

Decision No. 38770

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Clover Valley Lumber Company,)
 Complainant,)
 v.)
 The Western Pacific Railroad)
 Company,)
 Defendant.)

Case No. 4757

ORIGINAL

Appearances

Gwyn H. Baker and A. Larsson, for complainant.
John E. Hennessy, for defendant.

O P I N I O N

Complainant alleges that the rates charged by defendant for the transportation of 6 carloads of railroad ties from Greenville to Hawley and Loyalton during the period July 20, 1943, to June 15, 1944, inclusive, were and are inapplicable and unreasonable in violation of Sections 17 and 13 of the Public Utilities Act. It asks that reparation be awarded and that defendant be required to observe for the future rates no higher than the rate on the basis of which reparation is sought.

A public hearing was had at San Francisco before Examiner Mulgrew.

Greenville is on defendant's Keddle-Bieber line 15 miles north of Keddle at which point it connects with the main line. Hawley is on the main line 47 miles east of Keddle. Loyalton is on a branch line 12 miles south of the main line connection at Hawley. A rate of 10½ cents was charged on the 4 carloads of ties shipped

to Hawley.¹ On the 2 carloads shipped to Loyaltan a 13-cent rate was charged. The Hawley rate was published to apply only on shipments of railroad ties and was 1/2 cent lower than the rate on lumber and numerous lumber products. The rate used on the Loyaltan shipments was published on lumber and lumber products including railroad ties. Defendant contemporaneously maintained a 7½-cent rate on "lumber, rough as from the log" from Greenville to Hawley and Loyaltan.

Complainant contends (1) that the 7½-cent rate on "lumber, rough as from the log" was and is applicable to shipments of railroad ties and (2) that rates on ties higher than this rough lumber rate were and are unreasonable. In support of the first of these contentions complainant relies principally upon the testimony of an industrial traffic manager for lumber interests. The traffic manager said that he had had "considerable experience and contact with lumber people in the manufacture and sale of their products" and that he was "familiar, in a general way, with the different types and sizes of lumber." Railroad ties, the witness stated, are not further finished than rough sawed. Therefore, he claimed, this commodity is covered by the description "lumber, rough as from the log."

Defendant denies that railroad ties are rough lumber. Its witness, the resident manager of a lumber mill located in the producing territory here involved, testified that a railroad tie is a manufactured product. He pointed out that specifications for ties are contained in grading and dressing rules promulgated by lumbermen's associations. In producing ties, he said, the "grades" on the outside of the log are taken off, the log is "squared up" and ties of

¹ Throughout this opinion rates are stated in cents per 100 pounds.

the required size are cut therefrom. On the other hand, the witness stated, lumbermen generally consider the description "lumber, rough as from the log" as covering lumber just as it comes from the mill, green or dry, and in mixed "grades" and dimensions. The green lumber, he said, is piled and dried and all of it is graded and sorted before being further processed.

The record shows that in the terminology of the lumber business the expression "lumber, rough as from the log" has an accepted meaning which does not include railroad ties. It is well settled that in determining transportation rates the terms used in carriers' tariffs must be given their commercial meanings.² Complainant has not substantiated its contention that defendant's 7 $\frac{1}{2}$ -cent rate on "lumber, rough as from the log" from Greenville to Hawley and Loyaltan was and is applicable to shipments of railroad ties.

The question of the reasonableness of the assailed rates remains for determination. Complainant's rate witness testified that railroad tie rates are generally either the same as or lower than lumber rates. In addition, a rate study prepared by the witness indicates that ton-mile and car-mile earnings which the sought rate would produce for the distances of 62 and 74 miles involved would exceed such earnings under six lumber and tie rates maintained by defendant and other California rail lines for distances ranging from 181 to 350 miles. The study also shows ton-mile and car-mile earnings under defendant's rates on second-hand ties and other lumber products for the 37-mile haul from Westwood to Halls Flat. These

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See Decision No. 38195 (46 C.R.C. 25) and other decisions referred to therein.

earnings are higher than those which the sought rate would produce.³

Defendant's rate witness testified that the rough lumber rate which complainant seeks to have applied to shipments of railroad ties was established shortly after the Greenville mill was placed in operation, that there were no facilities for drying lumber at Greenville, and that the rate in question was published to Loyalton so that a considerable quantity of green lumber produced by the Greenville mill could be dried at Loyalton under kiln-drying in transit rates maintained by defendant and its connections. Studies prepared by this witness show that ton-mile and car-mile earnings under the sought rate would be within the range of earnings from other rates on lumber from producing to transit points involving distances of from 41 to 153 miles.

