

Decision No. 26380.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

H. MOFFAT COMPANY, UNION SHEEP COMPANY,
HENRY LEVY COMPANY, QUINTO RANCH COMPANY,
J. G. JOHNSON, INC.,
GRAYSON-OWEN PACKING COMPANY,
GOLDEN WEST MEAT AND PACKING COMPANY,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY,
THE WESTERN PACIFIC RAILROAD COMPANY,
THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

Defendants.

ORIGINAL

Case No. 3146.

E. W. Hollingsworth and Bishop & Bahler, for
complainants.

G. E. Duffy and E. C. Pierre, for The Atchison,
Topeka and Santa Fe Railway Company, defendant.

J. E. Lyons and H. H. McElroy, for Southern Pacific
Company, defendant.

H. H. McElroy and G. E. Duffy, for The Western
Pacific Railroad Company, defendant.

WEITSELL, Commissioner:

O P I N I O N

In this proceeding it is alleged (a) that the construction placed by defendants upon Item 90 of Pacific Freight Tariff Bureau Tariff 198-C, C.R.C. 487, of F. W. Gomph, Agent, and previous issues thereof, is contrary to the applicable tariffs, and (b) that if the item is held to have been applied correctly, then the resulting charges are unjust, unreasonable, discriminatory and

unauthorized. Complainants seek an order directing defendants to cease and desist from assessing or collecting rates in excess of those lawfully applicable, or if it be found that the tariff has not been misapplied, an order prescribing just, reasonable and non-discriminatory rates for the future and awarding reparation.

A public hearing was had at San Francisco. Rates are stated in amounts per 36-foot car.

The issue raised by complainants is primarily one of tariff interpretation. Complainants shipped a car of cattle from Gazelle to Dorris for feeding in transit.¹ The cattle were subsequently forwarded to San Francisco. Gazelle and Dorris are on the Southern Pacific Company, the former point being 17 miles north of Black Butte on the Shasta route and the latter point being 62 miles north of Black Butte on the Cascade route. The through rate on fat cattle from Gazelle to San Francisco is \$100.00; from Dorris to San Francisco it is \$109.00. The out-of-line distance from Black Butte, the point of divergence, to Dorris and return is 124 miles, for which distance there is provided in Item 180 of the tariff an out-of-line charge of \$25.00. Complainants contend that the charge applicable to the through movement (exclusive of the feeding-in-transit charge of \$5.85) is \$125.00, obtained by adding to the rate of \$100.00 from origin to destination the out-of-line charge of \$25.00. Defendants on the other hand contend that the correct charge is \$134.00, obtained by adding to the rate of \$109.00 from feeding point to destination the out-of-line charge of \$25.00.

The determination of the applicable charge depends upon

¹ Complainants made other shipments but this one will illustrate the issues raised.

the interpretation of Item 90 of the tariff.² Paragraph (b) of Item No. 90 provides two methods of computing the charges when a back haul or out-of-line service has been performed. The first is based upon the charge from origin to destination. The second is computed upon the rate from the feeding in transit point to destination. The higher of these two rates must be used. But the item also provides that, when using the rate from the origin to destination, there must be added thereto the out-of-line charges provided

² Item 90 reads:

"(a) When shipment is reforwarded from feeding or grazing point to final destination, charges will be assessed on basis of rate applicable to fat or beef (not feeder) cattle, sheep, goats, horses, mules or hogs, in effect on date of movement from point of origin to final destination via route over which shipment moved, provided no back haul and/or out-of-line haul service was performed (see Item No. 20).

(b) When shipment is reforwarded from feeding or grazing point to final destination and back and/or out-of-line haul service has been performed, charges will be assessed on basis of rate applicable to fat or beef (not feeder) cattle, sheep, goats, horses, mules or hogs from --

(1) Origin to destination
or

(2) First or second feeding-in-transit point to destination whichever is highest, in effect on date of movement from point of origin via route over which shipment moved (see Item No. 20). Charge for transit privileges, as provided in Item No. 50, and back and/or out-of-line hauls, as provided in Item Nos. 180 to 390, will be in addition to freight charges applicable from point of origin to final destination. In no case shall the aggregate charges assessed in accordance with the foregoing be less than charges based on the rate from point of origin to first or second (whichever is highest) feeding in transit point, applicable to fat or beef (not feeder) cattle, sheep, goats, horses, mules or hogs.

(c) The difference between the total freight charges paid at feeding or grazing point or points and the through freight charges from point of origin to final destination as provided in paragraph (a) or (b), will be collected or refunded, as the case may be, on arrival at final destination.

(d) In computing the difference between the total freight charges paid at feeding or grazing point or points and through freight charges applicable from point of origin to final destination in accordance with paragraph (a) or (b), charge for transit privileges, and back and/or out-of-line haul service will be excluded."

in Items Nos. 180 to 390 of the tariff. But Item 90 does not specifically provide, when using the feeding-in-transit point to destination rate, that the out-of-line charge must be added. Nevertheless defendants contend that Paragraph (b) of Item 90 should be construed as providing the so-called "two point" method of determining the applicable rate, i.e., either use the origin to destination rate or the feeding-in-transit point to destination rate, and whichever is higher then becomes the origin to destination rate, to which should be added the out-of-line or back haul charge. Complainants on the other hand construe the item as establishing the origin to destination rate plus the out-of-line or back haul charge, or the transit point to destination rate without the addition of the out-of-line or back haul charge, whichever is higher, as the applicable rate.

The most that can be said for defendants is that Item 90 is ambiguous. And being ambiguous it should be construed against the framer and in favor of the shipper provided the interpretation so placed upon the tariff does not result in an unreasonable construction. Golden Gate Brick Company vs. Western Pacific R.R., 2 C.R.C. 607. In the Matter of the Suspension of Rule 85-A, 30 C.R.C. 372. San Francisco Milling Co. vs. Sou.Pac.Co., 33 C.R.C. 178. Pacific Coast Shippers' Assn. vs. A.C.& Y.R.Co., 112 C.R.C. 527. The interpretation placed upon Item 90 by complainants is not unreasonable. Moreover, if defendants' interpretation is placed upon Item 90, numerous long and short haul departures would result thereby, for which defendants have no relief under Section 24(a) of the Public Utilities Act. Where two interpretations may be given a tariff the one which makes it lawful should be given preference. Great Northern Ry. Co. vs. Delmar Co., 383 U.S. 686.

The Commission should find that Item 90 was incorrectly

applied and that the overcharges should be refunded with interest at six per cent. per annum.

The following form of order is recommended:

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that defendants be and they are hereby ordered to cease and desist and thereafter to abstain from applying, assessing, demanding or collecting for the transportation of the shipments of livestock involved in this proceeding, charges in excess of those herein found applicable.

IT IS HEREBY FURTHER ORDERED that defendants be and they are hereby authorized and directed to refund to complainants with interest at six (6) per cent per annum, all charges collected for the transportation of the shipments of livestock involved in this proceeding in excess of those herein found applicable.

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 2^d day of October, 1933.

CC Sawyer

Tom Whalley

W. A. Carr

M. B. Harris

Commissioners.