AEF

ORIGINAL

Decision No._____

Decision No. 4094

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

---oOo---

CALIFORNIA CANNERIES COMPANY,	)	
	)	
Complainant,	)	
	)	
vs.	)	Case No. 876.
	)	
SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA & SANTA FE RAILWAY (C/L), WESTERN PACIFIC RAILWAY COMPANY,	)	
	)	
Defendants.	)	

Sanborn & Roehl, for California Canneries Co.
C. W. Durbrow, for Southern Pacific Co.
G. H. Baker, for Atchison, Topeka & Santa Fe Ry.Co.
Allan P. Matthew, for Western Pacific Railway
and receivers therefor.

DEVLIN, Commissioner.

O P I N I O N.

The complainant in this proceeding is a corporation organized and existing under and by virtue of the laws of the State of California, and is engaged in the business of canning and packing fruits and vegetables. Its place of business and factory are located in the City and County of San Francisco on an industry or private side track connected with the tracks of and served by the Atchison, Topeka & Santa Fe Railway Company, (Coast Lines).

The complaint attacks as unjust, unreasonable and discriminatory the tariff provisions of the defendants, Southern Pacific Company and Western Pacific Railway Company, hereinafter referred to as Southern Pacific and Western Pacific, respectively, whereby defendants refuse to absorb the charge of $2.50 per car

62

assessed by the Atchison, Topeka & Santa Fe Railway Company to cover switching service performed between the transfer track, on the one hand, and the complainant's factory, on the other, on shipments received from or destined to non-competitive points, thus subjecting complainant to undue prejudice and disadvantage in violation of the provisions of the Constitution of the State of California and of the Public Utilities Act.

In explanation of its charge of discrimination complainant refers to the fact that the plant of its principal competitor, the California Fruit Canners Association, is located on an industry track of the State Belt Railroad and that under tariff provisions the Southern Pacific, Western Pacific and Atchison, Topeka & Santa Fe absorb the switching charge of $2.50 per car assessed by the State Belt Railroad regardless of point of origin or destination.

Testimony of witness for complainant also developed the fact that there is maintained on Illinois Street, in a so-called "neutral zone", within a few blocks of complainant's factory, an industrial track owned jointly by the Southern Pacific and Atchison, Topeka & Santa Fe and that industries located on these joint tracks are not required to pay switching charges when the main line haul is performed by either of the two carriers. Complainant alleges further that this is likewise a discrimination for the free service given on the Illinois Street tracks is no different and no more expensive than the switching service rendered to complainant's factory located in the same territory.

Following extract from Southern Pacific Co. tariff 230-G, CRC No. 1260, Item 20-B, effective April 1, 1915, covers the absorption of State Belt Railroad's charges:

Item 20-B- Absorption Switching at San Francisco, California.

"This Company when it receives the line haul on carload traffic will absorb of the charge exacted by the State Belt Railway for switching to or from industry tracks or team tracks served by the State Belt Railway the following:

(a) $2.50 per car switching when delivered to or received from State Belt Railway through Ferry Slip, and destined to or moving from industry tracks or team tracks east of Van Ness Ave. served by the State Belt Railway.

(b) $2.50 per car switching charge for movement between interchange tracks at 2nd and King Streets and industry tracks or team tracks south of Market St. served by the State Belt Ry."

Corresponding item in defendant Western Pacific tariff is Item 70-C of CRC 106.

Prior to April 1, 1915, Item 20-A of Southern Pacific's CRC 1260, covering absorption of State Belt Railroad's charges read as follows:

Item 20-A- Absorption Switching at San Francisco, California.

"Southern Pacific Company will absorb the charge made by California State Board of Harbor Commissioners of $2.50 per car for switching carload freight between Ferry Slip or transfer tracks with the State Belt Ry. on the one hand, and team tracks of, or wharves served by the State Belt Ry. on the other hand, at San Francisco, when originating at or destined to points on or by the line of the Southern Pacific Company beyond San Francisco, California."

Corresponding item in Western Pacific tariff is Item 70, of CRC No. 106.

Item 9-3 of Southern Pacific tariff CRC 1260 covers absorption of connecting carrier's switching charges on competitive traffic, effective April 1, 1915, and reads as follows:

Item 9-3- Absorption of Connecting Carrier Switching Charges.

