JLA

Decision No. 23789.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

POULTRY PRODUCERS OF CENTRAL CALIFORNIA,
Complainant,
vs.
NORTHWESTERN PACIFIC RAILROAD COMPANY,
Defendant.

Case No. 2874.

C. R. Schulz and J. E. McCurdy, for complainant.

James E. Lyons and H. H. McElroy, by H. H. McElroy, for defendant.

BY THE COMMISSION:

ORIGINAL

OPINION

Complainant is a cooperative association engaged among other things in the buying, selling and milling of grain, grain products and feed. By complaint filed June 13, 1930, it is alleged that the charges assessed and collected on numerous carload shipments of grain, grain products and feed from complainant's mill at West Petaluma to Penn Grove were during the two-year period immediately preceding the filing of the complaint, are now and for the future will be in excess of charges assessed for a longer distance over the same line or route in violation of Section 24(a) of the Public Utilities Act and Section 21 Article XII of the Constitution of the State of California. Reparation and an order requiring defendant to cease and desist from the alleged violation of the law is sought. Rates are

stated in cents per 100 pounds except as noted.

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.

West Petaluma is on the Petaluma & Santa Rosa Railroad Company (hereinafter referred to as the Petaluma and Santa Rosa), 1.4 miles from Petaluma. Penn Grove is on the Northwestern Pacific Railroad Company (hereinafter referred to as the Northwestern Pacific), 4.8 miles north of Petaluma. Complainant's shipments moved from its mill at West Petaluma to Petaluma via the Petaluma and Santa Rosa, thence via Northwestern Pacific to Penn Grove. Charges were assessed and collected on a shipment submitted by complainant as typical of other shipments involved, at a line haul rate of 4½ cents accruing to the Northwestern Pacific, plus a switching rate of 25 cents per ton of 2000 pounds (1¼ cents per 100 pounds) accruing to the Petaluma and Santa Rosa, making the total through rate from West Petaluma to Penn Grove 5-3/4 cents. At the time complainant's shipments moved there was in effect via the Northwestern Pacific from Petaluma to Santa Rosa, a point 11 miles beyond Penn Grove, a line haul rate of 5 cents, which rate included absorption of the Petaluma and Santa Rosa rate for switching freight from West Petaluma to Petaluma. The aggregate rate to Penn Grove thus exceeded by 3/4 cent the rate in effect to Santa Rosa. Complainant contends that the collection of a higher aggregate charge to the intermediate point than applied to the more distant point resulted in a departure from the long and short haul provision of Section 24(a) of the Public Utilities Act, for which no relief has been granted by this Commission.

By Decision No. 22670, <u>In Re Application of F. W. Gomph</u>, 35 C.R.C. 46, effective July 31, 1930, the Commission

authorized the Northwestern Pacific to continue to absorb connecting lines' switching charges at competitive points while not absorbing connecting lines' switching charges at intermediate non-competitive points, to the extent set forth in the decision. The relief granted was however confined to instances where the amount absorbed did not exceed $2.70 per car. Defendant subsequently made application to this Commission informally for authority to continue the long and short haul departures brought about by the absorption by its line of the Petaluma and Santa Rosa charge of 25 cents per ton, minimum $5.00 per car, for moving carload freight between West Petaluma and Petaluma on traffic competitive with the Petaluma and Santa Rosa when moving between Petaluma and Santa Rosa while not making a like absorption on traffic moving to or from intermediate non-competitive points. The relief sought was granted under our authority No. 24(a)-2572 of August 25, 1930, and thereafter the long and short haul departure involved in this proceeding was legally authorized.

The defendant admits the facts as stated by complainant and further admits that prior to August 25, 1930, the rates assessed and collected were in violation of the long and short haul provisions of Section 24(a) of the Public Utilities Act. However, defendant at the hearing moved to dismiss the case for lack of jurisdiction. The motion will be denied, as the California Supreme Court in A.T.& S.F.Ry.Co. et al. vs. Railroad Commission et al., 81 Cal. Dec. 667, upheld our jurisdiction to award damages for violations of the long and short haul provisions of the Act. The court there reviewed the decision of this Commission in Chamberlain Co. Inc. et al. vs. A.T.& S.F.Ry.Co. et al., 35 C.R.C. 63, wherein we found the measure of damages to the shipper who had paid a higher rate for a shorter haul than for a longer haul over the same line or route in the same direction, was the difference

between the rate paid and the rate contemporaneously in effect from or to the more distant points. (See also California Adjustment Co. vs. A.T.& S.F.Ry., 179 Cal. 140. S.F.Milling Co. vs. Southern Pacific, 34 C.R.C. 453.)

After consideration of all the facts of record we are of the opinion and so find that the charges on complainant's shipments moved prior to August 25, 1930, were assessed and collected in violation of Section 24(a) of the Public Utilities Act; that complainant paid and bore the charges on the shipment described in Exhibit No. 2 and that it has been damaged to the extent of the difference between the charges paid and those in effect from or to more distant points. In accordance with stipulation by defendant reparation on all like shipments moved from West Petaluma to Penn Grove during the statutory period may be paid provided an affidavit be filed by complainant with the Commission and the defendant showing that complainant paid and bore the charges on such shipments.

Upon payment of the reparation defendant 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 and the conclusions contained in the preceding opinion,

IT IS HEREBY ORDERED that defendant, Northwestern Pacific Railroad Company, be and it is hereby directed to refund with

interest at six (6) per cent. per annum to complainant, Poultry Producers of Central California, all charges for the transportation of the shipment described in Exhibit No. 2 in excess of the charges contemporaneously in effect on like traffic to the more distant point described in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that defendant, Northwestern Pacific Railroad Company, be and it is hereby authorized to refund with interest at six (6) per cent. per annum to complainant, Poultry Producers of Central California, all charges for the transportation of all other shipments involved in this proceeding moved prior to August 25, 1930, and on which the cause of action accrued within the two-year period immediately preceding the filing of this complaint, in excess of charges contemporaneously in effect on like traffic to or from a more distant point described in the opinion which precedes this order, subject to the condition that an affidavit be filed by complainant with the Commission and the defendant showing that complainant paid and bore the charges on such shipments.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint in the above entitled proceeding be and it is hereby dismissed.

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

C. L. Seavey

Leon Whitsell

W. S. Carr

M. B. Harris

Fred G. Stevenot

Commissioners.