Decision No. 7982

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

C. A. Smith Lumber Company, Complainant, vs. Southern Pacific Company, Defendant.	CASE NO. 328.
The Pacific Lumber Company, The Charles Nelson Lumber Company, E. K. Wood Lumber Company, C. A. Smith Lumber Company, Complainants, vs. Southern Pacific Company, Defendant.	CASE NO. 335.
C. A. Smith Lumber Company, The Charles Nelson Lumber Company, E. K. Wood Lumber Company, The Pacific Lumber Company, Complainants, vs. Southern Pacific Company, Defendant.	CASE NO. 338.
C. A. Smith Lumber Company, The Charles Nelson Lumber Company, E. K. Wood Lumber Company, Complainants, vs. Southern Pacific Company, Defendant.	CASE NO. 339.
C. A. Smith Lumber Company, Complainant, vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Ry. Co. Northwestern Pacific Railroad Company, Defendants.	CASE NO. 341.

F. T. Westfall, for Complainants,
Frank P. Austin, for Defendant.

LOVELAND, COMMISSIONER:

OPINION

The complaints in these cases were filed in the months of October, November and December, 1912 and were postponed from time to time upon requests of both complainants and defendants until after the commencement of the war, when, because of acts of Congress and proclamation of the President, the jurisdiction of this Commission in the matter was suspended. For these reasons the proceedings were not terminated until the final briefs were filed in June, 1920.

Reparation is sought on three grounds; violation of the Long and Short Haul clause of the State Constitution, unreasonableness of the rates charged, and discriminatory rates.

The cases were consolidated and heard at the same time and single briefs prepared covering all cases. They will, therefore, be disposed of in one opinion and order.

The controlling features in each case, in their chronological order, follow:

CASE NO.328

This complaint involves carload shipments of lumber moving February 1910 to July 1912, from Bay Point to Sacramento, Homestead and Folsom, California. The rates charged by the defendant were:

Bay Point to Sacramento $2.00 per ton,
Homestead $2.00 per ton, plus $1.50 per car,
Folsom $3.00 per ton.

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The Sacramento rate was specifically published in Lumber Tariff No. 634 (C.R.C.699). Homestead takes switching charge of $1.50 per car over Sacramento, in accordance with switching item in Terminal Tariff. Folsom rate, while published through, is nothing more nor less than a combination of locals on Sacramento.

Effective February 6,1911 (Supplement 4 to Tariff 634, C.R.C.699) rate of 75 cents per ton was published from Bay Point to Benicia, which had the effect of reducing through rates by 25 cents per ton, or $1.75 to Sacramento (with additional charge of $1.50 per car on shipments destined Homestead) and $2.75 to Folsom by combination on Sacramento. Charges were accordingly reduced by claim medium as to shipments moving on and after February 6, 1911.

Complainant contends that charges assessed were unjust, unreasonable and discriminatory, and in violation of the Long and Short Haul provision of the State Constitution, to the extent that they exceeded rates contemporaneously in effect from San Francisco and Oakland to Sacramento $1.50 per ton (plus $1.50 per car to Homestead) and to Folsom of $2.50 per ton. These rates are based combination on Benicia, using rate of 50 cents per ton from San Francisco and Oakland to Benicia, as per Item 9-A of Supplement No.4 to Mail Dock or Benicia Commodity Tariff No. 291-C (C.R.C.33), plus rate of $1.00 per ton from Benicia to Sacramento, Item 11 of same tariff. The charges to Homestead and Folsom are based in the same manner, by combination on Sacramento. This Tariff. 291-C, originally applied from and to points named only and, effective January 28, 1910, per Supplement No. 3, was amended to carry a further note - that the rates named therein must not be used as factors in making rates to or from other points.

Effective July 10, 1912, as per Item 1-C, Supplement No.5, the prohibition as to combination was removed. It is fair to assume rule preventing combination was not rigidly adhered to, as the defendant company admits in its answer to the complaint that the combination rates were available. The tariff was also in violation of the rules of this Commission's Supplement No.2 to Tariff Circular No.1, effective November 21.1910, which provides for the application of combination rates when lower than through published rates.

CASE NO. 335.

This complaint alleges that subsequent to February 10,1910, various carload shipments of lumber moved from Oakland, San Francisco and Bay Point to Wheatland, Arbuckle, Williams, Maxwell, Delevan, Willows, Orland, Corning, Live Oak, Chico and Marysville, on which charges were assessed at rates ranging from \$3.50 to \$4.50 per ton; that rate of \$3.10 per ton was contemporaneously in effect from San Francisco, Oakland Wharf, Oakland and Richmond to Weed, non-intermediate in application; that the rates charged are unreasonable, unjust, discriminatory and in violation of the Long and Short Haul provision of the State Constitution and Section 24(a) of the Public Utilities Act.

The Commission is asked to declare \$3.10 per ton a just and reasonable rate and to award reparation on basis of the difference between the rates charged and \$3.10 per ton.

CASE NO. 338.

