

Decision No. 9131

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.
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Judson Manufacturing Company,)
Complainant,)

vs.)

Southern Pacific Company.)
Defendant.)

CASE NO. 1551.

A. Larsson, for Complainant.
Frank B. Austin, for Defendant.

LOVELAND, COMMISSIONER:

O P I N I O N

Complainant, the Judson Manufacturing Company, is a corporation organized under the laws of the State of California, and is engaged in the production, manufacture and sale of steel products, with mills at Emeryville and its principal offices at San Francisco.

This proceeding, instituted March 17, 1921, alleges that the switching charges of the Southern Pacific Company for moving carload shipments of ingots and other steel articles between points within the plant located at Emeryville are unjust, unreasonable, discriminatory and prejudicial and, therefore, in violation of the Public Utilities Act. Reparation is asked upon the shipments moved between July and December 1917.

Charges were collected under the provisions of Item No. 67-C, page 8. Revised page 20 of Southern Pacific Terminal Tariff No. 230-G, C.R.C.No. 1260, which item carries rate of 25 cents per ton, minimum charge \$5.00 per car. Complainant alleges that the charges collected should not have been in excess of \$2.50 per car.

Subsequent to December 1917 complainant constructed additional tracks over its own property within the plant and is now performing the service with a plant locomotive; therefore, no order for the future is asked, so that the sole question presented in this proceeding is the amount of reparation, if any, to which complainant is entitled for the service performed.

Emeryville is a local station 1.1 miles east of Oakland (16th Street), within the Oakland switching limits. The shipments involved numbered 182 and were moved an approximate distance of 3200 feet between points both of which are located within the plant enclosure. About 1700 feet of the tracks used belong to the Southern Pacific Company, is just outside of the plant property, and about 100 feet of this track is main line.

Testimony of complainant's witnesses was to the effect that the equipment employed in this service is unloaded or partly unloaded at points within the yard, principally in the open hearth department, reloaded with ingots or scrap iron to be taken to the rolling mill department. No special cars; that is, no empty cars, were ever taken into the plant for the performance of this movement.

The bills covering the shipment in controversy were not paid until the months of January to March 1920, although the service was performed in the last half of the year 1917. The explanation for this delay in settlement is that, through some misunderstanding, the switching crews failed to render reports of the intrayard

service performed within the plant of the Judson Manufacturing Company and that it was not until after an inspection by the defendant's traveling auditors that the situation was disclosed. Upon presentation of the bills to this complainant controversy arose as to the correctness of the charge and for these reasons settlement was not made until some three years after the service had been rendered.

By its Exhibit No. 3 complainant shows a comparison of intrayard terminal and intraplant switching charges at stations served by the Southern Pacific Company, where the charge varies from \$1.50 to \$2.50 per car. However, it is to be noted that all of the comparisons used, with the exception of the service performed at Algoma, Ore. and at Richmond, Cal., involved line-haul traffic and, therefore, are not comparable and cannot be used in arriving at a just rate for the intraplant service performed at Emeryville. At Algoma, Ore., in the year 1917, a charge of \$2.50 per car was made for switching within the plant yards. No explanation of why this rate was published has been given and the same was cancelled out of the tariff August 27, 1919.

The other item, not restricted to line-haul traffic, covers a charge of \$2.00 per car at Richmond; Item 182-1, page 36, Southern Pacific Terminal Tariff No. 230-G, C.R.C.No.1260. This item, however, is restricted to points located within the yard of the industrial or car owner's plant, a different service to that performed on behalf of the complainant at Emeryville.

Defendant presented but one exhibit, a map showing the location of the tracks within complainant's plant at Emeryville and the tracks outside the plant property owned by the Southern

Pacific Company. The contention of defendant is that the service rendered in the movement of the cars involved in this proceeding where Southern Pacific tracks outside of the plant are used cannot be treated as intraplant movement similar to the service performed at Richmond, where all the tracks, as well as the leads to and from the spurs, are owned by the industry. The switching service performed at the two points, however, is very similar and, apparently, is no greater at one station than at the other, although at Richmond the intraplant movement is ten times greater than at Emeryville.

