

ORIGINAL

DECISION NO. _____

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

PURITAS COFFEE & TEA COMPANY,
a corporation,

Complainant,

-vs-

CASE NO. 1071.

ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, a corporation;
LOS ANGELES TRUST & SAVINGS
BANK, a corporation;
GODFREY HOLTERHOFF and F. W.
BRAUN,

Defendants.

Ward Chapman and L. M. Chapman,
for Complainant.
E. W. Camp and M. W. Reed, for
Atchison, Topeka & Santa Fe
Railway Company, Defendant.
Oscar C. Mueller, for Los Angeles
Trust & Savings Bank, Godfrey
Holterhoff and F. W. Braun,
Defendants.

LOVELAND, Commissioner.

O P I N I O N

Puritas Coffee & Tea Company, complainant in this proceeding, is a wholesale dealer, importer and distributor of coffees, teas and spices with its principal place of business located at No. 811 Traction Avenue in the city of Los Angeles. The plant of complainant is located on Lots 23, 24, 25 and 26 of Mills & Wicks Extension of Second Street, as per map recorded in Book 13, page 87, Miscellaneous Records of Los Angeles County, one of said lots, lot 26, abutting upon and adjoining a certain spur

track controlled by the Atchison, Topeka and Santa Fe Railway Company. Complaint ~~xxxxxx~~ alleges that the spur track is located on land leased by the Atchison, Topeka and Santa Fe Railway Company from Los Angeles Trust Company and F. W. Braun, said land adjoining and abutting on property controlled by complainant and being said lot 26 as hereinabove stated, and that applications have been repeatedly made to the Atchison, Topeka and Santa Fe Railway Company for the delivery of cars upon said spur track, but that all such applications have been refused upon the ground that other defendants herein object to the delivery of cars and will be inconvenienced in the handling of their business served by the spur track. Complaint further alleges that by reason of the refusal of permission to unload cars from the spur track that an expense of approximately twenty dollars per car is necessary for the drayage from the freight delivery tracks of the Atchison, Topeka and Santa Fe Railway to complainant's place of business. Complainant asks a finding by this Commission that complainant is entitled to the use of said spur track for the purpose of receiving and unloading cars consigned to complainant at the point where its property abuts on said spur track upon payment of such proportion of the cost of the construction as the Commission may find to be reasonable and for an order directing the Atchison, Topeka and Santa Fe Railway Company to provide such service as may be needed by the complainant.

Defendants in this proceeding filed answers denying the material allegations of complainant.

A public hearing was held at Los Angeles on July 6, 1917, the case was submitted with the understanding that briefs would be filed by the attorneys for complainant and the defendants.

The Puritas Coffee & Tea Company is a corporation controlled through stock ownership by W. A. Glascock, its president. The plant is located on Lots 23, 24 and 25 of Mills and Wicks Extension of Second Street, Los Angeles, said lots being owned by W. A. Glascock and M. P. Glascock, his wife. Lot 26 of Mills and Wicks Extension of Second Street, Los Angeles, is owned by L. McClintock and was leased, with option to purchase, by McClintock under date of April 22, 1916, to W. A. Glascock. Lot 26 herein referred to adjoins a spur track operated by the Atchison, Topeka and Santa Fe Railway, such track extending from the freight yards near Third Street over a right of way leased from F. W. Braun and the Los Angeles Trust Company. The history of the right under which the Atchison, Topeka and Santa Fe Railway hold occupancy of the land upon which the spur is located, after it leaves their own property, is as follows:

On November 12, 1909, an agreement was executed between the Railway Company and F. W. Braun, covering the installation and maintenance of a spur track 443 ft. in length (a portion of same being on the station reservation of the Atchison, Topeka and Santa Fe Railway). Under this agreement Braun was to furnish, without cost to the Railway, right of way for the track over such portion of Braun's property as was required. Braun was not to assign contract without written consent of the Railway Company. The Railway Company agreed to maintain track during life of agreement. In the mutual agreement of the parties, appears the following clause under Article III, Paragraph 1:

".....and said Railway Company may use the same for other purposes than the delivery of freight to or the receipt of freight from the second party, provided that such use shall inconvenience the business of the second party as little as possible consistent therewith."