"On carload traffic *competitive with the connecting carrier performing the switching service on which the Southern Pacific Company receives a line haul, destined to or originating

at industry tracks or wharves not reached by this Company's rails, located within the switching limits at the stations of the carriers as shown below, this Company will absorb, subject to the conditions of Item 5-B, the amount of connecting carriers published charge for switching to or from the interchange track with this Company."

Item 5-B:

"Southern Pacific Company will in no case absorb switching charge (or any portion thereof), of connecting line when such absorption results in less net revenue to this Company than $10.00 per car."

Corresponding item in Western Pacific tariff is 60-A of CRC 106.

NOTE:- *Definition of competitive traffic as shown in tariffs of the defendants, "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."

The three items set forth above were not made effective by tariff publication on intrastate traffic until April 1, 1915, but inasmuch as the United States Supreme Court sustained the decision of the Interstate Commerce Commission in the so-called Pacific Coast Switching cases (Associated Jobbers of Los Angeles vs. A. T. & S. F. Ry. Co., 18 ICC p. 319, and Pacific Coast Jobbers and Manufacturers Assn. vs. Southern Pacific Co., 18 ICC p. 333) the carriers, on August 12, 1914, discontinued the $2.50 switching charge against interstate traffic and thereafter, in order to place the California shippers on an equality with interstate shippers, made reparation refunds under Rule 102 of this Commission's Tariff Cir-

cular No. 2, on all intrastate shipments subject to the changes made in tariffs which moved subsequent to August 12, 1914.

Under the present tariff provisions, and by reason of the voluntary reparations made, the California Canneries Company claims to have been injured to the extent of $2.50 per car on all shipments received from or destined to so-called non-competitive points located on the lines of Southern Pacific and Western Pacific since August 12, 1914. This Commission is petitioned to issue an order directing defendants to cease and desist from their alleged discriminatory practices and require the said defendants in future to absorb the charge of $2.50 per car exacted by the Atchison, Topeka & Santa Fe Railway Company for switching carload traffic between complainant's factory and interchange tracks of Southern Pacific and Western Pacific, regardless of point of origin or destination, thereby placing complainant on an equal footing with the California Fruit Canners Association with factory located on the State Belt Railroad.

It is further urged that reparation be ordered paid to complainant in the sum of $2.50 per car on all non-competitive shipments moving since August 12, 1914, between complainant's factory and the connecting tracks of defendants.

At the hearing it developed that the joint industry tracks on Illinois Street, in the so-called "neutral zone" were originally constructed by the Atchison, Topeka & Santa Fe Railway under a franchise granted by the City and County of San Francisco and that the charter of the City and County of San Francisco provides that any franchise given to a railroad company to construct and operate tracks upon public streets shall carry with it an express obligation that any other carrier shall have the equal and joint use of such tracks upon paying its proportionate share of the cost of construction and operation.

The franchise in this instance was granted to the Atchison, Topeka & Santa Fe Railway subject to those conditions and the Southern Pacific demanded and secured its right to the joint use of the tracks under the charter provisions. As a consequence, industries located in this neutral zone enjoy free switching service rendered by both the Atchison, Topeka & Santa Fe Railway and the Southern Pacific on all traffic regardless of point of origin or destination, and therefore they are on an equal footing with industries located on the State Belt Railroad. Such industries, therefore, have a decided advantage over an industry located, as is the complainant in this case, upon a track served only by the Atchison, Topeka & Santa Fe Railway or an industry served only by the Southern Pacific or Western Pacific, not by reason of any discriminatory rate situation, but solely because of the advantage of location.

The Belt Railroad is owned by the State of California and is operated by the Board of State Harbor Commissioners. Its tracks extend around the water front in the City of San Francisco. Its freight tariffs are on file with this Commission and among other items provide for a charge of $2.50 per car for switching between any two points on the same division. The locomotives of the Belt Railroad perform all services, receiving the cars either from the connecting tracks of main line carriers or from the boats or barges of the carriers. The road is operated as a common carrier and it permits the use of its facilities at a certain charge to all traffic which offers. It has, in other words, dedicated all its facilities to the use of any carrier that may desire to employ them. In this respect, there is an essential difference between the Belt Line and the Atchison, Topeka & Santa Fe Railway.

