

Decision No. 19587.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

CALIFORNIA HAWAIIAN MILLING CO., INC.,)
a corporation,)
Complainant,)

vs.)

Case No. 2456.

THE SOUTHERN PACIFIC COMPANY,)
a corporation,)
Defendant.)

- C. R. Schulz and Max B. Schulz, by C. R. Schulz, for complainant.
- James E. Lyons, for defendant, Southern Pacific Company.
- C. S. Connolly, for Albers Bros. Milling Company.
- C. R. Schulz, for San Francisco Milling Company, George H. Croley & Company, Incorporated, and Consolidated Milling Company.
- E. B. Smith, for Sperry Flour Company.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation organized under the laws of the State of California with its principal place of business at San Francisco and is engaged in the buying, selling and manufacture of grain, hay and products thereof. By complaint filed December 12, 1927, it is alleged that the rates assessed and collected by defendant on various carload shipments of barley moved during the period two years immediately prior to the filing of this complaint from Woodland to Petaluma and Santa Rosa and points between on the Northwestern Pacific Railroad Company, and milled in transit at San Francisco, were in excess of the legally published tariff rates, in violation of Section 17 of the Public

Utilities Act.

We are asked to find as to the rates legally applicable and for an order authorizing refund of the alleged overcharges. Rates will be stated in cents per 100 pounds.

A public hearing was held March 15, 1928, before Examiner Geary and the case having been duly heard and submitted is now ready for our opinion and order.

Woodland is on the Sacramento Northern Railway and Southern Pacific Company; Petaluma on the Northwestern Pacific Railroad Company and Petaluma and Santa Rosa Railroad Company; and Santa Rosa on the Southern Pacific Company, Northwestern Pacific Railroad Company and Petaluma and Santa Rosa Railroad Company. Complainant's shipments of barley moved from Woodland via the Southern Pacific to San Francisco, there ground or rolled and the manufactured product then shipped to Petaluma and Santa Rosa and points between on the Northwestern Pacific. A rate of 17 cents was assessed and collected by defendant on this traffic, this being the commodity rate of 12 cents on the manufactured product from Woodland to Petaluma and Santa Rosa as shown in Item 3510 of Pacific Freight Tariff Bureau Tariff 16-J, C.R.C. 386, which rate applies via Shellville Junction thence Northwestern Pacific, plus 5 cents for out-of-line or back haul charge at San Francisco. The rate from and to the same points via the Sacramento Northern to Sacramento, Western Pacific to San Francisco, thence Petaluma and Santa Rosa Railway to Petaluma and Santa Rosa, was also 12 cents as shown in Item 6260 of Pacific Freight Tariff Bureau Tariff 34-L, C.R.C. 405 and corresponding items of previous issues. This latter rate is non-intermediate in application as to points of origin but is intermediate in application as to points of destination and the gist of the proceeding here before us is whether or not milling in transit was, under the tariffs, permissible at San

Francisco. Upon the determination of this depends whether or not San Francisco should be considered as an intermediate point via the Southern Pacific under the provisions of Note 2 of Paragraph "A" of Item 1390 of Southern Pacific Tariff 230-J, C.R.C. 3183, which provides in part as follows:

"The milling, cleaning, storing or otherwise treating in transit point will be considered as intermediate between point of origin and final destination, provided it is intermediate via any authorized route."

San Francisco would be physically an intermediate point between Woodland and Petaluma and Santa Rosa in connection with movement via the Sacramento Northern, Western Pacific and Petaluma and Santa Rosa Railway and complainant contends that in view of this San Francisco should be considered an intermediate point via the Southern Pacific by virtue of Note 2 of Paragraph "A" of Item 1390. It is of evidence that the Western Pacific has on this traffic permitted milling in transit at San Francisco under its milling in transit arrangements as contained in Western Pacific Terminal Tariff 35-J, C.R.C. 245, but the defendant avers that milling in transit at that point would not be permissible under the provisions of the Western Pacific transit rules account of the 12-cent rate via that line being non-intermediate in application as to points of origin. They rely upon Item 1500 of Western Pacific Tariff 35-J, C.R.C. 245, which prohibited the privilege of milling in transit of grain in connection with rates non-intermediate in application, but the 12-cent rate via the Western Pacific was not in all respects a non-intermediate rate, it being intermediate in application as to points of destination. Item 1500 was amended November 10, 1927, so as to clearly provide that milling in transit would be permitted on grain moving under rates which were non-intermediate in application as to points of origin but intermediate as to points of destination, and upon

this record it appears Section 17 of the Public Utilities Act has not been violated by the Western Pacific in permitting the milling in transit at San Francisco. The milling in transit at San Francisco of shipments moving via the Western Pacific and Petaluma and Santa Rosa Railway from Woodland to Petaluma and Santa Rosa at the same through rates as those available via the Southern Pacific creates, within the meaning of Note 2 paragraph "A" of Item 1390 of Southern Pacific Terminal Tariff 230-J, an authorized route via San Francisco and should be construed as authorizing the milling in transit of grain at San Francisco on traffic moving via the Southern Pacific from Woodland to Petaluma and Santa Rosa. There being no points between Petaluma and Santa Rosa common with the Petaluma and Santa Rosa Railway and Northwestern Pacific there would be no other authorized route via San Francisco to such points.

After consideration of all the facts of record and the matters and things involved, we are of the opinion and so find that in the application of Note 2 of paragraph "A" of Item 1390 of Southern Pacific Tariff 230-J, C.R.C. 3183, San Francisco is an intermediate point between Woodland and Petaluma and Santa Rosa. We further find that complainant has within two years prior to the filing of this complaint made shipments of barley from Woodland to Petaluma and Santa Rosa which were milled in transit at San Francisco; that it paid and bore the charges thereon and has been damaged in the amount of the difference between the charges paid and those that would have accrued at the applicable rates, and is entitled to refund of the overcharges with interest at the rate of 6 per cent. per annum.

Complainant will submit statement of shipments to defendant for check. Should it not be possible to reach an agreement as to the amount of the refund 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 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 immediately preceding this order, which said opinion is hereby referred to and by reference made a part hereof,

IT IS HEREBY ORDERED that the defendant, Southern Pacific Company, be and it is hereby authorized and directed to refund to complainant, California Hawaiian Milling Company, Inc., on shipments involved in this proceeding all charges it may have collected in excess of those found legally applicable in the opinion immediately preceding this order, together with interest at the rate of 6 per cent. per annum.

Dated at San Francisco, California, this 12th day of April, 1928.

Leon Whittell

C. Seamy

Miss S. R. R. R.

W. P. C.
Commissioners.