

Decision No. _____

ORIGINAL

Decision No. 3901

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of Southern Pacific Company for adjustment of disputes which have arisen between it and Frank L. DeLong, also known as F. L. DeLong; E. Clemens Horst Company, a corporation; Kelley & Henry Co., a corporation; W. D. Sheldon & Co., a co-partnership; Girvin & Eyre, a co-partnership; Strauss & Co., Volmer & Perry, a co-partnership; M. Blum & Co., a corporation; Moore, Ferguson & Co., a co-partnership; and Somers & Co., a corporation; concerning interpretation of Car Demurrage Tariff No. 2-D, C. R. C. No. 6.)

Application No. 2574.

Elmer Westlake, for applicant.
Seth Mann, for San Francisco Chamber
of Commerce and various protestants.

Gordon, Commissioner.

OPINION

This is a proceeding instituted by the Southern Pacific Company with reference to unpaid demurrage charges assessed against consignments of grain destined to warehouses at Port Costa.

Briefly, the petition alleges that during the period from June to December, 1914, certain carloads of grain were transported from points in California to Port Costa for various consignees; that the unloading from cars into warehouse was performed by the Southern Pacific Company; that prompt notice of arrival of consignments was given consignee; that unloading could not be performed until instructions had been received from the consignees, or their representatives specifying the door of a designated warehouse or particular location where car could be unloaded; that the unpaid demurrage, amounting to \$1410.00, covers only the excess of free time between

notice of arrival and the receipt of instructions to place the cars.

The following statement sets forth in detail the demurrage originally assessed, amount cancelled and the amount claimed to be due:

<u>Consignee</u>	<u>Demurrage Originally Assessed</u>	<u>Demurrage Cancelled</u>	<u>Demurrage now Assessed</u>
Frank L. DeLong, also known as F.L. DeLong	\$ 78.00	\$ 27.00	\$ 51.00
E. Clemens Horst Company	177.00	36.00	141.00
Kelley & Henry Co.	105.00	24.00	81.00
W.D. Sheldon & Co.	198.00	87.00	111.00
Girvin & Eyre	198.00	81.00	117.00
Strauss & Co.	306.00	102.00	204.00
Volmer & Perry	102.00	48.00	54.00
M. Blum & Co.	75.00	36.00	39.00
Moore, Ferguson	9.00	6.00	3.00
Somers & Co.	969.00	360.00	609.00
Total -	<u>\$2217.00</u>	<u>\$807.00</u>	<u>\$1410.00</u>

Since the filing of this action Moore, Ferguson & Co. have paid their demurrage charges, amounting to \$3.00.

It is alleged that the unpaid amounts in dispute have been assessed in conformity with Car Demurrage Tariff No. 2-D, C.R.C. No. 6, and the consignees have been given the benefit of every doubt in the final computation. The Car Demurrage Tariff is constructed in conformity with this Commission's General Order No. 2, effective May 1, 1911.

Rules 3 and 15 of the Tariff read as follows:

Rule 3.

- "(A) Forty-eight hours free time computed from the first 7 a.m. after cars are placed and notification of arrival is given to consignee will be allowed for unloading all commodities except oil from tank cars, for which twenty-four hours will be allowed.

"(B) Whenever it shall appear to the satisfaction of the Commission that the failure of a railroad to furnish a car or cars for loading within the time fixed by these rules, or the failure of the shipper or consignee to load or unload the same was due to causes beyond the control of such carrier, shipper or consignee, no payment shall be required to be made on account of such delay."

Rule 15.

"Whenever any disputes arise between shippers, consignees and carriers concerning the interpretation of these rules and concerning any claim arising hereunder, the same shall be submitted to the Commission for adjustment."

The petition states and it is confirmed by the testimony of applicant's witnesses, that at the present time, and for a period of more than twenty years, the practice at Port Costa has been to give consignees notice of the arrival of carload shipments of grain by entry in books provided specifically for that purpose. The books are kept in receptacles similar to postoffice boxes, one book and one box for each warehouse, the key of which is held by the representative of the particular warehouse, who checks the book daily, or oftener, as the circumstances may require, and receipts for the information at the time of checking the book. This method of notification, applicant contends, is a complete compliance with paragraph "A" of Rule 3.

