JLA

Decision No. 23872.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

ALBERS BROS. MILLING CO., a corporation, W. H. ALLEN, an individual, E. SALZ & SON, a corporation, SCHULER-O'CONNELL, a corporation, Complainants, vs. ATCHISON, TOPEKA & SANTA FE RAILWAY CO., a corporation, Defendant.	Case No. 2864.

C. S. Connolly, for complainants.

Gerald E. Duffy and Berne Levy, for defendant.

E. G. Wilcox, for Oakland Chamber of Commerce, intervener.

BY THE COMMISSION:

O P I N I O N

Complainants are corporations and an individual engaged in buying, selling and/or manufacturing grain and grain products. By complaint seasonably filed it is alleged that defendant has collected a charge of $2.70 per car for switching carloads of grain, grain products, seeds and empty drums between the interchange track of defendant and the Southern Pacific Company on the one hand, and complainant Albers Bros. Milling Company's plant at Oakland on the other, in connection with traffic moving to or from non-competitive points on the line of defendant, which was unreas-

onable, unduly preferential and prejudicial, in violation of the provisions of Sections 13(a) and 19, and in some instances resulting in a higher charge for a shorter haul than for a longer haul over the same line or route, in violation of Section 24(a) of the Public Utilities Act. Reparation and an order requiring defendant to cease and desist from the alleged violations of the Act are sought.

A public hearing was held before Examiner Geary at San Francisco and the case submitted on briefs.

The evidence and testimony, in so far as the issue of undue preference and prejudice is concerned, was confined to shipments of grain and grain products. Complainant Albers Bros. Milling Company maintains a mill for the manufacture of these commodities at Oakland on the rails of the Southern Pacific. It is in active competition with the Globe Grain and Milling Company, which has a mill on the State Belt Railroad at San Francisco. Both of these companies obtain their raw material in the same general territory, manufacture the same grain commodities and sell their products at the same points. In practically every instance the line haul rates from and to their mills are the same. However, on traffic originating at or destined to non-competitive points complainant is assessed, in addition to the line haul rates, a charge of $2.70 per car for the switching service between the interchange track of defendant and its mill on the Southern Pacific. Prior to November 1, 1929, the Globe Grain and Milling Company paid only the line haul rates, defendant absorbing the entire switching charge of $3.50 per car maintained by the State Belt Railroad. Effective November 1, 1929, the State Belt switching charge was increased to $4.50 per car, and since then defendant has absorbed at San Francisco $3.50 per car of this amount. Thus prior to November 1, 1929, complainant on non-competitive traffic was at

a rate disadvantage of $2.70 per car. Since then the disadvantage has been $1.70 per car.

In R. Van Hoosear vs. Southern Pacific Co., Case No.2828, decided June 15, 1931, we held that the practice of the Southern Pacific in absorbing the State Belt Railroad's switching charge in whole or in part, while not absorbing the switching charges of its line haul competitors, resulted in undue preference and prejudice (see also Globe Grain and Milling Co. vs. Santa Fe et al., 36 C.R.C. 80). The issues presented in the instant case are similar to those considered in the Van Hoosear case, the only difference being that there both the industry alleged to be preferred and that prejudiced were within the switching limits of a single station, while here one of the industries is located in San Francisco while the other is in Oakland, on the opposite shore of San Francisco Bay. From the facts here before us this difference in location is immaterial and we are of the opinion that the rule followed in the Van Hoosear case should be followed here. Defendant will be ordered to remove the undue preference and prejudice.

Complainants' allegation of unreasonableness rests entirely upon the fact that a higher aggregate charge was assessed on shipments moving to or from the plant of complainant Albers Bros. Milling Company at Oakland than was assessed on like shipments moving to or from industries on the State Belt Railroad at San Francisco involving a substantially greater service. It is evident that whatever difference exists in these charges is brought about solely by the differences in absorption practices at these points. The record fails to show that either the line haul or switching charges are unreasonable or that the aggregate charges are unreasonable. The allegation of unreasonableness under Section 13 has not been sustained.