The assailed rates were also compared by defendant's rate witness with 39 other rates on railroad ties maintained by his company for distances of from 29 to 85 miles. This study shows that ton-mile and car-mile earnings under the assailed rates are generally lower than such earnings under the compared rates. The witness also referred to proceedings before the Commission wherein rates were prescribed for the transportation of lumber and lumber products. His study of rates prescribed for distances of from 20 to 86 miles shows that ton-mile and car-mile earnings under those rates are generally higher than under the rates here assailed.

On this record it appears that the rough lumber rate on the basis of which reparation is sought was voluntarily established to develop kiln-drying in transit traffic, and that this rate, as well as

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All of complainant's comparisons of rates and earnings, as well as those comparisons submitted by defendant which are subsequently referred to in this opinion, are shown in Appendix "A" hereto.

other lumber rates for transit traffic, is on a relatively low basis. The record also shows that the assailed rates are not higher than the rates generally maintained by defendant on railroad ties nor higher than lumber and lumber products rates prescribed by the Commission for comparable distances. It has not been established that the rates assailed were or are unreasonable.

Upon consideration of all the facts of record we are of the opinion and find that the rates charged on the shipments involved in this complaint have not been shown to be inapplicable or unreasonable. The complaint will be dismissed.

O R D E R

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and basing this order upon the findings of fact and the conclusions in the opinion which precedes this order,

IT IS HEREBY ORDERED that the above entitled complaint be and it is hereby dismissed.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 17th day of March, 1946.

L. Harold Anderson

John W. Lawrence

Harold P. Hull
Commissioners

APPENDIX "A" TO DECISION NO.
IN CASE NO. 4757 SHOWING RATE AND EARNING
COMPARISONS SUBMITTED BY THE PARTIES.

7. COMPLAINANT'S COMPARISONS

| From | To | # Routes | Miles | ## Rates | Minimum Weights (In Pounds) | Earnings | |
|------------|------------|-------------|-------|-------------|-----------------------------------|------------------------|--------------------------|
| | | | | | | Ton-Mile (In Mills) | Car-Mile** (In Cents) |
| Greenville | Hawley | 1 | 62 | (T) 10½ | 30,000 | 33.9 | 51 |
| Greenville | Hawley | 1 | 62 | (R) 7½ | 50,000 | 24.2 | 61 |
| Greenville | Loyalton | 1 | 74 | 13 | 34,000 | 36.5 | 60* |
| Greenville | Loyalton | 1 | 74 | (R) 7½ | 50,000 | 20.3* | 51 |
| Westwood | Sacramento | 1 | 181 | 15 | 34,000 | 16.6 | 28 |
| Bieber | Sacramento | 1 | 255 | 15 | 34,000 | 11.8 | 20 |
| Pondosa | Sacramento | 2 | 320 | 16 | 34,000 | 10.0 | 17 |
| Mt. Shasta | Sacramento | 3 | 350 | 16 | 34,000 | 9.1 | 16 |
| Sacramento | Herlong | 4 | 259 | (RT) 15 | 50,000 | 11.6 | 29 |
| Sacramento | Herlong | 1 | 233 | (RT) 15 | 50,000 | 12.9 | 32 |
| Westwood | Halls Flat | 1 | 37 | (TS) 6½ | 40,000 | 35.1 | 70 |
| Westwood | Halls Flat | 1 | 37 | (T) 8 | 60,000 | 43.2 | 129 |
| Westwood | Halls Flat | 1 | 37 | 11 | 34,000 | 59.5 | 101 |

Explanation of Routes:

- Route 1 = Western Pacific
- Route 2 = McCloud River R.R. - Western Pacific
- Route 3 = Southern Pacific - Western Pacific
- Route 4 = Southern Pacific

Rates Preceded by Symbols Are Restricted
in their Application to the Commodities
indicated below:

- (R) = Lumber, rough as from the log.
- (T) = Ties.
- (RT) = Lumber, rough as from the log, and ties.
- (TS) = Ties, second-hand.

* Errors in calculation corrected.

