

Decision No. 14479

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of the Southern Pacific Company for authority to change tariff restricting the rates applying to Flour, Cereals and Cereal Products, of 5½ cents per 100 Pounds between Oakland and Mountain View, and 10½ cents per 100 Pounds between South Vallejo and Mountain View, to the route via Dumbarton only.

APPLICATION NO. 10506

Henley C. Booth and H. W. Klein, for Applicant
Edw.I.Barry and C.S.Connolly, for Albers Bros. Milling Company, Protestant
Frank E. Chandler, for Sperry Flour Company
R. P. McCarthy, for Globe Grain & Milling Company.

BY THE COMMISSION:

O P I N I O N

This application was filed informally by the Southern Pacific Company February 21, 1924 under Section 63 of the Public Utilities Act, and seeks authority to restrict rates applying to Flour, Cereals and Cereal Products, in carloads, between Oakland and Mountain View of 5½ cents per 100 pounds and between South Vallejo and Mountain View of 10½ cents per 100 pounds, via Dumbarton only.

The application was considered informally, but the investigation developed opposition from prominent milling companies and therefore the matter was set for formal hearing, as per applicant's request August 11, 1924.

A public hearing was held before Examiner Geary at San Francisco October 16, 1924, and the matter having been duly submitted is now ready for an opinion and order.

Rates will be stated in cents per 100 pounds.

The rates directly in controversy are those published as applying to flour, cereals and cereal products, page 73 of Southern Pacific Company's Local, Joint and Proportional Freight Tariff No. 659-C, Cal. R.C. No. 2500, and are governed by Rule No. 38, carried on page 41, which reads, in part:

"Unless otherwise specifically provided herein, rates apply via routes provided in G.F.D. Circular No. 199-E (I.C.C. No. 4321, C.R.C. No. 2711), or reissues thereof".

The rates also apply to grain and commodities taking the grain rates, as per Rule 10, carried on page 33 of Southern Pacific Company's Local, Joint and Proportional Freight Tariff No. 793-B, C.R.C. No. 2487. This rule reads:

"Unless otherwise specifically provided, all rates in Tariff carloads or less than carload must not exceed rates for Flour from and to same points".

Therefore, we have for consideration in this proceeding both flour and grain rates between the points in controversy. No protest was made as to the proposed adjustment between South Vallejo and Mountain View, and no evidence was submitted in opposition to the adjustment between these points; this, no doubt, due to the fact that the rates from South Vallejo do not break down the rates at San Jose or other points and, therefore, the change is merely technical without bringing about increased charges. The matter will be considered entirely with reference to the rates between Oakland and Mountain View.

The volume of the rates covering flour, cereals and cereal products (Tariff No.659-C) and those covering grain (Tariff No.743-B), are the same from Oakland to Mountain View, but the grain rates are protected by a symbol reading "Rates apply via Redwood City, California only" and if this same symbol and foot note had been published in connection with the flour rates, the present controversy would not exist.

Applicant's Exhibit No.3 presents a chronological history of the rates from San Francisco and Oakland to Mountain View and San Jose. This exhibit shows that on August 3, 1910 the rate on flour from San Francisco to Mountain View was 4 cents and from Oakland to Mountain View $6\frac{1}{2}$ cents.

On September 12, 1910 the Dumbarton Bridge was opened to Traffic, making available a route from Oakland to Mountain View via Dumbarton and Redwood City. Prior to the construction of the Dumbarton Bridge the only available route between Oakland and Mountain View was via Niles and San Jose, or via Newark and Santa Clara. The distance between Oakland and Mountain View, via Newark and Santa Clara, is 47 miles; via Niles and San Jose 52 miles, and via Dumbarton and Redwood City 42 miles; the distance San Francisco to Mountain View is 36 miles.

On July 15, 1913 the flour rate from Oakland to Mountain View was reduced from $6\frac{1}{2}$ cents to 4 cents; at the same time the rate on flour from San Francisco and from Oakland to San Jose was 5 cents. Carrier's witness testified that prior to July 15, 1913 the rates between Oakland and Mountain View were higher than between San Francisco and Mountain View, and the reductions were made in both the grain and flour rates in order to place the mills at these two important producing points on a parity. The routing governing the rates between Oakland and Mountain View at the time

the reductions were first made was via Dumbarton, as per Southern Pacific Circular 199-B, C.R.C. 476. This routing restriction prevailed until August 1, 1917, when G.F.D. Circular 199-D, C.R.C. 2123, was changed to provide that the rates between Oakland and Mountain View would apply via Dumbarton, Santa Clara, Alviso or San Jose. This latter application prevails today in Circular 199-E, C.R.C. No. 2711. Item No. 250 of the same Circular specifies routes via which rates apply between Oakland on the one hand and Redwood City-Lawrence and points between on the other, and restricts the rate applications via Dumbarton. The record does not disclose why, in Item 600, Mountain View should be favored with the application of rates via Dumbarton, Santa Clara, Alviso and San Jose, particularly in view of the fact that Mountain View is located between Redwood City and Lawrence.

In order to reach a conclusion it will be necessary to determine first the legal rates now applicable under the tariffs lawfully on file with the Commission and then to determine whether the resulting increases made by the proposed adjustment have been justified, as provided in Section 63 of the Public Utilities Act.

