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Decision No. 22684

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CHAMBERLAIN COMPANY INCORPORATED,
DALEY'S INCORPORATED,
DETRICK JOSLYN COMPANY,
GENERAL PETROLEUM CORPORATION OF CALIFORNIA,
KLINCH LATH CORPORATION,
LOS ANGELES CAN CORPORATION,
McKEON CANNING COMPANY INCORPORATED,
PENNSYLVANIA IRON AND STEEL COMPANY (Samuel Tush, sole owner),
SHANNAHAN BROS., INCORPORATED,

Complainants,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
LOS ANGELES AND SALT LAKE RAILROAD COMPANY,
PACIFIC ELECTRIC RAILWAY COMPANY,
SOUTHERN PACIFIC COMPANY,

Defendants.

Case No. 2630.

F. A. Jones and H. M. Avey, for the Complainants.

James E. Lyons, A. L. Whittle and C. N. Bell, for the Defendant Southern Pacific Company.

A. S. Halsted, J. P. Quigley and E. E. Bennett, for the Defendant Los Angeles & Salt Lake Railroad Company.

Robert Brennan, Platt Kent, Berne Levy, C. K. Adams and A. E. McGowan, for the Defendant The Atchison, Topeka and Santa Fe Railway Company.

Frank Karr, C. W. Cornell and W. G. Knoche, for the Defendant Pacific Electric Railway Company.

E. J. Forman, for the Globe Grain & Milling Company.

G. A. Olson, for the Carmichael Traffic Corporation.

BY THE COMMISSION:

O P I N I O N

Complainants, excepting Pennsylvania Iron and Steel Company, are corporations organized under the laws of the State of California. The Pennsylvania Iron and Steel Company is a fictitious name under which Samuel Tush as sole owner is doing business. By complaint seasonably filed it is alleged that the rates assessed on numerous carloads of various commodities moving within the switching limits of Los Angeles; from Los Angeles to Shorb and between Los Angeles and Burbank, subsequent to July 30, 1925, were, are, and for the future will be inapplicable, excessive, unjust, unreasonable, unduly prejudicial and discriminatory in violation of Sections 13, 17, 19 and 24 of the Public Utilities Act.

Reparation and rates for the future are sought.

A public hearing was held before Examiner Geary at Los Angeles, and the case having been submitted is now ready for an opinion and order.

The movement of complainants' shipments falls within two catogories: (1) those between points wholly within the switching limits of Los Angeles and (2) those between points within the switching limits of Los Angeles on the one hand and Shorb or Burbank on the other hand. The first is obviously entirely a switching service while the second is a joint switching and line haul service.

The rates for the switching movements via a single line vary from 34 cents per ton, minimum $7.20 per car to 70 cents per ton, minimum $15.00 per car depending upon the zones traversed. For a two line haul there is an additional charge

of $3.60 per car or $4.50 per car, according to the destination of the shipment, accruing to the delivering carrier. The Los Angeles switching charges now in effect were established by this Commission as just and reasonable after an extensive investigation. In Re Application of the Southern Pacific Company, etc., 19 C.R.C. 856. In this proceeding we also established substantially the same zone switching charges at San Francisco and Oakland. The present switching charges at all three points are practically the same as those prescribed by us except for the general 10 per cent post-war reduction effective July 1, 1922.

For the combination line haul and switching movement from or to Shorb or Burbank defendants assessed a rate of $17.70 per car made up of the minimum per car line haul charge of $15.00 plus a switching charge of $2.70 per car.

At the time complainants' shipments moved, as well as now, defendants maintained proportional rates of $4.50 per car between Los Angeles and Slauson, Industrial, Wildasin, Forest Lawn, Clifford Spur and Dotson Spur; $7.20 per car between Los Angeles and West Glendale, Glendale, Alhambra, West Alhambra, Florence Avenue and Wingfoot and $10.00 per car between Los Angeles and Burbank and Sepulveda. These points are industrial districts situated a short distance beyond the Los Angeles switching limits. Under the applicable tariffs the proportional rates are used in combination with each other, subject to a minimum per car charge of $15.00. When so used they produce lower charges than assessed on complainants' shipments for shorter hauls between intermediate points. In Re Application of Southern Pacific Company, etc., 34 C.R.C. 167.