On January 28, 1916, the contract of F. W. Braun was assigned to the National Chemical Company of California, said assignment being consented to by the Atchison, Topeka and Santa Fe Railway Company.

On August 27, 1909, a lease was executed by the Los Angeles Trust Company to the Atchison, Topeka and Santa Fe Railway Company of a right of way for a spur track, said lease covering land located $8\frac{1}{2}$ feet from each side of the center line of the following described proposed spur track:

"Beginning at or near the southeast corner of said Lot 23 of the Thomas tract; thence westerly, on a 20 degree curve, concave to the south, a distance of 72.1 feet to a point in said Lot 22 distant 101.5 feet southerly at right angles from the southerly line of Third Street and easterly 8.2 feet at right angles from the westerly line of said Lot 22; thence westerly, parallel with and 101.5 feet southerly from said southerly line of Third Street, 208.2 feet, more or less, to point of ending in the westerly line of said Lot 17."

The property thus leased was contained in the following:

".....portions of Lots 17, 18, 19, 20, 21, 22 and 23 of Block "H" of the Thomas Tract in the City of Los Angeles, State of California, as per Map recorded in Book 3, Pages 60 and 61, Miscellaneous Records of said County; of Lot 15 of the Mills and Wicks' Extension of Second Street and adjoining sub-division, in said City, County and State, as per Map recorded in Book 13, Page 87 et seq., of said Miscellaneous Records, and of that portion of Lot A of said Mills and Wicks' Extension of Second Street and adjoining sub-division, lying west of the prolongation southerly of the easterly line of said Lot 23 of the Thomas Tract."

The Railway Company agreed not to sub-let the premises nor to assign the lease or any right of interest thereby acquired.

Also to use the demised premises for the purpose of constructing, maintaining and operating a spur track thereon and thereover and for no other purpose; also agreed,-

"The Railway Company shall not, without the written consent of the Trust Company, use or permit said premises to be used for yard purposes or for the storing of cars or engines or other property thereon, but solely as a spur track for the moving of cars thereover."

On November 8, 1909, a standard form of Spur or Industry Track contract was executed between the Railway Company and William Joyce, by which Joyce agreed to pay the usual industry proportion of the cost of a spur track over the right of way heretofore covered by lease from the Los Angeles Trust Company, estimated to be the amount of \$275.43. Joyce was not to assign the contract without the written permission of the Railway Company.

In the mutual agreements of the parties to this contract, the following appears in Article III, Section 1:

".....and said Railway Company may use the same for other purposes than the delivery of freight to or the receipt of freight from the second party, provided that such use shall inconvenience the business of the second party as little as possible consistent therewith".

On November 20, 1916, an agreement was entered into between the Atchison, Topeka and Santa Fe Railway Company, William Joyce and the Los Angeles Trust and Savings Bank, whereby Joyce assigned his contract to the Los Angeles Trust and Savings Bank and such assignment was consented to by the Atchison, Topeka and Santa Fe Railway Company. No change was made in the conditions of the contract by this assignment and the Los Angeles Trust and Savings Bank accepted all conditions and obligations imposed by the industry track agreement, without any reservation or modification.

The land originally leased to the Atchison, Topeka and Santa Fe by the Los Angeles Trust Company as above outlined, is the same that William Joyce applied for and built the spur track over, under the agreement between the Railway Company and Joyce as outlined above. Joyce, under the agreement, was required to furnish all right of way (excepting such as was then owned by

the Atchison, Topeka and Santa Fe.)

The original lease from the Los Angeles Trust Company to the Atchison, Topeka and Santa Fe Railway Company provided for the use of the property "solely as a spur track for the moving of cars thereover." No spur track was ever constructed under this lease; the spur track was installed under the agreement with William Joyce, and a condition of the agreement required that Joyce furnish all right of way not then owned by the Santa Fe.

