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Decision No. 24821.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALCO TILE MANUFACTURING CORPORATION, a corporation, and PACIFIC CLAY PRODUCTS, a corporation, Complainants, vs. LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation, and SOUTHERN PACIFIC COMPANY, a corporation, Defendants.	Case No. 3088.

F. W. Turcotte and B. H. Carmichael, for the complainants.

J. E. Lyons, A. L. Whittle and J. L. Fielding, for Southern Pacific Company, defendant.

E. E. Bennett, for Los Angeles & Salt Lake Railroad Company, defendant.

Gerald E. Durfy and Berne Levy, for The Atchison, Topeka and Santa Fe Railway Company, interveners on behalf of defendants.

R. E. Wedekind, for Pacific Electric Railway Company, intervener on behalf of defendants.

BY THE COMMISSION:

O P I N I O N

By complaint filed July 7, 1931 it is alleged that the charges on one carload of feldspar and two carloads of brick transported during the two-year period immediately preceding the filing of the complaint were assessed and collected in violation of the long and short haul, and the aggregate or intermediate, provisions of Section 24 of the Public Utilities Act.

Reparation only is sought. Except where otherwise stated rates are shown in dollars and cents per car.

A public hearing was held before Examiner Geary at Los Angeles and the matter submitted on briefs. It was stipulated by the parties that the shipments involved were made as shown in the complaint and that complainants paid and bore the charges thereon. Complainants made no effort to sustain the allegation that the charges were in violation of the aggregate or intermediate provision of Section 24 of the Act and this allegation will therefore be considered as having been abandoned.

The movement of the three cars here in issue was entirely within the Los Angeles switching limits. The car of feldspar was shipped August 14, 1929 from an industry track served by the Southern Pacific Company to a like track served by the Los Angeles & Salt Lake Railroad Company, hereinafter referred to as the Salt Lake Line. On it charges of $22.31 were assessed and collected based on a switching charge of 34 cents per ton for the service performed by the Southern Pacific Company plus $4.50 for the Salt Lake Line service. The two carloads of brick were loaded on a Salt Lake Line industry track and delivered on industry tracks of the Southern Pacific Company. On these cars charges of $11.12 and $20.11 were assessed, based on a switching charge of 34 cents per ton accruing to the Salt Lake Line and $3.60 and $4.50 respectively for the service performed by the Southern Pacific Company.

At the time of movement defendant Southern Pacific Company maintained in its tariffs a rate on freight, regardless of classification, between Industrial and Los Angeles of $4.50. A rate of the same volume was maintained by the Salt Lake Line between Los Angeles and Clifford Spur. These rates were restricted

to apply only as proportional rates on shipments originating at or destined to points beyond Los Angeles. Industrial and Clifford Spur are located immediately beyond the Los Angeles switching limits.

The proportional per car charges to and from Los Angeles may be combined to make through charges on shipments moving between points outside the Los Angeles switching limits, subject to the minimum per car charges set forth in the current Western Classification.[1] In Chamberlain Company Inc. et al. vs. Santa Fe et al., 35 C.R.C. 63,[2] the Commission held that where the combination of the proportional per car rates makes a lesser charge than that collected for a directly intermediate movement over the same line or route a 24th Section departure is created.

The industries from and to which the shipments here involved are made are located within the Los Angeles switching limits on tracks diverging from the Southern Pacific-Salt Lake interchange points. Shipments moving from Industrial to Clifford Spur, the more distant points, would not move directly over these tracks. Defendants contend therefore that the shorter distance is not included within the longer distance inasmuch as the proportional rates are restricted to apply only on shipments originating at or destined to points beyond Los Angeles, and therefore they apply from and to the interchange point and do not apply from or to industry tracks.

The fact that the through charge from Industrial to Clifford Spur was made by a combination of proportional rates over

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[1] In Re Application of Southern Pacific, etc., 34 C.R.C. 167.

[2] In this proceeding the charges on shipments moving (1) between points wholly within the switching limits of Los Angeles and (2) between the switching limits on the one hand and Shorb or Burbank on the other were found not in violation of Sections 13, 17 or 19 of the Act, but in violation of Section 24. Reparation was awarded. See also E. J. Stanton & Son vs. A.T.& S. F.Ry. et al., 36 C.R.C. 390.

Los Angeles is immaterial. The point raised by defendant is not materially different from that considered by the Commission in Re Junction Point Case, 28 C.R.C. 440,[3] where it was held that an 8-cent rate on cement from Cement to Stockton, applicable via the Cement, Tolenas and Tidewater Railroad and Southern Pacific Co. via Sacramento, thence Western Pacific Railroad, was the maximum charge which would be made on a similar shipment moving from Cement to Sacramento via the Cement, Tolenas and Tidewater Railroad and Southern Pacific Company but destined to an industry on the rails of the Western Pacific Railroad. The carriers were assessing from Cement to Sacramento for delivery to a Western Pacific Railroad industry track a line-haul rate of 8 cents per 100 pounds plus a switching charge of $2.70, resulting in a higher charge than contemporaneously applicable from Cement to Stockton, the latter a point beyond Sacramento, on the theory there was no violation of the long and short haul provisions inasmuch as a shipment moving from Cement to Stockton would not pass over an industry track of the Western Pacific at Sacramento and therefore the shorter distance was not included in the longer distance. The Commission in considering this question stated:

> "Were we to agree with this interpretation of Section 24(a) there would be created a peculiar situation in that long and short haul departures would only occur when shipments were loaded or unloaded on the main line tracks of the carriers, a practice that is very rarely if ever followed. The term 'Sacramento' in the tariffs comprehends not only the depot or that portion of the city served by the main line rails of respondent but all terminal facilities within the switching limits owned or controlled by the carriers and used by them in the performance of their common carrier duties."

Likewise the Interstate Commerce Commission in Intermediate Application of Lumber Rates in Pacific Coast Territory,

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[3] See also 32 C.R.C. 655.

147 I.C.C. 13, citing Lautz Marble Corporation vs. P.R.R.Co., 115 I.C.C. 543, 136 I.C.C. 183, General Petroleum Corporation vs. A.T.& S.F.Ry.Co., 146 I.C.C. 194, said:

> "We have heretofore found in effect that points within the switching limits of a station such as Los Angeles are to be considered as a unit in construing the provisions of the long-and-short-haul clause of the 4th Section."

Upon consideration of all the facts of record we are of the opinion and find that the charges on complainants' shipments were assessed and collected in violation of the long and short haul provision of Section 24 of the Public Utilities Act. We further find that complainants made the shipments as described, paid and bore the charges thereon and are entitled to reparation with interest at 6 per cent. per annum.

The exact amount of reparation due is not of record. Complainants will submit to defendants for verification a statement of the shipments made and upon 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 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 defendants Los Angeles & Salt Lake Railroad Company and Southern Pacific 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 complainants Calco Tile Manufacturing Corporation and Pacific Clay Products, according as their interests may appear, all charges collected for the transportation within the switching limits of Los Angeles of the shipments of feldspar and brick involved in this proceeding in excess of those contemporaneously applicable to like shipments originating at and destined to suburban points beyond Los Angeles, moving via Los Angeles.

Dated at San Francisco, California, this 31st day of May, 1932.

C. L. Seavey

Leon O. Whitsell

W. J. Carr

M. B. Harris

Fred E. Stevinot

Commissioners.