C.5610-AHS

Decision No. 51887

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CARL W. BAUGH, 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. 5610

OPINION AND ORDER

By this complaint, as amended, Carl W. Baugh, a wholesale lumber merchant, alleges that the rates assessed and collected by the defendant railroads for the transportation of various carloads of lumber were greater than the rate concurrently maintained for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, in violation of Section 460 of the Public Utilities Code and of Section 21, Article XII of the State Constitution. The complainant seeks reparation with interest.

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 on the line of Southern Pacific Company; and to San Bernardino to Pasadena, inclusive, on the line of The Atchison, Topeka and Santa Fe Railway Company. Complainant alleges that a lower rate was 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 that prior to November 9, 1954, the departures from the long and short haul provisions of the Public Utilities Code and of the Constitution were not authorized by this Commission.[1]

Defendants, in their reply to the complaint, "admit that complainant or complainants, as the case may be, made at least one shipment from an origin in California origin groups 6, 7 and 8 as listed in Items 14 and 16 of tariffs Cal.P.U.C. Nos. 132 and 189, to destination intermediate to Long Beach, on the Santa Fe, as more particularly described in the complaint; that at least one shipment was delivered within two years prior to the filing of the complaint herein." Further, defendants "admit that on at least one shipment made between one of the origins named above and one of the destinations specified hereinabove as intermediate to Long Beach on the Santa Fe, which shipment was delivered or tendered for delivery within two years prior to the filing of the complaint herein, the charges exceeded charges based on the applicable rate to Long Beach, on the Santa Fe, and were in violation of the long and short haul provisions of Section 460 of the California Public Utilities Code and of Section 21, Article XII of the California Constitution" and "admit that complainant or complainants, as the case may be, have been damaged to the extent that charges on such shipments to an intermediate destination exceeded charges concurrently applicable to Long Beach, on the Santa Fe."[2]

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[1] The defendant railroads by joint rate arrangement participate in the rate maintained to Long Beach on the line of The Atchison, Topeka and Santa Fe Railway Company.

[2] The complaint was filed January 18, 1955. 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.

Defendants 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, and to the opinions and orders of this Commission as being the best evidence as to whether, and to what extent, defendants have been authorized by this Commission to charge less for the longer distance than for the shorter distances.

By agreement of the parties, the matter was submitted upon the complaint as amended and answer as filed. A public hearing is not necessary.

Reference has been made to the Commission's official file of defendants' tariffs. It is clear that the rates assessed to the intermediate destinations exceeded the rate concurrently maintained to Long Beach. However, as to some of the movements the long and short haul departures were authorized by prior decisions of the Commission. Authority 24(a) 5315 of August 26, 1947, covered the origin point of Cinnabar; Authority 460-433 of January 18, 1954, covered the origin point of Sonoma; and Decision No. 50682 effective November 8, 1954, in Application No. 35591, covered all of the other origins involved herein. Reparation will be awarded as to shipments moving prior to the dates of authorization and not barred by the statute of limitations.

Upon consideration of all the evidence 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.

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.

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

Dated at San Francisco, California, this 30th day of August, 1955.

President

Commissioners