Terminal Tariff 230-G, C.R.C.1260, carries provisions in Items 42 and 43 for the service of loading and unloading grain at Port Costa warehouses and since this service was performed in each case by applicant it assumed the responsibility for any delay in unloading after receipt of definite information to spot cars at the warehouses.

The cancellation of charges amounting to \$807.00 was made, for the following reasons:

Demurrage was originally assessed after forty-eight hours, computed from the first 7 A.M. following the date of entry in ware-

houseman's notification register, even though the entry may have been made prior to 7 A.M. Since, under ordinary circumstances, the notification may not have been actually received until after 7 A.M., consignees have been given the benefit of any doubt and corrected charges are computed from 7 A.M. following notification received during regular business hours. Allowances are also made in the corrected charges, by the Southern Pacific Company, for any failure of its stevedoring crews to unload cars promptly upon the receipt of instructions.

The petition, in conclusion, recites:

"That said consignees refused and now refuse to accept or to pay said demurrage charges as now assessed, or any part thereof, and claimed, and now claim, that because of conditions claimed to have been caused by the impending European war, and conditions claimed to exist by reason of the war itself, they were unable to secure bottoms into which grain could be loaded to make room for incoming grain, or grain on hand, or that, when vessels could be secured, the risk of shipment was too great to warrant shipment, and that these alleged conditions bring the consignees within the exceptions provided for by subdivision (B) of Rule 3 of said Tariff. With this position petitioner did not and does not now agree, and claims the right to assess demurrage charges as now assessed."

These consignees, having refused to pay any demurrage charges, petitioner, on June 2, 1916, in order to prevent the running of the statute of limitation, filed suits in court to protect its interests and to avoid the penalties of the law for failure to collect tariff charges.

Petitioner asks that the Commission examine into the merits of the claims and issue an appropriate order.

Between the dates in question 2991 cars of grain arrived at Port Costa in care of the Grangers Warehouse, out of which 608 were held overtime and demurrage of \$3462.00 assessed; of this amount \$2217.00 was charged against 259 cars involved in these proceedings, thus indicating that \$1245.00 was assessed against other consignees, a part was paid and the balance cancelled for the same reason as was the \$807.00 in favor of these protestants.

It does not appear from the evidence that there was any

bunching in transit, as that term is commonly understood. It seems that petitioner was ready at all times to make deliveries, but due to the number of cars arriving and the limited capacity of the Grangers Warehouse, a congestion was created in excess of the warehouseman's ability to handle. All the unpaid demurrage accrued while the cars were being held awaiting placement orders.

It was shown by exhibits and by the testimony of witnesses that cars were usually "spotted" by petitioner on the day instructions were received. A specific transaction was testified to in the case of cars LV 10666 and SP 82370. These cars arrived at Port Costa July 28th, but no instructions for placement were received until August 10th, when both cars were switched within an hour. Demurrage in the sum of \$30.00 was assessed against each car. That the arrival of cars in large numbers at the Grangers Warehouse was unusual is shown by petitioner's exhibit No. I, only 513 cars being received during the period June to December, 1913, as compared with 2991 cars for the corresponding period of 1914.

Protestants deny that the Southern Pacific Company has any authority to charge demurrage in excess of free time elapsing between entry in book of notice of arrival and the giving of instructions to place the cars, or for any period of time. They further assert that all cars were billed to a designated warehouse and could not be unloaded until set at the warehouse, nor could demurrage commence to run until cars were placed; further, that there was a blockade at Port Costa of grain cars, that this blockade was brought about and added to by carrier bringing loaded cars into Port Costa, knowing same would be bunched at or near destination and that the cause of any delay in unloading was due entirely to the omissions and negligence of carrier in failing to unload promptly.

The position taken by protestants is not substantiated by the

evidence. In most cases the cars were billed to protestants in care of the Grangers Warehouse and, therefore, could not be spotted until definite instructions had been received. The unloading was accomplished by the petitioner at a charge per ton provided in its tariff and the testimony and the exhibits show that, with but few exceptions, cars were promptly spotted upon receipt of instructions from warehouseman and unloaded without delay. When delays did occur after receipt of placement instructions, petitioner assumed the responsibility and cancelled the charge.

