JLA

Decision No. 21932.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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

vs.

SOUTHERN PACIFIC COMPANY, a corporation,
Defendant.

Case No. 2675.

C. R. Schulz, for San Francisco Milling Company, Limited, complainant; also for interveners: Consolidated Milling Company, Outsen Brothers, George H. Croley Company, Inc., California-Hawaiian Milling Company, Inc., and George A. Beanston Company.

J. E. Lyons, W. S. Dawson and H. H. McElroy, for defendant.

J. E. McCurdy, for Poultry Producers of Central California.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation engaged in the buying, selling and manufacturing of grain and grain products. By complaint filed April 4, 1929, it is alleged that a milling in transit charge of 5 cents per 100 pounds demanded by defendant for the transportation of numerous carload shipments of grain and grain products moving during the period July 12, 1926, to August 14, 1928, from Elmira, Dixon, Tremont, Davis and Merritt, milled in transit at San Francisco and subsequently reshipped

to Petaluma and Santa Rosa; and from Woodland, Sacramento, Merritt, Davis, Tremont, Dixon and Elmira, milled in transit at San Francisco and subsequently reshipped to Penn Grove, Cotati, Novato and points between (except Petaluma) are in excess of the published tariff rates in violation of Section 17(2) of the Public Utilities Act, and if collected will be in violation of the long and short haul provisions of Section 24 of the Act and of Section 21 of Article XII of the Constitution of the State of California.

We are asked to require defendant to cease and desist from demanding the alleged unlawful milling in transit charge. Rates are stated in cents per 100 pounds.

The Consolidated Milling Company, Outsen Brothers, George H. Croley Company Inc., California-Hawaiian Milling Company Inc., and George A. Beanston Company intervened in behalf of complainant.

A public hearing was held before Examiner Geary at San Francisco June 5, 1929, and the case having been duly heard, submitted, and briefs filed, is now ready for an opinion and order.

The charges on the shipments of grain here involved were originally assessed and collected on the basis of a through commodity rate of 12 cents, as published in Item 3500 Pacific Freight Tariff Bureau Tariff 16-K, C.R.C. No. 422, without an additional charge for the milling in transit privilege at San Francisco. Defendant subsequently demanded an out of line charge of 5 cents for the transit service, and it is in connection with this charge that the issues of the complaint arise. The reasonableness of neither the line haul rate nor the transit charge is involved.

Tariff 16-K provided in Item 330 thereof that the line haul rate of 12 cents was subject to the charges, privileges and

allowances provided in defendant's Terminal Tariff 230-J, C.R.C. 3183, thus in effect making the terminal tariff a part of the line haul tariff. The terminal tariff (Item 1390-D) permits milling in transit without any charge in addition to the line haul rate provided the transit point is directly intermediate between points of origin and final destination, subject however to the two deviations from this general rule contained in Notes 1 and 2. The first permitted milling in transit, where the transit point was not directly intermediate, upon the payment of charges ranging from 2 cents per 100 pounds to 6 cents per 100 pounds according to the distance involved in the out of line, indirect, or back haul service (Item 1400-F). The second exception waived the out of line, indirect, or back haul charge where the milling in transit point is directly intermediate between points of origin and final destination via any authorized route other than the one the shipment takes (Item 1390-D). The latter exception, published to meet competition of other carriers, created departures from the long and short haul provision of the State Constitution and the Public Utilities Act which were authorized by our Decision No. 19893 of June 13, 1928. (In Re Application Southern Pacific Company, etc., 32 C.R.C. 862.) San Francisco was not directly intermediate via the Southern Pacific Company nor via the routes of other carriers on traffic originating at and destined to the points here involved, therefore under the provisions of the terminal tariff the out of line charge of 5 cents was applicable. At the time complainant's shipments moved there was in effect in Tariff 16-K from Sacramento and Woodland to Santa Rosa a line haul rate of 12 cents, and as in this instance San Francisco was a directly intermediate point via another authorized route, viz., Western Pacific Railroad via San Francisco, thence Petaluma and Santa Rosa Railroad, the

milling in transit charge was waived. All of the points here involved were directly intermediate to either Sacramento or Santa Rosa.

