

Decision No. 42549

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Scott Lumber Company, Inc.,

Complainant,

vs.

The Atchison, Topeka & Santa Fe
Railway Company, The Western
Pacific Railroad Company, The
Great Northern Railway Company,
Southern Pacific Company, et al.,

Defendants.

Case No. 4863

ORIGINAL

Additional Appearances

Frank Loughran and William Larimore, for
Yreka Western Railroad Company.
Floyd Merrill, for Sugar Creek Fine Company.
E. L. Van Dellen, for defendants.
Gerald Morrison, for Yreka Chamber of Commerce.

OPINION ON REHEARING

Complainant operates a lumber mill located near Burney, Shasta County. It is served by Burney Transportation Company, a highway common carrier. The nearest rail shipping point is Pondosa, Siskiyou County, on the line of the McCloud River Railroad Company. The constructive highway distance from the mill to Pondosa is 37 miles. Other lumber mills situated at Fort Jones, Etna, and Callahan in Siskiyou County are served by the highway division of Yreka Western Railroad Company. These mills are 26, 47, and 57 constructive miles, respectively, from Yreka, the railroad's terminal and the nearest rail shipping point. Both the McCloud River and Yreka Western railroads connect with Southern Pacific Company, the former at Mount Shasta, the latter at Montague. Southern Pacific, in turn, connects with Pacific Electric Railway and Union Pacific Railroad Company at interchange points in southern California.

Southern Pacific, Pacific Electric, and Union Pacific participate in joint through rates for the transportation of lumber and other forest products from Fort Jones, Etna, and Callahan to various destinations. Similar rates are not available for transportation from complainant's mill near Burney. Decision No. 41023 of December 17, 1947, in this proceeding, found that the practice of these three defendants in publishing and maintaining joint through rates from the Yreka Western points and refusing to do so from Burney resulted in preference or advantage and prejudice or disadvantage in violation of Section 19 of the Public Utilities Act. They were directed to remove this preference and advantage. They elected to cancel the joint through rates from the Yreka Western points and filed Application No. 29070 seeking authority under Section 63 of the Public Utilities Act to establish the increases involved. Meanwhile, Yreka Western Railroad Company, not made a defendant in this complaint, filed a petition for intervention and rehearing. The petition was granted. Rehearing was had at San Francisco before Examiner Mulgrew. Briefs were filed. Application No. 29070 has been held in abeyance pending further consideration and disposition of the complaint.

The principal California markets for complainant's and the Yreka Western mills' lumber are in the Los Angeles and San Francisco Bay areas. As hereinbefore stated, the nearest points to these mills served by rail are Pondosa and Yreka. These points are grouped with numerous other shipping points in northern California and southern Oregon in the rail lines' lumber tariff (P.F.T.B. Tariff No. 48-T, Cal. P.U.C. No. 132 of J. P. Haynes, Agent) and described therein as "Group No. 12 (Northern California)." All "Group 12" points enjoy the same rail rates to Los Angeles, to San Francisco and to other points in central and southern California. The joint through rates from the Yreka Western highway division points are higher than the

all-rail rates. The combination truck-rail rates from complainant's Burney mill are still higher.

Complainant does not seek cancellation of the joint through rates from the Yreka Western highway division points. It insists that the disadvantage and prejudice it suffers may be relieved only by the establishment of similar rates from its mill near Burney. It concedes that it would derive no benefit from cancellation of the Yreka Western rates and that such action would create hardship for, and work an injustice on, the Yreka area shippers and the carrier serving them. Complainant and the Yreka Western mills are faced with general competition with numerous mills located throughout the area from which the "Group 12 (Northern California)" rates apply. There is no showing of direct competition between complainant and the Yreka Western shippers.

Decision No. 41023, supra, pointed out that preference and prejudice is not undue unless shown to be a source of advantage to the parties or traffic alleged to be favored and a detriment to the other parties or traffic, citing Blackington & Son Canning Co. v. Alton R. Co., 259 ICC 584, 591 (1945) and Kohler Co. v. Alton & S.R. Co., 263 ICC 667, 673 (1945). It is admitted that the joint through rates from Yreka Western highway division points are not a source of advantage to the shippers situated at, or to the traffic shipped from, those points. It is also admitted that these rates are not detrimental to complainant or to the Burney traffic. The record on rehearing thus establishes, and we accordingly find, that the practice of defendants Southern Pacific, Pacific Electric and Union Pacific in maintaining joint through rates from Yreka Western highway division points and not from complainant's mill near Burney has not been shown to violate Section 19 of the Public Utilities Act. Our previous finding of unlawful preference or advantage and prejudice or disadvantage (Finding No. 2 of Decision No. 41023) is

rescinded. Application No. 29070, filed pursuant to our direction to remove such preference and advantage, will be dismissed.

In view of the foregoing, it is not necessary to discuss complainant's contentions with respect to the ordering of the establishment of joint rates under Section 33 of the Public Utilities Act to remove unlawful preference or advantage.

O R D E R

Rehearing having been had in the above-entitled complaint, and based upon the evidence of record and the conclusions and findings of Decision No. 41023 of December 17, 1947, as modified by the conclusions and findings of the preceding opinion on rehearing,

IT IS HEREBY ORDERED that the complaint, as amended, in this proceeding be and it is hereby dismissed, and that the direction to remove preference or advantage contained in the order in the aforesaid Decision No. 41023 be and it is hereby rescinded.

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

Dated at San Francisco, California, this 23rd day of February, 1949.

R. Z. Imboden
Justice F. Coe
Dean H. Russell
Harold T. Kels
Commissioners