There remains for consideration the allegation that in

some instances the charges were in violation of the long and short haul provisions of Section 24(a) of the Act. Under the provisions of defendant's terminal tariff the charge of $2.70 per car assessed by the Southern Pacific for switching from and to the mill of complainant Albers Bros. Milling Company is absorbed by defendant on competitive traffic but is not absorbed on non-competitive traffic. All of the shipments here involved moved to or from non-competitive points. Complainants show that the aggregate charges assessed on their shipments were contemporaneously higher than in effect on like shipments from or to more distant competitive points. Defendant does not deny that the higher charges created departures from the long and short haul provisions of Section 24(a) of the Act.

In Re Application of F. W. Comph, etc., 35 C.R.C. 46, effective July 31, 1930, defendant was authorized to continue departures from the terms of the long and short haul provision of Section 24(a) of the Public Utilities Act brought about by the absorption of connecting line switching charges at competitive points while not absorbing like charges at intermediate non-competitive points. But prior to this date and at the time complainants' shipments moved, these departures existed without the specific authority of this Commission and were therefore unlawful.

Complainants ask for reparation because of the undue preference and prejudice here found to exist, and the violations of the long and short haul provisions of Section 24(a) of the Act. The record however does not show that they have actually been damaged by reason of the undue preference and prejudice found to exist, and reparation in so far as it relates to this finding, will be 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 therein cited.) However they are entitled to reparation on those shipments

which moved in violation of the long and short haul provisions of Section 24(a) of the Act. (San Francisco Milling Co. vs. Southern Pacific Co., 34 C.R.C. 453.)

After consideration of all the facts of record we are of the opinion and so find:

1. That the rates here at issue were not and are not unreasonable, in violation of Section 13 of the Public Utilities Act.

2. That the practice of defendant in absorbing, in whole or in part, the switching charges on non-competitive shipments of grain and grain products, in carloads, switched to or from the Globe Grain and Milling Company's mill on the State Belt Railroad while refusing to absorb, in whole or in part, switching charges on non-competitive intrastate shipments of grain and grain products in carloads, switched to or from the industry of complainant Albers Bros. Milling Company, is, was and for the future will be unduly prejudicial to this complainant and unduly preferential of the Globe Grain and Milling Company, 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 the mill of the Globe Grain and Milling Company at San Francisco.

3. That the aggregate charges assessed on complainants' shipments of grain and grain products, seed and empty drums transported from or to non-competitive points covered by this complaint and moving prior to July 31, 1930, which exceeded the aggregate charges contemporaneously in effect from or to more distant competitive points, resulted in charges in violation of Section 24(a) of the Act.

4. That complainants paid and bore the charges on certain shipments of empty drums from Knightsen to Oakland, seed from

Holt to Oakland, and grain and grain products from Oakland to El Cerrito, Holt, Woodsboro and Claus, and from Holt, Avena and Claus to Oakland, which were assessed and collected in violation of Section 24(a) of the Act, and have been damaged in the amount of the difference between the charges paid and those contemporaneously in effect on like traffic from Oakland to Richmond, Stockton and Modesto, or from Richmond, Stockton and Modesto to Oakland.

5. That in all other respects the complaint be and it is hereby dismissed.

The exact amount of reparation due is not of record. Complainants will submit to defendant for verification a statement of the shipments made and upon the payment of the reparation defendant will notify the Commission 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 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 defendant, The Atchison, Topeka and Santa Fe Railway Company, be and it is hereby authorized and directed to refund with interest at six (6) per cent.

per annum to complainants, Albers Bros. Milling Company, W. H. Allen, E. Salz & Son and Schuler-O'Connell, according as their interests may appear, all charges collected for the transportation of shipments involved in this proceeding and moving prior to July 31, 1930, on which the cause of action accrued within the two-year period immediately preceding the filing of the complaint, in excess of the charges contemporaneously in effect on like traffic to or from more distant competitive stations herein described.

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 3rd day of July, 1931.

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Commissioners.