JLA

Decision No. 22512.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

ALBERS BROS. MILLING COMPANY,
a corporation,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
a corporation,
THE WESTERN PACIFIC RAILROAD COMPANY,
a corporation,
Defendants.

Case No. 2819.

C. S. Connolly, for the complainant.

A. L. Whittle, James E. Lyons and Morton G. Smith, for Southern Pacific Company, defendant.

L. N. Bradshaw and J. F. Bon, for The Western Pacific Railroad Company, defendant.

E. G. Wilcox, for Oakland Chamber of Commerce.

BY THE COMMISSION:

OPINION

Complainant is a corporation engaged in the buying, selling and manufacturing of grain and grain products, with its principal place of business at San Francisco. By complaint filed February 4, 1930, it is alleged that the charges assessed and collected on six carload shipments of grain products moving from Oakland to San Leandro between March 1, 1928, and December 31, 1929, were at the time shipments moved, are now and for the future will be unjust and unreasonable, in violation of Section 13 of the Public Utilities Act, and discriminatory in violation

of Section 19 of the Act.

Reparation and rates for the future are sought.

A public hearing was held before Examiner Geary at San Francisco April 15, 1930, and the case having been submitted is now ready for an opinion and order.

Complainant's shipments originated at its plant at Oakland on the rails of defendant Southern Pacific Company, hereinafter referred to as the Southern Pacific, and were destined to San Leandro on the line of The Western Pacific Railroad Company, hereinafter referred to as the Western Pacific, 8 miles southeast of Oakland but within the Western Pacific Oakland switching limits. For the movement from complainant's plant to the interchange with the Western Pacific charges were assessed and collected on basis of 34 cents per ton, minimum charge $7.20 per car, as shown in Item 3580 series of Southern Pacific Terminal Tariff 230-J, C.R.C. 3183. From the point of interchange to San Leandro an additional charge of 55 cents per ton, minimum $13.50 per car, as named in Item 545 series of Western Pacific Terminal Tariff 35-J, C.R.C. 245, was assessed, resulting in a through charge of 89 cents per ton, minimum $20.70 per car.

Prior to October 15, 1924, the Oakland switching limits of the Southern Pacific and the Western Pacific did not extend east of the Oakland-San Leandro city limits. On that date however the Western Pacific extended its switching limits to include San Leandro. The Southern Pacific however did not similarly extend its switching limits, but did publish, effective concurrently, in its Local, Joint and Proportional Freight Tariff No. 730-C, C.R.C. No. 2904, between Oakland and San Leandro an "all freight" rate of the same volume as the Western Pacific switching rate, viz., 55 cents per ton, minimum $13.50 per car.

In this territory the prevailing charge for a movement

such as here at issue from a point within the switching limits of one carrier to a point within the switching limits of a connecting carrier at the same station is 34 cents per ton, minimum $7.20 per car for the originating line, and $3.60 per car for the delivering line. This basis, however, does not prevail in the instant case, as simultaneously with the extension of its switching limits the Western Pacific restricted the item in its tariff naming the $3.60 per car charge so as not to apply from interchange tracks with the Southern Pacific at Oakland on traffic destined to San Leandro. The restriction, according to the Western Pacific, was made because the Southern Pacific did not extend its switching limits to embrace San Leandro as did the Western Pacific, and therefore when the haul was in the reverse direction and the Western Pacific the originating carrier of the traffic, the corresponding charge of $3.60 per car of the Southern Pacific as the delivering carrier was not applicable.

Complainant points out that as a result of these provisions shipments originating on the Santa Fe in Berkeley (Hopkins Street and south), a substation of Oakland, may be transported to the destinations here involved for a lesser charge than is being assessed its shipments. Such cars would be switched to the Southern Pacific by the Santa Fe at 20th and Wood Streets, a point in the vicinity of complainant's plant, and would thereafter travel substantially the route traversed by shipments made by complainant at a charge of 34 cents per ton, minimum $7.20 per car, for the Santa Fe, plus $3.60 per car each for the Southern Pacific and the Western Pacific, making a minimum per car charge of $14.40. Likewise a car originating on the State Belt Railroad or on the Southern Pacific at San Francisco and line-hauled by the Western Pacific would be moved across San Francisco Bay and transported almost past complainant's plant to San Leandro for a lesser charge than is being

assessed against the shipments here involved.

Complainant however is not here asking for a charge of 34 cents per ton, minimum $7.20 per car for the originating carrier plus $3.60 per car for the delivering line, but is seeking a joint rate of 55 cents per ton, minimum $13.50 per car, which is the same as the joint rate now maintained by defendants in Pacific Freight Tariff Bureau Tariff 201, C.R.C. 428, on traffic between industry tracks on the Alameda Belt Line at Alameda or the Howard Terminal Railway at Oakland and San Leandro on the Southern Pacific or Western Pacific.

A witness for defendants contended that rates higher than 55 cents per ton, minimum $13.50 per car, were justified on complainant's shipments because of competitive and operating conditions, but just what these conditions were the witness did not say.

Upon consideration of all the facts of record we are of the opinion and find that the assailed charges are unduly discriminatory to the extent they exceed charges based on a rate of 55 cents per ton, minimum $13.50 per car. Complainant made no attempt to show that the charges collected were unreasonable per se, in violation of Section 13 of the Act.

Reparation is sought because of the discriminatory adjustment. However, the record is devoid of any proof of damages suffered and therefore reparation is denied. (Penn.R.R.Co. vs. International Coal Co., 230 U.S. 184. Los Angeles County vs. Pacific Electric et al., 27 C.R.C. 337.)

O R D E R

This case being at issue upon complaint and answer on file, 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 defendants, Southern Pacific Company and The Western Pacific Railroad Company, on or before thirty (30) days from the effective date of this order, on not less than five (5) days' notice to the Commission and to the public, publish and apply to shipments moving from complainant's plant on the line of the Southern Pacific Company at Oakland to San Leandro on the Western Pacific Railroad Company, a rate not to exceed 55 cents per ton, minimum $13.50 per car.

IT IS HEREBY FURTHER ORDERED that in all other respects this complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 6th day of June, 1930.

C. L. Seavey

Leon O. Whitsell

M. J. Carr

Commissioners.