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Decision No. 19661.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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

vs.

SOUTHERN PACIFIC COMPANY, a corporation,
Defendant.

Case No. 2466.

ORIGINAL

C. R. Schulz and Max B. Schulz, by C. R. Schulz, for California Hawaiian Milling Company, complainant; and for San Francisco Milling Company, George H. Croley Company and Consolidated Milling Company, interveners.
James E. Lyons, for Southern Pacific Company, 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.
Platt Kent, E. C. Pierre and Berne Levy, for The Atchison, Topeka and Santa Fe Railway 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 20, 1927, it is alleged that the rates assessed and collected by defendant on various carload shipments of grain moved during the period two years immediately prior to the filing of this complaint from Stockton, Lathrop, Tracy and points

south thereof to points 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; that the according of milling in transit of grain at Oakland from and to the same territory without any out-of-line or back haul charge for such transit privilege while denying the same at San Francisco is unduly discriminatory and prejudicial to San Francisco and preferential to Oakland in violation of Section 19 of the Public Utilities Act.

We are asked to find as to the legally applicable rates, award reparation and remove the preference and discrimination alleged to exist.

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.

Complainant ships grain from Stockton, Lathrop, Tracy and points south thereof to San Francisco, where it is there manufactured and the finished product shipped to points on the Northwestern Pacific in competition with plants located at Oakland, South Vallejo and other points in California.

Paragraph C of Item 1400 of Southern Pacific Terminal Tariff 230-J, C.R.C. 3183, provides on this traffic that Oakland will be considered as an intermediate point between point of origin and destination and as a consequence no out-of-line or back haul charge applies when the grain is milled at Oakland, while at San Francisco there is no such specific tariff provision and complainant has paid 2 cents per 100 pounds out-of-line or back haul charge on its grain milled in transit at the latter point.

Complainant avers that by reason of the provisions of Item 1400, paragraph F, the mileage via Oakland by the greatest distant route authorized by the tariff would be in excess of the shortest possible mileage through San Francisco, but the tariff provides that the through rate on a milling in transit movement is only applicable at points which are intermediate in the movement of the tonnage through the transit point and San Francisco is not intermediate between the points in the San Joaquin Valley and the points located on the Northwestern Pacific when the shipments move through Oakland. To construe paragraph F of Item 1400 as authorizing the use of distances via a possible route in which the defendant participates from point of origin to destination in determining charges would result in most incongruous situations. The mere fact that Oakland is located in close proximity to San Francisco is not a deciding factor of the milling in transit privileges applicable at the latter point. The interpretation of the tariff as contended for would be an unreasonable one, for there is no tariff authorizing the use of absolute distances to and from Oakland as compared with San Francisco in determining the out-of-line or back haul charges applicable on the grain milled in transit at San Francisco.

There remains for consideration the question of undue preference and prejudice alleged to exist by the permitting of milling in transit at Oakland without any out-of-line or back haul charge while denying the same privilege at San Francisco. In George H. Croley Company, Inc., vs. Atchison, Topeka and Santa Fe Case 2474, similar allegations are made as to rates via the Santa Fe and it was stipulated at the hearing that a single report should dispose of this issue. It will therefore be unnecessary to here reiterate in detail the evidence submitted on this

question for in many respects substantially the same conditions exist in connection with traffic moving via the Southern Pacific as that moving via the Santa Fe.

After consideration of all the facts of record and the matters and things involved we are of the opinion and so find that the defendant has not violated Section 17 of the Public Utilities Act in declining to consider the distances to and from Oakland in determining, if any, the out-of-line or back haul charge applicable on grain originating at Stockton, Lathrop, Tracy and points south thereof, milled in transit at San Francisco and destined points on the Northwestern Pacific. We are of the further opinion that the permitting of milling in transit at Oakland from and to the territory here involved without any out-of-line or back haul charge while denying similar privileges at San Francisco was unduly preferential to Oakland and unduly prejudicial to San Francisco in violation of Section 19 of the Public Utilities Act.

No proof of damage suffered, as is required to be made on a finding of prejudice or discrimination, is of record, and reparation is therefore denied. Penn. R. R. Co. vs. International Coal Company, 230 U.S. 184, Los Angeles County vs. Pacific Electric et al., 27 C.R.C. 337, 28 C.R.C. 143.

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 the conclusions contained 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, carloads, milled in transit at San Francisco and re-shipped to points on the Northwestern Pacific Railroad are unduly prejudicial to San Francisco and unduly preferential to Oakland to the extent they exceed charges for back haul or out-of-line haul services contemporaneously maintained by defendant on like traffic milled at Oakland;

IT IS HEREBY ORDERED that defendant, Southern Pacific 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 HEREBY 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 HEREBY 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 23d day of April, 1928.

Leon O. Whitsell
C. L. Seavey
Ezra W. Decoto
Thos. D. Lawrence[?]
W. J. Carr[?]
Commissioners.