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Decision No. _____

ORIGINAL

Decision No. 4246

BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA.

Fred Meier,

Complainant,

v.

Case No. 959.

Southern Pacific Company
and Sacramento and Wood-
land Railroad Company,
John P. Coghlan, Receiver,

Defendants.

Sanborn and Roehl for complainant and
Globe Grain and Milling Company,
Intervener.
George D. Squires for Southern Pacific
Company.
T. W. Chester for John P. Coghlan, Re-
ceiver, Sacramento and Woodland
Railroad Company.

BY THE COMMISSION.

O P I N I O N

Complainants pray for the construction of
an interchange track at Woodland connecting the
tracks of defendants to relieve car shortage and
that carload shipments to and from industries on

Southern Pacific Company's tracks near Woodland may be conveniently handled from and to Northern Electric points.

Defendant Sacramento and Woodland Railroad Company is leased to Northern Electric Railroad Company and both properties are operated by J. P. Coghlan, Receiver. Both electric lines will be referred to herein as the Northern Electric.

The receiver expresses willingness to join in the construction of the interchange track if it can be constructed in accordance with plans submitted with his answer and if the proper permission can be procured to cross East Street in Woodland.

Defendant Southern Pacific Company objects to the establishment of the interchange track, urging that such action would throw its facilities open to the use of the Northern Electric and divert a great deal of the traffic which it now controls because of its having developed the territory through years of pioneering. The Northern Electric admits that it would benefit largely by such connection but urges that public necessity and convenience require it.

Globe Grain & Milling Company, intervener, alleges delay in furnishing cars for loading at its mill on the industry tracks of Southern Pacific Company at Woodland and represents that it plans to engage in the business of dealing in paddy rice and cleaning it at its Woodland mill, and in that business will desire to reach Northern Electric territory

not served by the Southern Pacific Company.

The pleadings present two questions: (1) car shortage and (2) the effect of the proposed interchange track upon traffic conditions.

Car Shortage

Intervener, during the months of July and September, 1916, suffered delays of from five to fourteen days in receiving cars for loading after its orders for cars were placed. It promptly loaded cars when received. Two or three other shippers were shown to have suffered similar delays. It was also shown that the Northern Electric always has many empty cars for return to owners after having been made empty on its system. It was urged that these empty cars could readily be furnished for loading at Woodland if there were an interchange track. It appears, however, from the rules of the American Railway Association, to which both defendants have subscribed, that these empty cars would have to be returned to their owners by the most direct route, and could not properly be used for loading except through a junction point in the general direction of the owning line.

Apparently no shipper who suffered delay in the furnishing of cars sought to take advantage of the provisions of Rule 13 of the Commission's General Order No. 41, providing reciprocal demurrage for shippers and carriers, and requiring carriers to place cars

within a limited time after receiving order, or to pay a demurrage of \$3. per day per car. We are of the opinion that said rule, if used by the shippers, will probably take care of the complaint as to lack of cars. We therefore pass to a consideration of traffic conditions at Woodland and vicinity.

Traffic Conditions

Southern Pacific Company operates a system of about 6165 miles of railroad within the state, beside its mileage in several other states. In a territory about thirty miles wide and seventy-five miles long extending northwardly from Sacramento, it has four lines. Most of the large towns in this territory served by it, including Chico, Oroville, Colusa, Yuba City, Marysville, Woodland and Sacramento are also served by the Northern Electric system consisting of 166 miles of main line track. The two systems are active competitors for the business of the heart of the Sacramento Valley. They now have interchange tracks at Chico, Marysville and Sacramento, the latter seventeen miles southeast from Woodland.

Of the 636 carloads of outbound shipments from industries on tracks of Southern Pacific Company at Woodland for the year ending June 30, 1916, 341 carloads were shipped to points reached by Northern Electric at the same rates, either directly or through its connections. The remaining 295 cars were shipped to

non-competitive points. Of inbound business to the same industries at Woodland, 139 carloads were from such competitive points at ^{the} same rates, and 235 carloads were from non-competitive points. Nearly half of the Southern Pacific's business to and from its Woodland industries is therefore with competitive points which would be thrown open directly to Northern Electric competition by the construction of an interchange track at Woodland.

The testimony does not show what business to and from these competitive and non-competitive points is handled by the Northern Electric system.

Intervener's present business at Woodland is buying, selling and shipping wheat and barley originating in Central California. Intervener could give no instance of teaming to or from Northern Electric tracks. It did not show that it lost any shipments for lack of track connections with the Northern Electric at Woodland.

No further showing was made as to present traffic nor as to present needs of the public.

As to the possible development of future traffic, it was shown that the Globe Grain & Milling Company is installing machinery in its mill at Woodland for the purpose of cleaning and polishing paddy rice, that it expects to engage in the business of buying and selling rice and doing custom cleaning and polishing and that it wishes to be in position to

reach Northern Electric territory if it desires. Its representatives testified that they expect to buy and sell where they can deal to the best advantage. A number of rice growers along the Northern Electric testified concerning their present and future acreage, and that in selling they would sell where they could get the best price, and that if they could reach Woodland via the Southern Pacific at the same rate they would not care for an interchange track. Some, however, felt that routing shipments to Woodland from Northern Electric points via Southern Pacific over the interchange track at Sacramento might cause some delay.

