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Decision No. 9144

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

NICHOLLS-LOOMIS COMPANY

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, ET AL.,

Defendants.

Case No. 1552.

ORIGINAL

F. F. Miller, for Complainant.
F. B. Austin and H. C. Hallmark, for Southern Pacific Company.
Frank Karr, for Pacific Electric Railway Company.
E. W. Camp and G. H. Baker, for The Atchison, Topeka & Santa Fe Railway Company.
E. E. Bennett, for Los Angeles & Salt Lake Railroad.

LOVELAND, Commissioner.

O P I N I O N

This is a proceeding in which Nicholls-Loomis Company, a corporation incorporated under the laws of the State of California, engaged in the wholesale hay, grain, flour and feed business, located at Los Angeles, California, avers that Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company, Los Angeles & Salt Lake Railroad and Pacific Electric Railway Company, the defendants, maintain transit privilege on mixed feeds containing twenty per cent. or less of non-transit ingredients, and that such rule of said defendants is discriminatory, for the reason that it prohibits the transit privilege on mixed feeds containing in excess of twenty per cent. non-transit ingredients.

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A public hearing was held in Los Angeles, May 25, 1921, briefs have been filed, and the matter is now ready for opinion and order.

Prior to February 20, 1921, mixed feeds were not accorded by the defendant carriers any transit privilege. On February 20, 1921, the defendant carriers established a rule permitting transit privilege on mixed feeds containing not in excess of twenty per cent. non-transit ingredients.

The complainant in this proceeding contends that it is not able to take advantage of the transit privilege on its mixed feeds but that other mills are able to take advantage of the transit privilege owing to the fact that other mills manufacture some of the ingredients which the complainant does not, and complainant contended that it was discriminatory to the extent that they did not enjoy transit privilege while their competitors did.

The complainant manufactures large quantities of mixed feeds for poultry, consisting principally of mashes and soft feeds, the principal ingredients of which are bran and shorts. Of twenty-two different formulas for such feeds, fourteen contain over twenty per cent. of bran and shorts or other non-transit ingredients, and only eight of these different kinds of mixed feeds contain under twenty per cent. non-transit ingredients. Some of the mills competing with the complainant manufacture their own bran and shorts from wheat and other grains milled at the shipping point and therefore the by-product bran and shorts in such case are accorded transit privilege, and these competitors of the complainant are able to ship at a less rate on the outbound mixed feeds to the extent that the milling and transit rate was less than the local rate from shipping point.

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The evidence showed that the complainant purchased bran and shorts at eastern points and in many instances probably the bran and shorts so purchased, moving from eastern shipping point to complainant's mill, were accorded a milled in transit privilege which the same commodity would not be entitled to in reshipment from complainant's mill in mixed feeds outbound. Therefore the mixed feeds of the complainant containing the same commodity, bran and shorts, would not be entitled to the milled in transit privilege on account of said bran and shorts not having been milled at the shipping point. This condition is purely a commercial one and in no way discriminatory, for the reason that if the complainant did manufacture its bran and shorts it would enjoy the same transit privilege as its competitors who do manufacture these products.

The complainant cited the case of Atlas Cereal Company vs.Chicago, Burlington and Quincy Railroad Company, et al., 59 I. C. C. 702 . In that case the carrier denied transit privileges at Kansas City, Missouri, on mixed feeds containing more than twenty per cent. of molasses, while at the same time the same carrier granted transit privileges on the same commodity at St. Joseph, Missouri. The case is not parallel and is therefore not comparable.

In Southern Pacific Company's Terminal Tariff No. 230-H, C. R. C. No. 2477, effective February 20, 1921, on original page 34-a, we find the rule granting transit privileges to mixed feeds or blended products as follows: "Note

3.-- Transit privileges on Mixed Feed or Blended Products manufactured from two or more of the articles named in Paragraph "e", Section No. 1, page 34, or from such articles combined with not to exceed 20% of other articles, are subject to the following conditions:

(a) Shipper must furnish signed certificate showing the exact ingredients entering into the Mixed Feed or Blended Products and their percentage proportions to the whole, and surrender representative freight bills in proportions specified. Will not apply where the portion in the Mixed Feed or Blended Products made from articles other than those as listed in Paragraph "e", Section No. 1, page 34, exceeds 20% of the whole. In such cases flat rate from transit station will apply on the whole carload.

(b) Difference between rate paid origin to transit point and through rate applicable to the Mixed Feed or Blended Products will apply on the actual weight of the portion of outbound shipment entitled to transit privileges and for which representative freight bills for inbound tonnage (in proportions specified) are surrendered. The carload rate from transit point on the Mixed Feed or Blended Products will apply on the portion made from articles other than those listed in Paragraph "e", Section No. 1, page 34, providing it does not exceed 20%; also applies on the portion made from articles named in Paragraph "e", Section No. 1, page 34, for which representative freight bills are not surrendered.

In the absence of specific commodity rates origin to destination, on the Mixed Feed or Blended Products, each transit commodity in the Mixed Feed or Blended Products (per surrendered certificate of shipper and freight bill) will be billed from transit point to destination at the difference between the rate paid origin to transit point and the through rate applicable on such transit commodity; the non-transit portion, if any, to take carload rate applying on

Mixed Feed or Blended Products, transit point to destination." Similar privileges are published by the other defendants.

Inasmuch as transit privileges prescribed by the carriers' tariffs apply alike to all shippers under like conditions, and the only reason why complainant does not enjoy the same transit privilege on its mixed feeds shipped out is because the ingredients of their mixed feeds become non-transit ingredients for the reason that they are not milled at shipping point and have probably once been accorded transit privileges.

I believe that no discrimination has been shown and therefore recommend that the case be dismissed.

IT IS HEREBY ORDERED that the complaint in this case be and the same is hereby dismissed.

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 24th day of June, 1921.

H. G. Brundige
H. D. Loveland

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W. P. Benedict
Commissioners.