I am not in accord with the view of one of protestant's witnesses, who took the position that because no direct notice had been sent to his firm at San Francisco, demurrage tariff had not been complied with. Upon cross examination, it was admitted that during twenty years prior to the assessing of these particular demurrage charges the only notice ever given his firm and others of the arrival of cars at Port Costa was the entry in warehouseman's notification book. The evidence further indicates that, in the absence of advance information, warehouseman notifies consignees promptly, either by telephone or mail, of the arrival of cars and asks for instructions.

During the three months, June, July and August, of 1913 and 1914, grain receipts at Grangers Warehouse were as follows:

<u>Ex Water Craft</u>	<u>Ex Car</u>	<u>Total</u>
1913- 18,330,946 pounds.	2,964,283 pounds.	21,295,229 pounds.
1914- 27,986,309 "	85,937,237 "	113,923,546 "

The tonnage for 1914 is more than 500 per cent of the tonnage for 1913. It is of record that on a number of occasions when the Grangers Warehouse was completely filled, notice was given by the management to interested firms to discontinue consignments. Apparently grain dealers did not see fit to consider these instructions and permitted cars to come forward. In many instances, after cars had been held under demurrage awaiting space in Grangers Warehouse, they

were forwarded to other warehouses at Crockett, where no congestion existed.

No doubt the heavy grain crop of 1914 and the European war had much to do with protestants' failure to unload cars promptly. But the mere fact that vessels could not be secured to quickly move the grain through the warehouse at Port Costa is no justification for refusing to pay these demurrage charges.

The Interstate Commerce Commission, in I & S Docket 83-83A, 25 I.C.C. 314-324, says:

"The carriers are under no obligation to furnish storage in cars, but if they voluntarily undertake to provide such storage they are entitled to reasonable compensation therefor, which, as the Supreme Court has said, may include a profit beyond the cost of the service. There can be no justice in permitting one consignee to hold cars for storage or for his convenience or economy when the business of shippers is suffering because they cannot get those cars for loading, and the carriers are deprived of the earnings upon such loading. If additional charges for the purpose of releasing tracks are proper and reasonable, why are they not equally proper and reasonable when for the purpose of releasing cars?"

Carriers are not required to provide storage in cars and when, by force of circumstances, equipment is used for such purpose the demurrage charges as prescribed in our General Order No.2, effective May 1,1911, should be enforced.

Shippers and carriers should use every effort to promptly release cars, in order that there may be free use of the equipment and this is especially urged during rush seasons and at a time of shortage, such as exists at present.

From the record, I am unable to find that the congestion at Port Costa was due to any cause other than protestants' unusually large tonnage and their inability to secure vessels for trans-shipment.

Furthermore, it does not appear that the detention of cars was unavoidable, for protestants could have stopped the shipping of grain after having been notified that there was no space at Grangers' ^{warehouse} or the consignments could have been diverted to other warehouses at Crockett.

where storage was available.

Upon consideration of all the evidence, I am of the opinion and find that the charges in question are not shown to have been improperly assessed and they should be paid.

I recommend the following form of order:

O R D E R

The Southern Pacific Company having made application to the Commission for a ruling with reference to Rule 3 of Pacific Car Demurrage Tariff No.2-D, C.R.C.No.6, in connection with unpaid demurrage charges assessed at Port Coast during the months June to December, both inclusive, in the year 1914, and a public hearing having been held and being fully apprised in the premises and basing this order on the findings of fact set out in the opinion,

IT IS HEREBY ORDERED that the Southern Pacific Company enforce paragraph (A) of Rule 3 of Tariff No.2-D, C.R.C.No.6, and collect demurrage charges amounting to \$1407.00, as set forth in the application, viz:

<u>Consignee</u>	<u>Demurrage now Assessed</u>
Frank L.DeLong, also known as F.L.DeLong	\$51.00
E.Clemens Horst Company	141.00
Kelley & Henry Co.	81.00
W.D.Sheldon & Co.	111.00
Girvin & Eyre	117.00
Strauss & Co.	204.00
Volmer & Perry	54.00
M. Blum & Co.	39.00
Somers & Co.	609.00
Total -	<u>\$1407.00</u>

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.

Dated at San Francisco, California, this 2nd day of December,
1916.

H. B. Howard
W. E. Gordon

Frank R. W. W. W.

Commissioners.