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Decision No. 23542.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

GLOBE GRAIN AND MILLING COMPANY,

Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
CENTRAL CALIFORNIA TRACTION COMPANY,
HOLTON INTERURBAN RAILWAY COMPANY,
LOS ANGELES & SALT LAKE RAILROAD COMPANY,
LOS ANGELES JUNCTION RAILWAY COMPANY,
MODESTO AND EMPIRE TRACTION COMPANY,
NORTHWESTERN PACIFIC RAILROAD COMPANY,
PACIFIC COAST RAILWAY COMPANY,
PACIFIC ELECTRIC RAILWAY COMPANY,
SACRAMENTO NORTHERN RAILWAY,
SAN DIEGO AND ARIZONA RAILWAY COMPANY,
SAN FRANCISCO-SACRAMENTO RAILROAD COMPANY,
SANTA MARIA VALLEY RAILROAD COMPANY,
SOUTHERN PACIFIC COMPANY,
SUNSET RAILWAY COMPANY,
THE WESTERN PACIFIC RAILROAD COMPANY,

Defendants.

Case No. 2537.

E. J. Forman and Geo. A. Whitney, for the Globe Grain and Milling Company, complainant.
J. M. Souby, A. S. Halsted, E. E. Bennett and J. P. Quigley, for Union Pacific System.
Elmer Westlake, Platt Kent and Berne Levy, for The Atchison, Topeka and Santa Fe Railway Company.
S. M. Haskins and Woodward M. Taylor for Los Angeles Junction Railway Company.
J. E. Lyons, J. L. Fielding and H. H. McElroy, for Southern Pacific Company.
Frank Karr and F. F. Willey, for Pacific Electric Railway Company.
E. H. Carmichael and F. W. Turcotte, for Terminal Refrigerating Company, Gordon-Harrison-Russell, Inc., Taylor Milling Company and Poultrymen's Cooperative Milling Association.
H. M. Avey and F. A. Jones, for Seaboard Petroleum Corporation.
J. G. Beaver, for California Milling Corporation.
E. B. Smith, for Sperry Flour Company.
R. E. Valentine, for Central Manufacturing District Traffic Association.

R. E. Crandall and R. S. Sawyer, for Associated Jobbers and Manufacturers.
George Rahe, for Los Angeles Soap Company.
T. E. Banning, for Columbia Steel Corporation.
Seth Mann, for San Francisco Chamber of Commerce.
C. R. Schulz, for San Francisco Milling Company, Ltd., and Consolidated Milling Company.

BY THE COMMISSION:

O P I N I O N

The Globe Grain and Milling Company, complainant herein, is a California corporation engaged in the grain, milling and feed business at Los Angeles. By complaint filed May 14, 1928, and as amended at the hearing December 13, 1928, it alleges that the failure of defendants, The Atchison, Topeka and Santa Fe Railway Company (hereinafter called the Santa Fe), Los Angeles & Salt Lake Railroad Company (hereinafter called the Salt Lake Line), the Pacific Electric Railway Company (hereinafter called the Pacific Electric) and the Southern Pacific Company (hereinafter called the Southern Pacific) to absorb the switching charges of, and maintain joint rates with, their connecting line haul carriers on noncompetitive intrastate shipments of grain, grain products, hay, animal, poultry and stock feeds, in carloads, originating at or destined to Los Angeles, while absorbing the switching charges of, and maintaining joint rates with, the Junction Railway from or to Los Angeles, is and for the future will be inapplicable, unreasonable, unduly discriminatory, preferential, prejudicial and otherwise unlawful, in violation of Sections 13, 17 and 19 of the Public Utilities Act, and in some instances in violation of the long and short haul provisions of Section 24(a) of the Act. It is further alleged that the competitive traffic rule published in defendants' terminal tariffs is unreasonable.

Public hearings were conducted at Los Angeles December 13 and 14, 1928, before Examiner Geary, and the case submitted on briefs. Complaints filed with the Interstate Commerce Commission[1] embracing the same issues with respect to interstate traffic were heard jointly with this Commission.

Petitions in intervention were filed by the California Milling Corporation, Sperry Flour Company, Terminal Refrigerating Company, Gordon-Harrison-Russell, Inc., Taylor Milling Company, Poultrymen's Cooperative Milling Association, Associated Jobbers and Manufacturers, San Francisco Chamber of Commerce, Seaboard Petroleum Corporation, Federal Cold Storage Company, Central Manufacturing District Traffic Association, Los Angeles Soap Company, Columbia Steel Corporation, Consolidated Milling Company and San Francisco Milling Company.

