

Decision No. 2968.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

OUTSEN BROS., a copartnership
consisting of A. C. Outsen and
J. B. Outsen,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
WESTERN PACIFIC RAILROAD COMPANY,

Defendants.

Case No. 2968.

ORIGINAL

BY THE COMMISSION:

O P I N I O N

Complainant is engaged in buying, selling and manufacturing grain and grain products. By complaint filed December 3, 1930, and as amended it is alleged that the charges assessed and collected during the two-year period immediately preceding the filing thereof for the transportation between San Francisco and various points in California of numerous carloads of grain and grain products as described in Item 90-B of Southern Pacific Tariff 659-D, C.R.C. 3283, were in violation of Sections 17 and 24 of the Public Utilities Act and in violation of the long and short haul provisions of Section 21, Article XII of the State Constitution.

Reparation only is sought. Except as otherwise shown rates are stated in cents per 100 pounds.

Defendants originally denied the material allegations of the complaint and the matter was set for hearing. However, at the request of the interested parties it was dropped from the Commission's calendar to be disposed of informally. Thereafter, on October 28, 1931, a stipulation was filed in which defendants admitted that complainant made the shipments therein listed, that it bore the switching charges of \$2.70 per car in addition to the line haul charges, that these switching charges were assessed in violation of Section 24 of the Public Utilities Act, and that complainant is entitled to reparation in the sum of \$2.70 per car with interest at 6%. All other issues of the complaint were withdrawn by complainant.

Complainant's shipments originated at or were destined to its mill located upon the rails of defendant Western Pacific Railroad Company at San Francisco. The switching service between complainant's mill and defendants' interchange track at San Francisco was accomplished by the Western Pacific Railroad; the line haul was performed by the Southern Pacific Company. The following statement shows the points between which the shipments moved, together with the rates assessed and those contemporaneously applicable from more distant points on the same line or route:

Between	And	Rate Assessed :\$2.70 per car plus:	More Distant Point and Rate Applicable therefrom
San Francisco	Wheatland	15¢	Marysville - 15¢
"	Lincoln	15¢	" - 15¢
"	Dixon	10 ¹ / ₂ ¢	Sacramento - 10 ¹ / ₂ ¢
"	Tremont	10 ¹ / ₂ ¢	" - 10 ¹ / ₂ ¢
"	Davis	10 ¹ / ₂ ¢	" - 10 ¹ / ₂ ¢
"	McConnell	10 ¹ / ₂ ¢	" - 10 ¹ / ₂ ¢
"	Elk Grove	10 ¹ / ₂ ¢	" - 10 ¹ / ₂ ¢
"	Merritt	11 ¹ / ₂ ¢	Woodland - 11 ¹ / ₂ ¢
"	Tudor	15¢	Marysville - 15¢
"	Graino	18¢	Sycamore - 18¢
"	Reseda	31 ¹ / ₂ ¢	Los Angeles - 31 ¹ / ₂ ¢
"	Bethany	7 ¹ / ₂ ¢	Lathrop - 7 ¹ / ₂ ¢

The rates assessed by defendants were the line haul rates named in the applicable tariffs plus a switching charge of \$2.70 per car. This switching charge is contained in Western Pacific Terminal Tariff No. 35-J, C.R.C. No. 245, and is not absorbed on the shipments here involved. Under the provisions of Southern Pacific Terminal Tariff No. 230-J, C.R.C. No. 3183, that carrier will absorb the \$2.70 charge in connection with competitive traffic as that term is defined in the tariff. All of the more distant points shown in the foregoing statement are competitive points, and therefore by the absorption of the switching charge at San Francisco the aggregate charges between San Francisco and these points are less than those assessed on complainant's shipments moving from directly intermediate points, and departures from the long and short haul provisions of Section 24(a) of the Public Utilities Act are thus created. These departures were unauthorized at the time complainant's shipments moved but have since been authorized (In the Matter of the Joint Application of the A.T. & S.F. Ry., etc., 35 C.R.C. 46).

In view of the stipulation heretofore referred to and under the issues as they now stand a formal hearing will not be necessary.

Upon consideration of all the facts of record we are of the opinion and find that the charges assessed and collected on complainant's shipments were in violation of the long and short haul provisions of Section 24(a) of the Public Utilities Act and of Section 21, Article XII of the State Constitution. We further find that complainant made the shipments as described, paid and bore the charges thereon, and is entitled to reparation with interest at 6% per annum.

The exact amount of reparation due is not of record.

Complainant will submit to defendants for verification a statement of the shipments made and upon the payment of the reparation defendants 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 answers 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 opinion which precedes this order,

IT IS HEREBY ORDERED that defendants Southern Pacific Company and The Western Pacific Railroad Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund with interest at six (6) per cent. per annum, to complainant Outsen Bros. all charges collected for the transportation from and to complainant's mill in San Francisco of the shipments of grain and grain products involved in this proceeding in excess of those contemporaneously applicable from or to more distant points on the same line.

IT IS HEREBY FURTHER ORDERED that in all other respects this proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 21st day of December, 1931.

C. S. ...
L. ...
M. ...
W. B. ...
James G. ...
Commissioners.