

Decision No. 21226.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SAN FRANCISCO MILLING CO., LTD.,
a corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
a corporation,

Defendant.

ORIGINAL

Case No. 2639.

C. R. Schulz for complainant.
J. E. Lyons, A. L. Whittle and M. A. Smith, for
defendant.
E. B. Smith for Sperry Flour Company, intervener.
C. S. Connolly for Albers Bros. Milling Company,
intervener.
J. E. McCurdy for the Poultry Producers Associa-
tion, intervener.
R. P. McCarthy, for the Globe Milling Company,
intervener.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation engaged in the buying, selling and manufacturing of grain and its products. By complaint filed December 26, 1928, it is alleged that an out of line milling in transit charge of 2 cents per 100 pounds assessed in addition to the line haul rates on shipments of grain and grain products moving from points north of Suisun-Fairfield via Port Costa, milled in transit at San Francisco and subsequently reshipped to points in Southern California, was contrary to the applicable tariffs, in violation of Section 17 of the Public

Utilities Act.

We are asked to require defendant to refund the alleged overcharge. The issue is solely one of tariff interpretation and does not involve the level of the line haul rates or transit charges.

A public hearing was held before Examiner Geary at San Francisco March 26, 1929, and the case having been duly submitted is now ready for our opinion and order.

Complainant's shipments of grain originated at Sacramento, Red Bluff, Batavia, Milton and other points in the Sacramento Valley, as shown in Index Nos. 439 to 892 and 1357 to 1642 of Southern Pacific Grain Tariff 659-D, C.R.C. 3283, were transported to San Francisco where they were milled in transit, and the finished products subsequently reshipped to Saugus, San Bernardino, Santa Barbara, Pardee and other points in Southern California, as shown in Index Nos. 2776 to 3145 and 4021 to 4228 of the same tariff. Defendant assessed the applicable line haul rates as published in Southern Pacific Grain Tariff 659-D, C.R.C. 3283, plus an out of line milling in transit charge of 2 cents per 100 pounds. The latter charge was published in Southern Pacific Terminal Tariff 230-J, C.R.C. 3183, and was subject to a provision contained therein in Section 4, Paragraph F, Item 1400-E, reading as follows:

"The charge for the out of line, indirect or back haul shipments will be based upon the additional distance traversed in movement to and from transit point as against direct short line mileage or mileage via routes in which Southern Pacific Company (Pacific Lines) participated from point of origin of inbound commodity to final destination of the outbound product."

The line haul rates in the grain tariff were governed by the routing provisions contained in Southern Pacific routing Circular No. 198-E, C.R.C. 2711. The routing circular in Item 10-G thereof restricted the line haul rates to apply via the

short line mileage "except as otherwise specifically provided". Complainant contends that Item 350-A of the routing circular reading as follows:

ITEM NO.	BETWEEN	A N D	Unless otherwise specifically provided in Individual Tariffs making reference hereto, Rates in such Tariffs apply only via
350-A	San Jose...Cal.	Watsonville Junction, Cal., to but not including Santa Cruz, Cal.	Gilroy.....Cal.
350	and points beyond via Pacmanco and Ruric, Cal.	Watsonville Junction, Cal., and points beyond via Elkhorn, Cal.	Watsonville Junction, Cal.
		Santa Cruz.....Cal.	Glenwood.....Cal.
		Davenport..... "	
		and points between	

was an exception to the short line mileage (via the San Joaquin Valley) in connection with shipments originating in the Sacramento Valley and destined to Southern California points, inasmuch as the points in the Sacramento Valley here involved are beyond San Jose via Pacmanco and Ruric, and those in Southern California are beyond Watsonville Junction via Elkhorn; hence under the provisions of Section 4 Paragraph F Item 1400-E of the terminal tariff quoted above, Item 350-A of the routing circular provided a route sufficiently longer than the short line mileage to eliminate the out of line charge as authorized under the provisions of the terminal tariff.

