

C. A. SMITH LUMBER COMPANY, )  
 Complainant )  
 vs ) Case No. 328  
 SOUTHERN PACIFIC COMPANY, )  
 Defendant )

THE PACIFIC LUMBER CO., et al, )  
 Complainants )  
 vs ) Case No. 335  
 SOUTHERN PACIFIC COMPANY, )  
 Defendant )

C. A. SMITH LUMBER CO., et al, )  
 Complainants )  
 vs ) Case No. 338  
 SOUTHERN PACIFIC COMPANY, )  
 Defendant )

C. A. SMITH LUMBER CO., et al, )  
 Complainants )  
 vs ) Case No. 339  
 SOUTHERN PACIFIC COMPANY, )  
 Defendant )

C. A. SMITH LUMBER COMPANY, )  
 Complainant )  
 vs ) Case No. 341  
 SOUTHERN PACIFIC COMPANY, et al, )  
 Defendants )

P. F. Westfall for Complainants  
 Henley C. Booth for Defendants.

BY THE COMMISSION:

FIRST SUPPLEMENTAL OPINION AND ORDER

Since the denial, on October 11, 1920, of the petition for rehearing, a petition was filed by the Southern Pacific Company on October 27, 1920, for a supplemental order modifying the Commission's decision and order made herein on August 12, 1920.

ORIGINAL

By the terms of the order in question, reparation was granted as to all shipments made prior to June 19, 1916, which was the date of the final orders in Cases 214 (a), (b), (c) and (f), authorizing the continuance in effect of certain freight rates in violation of the long and short haul provisions of the State Constitution and of Section 24 of the Public Utilities Act.

As pointed out in the opinion preceding this order, these decisions of June 19, 1916, Nos. 3436, 3437, 3440 and 3441, "were in confirmation of the earlier formal orders made in said proceedings under dates of October 26, 1911, November 20, 1911, January 19, 1912 and February 15, 1912, which orders this Commission believed were sufficient to relieve the carriers from the long and short haul provision above referred to." It was further stated in the Commission's opinion, however, that the decision of the Supreme Court in the case of California Adjustment Co. v. Atchison, Topeka & Santa Fe Ry. Co., 179 Cal. 140, held adversely to the Commission's belief, and in effect decided that, under the provisions of the Constitution and the Public Utilities Act, the Commission had no authority to relieve the carriers from the long and short haul provisions until its final order was made in the proceedings initiated by application filed by the carriers for such relief. A careful analysis of the decision in 179 Cal. 140, indicates that it does not go to the extent of overruling, in effect, the Commission's prior decisions in which the Commission exercised its jurisdiction to grant relief from the long and short haul provisions after application had been filed by the carriers and proper investigation made by the Commission.

California Packing Corp. v. Southern Pacific Co.  
and Santa Fe Railway Co., Decision No. 4003  
(12 Opinions and Orders of the California Rail-  
road Commission, 261);

Santa Fe Traffic Association v. Southern Pacific  
Co., Decision No. 2884 (8 Opinions and Orders  
of California Railroad Commission, 390).

The Supreme Court in the case referred to decided that the Commission is without jurisdiction to make an effective order relieving the carriers from the long and short haul provisions of the Constitution and Public Utilities Act in absence of proper application to the Commission by the carriers affected and due investigation by the Commission.

It is pointed out by the Supreme Court on page 150 of the opinion that the record before the Court showed that the defendant carrier never filed any application before December 30, 1911, and that no investigation was had on this application prior to the commencement of the action, and that no order was finally made approving any of the rates or fares contained in the schedules filed by the carrier.

It is very evident, from this statement in the opinion, that the record of the case before the Supreme Court did not fully set forth the facts which are relied upon by the Commission in its earlier decisions granting relief from the long and short haul provisions. This is shown by the following quotation from the Commission's Decision No. 2884 above referred to (Vol. 8, Opinions and Orders of Railroad Commission of California, 390, 393):

"The evidence in this proceeding shows clearly that the investigations thus conducted by the rate department were extended and exhaustive and that frequent conferences on this subject were held, as the investigation proceeded, between the Commission and its rate department, prior to the order of February 15, 1912. This investigation, as shown by the evidence herein, covered not merely the general subject but also was specifically directed to the individual

"deviations shown in the petitions of the carriers. The order of February 15, 1912, was based upon these investigations."

We are of the opinion, therefore, that the decision of the Supreme Court in the case of California Adjustment Co. v. Atchison, Topeka & Santa Fe Ry. Co., 179 Cal. 140, is not in conflict with the position heretofore taken by the Commission granting relief from the long and short haul provisions for all shipments moved subsequent to February 15, 1912.

We conclude, therefore, that the petition for a modification of this Commission's first opinion and order herein should be granted, and that reparation should be allowed only for all shipments moving prior to February 15, 1912, which was the date upon which the Commission first made an order relieving the carriers from the long and short haul provisions, and which order, as shown by the above quotation from the Commission's Decision No. 2884, was based upon an investigation by the Commission after application duly filed by the carrier.

O R D E R

IT IS HEREBY ORDERED that the order heretofore issued herein on the 12th day of August, 1920, under Decision No. 7982, be amended by substituting the date "February 15, 1912," in place of the date, "June 19, 1916," appearing in the second paragraph of the Order, so that said paragraph as amended shall read as follows:

"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 February 15, 1912, provided such shipments were covered by claims presented to the Railroad Commission within the statutory period."

Said order in other respects to remain unchanged.

Dated at San Francisco, California, this 30<sup>th</sup> day of November, 1920.

Edwin O. Edgerton  
H. B. Leonard  
Samuel C. Wilson  
H. T. Brundage  
Erving Martin  
Commissioners