Complainant contends that regardless of the express provisions of the terminal tariff the out of line charge was nullified by the intermediate application rules carried in the line haul Tariff 16-K, to which the 12-cent rate from Sacramento to Santa Rosa was subject. The intermediate application rule to which complainant refers provides as to points of origin (Item 10) that -

> "Except as otherwise specifically provided in connection with individual rates, rates named in this tariff will, in the absence of specific commodity rates, apply from directly intermediate points on the same line. * * * (See * * * exception)
> "Exception: This rule will not apply where the rate from a point beyond applies from that point only."

Substantially the same intermediate application of rates was carried in Item 20 of the tariff with respect to points of destination.

But these intermediate rules cannot be construed in the manner contended for by complainant in view of the other express tariff provisions to which reference has already been given. It is clearly apparent that the out of line milling in transit charge in connection with traffic from Sacramento to Santa Rosa was waived to and from those points only to meet the competition of another rail route, viz., Western Pacific via San Francisco thence Petaluma and Santa Rosa Railroad, and was not intended to be waived from and to the intermediate points. While we have heretofore held that the intention of the tariff framer was not controlling, we have also held that the construction contended for must be within the realms of reason and that shippers cannot be permitted to urge for their own purposes a strained and unnatural construction. A review

of all the pertinent tariff provisions leads us to the conclusion that defendant's interpretation is proper and that the intermediate application rules do not operate to establish the absolute maximum rates in a situation such as is here before us. This construction was found by us to be in accordance with the tariffs In Re Application of Southern Pacific Co., supra. There was a specific milling in transit rate of 5 cents per 100 pounds applicable to the traffic here at issue for the out-of-line service, and although it resulted in higher charges at the intermediate points it nevertheless should be applied under the tariffs to the shipments in question.

Prior to our Decision No. 19893 of June 13, 1928, In Re Application of Southern Pacific Co., supra, these departures from the long and short haul provisions existed without authorization by this Commission. Substantially all the shipments here involved moved prior to the time the Commission's Decision 19893 was rendered, hence the rates applicable thereto were unlawfully published and filed. Complainant contends that in the absence of express authority from this Commission to depart from the long and short haul provisions, the rate from and to the more distant points was as a matter of law the maximum rate that could be collected at intermediate points. A determination of this question however requires consideration of other sections of the Act.

Section 17(2) of the Public Utilities Act, which is almost identical with the provisions of Section 6(7) of the Interstate Commerce Act, requires carriers to adhere to the rates published in their schedules on file with the Commission. The courts have repeatedly held that the filed and published rates of interstate carriers, though established in

violation of the law, become nevertheless the effective rates, from which there can be no deviation. (Penn. Ry. Co. vs. International Coal Co., 230 U.S. 184; Davis vs. Portland Seed Co., 264 U.S. 403; Magnolia Co. vs. Beaumont, etc., Ry., 20 Fed. (2nd) 384; Beaumont, etc., Ry. vs. Magnolia Co., 26 Fed. (2nd) 72.) This Commission has placed a similar construction upon Section 17(b) of the Public Utilities Act. (Golden State Milk Products Co. vs. Southern Sierras Power Co., 33 C.R.C. 83.) We do not believe this rule is contrary to the holding of the Supreme Court of California in California Adjustment Co. vs. Atchison, T.& S.F.Ry.Co., 179 Cal. 140, relied upon by complainant in support of its contention that the rates from and to the more distant points established the maximum charge that could be made at the intermediate points. As we construe the California Adjustment Case, supra, the court did not have for determination the precise points raised in the instant proceeding, for it was only called upon to interpret the long and short haul provisions of the Constitution and the Public Utilities Act and did not have for consideration Section 17 of the Act. Here we are confronted with a situation where the tariff clearly provides rates at the intermediate points higher than applied from and to the more distant points; and while it is true the higher charges at the intermediate points were unlawfully established, we can see no escape from the conclusion that they nevertheless became the legal rates which defendant was obligated to charge (see cases cited above).

