

Decision No. 51890

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIEBOLD MILLS, INC., and)
 WEST COAST LUMBERMEN'S ASSOCIATION,)
 Complainants,)
 vs.)
 NORTHWESTERN PACIFIC RAILROAD COMPANY)
 and SOUTHERN PACIFIC COMPANY,)
 Defendants.)

Case No. 5632

OPINION AND ORDER

Complainants allege that the rates assessed and collected by the defendant railroads for the transportation of certain carload shipments of lumber were greater than the rate concurrently maintained for longer distances 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 complainants seek the payment of reparation with interest to Diebold Mills, Inc., and also an order requiring defendants to establish rates no greater than that contemporaneously published and maintained between the more distant point.¹

The shipments at issue originated at Arcata on the line of Northwestern Pacific Railroad Company and were consigned to Modesto, Turlock and Fresno on the line of Southern Pacific Company. Complainants allege that a lower rate was maintained for the transportation of lumber from Arcata to Long Beach on the line of The Atchison, Topeka and Santa Fe 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.²

¹ The complaint indicates that the West Coast Lumbermen's Association participated only to the extent of providing traffic department service for its member shipper, Diebold Mills, Inc.

² The defendant railroads by joint rate arrangement participated in the rate maintained to Long Beach on the line of The Atchison, Topeka and Santa Fe Railway Company.

Defendants, in their reply to the complaint, state as follows:

"If the charges assessed on any shipments not barred by the statute of limitations are in violation of the long-and-short-haul provision of Section 460 of the California Public Utilities Code and of Section 21, Article XII, of the California Constitution, defendants admit that persons who paid or bore such charges have been damaged to the extent that charges to an intermediate destination are greater than charges applicable to more distant points."³

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 complainants' 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 and answer as filed. A public hearing is not necessary.

Reference has been made to the Commission's official file of defendants' tariffs. It appears therefrom that the rates assessed to the intermediate destinations exceeded the rate concurrently maintained to Long Beach. Authority for the long and short haul departure was granted to the defendants by the Commission's Decision No. 50682 effective November 8, 1954, in Application No. 35591. Rates for the future therefore are not involved. On shipments moving prior to November 8, 1954, and not barred by the statute of limitations, reparation will be awarded.

³ The complaint was filed March 4, 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.

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 shipments of complainant Diebold Mills, Inc., as hereinbefore specified;
- (b) That complainant, Diebold Mills, Inc., paid and bore the charges on the shipments in question; and
- (c) That complainant, Diebold Mills, Inc., 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. Upon the payment of the reparation defendants shall notify the Commission of the amount thereof.

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, Diebold Mills, Inc., 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.

E. J. [Signature]
 President

James J. [Signature]

[Signature]

[Signature]

Commissioners