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Decision No. 88209 DEC 6 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AMERICAN FOREST PRODUCTS CORPORATION,  
a corporation,

Complainant,

vs.

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY, a corporation,

Defendant.

Case No. 10315  
(Filed April 22, 1977)

Vaughn, Paul & Lyons, by John G. Lyons,  
Attorney at Law, for American Forest  
Products Corporation, complainant.  
John MacDonald Smith, Attorney at Law,  
for Southern Pacific Transportation  
Company, defendant.

O P I N I O N

American Forest Products Corporation (complainant) engages  
in the manufacture and distribution of lumber and forest products in  
California.

Complainant requests that the Commission make its order pursuant to Section 734 of the Public Utilities Code,<sup>1/</sup> authorizing and directing Southern Pacific Transportation Company (defendant) to make payment to complainant of reparation in the amount of \$702.80, without interest, and to waive collection of undercharges in the amount of \$11,274.80, in connection with 16 carload shipments of furniture stock which defendant transported for complainant from Lodi, California, to Pomona and Santa Fe Springs, California, during the period from January 31, 1975 to and including May 11, 1976.

The rates assessed are the Class 35 rates set forth in Pacific Southcoast Freight Bureau (PSFB) Tariff 1016, Interstate Commerce Commission (ICC) 1590. The complaint alleges that prior to the shipments in question, no shipments of furniture stock were moved by rail in California intrastate commerce under those class rates because there were no movements.

At the request of complainant, defendant established reduced carload commodity rates on furniture stock when informed that an intrastate movement had developed. Complainant seeks reparation or waiver of undercharges to the levels of commodity rates subsequently established.

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<sup>1/</sup> "734. When complaint has been made to the commission concerning any rate for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an unreasonable, excessive, or discriminatory amount therefor in violation of any of the provisions of this part, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection if no discrimination will result from such reparation. No order for the payment of reparation upon the ground of unreasonableness shall be made by the commission in any instance wherein the rate in question has, by formal finding, been declared by the commission to be reasonable, and no assignment of a reparation claim shall be recognized by the commission except assignments by operation of law as in cases of death, insanity, bankruptcy, receivership, or order of court."

The assessed and sought rates (in cents per 100 pounds) are as follows:

	Period			
	1/31/75 Through 9/30/75		11/11/75 Through 5/11/76	
<u>To:</u>	<u>Assessed Rate</u>	<u>Sought Rate</u>	<u>Assessed Rate</u>	<u>Sought Rate*</u>
Santa Fe Springs	231	96	259	108
Pomona	243	96	273	108

\*111 after 1/28/76.

Defendant filed Special Tariff Docket Application No. 8923 (STD 8923) seeking authority to refund \$702.80 and waive undercharges of \$11,274.80 in connection with the shipments in question. That request was denied by Special Tariff Docket Resolution No. 830 dated February 15, 1977, for the reason that the justification set forth in the application, that, although interstate lumber rates applied on furniture stock, intrastate lumber rates did not prior to May 11, 1976. The application also did not establish that the assessed class rates are unreasonable, excessive, or discriminatory.

Following dismissal of STD 8923, this complaint was filed. Public hearing was held before Administrative Law Judge Mallory in San Francisco on October 14, 1977.<sup>2/</sup> Complainant presented evidence through its corporate traffic manager and the general manager of its national sales division. The evidence was designed to show

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<sup>2/</sup> A prior public hearing was held under the Commission's Expedited Complaint Procedure on July 1, 1977. The proceeding was reopened after a proposed decision was withdrawn from the Commission's Agenda of July 26, 1977.

that the application of Class 35 rates subject to a minimum weight of 30,000 pounds was unreasonable and discriminatory, that the sought rates were reasonable, and that no discrimination would result if an award of reparation is made as requested herein.

The following summarizes the evidence presented by complainant. The commodity in question is described for transportation purposes as furniture stock, wooden, in the white, unassembled pieces. After July 24, 1977 that classification description was changed to furniture (knocked down) furniture parts or furniture stock, wooden, in the white, unassembled pieces, packaged or not packaged.

