Decision No._____

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Decision No. 2226

ORIGINAL

NORTH[illegible] PACIFIC STEAMSHIP COMPANY,
Complainant,
vs
SOUTHERN PACIFIC COMPANY, et al,
Defendants.

Case No. 849

H. W. Glensor for Northern Pacific Steamship Company
C. W. Durbrow for Southern Pacific Company
Platt Kent for Atchison, Topeka & Santa Fe Railway Company
Allan P. Matthew for Western Pacific Railway Company
Seth Mann for San Francisco Chamber of Commerce.

LOVELAND, Commissioner:

O P I N I O N

This case, being at issue upon complaint and answers duly filed, came on for hearing regularly in San Francisco on October 5, 1915. The San Francisco Chamber of Commerce had asked for and been granted permission to intervene in behalf of complainant.

As illustrative of the different features involved in this case, a brief statement referring to past and present conditions in San Francisco, as relating to a charge by the railroads for a switching or delivery service, will be illuminating. For many years the defendant carriers made, under certain circumstances, a charge for switching service and under other circumstances did not make a charge. To illustrate: The State of California owns and operates a belt line railroad around the water front. While this belt line road operates both north and south of Market Street its larger operations are north of Market Street because of the carriers having team tracks, and various industries having industry tracks in that section of the city.

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Before the case of the Associated Jobbers of Los Angeles vs. Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, et al. (Case #1704, decided April 5, 1910 generally known as the "Switching Case") was decided, in which case the Interstate Commerce Commission was overruled by the Commerce Court, the decision of that court being overruled and the Commission's decision sustained by the United States Supreme Court, 234 U.S. 294, it was the practice of rail carriers, terminating at San Francisco, to use the belt line railroad to make deliveries to industries, team tracks, and docks and piers north of Market Street. The charge made by the belt line of $2.50 per car was absorbed by the carriers on shipments to their team tracks and to docks and piers, but was not absorbed on shipments to industry tracks; that is, it was paid by the carriers to the belt line but collected from the industries. After the Supreme Court had affirmed the decision of the Interstate Commerce Commission in Case 1704, supra, that the switching charge was a part of the rate of the line haul, the rail carriers on April 1, 1915 changed their practice, continuing to make absorption of switching charge on shipments consigned to team tracks and began to absorb the charge on shipments consigned to industry tracks but discontinued to absorb the switching charge on shipments consigned to wharves and piers, the alleged reason for such action being that the water carriers competed with them (the rail carriers) and that they were not compelled to absorb switching charges to competitors.

The testimony in the case shows that at many other places in California, such as Oakland, Richmond, Stockton, Sacramento, San Pedro, Wilmington and San Diego, some of which cities have belt line roads which perform the terminal switching service and others dock companies which perform similar service, ~~[illegible] piers~~ the rail carriers absorb the switching charge, San Francisco

being the only exception, and that some of these absorptions are on shipments to water competitors.

The testimony further showed that in other cities in the United States, such as Chicago, St. Louis and New Orleans, where belt line roads are employed to perform delivery service, rail carriers absorb the switching charge of such belt lines.

While the complaint as originally filed by the North[illegible] Pacific Steamship Company comprehended only switching to the pier of that company, the intervention of the San Francisco Chamber of Commerce widened the issues, and after much discussion at the hearing as to a continuance in order to give the intervener an opportunity to prepare to support its intervention, a stipulation was finally entered into by counsel for the complainant, defendants and intervener by the terms of which an examination into the switching situation in San Francisco, along the widest possible lines, could be made in this case, and a decision rendered applicable to all points where the defendant carriers do such switching in San Francisco, or have it performed by others.

It was further stipulated that in the cities named above, both in California and in other places in the United States, the carriers used the rails of belt line roads to make deliveries and absorbed the switching charges incidental to such use, and that San Francisco was the only exception to such custom; and for the purpose of this case it was further stipulated, in the case of some of these cities, that carriers absorb switching charges to competitive water carriers.

Counsel for defendant carriers endeavored to show, by testimony and argument, that this case should be decided upon the charge of discrimination and maintained that such discrimination as was found in the premises was justified and

not undue.

Counsel for complainant and intervener endeavored, by testimony and argument, to sustain their charge that while discrimination was unquestionably shown, the case should hinge and be decided upon the reasonableness of the rate - in other words, counsel for defendant carriers insisted that the carriers could not be compelled to absorb switching charges to their competitors, and that no undue discrimination resulted from their refusal to do so, while counsel for complainant and intervener insisted that in employing belt lines or dock companies to perform a switching delivery service, in reality the rail carriers made the rails of such belt lines or dock companies additions to the lines of the carriers.

