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Decision No. 20781.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of Investigation on the Commission's own motion into the practice of carriers, parties to tariffs issued by F. W. Gomph, Agent, in assessing and collecting higher freight charges in the aggregate at the interchange points than apply from or to the more distant points.

Case No. 2588.

A.S.Halsted, J.P.Quigley and E.E.Bennett, for Union Pacific System.
Platt Kent, Berne Levy and Robert Brennan, for The Atchison, Topeka and Santa Fe Railway Company.
C.N.Bell and A.Burton Mason, for Southern Pacific Company.
A.Burton Mason and W.G.Knoche, for Pacific Electric Railway Company.
James S. Moore, Jr., and L. N. Bradshaw, for the Western Pacific Railroad Company (entered by E.E.Bennett).
W. S. Wheaton, for Los Angeles Junction Railway Company.
Seth Mann, for San Francisco Chamber of Commerce.
J.C.Sommers, for Stockton Chamber of Commerce.
Sanborn, Roehl & Smith, by Harvey H.Sanborn, for the Union Lumber Company, and Harvey H.Sanborn and N.E.Keller, for the Pacific Portland Cement Company.
E.W.Hollingsworth, R.T.Boyd, and Bishop & Bahler, for California Manufacturers Association, Setzer Box Company, Sacramento Box & Lumber Company, Engineering and Foundry Company, and Yosemite Materials Company.
B.H.Carmichael, of Carmichael Traffic Corporation, for General Petroleum Corporation, Hercules Gasoline Company, and Agricultural Chemical Works (all of Los Angeles).
A.Larsson, of Larsson Traffic Service, for California Redwood Association and other lumber company constituents.
R.A.Dutton, and Thelen & Marrin, by Max Thelen, for Richfield Oil Company.
G.J.Olliffe, for the Texas Company.
W.J.Higgins, for Santa Cruz Portland Cement Company.
C.S.Connolly, for Albers Bros. Milling Company.
E.J.Forman, for Globe Grain and Milling Company (Los Angeles) and Los Angeles Traffic Managers Conference.
R.P.McCarthy, for Globe Grain and Milling Company, San Francisco.
J.E.McCarthy, for Poultry Producers of Central California.
C.R.Schulz, for George H.Croley Company, Inc.

BY THE COMMISSION:

O P I N I O N

This is an investigation on the Commission's own motion to determine whether or not the rail carriers, parties to

freight tariffs issued by F. W. Comph, Agent, are assessing and collecting higher charges in the aggregate on traffic originating at or destined to interchange points with connecting carriers than are assessed and collected on traffic moving through the interchange point under joint rates from or to more distant points.

A public hearing was held before Examiner Geary at San Francisco October 30, 1928, and the proceeding having been duly submitted is now ready for our opinion and order.

This proceeding was instituted following the receipt of many informal complaints from various shippers and receivers of freight alleging that respondents were failing to hold the joint rates as maximum at the interchange point contrary to our findings in Case 2176, Decision No. 17175 of July 31, 1926, 28 C.R.C. 440, hereafter referred to as the Junction Point case. The latter case was a proceeding on the Commission's own motion following the suspension of certain items of Pacific Freight Tariff Bureau publications effective October 10,1925, which items specifically restricted the joint rates therein from applying from or to the point of interchange with the connecting carriers. The record in the Junction Point case showed that throughout California respondents maintained joint rates from points of origin to destinations of the same volume as the local rates of the delivering carrier from the interchange point to the same destinations. For example, The Atchison, Topeka and Santa Fe Railway and Southern Pacific Company published a joint rate of 7 cents on fuel oil from El Segundo on the former line to Narod on the latter line, applicable via Los Angeles, while the local rate of the Southern Pacific from Los Angeles to Narod was likewise 7 cents. A shipment moving under the joint rate from El Segundo on The Atchison, Topeka

and Santa Fe Railway to Narod on the Southern Pacific was assessed only the line-haul rate of 7 cents, but if a car originated on an industry track within the switching limits of The Atchison, Topeka and Santa Fe at Los Angeles and was delivered to the Southern Pacific for the line-haul movement to Narod, a switching charge of $2.70 per car was assessed by The Atchison, Topeka and Santa Fe in addition to the line-haul rate of 7 cents assessed by the Southern Pacific Company.

