

Decision No. 17358

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Coast Rock & Gravel Company,
a Corporation,

Complainant,

vs.

Southern Pacific Company,
a Corporation, and
The Atchison, Topeka & Santa Fe
Railway Company, a Corporation,

Defendants.

ORIGINAL

CASE NO. 2214

Sanborn, Roehl & DeLancey C. Smith, for Complainant,
F.W. Mielke, for Southern Pacific Company,
Platt Kent and Berne Levy, for The Atchison, Topeka
& Santa Fe Railway Company,
Seth Mann, for San Francisco Chamber of Commerce, in
behalf of Complainant,
A. Larsson, for Larsson Traffic Service, in behalf of
Complainant,
W.T. Plunkett, for State Board of Harbor Commissioners.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation with its principal place of business in San Francisco.

By complaint filed February 16, 1926 and as modified at the hearing, it is alleged that the total charges assessed and collected on various carloads of crushed rock, sand and gravel moving during the period February 16, 1924 to February 16, 1926 from Eliot on the Southern Pacific Company, to a point designated

as Track 29, located near Pier 50 on the Atchison, Topeka & Santa Fe Railway in the China Basin district at San Francisco, were unreasonable, excessive and unjust in violation of Section 13 of the Public Utilities Act, and subject complainant to undue prejudice, disadvantage and discrimination, in violation of Section 19 of said Act to the extent they exceeded the charges that would have accrued at a rate of 50 cents per ton of 2000 pounds. Charges were assessed at 50 cents per ton, the line haul rate of the Southern Pacific Eliot to San Francisco, plus two San Francisco switching charges, the Santa Fe of \$2.70 per car and the State Belt Railroad of \$3.50 per car.

We are asked to award as reparation the switching charges collected in the amount of \$6.20 per car and to prescribe a reasonable and nondiscriminatory rate for the future.

Public hearings were held before Examiner Geary at San Francisco May 6, 8, and 14, 1926 and the case having been duly submitted upon oral argument is now ready for our opinion and order.

The shipments here at issue consisted of approximately 700 cars, averaging 50 tons per car and containing about 35000 tons of crushed rock, sand and gravel for use in the construction of Pier 50 for the State of California in the China Basin district.

Eliot is a main line point on the Western Division of the Southern Pacific, 43 miles east of San Francisco, and the China Basin district is in the southern portion of the San Francisco waterfront, immediately east of Third and Channel Streets. The Southern Pacific hauled the shipments from Eliot to a point near El Dorado Street, San Francisco, where they were turned over to the Santa Fe. From El Dorado Street the Santa

Fe switched the cars to Track 29. The actual point of delivery is on property owned by the State of California and served by the rails of the Belt Line. Thus, three carriers participated, the Southern Pacific performing the line haul service, Eliot to San Francisco (El Dorado Street), the Santa Fe the switching service, and the Belt Line furnishing the terminal properties and a short piece of the switching tracks. The Santa Fe performs all transportation service for the Belt Line, acting as its agent under an operating agreement.

It is complainant's contention that the failure of the Southern Pacific to absorb the switching charges of both the Santa Fe and the Belt Line in the China Basin district on the Eliot shipments while absorbing them on all competitive traffic and, in part, on non-competitive traffic in the other San Francisco districts and at various other points throughout the State, has resulted in the exaction of unreasonable and discriminatory charges.

The record shows that with the exception of the China Basin district the Southern Pacific absorbs the Belt Line switching charge of \$3.50 per car on both competitive and non-competitive carload traffic.

Absorptions are likewise made by the Southern Pacific on non-competitive traffic of the South San Francisco Belt Railway at South San Francisco (within the San Francisco switching limits), the Howard Terminal Railway at Oakland, the Pacific Electric Railway at Long Beach, the Los Angeles Junction Railway at Los Angeles, Pacific Electric Railway and the Outer Harbor Dock & Wharf Company at San Pedro, and the McCloud River Railroad at Mt. Shasta. On competitive traffic throughout California it is the general practice of the carriers receiving the line haul to absorb all terminal switching charges and this practice prevails

in the China Basin district.

The Terminal Tariff of the Southern Pacific and other important railroads defines competitive traffic as "traffic which at the time the shipment moves may be handled at equal rates exclusive of the switching charges from same point of origin to the same point of destination via other carriers, one of which performs the switching service". Conversely, non-competitive traffic is defined "traffic other than that described as competitive traffic".

Traffic from Eliot to San Francisco is non-competitive under the Terminal Tariff definition.