It is in the public interest to hold that the legal tariffs should be construed as they read without the public having first to determine whether or not they were lawfully published and filed. A contrary rule would lead to endless confusion. Nor do we believe it equitable to hold that a rate

established in violation of the long and short haul provisions automatically nullifies the published tariff rates at all intermediate points wherever such rates are higher than from or to the more distant points. If, for example, a rail carrier should, due to a typographical error, inadvertently establish a rate for the transportation of a given commodity from San Francisco to Los Angeles of 7 cents instead of 70 cents, the former rate, following complainant's theory, must be applied as maximum at all the intermediate points. Thus mistakes in tariffs which happen frequently and are inevitable, may well prove disastrous to the carrier.

The precise situation now before us was considered by the Supreme Court of the United States in Davis vs. Portland Seed Co., supra, in construing the long and short haul provisions of Section 4 of the Interstate Commerce Act. In that proceeding the court had for consideration whether or not a rate of $1.51½ per 100 pounds for the transportation of alfalfa seed from Pecos, Texas, to Walla Walla, Washington, established the maximum charge that could be made from Roswell, New Mexico, to Walla Walla, Washington. Roswell was directly intermediate to Pecos in the movement to Walla Walla. The carriers for the transportation from Roswell to Walla Walla assessed a rate of $2.44 per 100 pounds as published in their tariffs on file with the Interstate Commerce Commission. The court held that the rate from Pecos to Walla Walla did not nullify the published rate from Roswell to Walla Walla, and that in order for the shipper to recover it must prove it had been actually damaged by the exaction of the higher rate. We believe the following language of the court in that case is pertinent to the issues here:

"The record shows, we think, that the carrier violated the statute by publishing the lower rate for the longer haul without permission, and, prima facie, at least, incurred the penalties of Section 10. Also, it became 'liable to the person or persons injured thereby for the full amount of damages sustained in consequence of . . . . such violation,' together with reasonable counsel fees, as provided by Section 8. But mere publication of the forbidden lower rate did not wholly efface the higher intermediate one from the schedule and substitute for all purposes the lower one, as a supplement might have done, without regard to the reasonableness or unreasonableness of either.

"With special knowledge of rate schedules, and relying on Pennsylvania R. Co. vs. International Coal Min. Co. the Interstate Commerce Commission for ten years has required proof of financial loss as a prerequisite to reparation for infractions of the 4th section. The rule is firmly established. Congress has not shown disapproval. The Transportation Act of 1920, with evident purpose to conserve the carriers' revenues, added the following to the proviso which gives power to exempt from the long and short haul clause: 'But in exercising the authority conferred upon it in this proviso the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed.' The rule adopted by the Commission follows the logic of the opinion relied upon and can be readily applied. The contrary view would not harmonize with other provisions of the act; and, put into practice, would produce unfortunate consequences.

"The statute requires rigid observance of the tariff, without regard to the inherent lawfulness of the rates specified. It commanded adherence to the published rate from Roswell. Section 6 forbade any other charge. Observance of the lower rate from Pecos, put in without authorization, might have been forbidden, as pointed out in United States v. Louisville & N. R. Co., 235 U.S. 314, 322, 323, 59 L. ed. 245, 251, 252, 35 Sup.Ct.Rep. 113; but it would be going too far to hold, as respondent insists, that the unauthorized publication established the lower rate as the maximum permissible charge from the intermediate point - the only rate therefrom which could be demanded." (underscoring ours)

The record contains no proof that complainant will be damaged by the exaction of the rate here under attack. Reparation is therefore denied.

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 contained in the preceding opinion,

IT IS HEREBY ORDERED that the complaint in the foregoing proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 20th day of December, 1929.

Commissioners.