At the hearing certain interveners presented petitions raising substantially the same issues as complainant but with respect to building materials and food commodities placed in cold storage. Defendants objected to the inclusion of these commodities on the grounds that the issues would be broadened. To the extent the petitions relate to commodities not covered by the complaint they will be denied as they would unduly broaden the issues.

Complainant operates four milling plants and warehouses for the storage, milling, manufacture and sale of flour, grain and grain products, animal and poultry feeds, hay and fertilizer. Two are served by the Santa Fe and two by the Southern Pacific. All are within the Los Angeles switching limits of the respective carriers which serve them. Complainant and its competitors, located on the Junction Railway, draw their supply of grain from

1. I.C.C.Docket 21244, Globe Grain and Milling Company vs. A.T. & S.F.Ry. et al., and 21244 (Sub-No.1), California Milling Corporation vs. A.T.& S.F.Ry.

the same general territory, manufacture substantially the same products, and are in active competition in the sale of the commodities. Interveners whose plants are located within the Los Angeles switching limits on defendants' lines other than the Junction Railway, are likewise in competition with similar plants on the Junction Railway.

The Central Manufacturing District, where complainant's and some of the interveners' competitors are located, is in Vernon but within the Los Angeles switching limits. The Junction Railway, a separate and distinct belt line, owns and operates some 24 miles of track in this district. It has no agents or stations and furnishes no car equipment for commercial use, although it does provide the engines to perform the switching service between the line haul carriers' interchange tracks and the industries on its rails. The Santa Fe, Salt Lake Line, Pacific Electric and Southern Pacific have their own agents and offices in the Central Manufacturing District, and there handle all clerical and soliciting work incidental to the movement of the traffic. Only the Salt Lake and Pacific Electric reach the Junction Railway direct. The other two lines require the services of a bridge carrier.

The line haul carriers in numerous instances publish through joint rates from or to the Junction Railway. Under the provisions of their terminal tariffs they also absorb on all traffic when incidental to a line haul, the switching charge of $3.50 per car maintained by the Junction Railway for switching between industries on its line and their interchange tracks. On the other hand the switching charges at Los Angeles of the other defendants are not absorbed by the connecting line haul carriers unless the traffic is competitive. On noncompetitive traffic a switching charge of $2.70 per car is assessed. Competitive

traffic is defined in the terminal tariffs as "traffic which at time of shipment may be handled at equal rates (exclusive of switching charge) from same point of origin to same destination via other carriers, one of which performs the switching service". Noncompetitive traffic is defined as traffic other than competitive. Thus complainant on noncompetitive traffic must pay a switching charge of $2.70 per car, and in some cases an additional charge of $2.70 per car if shipments are transitted at Los Angeles, while its competitors on the Junction Railway in all instances receive a switching service without any charge in addition to the line haul rate. As illustrative, a shipment of grain originating at Santa Barbara, a noncompetitive point on the Southern Pacific, and destined to the industry track of complainant on the Santa Fe at Los Angeles, would be assessed a line haul rate of 17½ cents plus a switching charge of $2.70 per car, whereas if the same shipment were destined to the Junction Railway, only the line haul rate of 17½ cents would be assessed. Or if a car of grain originated at a noncompetitive point on the Salt Lake Line destined to complainant's industry on the Southern Pacific, there transitted and subsequently reshipped to San Diego on the Santa Fe, two switching charges of $2.70 each, or $5.40 per car, would be assessed against the shipment, while if a similar shipment were transitted at an industry on the Junction Railway no switching charge would be assessed. The advantages obtained by industries in the Central Manufacturing District are concisely described in a printed folder issued by the Junction Railway as follows:

> "The Los Angeles Junction Railway is operated solely upon the basis of a neutral belt line and depends for its revenue upon line haul traffic upon which the trunk line railroads pay the Junction Railway for its switching service on this class of traffic out of their line haul rates, on both in and outbound car load shipments. In

this way switching charges are eliminated which heretofore have been paid by the industries, an economy which must reflect advantageously to the industrial section served. This does not apply, however, to local switching between points on the Los Angeles Junction Railway and points within the Los Angeles terminal."

