Decision NO. 15829

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

C. N. Turner Petroleum Company,
American-Asiatic Petroleum Company,
Complainants,

vs.

Pacific Electric Railway Company,
Southern Pacific Company.
Defendants.

ORIGINAL

CASE NO. 2120

B.H.Carmichael and Glenson,Clewe,Van Dine & Turcotte,
by F.W.Turcotte, for Complainants.

C.W.Cornell and G.F.Squires, for Defendants.

SQUIRES, COMMISSIONER:

O P I N I O N

Complainants are corporations engaged in the business of producing, buying, refining, blending and selling petroleum and petroleum products, with their principal place of business at Los Angeles,California.

By complaint filed April 11,1925 and amended August 19,1925, it is alleged that a switching charge of $2.70 per car assessed by the defendants, in addition to the line haul rates, on shipments of petroleum fuel oil from East Long Beach and Signal Hill to Colton during the period from December 27,1922 to February 15,1925 was inapplicable, under the tariffs lawfully on file with this Commission, and that the said switching charge should have been absorbed by defendant, Pacific Electric Railway. It is further alleged that if

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the Commission finds the aforesaid switching charge to have been lawfully applicable, then we are asked to declare that the adjustment was unduly discriminatory to complainants and unduly preferential to complainants' competitors located at San Pedro, Wilmington, El Segundo, El Segundo wharf and other oil shipping points in Southern California, and in either event to award reparation.

Signal Hill and East Long Beach are points on the Pacific Electric Railway, in what is known as the Signal Hill oil producing section. Colton is located on the Pacific Electric Railway, Southern Pacific Company, Atchison, Topeka & Santa Fe Railway, and Los Angeles & Salt Lake Railroad.

Complainants' shipments consisted approximately of 2000 cars of fuel oil and were loaded at the racks of the Hursh Refinery at Signal Hill. The cars were waybilled from East Long Beach and were routed via xxx Pacific Electric Railway to Colton for delivery to the California Portland Cement Company. The latter industry was and still is served by the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railway Company. Defendants assessed and collected on these shipments prior to December 22,1924 their line haul rates of 8 cents per 100 pounds, and 7 cents thereafter, plus $2.70 per car, the latter charge accruing to defendant, Southern Pacific Company, for performing the switching service from the interchange point with the Pacific Electric Railway to the industry tracks in the plant of California Portland Cement Company at Colton. Complainants admit there were no movements originating at East Long Beach and the allegations of the complaint, insofar as they involved any tonnage from that point, were abandoned at the hearing.

During the time these movements took place defendant,

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Pacific Electric Railway Company, had in effect in its Terminal Tariff 2-F, C.R.C. 255, Item 65, carrying a provision for the absorption of the switching charge at Colton, reading as follows:

> "On carload traffic (competitive traffic, see Item 10), on which the Pacific Electric Railway receives a line haul * * *destined to or originating at industry tracks not reached by this company's rails located within the switching limits of the Southern Pacific Company or the Los Angeles and Salt Lake Railroad at Colton, this company will absorb * * * the amount of connecting carrier's published charge for switching to or from the interchange track with this company."

Until August 28,1923 the term "competitive traffic" was defined in Item 10 as follows:

> "Competitive traffic is traffic which may be handled from point of origin to point of destination via two or more lines or routes."

On August 28,1923 an amendment to Item 10-A became effective, which reads as follows:

> "(Applies on Intrastate Traffic Only)
> "Competitive traffic is traffic which, at time of shipment, may be handled at equal rates (exclusive of switching charge) from same point of origin to same destination via other carriers, one of which performs the switching service."

Complainant maintains that during the time the first definition of competitive traffic was in effect it was possible to ship from Signal Hill to Colton via the Pacific Electric direct, or via the Pacific Electric to Los Angeles, thence via either the Southern Pacific, Atchison, Topeka & Santa Fe Railway, or Los Angeles & Salt Lake Railroad, to Colton. This, it is alleged, constituted two or more routes from point of origin to destination, and although the rates via the joint routes were not the same as the local rate

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of the Pacific Electric Railway, the traffic was, nevertheless, competitive.

Defendants' witnesses testified that prior to August 1,1914, the Pacific Electric Railway had in its Terminal Tariff the same definition of competitive traffic as is in force at the present time, and that Item 10 as above quoted was amended because of statements by the Interstate Commerce Commission that it was not in strict accordance with the provisions of Rule 4(1) of Tariff Circular No.18-A. Defendants do not seriously contend that the definition referred to is not open to misinterpretation, but they claim that it never was the intention to consider traffic from Signal Hill to Colton as competitive and that under a strict interpretation of the Item it should not be so considered. Testimony was given by defendants to the effect that the clause "via two or more routes" are correlated, the words "or routes" being simply explanatory of the words "two or more lines", and that because from point of origin to destination, Signal Hill to Colton, there is only the Pacific Electric Railway, the movement between those points does not come within the scope of the definition of competitive traffic as contained in Item 10.

Manifestly the Item was ambiguous. If it was not the intention of the carrier to declare the traffic from Signal Hill to Colton competitive, its tariff failed to inform the public definitely and clearly as to its application and, therefore, it should have its ambiguities construed against the framer.(Hurlburt vs. L.S.& M.S.Ry. 2.I.C.C.122).

There were undoubtedly two or more routes over which this traffic from Signal Hill could reach Colton, i.e. via the Pacific Electric direct, or via the Pacific Electric to Los Angeles,

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thence Southern Pacific or Atchison, Topeka & Santa Fe or Los Angeles & Salt Lake, and commodities moving over such routes, under the definition in effect at the time referred to, constituted competitive traffic.

