Decision No. 17175

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Revision of Tariff Items covering the application of Joint Rates from and to the Industry Tracks within the switching limits at the Junction Point through which the traffic is interchanged, as set forth in Tariffs issued by F.W.Gomph, Agent in the name of and on behalf of carriers, also in the Tariffs of Individual Carriers under the jurisdiction of the Railroad Commission of the State of California.

ORIGINAL

CASE NO. 2176

E.W.Camp, J.E.Lyons, E.E.Bennett, James S.Moore,Jr. and J.P.Quigley, for the Carriers,

Sanborn & Roehl and DeLancey C.Smith, by H.H.Sanborn and N.E.Keller, for Pacific Portland Cement Company,Cons.,

A. Larsson, for Larsson Traffic Service,

E. W. Hollingsworth, for Oakland Chamber of Commerce,

Seth Mann and S.A.Everstine, by S.A.Everstine, for San Francisco Chamber of Commerce,

C.S.Connolly, for Albers Brothers Milling Company,

R.P.McCarthy, for Globe Grain & Milling Company,

B.H.Carmichael and F.W.Turcotte, for General Petroleum Corporation, Hercules Gasoline Company and Agricultural Chemical Works,

McCutchen,Olney,Mannon & Greene, by John O. Moran, for Canners League of California; Dried Fruit Association of California, and California Packing Corporation.

BY THE COMMISSION:

O P I N I O N

This case involves the propriety of the publication of note 2 to item 10 and note 4 to item 20 in Pacific Freight Tariff Bureau Tariff 30-H, C.R.C.No.366 and the similar proposed amendments in other tariffs defining the application of joint freight rates from and to the intermediate junction points. By tariffs filed

to become effective on or about October 10,1925 respondent carriers endeavored to amend the items under suspension by the addition of the notes referred to above, as follows:

> Note 2: The joint through rates named herein will not apply from any point within the switching limits of the junction point at which the traffic is interchanged by the carriers, parties to such joint through rates.
>
> Note 4: The joint through rates named herein will not apply to any point within the switching limits of the junction point at which the traffic is interchanged by the carriers, parties to such joint through rates.

These amendments are shown as resulting in neither increases nor reductions.

Protests were received from many Chambers of Commerce, Trade Associations, shippers and receivers of freight alleging the proposed amendments would result in unauthorized increases in the freight charges and also that they were in violation of Section 21, Article XII of the State Constitution and Section 24(a) of the Public Utilities Act.

Our orders have suspended, until August 7,1926, the effective date of the amended items.

A public hearing was held before Examiner Geary at San Francisco January 25,1926 and the case having been duly submitted and the briefs filed, is now ready for our opinion and order.

Rates are stated in cents per 100 pounds unless otherwise specifically noted.

Prior to the addition of the suspended notes 2 and 4, Items 10 and 20 provided:

Item 10--

"Except as otherwise specifically provided in connection with individual rates, rates named in this Tariff will, in the absence of specific class rates, apply from directly intermediate points on the same line. (see Note).

"Note,- The term 'line', as used in this application, means the individual company on whose line the point having a specific rate is located, and such rate must not be used to determine a rate from a point on any other line.

Item 20--

"Except as otherwise specifically provided in connection with individual rates, rates named in this Tariff will, in the absence of specific class rates, apply to directly intermediate points on the same line. (see Note).

"Note,- The term 'line', as used in this application, means the individual company on whose line the point having a specific rate is located, and such rate must not be used to determine a rate to a point on any other line."

Items 10 and 20 are typical of all items under suspension and for the purpose of brevity will be hereinafter collectively referred to as Item 20.

These items, it is claimed by respondents, are subject to Item No.420, Rule No.265, of Bureau Tariff No.30-H, and to the similar rules of individual carriers. The rule reads:

"Except as otherwise specifically provided herein shipments made at rates named herein are subject to the Terminal and other Charges, Privileges and Allowances provided by tariffs of individual lines parties to this Tariff, and lawfully on file with the Interstate Commerce Commission and State Railroad Commissions."

