ORIGINAL

Decision No 8323

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Associated Jobbers of Los Angeles, Complainant. vs Atchison, Topeka & Santa Fe Ry. Co., et al., Defendants.	)	CASE NO. 620
San Francisco Chamber of Commerce, Complainant. vs Southern Pacific Company, et al., Defendants.	)	CASE NO. 636
San Francisco Chamber of Commerce, Complainant, vs Atchison, Topeka & Santa Fe Ry. Co., et al., Defendants.	)	CASE NO. 640
California Fruit Canners Association, Complainant, vs Southern Pacific Company, et al., Defendants.	)	CASE NO. 688
Clark Brothers Lumber Company, Complainant, vs San Pedro, Los Angeles & Salt Lake Railroad Company, Defendant.	)	CASE NO. 690
Bishop & Bahler, Com plainants, vs Southern Pacific Company, et al., Defendants.	)	CASE NO. 704
Pacific Brandy Company, Complainants, vs Southern Pacific Company, Defendant.	)	CASE NO. 717
Merchants & Manufacturers Traffic Association of Sacramento, Complainant. vs Southern Pacific Company, et al., Defendants.	)	CASE NO. 723
United States Steel Products Co., Complainant, vs Southern Pacific Company, et al., Defendants.	)	CASE NO. 729

Bartlett Springs Company. Complainant. vs Atchison,Topeka & Santa Fe Ry. Co., et al., Defendants.	CASE NO. 786.
Colusa Sandstone Company. Raymond Granite Co., Complainants. vs Southern Pacific Company. Defendant.	CASE NO. 837.
Los Angeles Pressed Brick Company. Complainant. vs. Southern Pacific Company, et al., Defendants.	CASE NO. 852.
Omen Oil Company. Complainant. vs Atchison,Topeka & Santa Fe Ry.Co. et al., Defendants.	CASE NO. 853.

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F.P.Gregson, for Associated Jobbers of Los Angeles, Complainant.
Seth Mann, for San Francisco Chamber of Commerce, Complainant.
C.W.Durbrow, for Southern Pacific Company and Northwestern Pacific Railroad Company, Defendants.
E.W.Camp, for Atchison,Topeka & Santa Fe Railway Co., Defendant.
Allan P.Matthew, for Western Pacific Railway Company, Defendant.
A.S.Halsted, for San Pedro,Los Angeles & Salt Lake Railroad,Defendant.
J.G.Melvin, for California Fruit Canners Association, Complainant.
Fred L.Gibson, for Clark Brothers, Complainants.
Haven & Athearn, for Bishop & Bahler, Complainants.
George J.Bradley, for Merchants & Manufacturers Traffic Association of Sacramento, Complainant.
Campbell,Weaver,Shelton & Levy, for United States Steel Products Company, Complainant.
Frank V.Bell, for Bartlett Springs Company and Omen Oil Company, Complainants.
Charles Clifford, for Colusa Sandstone Company, Raymond Granite Company and Los Angeles Pressed Brick Company, Complainants.
J.D.Reardon, for Union Oil Company, Intervener.
James E. Helpling, for C.J.Kubach Company,et al., Interveners.
S.E.Semple, for Stockton Chamber of Commerce.
F.M.Hill, for Fresno Traffic Association.
W.D.Wall, for San Jose Chamber of Commerce.

LOVELAND, COMMISSIONER:

O P I N I O N

These cases were consolidated by stipulation of the parties and will be disposed of in one report.

The complaints, in substance, allege that the practice of defendant carriers in collecting switching charge of $2.50 per car for placement on private sidings and on industry tracks within switching limits at different points in the State of California when the terminal service is performed by the carrier receiving the line haul is unlawful, unreasonable, unjust, discriminatory and in violation of the Public Utilities Act, particularly Sections 13 and 19 thereof. It is also alleged that defendants receiving the line haul should absorb the charge of $2.50 per car assessed by the State Belt Railroad, hereinafter referred to as the Belt Railroad, for moving cars to and from industry tracks located on the rails of that line at San Francisco. Reparation is asked for on all shipments moved within two years prior to the filing of the complaints.

