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Decision No. 24077.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ALBERS BROS. MILLING CO., a corporation, LEWIS-SIMAS-JONES CO., a corporation, Complainants, vs. WESTERN PACIFIC RAILROAD CO., a corporation, Defendant.	)	Case No. 2869.

ORIGINAL

C. S. Connolly, for complainants.

L. N. Bradshaw and J. P. Haynes, for defendant.

BY THE COMMISSION:

O P I N I O N

By complaint filed May 22, 1930, it is alleged that the switching charge of $2.70 per car assessed by defendant on 43 carloads of grain, grain products, feed and alfalfa meal transported within the two-year period prior to the filing of the complaint 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 originating at or destined to non-competitive points on the Western Pacific Railroad Company, Tidewater Southern Railway Company and The Atchison, Topeka and Santa Fe Railway Company, was unreasonable, unduly preferential and prejudicial, in violation

of Sections 13 and 19 of the Public Utilities Act, and in some instances resulted in higher charges being assessed and collected for a shorter haul than for a longer haul over the same line or route, in violation of Section 24(a) of the 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 Albers Bros. Milling Company maintains a plant on the rails of the Southern Pacific Company at Oakland for the manufacture of grain and grain products. In buying and selling its products it meets with competition from the Globe Grain and Milling Company, located at San Francisco on the rails of the State Belt Railroad. On shipments of grain and grain products originating at or destined to non-competitive points on defendant's line and its connections Tidewater Southern Railway Company and The Atchison, Topeka and Santa Fe Railway Company, the Albers Bros. Milling Company is assessed a switching charge of $2.70 per car, which accrues to the Southern Pacific Company. On like traffic from or to the same points of origin or destination the Globe Grain and Milling Company by reason of its being located upon the State Belt Railroad at San Francisco, pays but $1.00 of the $4.50 per car switching charge of the Belt Line, the balance being absorbed by defendant. Prior to November 1, 1929, the switching charge of the State Belt Railroad was $3.50 per car, all of which was then absorbed by this defendant. The line haul rates to Oakland and San Francisco are of equal volume. In Albers Bros. Milling Co. vs. A.T.& S.F.Ry.Co., 36 C.R.C. 467, we found that the failure of The Atchison, Topeka and Santa Fe Railway Company to absorb at Oakland the Southern Pacific Company's switching charge

to reach the plant of Albers Bros. Milling Company on non-competitive traffic, while absorbing at San Francisco $3.50 per car of the State Belt Railroad's switching charge on like traffic, was unduly prejudicial to the Albers Bros. Milling Company at Oakland and unduly preferential of the Globe Grain and Milling Company at San Francisco. A similar finding will be made here.

On complainants' shipments of grain and feed from Oakland to Carbona (a Western Pacific point) and from Thornton, Franklin and Trowbridge (Western Pacific points) to Oakland defendant assessed and collected $2.70 more per car than the charges contemporaneously in effect on like traffic from or to more distant competitive points. The lower charges from or to the more distant points were in effect by reason of defendant's practice of absorbing the connecting line's switching charges on competitive traffic while not absorbing those charges on non-competitive traffic, the line-haul rates being of the same volume from both the competitive and the non-competitive points. At the time complainants' shipments moved defendant was without authority from this Commission to depart from the long and short haul provisions of Section 24(a) of the Act.

Complainant also alleges that the long and short haul provisions were violated on shipments of grain and feed from Oakland to Summer Home, Sims Station and Hilmar (points on the Tidewater Southern Railway) and Angiola (a point on the Atchison, Topeka and Santa Fe Railway); and from Harp and Hatch (points on the Tidewater Southern Railway) to Oakland in that they exceeded the charges in effect on like traffic from or to industries located on the State Belt Railroad at San Francisco. The movement from and to the State Belt industries is not over the same line or route traversed in reaching complainant's industry nor is the

shorter distance included within the longer. Thus there can be no violation of Section 24(a) of the Act. (Globe Grain and Milling Company vs. A.T.& S.F.Ry.Co. et al., 36 C.R.C. 80.)

Reparation is sought but there is nothing in this record to show that complainants were actually damaged by reason of the preference and prejudice herein found to exist, and it will be denied in so far as it relates to this finding. (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.) However complainants are entitled to reparation on those shipments which moved in violation of Section 24(a) of the Act. (San Francisco Milling Co. vs. Southern Pacific Co., 34 C.R.C. 453.)

Complainants made no effort to sustain the allegation of unreasonableness.

Defendant, although represented by counsel at the hearing, presented no testimony and made no attempt to justify the existing tariffs and charges.

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

1. 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 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.

2. That the aggregate charges assessed on complainants' shipments of grain and alfalfa meal transported from Oakland to Carbona and from Thornton, Franklin and Trowbridge to Oakland which exceeded the aggregate charges contemporaneously in effect from or to the more distant competitive stations of Stockton, Sacramento or Marysville, resulted in charges in violation of Section 24(a) of the Act.

3. That complainants paid and bore the charges on certain shipments of grain from Oakland to Carbona and from Franklin and Trowbridge to Oakland and on alfalfa meal from Thornton 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 Stockton or from Sacramento and Marysville to Oakland.

4. That in all other respects the complaint should be 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 Western Pacific Railroad 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 and Lewis-Simas-Jones Company, according as their interests may appear, all charges collected for the transportation from Oakland to Carbona and from Thornton, Franklin and Trowbridge to Oakland of the 23 carloads of grain and alfalfa meal involved in this proceeding 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 28th day of September, 1931.

C. L. Seavey

Leon O. Whitsell

M. B. Harris

Fred G. Stevenson

Commissioners.