At the hearing of this case the actual location of Lot 26 of Mills and Wicks' Extension to Second Street, Los Angeles, and its relation to the spur track right of way was the subject of dispute. It was stipulated by all parties that a survey should be made by a disinterested civil engineer and it was agreed that the Title Insurance and Trust Company would furnish a statement as to the record title and title boundaries and Mr. V. J. Rowan would actually survey the lot and plat the survey for the information of the Commission.

The record title as reported by the Title Insurance and Trust Company is as follows:

"In re the case of Puritas Coffee & Tea Co., vs Atchison, Topeka & Santa Fe Railway Co., et al., with respect to the boundaries of Lot 26 of Mills and Wicks Extension of Second St., and adjoining Subdivision in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 13 Pages 87 and 88, Miscellaneous Records of said County.

"From an examination of the record map of said tract, the map attached hereto being a copy of a part of said record map, we find the boundaries of said Lot as shown on said map to be as follows: the length of the North Westerly line thereof 113.98 feet, the length of the South Westerly line thereof 25 feet, the length of the South Easterly line thereof 120 feet, the length of the North Easterly line thereof 19.12 feet. The length of the North line of said Lot is not given on said map, said line scales about 9 feet and providing that the North Westerly and South Easterly lines of said Lot and the South Westerly

and North Easterly lines of said Lot are parallel, and that the angle between the South Westerly line and the South Easterly line thereof is 90° which is apparently the case; the distance of said North line by calculation is 8.41 feet.

"We find nothing of record indicating that the boundaries of said Lot are other than as shown on said record map."

The plat of the survey made by Mr. V. J. Rowan shows the boundaries of Lot 26, Mills and Wicks' Extension of Second Street, Los Angeles, to be as follows: The length of the northwesterly line 113.98 feet; the length of the southwesterly line 25 feet; the length of the southeasterly line 120 feet; the length of the northwesterly line 191.12 feet and the length of the northerly line 8.42 feet. The said northerly line, 8.42 feet in length, abuts on the property controlled by the defendant, Los Angeles Trust and Savings Bank, and the distance from the said northerly line of Lot 26 of Mills and Wicks' Extension of Second Street, Los Angeles, to the southerly line of the right of way leased to the Atchison, Topeka and Santa Fe Railway Company by the Los Angeles Trust Company under date August 27, 1909, is 1.58 feet at the easterly end and 1.63 feet at the westerly end.

It will be noted that from the plat of the survey made by Mr. V. J. Rowan, which survey was stipulated by counsel as indicating the correct boundaries of Lot 26 of the Mills and Wicks' Extension of Second Street, Los Angeles, and the location of the spur track right of way leased to the Atchison, Topeka and Santa Fe Railway by the Los Angeles Trust Company on August 27, 1909, that a small strip of land intervenes between the northerly line of said Lot 26 of the Mills and Wicks' Extension and the southerly line of the right of way upon which the spur track is located.

The other maps introduced in evidence in this proceeding show the boundary lines to be coincident, and it is possible that through some error in locating the spur that the narrow strip separating the boundary lines was left and this fact has not been known until the result of the Rowan survey was of record.

It is the contention of the defendants, Los Angeles Trust and Savings Bank, Godfrey Holterhoff and F. W. Braun, that the spur track owned, maintained and controlled by the Atchison, Topeka and Santa Fe Railway Company and located on land leased by the railway from F. W. Braun under date of November 12, 1909, and Los Angeles Trust Company under date August 27, 1909, is a private spur maintained and operated to serve only such industries as may now or hereafter be located on the property of said defendants. A careful inspection of the spur track agreements does not so indicate, as Article III, Paragraph 1, of the spur track agreement executed under date November 8, 1909, between the Atchison, Topeka and Santa Fe Railway Company and William Joyce contains the following language:

".....and said Railway Company may use the same for other purposes than the delivery of freight to or the receipt of freight from the second party, provided that such use shall inconvenience the business of the second party as little as possible consistent therewith."