** Earnings computed on minimum carloads.

DEFENDANT'S COMPARISONS OF SOUGHT RATES WITH
RATES FROM PRODUCING TO TRANSIT POINTS

| <u>From</u> | <u>To</u> | <u>Routes</u> | <u>Miles</u> | <u>Rates*</u> | <u>Earnings</u> | |
|---------------------------------|-----------|---------------|--------------|---------------|--------------------------------|----------------------------------|
| | | | | | <u>Ton-Mile (In Mills)</u> | <u>Car-Mile** (In Cents)</u> |
| <u>Sought Rate:</u> | | | | | | |
| Greenville | Hawley | 1 | 62.1 | 7½ | 24.2 | 94.9 |
| Greenville | Loyalton | 1 | 73.9 | 7½ | 20.3 | 79.8 |
| <u>Rates to Transit Points:</u> | | | | | | |
| Virginia | Oroville | 1 | 65.2 | 7 | 21.5 | 84.4 |
| Grays Flat | Oroville | 1 | 67.5 | 7 | 20.7 | 81.5 |
| Crescent Mills | Oroville | 1 | 84.4 | 9 | 21.3 | 83.8 |
| Sims | Dorris | 2 | 97.7 | 11 | 22.5 | 88.5 |
| Sims | Weed | 2 | 40.2 | 5½ | 27.4 | 107.5 |
| Hilt | Weed | 2 | 53.4 | 5½ | 20.6 | 81.3 |
| Montague | Dorris | 2 | 93.8 | 9 | 19.2 | 75.4 |
| Anderson | Dorris | 2 | 153.1 | 15 | 19.6 | 77.0 |
| Redding | Dorris | 2 | 142.0 | 14 | 19.7 | 77.5 |
| Diamond Springs | Stockton | 2 | 92.6 | 10 | 21.6 | 84.9 |

Route 1 - Western Pacific

Route 2 - Southern Pacific

*Minimum carload weight 50,000 pounds.

**Earnings computed on average weight of complainant's shipments, viz., 78,617 pounds.

DEFENDANT'S COMPARISONS OF ASSAILED RATES WITH
OTHER RATES IT MAINTAINS ON RAILROAD TIES

| <u>From</u> | <u>To</u> | <u>Miles</u> | <u>Rates*</u> | <u>Earnings</u> | |
|------------------------|------------|--------------|---------------|--------------------------------|----------------------------------|
| | | | | <u>Ton-Mile (In Mills)</u> | <u>Car-Mile** (In Cents)</u> |
| <u>Assailed Rates:</u> | | | | | |
| Greenville | Hawley | 62.1 | 10½ | 33.8 | 132.9 |
| Greenville | Loyalton | 73.9 | 13 | 35.2 | 138.3 |
| <u>Other Rates:</u> | | | | | |
| Loyalton | Paxton | 62.4 | 11 | 35.2 | 138.5 |
| Loyalton | Rich Bar | 75.3 | 14 | 37.1 | 146.1 |
| Virginia | Oroville | 65.2 | 11 | 33.7 | 132.6 |
| Greagle | Merlin | 62.8 | 13 | 41.4 | 162.7 |
| Greenville | Calime | 61.7 | 14 | 45.3 | 178.3 |
| Delleker | Merlin | 72.5 | 14 | 38.6 | 151.8 |
| Crescent Mills | Blinzig | 61.1 | 13 | 42.5 | 167.2 |
| Westwood | Clio | 72.3 | 14 | 38.7 | 152.2 |
| Westwood | Cromberg | 62.0 | 13 | 41.9 | 164.8 |
| Westwood | Belden | 59.9 | 11 | 36.7 | 144.3 |
| Bieber | Westwood | 73.9 | 14 | 37.8 | 148.9 |
| Bieber | Norvell | 60.8 | 14 | 46.1 | 181.0 |
| Massack | Doyle | 71.3 | 13 | 36.4 | 143.4 |
| Grays Flat | Tambo | 74.7 | 14 | 37.4 | 147.3 |
| Grays Flat | Land | 60.5 | 11 | 36.3 | 142.9 |
| Crescent Mills | Land | 77.0 | 13 | 38.8 | 152.7 |
| Crescent Mills | Halls Flat | 67.8 | 15 | 44.0 | 173.9 |
| Greenville | Halls Flat | 61.7 | 11 | 35.6 | 140.1 |
| Almapor | Halls Flat | 51.0 | 11 | 43.1 | 169.5 |

(Concluded on Page 3)

