

Decision No. 27106.

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SUGAR PINE LUMBER COMPANY, LTD.,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,  
MINARETS AND WESTERN RAILWAY  
COMPANY, LTD.,

Defendants.

Case No. 3576.

A. Larsson and H. L. Howland, for complainant.

James E. Lyons and H. H. McElroy, for defendants.

BY THE COMMISSION:

O P I N I O N

In this proceeding complainant alleges that the charges assessed and collected on various shipments of slab wood and mill blocks in carloads transported during the years 1931 and 1932 from Pinedale on the Minarets and Western Railway to points on the Southern Pacific Company between Fresno and Stockton were in violation of the long and short haul provisions of Section 24(a) of the Public Utilities Act. Reparation only is asked.

A public hearing was had before Examiner Geary and the matter submitted.

The shipments here at issue moved from Pinedale on the Minarets and Western Railway to Pinedale Junction, thence Southern Pacific to Turlock, Livingston, Merced, Patterson, Gustine, Los Banos, Dos Palos and Firebaugh. The rates assessed and collected

varied from \$1.55 to \$2.70 per cord of 128 cubic feet. At the time the shipments moved defendants had in effect a rate of \$1.40 per cord to Madera. Complainant contends that under the routing shown in the tariff the Madera rate applied via the Minarets and Western Railway via Pinedale Junction, Southern Pacific via Stockton, thence A.T.& S.F.Ry. to Madera. If the tariff so provided, the points of destination to which complainant made shipments were intermediate to Madera, resulting in a higher charge for a shorter than for a longer distance over the same line or route in the same direction. On the other hand, if the Madera rate did not apply via the Stockton gateway, then no long and short haul departures were created.

Thus the determination of whether or not a long and short haul departure existed requires an interpretation of the applicable tariff. Effective September 1, 1929, defendants, in Pacific Freight Tariff Bureau Tariff 48-L, C.R.C. 450, of F. W. Gomph, published numerous rates on slab wood and mill blocks from Pinedale to San Francisco Bay points and points south of Stockton to and including Bakersfield. These rates were contained in five different items. The rates to points north of Stockton applied via the Stockton gateway, and those to Stockton and south thereof, via the Fresno gateway. In reissuing Tariff 48-L all of the rates heretofore referred to were combined in one item (Item 470). In so doing the tariff compiler showed both the Fresno and Stockton gateways as the routes via which the rates applied.

Complainant is relying upon an obvious faulty tariff construction to obtain reparation. The construction it placed upon Item 470 does violence to all the equities of the situation. The distance from Pinedale to Madera via Fresno, the normal and logical route, is 41 miles. Via the Stockton route the distance is 265 miles. At first impression, and considering only the routing pro-

vision of the Item, it would appear that all rates apply via both the Fresno and Stockton gateways. But a closer analysis of the Item, giving consideration to it as a whole, reveals a different and logical construction to place thereon. The routing is shown directly opposite five points on the Santa Fe, namely, San Francisco, Oakland (Alice Street), Oakland (Emeryville), Richmond and Alameda. Following that is a line and a separate heading as follows: "A.T. & S.F. Ry. See note below." In a note at the bottom of the Item follow the individual points of destination south of Stockton to and including Bakersfield on the Santa Fe, all of which are arranged in geographical order. Opposite each point is shown the rate applicable. The rates are largely graded according to distance, and it would appear from a reasonable reading of the Item in its entirety that the Stockton gateway could not be construed as applying to the points south of Stockton.

Where two constructions of a tariff are possible, the one which makes the tariff lawful should be given preference. Great Northern Ry. Co. vs. Del Mar, 283 U.S. 686. Moffat vs. Southern Pacific Co., Case 3146, Decision 26380.

The complaint will be dismissed.

O R D E R

This case having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing the order on the findings of fact contained in the preceding opinion,

IT IS HEREBY ORDERED that Case 3576 be and it is hereby dismissed.

Dated at San Francisco, California, this 28th day of May, 1934.

OC Leary  
M. A. Lee  
M. B. Loring  
W. J. Loring  
Commissioners.