JLA

Decision No. 22217.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

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.
C. S. Connolly, for Albers Bros. Milling Company.
H. W. Glensor and F. W. Turcotte, by H. W. Glensor, for Carmichael Traffic Corporation.
E. W. Hollingsworth, for Bishop & Bahler.
Sanborn, Roehl, Smith & Brookman, by W. H. Kessler, for Union Lumber Company.

BY THE COMMISSION:

FURTHER OPINION AND ORDER

By Decision No. 21932 in the above entitled proceeding, rendered on December 20, 1929, we held that a milling in transit charge of 5 cents per 100 pounds, in addition to a line haul rate of 12 cents per 100 pounds, demanded by defendant for the transportation of carload shipments of grain and grain products made during the period extending from July 12, 1926, to August 14, 1928, from Elmira, Dixon, Tremont, Davis and Merritt to Petaluma and Santa Rosa and from Woodland, Sacramento, Merritt, Davis, Tremont, Dixon and Elmira to Penn Grove, Cotati, Novato

and points between (except Petaluma), all of which were milled in transit at San Francisco, were applicable under the tariffs and although maintained in violation of the long and short haul provisions of Section 24(a) of the Public Utilities Act and Section 21 Article XIII of the Constitution of the State of California should nevertheless be collected. Reparation was denied in the absence of proof that complainant would be damaged by the exaction of the rate under attack.

It was specifically alleged by complainant that the demand of defendant was for charges in excess of those stated in its tariff in violation of Section 17(2) of the Act and if collected would result in the collection of charges in violation of the long and short haul provisions of Section 24(a) of the Act and Article XIII Section 21 of the Constitution. Reparation was prayed for if the Commission should find the milling in transit charges applicable.

Prior to the effective date of the decision complainant petitioned for a rehearing and the petition was set for oral argument January 31, 1930, before the Commission en banc. In the light of the argument presented at that time we do not believe a further hearing is necessary for a proper disposition of this proceeding.

The facts are comparatively simple and are not in dispute. Complainant in the ordinary course of its business obtains grain from the points of origin here involved, mills it at San Francisco and subsequently ships the manufactured articles to Petaluma, Santa Rosa, Penn Grove, Cotati, Novato and points between. The charges on the shipments in question were originally collected upon the basis of 12 cents per 100 pounds, the rate applicable for the line haul service only. About two years thereafter defendant presented balance due bills to complainant

demanding the payment of an additional 5 cents per 100 pounds for the transit service, as according to its interpretation of the tariffs on file with the Commission the shipments were undercharged to the extent of the additional amount demanded. Complainant refused to pay any charge over and above 12 cents per 100 pounds upon the grounds that the transit charge was not only inapplicable under the tariffs but would result in the collection of charges in violation of the long and short haul provisions of the Constitution and the Public Utilities Act.

At the time of movement the terminal tariff of defendant allowed milling in transit of grain without charge if the transit point was directly intermediate between the points of origin and destination. If the transit point was not directly intermediate it provided out of line charges varying from 2 to 5 cents per 100 pounds according to the additional distance traversed from and to the transit point, except if the transit point was directly intermediate via another authorized or competing route the out of line charges would be waived. San Francisco was not a directly intermediate point with respect to the traffic here considered, nor was it intermediate via any other authorized or competing route. In our original decision we found the additional charge of 5 cents demanded by defendant was applicable under the tariff on file with the Commission, and to this finding we now adhere.

However, it is conceded the charges demanded on complainant's shipments (moving from Elmira, Dixon, Tremont, Davis and Merritt to Petaluma and Santa Rosa and from Woodland, Sacramento, Merritt, Davis, Tremont, Dixon and Elmira to Penn Grove, Cotati, Novato and points between, except Petaluma) were in the aggregate higher than contemporaneously in effect on shipments

of grain originating at Sacramento, milled in transit at San Francisco, and subsequently reshipped to Santa Rosa, for the line haul rate from Sacramento to Santa Rosa was the same as applied on complainant's shipments, namely, 12 cents per 100 pounds, but for the milling in transit services at San Francisco the out of line charge of 5 cents was waived as this route was competitive with that of the Western Pacific via San Francisco thence Petaluma & Santa Rosa Railroad. All of the points here involved were directly intermediate between Sacramento and Santa Rosa via the route through San Francisco. Thus if the existing undercharges are collected, defendant will receive, and complainant will be charged, a greater compensation in the aggregate for the transportation of like kind of property for a shorter than for a longer distance over the same route in the same direction, the shorter being included in the longer distance. Until our Decision No. 19893 was rendered (<u>In Re Application of Southern Pacific Company</u>, etc., 31 C.R.C. 862) and defendant's terminal tariff amended effective August 14, 1928, in compliance with our order, these departures from the long and short haul clause of Article XIII Section 21 of the Constitution and Section 24(a) of the Public Utilities Act existed without our express authority and were therefore unlawful. All of complainant's shipments moved prior to August 14, 1928.

Two questions should be given reconsideration: First, whether the carrier, in view of the fact that the charges applicable contravened the long and short haul provisions of the Constitution and the Act, is legally entitled to collect more than it would on shipments of grain for the longer haul from Sacramento to Santa Rosa; and second, if so, to what extent, if any, has complainant a right to recover because of the unlawful act of the defendant.