The first of these petitions, that of the Associated Jobbers of Los Angeles, Case No. 620, was filed June 23, 1914, and embraces the claims of shippers located in and around the city of Los Angeles. The petition of the San Francisco Chamber of Commerce, Case No. 636, was filed July 7, 1914 against the Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company and Western Pacific Railway Company and is confined to claims of its members and others located at San Francisco. Case No. 640, filed July 11, 1914, includes the same defendants as Case No. 636 and also the Northwestern Pacific Railroad Company, Pacific Electric Railway Company and the San Pedro, Los Angeles & Salt Lake Railroad Company, and covers claims for reparation of members of the San Francisco Chamber of Commerce, also firms and organizations not members of that body whether located at San Francisco or elsewhere.

The other cases were filed on subsequent dates and the principle involved, except with reference to the Northwestern Pacific,

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is in each case identical.

The following petitions in intervention were received:

Names of Interveners	Case No.
Riverside Portland Cement Company	620
The Barber-Bradley Construction Company	620
Weaver Roof Company	620
D.D.Duncan & Company	620
California Hardwood Lumber Company	620
Bryant & Austin	620
C.J.Kubach Company	620
Fidelity Storage & Moving Company	620
Commercial Warehouse Corporation	620
Los Angeles Warehouse Company	620
Hipolite Screen & Sash Company	620
Union Oil Company of California	620
C. W. Bohnhoff	620
Pacific Portland Cement Company	636
California Building Material Company	636
Baker & Hamilton	636
Standard Oil Company, et al.	640
H. U. Jaudin & Company, et al.	640
City and County of San Francisco	640
Italian-Swiss Colony, et al.	640
C. A. Smith Lumber Company, et al.	640
C. Shilling & Company, et al.	640
J. E. Lennon Lime & Cement Company	640
Pope & Talbot	640

On June 29, 1914 this Commission, upon its own initiative, Case No. 630, instituted proceedings against the Southern Pacific Company, Atchison,Topeka & Santa Fe Railway Company, Western Pacific Railway Company and San Pedro,Los Angeles & Salt Lake Railroad Company calling into question the practice of assessing switching charges on carload freight to and from industry tracks or private sidings when incidental to a line haul of the carrier performing the switching service.

When this proceeding was instituted the Terminal Tariff of Southern Pacific Company, No. 230-G, C.R.C.No.1260, provided in

Item 207, on page 39, as follows:

Station	Between	And	Commodity	Rate per car
San Francisco,Cal	Depot at 4th and King Sts	Industry tracks and Private Sidings within Switching Limits, as defined in Item No.272 on page 46, including Industrial Tracks at 16th and Harrison Streets "Potrero Cut" and Industries on Joint Track at Illinois Street.	Freight, not otherwise specified-carloads- originating at or destined to points on or via the lines of the Southern Pacific Company beyond San Francisco, Cal.	$2.50

Similar items, shown in tariff, cover the same service at other stations.

The item was amended August 12, 1914, to read:

"Will not apply on interstate traffic".

It was cancelled in its entirety April 1, 1915, thus leaving no switching charges in effect to industry tracks, either interstate or intrastate, when incidental to a main-line haul. Concurrently, provisions were made in Item No.20-B, page 7 of the same Southern Pacific tariff for the absorption in connection with line haul traffic of the charges on loaded cars received or delivered on industry tracks or private sidings served by the Belt Railroad at San Francisco.

Tariffs of other defendants carried practically the same provisions as those of the Southern Pacific Company and were likewise amended April 1, 1915, with the exception of the tariff of the Northwestern Pacific Railroad Company.

The Commission's proceeding in Case No.630 was dismissed without a formal hearing after the Southern Pacific Company, The Atchison Topeka & Santa Fe Railway Company, Western Pacific Railway Company and San Pedro,Los Angeles & Salt Lake Railroad Company had

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informally agreed to file tariffs cancelling the switching charges at practically all stations.

Originally all freight was delivered by rail carriers to the sheds or team tracks, where they had provided facilities for completing the act of transportation by making deliveries to consignees.

