

ORIGINAL

Decision No. 53848

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
into the operations and practices of)
Daniel V. Guerin, doing business as)
Guerin Transportation Co., relating)
to transportation performed for the)
Ralph E. Barto Lumber Company under)
the provisions of Minimum Rate)
Tariff No. 2.)

Case No. 5667

Cyril M. Saroyan for the Commission staff.

Daniel V. Guerin, in propria persona.

George J. Hider, for Ralph E. Barto Lumber
Company, intervener.

Arlo D. Poe and J. C. Kaspar, by Arlo D. Poe,
for California Trucking Associations, Inc.,
interested party.

O P I N I O N

In this case an "Order Instituting Investigation" was filed by the Commission on August 2, 1955. This order calls for an investigation into the reasonableness, lawfulness and propriety of the operations of Daniel V. Guerin, doing business as Guerin Transportation Company, hereinafter referred to as Guerin, insofar as they relate to transportation performed for Ralph E. Barto Lumber Company, hereinafter referred to as Barto, with particular reference to the question of the application of the alternative common carrier rate provisions of Items 200 and 210 of Minimum Rate Tariff No. 2, to shipments delivered to certain

property of said lumber company located at or about 7233 East Firestone Boulevard, Downey, California, and to determine whether or not the provisions of Minimum Rate Tariff No. 2 have been observed and whether or not said carrier should be directed to collect any undercharges which may be shown to exist in connection with certain shipments to said lumber company.

The pertinent provisions of Items 200 and 210 of Minimum Rate Tariff No. 2 are as follows:

Item 200-E

"(a) Common carrier rates, . . . , may be applied in lieu of the rates provided in this tariff, when such common carrier rates produce a lower aggregate charge for the same transportation then results from the application of the rates herein provided."

Item 210-D

"When lower aggregate charges result, rates provided in this tariff may be used in combination with common carrier rates, except rates of coastwise common carriers by vessel, for the same transportation as follows:

.....

"(b) When point of origin is located at railhead or an established depot and point of destination is located beyond railhead or an established depot, add to the common carrier rate applying from point of origin to any team track or established depot the rate provided in this tariff for the distance from the team track or depot to which the common carrier rate used applies to point of destination."

Pertinent definitions in Minimum Rate Tariff No. 2 are as follows:

Item 10-J

"(c) Common carrier rate means any intrastate rate or rates of any common carrier or common carriers,

"defined by the Public Utilities Act, lawfully on file with the Commission and in effect at time of shipment;"

"(f) Point of destination means the precise location at which property is tendered for physical delivery into the custody of the consignee or his agent. All points within a single industrial plant or receiving area of any consignee shall be considered as one point of destination. An industrial plant or receiving area of one consignee shall include only contiguous property which shall not be deemed separate if intersected only by public street or thoroughfare.

"(h) Railhead means a point at which facilities are maintained for the loading of property into or upon, or the unloading of property from, rail cars or vessels. It also includes truck loading facilities of plants or industries located at such rail or vessel loading or unloading point."

Item 11-E

"(p) Team track means a point at which property may be loaded into, or upon, or unloaded from rail cars by the public generally ..."

Distance Table No. 4, issued by the Commission, provides that the constructive mileage from the Southern Pacific Downey Depot team track at 8158 East Nance Street, Downey, to Barto's place of business at 7233 East Firestone Boulevard is three miles.

Item 690-H of Minimum Rate Tariff No. 2 sets forth the rate for lumber and forest products in the 0 to 5 mile radius as 7 $\frac{1}{2}$ cents per 100 pounds for shipments over 30,000 pounds.

The rail carload base rate for lumber shipped from Origin Group 12, which includes the rail points of origin of the shipments of lumber transported by Guerin for Barto, to Downey, California, is 57 cents per 100 pounds (Pacific Southcoast Freight Bureau Tariff No. 48-U, Cal. P.U.C. No. 189 of J. P. Haynes, Agent).

There is a surcharge of 15 percent applicable in connection with the rail base rate of 57 cents per 100 pounds (Item

No. X-175-A of Supplement No. 14 to P.S.F.B. Tariff No. 48-U, in conjunction with Tariff of Increased Rates and Charges No. X-175-B, Cal. P.U.C. No. 176 of J. P. Haynes, Agent).

A public hearing in the matter was held in Los Angeles on January 11, 1956, before Examiner Kent C. Rogers, and it was submitted. On February 2, 1956, Barto petitioned to have the submission set aside to permit it to present additional evidence. By order dated February 21, 1956, the Commission set aside the submission, and on July 30, 1956, a further hearing was held and the matter was submitted.