Prior to April 1, 1915, the industries located on the Belt Railroad paid a switching charge of $2.50 per car in addition to the main line freight charges. On April 1, 1915, as per the tariff amendments referred to, the carriers commenced the absorption of this switching charge on all traffic, whether competitive or non-competitive.

Counsel for complainant urged that the issues framed by the pleadings included the issue of reasonableness of rates; this contention was challenged by defendants. Assuming, however, that an issue of reasonableness per se of the rates is presented in this case, it seems that the case of the Interstate Commerce Commission vs. Stickney, 215 U.S. 112, commonly referred to as the Stickney case, spoke decisively on that point when it held that the terminal charge for delivering a carload of live stock to the Union Stock Yards in Chicago, a point beyond the carrier's line, if it is just and reasonable and separately stated in the tariff schedules as required by law, can not be condemned or the carrier required to reduce it on the ground that it, taken with prior charges of transportation over the lines of the carrier or of connecting carriers, makes the total charge to the shipper unreasonable. In this case the reasonableness of the line haul rates of the defendants, separated from the switching charges, was not challenged, neither was the reasonableness of the switching charges, treated independently, attacked.

There was no attempt made on the part of complainant to establish the reasonableness of rates from any point of origin on the Southern Pacific or Western Pacific to points of delivery to the Atchison, Topeka & Santa Fe tracks, nor to compare the reasonableness of any such rates with the rates from point of origin on the Southern Pacific or Western Pacific tracks to point of delivery on the Belt Line tracks.

Under the rule declared in the Stickney case, it appears that under conditions herein found that the reasonableness of the terminal charge must stand or fall on its own merits.

With the issue of reasonableness per se of the rates eliminated, as I think it must be, the issues herein are reduced solely to discrimination.

We must go beyond mere character of service in our comparison for the purpose of determining whether or not discrimination exists, and we are compelled to inquire whether the relationship between the connecting carriers is similar in character of service.

As hereinbefore stated, all of the facilities of the Belt Railroad are dedicated to the use of any and all carriers that may desire them. The main, or I might say the sole function and activity of the Belt Railroad are that of rendering terminal service. It is in this regard in no sense a competitor of the defendants. On the other hand, the Atchison, Topeka & Santa Fe is in direct and active competition with the defendants for main line hauls. Do we, therefore, find under these facts such a similarity in conditions as would warrant the conclusion that there is a discrimination because there is an absence of parity of rates? We think the answer must be in the negative. If the services performed by the Belt Railroad, for which its charges are absorbed, were performed by a carrier competing with defendants and defendants refused to absorb the Atchison, Topeka & Santa Fe switching charges of complainant, in that case it would undoubtedly be discrimination against complainant. If the rails of the three defendants had actually been constructed to the industries located on the Belt Railroad, this complainant certainly could

not be heard to demand that defendants either extend their rails to its factory or absorb the connecting lines switching charges. The practical, if not the actual effect, of the absorption of Belt Railroad charges was to place the industries on that line on the rails of each of the defendant carriers.

The Atchison, Topeka & Santa Fe is a competitor of both the Southern Pacific and Western Pacific and has various terminal facilities in San Francisco; these terminals can not be used by its competitors without the payment of a reasonable compensation, neither can defendants be expected to absorb switching charges, although they may. [redacted]

To sustain the contention of complainant would in effect be denying to the carriers the right, under any circumstances, to assess a switching charge within prescribed switching limits when the tariff involved a main line haul either by the originating or delivering carrier. The carriers on their own initiative might create such a situation, but it could not be confined to any one city, and to avoid discrimination as between localities such practice would, of necessity, have to be extended to all communities alike. I do not believe that it can be seriously urged that this Commission could order carriers to throw open their terminal facilities to the free use of their competitors.

Most careful consideration has been given to the contentions of complainant, and the authorities cited by it, but I am of the opinion that, for the reasons hereinbefore stated, the complaint should be dismissed.

I submit the following form of order:

O R D E R.

Complaint and answer having been filed in the above entitled proceeding, and a public hearing having been held and the Commission being fully apprised in the premises,

IT IS HEREBY ORDERED that the complaint be and the same is hereby dismissed.

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 8th. day of February, 1917.

Marc Thelen

H. D. Loveland

Alex Gordon

Edwin O. Edgerton

Frank R. Devlin

Commissioners.