As heretofore stated, the present grain rate of $5\frac{1}{2}$ cents between Oakland and Mountain View is restricted to apply via Dumbarton, but the flour rate of $5\frac{1}{2}$ cents between the same points is not so restricted and, therefore, under the provisions of Item 600 of Circular No. 199-E, is applicable at all points between Oakland and Mountain View either via Dumbarton, Santa Clara, Alviso or San Jose, thus cutting the point to point flour rate of $7\frac{1}{2}$ cents between San Jose and Oakland to $5\frac{1}{2}$ cents, which rate under the tariff rule could not be exceeded on grain between San Jose and Oakland because of the maximum clause, Rule 10, carried in Southern

Pacific Tariff 793-C, previously referred to.

It is applicant's contention that the Oakland to San Jose flour rate is $7\frac{1}{2}$ cents and that the $5\frac{1}{2}$ cent flour rate, Oakland to Mountain View, will not apply via Niles and San Jose or via Alviso and Santa Clara, for the reason that Circular 199-E provides "Routes via which rates between points on the line of the Southern Pacific Company (Pacific System) apply when not otherwise specifically provided in individual tariffs making reference hereto". We are unable to subscribe to this interpretation, and it is our opinion this caption in the tariff is directed only to the routes via which the rates apply. The $5\frac{1}{2}$ cent flour rate is not restricted to apply via any particular route other than the routes authorized in Circular 199-E, as per Southern Pacific Tariff 659-C.

Prior to October 22, 1923 Rule 5 of Tariff 659-C, covering application of rates, read:

"Except as otherwise specifically provided in connection with individual rates, the rates named in this tariff will, in the absence of specific commodity rates, apply from or to directly intermediate points".

There being a specific rate of $7\frac{1}{2}$ cents Oakland to San Jose, the Oakland to Mountain View rate of $5\frac{1}{2}$ cents could not be applied under the tariff publication.

Effective October 22, 1923, the rule was changed to read:

"The rates named in this tariff will apply as maximum from or to intermediate points unless otherwise specifically provided".

This changed rule, it will be noted, provides that rates will apply as maximum from or to intermediate points unless otherwise specifically provided. It therefore follows that the $5\frac{1}{2}$ cent rate not being restricted became, on October 22, 1923, the legally applicable

rates on grain and flour from Oakland to Mountain View via either Dumbarton, Santa Clara, Alviso or San Jose, and could not be exceeded at any intermediate station.

It would appear from this record that the Flour Tariff was improperly published, through an oversight or clerical error, and should have carried the same rate restriction as the grain tariff; this mistake, however, does not void the rates, for the intention of the tariff framers is not controlling and the tariff must be construed in strict conformity with the language employed. The Southern Pacific Company should refund any charges collected on carloads of flour and articles taking flour rates moved October 22, 1923 and subsequent thereto in excess of $5\frac{1}{2}$ cents at stations between Oakland and Mountain View via any of the routes set forth in Item 600 of Circular 199-E.

Albers Bros. Milling Company appeared as protestant to the proposed adjustment. This company has mills at Oakland and operates a branch house at San Jose, shipping its products from Oakland to San Jose for distribution. The testimony indicates that flour is not moved in carload lots between Oakland and Mountain View. Protestants contended that the rate of $5\frac{1}{2}$ cents to Mountain View would be reasonable to apply to flour and grain between Oakland and San Jose, and submitted exhibits setting forth rates on these commodities between various points. The majority of the points selected are situate in territory where the rates reflect depressing water competition and, therefore, such competitive rates voluntarily put into effect by the carriers are not a measure of the reasonable rates this Commission may order into effect.

In Golden Gate Brick Company vs. Western Pacific Railway Company (2,C.R.C.607-609), we said:

"I am not at all in sympathy with the practice of carriers in putting tortured construction upon a tariff provision so that the same may yield them more revenue, and I certainly am no more in sympathy with the same practice when indulged in by shippers with a view to securing less rates. Tariffs should be clear and unambiguous, and when there is an ambiguity by reason of which a shipper has suffered, the carrier being responsible for the ambiguity should certainly be required to sustain the loss."

We find that applicants have justified the increased rates resulting from the proposed routing restriction, which only restores the rates in effect before tariff error occurred.

The application will be authorized.

ORDER

This application having been duly heard and submitted by the parties, full investigation of the matters and things involved having been had, basing its order on the findings of fact and the conclusions contained in the opinion, which opinion is hereby referred to and made a part hereof, and it appearing applicant having justified the proposed increases, and that the application should be granted.

IT IS HEREBY ORDERED that the Southern Pacific Company be and it is hereby authorized to restrict, to apply via Dumbarton

only, the rate of 5½ cents between Oakland and Mountain View, and the rate of 10½ cents between South Vallejo and Mountain View, applying to flour, cereals and cereal products, as shown in Southern Pacific Company Tariff No. 659-C, C.R.C.2500, at page 73.

Dated at San Francisco, California, this 27th
day of January, 1925.

H. H. Brounidge
W. H. Cheney
Ernest Shore
George D. Squires
Frank Scott
Commissioners.