Defendant contends that Item 350-A of the routing circular was only intended for use in connection with tonnage moving from San Jose and points beyond via Pacmanco and Ruric to and including San Francisco on the one hand and on the other hand points on the Coast Division south of Watsonville and Gilroy, hence the routing for complainant's shipments should be governed by the short line mileage provisions of Item 10-G of the routing circular.

It may have been the intention of defendant when publishing Item 350-A to limit its application to San Francisco as the extreme point beyond San Jose, and the testimony appears to bear out this contention; but the item as published clearly includes all points beyond via Pacmanco and Ruric, thus including those points in the Sacramento Valley here at issue. It is a well established principle of tariff construction that tariffs should be free from ambiguities and the intentions of the framers are not controlling. Shippers are justified in relying upon the tariffs as they are worded, providing their interpretation is reasonable and will not result in an absurd situation. Golden Gate Brick Company vs. Western Pacific Railroad, 2 C.R.C. 607. In the Matter of the Suspension of Rule 85-A, 30 C.R.C. 372. Pacific Coast Shippers' Association vs. A.C.& Y.R.Co., 112 I.C.C. 527.

The longer route via the Coast Line, as contended for by complainant, from and to representative points as shown in Exhibit 2, is approximately 85 miles farther than the shorter route via the San Joaquin Valley, representing a percentage of circuitry of approximately 116% to 119%. The record shows that under the provisions of other items in Circular No. 199-E, routes are provided which vary from 105% to 213% of the short line mileage. We are of the opinion and so find that under a reasonable interpretation of Item 350-A, Circular 199-E, the line haul rates shown in Southern Pacific Tariff 659-D, C.R.C. 3283, from the points in the Sacramento Valley involved in this complaint to Southern California destinations apply either via the San Joaquin Valley or via defendant's Coast Line through Watsonville Junction, and therefore no out of line milling in transit charge is applicable under the tariffs. The overcharges should be refunded, with interest at 6% per annum.

ORDER

This case having been duly heard and submitted, 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 preceding opinion,

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be and it is hereby ordered to cease and desist and thereafter to abstain from applying, assessing, demanding or collecting an out of line milling in transit charge for the shipments of grain involved in this proceeding, moving from points in the Sacramento Valley, milled in transit at San Francisco, and reshipped to points in Southern California.

IT IS HEREBY FURTHER ORDERED that defendant, Southern Pacific Company, be and it is hereby authorized and directed to refund to complainant, San Francisco Milling Company, Ltd., with interest at six (6) per cent. per annum, the out of line charge of 2 cents assessed on the shipments here involved, provided such refund applies only to shipments on which the cause of action accrued within two years prior to the filing of this complaint.

Dated at San Francisco, California, this 10th day of June, 1929.

David L. Lewis
Ch. Lewis
Ernest A. ...
Leon ...

Commissioners.

Decision No. 21220.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SAN FRANCISCO MILLING CO., LTD.,
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Complainant,

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intervener.
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tion, intervener.
R. P. McCarthy, for the Globe Milling Company,
intervener.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation engaged in the buying, selling and manufacturing of grain and its products. By complaint filed December 28, 1928, it is alleged that an out of line milling in transit charge of 2 cents per 100 pounds assessed in addition to the line haul rates on shipments of grain and grain products moving from points north of Suisun-Fairfield via Port Costa, milled in transit at San Francisco and subsequently reshipped to points in Southern California, was contrary to the applicable tariffs, in violation of Section 17 of the Public

Utilities Act.

We are asked to require defendant to refund the alleged overcharge. The issue is solely one of tariff interpretation and does not involve the level of the line haul rates or transit charges.

A public hearing was held before Examiner Geary at San Francisco March 26, 1929, and the case having been duly submitted is now ready for our opinion and order.

