JLA

Decision No. 25113.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

PACIFIC COAST AGGREGATES, Inc.,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
THE WESTERN PACIFIC RAILROAD COMPANY,
Defendants.

Case No. 2837.

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

Frank Nelson and J. E. Lyons, for defendant Southern Pacific Company.

J. P. Haynes and L. N. Bradshaw, for defendant The Western Pacific Railroad Company.

BY THE COMMISSION:

OPINION

Complainant is a corporation with its place of business at San Francisco. By complaint seasonably filed it is alleged that the rates assessed and collected for the transportation of carload shipments of crushed rock, sand and gravel from Eliot on the Southern Pacific Company (hereinafter referred to as the Southern Pacific) to industry tracks served by The Western Pacific Railroad Company (hereinafter referred to as the Western Pacific) at Oakland and San Francisco were excessive, unjust, unreasonable, unduly discriminatory, prejudicial and disadvantageous to complainant,

in violation of the provisions of the Public Utilities Act, and of the long and short haul clause of Section 21 Article XII of the State Constitution. The prayer is for an award of reparation.

Public hearings were held before Examiner Geary at San Francisco, and the case having been submitted and briefs filed, is now ready for our opinion and order.

Complainant abandoned the allegation that the charges were unreasonable, unduly discriminatory, prejudicial and disadvantageous and devoted its testimony solely to the claimed violations of the long and short haul provisions of the State Constitution.

The shipments involved originated at Eliot, a station exclusively on the Southern Pacific, 35 miles east of Oakland, and were destined to industry tracks within the switching limits of the Western Pacific at Oakland and San Francisco. Charges were assessed and collected at the line haul rate of 2½ cents per 100 pounds applicable from Eliot to both Oakland and San Francisco, plus a switching charge of $2.70 per car for a service performed by the Western Pacific from the interchange tracks with the Southern Pacific to the industry tracks on the Western Pacific.

The rates from Livermore to Oakland and San Francisco via both the Southern Pacific and Western Pacific are of the same volume as those from Eliot on the Southern Pacific. Eliot is an intermediate station on the Southern Pacific 4 miles west of Livermore, but there are no station facilities of any kind at this point on the rails of the Western Pacific, although the Western Pacific main line tracks pass through the community where the Southern Pacific station of Eliot is located. Livermore, the more distant point, is served by both railroads and therefore involves competitive traffic under the provisions of Item 10, Southern Pacific Terminal Tariff 230-J, C.R.C. 3183. The Item reads:

"Competitive traffic is traffic which, at time of shipment, may be handled at equal rates (exclusive of switching charge) from same point of origin to same destination via other carriers, one of which performs the switching service."

Non-competitive traffic is described in Item 20. The Item reads:

"Non-competitive traffic is traffic other than that described as competitive traffic in Item No. 10-Series."

Item No. 140 reads in part as follows:

" * * * * On carload traffic competitive with the connecting carrier performing the switching service on which the Southern Pacific receives a line haul destined or originating at industry tracks or wharves not reached by the Southern Pacific rails located within the switching limits at the stations of carriers as shown, the Southern Pacific Company will absorb, subject to Item 150-Series, the amount of connecting carrier's charges for switching to or from the interchange track with the Southern Pacific * * * * ."

Under these provisions of the tariff all traffic from Livermore line-hauled by the Southern Pacific and destined to Western Pacific industry tracks at either Oakland or San Francisco has the benefit of the absorption privileges as per Items 10 and 140 of the Southern Pacific tariff. The tariff does not authorize any absorption in connection with the traffic from or to Eliot because, as heretofore stated, that station is not on the Western Pacific, and therefore involved only non-competitive traffic as described in Item No. 20 of the tariff.

Section 21 Article XII of the Constitution and Section 24(a) of the Public Utilities Act provide that after investigation the Railroad Commission may authorize transportation companies to charge less for a longer than for a shorter haul.

F. W. Gomph, acting as agent for the railroads within the State of California, in order to fulfill the legal requirements filed Application No. 16179 December 20, 1929, for authority to continue the tariff items creating departures from the long and short haul provisions of the State Constitution and of

the Public Utilities Act. The items provided for the absorption of connecting line switching charges on competitive traffic without making similar absorptions on non-competitive traffic. The Commission by its opinion and order, Decision No. 22670, dated July 11, 1930 (35 C.R.C. 46) authorized such violations. The opinion reviewed the practices of the railroads over a period of more than 20 years and gave reference to orders issued by the Interstate Commerce Commission in March, 1911, granting a blanket authority to all interstate carriers in the United States to continue the violations and to establish the rules for absorbing switching charges at competitive points without observing the long and short haul provisions of the Interstate Act at intermediate non-competitive points. Railroads within the State of California were of the opinion and they so contended in testimony and briefs, Application 16179, that they had authority under date of February 15, 1912, Case 214, to absorb competitive switching charges and that the application was made in an abundance of caution to remove all doubts. Decision No. 22670 and the order therein, effective July 31, 1930, granted authority to carriers to continue the practices of absorbing switching charges at competitive points while not absorbing corresponding charges at non-competitive points, therefore since July 31, 1930, the long and short haul departures are in compliance with the State Constitution and Section 24 of the Public Utilities Act.

The complainant made reference to certain language in Decision 22670 (Application 16179) supra, wherein we mentioned the Eliot and Livermore situation, but a careful reading of the decision clearly shows that the phraseology employed as to these particular stations is purely illustrative of a general situation and is in the nature of dictum or suggestions. A supplemental

order issued today rectifying the original decision and order.

The questions to be decided are, did the defendants at the time these shipments moved, have the authority necessary under the Constitution to charge more from the non-competitive point of Eliot than they contemporaneously charged from the more distant and competitive point of Livermore; and, is the complainant entitled to an award of reparation?

Prior to July 31, 1930, defendants had no specific authority to violate the long and short haul provisions of the Constitution and the Public Utilities Act. Since that date they have had such authority (In Re F. W. Gomph, 35 C.R.C. 46). A shipper who has paid a rate or charge in violation of the long and short haul provisions is entitled to reparation (A.T.& S.F.Ry. vs. Railroad Commission, 212 Cal. 372).

We are of the opinion and find that the assailed switching charges assessed and collected prior to July 31, 1930, were in violation of the long and short haul clause of Section 21, Article XII of the State Constitution. We further find that complainant paid and bore the charges on the shipments in question transported prior to July 31, 1930, and has been damaged to the extent of the difference between the charges paid and those in effect to the more distant point, with interest at 6 per cent. 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 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.

ORDER

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, 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 to complainant, Pacific Coast Aggregates, Incorporated, all charges with interest at six (6) per cent. per annum on the shipments of crushed rock, sand and gravel involved in this proceeding and moving prior to July 31, 1930, from Eliot on the Southern Pacific Company to industry tracks served by the Western Pacific Railroad Company at Oakland and San Francisco, which were in excess of the charges contemporaneously in effect on like shipments from Livermore to Oakland and San Francisco.

Dated at San Francisco, California, this 29th day of August, 1932.

C C Seavey

Leon O. Whitsell

M J Carr

W B Harr

Fred G. Stevenot,

Commissioners.