I am, therefore, of the opinion and so find that the switching charges of $2.70 per car on complainants' shipments moving during the period December 27,1922 until August 28,1923, should have been absorbed by defendant, Pacific Electric Railway, under the provisions of Item 10, Terminal Tariff 2-F, C.R.C. 255. The charges of $2.70 per car were, therefore, illegally applied and the amounts collected should be refunded with interest.

Under the second definition, effective August 28,1923, complainants contend that traffic from Signal Hill to Colton is competitive for the reason that Signal Hill on the Pacific Electric Railway, and Burnett on the Los Angeles & Salt Lake Railroad, should at all times have been treated as common points of origin and, further, that the rates from both points to Colton were equal. Signal Hill and Burnett are in the Signal Hill oil district, situated approximately seven-tenths of a mile apart, Burnett being within the corporate limits of the town of Signal Hill. As previously stated, the actual loading of shipments was done at the Hursh Refinery loading racks, on the Pacific Electric Railway, directly opposite the station of Signal Hill. There are also loading racks at Burnett, and the loading racks at both points are served by a common pipe line. Complainants contend that since the oil could have been loaded at either Signal Hill or Burnett from the same pipe line, the points should be considered as common and the shipments be given equal rates, including the switching to destination industry tracks when

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cars moved via either the Pacific Electric Railway or the Los Angeles & Salt Lake Railroad.

Defendants, on the other hand, maintain that Signal Hill and Burnett are not common points. They stress the fact that there are no track connections, that they are two separate and distinct stations on different railroads and are so shown in the respective tariffs of the Pacific Electric Railway and the Los Angeles & Salt Lake Railroad.

Complainants position, it clearly appears to me, is not based on sound logic. The fact that Signal Hill and Burnett are located in the same oil producing field and have loading facilities served by the same pipe line does not make them common points. It would be just as logical to hold that if Los Angeles and Bakersfield, 169 miles apart, were connected by a pipe line and it were possible to pump oil from the pipe line to either place for loading into tank cars, that then the two points and the stations intermediate thereto must be considered common railroad shipping points.

I therefore conclude and so find that under the definition of competitive traffic as set forth in Item 10-A as amended, defendants lawfully assessed and collected the destination switching charge at Colton of $2.70 per car on complainants shipments transported during the period herein involved on and after August 28,1923.

There now remains for consideration complainants' allegation that the switching charges assessed after August 28,1923 were discriminatory and unduly preferential. As previously stated, the line haul rate in effect after August 28,1923 from Signal Hill to Colton was 8 cents per 100 pounds prior to December 22,1924, and 7 cents thereafter, to which was added the switching charge of $2.70 per car assessed by the Southern Pacific Company for switching

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shipments to the industry tracks of California Portland Cement Company at Colton.

There were concurrently in effect to Colton from other oil shipping points in Southern California, commercially competitive with Signal Hill, many local and joint rates which included industry track delivery.

A study of these rates makes it clear that on shipments made by competitors destined to an industry at Colton served by the rails of the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway or the Los Angeles & Salt Lake Railroad, the payment of $2.70 per car switching charge at the latter point could in all cases be avoided. In this manner it is alleged complainants have suffered undue discrimination and complainants' competitors have been unduly preferred, because no joint rates were concurrently maintained by defendants from Signal Hill.

Complainants' president and general manager testified that the basic selling price of fuel oil is set by the larger oil companies and is generally followed by the other companies. In securing business from the California Portland Cement Company at Colton complainants were confronted with active competition from practically all the large oil companies located at the competitive points in Southern California. The oil handled by complainants was sold f.o.b. consignee's plant at Colton and the entire freight charges were borne by them.

Effective February 15,1925, defendants voluntarily established from Signal Hill to Colton a joint rate of 7 cents per 100 pounds applicable via the Pacific Electric railway to Los Angeles, thence Southern Pacific Company or Atchison, Topeka & Santa Fe Railway beyond. This action of defendants has placed

Signal Hill on a rate parity with the other oil shipping points referred to in this opinion, thus removing the discrimination and preference which evidently existed.

Complainants have requested this Commission to award reparation. However, in seeking reparation because of discrimination, complainants must show that they have suffered actual pecuniary damage. Proof of damage must be established by the same evidence required in a court of law. It cannot be presumed that if complainants suffered any damage the amount should be measured by the difference in freight charges. In the absence of proof that complainants have suffered direct injury by the discrimination which appears to have existed, I believe reparation should be denied. (International Coal Case, 230 U.S.184).

The following form of order is recommended for adoption:

O R D E R

This case being at issue upon complaint, full investigatuon of the matters and things involved having been had and basing this order on the findings of fact and conclusions contained in the foregoing opinion, which said opinion is hereby referred to and made a part hereof,

IT IS HEREBY ORDERED that defendants, Pacific Electric Railway Company and Southern Pacific Company, according as they participated in the traffic, be and they are hereby authorized and directed to refund, with interest, to complainants, C.N.Turner Petroleum Company and American-Asiatic Petroleum Company, according as their interests may appear, all charges they may have collected

from complainants, or their predecessors in interest, in excess of 8 cents per 100 pounds, for the transportation of petroleum fuel oil from Signal Hill to Colton shipped during the period extending from December 27,1922 until August 28,1923.

IT IS HEREBY FURTHER ORDERED that as to all other matters involved the complaint in this proceeding be, and the same is, hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of January, 1926.

C. L. Seavey

George D. Squires

Edwin O. Edwards

Leon O. Whitsell

Commissioners.

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