With the increase of carload business incidental to the growth and development of jobbing and manufacturing interests came the necessity for spur or industry tracks. Such added facilities served a two-fold purpose; first, they enabled the jobbers and manufacturers to unload their freight at the store or warehouse door, thereby saving drayage expense and, second, they often relieved congestion at carriers' regular terminals.

Upon the theory that rates from points of origin to points of destination were reasonable, the second movement to a spur or industry track was considered an additional service performed primarily for the benefit of the receivers of freight and an additional charge was made therefor.

For a quarter of a century rail carriers serving Pacific Coast terminals charged and collected, in addition to the amount of their line haul, what was known as a switching charge on shipments destined to spur or industry tracks. On shipments destined to the freight sheds or team tracks only the regular line haul rate was imposed.

It may well be that at the beginning or inception of a switching charge thus originating, it was a proper charge, providing, of course, it was reasonable in amount and applied without discrimination. Just when such additional charge became unreasonable it is, of course, impossible to say definitely. Even if the claim that increased volume of traffic is a justification for lower rates be not

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conceded, it cannot be denied that such increase in density of traffic does affect the carriers' terminal facilities and, therefore, multiplies the importance of spur and industry tracks to carriers in relieving such congestion. In recognition of this, carriers have encouraged the construction of spur and industry tracks by sharing in the expense of such construction, not in my judgment alone, as they sometimes claim, because the installation of such additional tracks "ties business to their rails", but also because such tracks are in reality an addition to their terminal facilities.

So the charge for switching service originated and so also with the growth and development of the jobbing, manufacturing and transportation business there came a time when the reasonableness of making an additional charge for this service was questioned.

After extensive and prolonged negotiations between the carriers and the shippers, looking to an amicable elimination of the additional charge for switching to industry and private spur tracks had failed, the matter was brought before the Interstate Commerce Commission in the case of the Associated Jobbers of Los Angeles vs Atchison, Topeka & Santa Fe Railway Company, Volume 18, page 310, Interstate Commerce Commission Reports, heard by Commissioner Franklin K. Lane. The case was decided April 5, 1910, Mr. Lane holding that the additional charge for switching, when incidental to a line-haul movement, was "illegal and unjust". The carriers, parties to the case, appealed to the Interstate Commerce Court, which court on July 20, 1911 reversed the decision of the Interstate Commerce Commission. An appeal was then taken by complainant to the Supreme Court of the United States and on June 8, 1914 (234 U.S.294) that court handed down its decision reversing the Interstate Commerce Court and sustaining the decision of the Interstate Commerce Commission

as rendered by Mr. Lane. Pursuant to this decision, carriers cancelled the interstate switching charge at San Francisco and Los Angeles effective August 12,1914 and on April 1, 1915 voluntarily removed the switching charge at all other stations, making the effect of such changes as to interstate traffic retroactive to August 12,1914 through informal reparation proceedings.

I have quoted the history of the case of the Associated Jobbers of Los Angeles vs Atchison,Topeka & Santa Fe Railway Company thus fully to preface that which follows as an expression of my opinion in the cases at bar. In the case before Mr. Lane no reparation was asked. In the later cases of Boardman vs Southern Pacific Company, 37 I.C.C.81 and Hulme & Hart vs Atchison,Topeka & Santa Fe Railway Company, 46 I.C.C.665, where reparation of the switching charges was asked, the Interstate Commerce Commission found justification for saying that reparation should not be awarded.

Now, as to whether this Commission should award reparation in the cases under consideration. Section 71 of the Public Utilities Act of California says, in part:

> "When complaint has been made to the Commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the Commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, the Commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection; provided no discrimination will result from such reparation."

I take that to mean that the act is permissible and not mandatory. In other words, that this Commission may consider all of the circumstances of the case and while not interfering with the rights of shippers, if any such rights exist, to present their claims in the courts may, for reasons found in the circumstances of the case, decline to award reparation.

As has been said before, the making of a reasonable additional charge for an additional service may have been justified in the past; if it subsequently became unjust the particular time cannot be determined.

Complainants transacted their business with a full knowledge of the existing freight rates, which, without substantial changes, remained in effect for more than a quarter of a century and the reasonableness of the practice and the $2.50 charge on intrastate movements was not, so far as I know, called into question before any court or commission until the commencement of these cases.

