

COMMISSION HAS HEARING

Meets On Coos Bay To Hear Complaints Against C. B. R. & E. Road.

NORTH BEND WEDNESDAY

Yesterday the Railroad's Side of the Story Was Heard In Marshfield.

The Railroad Commission held the first hearing in the case of Davis-Shultz vs. the Coos Bay, Roseburg & Eastern Railroad and Navigation Company at North Bend on Wednesday evening. But one witness was heard during this hearing, Mr. Shultz, and the matter was continued until yesterday at the local depot of the railroad.

The complaint and answer were as follows:

"Whereas, the above-named plaintiffs have heretofore filed with the Railroad Commission of Oregon a complaint, among other things, alleging:

"That said Coos Bay, Roseburg & Eastern Railway and Navigation Co., and W. S. Chandler, receiver thereof, does unjustly and wrongfully discriminate against the shippers of freight over its line from Marshfield to Coquille and Myrtle Point, in favor of shippers at Portland, Oregon, and San Francisco, California, as follows, to wit: That the said Railroad Co., and its receiver charges Portland shippers a rate of \$2.00 per ton on merchandise from Marshfield to Coquille, and a rate of \$2.25 per ton from Marshfield to Myrtle Point, that the said railroad and its receiver makes a rate on the same class of merchandise to local shippers on Coos Bay, and to the plaintiff corporation herein of \$6.00 per ton from Marshfield to Myrtle Point, and \$5.00 per ton on the same class of merchandise from Marshfield to Coquille, thus making it impossible for this plaintiff to carry on its business in competition with the said Portland and San Francisco shippers.

"That said freight rate made and charged by the defendants herein is unjust, excessive, unjustly preferential, discriminatory and prohibitive.

"That the rates charged on all goods, locally, by this defendant from Marshfield to Coquille and Myrtle Point, are in themselves unjust, excessive and prohibitive.

"And praying that said Railroad Commission of Oregon adjust the said rates to a reasonable and just basis.

The Schultz-Davis Company, a corporation, vs. Coos Bay, Roseburg & Eastern Railroad & Navigation Company, and W. S. Chandler, Receiver thereof, defendant.

Answer.

Now comes the defendant, above named, and for answer to the complaint in the above entitled proceeding,

Denies each and every allegation in said complaint contained, not hereinafter admitted, qualified or specifically denied.

Admits the allegations of the paragraphs numbered 1st, 2nd and 3rd, in said complaint contained, substantially as therein alleged.

Further answering, alleges that the defendant corporation is primarily engaged in operating an industrial railroad for the transportation of coal, lumber and logs, and that the transportation of merchandise and other commercial freight is undertaken by it only incidentally, and more for the accommodation of residents and business men in the territory which it traverses than for a financial profit; that the amount of such merchandise and commercial freight offered to it is both absolutely and comparatively trivial, and that there is little profit, and a very small rate of profit made in handling the same;

That all logs, lumber and coal transported by the defendant corporation are received at Cedar Point and points between Cedar Point and Marshfield, and are transported to Marshfield, excepting a few small

shipments of lumber, and that the points in said complaint mentioned, to which the rates of shipment from Marshfield are alleged to be excessive and discriminative, are all beyond said Cedar Point;

That the operation of the portion of the said defendant corporation's railroad lying beyond said Cedar Point is, and for a long time has been unremunerative and unprofitable.

Further answering, defendant admits that the rate charged per ton for first-class freight, according to the Standard Western Classification, between Marshfield and Myrtle Point, is six dollars, and between Marshfield and Coquille City is five dollars, and alleges that these rates are reasonable, moderate and low, and are the same as are usually charged by other and more favorably situated railroads, carrying much more freight, for equal distances;

Further answering, the defendant alleges that on through shipments made by steamship from Portland to Marshfield, and by the defendant from there to destination, the freight is not classified according to weight, as are all exclusively rail shipments, but according to the custom of shipments by water, according to bulk or cubical contents, that by this method forty cubic feet is classified and charged for as a ton, that only the heaviest freight will weigh enough to constitute a ton by measurement; and that the average ton by measurement, as received by the defendant from the steamship company will weigh only about one thousand pounds;

Further answering, defendant admits that its rates upon such through shipments from Portland are as in said complaint alleged, but that its charges are upon the measured tons, as hereinbefore set forth, and that by reason of the measured ton of merchandise averaging only about one thousand pounds, the real charge by the defendant on such through shipments, as compared with the local shipments of merchandise, which are all charged for according to actual weight, are reasonable, moderate, just and proper, and that said rates and charges constitute no discrimination against the plaintiff or other local shippers.