The rice producing territory described at the hearing consists of about 9,000 acres about ten miles west of Woodland which would be tributary to the Southern Pacific; about 5000 acres around Knights Landing which would be tributary to the Southern Pacific and to the Sacramento River boats, and about 6000 acres tributary to the Northern Electric at various points along its line, estimated at 12,000 tons gross. The rate from these Northern Electric points to Woodland is 25¢ higher than to Sacramento where there is also a rice mill. The difference in rate would apparently keep this business away from Woodland, even though the interchange track were constructed. The cost of draying between the Northern Electric line in Woodland and the mill is estimated at 40¢ to 50¢ per ton. The mill did not indicate any desire or intent

to absorb the 25¢ differential in rate or the drayage charge. Possible future shipments of commodities other than rice were not shown.

It was not shown that any shipper now suffers any loss or inconvenience through lack of an interchange track at Woodland, or is likely to do so in the future, but only that the mill and rice growers may possibly benefit by extending the mill's territory and increasing the market possibilities for the growers. It was not shown that the establishment of an interchange track at Woodland will serve present public convenience or necessity sufficiently to justify its establishment.

The Northern Electric's engineer estimates the cost of the interchange track as shown on its plan at \$4,860, and the Southern Pacific's engineer estimates the cost at \$8,765 but including more track and heavier construction, and the cost of a girder rail across East Street at \$255 additional if that be required by the authorities. No franchise or permit to cross East Street has been procured and it was not shown that it can be secured.

The testimony shows that the interchange track would cost a substantial sum of money and that its construction and operation would probably divert considerable traffic from the Southern Pacific lines and throw its terminal facilities open to the use of its competitor without a demonstrated corresponding ad-

vantage or convenience to the public.

The Law.

The principle of law which should be applied here is the same principle as that applied in a case before the Commission arising under Section 33 of the Public Utilities Act providing that through routes and joint rates may be established where the Commission finds "that the public convenience and necessity demand the establishment of a through route and joint rate". In its opinion in that case, the Commission speaking through Commissioner Eshleman gave consideration to the degree of public convenience and necessity to be subserved which would justify placing an added burden upon a carrier, and held that the burden "should bear a proper relation to the amount of added convenience to the public". Under the circumstances of that case the Commission authorized the through route and joint rate. The Commission found as to passenger business that the burden upon defendant of the joint sale of tickets and through checking of baggage was but little more in degree than that already borne by it and the rewards of the proposed arrangement were adequate. As to freight business, the Commission found that the added convenience to the public was considerable through the reduction in team haul, and that a high traffic official of defendant had admitted in a letter that the

arrangement would be of benefit to it. (Central California Traction Company v. The Atchison, Topeka and Santa Fe Railway Company, Vol. 1, Opinions and Orders of the Railroad Commission of California, p. 629).

Both parties in the present proceeding cite and rely upon the case of Washington ex rel v. Fairchild, 224 U.S. 510. In that case, the Railroad Commission of the State of Washington ordered three railroads to agree upon the places and terms for connecting their tracks at eight towns and declared that in the absence of an agreement the Commission would make a supplemental order fixing places and terms. The evidence indicated that a connection at one point alone would accommodate all transfers which might be offered and that the three railroads paralleled each other through a territory fifteen miles wide and fifty miles long, an uncompleted electric line lying between two steam railroads. In his statement of facts, Mr. Justice Lamar says:

"There was no proof as to the volume of business at any of these places, nor as to the amount of freight that would be routed over these track connections if they were constructed. Nor was there any testimony as to the probable revenue that would be derived from the use of the track connections, or of the saving in freight or otherwise that would result to shippers. The inspector of the commission testified that these connections would develop very little business."

In the course of his opinion, he says:

"In determining the reasonableness of such an order the court must consider all the facts, - the places and persons interested, the volume of business to be affected, the saving in time and expense to the shipper, as against the cost and loss to the carrier. On a consideration of such and similar facts the question of public necessity and the reasonableness of the order must be determined. This was done in Wisconsin, M. & P.R. Co. v. Jacobson, in which for the first time, it was decided that a state commission might compel two competing interstate roads to connect their tracks.

"A careful examination of this record fails to show what, if any, business would be routed over these connections, or what saving would come to the public if they were constructed. There is nothing by which to compare the advantage to the public with the expense to the defendant, and nothing to show that, within the meaning of the law, there is such public necessity as to justify an order taking property from the company."

Considering the facts presented and the law as above stated and illustrated, a sufficient showing was not made in this case to justify the order sought and the complaint must be dismissed.

O R D E R

A public hearing having been held in the above entitled case and the evidence being submitted and briefs filed by the parties and the Commission being fully advised in the premises and a sufficient showing of facts not having been made to justify the

relief sought.

IT IS HEREBY ORDERED that this complaint be,
and it is hereby, dismissed.

Dated at San Francisco, California, this 16th
day of April, 1917.

Max Theiler
H. H. Loveland
W. Gordon
Edwin O. Edgerton
Frank R. DeWitt

Commissioners