In our original decision we held that it was mandatory under Section 17(2) of the Public Utilities Act for common carriers to collect the rates shown in the tariff and that it was in the public interest to hold that the rates in tariffs on file with the Commission should be assessed and collected without the public first having to determine whether or not they were lawfully published and filed. As we there stated, the courts have repeatedly held that the filed and published rates of interstate carriers, although 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); and we have 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). It seems fundamental to us that one of the vital benefits of public utility regulation would be nullified were we to hold that the provisions of the tariffs on file with this Commission should only be applied after an examination is made to determine whether or not they are in conformity with the long and short haul provisions of the Constitution and the Act. If we so held, then by the same line of reasoning deviations from the tariff could be made without our authority because a rate was claimed to be unreasonable, in violation of Section 13 of the Act, discriminatory, in violation of Section 19 of the Act, or unlawful under any other section of the Public Utilities Act.

We will affirm our original finding that the tariffs cannot be deviated from under any condition. What then is the right of complainant to recover because of the unlawful act of

defendant? We originally denied reparation because the record contained no proof that complainant would be actually damaged by the payment of the additional charges demanded. In reaching this conclusion we were largely guided by the decision of the Supreme Court of the United States in Davis vs. Portland Seed Co. supra. There the court held that a rate of $1.51½ per 100 pounds for the transportation of alfalfa seed from Pecos, Texas, to Walla Walla, Washington, did not nullify a higher rate of $2.44 per 100 pounds maintained in violation of the long and short haul provisions of Section 4 of the Interstate Commerce Act, for the transportation of the same commodity from Roswell, New Mexico, to Walla Walla, Washington, and for the shipper to recover reparation it must prove that it had been actually damaged by the exaction of the higher rate. Roswell was directly intermediate to Pecos in the movement to Walla Walla.

The facts considered in Davis vs. Portland Seed Co., supra, are fundamentally the same as here before us, although there the court was construing a statutory provision of the Interstate Commerce Act while here we have before us a state constitutional provision which forbids long and short haul departures unless authority is first obtained from this Commission.

What fundamental difference there may be in the interstate law and our own is not here material, as the measure of damages accruing to a shipper for a violation of the long and short haul provision of Section 21 Article XII has been considered by the Supreme Court of this state in California Adjustment Co. vs. Atchison, Topeka and Santa Fe Railway, 179 Cal. 140. This was an appeal from a judgment of $34,242.31 against the Atchison, Topeka and Santa Fe Railway for collecting, without legal permission from this Commission, charges on freight transported from San Francisco to points along its line between San

Francisco and Los Angeles which were higher than the charges held out to the public for the transportation of freight from San Francisco to Los Angeles. In affirming the judgment of the lower court the Supreme Court stated that the exaction of the higher charges at the intermediate points conclusively fixed the liability of the carrier and furnished a measure of the damage which the shipper suffered as soon as it occurred. Inasmuch as the Supreme Court of this state has held the measure of damage to a shipper who has paid a rate in violation of the long and short haul provisions of our Constitution shall be the difference between the rate charged for the shorter haul and the lower rate maintained for the longer haul, we are of the opinion our Decision No. 21932 should be brought into conformity with this holding.

Upon further consideration of the record in the above entitled proceeding in the light of the oral argument upon the petition for rehearing, we are of the opinion and so find:

1. That we should adhere to our original findings that the applicable rate under the tariffs for the transportation of complainant's shipments was 12 cents per 100 pounds for the line haul service plus 5 cents per 100 pounds for the milling in transit service, and that it is the duty of defendant to collect the undercharges.

2. That upon the collection of these discriminatory charges complainant will be damaged to the extent of the difference between the charges paid and those contemporaneously maintained for the transportation of like kind of property from Sacramento to Santa Rosa and milled in transit at San Francisco.

In view of our findings herein it would be an idle and useless act of defendant to actually collect the existing undercharges demanded. Therefore our order will simply require defendant to cease and desist from demanding or collecting any charges in excess of those applicable for the longer haul and will authorize the waiver of the undercharges on the shipments in question. This however should not be construed as a

precedent to either the complainant or defendant to disregard the rates shown in the tariff.

O R D E R

This proceeding having been duly considered in the light of the oral argument upon complainant's petition for rehearing, and good cause appearing therefor,

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be and it is hereby ordered to cease and desist from demanding from complainant, San Francisco Milling Company, charges for the transportation of the above mentioned carload shipments of grain from Elmira, Dixon, Tremont, Davis and Merritt to Petaluma and Santa Rosa, and from Woodland, Sacramento, Merritt, Davis, Tremont, Dixon and Elmira to Penn Grove, Cotati, Novato and points between (except Petaluma), milled in transit at San Francisco, in excess of the charges contemporaneously maintained for the transportation of like traffic from Sacramento to Santa Rosa, milled in transit at San Francisco.

IT IS HEREBY FURTHER ORDERED that defendant, Southern Pacific Company, be and it is hereby authorized and directed to waive the existing undercharges on complainant's shipments described in the preceding paragraph.

IT IS HEREBY FURTHER ORDERED that in so far as our findings herein are inconsistent with Decision No. 21932, the said decision be and it is hereby annulled and set aside.

Dated at San Francisco, California, this 18th day of March, 1930.

C. L. Seavey

Leon Whitsell

Thos. D. Doutitt

W. J. Carr

Commissioners.