Further answering, defendant alleges that the custom and method of shipping by steamship on the basis of the measured ton is proper and necessary for those operating steamships, and it would be impracticable for defendant to make a through rate with the steamship company, or companies, on any other basis.

Further answering, defendant alleges that the merchandise so received by it from the steamships for through shipment, and all through shipments are received by steamship, and not otherwise, are received in quantities of several carloads at a time, and are handled by the defendant in the same economical and expeditious manner, and with the same profit as carload shipments, that the steamship crews and their employees load said through shipments directly onto the cars, in many instances, from the steamship, and the defendant is thereby saved the labor and expense of storing, handling and loading said shipments, as is necessary in the case of local shipments.

Further answering, defendant alleges that said Coquille City and Myrtle Point, in said complaint mentioned, are on the Coquille river, and have direct connection by water with Bandon, which is a port having ocean connection with San Francisco, Port-

land and other points, and that the through rates made by the steamship companies, and the proportion thereof charged and received by the defendant are governed by the rates charged on the through water routes above mentioned, and that the present through rate by water from San Francisco to said Myrtle Point and Coquille, is less than the rate complained of by the plaintiff and charged by steamship companies for shipments from Portland to Marshfield, and thence via the railroad of the defendant to destination;

Further answering, defendant alleges that the plaintiff herein has never offered carload shipments to the defendants and never asked for rates on the same, that in all the time the plaintiff has been in business it has shipped less than two tons of merchandise over the railroad of the defendant, and said shipments have been in small lots and at different times;

Further answering, defendant alleges that the office and place of business of the plaintiff is at North Bend, Oregon, and not at, or upon the line of the railroad operated by the defendant corporation, that by reason of its said location, the plaintiff must ship all merchandise, intended for said Myrtle Point and Coquille City, to the station of the defendant at Marshfield, by water, that the regular rate charged for said water haul from North Bend to Marshfield, by the boats engaged in that traffic is twenty-five cents per hundred pounds weight, and in quantities of one ton and upward is in no case less than one dollar per ton, that the regular steamship rates, being those plaintiff is compelled to pay, for shipping merchandise from outside jobbing and supply centers to North Bend are the same as those charged for shipping merchandise from the same points to Marshfield, and that the inability of the plaintiff to compete with Portland and San Francisco jobbers is due to said disadvantageous situation of its place of business and the freight charges which it is thereby compelled to pay for transporting its shipments of goods in small quantities, in the manner in which it handles them, to the station of the defendant at Marshfield, and not to the rates or charge placed upon the same by the defendant.

John S. Coke,

Attorney for Defendant.

The following witnesses gave evidence at the hearing held at the local depot: F. A. Laise, W. S. Chand-

ler, C. J. Mills; Mr. Davis was recalled. The railroad in its proceedings followed the line of argument presented in its answer, and the complainant's procedure was about the same. The contention of the railroad was not that the rates held by Mr. Shultz to be discriminatory were not in effect, but an attempt was made to justify those rates. It was held that the water competition to the Coquille country by way of Bandon makes it necessary to protect the railroad by the rates now in effect. It was claimed by the railroad witnesses that the eight miles of road beyond Coquille is a losing investment and that it does not pay for maintenance. Most of the profits derived by the railroad, according to the company's evidence, are derived from the traffic in logs, lumber and coal. The amount of traffic in merchandise is so insignificant that the company believes its prices just.

An important point was raised during the hearing; the railroad has the co-operation of the Breakwater in its freight traffic and is enabled to route traffic through from Portland to the Coquille country, whereas, freight brought by another vessel must be transferred to the Southern Pacific here. The railroad holds that the Commission has no jurisdiction over water transportation, since it is carried on outside the three-mile limit, where all jurisdiction of a state ceases. This contention was supported by the company in quoting a decision handed down by Judge Deady of the United States District Court in Oregon, to the effect that Oregon has no jurisdiction over traffic which is carried outside the three-mile limit, even when it is returned to the State's boundaries in some other Oregon port.

Shultz and Davis were ordered to file a statement of the traffic the firm has forwarded over the local railroad since they have been in business, and this must be submitted to the railroad company and filed with the commission. Upon the evidence at the hearing the case will be decided on the following: affidavits, pleadings in cause, and briefs of parties. Each side reserves the right to submit its arguments by argument or briefs, the Commission sitting as a court. Hollister & Guerrey, of North Bend, represented Davis & Shultz, and the railroad had the following attorneys as counsel: John S. Coke, John H. Kollock, of Portland, and John D. Goss.

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