Decision No. 17689

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

San Francisco Milling Company, Ltd.,
Complainant,

vs.

Southern Pacific Company, et al.,
Defendants.

CASE NO. 2232

C. R. Schulz and Max B. Schulz, for Complainant,
James E. Lyons and A. L. Whittle, for Defendant, Southern Pacific Company.
Platt Kent and B. Levy, for Atchison, Topeka & Santa Fe Railway Company,
R. P. McCarthy, for Globe Grain & Milling Company,
C. S. Connolly, for Albers Bros. Milling Company, Intervener.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation with its principal place of business at San Francisco and is engaged in the buying, selling and manufacturing of grain and its products. By complaint duly filed it is alleged that failure of defendants to permit at complainant's mills, San Francisco the milling in transit on grain and the reshipment of the flour and other products of such grain on the basis of the through published rates on the finished commodities from points of origin of the grain to the wharves of the Harbor Commissioners at

333

San Francisco for further movement by ocean-going steamers, subjects complainant to the payment of charges in excess of those published in the lawful tariffs, and also results in undue prejudice and disadvantage to complainant and preference and advantage to complainant's competitors located at Oakland, South Vallejo, Stockton, Sacramento and Marysville, in violation of Sections 17 and 19 of the Public Utilities Act. We are asked to award reparation and to require defendants to cease and desist from the alleged violations.

Defendants aver they are applying the rates and the milling in transit rules and regulations in conformity with their tariffs and deny that such application is discriminatory to complainant or otherwise unlawful.

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

The complainant, in the conduct of its business at San Francisco, operates two mills, one on the State Belt Railroad, the other on the Southern Pacific, and the gravamen of the complaint is as to the shipments moved via the Southern Pacific. The complainant made no shipments via the Santa Fe and the subject will be considered under the provisions of the tariffs of the Southern Pacific, they being representative of the three defendants.

Complainant moves grain from various points in California to San Francisco, where it is milled and the finished products reshipped via boat to San Pedro and other Southern California points. There are no joint commodity rates on grain or its products from inland rail points to Southern California in connection with boat lines via San

Francisco and the charges base on the locals plus switching charges of the Southern Pacific and State Belt Railroad to the wharves. The rates of the boat lines applying from San Francisco are not here in issue.

It is the San Francisco switching charges which complainant contends should be absorbed by defendants. In reaching this conclusion the various tariff items are relied upon, the principal being paragraph A, section 2, Paragraph A, section 3 and Paragraph B, section 4, as shown on pages 35 and 36 of Southern Pacific Terminal Tariff No.230-I, C.R.C.2826, providing as follows:

Paragraph A,section 2--

"Except as otherwise provided in Paragraphs B and C of this section, shipments may be stopped once and at one point only,between origin and final destination, for any one or more of the following transit operations, * * * ."

Paragraph A,section 3--

"Milling, cleaning, storing or otherwise treating in transit points must be directly intermediate, between point of origin and final destination, * * *."

Paragraph B,section 4--

"Rate from milling, cleaning, storing or otherwise treating in transit point on outbound commodity to destination will be the difference between the rate collected to the milling, cleaning, storing or otherwise treating in transit point and the rate on the product shipped from the transit point from point of origin to destination as shown on the freight bills surrendered. * * *"

The term "final destination" is interpreted by complainant as including the wharves at San Francisco and it therefore contends that its plant would be intermediate between points of origin and the wharves on traffic to Southern California in connection with the boat lines.

In instances where combination of locals is applied on shipments receiving milling in transit, no switching charges are absorbed at the point of transit, section 10, page 38, of milling in transit rules specifically providing:

> "No switching charge will be absorbed at transit stations on shipments receiving transit privilege except as provided in tariff of individual lines lawfully on file with the Interstate Commerce Commission or State Commissions."

There are no provisions precluding the application of this rule on the shipments here in question and if "destination" is construed as contended to mean the destination reached via water lines, the switching charges would be in addition, San Francisco station being the transit point. To decide what is meant by the term "destination" as used in carriers' milling in transit provisions, it will be of assistance to briefly refer to the purposes of the milling in transit arrangements and to the other pertinent provisions of the rules and regulations. Milling in transit is a special service or privilege in addition to the transportation, the primary object of which is to permit shippers in connection with a through rate to stop the raw commodities at points intermediate between point of origin and destination for manufacturing purposes and to enable them to receive the benefit of through rates from points of origin to the rate destination on the finished product.

Item 50 provides:

> " * * * the carload rates applicable to or from points on Southern Pacific * * *apply to or from the depots * * * to or from all industry tracks or wharves served by its rails and within its switching limits * * *."

