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Decision No. 24038.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

C. B. WESTROPE, an individual doing business under the firm name and style of C. B. WESTROPE & CO., and E. CLEMENS HORST CO., a corporation, Complainants, vs. NORTHWESTERN PACIFIC RAILROAD CO., a corporation, Defendant.	Case No. 3093.

Carl R. Schulz, for complainants.

H. H. McElroy, for defendant.

SEAVEY, Commissioner:

O P I N I O N

Complainant C. B. Westrope is an individual doing business under the firm name of C. B. Westrope and Company, and complainant E. Clemens Horst Company is a corporation organized under the laws of the State of New Jersey. By complaint filed July 16, 1931, it is alleged that the defendant refused to absorb certain car loading costs incurred at San Francisco in connection with shipments of grain and grain products destined West Petaluma, Petaluma, Santa Rosa, Penn Grove and other stations on the Northwestern Pacific Railroad. The prayer is for reparation.

A public hearing was held at San Francisco August 28,

1931, and the matter submitted.

The facts describing the actual physical handling of the grain are not in dispute, the parties having filed an agreed stipulation giving all details. The grains originated in California on the rails of the Southern Pacific beyond San Francisco, were milled in transit at San Francisco and were forwarded from that point via the Southern Pacific under transit privileges published in Items 1360 and 1490 Series, Southern Pacific Terminal Tariff 230-J, C.R.C. No. 3183.

The sole question to be determined is the interpretation of an absorption privilege, which is published as Item No. 60 in Northwestern Pacific Terminal Tariff No. 4-N, C.R.C. No. 343, reading as follows:

> Northwestern Pacific Railroad will absorb charge for handling carload freight other than bulk freight (i.e., freight which will not be accepted in bulk for less carload shipment), at wharves at San Francisco, Cal., served by the rails of the State Belt Railroad, controlled and operated by the State of California, as follows:
>
> (a) Charge for unloading shipment from cars when traffic originates at competitive points, viz., Petaluma, West Petaluma (See Note 1), Santa Rosa, Sebastopol, Cal.
>
> (b) Charge for loading shipment into car when traffic is destined to Petaluma, West Petaluma (See Note 1), Santa Rosa, Sebastopol, Cal., and points between.
>
> Note 1. - West Petaluma is a point located exclusively on the P.& S.R.R.

The tonnage in dispute was all moved into San Francisco to the Islais Creek Grain Terminal by the Southern Pacific, and after having been processed at that point was reloaded into cars and moved out of the San Francisco milling point by the Southern Pacific. The carload shipments were delivered to the Northwestern Pacific either at the interchange tracks in San Francisco or at Schellville. The record clearly indicates that defendant issued no bills of lading and did not secure possession of the cars at the Islais Creek Grain Terminal.

Complainants rely entirely upon their literal interpretation of the rule, taking the position that because it is not qualified, the part reading "Northwestern Pacific Railroad will absorb charge for handling carload freight", when standing alone, must be construed to embrace all carload freight moving through San Francisco when the Northwestern Pacific participates in the movement to the destination stations located on its rails. The purpose of the item as explained by defendant was to equalize at San Francisco the competition of the Petaluma and Santa Rosa Railroad, which operates steamers between San Francisco and Petaluma and following the usual practices of steamer lines unloads and loads shipments from and to cars. The tariff item was intended to apply only when the tonnage was in competition with this steamer line and only when handled out of the San Francisco shipping point by the Northwestern Pacific. As heretofore stated, the grain was moved into and out of San Francisco by the Southern Pacific. The tariff of the Northwestern Pacific is local and is not participated in by any other carrier. Had the Northwestern performed a local service from San Francisco to the points on its line, the absorption of the charges involved would have been accomplished. This Commission follows the procedure adopted by the Interstate Commerce Commission that carriers' tariffs must be construed according to their language, and the intention of the framers is not controlling. But in determining a question of this kind all of the pertinent provisions of the tariff must be given consideration and a shipper cannot be permitted to urge for its own purposes a strained and unnatural construction (Golden Gate Brick Co. vs. Western Pacific Railway Co., Case No. 362, 2 C.R.C. 607). The fair and reasonable conclusion to be drawn from a study of the rule is that it does not apply unless the

tonnage is moved out of the San Francisco shipping point by the Northwestern Pacific. I am of the opinion that the meaning and use of the tariff as sought by these complainants is strained and improper, and find that the item in the tariff was not applicable to the shipments here involved. The complaint will be dismissed.

I recommend the following order:

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 Case 3093 be and it is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of September, 1931.

O. L. Jeary

Leon O. Whitsell

M. J. Carr

W. B. Harris

Fred G. Stevenot.

Commissioners.