DEFENDANT'S COMPARISONS OF ASSAILED RATES WITH
OTHER RATES IT MAINTAINS ON RAILROAD TIES

(Continued from Page 2)

| From | To | Miles | Rates* | Earnings | |
|---------------------|------------------|-------|--------|------------------------|--------------------------|
| | | | | Ton-Mile (In Mills) | Car-Mile** (In Cents) |
| Other Rates: | | | | | |
| Bieber | Halls Flat | 36.9 | 11 | 59.6 | 234.3 |
| Greenville | Jellico | 69.5 | 12 | 34.5 | 135.7 |
| Crescent Mills | Jellico | 75.2 | 15 | 39.8 | 148.8 |
| Virgilia | Westwood | 49.6 | 9 | 36.2 | 142.6 |
| Westwood | Halls Flat | 37.0 | 8 | 43.2 | 129.7 |
| Little Valley | Westwood | 55.4 | 14 | 50.5 | 198.6 |
| Massack | Westwood | 51.3 | 11 | 42.8 | 168.5 |
| Sloat | Westwood | 60.3 | 12 | 39.8 | 156.4 |
| Greagle | Westwood | 69.3 | 13 | 37.6 | 147.9 |
| Delleker | Westwood | 78.7 | 14 | 35.5 | 139.8 |
| Almanor | Hawley | 72.8 | 11½ | 31.5 | 124.1 |
| Little Valley | Hambone | 63.7 | 15 | 47.0 | 185.1 |
| Virgilia | Clear Creek Jct. | 45.4 | 9 | 39.6 | 155.8 |
| Little Valley | Clear Creek Jct. | 59.6 | 14 | 47.1 | 184.6 |
| Bieber | Clear Creek Jct. | 78.1 | 14 | 35.8 | 140.9 |
| Sloat | Clear Creek Jct. | 56.1 | 12 | 42.7 | 168.1 |
| Greagle | Clear Creek Jct. | 64.9 | 13 | 40.1 | 157.4 |
| Delleker | Clear Creek Jct. | 74.5 | 14 | 37.5 | 147.7 |
| Almanor | Loyalton | 84.6 | 14½ | 34.2 | 134.7 |
| Greagle | Chilcoot | 29.2 | 7 | 47.9 | 188.4 |

*Minimum carload weight 30,000 pounds, except Westwood to Halls Flat minimum carload weight 60,000 pounds.

**Earnings computed on average weight of complainant's shipments, viz., 78,617 pounds.

DEFENDANT'S COMPARISONS OF ASSAILED RATES WITH
RATES PRESCRIBED BY THE COMMISSION

| From | To | Miles | Rates | Earnings | |
|--------------------------|----------------|-------|-------|------------------------|--------------------------|
| | | | | Ton-Mile (In Mills) | Car-Mile** (In Cents) |
| Assailed Rates: | | | | | |
| Greenville | Hawley | 62.1 | 10½ | 33.8 | 132.9 |
| Greenville | Loyalton | 73.9 | 13 | 35.2 | 138.3 |
| Prescribed Rates: | | | | | |
| Madera | Exeter (1) | 73 | 13½ | 37.0 | 145.4 |
| Pinedale | Exeter (1) | 72 | 15 | 41.7 | 163.8 |
| Merced Falls | Fresno (1) | 79 | 15½ | 39.2 | 154.3 |
| San Pedro | Colton (1) | 81 | 14 | 34.6 | 135.9 |
| Madera | Visalia (1) | 63 | 13½ | 42.9 | 168.5 |
| Pinedale | Merced (1) | 76 | 15½ | 40.8 | 160.3 |
| Madera | Merced (1) | 33 | 3½ | 51.5 | 202.5 |
| Madera | Fresno (1) | 22 | 7 | 63.6 | 250.1 |
| Westwood | Litchfield (2) | 44 | 13 | 59.1 | 232.3 |
| Westwood | Leavitt (2) | 36 | 11 | 61.1 | 240.2 |
| Westwood | Susanville (2) | 29 | 9 | 62.1 | 244.0 |
| Susanville | Facht (2) | 25 | 8 | 64.0 | 251.6 |
| Susanville | Lasco (2) | 20 | 7 | 70.0 | 275.2 |
| Sacramento | Rumsey (3) | 79 | 17½ | 44.3 | 174.2 |
| Sacramento | Calistoga (3) | 86 | 17½ | 40.6 | 160.0 |
| Sacramento | Elmira (3) | 29 | 7 | 48.3 | 189.8 |

(1) Prescribed in Decision No. 14732, 26 C.R.C. 217;

(2) Prescribed in Decision No. 15052, 26 C.R.C. 602;

(3) Prescribed in Decision No. 20920, 32 C.R.C. 798.

*Earnings computed on average weight of complainant's shipments, viz., 78,617 pounds.

END OF APPENDIX