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ORIGINAL

Decision No. 89965 FEB 14 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BBD TRANSPORTATION COMPANY, INC.,
Complainant,

v.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY, THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY, UNION
PACIFIC RAILROAD COMPANY, THE WESTERN
PACIFIC RAILROAD COMPANY, railroad
corporations; and PACIFIC SOUTHCOAST
FREIGHT BUREAU, the publishing agent
for said railroad corporations,

Defendants.

Case No. 10383
(Filed July 29, 1977;
amended August 17, 1977)

In the Matter of the Application of
BBD TRANSPORTATION COMPANY, INC., for
order rescinding Decision No. 82645,
re reduced railroad steel and iron rates
of Southern Pacific Transportation Company,
The Western Pacific Railroad Company, et al.

Application No. 57340
(Filed May 24, 1977)

Broad, Khourie & Schulz, by Thomas Paine, Attorney at Law,
and Handler, Baker & Greene, by Marvin Handler, Attorney
at Law, for BBD Transportation Company, Inc., complainant
and applicant.

Fleischmann & Farber, by Sevmour Farber, Attorney at Law,
and Walter G. Treanor, Attorney at Law, for The Western
Pacific Railroad Company; F. G. Pfrommer, Attorney at Law,
for The Atchison, Topeka & Santa Fe Railway Company;
Charles W. Burkett and Carol A. Harris, Attorneys at
Law, for Southern Pacific Transportation Company; and
Robert M. White, Attorney at Law, for Union Pacific
Railroad Company; defendants.

R. A. Dand, for Norris Industries, interested party.
Harry E. Cush, for the Commission staff.

ORDER OF DISMISSAL

BBD Transportation Company, Inc. (BBD) alleges that certain reduced rail rates on steel shipments were established at the behest of steel manufacturers located in California (and Utah) with the collusive assistance of the railroads in order to maximize steel company profits by means of reducing the freight absorptions of the steel mills. BBD also alleges that the practical effect of the rail rate reductions was to reduce motor carrier revenues, inasmuch as the preponderance of the steel manufactured and sold in California is transported by motor carriers at rail rates under the alternative rate provisions mandated by Section 3663 of the Public Utilities Code. These issues were raised by BBD and other carriers in Case No. 9424 and were the subject of Decision No. 82645 dated March 26, 1974. BBD subsequently raised in the federal court the restraint of trade issue involving the alleged collusive actions of the steel mills.

A Prehearing Conference was held, and the matters were removed from the calendar pending completion of discovery procedures. Following repeated requests by the assigned ALJ that BBD proceed to hearing, BBD by letter dated December 8, 1978, advised the Commission as follows:

"We have decided that further proceedings before the Commission are likely to degenerate into costly litigation of collateral issues offering little hope of early relief for BBD Transportation. Consequently, BBD will look to the federal courts to vindicate its interests and hereby requests the dismissal of the captioned proceedings without prejudice."

Therefore, IT IS ORDERED that Case No. 10383 and Application No. 57340 are dismissed without prejudice.

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

Dated at San Francisco, California, this 14th day of FEBRUARY, 1979.

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Leonard M. Grimes, Jr., being necessarily absent, did not participate.

John E. Burns
President

William L. Sturgeon

Commissioners