Delleker, plus a switching charge of \$3.00 per car for movement from the Feather River Lumber Company mill to Clio is unreasonable, discriminatory and in violation of the Long and Short Haul provision of the Public Utilities Act, in that it exceeded a rate of 65 cents per ton contemporaneously maintained by defendant on lumber from Davies to Delleker, involving a longer haul on the same direct line. The Commission is asked to remove the discrimination, establish reasonable rates for the future, and award reparation.

The evidence introduced at the hearing held in San Francisco August 16, 1918, is to the effect that while the line-haul rate of 65 cents per ton from Clio to Delleker is assailed, complainant's attack is directed principally against the switching charge of \$3.00 per car between complainant's mill and Clio and to the recovery of reparation for amounts paid to cover switching charges during the two-year period prior to the filing of this action. Four matters are to be adjudicated;- the reasonableness of the main-line rate, the switching charge, the violation of the Long and Short Haul provision of the Public Utilities Act, and the payment of reparation.

At the time this complaint was filed defendant was operating a narrow gauge railroad between Reno, Nevada and Lake View, Oregon, crossing the Western Pacific at Hackstaff, California, with a branch line extending from Plumas Junction west through Delleker and Clio to Davies. The movement of freight between Davies and Delleker is intrastate and the rate of 65 cents per ton on lumber applying from either Davies or Clio to Delleker is published in Defendant's Local and Joint Freight Tariff No. 9-A, C.R.C. No. 45.

Early in the year 1917, the Western Pacific Railroad purchased a part of the Nevada-California-Oregon Railway, including the branch line extending from Plumas Junction to Davies, and this Commission, by its Decision No. 4288 in Application No. 2813, dated May 2, 1917, Opinions and Orders of the Railroad Commission of California, Vol. 13, page 135, authorized the abandonment of the line and the discontinuance of the service. Effective February 10, 1918, as per Supplement No. 14 to Freight Tariff No. 9-A, C.R.C. No. 45, all rates and service between Davies - Clio and Delleker were cancelled.

Complainant introduced no direct evidence to prove that the main-line rate of 65 cents per ton was excessive, and since the line over which the rate formerly applied has been abandoned and the situation prevailing under the rates under attack no longer exists, this Commission could make no order for the future and it therefore follows that this part of the complaint must be dismissed.

The switching charges are published in defendant's Terminal Tariff No. 7, C.R.C.No. 50, in Item No. 16-B. This item on June 1, 1915 read as follows:

"Except as may be otherwise specifically provided, carload rates named in the various tariffs of the Nevada-California-Oregon Railway apply to and from regular transfer, team or side tracks of the carrier within yard limits at all stations, and include the switching of cars, both loaded and empty, to and from such tracks. \* \* \* \* \*

For switching loaded cars between Clairville, California, and the Feather River Lumber Company's mill at Clairville, \$3.00 per car, regardless of weight.

For switching loaded cars between Clio, California, and the Feather River Lumber Company's mill at Clio, \$3.00 per car, regardless of weight.

All less carload rates named in the various tariffs of carrier apply only to or from the regular freight depot, except that on shipments originating at or destined to points beyond the lines of these companies, the rates apply to and from points of transfer with connecting line."

On February 1, 1916, Item No. 16-C became effective:

"Except as may be otherwise specifically provided in this tariff, the carload rates applicable to or from points on this company's lines as published in this company's tariffs, or in tariffs in which this company is shown as a participating carrier, and lawfully on file with the Interstate Commerce Commission or State Commissions, apply to or from the depots of this company; to or from all industry tracks served by its rails and within its switching limits, also to or from interchange tracks with connecting lines at points of interchange, but do not include cost of transfer from Standard Gauge to Narrow Gauge cars, nor from Narrow Gauge cars to Standard Gauge cars at point of interchange.

For switching loaded cars between Clio, California, and the Feather River Lumber Company's mill at Clio, \$3.00 per car, regardless of weight.

All less carload rates named in the various tariffs of carriers apply only to or from the regular freight depots, except that on shipments originating at or destined to points beyond the lines of these companies, the rates apply to and from points of transfer with connecting line."

The mill of complainant is not located on defendant's main-line tracks, but is reached by a siding about four thousand feet long owned by defendant, although the testimony indicates that complainant participated in furnishing some material for the construction of the line. As shown by the items in the Terminal Tariff, defendant has always maintained and has published a charge of \$3.00 per car for movements between the Feather River Lumber Company's mill and Clio, thus indicating that the mill was never treated as being on the main line of defendant or within the switching limits of Clio station.

Davies is approximately 2.65 miles west of Clio and traffic moving from Davies to Delleker would pass through the Clio station, but since the mills of the Feather River Lumber Company are on what may be termed a branch line, southerly from Clio, a movement from Davies to Delleker would not pass through the Feather River Lumber Company's mills, and the testimony further shows that no shipments have ever moved from Davies to Delleker under the 65 cent rate.

By the provisions of Section 24(a) of the Public Utilities Act, there can be no long or short haul violation unless the carrier shall charge or receive a greater compensation for a shorter than for a longer distance over the same line, and it follows that in order to hold this defendant responsible for a violation of this provision of the Act it must be affirmatively established that traffic actually moved at the lower rate from the more distant point. For this reason and for the further fact that the Feather River Lumber Company's mill has always been treated by tariff publication as a station separate and distinct from Clio, there can be but one conclusion, which is that in this case there

has been no long and short haul violation.

Defendant maintains that because of the close proximity of the Western Pacific to the Davies mill they were forced to meet competitive conditions there which did not exist at Clie and for this reason they extended the Clie main-line rates to include the Davies mill when operations were first commenced at that point in November, 1916. It was further shown that the operating conditions were entirely dissimilar at the two shipping points and that the Davies mill required but little service as compared with the Feather River Lumber Company's plant.

There is testimony to the effect that complainant paid the transportation charges from its mill to Delleker and that such traffic was in competition with like traffic from the Davies mills in the ultimate consuming markets. The record is clear, however, that the branch line was not extended from Clie to Davies until August 1, 1916, about one year and a half prior to the abandonment of the line and some nine years after the spur was constructed from Clie to complainant's mill; further, that direct competition was absent, as no shipments of lumber ever moved from Davies to Delleker.

In view of the fact that the Nevada-California-Oregon Railway no longer operates between Davies - Clie and Plumas Junction and for the further reason that no damages have been proven due to alleged discrimination in rates between the two shipping points, I am of the opinion that the prayer for reparation should be

denied and the complaint dismissed.

O R D E R

Public hearing having been held in the above entitled proceeding and the same having been submitted and being now ready for decision.

IT IS HEREBY ORDERED that the complaint 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 2d day of December 1918.

Edwin O. Edgeston  
H. D. Loveland  
Frank R. Debnis

Commissioners.