Decision No. 18345.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

ALBERS BROS. MILLING COMPANY)
vs.) Case No. 2311.
SOUTHERN PACIFIC COMPANY)

C. S. Connolly, for complainant.
Jas. E. Lyons, C. N. Bell and F. W. Mielke, for defendant.

BY THE COMMISSION:

O P I N I O N

Complainant, a corporation with its principal place of business at San Francisco, is engaged in buying, selling and manufacturing grain and grain products. By complaint filed January 21, 1927, it is alleged that a reconsignment charge of $5.85, assessed and collected against car S.P. 28141 loaded with feed stuffs transported during the month of October, 1925, from Oakland to Caruthers and subsequently forwarded from the latter point to Fresno, was unjust and unreasonable and in violation of Section 13 of the Public Utilities Act.

Reparation and an order requiring defendant to cease and desist from assessing and collecting the aforementioned reconsignment charge are sought.

A public hearing was held before Examiner Geary at San Francisco April 25, 1927, and the case having been duly submitted is now ready for an opinion and order.

The shipment in question was prepaid and forwarded by

complainant from its plant at Oakland, consigned to Rhodes and Sons at Caruthers and placed on the team track at the latter point, to be unloaded. Through some misunderstanding the consignee refused to accept the shipment, and upon instructions from complainant's representative at Fresno consignee notified the agent at Caruthers to forward the car to Fresno. Freight charges were assessed and collected upon the basis of the local freight rate from Oakland to Caruthers plus the local from Caruthers to Fresno, and in addition a reconsignment charge of $5.85 was assessed and collected. The latter charge was made in accordance with Rule 12 of the "Rules and Charges Covering the Diversion and Reconsignment of Carload Freight" as published in Southern Pacific Company Terminal Tariff 230-I, C.R.C. 2826. This rule provides in substance that a car placed for unloading at the original billed destination and reforwarded therefrom without being unloaded to a point outside of the switching limits, will be subject to the published rates to and from the point of reconsignment, plus $5.85 per car reconsignment charge. There is however an exception to this rule in the same tariff which provides as follows:

> "Where all charges have been paid to or at original destination and delivery accepted, and a new bill of lading (not an exchange bill of lading) issued to a new destination on basis of local (not proportional, reshipping or transshipping) rate from the reforwarding point and without any carrier or agent of the carrier acting for the shipper, the transaction will not be considered as a diversion or reconsignment, and no diversion or reconsignment charge will be assessed."

Thus, if the consignee had temporarily taken delivery of the car and had instructed defendant's agent at Caruthers to issue a new bill of lading to cover the journey to Fresno, the shipment would have been considered within the purview of the exception quoted above, and no charge in addition to the combination of locals would have been assessed.

Complainant contends that it was no more of a burden to the carrier to have the agent at Caruthers reconsign this car than it was to issue a new bill of lading, and therefore the reconsignment charge was unjust and unreasonable. Complainant does not question the reasonableness of the applicable line haul rates.

Defendant on the other hand contends that the charge of $5.85 per car assessed on shipments reconsigned or diverted is for the purpose of compensating carriers for the work necessary to be performed in connection with such shipments. In support of this contention a witness testified as to the number of letters, telegrams and the detailed clerical work necessary to effect the diversion and reconsignment of various shipments, which are all claimed to be handled through defendant's general freight offices. It appears however from the record that the work referred to is mainly in connection with the diversion or reconsignment of carload shipments before reaching original billed destination and does not apply to shipments such as here considered. In fact, it is of record that the reconsignment of this particular shipment was handled entirely by the agent at Caruthers without any more detailed clerical work than would have been necessary had a new bill of lading been issued for the movement from Caruthers to Fresno.

After careful consideration of all the facts of record we are of the opinion and find that the reconsignment charge of $5.85 assessed and collected by defendant against the car in question was unjust and unreasonable. We further find that the complainant paid and bore the charge in question, has been damaged thereby, and is entitled to reparation in the sum of $5.85, with interest.

The rule in effect is general in application, applying to all kinds of movements, and this record is insufficient

to warrant a finding, that it is per se either unjust or unreasonable.

O R D E R

This case being at issue upon complaint, and answer on file, full investigation of the matters and things involved having been had, and basing its order on the findings of fact and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be and it is hereby authorized and directed to refund to complainant, Albers Brothers Milling Company, the sum of $5.85, with interest, account unreasonable reconsignment charge assessed and collected against car S.P.28141 loaded with feed stuff moving during the month of October, 1925, from Oakland to Caruthers and subsequently reforwarded to Fresno.

Dated at San Francisco, California, this 13th day of May, 1927.

Commissioners.