Over the years complainant has manufactured unassembled furniture and shipped it between locations outside California. In the early 1970's shipments were made from its Stockton plant to eastern points. No other firm in California manufactured similar items and complainant had no movements within California until the shipments described in the complaint. There are manufacturers of furniture stock in Hoquiam, Washington, and Walla Walla, Washington, that ship to points in California by rail. The applicable interstate rate from Hoquiam and Walla Walla to Santa Fe Springs and Pomona is the lumber rate set forth in PSFB 80-L, of 225 cents per 100 pounds. Formerly there was a manufacturer at Pendleton, Oregon, who shipped to California at the same rates. The Class 35 rates from Stockton to Pomona and Santa Fe Springs of 259 and 273 cents exceeded the interstate rates of 225 cents from competing manufacturers located in Washington State.

Complainant presented evidence to show that the wholesale value of furniture stock does not exceed the wholesale value of molding and other building woodwork taking lumber commodity rates, and that the density of furniture stock is about the same as molding and building woodwork.

Complainant referred to Grays Harbor Chair & Mfg. Co. v Northern Pacific Ry. Co., et al. (1959) 308 ICC 239, in which the ICC found that rates on furniture stock, wooden, in the white, knocked down, from Hoquiam, Washington, to the eastern territory (as defined in connection with transcontinental rail carload commodity rates) should take the same rates as building millwork shipped knocked down flat. The ICC found that densities and values, and other shipping characteristics of furniture stock and millwork were sufficiently similar that both should be subject to the same level of rates, and that the lower rates for millwork should be applicable to furniture stock. Complainant seeks the same finding herein.

Defendant made no presentation and does not oppose the relief sought herein. Defendant asserts that the same rate relationship should be found reasonable with respect to California intrastate rail carload rates on furniture stock as those found reasonable by the ICC in Grays Harbor Chair & Mfg. Co.

Findings

1. Complainant shipped 16 carloads of furniture stock from Lodi to Pomona and Santa Fe Springs, as more fully described in Exhibit 1 attached to the complaint.
2. The rates assessed on the shipments in issue were those applicable to Class 35 rates subject to a minimum weight of 30,000 pounds.
3. Prior to the movements described in Exhibit 1 to the complaint, there were no rail carload shipments of furniture stock within California.
4. Defendant subsequently established commodity rates on rates on furniture stock on the same levels as the rates for millwork.

5. Complainant seeks reparation in the amount of \$702.80 (without interest) and waiver of undercharges of \$11,274.80 on the shipments in issue on the basis that the applicable Class 35 carload rates assessed were unreasonable and discriminatory to the extent the charges on 16 shipments exceeded the charges under the commodity rates subsequently established by defendant.

6. The record shows that the transportation characteristics of furniture stock shipped by complainant, including value and density, are substantially similar to those of millwork.

7. Defendant maintains commodity rates on furniture stock from Hoquiam and other points in Washington and in Oregon to Pomona and Santa Fe Springs, California, which are less than the Class 35 carload rates assessed by it from Lodi to the same destinations.

8. The interstate commodity rates on furniture stock referred to in the preceding finding are on the same level as the rates for millwork.

9. Charges under the Class 35 rates assessed by defendant on the 16 carload shipments of furniture stock in issue are unreasonable and excessive for that transportation to the extent that such charges exceeded charges under the rates contemporaneously maintained by defendant on millwork between the same points (Section 734).

10. No discrimination will result from an award of reparation herein as there are no other rail carload shippers of furniture stock in California (Section 734).

Conclusion

The relief requested should be granted.

O R D E R

IT IS ORDERED that Southern Pacific Transportation Company shall refund \$702.80 and shall waive collection of \$11,274.80 on the 16 shipments set forth in Exhibit 1 attached to the complaint.

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

Dated at San Francisco, California, this 6th day of DECEMBER, 1977.

*He would deny the relief sought on the basis that the showing by complainant only established a difference in rate, not an unreasonable level.*

*Richard A. Gault*

Robert Bateman  
President  
William J. Quinn  
Vernon L. Stinger

Clair T. Hildebrand  
Commissioners