The rule in Terminal Tariffs, relied upon, (Western Pacific Railroad Company Tariff 35-J, C.R.C.245,Item 770-A) reads:

> "Except as may be otherwise specifically provided in this tariff,when this company receives the line haul, the carload rates applicable to or from points on The Western Pacific Railroad Company's lines as published in The Western Pacific Railroad Company's tariffs, or in tariffs in which The Western Pacific Railroad Company is shown as a participating carrier,and Lawfully on file with the Interstate Commerce Commission or State Commissions, apply to or from the depots of The Western Pacific Railroad Company, to or from all industry tracks or wharves served by its rails and within its switching limits; also to or from interchange tracks with connecting lines at points of interchange, as shown in Section E hereof, but do not include cost of transfer from standard guage cars to narrow guage cars, nor from narrow guage cars to standard guage cars at points of interchange".

It is the contention of respondents that the changes proposed are merely in the interest of tariff clarification and that the original items and the terminal rules when read together prohibit the use of the joint rates at the intermediate junction points where the traffic is interchanged. They do not, however, contend that if Item 20 were read by itself that the joint rates would be inapplicable as maximum at the interchange points. In reaching this conclusion they ignore the plain language of Item 20.

Protestants take the position that Rule No.265 is not applicable at all to joint rates and can only be employed in assessing switching charge when the line hauls originate or terminate at the point where the switching services are performed.

Obviously in the absence of a joint rate from points on the individual lines the switching charge of the non-line haul carrier would apply, but in the instant situation respondents,

by the publication of joint rates, hold themselves out to deliver shipments to or from all points on the line of the individual company. Item 20 is specific and the definition of the term "line" includes the interchange point.

The terminal rules are not published in the rate section of the tariff; they are general in application, as evidenced by the proviso: "Except as otherwise specifically provided herein", and manifestly were never intended nor can they be construed as placing in effect provisions nullifying the specific provisions of the line haul tariff.

The proposed amendments would, without doubt, positively remove the application of the joint rates at the intermediate junction points.

The present tariff provisions, insofar as they affect the charges at the junction points, can best be illustrated by considering a few of the situations referred to by the protestants.

Cement is a station located on the Cement, Tolenas & Tidewater Railroad approximately 38 miles west of Sacramento and the rate on cement from that station to Sacramento via the Tidewater Railroad and Southern Pacific is 8 cents. There is concurrently in effect a joint rate of 8 cents from Cement to Stockton, 44.8 miles south of Sacramento, or a total distance of 82.8 miles applicable via the Tidewater Railroad - Southern Pacific through Sacramento, thence Western Pacific Railroad. The record indicates that on shipments from Cement to Sacramento for delivery to an industry track on the Western Pacific respondents assess and collect the line haul rate of 8 cents plus $2.70 per car switching charge. On shipments moving from Cement to Stockton hauled by the Western Pacific from Sacramento to Stockton and switched to an industry

track on the Western Pacific at that point, only the line haul rate of 8 cents is charged. Thus to Sacramento for Western Pacific delivery the per car charge would be $2.70 more than applicable on a shipment of equal weight destined to Stockton for Western Pacific delivery. In other words, to Sacramento where the Western Pacific may perform only a terminal switching service of a few thousand feet the charge per car of equal weight is $2.70 more than to Stockton where the Western Pacific renders a line haul service of 44.8 miles and the terminal switching service.

Both respondents and protestants agree that with the exception of the interchange point of Sacramento the joint rate of 8 cents applies under the provisions of Item 20 to all points on the Western Pacific Railroad intermediate between Sacramento and Stockton and on shipments destined to such points the joint rate includes the switching to industry tracks.

