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Decision No. 23938.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

R. VAN HOOSEAR,
an individual doing business as
the CONSOLIDATED MILLING CO.,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
a corporation,
Defendant.

ORIGINAL

Case No. 2772.

C. R. Schulz, for the complainant.

J. E. Lyons and H. H. McElroy, for the defendant.

C. S. Connolly, for Albers Bros. Milling Company.

BY THE COMMISSION:

O P I N I O N

In this proceeding complainant alleges that the charges assessed on carload shipments of grain and other commodities transported from state owned wharves at San Francisco to complainant's mill at San Francisco were in excess of the lawful tariff rates in violation of Section 17 of the Public Utilities Act. We are asked to award reparation and to require defendant to cease and desist from assessing such unlawful charges.

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

The shipments under consideration originated at interstate or foreign points, were transported by vessel to the state

wharves at San Francisco, and from there were reshipped to complainant's mill via rail. Complainant was not the original consignor. The transportation to the wharves via vessel and from the wharves via rail was performed under separate bills of lading. The rail transportation was over the lines of three carriers, viz., State Belt Railroad, Southern Pacific Company and Western Pacific Railroad. The switching charges of the State Belt Railroad and the Western Pacific Railroad were $3.50 per car and $3.60 per car respectively. These charges were effective on interstate, foreign and intrastate traffic. The Southern Pacific Company's published rates varied according to the character of the traffic. If it were interstate or foreign a rate of 34 cents per ton, minimum $7.20 per car, was applicable, and if it were intrastate $3.60 per car was applicable. Defendant assessed and collected the interstate or foreign charge on the assumption that there was no break in the continuity of the shipments at the wharves and that the subsequent rail movement was a part of the original transportation. Complainant on the other hand contends that the rail movement from the wharves to his mill was separate and distinct from the movement via vessel to the wharves, and that therefore the shipments were in intrastate commerce. Defendant admitted that if the traffic was in fact intrastate the shipments were overcharged. Thus the only question for determination is the character of the traffic.

Complainant is primarily a grain broker and conducts his business in substantially the following manner: He purchases for re-sale grain and related articles, hereafter collectively referred to as grain, which originate at various interstate and foreign points. A large part thereof comes to San Francisco via vessel. The grain is usually purchased while the shipments are in transit on the high seas or shortly after their arrival. Ordinarily

complainant is not in any sense a party to the first stage of the transportation via vessel, the shipments being made and the freight charges paid by others. Upon the vessel's arrival he immediately endeavors to dispose of the lading without removing it from the wharves. Approximately 90% to 95% of the grain is disposed of at the docks within a short time and is re-shipped by rail or truck from the docks to other points in San Francisco or beyond, either by complainant or by the buyer. Where a rail haul follows the water transportation the actual handling of the grain to the car is performed by stevedoring firms or by the steamship companies acting in the same capacity. The grain not immediately disposed of is left on the docks to be sold later if it is anticipated a buyer will be found within a short time. If no such buyer is available it is moved by truck or rail to complainant's mill for storage or manufacture. The mill is an incidental adjunct to complainant's business as a broker and is only maintained for the purpose of storing or manufacturing grain which remains unsold.

Complainant has been conducting his business in this manner for approximately the last past ten years, and until shortly before this complaint was filed was not aware of the lower intrastate charge.

Defendant's failure to apply the intrastate charges is grounded largely upon the assumption that there could be no break in the continuity of the shipments at San Francisco for the reason (1) that the state wharves are purely avenues of commerce for use of the water carriers which originated the shipments, (2) that such water carriers continued in the custody of such shipments until they were actually loaded into the cars for further transportation, and (3) that there was a continuing intention on the part of both the original shippers and of complainant to transport the shipments to some point beyond the wharves.

The state wharves at San Francisco are avenues of commerce, but not exclusively so. They are also depots for the receipt and delivery of freight and a natural place for common carrier transportation to end. The steamship companies, in the absence of specific orders from complainant or the buyers of the grain from him, were under no obligation to effect any further movement beyond the wharves. Nor was there, as defendant contends, any intention on the part of the original consignors or complainant to continue the goods beyond the wharves in interstate or foreign commerce. In so far as the original consignors are concerned, whatever their intention may have been, they were prevented from carrying it out as they relinquished entire control of the movement when title to the grain passed to complainant. And the record is clear that complainant had no definite point in mind to which he would transport the grain beyond the wharves. In fact, as we have already stated, his primary concern was to sell it at the wharves and relinquish possession. If he were successful in selling the grain on the wharves, as he was in practically all instances, whatever transportation followed, if any, was probably beyond his power to control.

The issues before us are similar to those in Geo. H. Croley Company vs. Southern Pacific, 33 C.R.C. 565.[1] There, as here, complainant used the wharves as a point from which it distributed shipments of grain originally coming from interstate points via vessels, the intrastate destinations being determined only after the goods had come to rest upon the dock. In the

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[1] Petition for Writ of Review denied by the Supreme Court of the State of California. Southern Pacific Co. vs. Railroad Commission et al., S.F. 13744. Petition for Writ of Certiorari denied by Supreme Court of the United States. Southern Pacific Co. vs. Railroad Commission et al., 74 L. Ed. 1167.

Croley case we held that the traffic was intrastate in character. (See also Atlantic Coast Line vs. Standard Oil Co., 275 U.S. 257, and Seaboard Air Line vs. Lee, 14 Fed. (2nd) 429, aff. 276 U.S. 591.)

We believe that complainant's plan of conducting his business had the effect of breaking the continuity of the interstate or foreign transportation, and that the subsequent movement was intrastate in character. Even though a rail haul followed immediately upon the water haul this is without controlling force in determining the character of the traffic. (Gulf C.& S.F.R.Co. vs. Texas, 204 U.S. 402.)

After consideration of all the facts of record we are of the opinion and so find that complainant's shipments moved in intrastate commerce; that they were overcharged, in violation of Section 17 of the Act; that complainant made the shipments as described, paid and bore the charges thereon and is entitled to reparation with interest at 6% per annum in the amount of the difference between the charges paid and those lawfully in effect on intrastate traffic.

The exact amount of reparation due is not of record. Complainant 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 being at issue upon complaint and answer on file, 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, Southern Pacific Company, according as it participates in the transportation, be and it is hereby directed to cease and desist and thereafter to abstain from applying, demanding and collecting for the transportation of complainant's shipments of grain and other commodities described in the opinion which precedes this order, any charge greater or less or different than that contained in the tariffs on file with this Commission and applicable on intrastate traffic.

IT IS HEREBY FURTHER ORDERED that defendant, Southern Pacific Company, according as it participated in the transportation, be and it is hereby authorized and directed to refund with interest at six (6) per cent. per annum to complainant, R. Van Hoosear, all charges collected for the transportation of the shipments of grain and other commodities involved in this proceeding in excess of those contained in the tariffs on file with this Commission and applicable on intrastate traffic.

Dated at San Francisco, California, this 10th day of August, 1931.

Commissioners.