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Decision No. 24159.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

W. H. GROWNEY (doing business as Western Petroleum Company),

Complainant,

vs.

THE WESTERN PACIFIC RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY,

Defendants.

Case No. 3074.

E. W. Hollingsworth and Bishop & Behler, by R. T. Boyd, for complainant.

L. N. Bradshaw, for The Western Pacific Railroad Company, defendant.

F. C. Nelson, for Southern Pacific Company, defendant.

BY THE COMMISSION:

O P I N I O N

Complainant, formerly a copartnership doing business under the fictitious name of the Western Highways Petroleum Company, and now an individual (W. H. Growney) doing business under the fictitious name of the Western Petroleum Company, filed this proceeding June 10, 1931, alleging that the charges assessed by defendants, The Western Pacific Railroad Company and Southern Pacific Company, against three carloads of gasoline moved in July, 1928, from Wilmington on the Southern Pacific to a delivery track on the Western Pacific at Sacramento, violated the provisions of the Public Utilities Act.

A public hearing was held September 18, 1931, before Examiner Geary at San Francisco, and the case submitted. At the hearing the complaint was amended to show that the shipments actually consisted of two carloads of gasoline and one carload of kerosene. This change however does not affect the volume of the rate, which applies to both gasoline and kerosene.

The charges originally paid in the month of November, 1928, were at a rate of 36 cents per 100 pounds without an additional charge for placement on the rails of the Western Pacific. On June 12, 1929, more than six months after the original bills had been paid, the Western Pacific presented undercharge claims and collected additional amounts at the rate of 6 cents per 100 pounds. These latter collections in the sum of $139.45, complainant contends, were not authorized by any tariff publication, were in violation of the tariffs, and should be refunded with interest from the date of payment. The cars were line-hauled by the Southern Pacific from Wilmington to Sacramento and switched to the delivery tracks by the Western Pacific. There was also an applicable route at the same rate via the Santa Fe from Wilmington to Stockton, thence Western Pacific to the Sacramento delivery tracks. Had the shipments moved by this joint route, Santa Fe and Western Pacific, the charges under attack would not have been imposed. Complainant alleges that under items published in the terminal tariffs of both the Southern Pacific and Western Pacific, the traffic was competitive and that therefore no charges should have been assessed in addition to the rate of 36 cents per 100 pounds. It further alleges as a second cause of action that the charges collected violated the long and short haul provisions of the State Constitution and Section 24 of the Public Utilities Act; and third,

that the total charges were unjust and unreasonable. No effort was made to prove the third cause of action, and the same will be considered as having been abandoned.

The gravamen of complainant's position is that the Western Pacific unloading tracks were industrial facilities within the switching limits of the City of Sacramento, and that since the traffic was competitive the services beyond the interchange tracks are included in the through rate of 36 cents per 100 pounds. The tracks used by complainant served three industries, the Western Highways Petroleum Company (this complainant), O'Neill Brothers, and the Sunland Oil Company. All of these shippers are in the oil business and have storage tanks adjacent to the unloading tracks for the receipt of petroleum products. The oil is transferred direct from the cars by use of pipes running from the delivery tracks to consignee's storage tanks. A witness for complainant testified that an investigation failed to locate any shippers using these tracks other than the three petroleum companies and that the tracks were not used as team tracks for the receipt or delivery of freight by the general public. Had the shipments, as heretofore stated, been moved by the Western Pacific from Stockton, the delivery would have been made under the 36-cent rate without question, because the rate when applied in connection with a Western Pacific line haul permits of deliveries upon either team or industry tracks. Defendants testified that the tracks were owned by the Western Pacific, constructed at their expense, and had occasionally been used by the City of Sacramento for unloading freight. In determining the classification of a delivery track such as involved in this proceeding, the conclusion must be based upon the actual use made of the same. The testimony

herein indicates that for all practical purposes these tracks are employed at the present time for the handling of petroleum oils and could not be used conveniently for other purposes.

The tariffs containing the rate of 36 cents are also governed by the Consolidated Classification, which provides in Rule No. 35 that inflammable liquids must not be delivered unless consigned to parties accepting delivery on sidings equipped with facilities for piping the oil from tank cars to permanent storage tanks. Thus an ordinary team track could not be used. The tariffs have no definition for the term industry tracks, and the use to which a track is put therefore governs its classification for rate purposes. Applying this test we are of the opinion and find that the tracks upon which these three carloads were delivered are industry tracks and the charges from the interchange tracks should be absorbed under the items published in defendants' terminal tariffs. Complainant is entitled to an award in the sum of $139.45, with interest thereon from June 15, 1929.

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 contained in the preceding opinion,

IT IS HEREBY ORDERED that defendants, The Western Pacific Railroad Company and Southern Pacific Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund to complainant, W. H. Growney, doing business as Western Petroleum Company, account transportation

from Wilmington to Sacramento of the shipments of gasoline and kerosene involved in this proceeding, the sum of $139.45, with interest thereon at six (6) per cent. per annum from June 15, 1929.

Dated at San Francisco, California, this 26th day of October, 1931.

Commissioners.