JLA

Decision No. 23786.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

R. VAN HOOSEAR, an individual doing business under the firm name and style of CONSOLIDATED MILLING COMPANY,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation,

Defendant.

Case No. 2828.

C. R. Schulz, for complainant.

James E. Lyons, for defendant.

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

C. R. Schulz, for intervener, Outsen Brothers.

BY THE COMMISSION:

O P I N I O N

Complainant, an individual, is engaged in the buying, selling and milling of grain, grain products, feeds and fertilizers. By complaint filed February 19, 1930, it is alleged that the failure of defendant to absorb a switching charge of $2.70 per car on shipments of grain, grain products, feeds and fertilizers originating at or destined to complainant's mill at San Francisco on the line of the Western Pacific Railroad while absorbing an amount of $3.50 per car on like shipments originating at or destined to complainant's competitors at San Francisco

served by the State Belt Railroad of California, has resulted during the two-year period immediately preceding the filing of the complaint, does now and if continued will in the future result in granting an undue preference and advantage to complainant's competitors and in subjecting complainant to undue prejudice and disadvantage in violation of Section 19 of the Public Utilities Act. It was conceded at the hearing that complainant was not in competition with any shippers or receivers of fertilizer located on the State Belt Railroad of California and that the complaint should be amended accordingly.

The prayer is for an order requiring defendant to cease and desist from the alleged violation of the Public Utilities Act, to provide in its tariffs for the absorption of the switching charge on complainant's shipments, and directing the payment of reparation. Outsen Brothers intervened on behalf of complainant.

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

Complainant maintains a mill for the manufacture of grain products and feeds on the line of the Western Pacific Railroad at San Francisco. Other mills manufacturing the same products and with which complainant is in competition are located on the State Belt Railroad of California, hereinafter referred to as the Belt Line. On complainant's noncompetitive shipments, as that term is defined in Item 20 of Southern Pacific Company's Terminal Tariff No. 230-J, C.R.C. 3183, defendant, in addition to the line haul charge, has collected a switching charge of $2.70 per car. On shipments made or received by complainant's competitors prior to November 1, 1929, whether competitive or not, no charge other than the line haul rates was assessed, at

as defendant absorbed the entire charge ($3.50 per car) of the Belt Line. On November 1, 1929, the Belt Line increased its switching charge to $4.50 per car, of which defendant absorbs $3.50 and the shipper or receiver of the freight pays $1.00. Thus on shipments originating at or destined to common points complainant prior to November 1, 1929, paid $2.70 per car more than its competitors. Since that date its rate disadvantage has been $1.70 per car.

In California Canneries Company vs. Southern Pacific Co., 12 C.R.C. 488, we held that defendant's absorption of the entire switching charge of the State Belt Railroad without absorbing the switching charge of its line haul competitors did not create undue discrimination. The decision in the California Canneries case was rendered largely upon the assumption that the Belt Line was in effect an extension of the line haul carrier's rails. This status however cannot be said to exist at the present time nor does defendant now contend that the Belt Line is an extension of its own rails for the obvious reason that it does not provide for the entire absorption of the Belt Line switching charges. The facts in the complaint here under review are analogous to those considered by this Commission in Case 2537, Globe Grain and Milling Co. et al. vs. Santa Fe et al., Decision No. 23542, rendered March 30, 1931, wherein we held that the absorption by defendants of the Los Angeles Junction Railway switching charges on non-competitive traffic created undue preference and prejudice. There, as here, the line haul carriers absorbed the switching charges of a belt line railroad but refused to absorb the switching charges of their line haul competitors. The rule of the Globe Grain and Milling Case should be followed here.

After consideration of all the facts of record we are

of the opinion and so find that the practice of defendant in absorbing in whole or in part the switching charges on noncompetitive intrastate shipments of grain, grain products and feeds, in carloads, switched to or from shippers or receivers of these commodities located on the State Belt Railroad, while refusing to absorb in whole or in part switching charges on noncompetitive intrastate shipments of grain, grain products and feeds, in carloads, switched to or from the industry of complainant within the switching limits of San Francisco served by The Western Pacific Railroad Company, is, was, and for the future will be unduly prejudicial to complainant and unduly preferential to industries on the State Belt Railroad, in violation of Section 19 of the Act, to the extent the aggregate charges assessed on complainant's shipments exceeded, exceed or may exceed the aggregate charges on like shipments originating at or destined to industries on the State Belt Railroad.

Complainant asks 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 defendant be and it is hereby notified and required to cease and desist on or before thirty (30)

days from the effective date of this order 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 petition in intervention be and they are hereby dismissed.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 15th day of June, 1931.

C L Seavey
Leon Whitsell
W S Carr
M B Harris

Commissioners.