

Decision No. 45764

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Scott Lumber Company, Inc.,

Complainant,

vs.

Atchison, Topeka and Santa
Fe Railway Company, et al.,

Defendants.

Case No. 5189

ORIGINAL

Appearances

Edward M. Berol and Bertram S. Silver,
for complainant.

J. E. Lyons, W. A. Gregory, E. L. Van
Dellen and John C. Orlowski, for
defendants.

OPINION AND ORDER

Complainant is a lumber mill operator. Its mill is situated near Burney, Shasta County. Defendants are various common carrier railroads and a highway common carrier. The defendant highway carrier serves complainant's mill, as well as the community of Burney. No railroad reaches either the mill or Burney.

This complaint, dated November 30, 1949, and filed with the Commission March 16, 1950, is essentially similar to Scott Lumber's complaint in Case No. 4863, filed June 17, 1947, and dismissed by Decision No. 42549 of February 23, 1949 (48 Cal.P.U.C.511). By Decision No. 43061 of June 28, 1949 (unreported), rehearing of Decision No. 42549 was denied. In the new complaint \$100,000 in reparation is sought. Reparation was not sought in the previous complaint.

In accordance with the Commission's Rules of Practice and Procedure copies of the new complaint were forwarded to defendants.

Defendants thereupon advised the Commission that they considered the complaint a vexatious one which should not be docketed nor entertained. They asserted that it is an exact counterpart of the amended complaint of the same complainant in Case No. 4863, supra. They contended further that the complaint filed March 16, 1950, does not set forth facts sufficient to state a cause of action and is ambiguous, obscure, uncertain and unintelligible.

Following the receipt of defendants' representations, the Commission scheduled the matter for preliminary hearing to determine whether the complaint should be dismissed, whether complainant should be permitted to amend, or whether the complaint should be set for hearing on its merits. The preliminary hearing was held at San Francisco before Examiner Mulgrew. Meanwhile, defendants filed a motion to dismiss the complaint on the grounds that the issues were and are fully and completely disposed of in Case No. 4863, supra.

It is unnecessary to discuss the extensive oral and written representations of the parties made at the hearing and permitted to be filed thereafter. It is abundantly clear that the issues here are no different than the issues considered and disposed of in Case No. 4863, supra.

Although no changes in conditions are alleged in the new complaint, complainant in its written answer on the motion to dismiss claims that changed conditions now prevail and affect competition between its mill and those mills in the Scotts Valley area served by Yreka Western Railroad Company. The nature and extent of these changes are not disclosed. Yreka Western was not originally a defendant in Case No. 4863, supra. It filed a petition of intervention following the issuance of Decision No. 41023 of December 17, 1947, in that proceeding, finding that the publication of joint

through rates from the Yreka Western points in Scotts Valley and not from Burney resulted in preference or advantage and prejudice or disadvantage in violation of Section 19 of the Public Utilities Act. Decision No. 42549, supra, rescinded that finding and dismissed the Case No. 4863 complaint. Yreka Western is not a defendant in the new complaint, notwithstanding the fact that the Scotts Valley points on its line are the only competitive points specifically referred to in complainant's written representations.

Defendants' motion to dismiss the complaint will be granted. No sufficient reason for reconsideration of the issues has been advanced.

Therefore, good cause appearing,

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

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

Dated at San Francisco, California, this 29th day of May, 1951.

R. J. [Signature]
Justus J. Craven
Harold A. Kule
Lawrence H. Potter
Edward L. McNeill
Commissioners