On January 10, 1956, the parties entered into a "Stipulation of Facts" which was introduced into evidence herein as Exhibit No. 1. In this stipulation it was agreed as follows:

That Guerin is a permitted highway carrier with principal place of business in South Gate, California; that Barto is engaged in the wholesale lumber business at 7233 East Firestone Boulevard, Downey, California; that during 1954 Guerin transported numerous shipments of lumber by truck for Barto from Anderson, Shasta County, California, and Chester, Plumas County, California, and in a few instances from other Northern California points to Barto's place of business in Downey; that Guerin assessed on spur rail rates; that thereafter, following a review of rates assessed by Guerin, the staff of the Public Utilities Commission sent undercharge letters to Guerin and Barto showing balance due amounts based on off-rail charges at point of delivery, and that Guerin was directed to review its records for the period January 1, 1954, to December 1, 1954, to determine the amount of undercharges involved and to collect same from Barto; that Barto claimed the

right to rail rates, in that, by virtue of a lease, Barto is entitled to the use of a certain spur track, the location of which is indicated on a sketch attached to Exhibit No. 1; that considerable correspondence developed between the staff and Barto, and copies of the more pertinent letters are attached to Exhibit No. 1 herein as "Exhibit 'A'"; that examination of the premises discloses that a drill track extends along the rear side of the Barto property; that a steel wire fence separates the property from the track; that a spur track leads off from the drill track onto the S & S Lumber Company property at 7053 East Firestone Boulevard; that the establishments of four different lumber companies intervene along East Firestone Boulevard between the Barto plant and that of the S & S Lumber Company wherein the spur is located; and that the physical setup is as indicated on a sketch attached to Exhibit No. 1 herein and marked Exhibit B.

Exhibit B on Exhibit No. 1 was prepared by a Commission transportation representative. Exhibit No. 3 is an air photo of the area involved. The drill track of the Southern Pacific Railway extends northeast and southwest along the northerly edge of the area, which includes the Barto property. The area extends approximately 2,600 feet along the railroad track and contains approximately 39 acres. There is a spur track approximately 600 feet in length in the northern portion thereof extending from the Southern Pacific drill track into the S & S Lumber Company premises at 7053 East Firestone Boulevard. South thereof are the premises of Builders Redwood, Inc., at 7175 East Firestone Boulevard; Timber Sales, Inc., at 7181 East Firestone Boulevard; Glough Lumber Company at 7221 East Firestone Boulevard; and the

Barto premises at 7233 East Firestone Boulevard. An open path or easement extends from the property of the S & S Lumber Company across the property of Builders Redwood, Inc., and Timber Sales, Inc., into the property of Glough Lumber Company. There is a wire fence between the property of Glough Lumber Company and Barto. There is a 40-foot setback between Firestone Boulevard and the fronts of the various properties herein referred to, and each of such properties has an entrance on Firestone Boulevard. Lumber can be moved between the spur track and Barto's premises either along the 40-foot setback or along the pathway from the spur through the premises of Builders Redwood, Inc., Timber Sales, Inc., and Glough Lumber Company, at which point the lumber would be taken via the latter company's driveway to the setback and via Barto's driveway into its premises.

An associate transportation rate expert on the Commission staff testified that the spur track above referred to is a "Railhead", as defined in Item 10-J (h) Minimum Rate Tariff No. 2, and as used in Item 210-D of the same tariff. He further testified and the intervener stipulated that the charges shown to have been paid by Barto to Guerin for lumber shipments by truck from Northern California rail points, during the period from January 8, 1954, to November 12, 1954, with exceptions not material here, were the correct charges to the S & S Lumber Company spur. He further testified that the same rail rate would apply to shipments to the Downey Depot team track above referred to, and that the lumber and forest product rate of $7\frac{1}{2}$ cents per 100 pounds for shipments having a minimum weight of 30,000 pounds and transported not to exceed

five miles applies to shipments of lumber between the Downey Depot or the S & S Lumber Company spur track and the Barto premises.

The 39-acre tract hereinbefore described is owned by J. L. Andrews, Minnie Bell Logan and D. C. Logan. On January 1, 1950, they leased the entire area to Dudlext Lumber Company, hereinafter referred to as Dudlext, subject to certain pre-existing leases which were assigned to Dudlext (Exhibit No. 8). On June 15, 1950, Dudlext sublet the property now leased by S & S Lumber Company to Collins and Meyer, Inc. Collins and Meyer agreed to construct the hereinbefore-mentioned spur track and Dudlext reserved the right to use the spur track (Exhibit No. 6). On November 15, 1951, Collins and Meyer assigned its lease to S & S Lumber Company, doing business as Dri Rite Kiln Corporation (Exhibit No. 7). In October, 1952, Barto leased its above-referred to property from Dudlext. Its lease made no reference to the siding, but Dudlext and S & S Lumber Company orally agreed that Barto had the right to the use of the spur track.

Mrs. Ralph E. Barto, Secretary of Barto, testified that prior to the execution of Barto's lease she informed Mr. Dudlext, President of Dudlext, that Barto could not use the leased premises unless it had the use of a spur facility, and Mr. Dudlext showed her the spur track above referred to and informed her that the spur was available to Barto. Both Mr. Dudlext and Mr. Schiel, President of the S & S Lumber Company, subsequently confirmed that Barto has a right to use the spur track (see letter attached to Exhibit No. 1 herein).