Various decisions by courts and commissions were cited by the various counsel, in some instances the same cases being cited, with different construction, by counsel for complainant, defendants and intervener, to all of which careful consideration has been given by this Commission.

I am of the opinion and find that the position of complainant and intervener is sustained by the weight of the evidence to the extent hereinafter set forth; and I further find that, while discrimination has unquestionably resulted from the practice of the rail carriers of absorbing certain switching charges and refusing to absorb others in San Francisco, and also of declining to make charge at other points in California, it is not necessary in this opinion and order to pass upon the justification of such discrimination, or to say whether it is due or undue, as I believe and find that the case should be decided upon the reasonableness of the rate, and justify such findings upon the following facts:

The testimony shows that for many years it has been the practice of the carriers defendant in this case to absorb the switching charge on deliveries in many cities in California, hereinbefore mentioned, using belt line roads or the rails of dock companies, for that purpose, that in fact San Francisco is the sole exception to that rule. It further shows that for years these carriers have used the belt line road in San Francisco to make deliveries to team tracks owned by themselves, to industry tracks owned by various industries and to wharves and piers owned by the State of California and leased to water carriers; that on such deliveries some of the switching charges were absorbed and others were not; that the practice of the carriers, while it comprehended at all times the absorption of some switching charges, was not uniform -- to illustrate; the carriers always absorbed the switching charge to their own team tracks. Some of the team tracks north of Market Street were owned by the belt line road and on deliveries to such team tracks the switching charge was formerly not absorbed but several years ago the carriers began to absorb the switching charge to such team tracks as well as to their own. In addition to this, they absorbed the switching charge to wharves and piers but did not absorb it to industry tracks.

After the Supreme Court had affirmed the decision of the Interstate Commerce Commission in the case above referred to, to-wit, Case numbered 1704, in an effort to bring about uniformity between interstate and intrastate shipments, on April 1, 1915, the carriers changed their practice, as above set forth, which the Commission permitted with the understanding that if complaint was received the matter would be investigated and, as a result of such change in practice and the imposition of the switching

charge on shipments to wharves and piers, this proceeding was filed with the Commission on August 19, 1915.

Ample opportunity was given the carriers defendant in this case to submit such evidence as they desired as to the reasonableness of the rates in question, as they were on notice that the reasonableness of the rates was attacked in this proceeding, but they contented themselves by declaring, through counsel, that the case should be decided upon discrimination and that in any event they could not be compelled to absorb switching charges on shipments consigned to their competitors.

I believe that the Commission is justified in assuming, and I find that the carriers accepted the rates from points of origin to such points to which they made, or now make, free deliveries as a reasonable rate -- in other words, that they regarded such rate as reasonable with the full knowledge that they were absorbing the switching charge of $2.50 per car, and having found this to be a reasonable rate, I find that the collection from the shippers of a switching charge of $2.50 per car, when the shipment is destined to wharves and piers, the service in such cases being no greater than that to team or industry tracks, as shown by the testimony, results in a rate unreasonable by at least the measure of the switching charge of $2.50 per car.

I further find, as an evidence that the carriers defendant in this case regarded the rate comprehending the absorption of the switching charge as a reasonable rate, and that the obligation is laid upon such carriers to give the same rate to wharves and piers, that one of the defendant carriers, to-wit, the Southern Pacific Company, has a dock in San Francisco to which they absorb the switching charge and that the other carriers defendant in this case make deliveries to this dock and also absorb the switching charge.

In the case of Mobile Chamber of Commerce et al. v. Mobile & Ohio Railroad Company et al., decided May 7, 1912, the Interstate Commerce Commission, speaking through Commissioner Lane, held that where a railroad has a wharf to which its tariffs offer delivery and at which part of the shipping public is served, such wharf becomes a public terminal, and if all shippers are not given access to it by the boats they choose to employ, it then becomes the carrier's duty to make delivery at other available docks at the same rate.

