

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Weed Lumber Company,
 a corporation,
 Complainant,
 vs.
 Southern Pacific Company,
 William G. McAdoo, Director-
 General of Railroads,
 Defendant.

CASE NO. 1284.

A. Larsson, for Complainant,
 Frank B. Austin and H. W. Klein, for Defendant.

LOVELAND, COMMISSIONER:

O P I N I O N

Complainant is a corporation engaged in the lumber business at Weed, Cal. By complaint, seasonably filed, it alleges that defendant's charges on 10 carloads of old rails shipped from Grass Lake and Murphy, Cal. to Mt. Hebron, Cal. during November and December, 1916 were unjust and unreasonable. The shipments consisted of 5 cars from Grass Lake on November 29, 1916 and a like number from Murphy on December 6, 1916. In each instance rate of 20 cents per 100 pounds was assessed.

Effective February 26, 1917 rate of 10½ cents per 100 pounds was published between the points in question. Reparation is asked on basis of the difference between the charges assessed and those that would accrue by use of the 10½ cent rate subsequently published, or such other rate as may be found proper.

An exhibit was filed on behalf of complainant showing commodity rates between points in the same territory as that embraced in this proceeding and in other districts, some of which were lower than rate of $10\frac{1}{2}$ cents published by defendant, but the evidence of record does not warrant a finding that such rates were ~~substantly~~ fair and a proper measure for the rate between the points in dispute.

The rate of $10\frac{1}{2}$ cents was voluntarily established by defendant pursuant to request of the Weed Lumber Company for rate on this commodity lower than the then existing class rate and the presumption attaches that defendant considered it reasonable and compensatory at the time.

Taking into consideration the testimony and exhibit submitted, I am of the opinion and hereby find as a fact that the rate charged on the shipments in question was unreasonable to the extent that it exceeded $10\frac{1}{2}$ cents per 100 pounds, minimum 40000 pounds.

No order for the future may be made, as the defendant carrier is now under federal control and certain rate increases have been established by authority of the Director General of Railroads, as result of which the rate $10\frac{1}{2}$ cents, on which reparation is predicated, no longer exists.

I further find that complainant made the shipments as described, paid and bore the charges thereon and has been damaged to the extent of the difference between the freight charges paid and those that would have accrued under the rate herein found reasonable and that it is entitled to reparation refund in the amount of \$368.52, with interest at rate of 7% per annum.

The following form of order is submitted:

O R D E R

Complaint and answer having been filed in the above entitled proceeding, a public hearing having been held, the Commission being fully apprised in the premises and basing its order on the finding of fact which appears in the foregoing opinion,

IT IS HEREBY ORDERED that the Southern Pacific Company be and the same is hereby authorized and directed to pay unto complainant, Weed Lumber Company, on or before *Jan. 20*, 1920 the sum of \$368.52, with interest thereon at the rate of 7% per annum from date of collection, as reparation, on account of unreasonable charges exacted for the transportation of 10 cars of old rails from Grass Lake and Murphy, Cal. to Mt. Hebron, Cal., more particularly described in Exhibit A attached to and made a part of complaint. *RM*

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 *28th* day of November, 1919.

Edwin O. Edgerton

H. D. Loveland

H. T. Brundage

Dwight Martin

Commissioners.