

Decision No. 51956

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of THE
 ARCATA AND MAD RIVER RAILROAD COMPANY,
 THE ATCHISON, TOPEKA AND SANTA FE
 RAILWAY COMPANY, CALIFORNIA WESTERN
 RAILROAD COMPANY, NORTHWESTERN PACIFIC
 RAILROAD COMPANY, PACIFIC ELECTRIC
 RAILWAY COMPANY, PETALUMA AND SANTA ROSA
 RAILROAD COMPANY, and SOUTHERN PACIFIC
 COMPANY, for Authority to Make Certain
 Reparatons on Shipments of Lumber.

Application No. 37160

OPINION AND ORDER

The applicants in this proceeding seek authority to make payments in refund of certain charges collected in violation of Section 460 of the Public Utilities Code and Section 21, Article XII of the State Constitution. These provisions prohibit common carriers from charging or receiving any greater compensation in the aggregate for the transportation of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, without authorization of this Commission.

At all times pertinent herein, applicants were and are engaged in, or participating in, the transportation of lumber from Sonoma, Willits, West Petaluma, Cinnabar, Korbelt, 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, to destinations Saugus to Sun Valley, inclusive, and Honby to Fresno, inclusive, on the line of Southern Pacific Company; and to San Bernardino to Gibson, inclusive, Fontana to Pasadena, inclusive, and Fresno to Ono, inclusive, on the line of The Atchison, Topeka and Santa Fe Railway Company.

For the transportation of lumber from the origin area hereinabove described to the destination point of Long Beach on the line of The Atchison, Topeka and Santa Fe Railway Company, a lesser rate and charge was specified in applicants' tariffs than the rate and charge specified to the aforesaid destination points intermediate to Long Beach. Applicants assessed and collected charges to the intermediate destinations in accordance with the provisions of their tariffs. Except as noted in the margin below, however, they had not been authorized by this Commission to assess greater rates and charges for the transportation to the intermediate destinations than to Long Beach.¹ To the extent that greater charges were collected of shippers for transportation of lumber to the intermediate points without appropriate lawful authority, applicants desire to reparate to those who have been thus damaged.

In Martin Weisal (Sunland Lumber Co.) et al., vs. The Arcata and Mad River Railroad Company, et al., Case No. 5523, a number of shippers sought reparation for damages resulting from the foregoing violation of Section 460 of the Code and of Section 21, Article XIII of the State Constitution. The complainants were awarded reparation in the amount of the difference between the charges assessed and those which would have accrued at the rate published to Long Beach, with interest at 6 percent per annum (Decision No. 50918, dated December 28, 1954, (53 Cal.P.U.C. 759); affirmed by Decision No. 51356, dated April 19, 1955 (54 Cal.P.U.C. 126). Subsequently numerous other shippers filed complaints involving

¹The rate was published as though appropriate authority to do so had been obtained from the Commission, but that through inadvertence the required authority was neither sought nor obtained as to all shipments involved. On shipments originating at Cinnabar appropriate authority was granted August 26, 1947, by Authority 24 (a) 5315. On shipments originating at Sonoma appropriate authority was granted January 18, 1954, by Authority 460-433. On shipments originating at all of the other points involved herein appropriate authority was granted effective November 8, 1954, by Decision No. 50682 in Application No. 35591.

the same rate situation in the following proceedings:

- Case No. 5536 - Forest Lumber Co., vs. The Arcata and Mad River Railroad Company, et al.
- Case No. 5552 - Brey-Wright Lumber Co., et al., vs. Same
- Case No. 5558 - Bakersfield Building Materials Co., vs. Same
- Case No. 5572 - H. C. Adams and Davis F. Henley, co-executors of the Estate of Chas. C. Adams (Charles C. Adams Lumber Co.), et al., vs. Same
- Case No. 5586 - Madera Lumber & Hardware Co., et al., vs. Same
- Case No. 5605 - Hammond Lumber Company vs. The Atchison, Topeka and Santa Fe Railway Company, et al.
- Case No. 5610 - Carl W. Baugh vs. The Arcata and Mad River Railroad Company, et al.
- Case No. 5611 - Humboldt Lumber Corporation, et al., vs. Same
- Case No. 5627 - Anawalt Lumber and Materials Co., vs. Same
- Case No. 5632 - Diebold Mills, Inc., et al., vs. Northwestern Pacific Railroad Company, et al.