"A location on the rails of the Junction Railway accomplishes the same purpose, from a traffic standpoint, as though the rails of each individual line haul carrier directly served the location."

"Because industries not favored with this service are seriously handicapped in competing with those which are."

Defendants contend that the Junction Railway is nothing but an extension of their own rails, and therefore they are within their rights in publishing joint rates with it and in absorbing its switching charge while not absorbing the switching charge of their line haul competitors on noncompetitive traffic. They claim that when the Central Manufacturing District was created and the Junction Railway constructed, it was found impracticable for each of the four defendants to serve the industries within this district, now 147 in number, so arrangements were made whereby the Junction Railway would perform the switching movement for all four carriers. Tariffs were published, as heretofore stated, naming joint rates to points on the Junction Railway or providing for the absorption of switching charges in connection with all line haul traffic. The record however does not bear out defendants' contention that the Junction Railway is part of their own facilities.

There appears in this record no equity for the line haul carriers to assess switching charges on shipments destined to industries on the connecting line haul carriers within the Los Angeles switching limits while at the same time placing cars without a switching charge on the industry tracks of the Junction Railway. Certainly the shippers not on the Junction

Railway are placed at a distinct disadvantage, and conversely those on the Junction Railway obtain an undue advantage. The mere fact that one delivery is to an industry on the rails of the line haul carrier while the other delivery is to an industry on the rails of a belt line, does not nullify the undue prejudice and preference. An order will be entered requiring defendants to discontinue the unlawful practices.

Complainant also alleges that numerous violations of the long and short haul provisions of Section 24(a) exist by reason of the switching charges assessed on its shipments. It contends that on shipments of grain from El Centro to Los Angeles via the Southern Pacific Company for delivery on the Santa Fe it is assessed a line haul rate of 24 cents per 100 pounds plus $2.70 per car, while on like shipments from El Centro to Wingfoot, a point beyond Los Angeles on the Pacific Electric and to which Los Angeles is intermediate, only the line haul rate of 24 cents is applicable. The rate to Wingfoot however applies via the Southern Pacific to Los Angeles, thence Pacific Electric to destination. Complainant's shipments on which the higher aggregate charges are assessed do not therefore move over the same line or route traversed in reaching Wingfoot, nor is the shorter distance included within the longer. Thus there is no violation of Section 24(a). The same principle holds true with shipments referred to by complainant moving from Corcoran to Los Angeles. The record does contain instances of aggregate charges on shipments of grain from points in Utah and Idaho to points beyond Los Angeles which are lower than to Los Angeles, resulting in violations of the long and short haul provisions, but these relate to interstate traffic over which we have no jurisdiction.

The record fails to sustain the allegation that the

charges under attack are in violation of Sections 13 and 17 of the Act.

After consideration of all the facts of record we are of the opinion and so find that the practice of defendants in absorbing the switching charges on noncompetitive intrastate shipments of grain, grain products, hay and animal, poultry and stock feeds, in carloads, switched to or from shippers or receivers of these commodities located on the Los Angeles Junction Railway, while refusing to absorb switching charges on noncompetitive intrastate shipments of grain, grain products, hay and animal, poultry and stock feeds in carloads, switched to or from industries of complainants and interveners within the switching limits of Los Angeles served by defendants other than the Los Angeles Junction Railway, is, was, and for the future will be unduly prejudicial to complainant and interveners and unduly preferential to industries on the Los Angeles Junction Railway, in violation of Section 19 of the Act. We are of the further opinion and so find that complainant's allegation that the rates and charges were and are in violation of Sections 13, 17 and 24(a) of the Act have not been sustained.

Complainant and certain interveners ask for reparation. The record however contains no proof of actual damages suffered because of the unlawful prejudice and preference. Reparation is therefore denied. Penn R.R.Co. vs. International Coal Co., 230 U.S. 184. Albers Bros. Milling Co. vs. S.P.Co., 31 C.R.C. 95 and cases cited therein.

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 defendants, according as they participate in the transportation, be and they are hereby notified and required to cease and desist on or before June 1. 1931. and thereafter to abstain from practicing the undue preference and prejudice referred to in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint and petitions in intervention be and they are hereby dismissed.

Dated at San Francisco, California, this 30th day of March, 1931.

O. C. Hanna

Leon O. Whitsell

W. J. Carr

W. B. Lamb

Fred G. Stevenot

Commissioners.