C.5536-EO

Decision No. 50819

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FOREST LUMBER CO., a corporation, Complainant, vs. THE ARCATA AND MAD RIVER RAILROAD COMPANY; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; CALIFORNIA WESTERN RAILROAD; NORTHWESTERN PACIFIC RAILROAD COMPANY; PACIFIC ELECTRIC RAILWAY COMPANY; PETALUMA AND SANTA ROSA RAILROAD COMPANY; and SOUTHERN PACIFIC COMPANY, Defendants.	Case No. 5536

OPINION AND ORDER

By this complaint Forest Lumber Co. alleges that the rates assessed and collected by the defendant railroads for the transportation of numerous carloads of lumber from certain origins in northern California to specified destinations in southern California were greater than the rates concurrently maintained for longer distances over the same line or route in the same direction, the shorter being included within the longer distance. Violation of Section 460 of the Public Utilities Code and of Section 21, Article XII of the State Constitution is involved. The complainant seeks reparation with interest, and also an order requiring defendants to establish rates no greater than those contemporaneously published and maintained between the more distant points.

The shipments at issue originated at Sonoma, Willits, West Petaluma, Cinnabar, Korbel, Longvale and other California Group 6, 7 and 8 origin points as listed in Items 14 and 16 of Pacific Southcoast Freight Bureau Tariff 48 series, Agent J.P. Haynes, Cal.P.U.C.

Nos. 132 and 189. They were consigned to destinations Saugus to Sun Valley, inclusive, and Honby to Fresno, inclusive, on the line of Southern Pacific Company; and to San Bernardino to Gypsum, inclusive, Fontana to Pasadena, inclusive, and Fresno to Ono, inclusive, on the line of The Atchison, Topeka and Santa Fe Railway Company. Complainant alleges that lower rates were maintained for the transportation of lumber from the northern California points to Long Beach on the line of The Atchison, Topeka and Santa Fe Railway Company and to Orange on the line of Pacific Electric Railway Company, and that the departures from the long and short haul provisions of the Public Utilities Code and of the Constitution were not authorized by this Commission. Complainant assertedly has been damaged in an amount equal to the difference between the charges assessed and those which would have accrued at the rates published and maintained for application to the destinations of Long Beach and Orange.

Defendants admit that complainant has been damaged to the extent that charges to an intermediate destination are greater than those applicable at more distant points where the charges assessed on any shipments not barred by the statute of limitations are in violation of Section 460 of the California Public Utilities Code, and of Section 21, Article XII of the California Constitution.[1] They refer to their tariffs on file with this Commission as being the best evidence of the lawful and applicable rates to be assessed on complainant's shipments.

The tariffs indicate, and the Commission's records show, that relief from the long and short haul prohibition was granted for the rates published to the destination point of Orange on the line of defendant Pacific Electric Railway Company (Authority No. 24(a) 3881

[1] The complaint was filed on March 24, 1954. Section 735 of the Public Utilities Code bars consideration of shipments on which the cause of action accrued more than two years prior to that date.

of June 28, 1935, and subsequent extensions and reissues thereof). Similar relief was granted in connection with the rates published to the destination point of Long Beach on the line of defendant The Atchison, Topeka and Santa Fe Railway Company insofar as the rates apply from Cinnabar and from Sonoma only (Authorities 24(a) 5315 of August 26, 1947, and 460-433 of January 18, 1954). Subsequent to the filing of the instant complaint, defendants sought and were granted authority to assess for the future the published lesser rate to Long Beach than to the intermediate destinations (Decision No. 50682, in Application No. 35591, effective November 8, 1954). In all other respects it appears that the assailed rates were assessed and collected contrary to the long and short haul provisions of the Code and the Constitution.

Upon consideration of all the facts of record, the Commission is of the opinion and finds as a fact:

(a) That the defendants assessed and collected charges in violation of the long and short haul provisions of the Public Utilities Code and of the State Constitution on complainant's shipments as hereinbefore specified.

(b) That complainant paid and bore the charges on the shipments in question; and

(c) That complainant has been damaged thereby and is entitled to reparation, with interest at 6 percent per annum, in the amount of the difference between the charges paid and those contemporaneously in effect to the more distant point of Long Beach.

Reparation will be awarded in conformity with these findings. In other respects the complaint will be dismissed.

The exact amount of reparation due is not of record. Complainant will submit to defendants for verification a statement of the shipments made. Upon the payment of the reparation defendants shall notify the Commission of the amount thereof. Should it not be possible for the parties to reach an agreement as to the reparation

award the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that defendants, according as they participated in the transportation, be and they are hereby authorized and directed to reparate to complainant, in accordance with the foregoing findings.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint be and it is hereby dismissed.

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

Dated at San Francisco, California, this 28th day of December, 1954.

Peter E. Mitchell
President
Justus F. Craemer
Kenneth Potter
Ray E. Untereiner

Commissioners