

Decision No. 22982.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

GLOBE GRAIN AND MILLING COMPANY,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
Defendant.



Case No. 2826.

George A. Whitney and E. J. Forman for complainant.

James E. Lyons for defendant.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation engaged in the buying, selling and milling of grain and grain products, with its principal place of business at Los Angeles. By complaint filed February 10, 1930, it is alleged (a) that the practice of defendant in assessing, collecting or demanding an out-of-line transit rate of 2 cents per 100 pounds for the transportation of grain from points north of Fresno, milled in transit at Los Angeles and the grain products subsequently reshipped to Oxnard and Santa Barbara is unreasonable, excessive and without tariff authority; and (b) that the provisions of defendant's Routing Circular No. 199-E, C.R.C. No. 2711, which restrict the line haul rates on whole grain originating at points on defendant's line in California north of Saugus, milled in transit at Los Angeles and thence reshipped to Oxnard and Santa Barbara, to apply only via Saugus, Pardee and

Montalvo, were and are unreasonable.

A public hearing was held before Examiner Geary at Los Angeles, and the case having been duly submitted and briefs filed, is now ready for our opinion and order. Rates will be stated in cents per 100 pounds.

Complainant's shipments originated at points on defendant's lines between Fresno and Stockton and moved to Los Angeles, where they were milled in transit and subsequently reshipped to Oxnard. Charges were originally assessed and collected on the basis of a through commodity rate of $29\frac{1}{2}$ cents from point of origin to final destination without an additional charge for the milling in transit privilege at Los Angeles. Subsequently, however, defendant assessed an out-of-line charge of 2 cents for this service, which complainant is here contending is inapplicable and otherwise unlawful.

The first allegation of the complaint involves the interpretation of defendant's tariffs. The line haul rates assessed on complainant's shipments were published in Southern Pacific Grain Tariff 659-D, C.R.C. 3283. These rates include the privilege of milling in transit as provided in Southern Pacific Terminal Tariff 230-J, C.R.C. 3183. The terminal tariff permits milling in transit without any charge in addition to the line haul rates if the transit point is directly intermediate between point of origin and final destination. If the transit point is not directly intermediate, out-of-line charges varying from 2 to 6 cents per 100 pounds are applicable. In computing the out-of-line mileage the terminal tariff provides in Paragraph F, Section 4, Item 1400-F that:

"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) participates from point of origin of inbound commodity to final destination of the outbound product."

It will be noted from the above that if the out-of-line haul via the short line to and from the transit point is less than the distance via any other route in which defendant participates, no out-of-line charge is made.

Complainant contends that under the provisions of Routing Circular No. 199-E, C.R.C. 2711, governing the application of the line haul rates in Tariff 659-D, C.R.C. 3283, there is a permissible route from and to the points here involved sufficiently in excess of the short line to absorb any out-of-line haul necessary in reaching the transit point.

Complainant's contention is principally based upon the construction of Items 500-A, 520-A and 660-A of the Routing Circular. These items are exceptions to the general provisions in Item 10-G, making the line haul rates subject to the Routing Circular apply via the short line mileage. Item 500-A provides a specific route from points north of Fresno to points south of Famosa via Visalia. Item 520-A authorizes a route from Visalia to points beyond Burbank, Macneil and Hewitt to but not including Montalvo, via Goshen Junction. Both items are silent as to the junction points beyond Visalia and Goshen Junction. Complainant takes the position that as these items provide specific routes from points north of Fresno to Oxnard and Santa Barbara, they have the effect of entirely nullifying the general short line provisions of Item 10-G; thus as they are silent as to the gateway beyond the junction points specifically named, the choice of routing is open to the shipper, permitting a route via Burbank and Chatsworth to reach Oxnard and Santa Barbara. This route is sufficiently in excess of the short line mileage via Saugus and Pardee to absorb the additional distance traversed in reaching the transit point. Complainant's contention however finds no support in this record, as Items 500-A and 520-A cannot under a

reasonable interpretation be construed as totally displacing the general short line provisions of Item 10-G, but only to the extent that such items may specifically restrict or extend the routing otherwise obtaining under Item 10-G.

In the event Items 500-A and 520-A are not applicable, complainant then relies upon Item 660-A of the Routing Circular to provide a route in addition to the short line route sufficiently in excess of the latter to absorb the out-of-line haul from and to the transit point. Item 660-A reads as follows:

Item No.:	BETWEEN	:	AND	:	Unless otherwise specifically provided in individual tariffs making reference hereto, rates in such tariffs apply only via
660-A	:Chatsworth, Cal.:	:	Burbank, Cal.:	:	Zelzah..... Cal.
660	:and points beyond via Hasson, Cal.:	:	:and points beyond via Sepulveda, Cal.:	:	Van Nuys.... Cal.

Complainant's contention is predicated on the wording of the territorial description shown under the "Between" heading of the above item reading "Chatsworth, Cal. and points beyond via Hasson, Cal.", which it asserts includes points in the San Joaquin Valley beyond Saugus, thus not only nullifying any out-of-line charge at the destination points west of Montalvo but also making the rate of 29½ cents assessed on these shipments inapplicable to the extent it exceeded a rate of 28 cents from the San Joaquin Valley to Los Angeles, held as maximum at points west of Montalvo. Complainant has not given Item 660-A a reasonable construction. The term "beyond" in its ordinary sense refers to points farther away in the same direction. Fresno is not in a strict sense beyond Chatsworth, as to reach the former point there would be involved a circuitous movement akin to a back haul.

Complainant also attacks the reasonableness of any

restriction in the routes from the San Joaquin Valley to Oxnard and Santa Barbara which limits the gateways to Saugus and Pardee upon the ground that a shipment from the San Joaquin Valley to Santa Barbara, for example, would be set out at Saugus, from there hauled to Montalvo by a second train, again set out at the last-named point and hauled by a third train to destination, while if the shipment were routed via Burbank and Chatsworth only one interchange would be necessary. Other than this complainant offered nothing to substantiate its allegation of unreasonableness. The mere fact that extra handling is required of a shipment via the short route does not prove that this route is unreasonable, nor that the longer route requiring a lesser handling is reasonable. There may be, and possibly are, more material factors not here of record entering into the physical handling of the shipments here considered.

Upon consideration of all the facts of record we are of the opinion and so find that the out-of-line milling in transit charge of 2 cents per 100 pounds collected or demanded on the shipments here at issue is under the tariffs applicable and that the restriction of the routes via Saugus and Pardee is not unreasonable. The complaint will be dismissed.

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 opinion which precedes this order,

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

Dated at San Francisco, California, this 20th day
of October, 1930.

C. Searcy

Leon Whittell
Thos. S. Lewis

Commissioners.