It is common knowledge that for a generation business was done in the manner indicated, by the application of an additional charge for what was considered the additional service.

There is no affirmative testimony in the record that shippers who paid this switching charge added it to the cost of their merchandise, but there is testimony to the effect that they were prevented by the competition of others located in towns or cities where this additional charge was not made from adding it in all cases, witnesses for complainants admitting that jobbers and manufacturers regarded it, as they did freight charges, taxes, insurances, rent, etc., part of the expense of doing business. To the extent that the additional charge was so treated by jobbers, manufacturers and retailers, the ultimate consumer unquestionably paid it and it would be impossible to distribute reparation for such payments.

As heretofore stated, defendants filed tariffs, effective April 1,1915, cancelling the charge for deliveries of intrastate carload consignments to and from industry tracks and, with the exception of the Northwestern Pacific Railroad Company, arranged for the absorption of the Belt Railroad charge of $2.50 per car at San Francisco. They also, in order to place intrastate traffic on an equality with inter-

state traffic, refunded all charges collected subsequent to August 12, 1914, the date upon which the switching charge was cancelled on interstate traffic at San Francisco and Los Angeles, in compliance with the Supreme Court decision.

The Interstate Commerce Commission said, in re National Wool Growers Association vs Oregon Short Line Railroad Company, et al., 25 I.C.C. 675-677:

> "There is no exact standard by which the reasonableness of a rate can be measured. While there are many facts capable of precise determination which bear upon that question, the final answer is a matter of judgment. The traffic official who establishes the rate exercises his judgment in the first instance, and the Commission when it revises that rate substitutes its judgment for that of the traffic official. With varying conditions the reasonableness of a rate itself may vary, so that the rate which is reasonable today may be unreasonable tomorrow.
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> "Consider the rates involved in this proceeding, namely, those on wool from far western points of production to eastern destinations. These rates were established many years ago. When established all the incidents of transportation in that country were different from what they are now. The railroads themselves were much less substantial. Traffic was nothing like as dense. In the period elapsing between the establishment of these rates by the carriers and the decision of this case by the Commission almost every condition which bears upon the reasonableness of a transportation charge by rail has undergone a transformation. It may well be that the rates were entirely reasonable when established, although unreasonable when the opinion of the Commission was promulgated".

Again, in the Boardman & Company case, supra, at page 86:

> "When carriers have reduced rates of their own volition or in compliance with the Commission's orders it does not necessarily follow that reparation should be awarded on shipments which moved under the pre-existing rates. The Commission has frequently declined to award reparation when the rates reduced have been in effect for long periods and the reduction applied throughout a large territory and affected shippers at many points who were not parties to the proceedings".

I think the principles set forth in the cited decisions should govern in these cases and am of the opinion that complainants have not established a lawful right to reparation and that the cases should be dismissed.

The alleged unlawful, unjust and discriminatory practice of the Northwestern in requiring shippers taking delivery on industry tracks of the Belt Railroad to pay the charges of that carrier and the claims for reparation against the Northwestern remain for consideration.

The Belt Railroad is the property of the State of California and is operated by a Board of Harbor Commissioners. It performs all service at points located on its rails and also the team and house tracks of this defendant.

The Northwestern, in San Francisco, has only team tracks and terminal facilities located on property leased from the State of California in the district adjacent to Vallejo and Davis Streets, about 2000 feet from the car ferry docks. The tracks between these terminal lands and the docks are owned and operated by the Belt Railroad. No switching charges are assessed by the Northwestern against consignor or consignee on shipments to its team tracks, but the Northwestern does compensate the Belt Road for the service between docks and team and house tracks in its yards on the basis of $2.50 for each loaded or partially loaded car moved; in other words, the Belt Railroad receives this compensation either in the case of carload shipments handled on the Northwestern's public team tracks or on cars of miscellaneous less-than-carload freight passing

over station platform. A like service is rendered by the Belt Railroad to its industry tracks and a charge of $2.50 per car is paid by the shipper. No question as to the amount charged for the service is involved. The question is whether this defendant is, under the law, obliged to absorb the terminal charges to the industry tracks located on the Belt Railroad. The Belt Railroad is not a party to the Northwestern tariffs carrying the main-line rates and no provisions are made for any absorption.

