Decision No. 26518.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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| ALBERS BROS. MILLING CO., a corporation, W. H. ALLEN, an individual, E. SALZ & SON, a corporation, SCHULER-O'CONNELL, a corporation, Complainants, vs. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a corporation, Defendant. | Case No. 2864. |
| ALBERS BROS. MILLING CO., a corporation, LEWIS-SIMAS-JONES CO., a corporation, Complainants, vs. WESTERN PACIFIC RAILROAD CO., a corporation, Defendant. | Case No. 2869. |

C. S. Connolly for complainants.

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

L. N. Bradshaw, for defendant Western Pacific Railroad Company.

BY THE COMMISSION:

OPINION ON FURTHER HEARING

These proceedings involve the lawfulness of a charge of $2.70 per car collected by defendants in addition to the applicable line haul charges for switching carloads of grain, grain products

and other articles between their respective interchange tracks with the Southern Pacific Company on the one hand and the plant of complainant Albers Bros. Milling Company at Oakland on the other. Allegations of unreasonableness and of undue preference and prejudice are disposed of by our Decision 23872 of July 3, 1931 (Case 2864) and Decision 24077 of September 28, 1931 (Case 2869).[1] Moreover a finding was made in Case 2864 "that the aggregate charges assessed on complainant's shipments * * * transported from or to noncompetitive points covered by this complaint and moving prior to July 31, 1930, which exceeded the aggregate charges contemporaneously in effect from or to more distant competitive points, resulted in charges in violation of Section 24(a) of the (Public Utilities) Act", and in Case 2869 "that the aggregate charges assessed on complainant's shipments * * * transported from Oakland to Carbona and from Thornton, Franklin and Trowbridge to Oakland which exceeded the aggregate charges contemporaneously in effect from or to the more distant competitive stations of Stockton, Sacramento or Marysville, resulted in charges in violation of Section 24(a) of the Act". Reparation was awarded. In all other respects the proceedings were dismissed.

Upon petition of complainant Albers Bros. Milling Co. (hereinafter referred to as complainant), alleging that there were still other violations of Section 24(a) of the Act, these proceedings were reopened "for further hearing for the purpose of determining whether or not charges were assessed and collected on complainants' shipments in violation of the long and short haul provisions of Section 24(a) of the Public Utilities Act".

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1 36 C.R.C. 467 and 647.

A further hearing was had before Examiner Geary at San Francisco.

There is no dispute as to the findings heretofore referred to with respect to violations of Section 24(a) of the Act. The question to be determined therefore is whether or not there are any other such violations involved in these proceedings.

In Decision 24077 (Case 2869) the Commission said:

> "Complainant also alleges that the long and short haul provisions were violated on shipments of grain and feed from Oakland to Summer Home, Sims Station and Hilmar (points on the Tidewater Southern Railway) and Angiola (a point on The Atchison, Topeka and Santa Fe Railway); and from Harp and Hatch (points on the Tidewater Southern Railway) to Oakland in that they exceeded the charges in effect on like traffic from or to industries located on the State Belt Railroad at San Francisco. The movement from and to the State Belt industries is not over the same line or route traversed in reaching complainants' industry nor is the shorter distance included within the longer. Thus there can be no violation of Section 24(a) of the act. (Globe Grain and Milling Company vs. A.T.& S.F.Ry.Co. et al., 36 C.R.C. 80.)

Complainant now concedes that there has been no violation of Section 24(a) of the Act because of movements to or from industries located on the State Belt Railroad at San Francisco. It agrees that Decision 24077 properly disposes of the issues in Case 2869, but contends that by applying the same reasoning to Case 2864 the conclusion that there were additional violations necessarily follows.

The facts of this case as now shown by the record are as follows: Car SP 35514, the movement of which it is stipulated is typical of that of all shipments involved, was line hauled by the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the Santa Fe), to its interchange with the Southern Pacific Company at a point near 20th and Wood Streets, Oakland. It was then moved from said interchange by the Southern Pacific Company over its tracks via Cedar Street to its yards in the vicinity

of Cedar and Atlantic Streets and thence westward to complainant's plant at the foot of West Seventh Street. Had this car been destined to a point on the Howard Terminal Railway it would have moved in like manner and over the identical tracks to the yards of the Southern Pacific Company in the vicinity of Cedar and Atlantic Streets. From there the movement would have been over the line of the Southern Pacific Company to its interchange with the Howard Terminal Railway and thence via that line to a point within its switching limits.

In other words, the movement first described involves a Santa Fe line haul followed by a Southern Pacific Company switching service within the Oakland switching limits, whereas the second involves a like Santa Fe line haul, followed by a Southern Pacific Company switching service within the Oakland switching limits and then by a movement over the Howard Terminal Railway. The length of the haul to complainant's plant is approximately the same as that to the Southern Pacific-Howard Terminal Railway interchange. The charges assessed and collected on complainant's shipments exceeded those applicable to shipments to or from a point on the Howard Terminal Railway by $2.70 per car.[2]

Whether or not for the purpose of applying Section 24(a) of the Public Utilities Act the movement to complainant's plant constitutes transportation for a shorter distance over the same line or route than that traversed in a movement to a point on the Howard Terminal Railway, the shorter distance being included within the longer, depends entirely upon whether or not the Southern Pacific Company's switching limits at Oakland are to be considered

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[2] Items 4360 and 4370 of A.T.& S.F.Ry.Co. Tariff 8117-N, C.R.C. 659, provide for the absorption by the A.T.& S.F.Ry. of the $2.70 per car switching charges of the Southern Pacific Company and $3.50 per car of the Howard Terminal Railway.

as a unit. If no departure from the provisions of Section 24(a) exists unless the physical movement is actually over the identical tracks, it is obvious that none exists here, for a car destined to a point on the Howard Terminal Railway would not move over the Southern Pacific Company tracks extending from that company's yard near Cedar and Atlantic Streets to complainant's plant.