Complainant does not attack as unreasonable, per se, either the Santa Fe or Belt Line switching charges, but contends these switching charges are included in the volume of the line haul rates and that such rates are not only predicated on the line haul service, but are sufficient to also include the cost of terminal delivery. It is claimed this practice in reality has the effect of making the switching lines' terminal facilities a part of the line haul service and, therefore, is in harmony with the principles laid down by the Interstate Commerce Commission in *Associated Jobbers of Los Angeles vs. Atchison, Topeka & Santa Fe Railway* (18 I.C.C.310-317). In that decision it was held that the rates included switching to industry tracks of the line haul carriers and that any charge in addition was, prima facie, unreasonable. Considerable stress was laid by complainant on our decision in *North Pacific Steamship Company vs. Southern Pacific* (8, C.R.C.512), wherein we concluded that the failure of the Southern Pacific to absorb the switching charges of the Belt Line on shipments to and from wharves and

piers of the North Pacific Steamship Company while absorbing the switching charges of other team, industry, wharf and pier tracks on the San Francisco waterfront was unreasonable.

Defendants contend the crushed rock, sand and gravel rates in Northern California are depressed by water competition, that the Eliot to San Francisco rate of 50 cents per ton is further depressed by market competition and that in order to allow the shippers at Eliot to reach the San Francisco market in competition with shippers at Niles it voluntarily placed both points on a rate equality. Livermore, a point four miles more distant than Eliot was also given the 50 cent rate to San Francisco. Thus, those shipping points are on a parity to Southern Pacific authorized delivery tracks. They further stress the fact that under the so-called Northern California Mileage Rock Scale, Southern Pacific Tariff 330-E, C.R.C.3112, the rate on crushed rock, sand and gravel for a 43 mile haul, Eliot to San Francisco, is 60 cents per ton. This scale, they claim, is the normal basis for the movement of crushed rock, sand and gravel in Northern California and only because of commercial competition has Eliot been accorded the rate of 50 cents per ton, or 10 cents per ton lower than the mileage scale.

Predicated upon a per car loading of 50 tons, the assailed charges were \$31.20 per car, \$25.00 per car for the line haul and \$6.20 per car switching charges. Based upon the 60 cent Mileage Scale and without considering the \$6.20 switching charge, the per car revenue for the haul from Eliot to San Francisco would be \$30.00. Thus, defendants claim, the per car charge of \$31.20 is not unreasonable when viewed in the light of the fact that the Eliot to San Francisco line haul rate of 50

cents per ton is depressed below the Mileage Scale. Defendants cite decisions of this Commission in which we considered the effect water competition on the Bay of San Francisco and its tributaries had on the general level of the freight rates, and particular stress was laid upon our decision in Union Rock Company vs. Atchison, Topeka & Santa Fe Railway Company, 27, C.R.C. 285-294, wherein we gave consideration to the influence of water-competition as a measure for the rates on crushed rock, sand and gravel in Northern California predicated upon the Mileage Scale. In that case we said:

"The record shows that at the time the rail carriers first felt the effects of this water competition they endeavored only to establish low rates at points where the competition was active and where it was necessary to go below the normal rates in order to secure to the rail carriers a portion of the water-borne traffic. But as additional plants were opened up at inland points the carriers were forced to establish rates whereby producers at those points could reach the consuming markets in competition with shippers enjoying the water-influenced rates. Following the San Francisco fire and earthquake of 1906 an abnormal demand was created for building materials. This condition resulted in the development of many sand and gravel deposits, and in order to permit shippers at the new points to compete for San Francisco business rates were established comparable with the water-compelled rates. Thus the low basis of rates originally intended to apply only between points where there was actual water competition gradually extended to the inland points not served by water until the rates were practically uniform in northern California."

On this record it appears clear that the volume of the Eliot to San Francisco rate of 50 cents per ton has been influenced to a large extent by both water and market competition.

As heretofore stated, the Southern Pacific, a non-competitive traffic, absorbs, with the exception of points in the China Basin district, the Belt Line switching charges at all points in San Francisco east of Van Ness Avenue, and also absorbs at points west of Van Ness Avenue \$3.50 of the \$13.50 switching charge; in other words, the Southern Pacific has voluntarily accorded to all shippers in San Francisco, save those located in the China Basin district, Belt Line delivery at the line haul rates. Defendants admit there is no different line haul service performed by it in reaching industries located in the China Basin district than at other points on the Belt Line, but urge the traffic from and to China Basin is not similar to traffic originating at or destined to other Belt Line points, in that to China Basin an intermediate or bridge switching service must be performed by the Santa Fe.