Quoting from that decision, Mr. Lane said:

> "A railroad may not have a preferred line of steamships to the exclusion of other ships. Without doubt it may prefer one line and have more intimate relationship with such line than with others, but its duty as a common carrier by rail can not be neglected because of such arrangements. It may set aside one or more docks for the use of such allied lines so long as such practice doesnot conflict with its duty to give delivery at these docks to whomsoever may apply for the freight properly deliverable at that point. If it chooses to give up its entire dock facilities to some particular line, it may do so, but it must make delivery upon equal terms to other ships at that port ********"

Again Mr. Lane says:

> "There can be no such thing as a terminal which is not a public terminal - a rate charged which only applies to certain favored connections - unless a like rate is made to some other dock or facility where a like service is rendered."

In this decision also Mr. Lane cites Baker-Whiteley Coal Co. v. B & O. R.R. Co., 188 Fed., 412, as follows:

> "that a railroad company has the right to keep a pier for its own use and for the use of such transportation lines as have contract with it for transshipment, can not be denied, provided it affords to the public reasonable facilities elsewhere at equal rates *******"

That a charge of discrimination, as well as unreasonableness of rate could be sustained in this case, and that the decision and citations of Mr. Lane would support such charge, I believe is, without question, but I also believe and find that

the rate maintained by the carriers to the dock of one of them, the Southern Pacific Company, such rate comprehending the absorption of the switching charge, is further evidence that the rate from points of origin to destination, comprehending the absorption of switching charges, is regarded by the carriers as a reasonable rate.

I also desire to cite the case known as the Lighterage & Storage case decided by the Interstate Commerce Commission. July 7, 1915, I & S Docket #572, reported in 35 I.C.C. page 47. In this case the Commission upheld the practice of free lighterage service accorded by the railroads in and about New York Harbor. At page 52 the Commission says:

> "The terminal floating service at New York, having been adopted by the railway companies many years ago as the natural and necessary recognition of the physical conditions, is now to be considered as much a part of the transportation service of the carriers as the service rendered on their rails."

On page 53 of the same decision the Commission says:

> "It is always a question of what, under all the circumstances, is just and reasonable. This is as applicable to a practice as to a rate."

The Commission held that the imposition of certain charges for loading and unloading from lighters, where the carriers had made no charge for this service in the past, was not justified and the proposed tariffs were cancelled. In this connection, at page 61, it said:

> "The assessment of any charge for terminal handling, the service having heretofore been performed under the freight rate, would have the effect of increasing that rate and a proper justification of such an increase would involve consideration both of the line haul and the terminal service to be performed under the increased rate."

On page 62, the Commission says:

> "As the railroad companies have made an allowance to shippers for many years out of their rates, there is a presumption that the rate covers that allowance and that its discontinuance should be accompanied by a relinquishment of revenue formerly

provided. There is nothing in this record to overcome this presumption."

I am not unmindful of the claims of counsel for the defendant carriers that they can not be compelled to absorb switching charges to competitors and I have given due consideration to the authorities cited in support of that position. Such contention would, in my judgment, be entitled to much greater weight if the carriers had not in the past voluntarily absorbed the switching charge to team tracks, thereby evidencing their belief that the rate comprehending their absorption of the switching charge is a reasonable one.

As this decision is based upon the reasonableness of the rate I do not feel called upon to pass upon the question of the due or undue discrimination alleged, or upon the contention of counsel for complainant and intervener that the rails of belt line roads and dock companies must be considered extensions of the defendant carriers' rails. Neither shall I give consideration in the order in this case to switching performed by the rail carriers in San Francisco and the absorption of charges made therefor, other than the switching comprehended in the complaint, to-wit, that performed by the belt line north of Market Street for the reason that, while the stipulation above referred to widened the issues to the extent that all switching in San Francisco might be considered, the testimony in the case was almost entirely confined to the switching north of Market Street by the belt line.

I submit the following form of order:

ORDER

In consonance with the findings expressed in the opinion preceding this order,

IT IS HEREBY ORDERED that the practice of the defend-

ant carriers herein of making such collection of $2.50 per car on shipments consigned to wharves and docks north of Market Street in San Francisco, California, be and it is hereby declared unreasonable as resulting in an unreasonable rate, and such defendant carriers are hereby ordered to discontinue such practice on or before the effective date of this order, and to put into effect the same rates and practices as are now in effect on shipments to team and industry tracks north of Market Street.

IT IS FURTHER ORDERED that this opinion and order apply to and affect only the rates and practices of defendant carriers in making deliveries to points north of Market Street, San Francisco, California.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Sated at San Francisco, California, this 22nd day of November, 1915.

Max Thelen

M. D. Loveland

Alex Gordon

Edwin O. Edgerton

Frank R. Devlin

Commissioners.