Another illustration; in Southern California the fuel oil freight charges from refineries located within the Santa Fe switching limits at Los Angeles to destinations on the Southern Pacific are greater than when the Santa Fe performs the line haul service. El Segundo is on the Santa Fe 17 miles southwest of Los Angeles, Narod is on the Southern Pacific 36 miles northeast of Los Angeles and the joint rate El Segundo to Narod is 7 cents. The local rate from Los Angeles to Narod is also 7 cents, but if a shipment destined to Narod originates on the rails of the Santa Fe within the Los Angeles switching limits a per car switching charge of $2.70 is assessed, notwithstanding the fact that the traffic from El Segundo moving under the joint rate passes the very doors of the Los Angeles shipper in reaching the Southern Pacific interchange tracks.

The same adjustments exist from Los Angeles Harbor

stations, San Pedro-Wilmington, where the joint rates from the more distant harbor points are the same as the local rates from Los Angeles; however, from points within the Los Angeles switching limits a $2.70 per car switching charge is assessed from the industry track to the interchange track of the line haul carrier.

Respondents maintain that such a situation as a movement from Cement to an industry on the Western Pacific at Sacramento constitutes two separate and distinct transactions, the line haul to the interchange point of the Southern Pacific - Western Pacific and the switching movement to the industry; that the latter is in the nature of a special privilege accorded shippers to obviate the necessity of private drayage and should not be considered a part of the line haul; that the fact of the two intermediate rates applying on separate local movements exceed the published through rate to a point beyond is not in violation of Section 24(a) of the Act inasmuch as the line haul rate is the same from Cement to Sacramento as it is from Cement to Stockton.

The position taken by respondents is not tenable. The shipment from Cement to Sacramento is destined to an industry track on the Western Pacific and until it reaches its ultimate destination the transportation service is not completed, nor can the physical movements be segregated and considered separately. There is but one continuous haul involved and any rate, whether line haul or switching, lawfully applicable to the shipment constitutes a part of the total through charge. The Interstate Commerce Commission, in Associated Jobbers of Los Angeles vs.

Atchison, Topeka & Santa Fe Railway Company, et al., 18, I.C.C.310-317, said:

> "* * * It is not to be overlooked that the delivery given on an industry spur is not supplemental to any other delivery. Cars destined to industry spurs are not placed first at a spur, depot, or on the team tracks, or at the sheds, and later switched to oblige the consignee. A train of freight cars goes to the breaking-up yards which lie at the entrance to the city, and there it is divided up with respect to the character of the freight in the various cars and their destination. No one has access to the cars at this point. This yard is purely a railroad facility. After the cars are segregated they are taken to the tracks to which they are ordered - * * * * *"

Section 24(a) of the Public Utilities Act prohibits, unless permission has been received from the Commission, the charging or receiving of any greater compensation in the aggregate for the transportation of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance. The joint rate of 8 cents applies from Cement to Stockton through Sacramento, but at the latter point respondents assess $2.70 more per car than at the former point, thus receiving a greater compensation for a shorter than for a longer haul over the same line or route. They contend, however, that the industry tracks at Sacramento being removed from the Western Pacific main line are not directly intermediate to Stockton as contemplated by Section 24(a) of the Public Utilities Act, for the traffic destined to the latter point does not physically move via the rails serving the industry; therefore, the shorter distance is not included within the longer.

Were we to agree with this interpretation of Section 24(a) there would be created a peculiar situation, in that long

and short haul departures would only occur when shipments were loaded or unloaded on the main line tracks of the carrier, a practice that is very rarely, if ever, followed. The term "Sacramento" in the tariffs comprehends not only the depot, or that portion of the city served by the main line rails of respondent, but all terminal facilities, within the switching limits, owned or controlled by the carriers and used by them in the performance of their common carrier duties. The Interstate Commerce Commission in considering the status of industry tracks at Los Angeles, Associated Jobbers Case, supra, held:

> "Each of such spurs is in a real sense a railroad terminal at which the carrier receives and delivers freight - a special, and generally in practice an exclusive, railroad depot for the carload freight of a particular shipper. * * * For forty years and more it has been the policy of the railroads to develop traffic and facilitate its movement by the construction of such spur lines, and so extensive has become this method of direct delivery by rail that it is difficult to conceive of any system which might be devised for conducting the vast volume of our heavy traffic without the spur track * * * In view of these conditions it would be manifestly unfair to treat the industrial spur as a plant facility, a shipper's convenience * * * * *." (p.313)

> "We are fully convinced that the complainant's view of the nature of these tracks is correct and that they are portions of the terminal facilities of the carrier with those lines they connect, and, together with the team tracks and other yards, form the terminal facilities of these carriers * * * * *". [313]

Respondents on brief urged that a finding by the Commission that the joint rates are applicable at the interchange junction points would be tantamount to opening the terminals of the carrier not receiving the line haul for the use of their competitors, in violation of the law. They cite our decision in "California Canneries Company vs. Southern Pacific Company", 12 C.R.C. 488-494, where we had for consideration the propriety of the Western Pacific

and Southern Pacific Companies' refusal to absorb the switching charge exacted by the Atchison, Topeka & Santa Fe Railway Company for switching from the interchange track of the Western Pacific and Southern Pacific to the industry of the California Canneries Company when such traffic originated at or was destined to non-competitive points on the former two lines. In reaching a decision in that case we held in effect that the terminals of the Atchison, Topeka & Santa Fe Railway could not be used by the Southern Pacific Company and Western Pacific Railroad without the payment of a reasonable compensation, nor could this Commission order carriers to throw open their terminal facilities to the free use of their competitors.

In the instant proceeding, however, we are confronted with an entirely different situation, for here respondents have voluntarily established joint rates including the switching service to or from all industry tracks at the line haul points. The carrier performing this switching service being a party to the joint through rate is certainly entitled to and does receive as its compensation a division of the line haul rate. Whether that division be properly measured by the volume of the switching charge or should be greater or less is not at issue in this proceeding and the matter of proper divisions will be left to respondents for determination.

Respondents have relied entirely upon a strained interpretation of the tariffs and of Section 24(a) of the Public Utilities Act to justify the assessing, at the interchange junction points, of a switching charge in addition to the line haul rates, and other than this the record is barren of any evidence justifying the present practice.

Upon consideration of all the facts of record we are

of the opinion and find that the addition of Note 2 to Item 10 and Note 4 to Item 20 of Pacific Freight Tariff Bureau Tariff 30-H, C.R.C.366, and similar items published in joint tariffs issued by F. W. Gomph,Agent, and in the tariffs of the individual carriers, have not been justified.

O R D E R

It appearing, that by order dated October 5,1925 the Commission entered upon a hearing concerning the lawfulness of the addition of Note 2 to Item 10 and Note 4 to Item 20 of Pacific Freight Tariff Bureau Tariff 30-H,C.R.C.366, and similar items published in joint tariff issued by F.W.Gomph,Agent, and in the tariffs of the individual carriers enumerated and described in said order and suspended the operation of the tariff until August 7,1926.

It further appearing that a full investigation of the matters and things involved having been had and the Commission having on the date hereof made and filed its opinion containing its findings of fact and the conclusions therein, which said opinion is hereby referred to and made a part hereof,

IT IS HEREBY ORDERED that the respondents herein be, and they are, hereby notified and required to cancel Note 2 to Item 10 and Note 4 to Item 20 of Pacific Freight Tariff Bureau Tariff 30-H,C.R.C.366 and similar items published in other joint tariffs issued by F.W.Gomph,Agent, and in the tariffs of the

individual carriers named therein, on or before September 1,1926 upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed by law.

IT IS HEREBY FURTHER ORDERED that the orders entered in this proceeding suspending the operation of the tariffs be vacated and set aside as of September 1,1926 and that this proceeding be discontinued.

Dated at San Francisco, California, this 31st day of July, 1926.

H. B. Brundige
O. K. Leamy
Leon O. Whitsell
Thos. S. Lovett

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