This item reasonably interpreted means that the carrier receiving the line haul will place cars at the rate destination point on any of the designated tracks within the switching limits and such placement is the final destination and is the final service in connection with the line haul rates. Paragraph B, section 4, supra, provides for a milling in transit in connection with the through movement at through rates and since placement at any point within San Francisco switching limits completes the through movement under the tariff provisions any further service would be at the local rates, whether to another point within the San Francisco switching limits or to a line haul station.

The Interstate Commerce Commission in disposing of a question of tariff interpretation in Forbes & Sons Piano Co. vs. A.G.S.RR.Co., et al., 101 I.C.C.77, said:

> " * * * that in interpreting a tariff the terms used must be taken in the sense in which they are generally understood and accepted commercially, and neither carriers nor shippers can be permitted to urge for their own purposes a strained and unnatural construction. Complainant relies entirely upon a literal interpretation of the intermediate rule, but in determining a question of this kind all of the pertinent provisions of the tariffs must be considered together, and if those provisions may be said to express the intention of the framers under a fair and reasonable construction, that intention must be given effect."

A holding similar in effect was made in National Tariff Bureau vs. Director General of Railroads, 99 I.C.C.11 and by this Commission in Golden Gate Brick Company vs. W.P.RR Co. 2 C.R.C.607.

337

Complainant's plea of unjust discrimination is based upon the claim that its competitors are able to ship coarse grain from the Sacramento and San Joaquin Valleys, mill in transit at Oakland and ship the manufactured articles to the wharves at San Francisco at a lower rate than the complainant enjoys by milling its product at San Francisco. This situation, however, considering Oakland versus San Francisco as representative, only prevails where the rates on the raw product are approximately the same as the rates on the manufactured articles. Where the differential between the raw and finished product is sufficient to embrace the switching charges of 34 cents per ton plus $3.50 per car, amounting approximately to 2½ cents per 100 pounds, which the manufacturer at San Francisco pays to reach the wharves from its mill, the advantage is with the shipper at San Francisco and, conversely, the shipper at Oakland is at a disadvantage. As illustrative; the rate on coarse grain from Waterford, in the San Joaquin Valley, to San Francisco and Oakland, is 12½ cents and on flour and cereal preparations 16 cents. The miller at San Francisco pays the inbound coarse grain rate of 12½ cents and on the outbound manufactured product from the mill to the docks approximately 2½ cents per 100 pounds, a total of 15 cents. On shipments milled in transit at Oakland the manufacturer pays the inbound coarse grain rate of 12½ cents, but on the outbound movement to San Francisco pays the difference between the coarse grain rate to the transit point (Oakland), and the manufactured product rate, or 16 cents, from point of origin (Waterford) to final destination (San Francisco).

A check of the rate situation from 15 other grain

shipping points picked at random in the San Joaquin Valley and embracing the territory extending from Oakdale, Manteca and Lyoth south to Bakersfield shows the same situation to exist at 10 of the 15 points, hence the manufacturer at San Francisco rather than being at a disadvantage as compared with the Oakland miller, enjoys a slight advantage. Likewise, in the Sacramento Valley, in the territory from Woodland and north to Redding, a check of the tariffs indicates that out of a total of 17 grain shipping points the rate advantage at 14 of these points rests with the San Francisco manufacturers.

Complainant admits that in shipping from points in the Sacramento Valley where the rates on coarse grains and the manufactured articles are equal, it is possible to mill in transit at San Francisco and reship to Oakland at the same rate the Oakland miller can mill in transit at Oakland and reship to San Francisco. An examination of the tariffs indicates that this situation also prevails from many points in the San Joaquin Valley, where the back haul to San Francisco is absorbed in the long line mileage via which the rates apply. Thus, in cases where there is a differential in the coarse grain and manufactured article rates of over 2½ cents per 100 pounds, complainant is not subject to undue discrimination, and where the coarse grain and manufactured article rates are the same complainant has the privilege of milling in transit at San Francisco and reshipping to Oakland in the same manner as the Oakland miller mills his product at Oakland and reships to San Francisco.

From the facts of record, we find that the rules of defendants, herein assailed, are not, in their application at San Francisco, unjust, unreasonable or excessive and do not result

in prejudice and disadvantage to complainant and preference and advantage to complainant's competitors.

The complaint will be dismissed.

ORDER

This case being at issue upon complaint and answer on file, 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 HEREBY ORDERED that the complaint in the above entitled proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 1st day of ~~November~~ December, 1926.

H. H. Brundige
C. L. Seavey
Emmet Seawell
Leon O. Whitsell
Thos. S. Louttit
Commissioners.

340