Similar reparation awards were granted in each of the cases.

Applicants state they have received numerous inquiries from other shippers of lumber between the same points concerning the procedure for gaining similar relief. Applicants declare that, inasmuch as the tariff facts are undisputed and presumably would warrant reparation if presented in formal proceedings, no purpose would be served in putting such shippers to the burden and expense of such proceedings. As stated in the application, it is applicants' desire to secure authority to grant the identical measure of relief awarded in the above-cited cases to all who may have suffered similar damage. It is proposed that such reparation be handled in a manner similar to that employed by applicants in refunding overcharges, upon the presentation of freight bills and statements within the time allowed by the statute of limitations. Applicants propose

to submit to the Commission, within ninety days after the payment of such claims, a list of claimants to whom such payments were made, the amounts of payments, and the subordinate details of the shipments.

It appears under the circumstances that applicants' proposal is proper, is in the public interest and should be granted.

The following order will authorize and direct the applicant railroads to make proper reparation to all lawful claimants therefor, and will require further that the applicants serve a copy of this order upon all known shippers and receivers who may be entitled to such reparation.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that:

1. Applicants be and they are hereby authorized and directed to reparate to persons who paid and bore the charges and make claim therefor in writing to one of the applicants herein, on shipments originating at points identified in paragraph (a) below, and with destinations at points identified in paragraph (b) below, and moving not more than two years prior to the filing of the claim for which charges were assessed and collected in violation of Section 460 of the Public Utilities Code and Section 21, Article XII of the State Constitution, in the amount of the difference between the charges paid and those contemporaneously in effect to the more distant point of Long Beach, with interest thereon at 6 percent per annum from date of payment of such charges to date of reparation. ✓

- (a) Sonoma, Willits, West Petaluma, Cinnabar, Korbel, Longvale and other California Group 6, 7 and 8 origin points as listed in Items Nos. 14 and 16 of Pacific Southcoast Freight Bureau Tariff 48 series, Agent J. P. Haynes, Cal. P.U.C. Nos. 132 and 189.
- (b) Saugus to Sun Valley, inclusive, and Honby to Fresno, inclusive, on the line of Southern Pacific Company; and to San Bernardino to Gibson, inclusive, Fontana to Pasadena, inclusive, and Fresno to Ono, inclusive, on the line of The Atchison, Topeka and Santa Fe Railway Company.

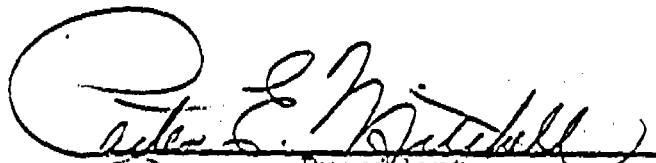
2. Applicants shall submit to the Commission on or before December 31, 1955, a list of the claimants to whom such payments were made, the amounts of payment and subordinate details of the shipments; and thereafter, at intervals of not to exceed three months, shall submit similar supplemental lists of any payments subsequently made.

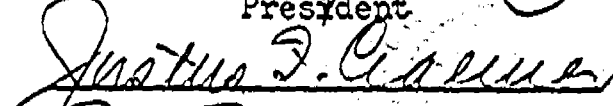
3. Applicants shall arrange to serve, within ninety days after the effective date of this order, a true and correct copy of the Commission's decision in this proceeding upon all known shippers and receivers of carload shipments of lumber moving within the statutory period from the origin groups to the destinations hereinbefore identified in Ordering Paragraph No. 1.

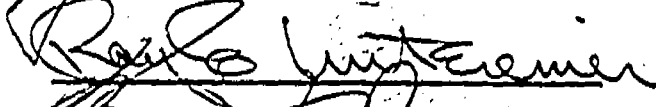
4. Applicants shall, within ninety days after the effective date of this order, file in this proceeding an affidavit of service containing a list of the shippers and receivers served with a copy of this decision in accordance with the foregoing Ordering Paragraph No. 3.


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

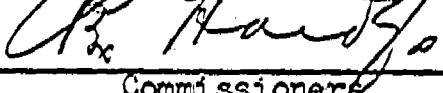
Dated at San Francisco, California, this 13th day of September, 1955.



President








Commissioners