JLA

Decision No. 23792.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

OUTSEN BROS., a co-partnership consisting of A. C. and J. B. Outsen,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation,

Defendant.

ORIGINAL

Case No. 2919.

Carl R. Schulz and Max B. Schulz, for complainant.

James E. Lyons and A. L. Whittle, by A. L. Whittle, for defendant.

BY THE COMMISSION:

O P I N I O N

By complaint filed September 18, 1930, complainant, a partnership consisting of A. C. and J. B. Outsen, alleges that during the two year period immediately preceding the filing thereof, defendant, contrary to the provisions of Section 21, Article XII of the State Constitution and Section 24 of the Public Utilities Act, assessed and collected charges on shipments of grain and grain products which exceeded those contemporaneously applicable to like shipments from the same points of origin, moving over the same route and destined to a more distant station.

Reparation and rates for the future are sought. Except as otherwise shown rates are stated in cents per 100 pounds.

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

Complainant's shipments originated at points in the Sacramento Valley, were milled in transit at San Francisco and were subsequently forwarded to South San Francisco, a point within the San Francisco switching limits. The milling in transit service was performed on the Western Pacific Railroad at San Francisco.

The evidence and testimony were confined to a single shipment. On July 19, 1930, complainant tendered to defendant at San Francisco for shipment to South San Francisco Car SP 26496 containing 800 sacks of rolled barley weighing 60,600 pounds. The bill of lading contained appropriate reference to and was accompanied by a duly recorded freight bill covering a carload of whole barley which had previously been transported from Ordbend and on which charges had been paid on basis of the lawfully applicable rate of 22½ cents for the line haul via the Southern Pacific plus $2.70 per car accruing to the Western Pacific for the switching movement. The total inbound charge on the shipment in question amounted to $139.05. This rate also applies on rolled barley. The car was refused by defendant and was thereupon tendered to the Western Pacific Railroad for transportation to South San Francisco via its line and the Southern Pacific Company. For this service an additional charge amounting to $19.05 was paid by complainant, making a total charge of $158.10 for the inbound and outbound movements. The 22½-cent rate assessed on the inbound movement is likewise applicable to whole or rolled barley from Ordbend to Redwood City, a point on the Southern Pacific Company 25 miles beyond San Francisco. On shipments moving under this rate milling in transit is permitted at San Francisco at points on the Western Pacific Rail-

road without extra charge other than switching charges of $5.40 per car. Had complainant's shipment moved to Redwood City the aggregate charge from Ordbend would have been $141.75.

The sole question here presented is whether or not Sections 21 of Article XII of the State Constitution and 24 of the Public Utilities Act are contravened by the assessing of this greater charge on shipments milled in transit at San Francisco and moving to a point within the switching limits of San Francisco, than on like shipments moving to the more distant point of Redwood City. South San Francisco is directly intermediate to Redwood City in the movement from Ordbend via San Francisco.

Prior to the Commission's Decision No. 8221 of October 11, 1920, in South San Francisco Chamber of Commerce vs. Southern Pacific Company et al., 18 C.R.C. 997, South San Francisco was not within the San Francisco switching limits. Complainant points to the fact that at that time the collecting of a greater charge on shipments destined to South San Francisco than was collected on like shipments destined to Redwood City would have been a clear violation of the long and short haul provisions, and contends that inasmuch as all the physical facts remain unchanged, the mere tariff change whereby the switching limits of San Francisco were extended to include South San Francisco cannot make lawful the assessing of charges which would otherwise be unlawful.

Defendant apparently rests its case upon three points: First, that when this and like shipments were delivered to complainant's mill at San Francisco they had reached their final destination and the contract of carriage was completed; second, that the shipment to Redwood City involved a line haul movement from San Francisco, whereas that destined to South San Francisco

involved a switching movement, and that because of this difference in the character of the movement the long and short haul provisions were not contravened; third, that the Commission has no jurisdiction to award reparation because of unauthorized departures from the long and short haul provisions of the Act and the Constitution. Our jurisdiction to award reparation because of long and short haul departures has since been upheld by the California Supreme Court in A.T.& S.F.Ry.Co. et al., vs. Railroad Commission et al. (April 27, 1931), 81 Cal. Dec. 667.

Defendant's first contention rests upon the Commission's finding in San Francisco Milling Co. Ltd. vs. Southern Pacific Co. et al., 28 C.R.C. 870. There the question was one of tariff interpretation. We held that the term "destination" contained in defendant's terminal tariff relating to milling in transit privileges meant the original billed destination and did not comprehend a point beyond but located in the same switching limits. This finding has no bearing on the question to be determined here, as regardless of what the term "destination" meant in the terminal tariff it is clear that the ultimate destination of the shipment here considered was South San Francisco and the milling in transit at complainant's mill was but an incident in the through movement. There was no more break in the continuity of the shipment by reason of its being milled in transit at a point within the San Francisco switching limits, than if a like shipment had been subsequently reshipped to Redwood City. Transit privileges rest upon a fiction that the incoming and outgoing services create a continuous movement. (Central R.R.Co. vs. United States, 257 U.S. 247.)

Neither can it be said that there was no long and short haul departure because part of the haul consisted of a switching movement. This issue was before the Commission In the Matter of

the Revision of Tariff Items, etc., 28 C.R.C.440; In the Matter of the Investigation of Long and Short Haul Departures, 32 C.R.C. 655; Chamberlain Co. Inc. vs. A.T.& S.F.Ry.Co. et al., 35 C.R.C. 63, and decided adversely to defendant's contention.

Upon consideration of all the facts of record we are of the opinion and find that the assessing and collecting of charges on shipments milled in transit at San Francisco and subsequently forwarded to South San Francisco greater than those contemporaneously applicable to shipments moving over the sameroute to Redwood City, was and is in violation of Article XII Section 21 of the Constitution of the State of California and of Section 24(a) of the Public Utilities Act. Complainant also seeks reparation. This it is entitled to under the doctrine of San Francisco Milling Company vs. S. P. Co., 34 C.R.C. 453, provided it paid and bore the charges on the shipments here at issue. With the exception of a single shipment the record is silent as to this phase of the proceeding. The case will be held open for a period of 60 days to allow complainant to present proof as to the payment and bearing of the charges.

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 Southern Pacific Company be and it is hereby ordered to remove the violation of Section 21 Article XII of the State Constitution and Section 24(a) of the Public Utilities Act found to exist in the opinion which precedes this order, and thereafter to abstain from applying, assessing or collecting transportation charges on the traffic

more specifically described in the opinion which precedes this order, which exceed in the aggregate the charges contemporaneously applicable on like traffic moving over the same route to the more distant point of Redwood City, unless and until authority is obtained from the Commission to depart from the provisions of said Section 21 Article XII of the State Constitution and Section 24(a) of the Public Utilities Act.

IT IS HEREBY FURTHER ORDERED that this proceeding be and it is hereby held open for a period of sixty (60) days from the date hereof to allow complainant to present proper proof that it paid and bore the charges on the shipments in question.

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

Commissioners.