In Re Revision of Tariff Items covering the Application of Joint Rates, etc., 28 C.R.C. 440, commonly known as the Junction Point Case, wherein defendants likewise argued that a shorter distance was not included within a longer distance unless the physical movement to the more distant point was actually over the same tracks traversed in a haul to the nearer point, the Commission said:

> "Were we to agree with this interpretation of Section 24(a) there would be created a peculiar situation, in that long and short haul departures would only occur when shipments were loaded or unloaded on the main line tracks of the carrier, a practice that is very rarely, if ever, followed. The term 'Sacramento' in the tariffs comprehends not only the depot, or that portion of the city served by the main line rails of respondent, but all terminal facilities, within the switching limits, owned or controlled by the carriers and used by them in the performance of their common carrier duties." [3]

Defendant attempts to distinguish the Junction Point and other cases wherein the unit rule has been applied, from the one here before us on the ground that in those proceedings the points involved were located in different cities, whereas here they are within the same switching district.

We see no grounds for such a distinction. The movement after delivery to the Southern Pacific Company, as has been pointed out, is through a portion of that carrier's switching limits to its interchange with the Howard Terminal Railway and thence via the

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[3] See also Lautz Marble Corpn. v. E.R.R.Co., 136 I.C.C. 183; Associated Oil Co. v. A.T.& S.F.Ry.Co., 172 I.C.C. 660; Globe Grain and Milling Co. vs. A.T.& S.F.Ry.Co., 173 I.C.C. 193.

line of the Howard Terminal Railway, and is no different, so far as the application of the unit rule is concerned, from a movement to the Santa Fe-Southern Pacific Company interchange thence to a point beyond the Southern Pacific Company switching limits via that line.

Complainant also alleges there is a violation of Section 24(a) of the Act because shipments received at complainant's plant are there transited and subsequently reforwarded to a point beyond the Southern Pacific Company switching limits at Oakland, other than to a point on the Howard Terminal Railway Company.

Defendant argues that transit privileges rest upon a fiction that the incoming and outgoing services create a continuous movement,[4] and that therefore the governing rate and distance in construing a possible violation of Section 24(a) of the Act are not the local rate and the distance to or from the transit point but the through rate and total distance from origin to final destination.

Section 10 of defendant's tariff circular 2297-B, Cal.R.C. 600, reads in part as follows:

> "In the authorized absorption of connecting line switching charges, the transit station will be considered as the final destination on carload shipments from points of origin to transit stations, and as point of origin on transited outbound carload shipments."

Clearly in view of this provision it is immaterial in so far as the application of Section 24(a) is concerned whether shipments are destined to complainant's plant for final delivery or are merely transited there.

Upon further consideration of the record and in the light of the facts developed upon further hearing, we are of the opinion and find that in addition to the instances set forth in Decisions

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[4] Central R.R.Co. vs. U.S., 257 U.S. 247.

23872 and 24077, the long and short haul provisions of Section 24(a) of the Act have been contravened by the collection by defendant The Atchison, Topeka and Santa Fe Railway Company of charges for the transportation to and from complainant's plant at Oakland of the shipments involved in Case 2864 which exceeded those contemporaneously in effect for like transportation to or from a point on the Howard Terminal Railway. We further find that certain of the complainants paid and bore charges on shipments here involved which were assessed and collected in violation of Section 24(a) of the Act, and have been damaged in the amount of the difference between the charges paid and those contemporaneously in effect for movements in the same direction on like traffic to or from a point on the Howard Terminal Railway.

The exact amount of reparation due is not of record. Complainants will submit to defendant for verification a statement of the shipments made and upon payment of the reparation defendant will notify the Commission of the amount thereof. Should it not be possible to reach an agreement as to the reparation award, the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

## O R D E R

Further hearing of these matters having been had,

IT IS HEREBY ORDERED that defendant The Atchison, Topeka and Santa Fe Railway Company be and it is hereby ordered and directed to cease and desist on or before thirty (30) days from the effective date of this order and thereafter to abstain from collecting charges on complainants' shipments here involved in excess of those contemporaneously in effect for the transportation of like shipments to or from points on the Howard Terminal Railway.

IT IS HEREBY FURTHER ORDERED that defendant The Atchison, Topeka and Santa Fe Railway Company be and it is hereby ordered and directed to refund with interest at six (6) per cent. per annum to complainants, Albers Bros. Milling Co., W. H. Allen, and Schuler-O'Connell, according as their interests may appear, all charges collected for the transportation of the shipments involved in Case 2864 on which the cause of action accrued within the two-year period immediately preceding the filing of the complaint, in excess of those contemporaneously in effect on like traffic from or to points on the Howard Terminal Railway.

IT IS HEREBY FURTHER ORDERED that in all other respects our Decisions 23872 of July 3, 1931, and 24077 of September 28, 1931, shall remain in full force and effect.

Dated at San Francisco, California, this 13th day of November, 1933.

Commissioners.