The agreement entered into on November 12, 1909, between the Atchison, Topeka and Santa Fe Railway Company and F. W. Braun contains the same clause in Article III, Paragraph 1. The standard form of spur track agreement as executed by the Atchison, Topeka and Santa Fe Railway Company gives the railway an unquestioned right to use spur tracks for the receipt of freight from and the delivery of freight to any other party than the industry with whom the agreement is made, "provided that such use shall inconvenience the business of the second party as little as possible consistent

therewith". The right of the railway to use the spur track for the service of other patrons cannot be questioned unless on the basis of inconvenience to the business of the industry which was a party to the agreement.

I will now consider the matter of the alleged inconvenience to the existing industries served by this spur track. From the evidence in this proceeding it appears that the various industries receiving carload shipments on the spur track and for the yearly period ending April 30, 1917, are as follows: Dearborn Drug Company, 21 cars; Southern California Supply Company, 27 cars; National Chemical Company, 70 cars; Davis Roofing Company, 2 cars; Leonard and Peck, 29 cars; - a total of 149 cars and an average of 12-5/12 cars per month. Of the above cars the shipments received by Leonard and Peck, amounting to 29 carloads, were intended for the use of the contractors erecting the building now occupied by the Puritas Coffee & Tea Company and the cars received by the several industries claimed by the defendants to be entitled to the exclusive use of the spur track therefore averaged but 10 per month. During the year the Globe Mills also received grain and mill products over this spur track, same being unloaded into warehouse space leased in the building owned by F. W. Braun and located on the easterly end of the spur near the property line of the Atchison, Topeka and Santa Fe freight yard. The number of cars handled by the Globe Mills was not definitely shown at the hearing and although a statement has since been furnished by defendants' counsel showing 6209 tons of grain to have been handled by the Globe Mills at the Braun Warehouse from January, 1915, to October, 1916, inclusive, there is no segregation by which the actual tonnage moved over the spur track can be determined, the

Braun warehouse being served by another spur track on the east side of the building. I am of the opinion that if this track has cared for shipments of all the industries now located and in addition has cared for 29 carloads for a temporary receiver of freight during the period above referred to, the business of the complainant can be accommodated and without inconvenience to the other industries located on this spur track.

I recommend the following order:

O R D E R

A public hearing having been held in the above entitled proceeding, the matter having been duly submitted and the Commission being fully advised in the premises;

IT IS HEREBY FOUND AS A FACT that a connection with the spur track involved in this proceeding so as to serve complainant and the use of said spur track in receiving and delivering freight from and to complainant can be made without unreasonable interference with the rights of the parties incurring the primary expense of such spur track, and basing its order on this finding of fact,--

IT IS HEREBY ORDERED, That complainant be entitled to connect with the spur track involved in this proceeding and to use the same upon payment to the parties incurring the primary expense of such spur track of a reasonable proportion of the cost thereof, the amount of such proportion, unless agreed upon by the parties in interest, shall be determined by the Railroad Commission after notice to the interested parties and a hearing thereon.

IT IS FURTHER ORDERED, That the defendant, Atchison, Topeka and Santa Fe Railway Company furnish switching service for all carload lots of freight consigned to or shipped from the plant of Paritas Coffee & Tea Company over that certain spur track in the city of Los Angeles constructed on the right of way as acquired by lease from Los Angeles Trust Company under date August 27, 1909, and by spur track agreements with F. W. Braun under date November 12, 1909, and William Joyce under date November 8, 1909, such service to be furnished at such times and in such manner that will cause the least possible inconvenience to the handling of carload business consigned to or shipped by the Los Angeles Trust & Savings Bank, Godfrey Holterhoff, or F. W. Braun, their tenants, lessees or assigns.

The Commission reserves the right to make such other and further orders in this proceeding as to it may appear just and proper.

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 13th day of November, 1917.

Max Theles
H. H. Loveland
W. L. Gordon
Edwin O. Edgerton
Frank R. Decker
Commissioners.