An officer of S & S Lumber Company testified that Barto has a right to use the spur track; that S & S Lumber Company does

rail car unloading and milling for Barto; that S & S Lumber Company delivers the rail-delivered lumber from the spur to Barto; and that the car unloading, milling and charges for delivery from the spur to Barto's premises are included in the S & S Lumber Company charges. Barto can, he said, pick up the lumber at the siding with no extra charge.

An assistant transportation representative of the Commission testified that he was informed by the Southern Pacific Company, through its Downey office, that Barto received rail lumber shipments at the Downey Depot team track.

Conclusion

From the evidence presented herein it is at once apparent, and we find, that respondent Guerin must assess and collect, in addition to the common carrier rates, the appropriate highway carrier charges for the transportation of Barto's forest products for the portion of each movement beyond the rail head as provided in Item No. 690-H of Minimum Rate Tariff No. 2, and it will be so ordered. We further find that respondent Guerin has in the past failed to assess and collect the proper rates as prescribed by Minimum Rate Tariff No. 2. He will be ordered to assess and collect the proper charges for transportation heretofore performed for Barto.

Rail rates may be applied to the truckload lumber shipments transported by Guerin for Barto between the team track or spur track points of origin set forth in Exhibit No. 1 herein and the Downey Depot team track or the S & S Lumber Company siding, both of which are railheads (Item 200-E and Item No. 10-J (h) of

Minimum Rate Tariff No. 2). The applicable rail rates are 57 cents per 100 pounds for rail point delivery in the Downey area, which includes the S & S Lumber Company siding, plus a surcharge of 15 percent (Pacific Southcoast Freight Bureau Tariff No. 48-U, Cal. P.U.C. No. 189 of J. P. Haynes, Agent, and Item No. X-175-A of Supplement No. 14 to P.S.F.B. Tariff No. 48-U, in conjunction with Tariff of Increased Rates and Charges No. X-175-B, Cal. P.U.C. No. 176 of J. P. Haynes, Agent). If either the point of origin or point of destination is beyond the railhead, highway carrier minimum rates must be added to the rail rates for the beyond transportation (Item No. 210-D of Minimum Rate Tariff No. 2). All shipments referred to are forest product shipments weighing in excess of 30,000 pounds and the truck movement would be less than five miles beyond the railhead. Guerin should, therefore, assess and collect, in addition to the rail rates, the sum of 7½ cents per 100 pounds (Item No. 690-H of Minimum Rate Tariff No. 2).

The intervener maintains, however, that by virtue of the various leasing arrangements referred to in this opinion, whereby all the premises involved are under the same ownership and master lease holder, from whom, in turn, all the industries located in the described area lease their premises, plus the fact that the intervener has the right to the use of the spur, its premises are at a railhead and it is entitled to rail spur rates for shipments respondent delivers to its premises by truck. The arrangements between the owners of the premises, the master lease holder and the sublessees relative to the use of the spur are, of course, immaterial as they have nothing to do with the rates fixed by

this Commission for the transportation of property. The intervenor contends, however, that all of the leaseholds situated in the herein referred to area constitute one point of destination (Item 10-J (f) of Minimum Rate Tariff No. 2), and hence, inasmuch as there is a spur track on the premises of the S & S Lumber Company, all of the lessees are entitled to spur rates for truck deliveries at their premises. The tariff provision referred to is clear and concise and will permit of no such construction. It states that "(a)ll points within a single industrial plant or receiving area of one consignee shall be considered as one point of destination." (Underlining added). The only consignee involved herein is Barto, and Barto has only one receiving area which is its lumber yard. The spur track involved is not Barto's "point of destination" within the meaning of Item 10-J (f) of Minimum Rate Tariff No. 2.

O R D E R

The Commission having made the foregoing findings, and based upon said findings,

IT IS ORDERED:

(1) That Daniel V. Guerin, doing business as Guerin Transportation Co., shall immediately collect from Ralph E. Barto Lumber Company all undercharges resulting from the failure of said Daniel V. Guerin to charge said Ralph E. Barto Lumber Company for transportation beyond the railhead, as provided in Item No. 690-H of Minimum Rate Tariff No. 2, as set out in the opinion herein, and report to the Commission in writing, not later than sixty days after the effective date of this order, the shipments involved and the amounts collected.

(2) That, as to all future shipments transported by Daniel V. Guerin for Ralph E. Barto Lumber Company, concerning which the provisions of Items 200-E and 210-D of Minimum Rate Tariff No. 2 are applicable, said Daniel V. Guerin shall collect, in addition to the common carrier rates, the highway carrier rates specified in Item 690-H of Minimum Rate Tariff No. 2, for the portion of the transportation beyond the railhead.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California,
this 1st day of OCTOBER, 1956.

[Signature]
President

[Signature]

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Commissioners