Some testimony was given to the effect that a freight car has a daily earning capacity of \$7.27 when kept in service under load. In view of the large amount of switching service performed at rates voluntarily established lower than the average claimed, it would seem this element is of little importance in reaching a conclusion in the instant proceeding.

The common intrayard local switching charge of the Southern Pacific Company at all stations in Arizona, California, Nevada, Utah, New Mexico and Oregon, as shown by Southern Pacific Terminal Tariff 230-G, Item 67-C, was 25 cents per ton, with a minimum charge of \$5.00 per car. From industrial tracks and private sidings to transfer tracks of connecting lines the charge is 25 cents per ton, with a minimum of \$5.00 per car to the carrier originating the traffic and furnishing the equipment, and \$2.50 per car to the carrier moving the car from the transfer tracks to the industry tracks. Therefore, for a strictly intrayard station movement requiring the services of two carriers, the minimum charge is \$7.50 per car. Under this tariff provision the Southern Pacific

Company was switching cars, as shown by the testimony, originated by connecting carriers, from its transfer tracks within the Oakland switching limits, for \$2.50 per car, the service being no different than that performed in the movement of the 182 cars involved in this proceeding; special equipment was not furnished, the cars being brought into the Emeryville plant in connection with line-haul traffic.

It appears to me to be inconsistent to make the same charge (25 cents per ton, minimum \$5.00 per car) for an intraplant switching movement, using the line-haul cars, as is made for a similar intrayard service where special cars must be switched to the point of loading, and a much greater haul is involved from industry tracks to industry tracks or the transfer tracks of connecting carrier. The intraplant service is more comparable with the service performed for \$2.50 from transfer tracks to industry tracks.

Considering the shorter distance haul, but 3200 feet, between points located within the complainant's plant, and giving consideration to the equipment used, I am of the opinion that the charge of 25 cents per ton, with a minimum of \$5.00 per car, was excessive and unreasonable. The only distinction between the service performed at Emeryville, with a charge of 25 cents per ton, minimum \$5.00 per car, and the flat rate of \$2.00 per car assessed for a similar intraplant switching movement at Richmond, is the fact that for a distance of some 1700 feet the cars are moved over the rails of the Southern Pacific Company. It is claimed, however, by the complainant, and not positively contradicted by the defendant,

that this switching track, 1700 feet in length, was built primarily by the Southern Pacific Company for use of this complainant.

I am of the opinion that a just and reasonable rate for the service performed involved in this proceeding would be \$3.00 per car, and in reaching this conclusion I have given consideration to the fact that the tracks used belong in part to the Southern Pacific Company and, therefore, that company is entitled to a greater charge than is assessed by it for performing a similar service within the plants located at Richmond.

No rate for the future will be established, as the testimony shows that the switching is now being done by this complainant with its own power.

The exact amount of reparation due cannot be determined on this record and complainant should prepare a statement covering the shipments, which statement should be submitted to the defendant. If an agreement cannot be reached as to the exact amount of reparation due the matter should then be referred to this Commission for further consideration.

I submit the following order:

O R D E R

Complaint and answer having been filed in the above entitled proceeding, a public hearing having been held, the Commission being fully apprised in the premises, and basing its order on the findings of fact which appear in the foregoing opinion;

IT IS HEREBY ORDERED that the Southern Pacific Company be, and the same is hereby authorized and directed to pay unto complainant, Judson Manufacturing Company, within ninety (90) days from the date of this order, a sum equal to the difference between the charges paid and those that would have accrued at the rate of \$3.00 per car, found to be reasonable, with interest thereon at the rate of 7 per cent per annum from date of collection, as reparation on account of unreasonable charges assessed on carloads of ingots and scrap iron between points within complainant's plant, during the period July to December, inclusive, 1917.

IT IS HEREBY FURTHER ORDERED that if an agreement cannot be reached as to the exact amount of reparation due, complete data be submitted to this Commission, when a supplementary order fixing amount of reparation will be entered.

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 21st day of June, 1921.

[Signature]
[Signature]
[Signature]
Commissioners.