We held in the Junction Point case that the assessing of the $2.70 switching charge at Los Angeles in addition to the line-haul rate, as well as at other interchange points where the same situation existed, was contrary to the applicable tariffs and in violation of the long and short haul clause of the State Constitution and Section 24(a) of the Public Utilities Act. We also found that the publication of the definite restriction specifically removing the application of the joint rates as maximum at the interchange points, was not justified and ordered its cancellation. Respondents cancelled the tariff provisions effective September 1, 1926, but subsequent thereto petitioned for and were granted a reopening of the proceeding for oral argument before the Commission en banc on November 15, 1926. By Decision No. 19563 of April 2, 1928, our original decision was affirmed.

The record in the instant proceeding shows that since our decisions in the Junction Point case respondents have continued to assess a switching charge of $2.70 per car at the interchange point in addition to the line haul rate where there was joint rate of the same volume from or to points beyond. In some cases the switching charge has been collected and in other cases where the shipper or receiver of the car has declined to submit to the charge, respondents have made no attempt to force

payment, although it was stated at the hearing that suits would be commenced for the recovery of all outstanding switching charges.

Respondents take the position that by the cancellation of the proposed tariff items found unjustified in the Junction Point case they have literally complied with our order, and according to their interpretation of the existing tariffs and of the long and short haul provisions of the Constitution and the Public Utilities Act they are now lawfully assessing the switching charge. The question of the proper interpretation of the line haul and terminal tariffs was fully considered in the Junction Point case, as well as the contentions of carriers that there was no violation of the long and short haul clause of the Constitution and of the Public Utilities Act, hence need not be further discussed here.

Respondents also maintain that neither this Commission, the Interstate Commerce Commission nor the courts have found the present practice unlawful. This latter contention is without foundation of fact, for our order in the Junction Point case not only required respondents to cancel the proposed tariff provisions, but the opinion found that the practice was contrary to the tariff and unlawful, and we stated therein that:

> "Respondents have relied entirely upon a strained interpretation of the tariffs and of Section 24(a) of the Public Utilities Act to justify the assessing at the interchange junction points of a switching charge in addition to the line haul rates, and other than this the record is barren of any evidence justifying the present practice."

Thus the Commission definitely placed its stamp of disapproval upon the exaction of the switching charge at the junction point. Furthermore, the Interstate Commerce Commission in two recent decisions, General Petroleum Corporation vs. A.T.& S.F.Ry. et al., 146 I.C.C. 194, and Lumber Rates on Pacific

Coast, 147 I.C.C. 13, has also condemned this practice as unlawful under the long and short haul prohibition contained in Section 4 of the Interstate Commerce Act.

Upon consideration of all the facts of record we are of the opinion and so find that the assessing and collecting of charges at the interchange point which in the aggregate are higher than contemporaneously assessed and collected on traffic moving from or to the more distant points under joint through rates, is in violation of Article XII Section 21 of the Constitution of the State of California and Section 24(a) of the Public Utilities Act and is contrary to the applicable tariffs in violation of Section 17 (2) of the Public Utilities Act.

An order will be entered requiring respondents to immediately cease and desist from assessing and collecting the unlawful charges.

O R D E R

This proceeding having been duly heard and submitted and a 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 precedes this order,

IT IS HEREBY ORDERED that respondents parties to tariffs issued by F. W. Gomph, Agent, according as they participate in the transportation, be and they are hereby ordered to immediately cease and desist and thereafter to abstain from applying, assessing or collecting transportation charges on traffic more specifically described in the opinion which precedes

this order, originating at or destined to the interchange point with connecting carriers which exceed in the aggregate the charges contemporaneously applied, assessed or collected on traffic originating at or destined to more distant points and moving under joint through rates.

Dated at San Francisco, California, this 13th day of February, 1929.

Thos. S. Louttit

C. L. Seavey

Wm. Carey Scott?

Leon O. Whitsell

M. J. Carr

Commissioners.