Section 19 of the Public Utilities Act prohibits a public utility from establishing or maintaining any unreasonable difference as to rates, charges, service, facilities, or in any other respect either as between localities or as between classes of service. Under this section of the Act where carriers voluntarily grant a privilege, they cannot lawfully withhold that privilege from all shippers in the same general locality unless justified by controlling transportation conditions creating dissimilar circumstances and conditions.

Upon this record there is no justification for the assessing of the Belt Line switching charge on complainant's shipments to China Basin while absorbing the charge to all other points on the Belt Line. We are of the opinion and find, after consideration of all the facts of record, that complainant has been and is now subjected to unlawful discrimination, prejudice

and disadvantage by reason of the refusal of the Southern Pacific to absorb the Belt Line switching charge of \$3.50 per car to the China Basin points.

There remains for consideration the allegation that the failure of the Southern Pacific to absorb the bridge switching charge of the Santa Fe from Southern Pacific interchange tracks to the connection with the Belt Line results in undue preference and creates unreasonable difference in rates. Eliot is in competition with the rock quarries at Niles and Livermore, but under the language of the Southern Pacific Terminal Tariff is not a competitive point; Item 10-A reading:

"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."

Niles and Livermore are served by the Southern Pacific and the Western Pacific and, therefore, are competitive to San Francisco. Shipments from Niles or Livermore to China Basin pay no switching charges, while traffic from Eliot is assessed the two switching charges totaling \$6.20 per car. Prior to December 1, 1924 Niles, Eliot and Livermore were on a parity, switching charges being assessed against all three points. Effective December 1, 1924 the Western Pacific, by publication of Item 198 in its Terminal Tariff 35-J, C.R.C.245, provided as to all traffic for the absorption of the \$2.70 per car charged by the Santa Fe and the \$3.50 charged by the Belt Line. Effective February 16, 1925 the Southern Pacific, by publication of Item 450 in its Tariff 330-I, C.R.C.2828, provided the same absorption, but applicable to competitive traffic only. This had the effect

of giving Niles and Livermore the 50 cent rate to China Basin when the traffic originated on either the Western Pacific or Southern Pacific. However, the tracks of the Western Pacific and Southern Pacific are immediately adjacent between Niles and Livermore. There are no interchange tracks at either Niles or Livermore, but both carriers have stations at those points. At Livermore the Western Pacific and Southern Pacific depots are about 100 feet apart. The testimony and the maps on file with this Commission show that the Western Pacific and Southern Pacific tracks are on practically the same right of way, although the Western Pacific has no station named Eliot at the opposite point. The short line distance to San Francisco from Niles is 29.2, Eliot 43 and Livermore 46.9 miles. Traffic of the Southern Pacific to San Francisco passes over the same rails, the only difference comparing Eliot with the other points is the longer haul of approximately 4 miles from Livermore, and the shorter haul of approximately 17 miles from Niles. The 50 cents is blanketed over this entire territory. Upon arrival at San Francisco cars are placed on the Santa Fe interchange track by the Southern Pacific, a yard movement of .57 mile from Mission Yards, thence over the Santa Fe rails, a distance of .35 mile, to the tracks of the Belt Line.

Defendant, Southern Pacific Company, alleged the absorption provisions in favor of Niles and Livermore are to meet a competitive situation not existing in the movement from Eliot and urge that Eliot, being a non-competitive point by tariff publication, is not entitled to the same treatment as Niles and Livermore, although the three points are in the same territory and are serving the same consuming markets. Crushed rock can now move to China Basin without the payment of switch-

ing charges when from all points on the Western Pacific and Santa Fe, competitive and non-competitive, and from Southern Pacific points only when competitive. The Southern Pacific, for all practical purposes, now treats the Belt Line, east of Van Ness Avenue, as its own terminal and makes free delivery except as to China Basin. The Santa Fe and Western Pacific make free delivery at all points, including China Basin.

