

Decision No. 18995.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SAN FRANCISCO MILLING COMPANY, LIMITED,
a corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation,

Defendant.

ORIGINAL

Case No. 2361.

Max B. Schulz and Carl R. Schulz, for complainant.
James E. Lyons, F. W. Mielke and A. L. Whittle,
for defendant.C. S. Connolly, for Albers Bros. Milling Company,
intervener.E. E. Smith, for Sperry Flour Company, intervener.
Carl R. Schulz, for Consolidated Milling Company,
intervener.

C. H. Teitzohel, for Sacramento Chamber of Commerce.

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 its products. By complaint filed April 30, 1927, and as amended at the hearing, it is alleged that the out-of-line charge of 2 cents per hundred pounds assessed and collected by defendant on various carloads of grain and grain products moving during the period of two years prior to the filing of the complaint from points in the Sacramento Valley north of Davis and Roseville, milled in transit at San Francisco, and subsequently reshipped to points south thereof to and including Redwood City, is contrary to

the provisions of defendant's tariffs lawfully on file with this Commission, in violation of Section 17 of the Public Utilities Act, and subjects complainant to undue prejudice and disadvantage and extends undue preference and advantage to complainant's competitors located at Sacramento and Stockton, in violation of Section 19 of the Act.

We are asked to award reparation, and to require defendant to cease and desist from the alleged violations of the Act.

A public hearing was held before Examiner Geary at San Francisco August 19, 1927, and the case having been duly submitted is now ready for our opinion and order.

The points of origin here involved are situated in the Sacramento Valley north of Davis and Roseville; the destination territory embraces the points on the Coast Division of defendant south of San Francisco to and including Redwood City.

Complainant in the conduct of its business maintains a mill at San Francisco for the manufacture of grain products. A portion of the coarse grain used is secured from points in the Sacramento Valley north of Davis and Roseville, is milled in transit at San Francisco, and the finished products subsequently reshipped to Redwood City and various other points in California. At the time complainant's shipments moved, defendant's Terminal Tariff No. 230-I, C.R.C. No. 2326, and superseding issues provided that shipments milled in transit would be assessed the applicable rate on the coarse grain into the transit point, and upon the completion of the movement of the manufactured articles from the transit point to the final destination and the surrender of the inbound tonnage slips, would be assessed charges based on the difference between the rate paid and that applicable on the manufactured articles from point of

origin to final destination, provided the transit point was directly intermediate. In the event the transit point was not directly intermediate, a charge in addition to the line haul rate varying from 2 to 6 cents per hundred pounds, according to the length of haul, was applicable for the out-of-line, indirect or back haul service. Complainant's shipments were assessed the line haul rates in accordance with defendant's Grain Tariff 795-B, C.R.C. 2437, and in addition paid a back haul charge of 2 cents per hundred pounds. The line haul rates are not here involved, the sole question being whether or not the back haul charge published in defendant's terminal tariff referred to above, was properly applicable.

Prior to January 5, 1927, defendant did not publish specific through rates on grain products in its line haul tariff from the origin points here at issue to Redwood City. The line haul rates applicable were the San Francisco rates held as maximum by reason of the fact that defendant's Routing Circular 199-E, C.R.C. 2711, provided an alternative route in connection with the San Francisco rates to apply via Stockton, Livermore and Dumbarton, making Redwood City directly intermediate to San Francisco. Defendant urges that the only route available for traffic destined to Redwood City was through Stockton, Livermore and Dumbarton, hence the milling point, San Francisco, not being directly intermediate via this route, there was a back haul service from San Francisco to Redwood City. Effective January 5, 1927, defendant published specific rates to Redwood City, and these rates under the provisions of the routing circular referred to above, applied through the Dumbarton gateway and also via Suisun, Oakland and San Francisco, thus making San Francisco a directly intermediate point in the movement to Redwood City via the latter route. Since the publication of specific rates

to Redwood City there has been no back haul charge applicable.

Complainant contends that the assessing of the back haul charge prior to January 5, 1927, was contrary to the provision of Paragraph E, Section 4 of the Terminal Tariff, which reads:

"The charge for the out-of-line, indirect or back haul shipments will be based upon the additional distance traversed in movement to and from transit point as against direct short-line mileage or mileage via routes in which the Southern Pacific Company (Pacific Lines) participates from point of origin of inbound commodity to final destination of the outbound product."

Complainant does not question the fact that in holding the San Francisco rates as maximum at Redwood City the only available route via which the rates applied at the time these shipments moved was through Stockton, Livermore and Dumbarton, but it is contended that there is no additional distance traversed in the movement to and from the transit point via Suisun and Oakland as against the mileage via Stockton, Livermore and Dumbarton. For example, the distance from Willows to San Francisco thence to Redwood via the short line mileage through Suisun and Oakland is 149 miles, while the distance through Stockton, Livermore and Dumbarton is 215.8 miles. In other words, complainant maintains that if the short line mileage from the point of origin to the transit point thence to the final destination is less than the distance traversed from point of origin to final destination via other authorized routes, the back haul charge is not applicable.

Defendant testified that it was never the intention to apply Paragraph E, Section 4 of the Terminal Tariff in this manner, contending that where the rates apply only via the longer route the short line mileage to and from the transit point could not be used in computing the back haul involved

unless the rates also apply via the latter route. Defendant admits that had there been specific rates published to Redwood City, the routing circular would have permitted the application of the rates via Suisun, Oakland and San Francisco, in which event there would have been no back haul charge applicable.

If it were defendant's intention to restrict the computation of the mileage to and from the transit point only to those routes via which the line haul rates from point of origin to final destination apply, the tariff should so state in definite terms. Manifestly Paragraph E, Section 4 of the Terminal Tariff is ambiguous, and we have repeatedly held that a tariff ambiguity must be construed against its framer provided the interpretation placed thereon does not result in an absurd situation. (Golden Gate Brick Company vs. Western Pacific Railroad, 2 C.R.C. 507; Pacific Coast Shippers' Association vs. A.C. & Y.R.Co., 112 I.C.C., 527.)

After careful consideration of all the facts of record we are of the opinion and find that the back haul charge of 2 cents per hundred pounds assessed on complainant's shipments involved in this proceeding, moving from points north of Davis and Roseville, milled in transit at San Francisco, and the manufactured products subsequently reshipped to points south thereof to and including Redwood City, was contrary to the applicable tariffs lawfully on file with this Commission.

In view of our findings herein it will not be necessary to consider complainant's allegation of undue preference and advantage, and undue prejudice and disadvantage.

O R D E R

This case having been duly heard and submitted, 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 precedes this order,

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be and it is hereby authorized and directed to refund to complainant, San Francisco Milling Company, all charges it may have collected in the amount of the difference between the charges paid and the charges herein found applicable on shipments of grain and grain products involved in this proceeding, moving from points north of Davis and Roseville, milled in transit at San Francisco, and subsequently reshipped to points south thereof to and including Redwood City.

Dated at San Francisco, California, this 3d day of November 1927.

Ernest G. Smith

C. S. Sauer

Leon Whitely

Thos. B. Louder

M. J. Lee
Commissioners.