This Complaint alleges that between May 1910 and October, 1912 certain carloads of lumber were forwarded from San Francisco, Oakland, East Oakland and Bay Point to points specified, and charges paid thereon at rates shown:

To Galt and Dixon - - - -	$1.60	per ton
To Elk Grove and Davis- -	2.00	" "

and that such rates are unjust, unreasonable, discriminatory and in violation of the Long and Short Haul provision of the State Constitution and of the Public Utilities Act, in that they exceed rates contemporaneously maintained from San Francisco and Oakland to Sacramento of $1.50 per ton.

CASE NO.339.

Complainants here allege that between September, 1910 and June, 1912 certain carloads of lumber were forwarded to the points specified and charges paid thereon at the rates shown:

Oakland to Sunnyvale - -	$1.10	per ton
East Oakland to Mountain View-	1.10	" "
Bay Point to Redwood - -	1.45	" "
Oakland to Livermore - -	1.40	" "
Oakland to Midway - -	1.80	" "
Bay Point to Livermore - -	1.60	" "
Bay Point to Remillard - -	1.60	" "
Bay Point to Eliot - -	1.60	" "

All of these rates are claimed to be unjust, unreasonable and discriminatory, also that the rates to Livermore, Midway, Remillard and Eliot are in violation of the Long and Short Haul

provisions of the State Constitution. The rates alleged to be reasonable are as follows:

Oakland to Sunnyvale - - -	$ .60	per	ton
East Oakland to Mountain View-	.60	"	"
Bay Point to Redwood - - -	1.20	"	"
Oakland to Livermore - - -	1.20	"	"
Oakland to Midway - - -	1.20	"	"
Bay Point to Livermore- - -	1.20	"	"
Bay Point to Remillard- - -	1.20	"	"
Bay Point to Eliot - - -	1.20	"	"

The claimed reasonable rates to Coast Division points - Sunnyvale, Mountain View and Redwood are based on a rate of 60 cents, applying from San Francisco and Oakland to San Jose, which complainant contends should not be exceeded. The rates to Livermore - Eliot are based on the rates in effect from Oakland to Tracy of $1.20 per ton and from Bay Point to Niles of $1.20.

CASE NO. 341.

Complainant alleges that certain carloads of lumber were forwarded from Bay Point to points indicated subsequent to February 10, 1910 and charges paid thereon at the following rates:

Berkeley, Selby, Crockett, Martinez, Tormey, Oleum, Rodeo, Pinole, Nitro, Richmond, Stege, West Berkeley, Tillman, Paraffin, Emeryville, Oakland, Fruitvale, Melrose, Alameda, - -	$ .65	per	ton
Hayward, San Leandro - - - - - - -	1.15	"	"
Petaluma, San Anselmo, Santa Rosa - - (a)	1.65	"	"

(a) Joint movement via Southern Pacific Company, Atchison, Topeka & Santa Fe and Northwestern Pacific, combination of separately established locals.

That the rates to the first named points are unjust, unreasonable, discriminatory and in violation of the Public Utilities Act, in that

they exceed the rate of 60 cents per ton in effect in the opposite direction, from Oakland to Bay Point, and that the other rates charged were excessive by 5 cents per ton, by reason of the claimed reasonableness of the rate of 60 cents per ton Oakland to Bay Point.

I shall first deal with Cases Nos. 339 and 341.

In Case No. 339, it is maintained that the rates from Oakland and East Oakland to Coast Division Points of the Southern Pacific Company between San Francisco and San Jose should not be in excess of a rate of 60 cents per ton in effect from San Francisco to Coast Division points and that the rates from Bay Point to the same destinations should not be in excess of a combination based on this 60 cent rate. The rate on lumber of 60 cents per ton, upon which the claim for reparation is based, was made effective a great many years ago, when there was competition or threatened competition by water carriers between San Francisco and San Jose via Alviso.

According to the testimony of defendant's witnesses, this rate was not applied from Oakland via San Francisco for the reason that the same competitive conditions did not then and do not now exist at that point. There is here no violation of the Long and Short Haul provision of the State Constitution, the 60 cent rate being applicable only via specific routes and is not exceeded at the intermediate points.

With reference to the rates from Oakland to Livermore and Midway, where $1.40 and $1.80 per ton were charged and collected, it is alleged that the rate should have been $1.20 per ton, this

being the rate in effect from Oakland to Tracy and Stockton, non-intermediate in application at the time these shipments moved; and that they are, therefore, in violation of the Long and Short Haul provision of the State Constitution.

It is further alleged that the rate from Bay Point to Livermore, Remillard and Eliot of $1.60 per ton should not have been in excess of $1.20 per ton, this being the rate from Bay Point to Niles.

The points involved are not intermediate between Bay Point and Niles either via the Port Costa-Oakland route or via Avon-Radum; there is no long and short haul violation. Neither were the rates per se shown to be excessive or unreasonable.

In Case No. 341, the charges are claimed to be unreasonable and discriminatory on the grounds that the rates of the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railway Company are higher on northbound traffic from Bay Point to Oakland than are the rates in the opposite direction, from Oakland to Bay Point.