The testimony, evidence and tariffs show that the competing carriers are endeavoring to serve the industrial tracks and wharves in the San Francisco Bay region at the line haul rates. At San Francisco the Southern Pacific has direct track connections with all delivering lines except to China Basin, where the Santa Fe performs the bridge switch. It makes direct connection with the South San Francisco Belt Railway and absorbs the \$4.00 switching charge to South San Francisco points; it also absorbs the Santa Fe charge to the plant of the California Camerries Company. The Santa Fe and Western Pacific have no direct connection with the South San Francisco Belt Railway and they absorb the Southern Pacific bridge charge of \$2.70, also the South San Francisco Belt Railway charge of \$4.00. To Islais Creek the same practice is followed by the Western Pacific absorbing the Southern Pacific charge of \$2.70 and the Belt Line (State Belt Railroad) charge of \$3.50.

At Oakland, the Santa Fe and Western Pacific absorb the Southern Pacific bridge switching charge to Key System industries. All three companies, Southern Pacific, Atchison, Topeka & Santa Fe and Western Pacific, absorb the switching charge of the Howard Terminal Belt Railway and, in addition, the Santa Fe absorbs the Southern Pacific bridge charge to the Howard Belt Railway interchange tracks. At Alameda (Encinal Terminals) the

Santa Fe and Western Pacific absorb the Southern Pacific switching charges. Similar arrangements are in effect, to a less extent, at other terminals throughout the State.

In deciding a proceeding such as this we must take into consideration the interests of the shippers and receivers of the freight, the carriers and the general public. Clearly, it would not be in the interest of a carrier to require it to open its terminals to its rivals in the handling of well defined non-competitive traffic, although the absorption of all switching charges in connection with line haul freight would create an ideal situation. The delivery point at San Francisco involved in this proceeding forms part of one business community and it is the practice of the Southern Pacific, as well as the other carriers to extend the line haul rates to include the receipt and delivery of freight at all Belt Line points, except on the part of the Southern Pacific which refuses to absorb the switching charges to China Basin.

The station of Eliot on the Southern Pacific for all practical purposes is as much a competing point with the Western Pacific as are Niles and Livermore, for at those points there are no connecting tracks and, therefore, a shipper located on the rails of one carrier would have to truck or team the tonnage to the rails of the competing carrier, a practice which might be indulged at the point where Eliot is located, although there is no station by the name of Eliot on the Western Pacific.

It follows, from all that has been said, and we find that the practice of defendant Southern Pacific Company in absorbing the bridge switching charge of the Santa Fe on crushed rock, sand and gravel when from Niles and Livermore and refusing to absorb such charges when the traffic originates at Eliot results in

unlawful discrimination, prejudice and disadvantage to this complainant.

We further find that complainant made shipments of crushed rock, sand and gravel from Eliot to San Francisco within two years prior to the filing of this complaint and paid and bore the freight charges of 50 cents per ton plus a switching charge of \$6.20 per car; that the switching charge of \$6.20 per car resulted in discrimination, prejudice and disadvantage to complainant and was unreasonable and excessive; that complainant has been damaged in the amount of \$6.20 per car against all shipments involved in this proceeding forwarded since February 16, 1924, and that complainant is entitled to reparation with interest.

Complainant should submit statements to defendants for check. Should it not be possible to reach an agreement as to the amount of reparation the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

O R D E R

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

IT IS ORDERED that defendants, according as they participated in the transportation, be, and they are, hereby

notified and required to cease and desist, on or before November 1, 1926, and thereafter to abstain from publishing, maintaining or applying charges on carload shipments of crushed rock, sand and gravel from Eliot to points on the State Belt Railroad located in the China Basin district at San Francisco which exceed the rates on crushed rock, sand and gravel contemporaneously in effect on like traffic from Eliot to other points located on the State Belt Railroad in San Francisco.

IT IS FURTHER ORDERED that the defendants be, and they are, hereby notified and required to establish on or before November 1, 1926, upon notice to the Commission and to the general public by not less than five (5) days' filing and posting, in the manner prescribed in Section 14 of the Public Utilities Act, rates on crushed rock, sand and gravel from Eliot to points on the State Belt Railroad located in the China Basin district at San Francisco which shall not exceed the charges on crushed rock, sand and gravel contemporaneously in effect from Eliot, Niles and Livermore to other points located on the State Belt Railroad in San Francisco.

IT IS FURTHER ORDERED that the defendants, according as they participated in the transportation, be, and they are, hereby authorized and directed to pay unto complainant, Coast Rock & Gravel Company, as reparation,

with interest, the sum of \$6.20 per car against all shipments involved in this proceeding forwarded since February 16, 1924 from Eliot to San Francisco.

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

Dated at San Francisco, California, this

21st day of September, 1926.

W. B. Boudige

C. Leary

Ernest P. Potts

Leon Whitell

Thos. J. Quinn

Commissioners.