

Decision No. 19648.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

GEO. H. CROLEY, INC.,
a corporation,

Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY, a corporation,

Defendant.

Case No. 2474.

C. R. Schulz and Max B. Schulz, by C. R. Schulz,
for complainant.
Platt Kent, E. C. Pierre and Berne Levy, for
defendant.
R. P. McCarthy, for Globe Grain and Milling Company.
E. B. Smith, for Sperry Flour Company.
C. S. Connolly, for Albers Bros. Milling Company.
James E. Lyons, for Southern Pacific Company.

BY THE COMMISSION:

O P I N I O N

Complainant, a corporation organized under the laws of the State of California, with its principal place of business at San Francisco, is engaged in buying, selling and manufacturing grain and its products. By complaint filed January 25, 1928, it alleges that the out-of-line charge of 2 cents per 100 pounds assessed and collected by defendant on grain, carloads, moving during the period of two years prior to the filing of this complaint from points on defendant's line, milled in transit at San Francisco and the milled products subsequently reshipped to points on the Northwestern Pacific Railroad, is in violation of Section 19 of the Public Utilities Act and subjects complainant to undue

prejudice and disadvantage and extends undue preference and advantage to its competitors located at Oakland.

We are asked to require defendant to cease and desist from the alleged violation of the Public Utilities Act and to award reparation. Rates will be stated in cents per 100 pounds.

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

Complainant in conducting its business maintains a mill at San Francisco for the milling, cleaning, storing and otherwise treating in transit of grain and grain products. A portion of the grain used is shipped from points in the San Joaquin Valley to San Francisco where it is transitted and the finished product reshipped to Petaluma, Santa Rosa and other points on the Northwestern Pacific Railroad. The direct route from the origin territory to the final destination points involved herein is over defendant's rails to Point Richmond, car-ferry to Tiburon, thence Northwestern Pacific Railroad beyond. Complainant's shipments moved over defendant's rails to Point Richmond; car-ferry to the defendant's pier at San Francisco; rail haul to complainant's mill and return to Northwestern Pacific Railroad Company's pier, car-ferry to Tiburon; thence Northwestern Pacific Railroad beyond.

Defendant's Circular 2297, C.R.C. No. 412, provides that shipments of grain may be stopped for the purpose of milling, cleaning, storing or otherwise treating in transit at stations directly intermediate between point of origin and final destination without additional charges. In the event that the transit station is not directly intermediate, charges for the out-of-line, indirect or back haul services ranging from 2 cents for distances not exceeding 45 miles to 6 cents for distances over 100 miles and less than 125 miles, are assessed in addition to the line

haul rate. On shipments destined to points on the Northwestern Pacific Railroad an out-of-line rate of 2 cents was charged if the grain was transitted at San Francisco, but no out-of-line rate was charged on similar shipments milled in transit at Oakland as per exception published effective April 10, 1923, in Supplement No. 15 to The Atchison, Topoka and Santa Fe Railway Company's Circular C.R.C. 412, which provided that Oakland would be considered intermediate on carload traffic destined to points on the Northwestern Pacific Railroad Company.

Witness for the defendant stated this exception was published for the reason that the Southern Pacific Company treated Oakland as an intermediate point on traffic moving over its rails from points in the San Joaquin Valley when destined to the territory involved herein, therefore in order to meet the rates of the competing carrier it was required to perform the back haul services from Richmond to Oakland and return to Richmond free or impose a charge for same and thus discourage the movement of grain over its own line.

The distances from San Joaquin Valley points to Petaluma and Santa Rosa via San Francisco are slightly less than the distances via Oakland; however, on traffic moving to the former point an expensive car-ferry service from Point Richmond to San Francisco of approximately 10 miles is involved, and the cost of this service per mile is in excess of the operating cost per mile for a rail haul. On traffic moving over the Southern Pacific Company's rails from the San Joaquin Valley to the same points on the Northwestern Pacific Railroad that carrier did not make San Francisco an intermediate point, therefore this defendant was not required to perform the out-of-line haul without compensation in order to secure its portion of the traffic.

Witness for the defendant stipulated at the hearing that its Transit Circular C.R.C. No. 412 would be amended making San Francisco an intermediate point and giving it the same privileges as are now enjoyed by Oakland, thereby removing the undue prejudice and disadvantage complained of.

The circumstances and conditions as shown by this record do not warrant a difference in the charges on grain milled in transit at San Francisco from the charges on similar shipments milled in transit at Oakland, and we conclude and find that defendant should publish and maintain the same transit arrangement at San Francisco as is now in effect at Oakland.

Complainant seeks an award of reparation on all shipments moved within the statutory period, apparently upon the theory that having paid a higher freight charge than its Oakland competitor at the destination points it was automatically damaged, but the record fails to furnish testimony of actual competition between the two points. Damage for which reparation can be awarded in a proceeding involving undue prejudice and disadvantage is not shown to have been sustained. (Pennsylvania Railroad Company vs. International Coal Company, 230 U.S. 194. Los Angeles County vs. Pacific Electric Railway, 27 C.R.C. 337 and 28 C.R.C. 143. Turner vs. Pacific Electric Railway Company, 27 C.R.C. 404 and Vernon Oil Refining Company vs. Pacific Electric Railway Company, 27 C.R.C. 442. Coal Switching Reparation Cases at Chicago, 36 I.C.C. 226.)

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 on the findings of fact and conclusions con-

tained in the opinion, which said opinion is hereby referred to and made a part hereof; it having been found in said opinion that the charges assailed, which were collected by defendant for back haul or out-of-line services to and from San Francisco in connection with the transportation of grain, in carloads, milled in transit at San Francisco and reshipped to points on the Northwestern Pacific Railroad are unduly prejudicial to San Francisco and unduly preferential to Oakland to the extent that they exceed charges for back haul or out-of-line services contemporaneously maintained by defendant on like traffic milled at Oakland,

IT IS ORDERED that defendant, The Atchison, Topeka and Santa Fe Railway Company, be and it is hereby notified and required to cease and desist on or before forty-five (45) days from the date of this order, and thereafter to abstain from practicing the undue preference referred to in the next preceding paragraph hereof.

IT IS FURTHER ORDERED that said defendant be and it is hereby notified and required to establish on or before forty-five (45) days from the date of this order, upon notice to this 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 rates, charges, regulations and practices which will prevent and avoid the aforesaid undue prejudice and preference.

IT IS FURTHER ORDERED, that as to all other matters the complaint in the above entitled proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 21st day of April, 1928.

Leon Whitell
Chairman
Commissioners
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