The Northwestern Pacific Railroad Company is made a defendant, for the reason that certain of the shipments referred to in the application were destined to points on that line. The rate under attack, of 65 cents per ton on lumber from Bay Point to Oakland, was established in the year 1909 and has continued in effect up to the present time, with the exception of the increase, effective June 25, 1918, in compliance with General Order No. 28 of Director-General McAdoo. There is here no violation of the Long and Short

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Haul provision of the State Constitution; the only point involved is as to whether or not the rate of 65 cents per ton was excessive and unreasonable upon the theory that it should not exceed a rate of 60 cents per ton maintained by the defendants in the opposite direction.

The testimony of defendants' witnesses was to the effect that the 60 cent rate was published to meet the competition of lumber moving from San Francisco to Pittsburg and Bay Point on barges and that there was not the same competition to be met in the movement in the opposite direction. It is not an uncommon practice for carriers to maintain lower rates in one direction than in the other and, as in this case, where the rates were forced down by water competition, the adjustment cannot be considered as either unreasonable or discriminatory.

Complainaint and defendants presented a number of exhibits applicable to both of these proceedings, dealing with the circumstances surrounding the transportation, history of the rates, their relationship to other rates, earnings per ton mile, per car mile, etc. All of these exhibits have been given careful consideration, but it will not be necessary to reproduce any of them or enter into an analysis.

The record is not compelling that the rates in issue in these two cases (Nos.339 and 341), and which are not in violation of the Long and Short Haul provisions of the Constitution, were either unreasonable or discriminatory at the time they were charged. It therefore follows that the claim for reparation must be denied. It might here be added that owing to Federal control, this Commission is without jurisdiction to make a complete readjustment of rates

until September 1, 1920, therefore the volume of any rate for future application cannot be considered on this record.

Consideration will now be given to the allegation that the charges collected against shipments included in Cases Nos.328, 335, 338 and part of 339 are in violation of the long and short haul provisions of the Constitution of this State, of the Wright Act, and of the Public Utilities Act.

Under date June 19, 1916, by Decisions Numbers 3436, 3437, 3440, and 3441, in Cases 214(a)-(b)-(e) and (f), the Southern Pacific Company and The Atchison, Topeka & Santa Fe Railway Company were granted final authority to continue freight rates in violation of the long and short haul provisions of the State Constitution and of Section 24 of the Public Utilities Act. These decisions were in confirmation of the earlier formal orders made in the same proceedings under dates October 26, 1911, November 20, 1911, Jan. 19, 1912 and February 15, 1912, which orders this Commission believed to be in full compliance with the Constitution as amended and of the different sections of the Wright Act, Chapter 312, Statutes of 1909, Stetson-Eshleman Act, Chapter 20, Statutes of 1911, and Public Utilities Act, Chapter 14, Statutes of 1911 extra session.

The question, however, of the payment of reparation for long and short haul violations prior to the date of this Commission's final action, unless the bar of the statute of limitation had fallen, is no longer a matter of doubt, following the decisions of our Supreme Court in the case of the California Adjustment Company vs. Atchison, Topeka & Santa Fe Railway Company, 179, Cal., 140, and by the decision of the Circuit Court of Appeals, Southern Pacific Company vs. California Adjustment Company 237 Fed.954. In these cases the

courts held that under the Constitution of 1879 the legitimate maximum charge for the short haul was the charge the carrier made for the longer haul and that it was only necessary to show proof that the shipper paid a larger sum for the short haul than the defendant would have charged for the longer one. In the cases before the courts carriers were required to pay the reparation claims.

It follows that these complainants are entitled to reparation refunds for the long and short haul violations involved in Cases 328, 335, 338 and 339 of the differences between the amounts paid at the rates charged and what would have been paid had the lower rates to the more distant points, which were in violation of the long and short haul provision of the State Constitution, been applied.

The exact amount of the reparation due cannot be determined upon this record and the complainants should prepare a statement showing as to each shipment upon which reparation is claimed, the date of shipment, point of origin and destination, car numbers and initials, weight, rate applied, charges collected, and the amount of reparation due under the findings herein, which statement should be submitted to defendants. If the amounts due cannot be agreed to between the parties the Commission will issue a further order setting forth the exact sum to be paid.

ORDER

Complaints and answers having been filed in the above entitled proceedings, a public hearing having been held, the Railroad Commission being fully apprised in the premises and basing its order

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on the findings of fact which appear in the foregoing opinion,

IT IS HEREBY ORDERED that the Southern Pacific Company is hereby authorized and directed to pay to complainants who made the shipments involved and who paid and bore the charges thereon, as their interests may appear, sums equal to the difference between the charges paid, with interest, and those that would have accrued at the rates in effect to more distant points on shipments made prior to June 19, 1916, provided such shipments were covered by claims presented to the Railroad Commission within the statutory period.

IT IS HEREBY FURTHER ORDERED that if an agreement cannot be reached as to the exact amount of reparation due, complete data be submitted to this Commission, when a supplemental order fixing the amount of reparation will be entered.

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 12th day of August, 1920.

Edwin O. Edgerton
H. D. Loveland
Frank R. Devlin
H. G. Brundige
Irving Martin
Commissioners.