Complainant's shipments of grain originated at Sacramento, Red Bluff, Batavia, Mikon and other points in the Sacramento Valley, as shown in Index Nos. 439 to 892 and 1357 to 1642 of Southern Pacific Grain Tariff 659-D, C.R.C. 3283, were transported to San Francisco where they were milled in transit, and the finished products subsequently reshipped to Saugus, San Bernardino, Santa Barbara, Pardee and other points in Southern California, as shown in Index Nos. 2776 to 3145 and 4021 to 4228 of the same tariff. Defendant assessed the applicable line haul rates as published in Southern Pacific Grain Tariff 659-D, C.R.C. 3283, plus an out of line milling in transit charge of 2 cents per 100 pounds. The latter charge was published in Southern Pacific Terminal Tariff 230-J, C.R.C. 3183, and was subject to a provision contained therein in Section 4, Paragraph F, Item 1400-E, reading as follows:

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The line haul rates in the grain tariff were governed by the routing provisions contained in Southern Pacific routing Circular No. 199-E, C.R.C. 2711. The routing circular in Item 10-G thereof restricted the line haul rates to apply via the

short line mileage "except as otherwise specifically provided". Complainant contends that Item 350-A of the routing circular reading as follows:

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Defendant contends that Item 350-A of the routing circular was only intended for use in connection with tonnage moving from San Jose and points beyond via Pacmanco and Ruric to and including San Francisco on the one hand and on the other hand points on the Coast Division south of Watsonville and Gilroy, hence the routing for complainant's shipments should be governed by the short line mileage provisions of Item 10-G of the routing circular.

It may have been the intention of defendant when publishing Item 350-A to limit its application to San Francisco as the extreme point beyond San Jose, and the testimony appears to bear out this contention; but the item as published clearly includes all points beyond via Pacmanco and Ruric, thus including those points in the Sacramento Valley here at issue. It is a well established principle of tariff construction that tariffs should be free from ambiguities and the intentions of the framer are not controlling. Shippers are justified in relying upon the tariffs as they are worded, providing their interpretation is reasonable and will not result in an absurd situation. Golden Gate Brick Company vs. Western Pacific Railroad, 2 C.R.C. 607. In the Matter of the Suspension of Rule 85-A, 30 C.R.C. 372. Pacific Coast Shippers' Association vs. A.C.& Y.R.Co., 112 I.C.C. 527.

The longer route via the Coast Line, as contended for by complainant, from and to representative points as shown in Exhibit 2, is approximately 85 miles farther than the shorter route via the San Joaquin Valley, representing a percentage of circuitry of approximately 116% to 119%. The record shows that under the provisions of other items in Circular No. 199-E, routes are provided which vary from 105% to 213% of the short line mileage. We are of the opinion and so find that under a reasonable interpretation of Item 350-A, Circular 199-E, the line haul rates shown in Southern Pacific Tariff 659-D, C.R.C. 3283, from the points in the Sacramento Valley involved in this complaint to Southern California destinations apply either via the San Joaquin Valley or via defendant's Coast Line through Watsonville Junction, and therefore no out of line milling in transit charge is applicable under the tariffs. The overcharges should be refunded, with interest at 6% per annum.

O R D E R

This case having been duly heard and submitted, 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 preceding opinion,

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be and it is hereby ordered to cease and desist and thereafter to abstain from applying, assessing, demanding or collecting an out of line milling in transit charge for the shipments of grain involved in this proceeding, moving from points in the Sacramento Valley, milled in transit at San Francisco, and reshipped to points in Southern California.

IT IS HEREBY FURTHER ORDERED that defendant, Southern Pacific Company, be and it is hereby authorized and directed to refund to complainant, San Francisco Milling Company, Ltd., with interest at six (6) per cent. per annum, the out of line charge of 2 cents assessed on the shipments here involved, provided such refund applies only to shipments on which the cause of action accrued within two years prior to the filing of this complaint.

Dated at San Francisco, California, this 10th day of June, 1929.

Thos B. Lovitt
Clarence
Ernest A. ...
Leon ...

Commissioners.