Testimony of complainant's witnesses and the argument of its attorneys are to the effect that absorption by the Northwestern of the Belt Railroad charges to the Northwestern's team and house tracks and the non-absorption of similar charges to industry tracks on the Belt Railroad is discriminatory, unjust and unlawful. Team track delivery is a necessary service rendered by carriers in receiving and delivering carload freight and must be provided by the line carrier in some manner. In the instant case, the Northwestern having no access to terminal grounds in San Francisco over its own tracks is compelled to employ the service of the Belt Railroad to handle a traffic which under ordinary conditions it would render with its own equipment. We thus have two separate services to be considered; one consisting of the switching between the dock and industry tracks by the Belt Road of line-haul traffic originating at or destined to points on the Northwestern Pacific, the other being that by which the Northwestern, through its operating agency, the Belt Road, moves loaded cars containing both carload and less-than-carload freight between the same dock and its (the Northwestern Pacific) depot or team tracks. In the latter case there is no absorption in the accustomed sense of the word, but simply an item of operating expense. The means employed by the Northwestern in

reaching its terminal grounds and the separate expense of $2.50 per car incurred by it are not of importance to the shipping public, and the through rates in and of themselves have not been called into question.

The Northwestern does not to any considerable extent operate in territory competitive at San Francisco with the Southern Pacific, Atchison,Topeka & Santa Fe, and Western Pacific and has not found it necessary, as have these carriers, to absorb the switching charges of the Belt Road to industry tracks. It, however, holds itself out to make San Francisco deliveries and having accepted and employed the Belt Road to make the deliveries at the Northwestern team tracks, it has thereby made that carrier its delivering agent. The charge of the Belt Road for switching cars to the industry tracks on its own rails is exactly the same as for switching cars to the team, house or platform tracks located in the terminal yards of the Northwestern Pacific. The switching charge against carload traffic delivered to the team tracks is absorbed by the Northwestern Pacific; in other words, the line-haul rate covers this delivery, whereas a charge in addition to the line-haul rate is assessed and collected when like carload traffic is delivered to industry tracks located on the Belt Railroad within the same industrial zone. The cost to the Northwestern Pacific per car would be no greater in making deliveries to industry tracks than it now assumes in making the deliveries to the team tracks.

If this defendant could operate freight trains direct to the San Francisco terminal and to the same industry tracks now served by the Belt Railroad, it certainly could not be argued that a charge in addition to the line-haul rates for the deliveries on

industry tracks within the switching limits would be a just and reasonable charge.

The Northwestern Pacific has elected to make San Francisco its terminal and employs the Belt Railroad as its agent in moving the traffic in that city. It therefore appears that a discrimination exists between the shippers taking deliveries on the team tracks at line-haul rates and those taking deliveries on industry tracks at line-haul rates plus the switching charge of the Belt Railroad.

I am of the opinion that the discrimination should be removed and the Northwestern Pacific is hereby required to present to this Commission within sixty (60) days from the date of this order a tariff arranging for the absorption of the Belt Railroad's charges to the industry tracks within the switching zone.

The testimony does not justify the awarding of reparation and, therefore, reparation is denied.

I submit the following form of order:

O R D E R

The above entitled cases having come on regularly for hearing, and the Commission being duly apprised in the premises,

IT IS HEREBY ORDERED that no reparation will be awarded against any of the defendants and that the complaints against all of the defendants except the Northwestern Pacific Railroad Company are hereby dismissed.

IT IS HEREBY FURTHER ORDERED that the Northwestern Pacific Railroad Company within sixty (60) days from the date of this order remove the discrimination now existing at San Francisco against shippers receiving and forwarding Northwestern Pacific

line-haul freight by filing a tariff arranging for the absorption of the Belt Railroad switching charges to and from the industry tracks located on the rails of the Belt Railroad within the switching zone.

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 November, 1920.

Edwin O. Edgerton

W. D. Loveland

Grace P. Colvin

H. A. Brundige

Commissioners.