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Decision No. 19292.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ALBERS BROS. MILLING COMPANY, a corporation, Complainant, vs. SOUTHERN PACIFIC COMPANY, a corporation, Defendant.	Case No. 2374.

C. S. Connolly, for Albers Bros. Milling Company, complainant.

F. W. Mielke and J. L. Fielding, for Southern Pacific Company, defendant.

E. B. Smith and M. J. McCarthy, for Sperry Flour Company, intervener.

E. C. Wilcox, for Oakland Chamber of Commerce, intervener.

F. A. Somers, for Grangers Business Association, protestant.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation organized under the laws of the State of Oregon, with its principal place of business at San Francisco, and is engaged in the buying, selling and manufacturing of grain and its products with plants at various points in the states of Washington, Oregon, California and elsewhere. By complaint duly filed and as amended, it is alleged that the carload rates on grain, prepared feeds and numerous other grain products from Oakland to points in the San Joaquin Valley are unjust

and unreasonable in violation of Section 13 and also unduly discriminatory to Oakland and preferential to South Vallejo in violation of Section 19 of the Public Utilities Act.

Rates for the future and reparation are asked to points south of Stockton and Lathrop on the east side of the San Joaquin Valley, and reparation prior to February 28, 1927, only to points south of Tracy on the west side of the San Joaquin Valley. The Oakland Chamber of Commerce intervened in behalf of complainant and the Sperry Flour Company and Grangers Business Association in favor of the continuance of the present adjustment of rates.

Public hearings were held before Examiner Geary and the case having been duly submitted and briefs filed by interested parties is now ready for our opinion and order.

Rates will be stated in cents per 100 pounds, and the term east side of the San Joaquin Valley as used herein refers to the territory south of Stockton and Lathrop via Merced to and including Lerdo, and the term west side to points south of Tracy via Newman to but not including Fresno.

Complainant manufactures various kinds of feeds and grain products at its Oakland mill in competition with mills located at numerous points in California, its principal competitor being the Sperry Flour Company, with a mill at South Vallejo manufacturing commodities similar to those of the complainant.

The South Vallejo and Oakland grain rates have been before this Commission on different occasions in formal proceedings and the present rates reflect those prescribed in Albers Brothers Milling Company vs. The Southern Pacific Company, Case 1463, decided June 1, 1921, 20 C.R.C. 1 and as supplemented March 6,1922, 21 C.R.C. 302; Case 2125, decided March 3, 1926, 27 C.R.C. 684 and as supplemented February 8, 1927, 29 C.R.C. 366. Case 1463 involved primarily the adjustment to Oakland and South Vallejo

from the Sacramento, San Joaquin and Salinas Valleys, and there were prescribed in that case certain differentials between South Vallejo and Oakland depending upon distances. In Case 2125 rates were set which would remove undue discrimination against Oakland and undue preference to Sacramento found to exist at points on the west side. The gist of the present case involves the relative adjustment of the rates on grain and its products from Oakland as compared with the rates from South Vallejo to points in the San Joaquin Valley. Both complainant and defendant are agreed that in the instant proceeding there is presented for consideration for the first time the relative adjustment of the rates from South Vallejo and Oakland as distinguished from the adjustment to those points.

The history of the grain rates from San Joaquin Valley points to South Vallejo and Port Costa and the elements of the competition from the water-borne grain influencing their structure are set forth in the previous Albers Brothers cases, and it would serve no purpose to reiterate here in detail this history other than to outline the relative adjustment of the rates as an outgrowth of the cases above referred to. In Case 1463, supra, the rates to Oakland were made ½ cent and 1 cent higher than the rates applicable to Port Costa, depending upon distances, and South Vallejo was placed upon the Port Costa basis. In Case 2125, supra, rates were prescribed placing the Oakland rates from points on the west side upon a basis no higher than the rates from the same points to Sacramento, this because of the equality of mileages. The Sacramento rates being generally of the same volume as those existing to South Vallejo, the practical effect has been that Sacramento, South Vallejo and Oakland since February 28, 1927, when carrier complied with order in Case 2125, have

been on the same basis to points on the west side of the valley. On the east side the rates from South Vallejo are ½ cent to 1 cent less than Oakland, although the hauls are approximately 24 miles greater from South Vallejo than from Oakland.

South Vallejo is on the Suisun-Fairfield branch and Oakland on the main line of the Southern Pacific Company. A witness from the operating department of the defendant outlined in detail the handling of the traffic from South Vallejo and Oakland. It is of record that a greater transportation service is performed by defendant from South Vallejo to points on the east side than is performed from Oakland although the Oakland rates are higher than those from South Vallejo. When originally established, because of the competitive conditions existing between South Vallejo and Port Costa, as fully described in the previous Albers Brothers cases, South Vallejo was placed upon the Port Costa basis and Port Costa being a shorter distance to points in the San Joaquin Valley than Oakland and involving a less transportation service, accounts for the South Vallejo rates being less than those applicable at Oakland. Defendant and complainant stipulate that there is no movement of grain or grain products via water carriers from South Vallejo or Oakland to points in the San Joaquin Valley. A witness for defendant on cross-examination admitted that under the present day conditions there could be no justification for lower rates from South Vallejo than from Oakland to points involved in this complaint, and defendant in its brief offered no convincing argument in justification of the continuance of the present adjustment.

The following is representative of the rates and distances from South Vallejo and Oakland to points on the east side of the San Joaquin Valley.

