

**ORIGINAL**Decision No. 19610.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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

vs.

SOUTHERN PACIFIC COMPANY,  
 a corporation,  
 WESTERN PACIFIC RAILROAD COMPANY,  
 a corporation,  
 ATCHISON, TOPEKA & SANTA FE RAILWAY CO.,  
 a corporation,  
 Defendants.

Case No. 2473.

C. R. Schulz, for complainant.  
 G. E. Walk, for Western Pacific Railroad Company,  
 defendant.  
 James E. Lyons, for Southern Pacific Company,  
 defendant.  
 Platt Kent, E. C. Pierre and B. Levy, for The Atchison,  
 Topeka and Santa Fe Railway Company, defendant.  
 C. S. Connolly, for Albers Bros. Milling Company.

BY THE COMMISSION:

O P I N I O N

The complainant, a corporation organized under the laws of the State of California, with its principal place of business at San Francisco, is engaged in the buying and selling of grains and alfalfa hay and the manufacturing of alfalfa meal and grain products. It alleges by complaint filed January 5, 1928, that the failure and refusal of these defendants to grant milling in transit privileges on alfalfa hay at San Francisco subjects it to undue prejudice and disadvantage and extends undue preference and advantage to its competitors. We are asked to require

defendants to permit the milling in transit of alfalfa hay between the points of origin and destination of alfalfa meal.

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

Complainant avers that the practices of defendants as published in their respective terminal tariffs and circulars providing that alfalfa meal may be stored in transit and subsequently reshipped from the transit station at the balance of the through rate applicable, results in preference and advantage to its competitors because complainant cannot mill alfalfa hay in transit but must pay the rate on the hay to San Francisco and the rate on alfalfa meal to destination. Complainant buys alfalfa hay at producing points in California, shipping the same by the lines of defendants to San Francisco, where it is manufactured into alfalfa meal and sold at Petaluma, Stockton, San Jose, Los Angeles and other points, which transactions are in competition with the millers of alfalfa meal located at Gerber and Dixon, California, and at Fallon and Lovelock, Nevada.

Complainant and its competitors operate in the same general territory, and both are compelled to pay the local rates on hay to the mills and the rate therefrom on the manufactured alfalfa meal. As illustrative of this situation, the rates on hay from Knights Landing to Dixon and San Francisco are  $7\frac{1}{2}$  cents and 10 cents per 100 pounds respectively; the rates on alfalfa meal to Petaluma are 12 cents per 100 pounds from Dixon and  $7\frac{1}{2}$  cents per 100 pounds from San Francisco. These factors result in total combination rates of  $19\frac{1}{2}$  cents per 100 pounds on hay transitted at Dixon as compared with 18 cents per 100 pounds on hay transitted at San Francisco. In this particular situation the competitors of this complainant are at a disadvantage. However, where the

alfalfa hay is produced immediately adjacent to the manufacturing plant, the advantage would be in favor of the competitors.

Complainant gave testimony alleging there was substitution of tonnage at the storage points by the millers of alfalfa meal and that this practice created the discrimination complained of. That there is tonnage substitution at transit and storage points is not questioned, it being admitted that it is impractical to preserve the identity of the different colors, grades or blends of commodities, and the terminal tariffs provide for this practice, therefore this complainant has the same privilege as its competitor.

In the matter of investigation into the substitution of tonnage at transit points, Docket No. 3002, 26 I.C.C. 204-210, the Interstate Commerce Commission said:

"The Commission has been assured, both on behalf of the carriers and the shippers, that the carriers can lawfully publish tariffs specifically permitting substitutions in so many words, and that in the absence of a showing that they are unreasonable, or unjustly discriminatory, or unduly preferential, they are entirely proper."

Milling in transit is a special arrangement which may be originated by the carriers the same as they may voluntarily undertake to publish subnormal rates to meet water competition, and this Commission will not ordinarily establish or extend milling in transit unless it is shown that the voluntary action of the carriers results in unlawful discrimination. Defendants do not now provide for the milling in transit of alfalfa hay within California, and no compelling necessity or general demand for its establishment has been shown in this record. The storing in transit of alfalfa meal is open to all shippers without discrimination and therefore this complainant is not discriminated against.

After a careful consideration of the testimony and exhibits we are of the opinion and find that defendants' failure to

provide for the milling in transit of alfalfa hay while providing for the storing in transit of alfalfa meal, is not unjustly discriminatory or unduly preferential. The complaint will be dismissed.

O R D E R

This case being at issue upon complaint and answers on file, having been duly heard and submitted by the parties, 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 this proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 13th day of April, 1928.

Leon Whitell

C. Seamy

Thos. D. Hotal

M. A. Lee  
Commissioners.