

ORIGINAL

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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Decision No. 573

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GOLDEN GATE BRICK COMPANY,
Complainant,

- vs. -

Case No. 362.

WESTERN PACIFIC RAILWAY COMPANY,
Defendant.
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D. H. Walker, Jr., for Complainant.
Allan P. Mathew for Defendant.

ESHELEMAN, Commissioner.

O P I N I O N

Complainant applies for reparation on thirty-eight cars of sand moving between February 7, 1912, and November 25, 1912, between Marysville, California, and Richmond, California. At the time these shipments moved Western Pacific Railway Company had in effect in its Tariff No. 35-C, C.R.C. 64, Item 280, a specific charge of \$5.00 per car from sand pit to the transfer tracks of the Southern Pacific Company, which charge was assessed and collected on the thirty-eight cars involved. The carrier also had in effect in the tariff, Item 290, a rate of \$1.50 per car applying on competitive traffic only. The tariff referred to defines competitive traffic as follows:

"Competitive traffic is traffic moving from a point of origin to a point of destination, both of which are located on or reached by way of two or more rail, water or team carriers, or a combination of same."

It is urged that because Richmond, the point of destination, is reached by the Southern Pacific Company, a line which with the Western Pacific Company serves Marysville, and also the Atchison, Topeka and Santa Fe, that the point, Richmond, is reached by two

rail carriers, and so is a competitive point under the tariff and the rate of \$1.50 per car instead of \$5.00 should be assessed. The Western Pacific defends itself on the ground that no such construction of the tariff is reasonable, and calls attention to the fact that the reason for putting in the lower charge of \$1.50 per car on competitive traffic is that on such traffic this carrier receives not only the \$1.50, but a portion of the rate for the line haul over its competitor. For example, between the points involved the Western Pacific, if its provision on competitive traffic prevailed, would, on delivering each carload of sand to the Southern Pacific at Marysville for transportation to Richmond, have received from the Southern Pacific Company at least \$7.50, making an aggregate amount of \$9.00 on such traffic instead of \$5.00 which it receives for the switching service merely on non-competitive traffic. Both the Southern Pacific and the Western Pacific construe the tariff in such a way as to allow no division to the Western Pacific for traffic delivered by it to the Southern Pacific for transportation by the latter line to Richmond, and I believe such construction is reasonable. Thus, if the complainant is right in its contention, the Western Pacific when delivering a car of sand to the Southern Pacific for transportation to Richmond, where the Santa Fe competes with the Southern Pacific, would receive but \$1.50, while if it performed exactly the same service with reference to a car of sand destined say to Los Banos, which is a point solely upon the Southern Pacific and not touched by any other line, it would receive \$5.00 for such service. I do not believe that the fact that the Santa Fe competes with the Southern Pacific at Richmond makes traffic delivered to the Southern Pacific at Marysville by the Western Pacific destined to Richmond competitive traffic as far as the Western Pacific and Southern Pacific are concerned, unless the Western Pacific has a joint rate and a through route by way of the Western Pacific and Santa Fe to Richmond carrying the same rate as prevails over the

Southern Pacific on its single line haul between these two points, thereby making of the Santa Fe a connection of the Western Pacific and in effect a single competitive line for its traffic. The evidence shows that no such rate is in effect, and I am clearly of the opinion that under the facts of the case the complainant is not entitled to the relief asked.

I am not at all in sympathy with the practice of carriers in putting tortured construction upon a tariff provision so that the same may yield them more revenue, and I certainly am no more in sympathy with the same practice when indulged in by shippers with a view to securing less rates. Tariffs should be clear and unambiguous, and when there is an ambiguity by reason of which a shipper has suffered, the carrier being responsible for the ambiguity should certainly be required to sustain the loss, but where, as here, the shipper shows no loss whatsoever and the construction sought is contrary to the plain intent of the tariff, I think such shipper should have no standing before this Commission.

I recommend that the application be denied and submit the following order:

O R D E R .

GOLDEN GATE BRICK COMPANY having filed its complaint against the Western Pacific Railway Company praying for reparation on certain shipments of sand referred to in the opinion hereto, and a hearing having been held and being fully apprized in the premises,

IT IS HEREBY ORDERED that the application be and the same is hereby denied.

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

Dated at San Francisco, California, this 12th day of
April, 1913.

John W. Kitchman
H. L. Leland
W. L. Leland