Defendants contend that notwithstanding the fact that the charges collected on complainants' shipments were higher than those applicable on like traffic from and to more distant

points, the long and short haul provisions of the Constitution and the Public Utilities Act were not contravened, inasmuch as the charges from and to the more distant points were determined by the use of proportional rates. They cite numerous decisions of the Interstate Commerce Commission holding in effect that in construing the long and short haul provisions of Section 4 of the Interstate Commerce Act, proportional rates cannot be compared with local rates. The issue before us however is clearly distinguishable from the cases cited, for here two proportional rates are being combined to make a through charge, while in the proceedings before the Interstate Commerce Commission a single proportional rate which by its terms must be used in conjunction with some other rate before arriving at the through charge, was being compared with an all inclusive local rate. Regardless of what rate factors were here used, the fact remains that the total through charges determined by a combination of proportional rates were lower than the charges assessed on complainants' shipments for shorter hauls over the same line or route.

While complainants also alleged the rates at issue were in violation of Sections 13, 17 and 19 of the Act, it is apparent that those allegations were made solely because the charges exacted on their shipments were higher than the charges in effect from or to more distant points obtained by using the proportional rates. There is nothing in this record to show that the rates under attack per se were in violation of either Sections 13, 17 or 19 of the Act.

Complainants ask for reparation because of the charges paid in violation of the long and short haul provisions. Some of the shipments involved moved more than two years before the complaint was filed. These are barred from further consideration. In San Francisco Milling Company vs. Southern Pacific

Company, 34 C.R.C. 453, we held that a shipper who had paid a rate maintained in violation of the long and short haul provisions was damaged in the amount of the difference between the rate assessed and the lower rate from or to the more distant points. Defendant in that proceeding petitioned the Supreme Court of the State of California for a writ of review which was denied. Southern Pacific vs. Railroad Commission et al., S.F. 13909. Following the doctrine of the San Francisco Milling case complainants are entitled to recover the charges paid in excess of those applicable from or to the more distant points.

After consideration of all the facts of record we are of the opinion and so find that the charges on complainants' shipments were assessed and collected in violation of Section 24(a) of the Public Utilities Act but were not in violation of Sections 13, 17 and 19 of the Act; that complainants paid and bore the charges on the shipments in question and have been damaged to the extent of the difference between the charges paid and those in effect from or to more distant points. We are of the further opinion and so find that for the future defendants should be required to cease and desist from assessing and collecting charges on complainants' shipments which shall exceed the charges in effect on like traffic from and to more distant points, unless and until authority is obtained from this Commission to depart from the long and short haul provisions of the Constitution and the Act.

The exact amount of reparation due is not of record. Complainants will submit to defendants for verification a statement of the shipments made and upon payment of the reparation defendants will notify the Commission of the amount thereof. Should it not be possible to reach an agreement as to the reparation award, the matter may be referred to the Commission

for further attention and the entry of a supplemental order should such be necessary.

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 defendants, The Atchison, Topeka and Santa Fe Railway Company, Los Angeles and Salt Lake Railroad Company, Pacific Electric Railway Company and Southern Pacific Company, according as they participate in the transportation, be and they are hereby ordered to cease and desist and thereafter to abstain from applying, demanding or receiving a greater compensation for the transportation of shipments here involved than contemporaneously applicable on like traffic from or to the more distant points herein described.

IT IS HEREBY FURTHER ORDERED that defendants, The Atchison, Topeka and Santa Fe Railway Company, Los Angeles and Salt Lake Railroad Company, Pacific Electric Railway Company and Southern Pacific Company, according as they participated in the transportation, be and they are hereby directed to refund to complainants, Chamberlain Company Incorporated, Daley's Incorporated, Detrick Joslyn Company, General Petroleum Corporation of California, Klinch Lath Corporation, Los Angeles Can Corporation, McKeon Canning Company Incorporated, Pennsylvania Iron and Steel Company (Samuel Tush, sole owner), and Shannahan Bros., Incorporated, according as their interests may appear, all charges for the transportation of the shipments involved in this proceeding on which the cause of action accrued within the two year period immediately preceding the filing

of this complaint in excess of the charges contemporaneously in effect on like traffic from or to the more distant points herein described.

Dated at San Francisco, California, this 17th day of July 1930.

C. L. Seavey

Ezra W. Decoto

Leon Whitsell

COMMISSIONERS.