TO	FROM OAKLAND		FROM SOUTH VALLEJO	
	Distance	Rate	Distance	Rate
Oakdale	117	11½	139	10½
Manteca	80	9½	104	8½
Modesto	96	12½	120	11½
Turlock	109	14½	134	13½
Merced	134	17	158	16
Fresno	199	19½	213	18½
Visalia	230	21	254	20½

By the short line distances there is approximately a 24-mile greater haul from South Vallejo to points on the east side than is involved from Oakland.

Complainant bases its allegation of unreasonableness of the Oakland rates almost solely upon a comparison of rates applicable from South Vallejo but it offered no convincing evidence or testimony in support of the contention that the Oakland rates were in and of themselves reasonable. Defendant submitted exhibits comparing the present grain rates from Oakland with those applicable in and between other states for comparable distances and particularly with the distance scale prescribed by the Interstate Commerce Commission for application in the Southwestern territory, Corporation Commission of Oklahoma vs. Abilene and Southern Railway et al., 101 I.C.C. 116, and refers to the fact that this latter scale was offered by complainant in Case 2525, Albers Bros. Milling Company vs. Southern Pacific Company, decided December 23, 1927, Decision No. 19159, as a reasonable maximum one for application between these points in California. The rates from Oakland to territory here involved are now generally lower than those prescribed in the Corporation Commission of Oklahoma case and are also lower for equal distances than the comparable rates shown in exhibits of defendant.

As heretofore stated, the grain rates applicable at Port Costa and South Vallejo were influenced by water competition, and by water competition is not meant the actual physical movement by rail from the point of production to South Vallejo or to Port Costa, but has reference to the competition which the grain produced at interior points distant from the water must meet in reaching the consuming, marketing, or ocean shipping points. Comparison of rates and other tokens of rate making clearly shows on this record that the grain rates applying to Port Costa and South Vallejo were depressed originally by the water competition and today reflect this adjustment, and they are lower in almost every instance than any scales introduced as exhibits.

Attention is directed to the fact that the class rates and the flour commodity rates from South Vallejo are the same as those from Oakland.

After full consideration of all the facts of record we are of the opinion and so find that upon this record none of the rates on grain and articles taking the same rates from Oakland to points south of Tracy, Lathrop and Stockton to and including Lerdo are unreasonable per se, but for the future that the rates from Oakland to points south of Lathrop and Stockton via the east side of the San Joaquin Valley through Merced to and including Lerdo will be unduly preferential to South Vallejo and unduly prejudicial and discriminatory to Oakland to the extent they exceed the rates contemporaneously in effect from South Vallejo.

Complainant requests an award of reparation, apparently upon the theory that having met the prices of its competitors it was automatically damaged in amounts measured by the difference in the rates paid and rates accorded its competitors. However,

Where rates are found to be unduly preferential, prejudicial and discriminatory but not unreasonable, the burden of proof is upon complainant to establish by competent evidence that it has been actually damaged and that the damage suffered, if any, was the direct result of the discriminatory and prejudicial rate adjustment. It cannot be presumed that the amount of damage is the difference between the rate paid and the rate established by the Commission; it may be greater or less, but whatever it is must be actually proved by competent evidence before recovery can be had. There is no evidence in this record to show that complainant was damaged, and therefore reparation is denied. Pennsylvania Railroad Co. vs. International Coal Co., 230 U.S., 184. Los Angeles County vs. Pac. Electric Ry.Co., 27 C.R.C. 337, 342, and 28 C.R.C. 143. Turner vs. Pacific Electric Ry., 27 C.R.C. 404, 408, and Vernon Oil Refining Company vs. Pacific Electric Railway Co., 27 C.R.C. 442, 446. Coal Switching Reparation Cases at Chicago, 36 I.C.C. 226. C. D. Park vs. L.& N. Railroad, 55 I.C.C. 703. Carnegie Steel Co. vs. Director General, 96 I.C.C. 527 and cases cited therein.

The adjustment made in this proceeding is without prejudice to any finding in Case No. 2323, an investigation on this Commission's own motion involving the general level of all rates on grain and grain products between points in California, which proceeding is co-related with Docket No. 17000, Part 7, of the Interstate Commerce Commission.

O R D E R

This case being at issue upon complaint and answer on file, having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and basing this order upon 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 directed to cease and desist on or before forty-five (45) days from the date of this order and thereafter to abstain from publishing, demanding or collecting for the transportation of grain and articles taking the same rates in carloads, as described in Southern Pacific Tariff 793-B, C.R.C. 2487, from Oakland to points south of Lathrop and Stockton via Merced, to and including Lerdo, rates which exceed those contemporaneously in effect from South Vallejo to the same destinations.

IT IS HEREBY FURTHER ORDERED that defendant, Southern Pacific Company, be and it is hereby directed to establish on or before forty-five (45) days from the date of this order on notice to the Commission and the general public by not less than five (5) days' filing and posting in the manner required by law and thereafter to maintain and apply for the transportation of grain and articles taking the same rates in carloads as described in Southern Pacific Tariff 793-B, C.R.C. 2487, rates from Oakland which shall not exceed the rates contemporaneously in effect from South Vallejo.

Dated at San Francisco, California, this 23rd day of January, 1928.

Leon O. Whitsell
C. C. Seavey
Edward Stevens
Thos. S. Lowell
W. J. Carr
Commissioners.