

Decision No. 26521.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CARNATION COMPANY OF CALIFORNIA,  
a corporation,  
ALBERS EROS. MILLING CO.,  
a corporation,  
Complainants,  
vs.

Case No. 3470.

ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, a corporation,  
SOUTHERN PACIFIC COMPANY,  
a corporation,  
Defendants.

ORIGINAL

CARNATION COMPANY OF CALIFORNIA,  
a corporation,  
Complainant,  
vs.

Case No. 3480.

SOUTHERN PACIFIC COMPANY,  
a corporation,  
WESTERN PACIFIC RAILROAD COMPANY,  
a corporation,  
Defendants.

CARNATION COMPANY OF CALIFORNIA,  
a corporation,  
Complainant,  
vs.

Case No. 3502.

ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, a corporation,  
SOUTHERN PACIFIC COMPANY,  
a corporation,  
Defendants.

C. S. Connolly, for complainants.

James E. Lyons, for defendants.

BY THE COMMISSION:

## O P I N I O N

These proceedings involve the lawfulness of the charges assessed and collected by defendants for the transportation of canned evaporated milk, in carloads, from Gustine to Wingfoot, Bakersfield, Oakland and San Francisco. In each of the proceedings it is alleged that defendants have collected a switching charge of \$2.70 per car (plus the so-called emergency charge where applicable) in addition to the line haul charges, in violation of Sections 13, 19 and 24(a) of the Public Utilities Act. In Case 3470 it is also alleged that the charges collected were and are inapplicable.

Reparation and rates for the future are sought. Except as otherwise noted rates are stated in cents per 100 pounds.

A public hearing was had before Examiner Geary at San Francisco. Although the proceedings were tried separately, it was stipulated that they might be covered by one brief and decision.

Gustine is 45 miles north of Fresno and is served exclusively by the Southern Pacific Company.

The shipments involved in Case 3470 were line hauled by the Southern Pacific Company from Gustine, a point exclusively on its line, to Los Angeles and were there delivered to the Santa Fe for switching to the Albers Bros. Milling Co. industry track at Wingfoot.<sup>1</sup> The shipments involved in Case 3480 were transported from Gustine to Oakland and San Francisco by the Southern Pacific Company and switched to industries at these points by the Western

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<sup>1</sup> Wingfoot is within the corporate limits of Los Angeles and is served by The Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the Santa Fe) and by the Pacific Electric Railway Company. It is also within the Santa Fe Los Angeles switching limits. Complainant's industry track is connected to a track owned jointly by the Pacific Electric Railway Company and the Santa Fe, and switched by these carriers during alternate periods.

Pacific Railroad Company. Those covered by Case 3502 were transported from Gastine to Bakersfield via the Southern Pacific Company and there delivered to the Santa Fe for switching to complainant's industry.

Case 3470

All of the cars involved in this case were consigned to the Carnation Company at Los Angeles.<sup>2</sup> The bills of lading in each instance carried a rate of 31½ cents and showed that the charges were prepaid. The following nine routings were used:

1. SP Santa Fe delivery
2. SP
3. So. Pac. Ry. Santa Fe Delivery for Albers Switch
4. SP Santa Fe Albers Track
5. SP c/o Albers Track
6. SP Santa Fe c/o Albers Track Los Angeles
7. SP c/o SP Santa Fe c/o Albers Track Los Angeles
8. SP c/o Santa Fe for Albers Switch
9. SP for Albers Track

At the time these shipments moved there was in effect on canned condensed milk a rate of 31½ cents applying for transportation from Gastine to Los Angeles via the Southern Pacific Company or from Gastine to Wingfoot via the Southern Pacific Company and the Pacific Electric Railway Company. No such rate was in effect via the joint route of the Southern Pacific Company and the Santa Fe. Defendants concede that on the shipments routed "S.P.", "S.P. c/o Albers Track", "S.P. for Albers Track" complainants have been overcharged, but contend that the tariff has been properly applied on the other shipments.

Complainants rely on numerous decisions of the Interstate Commerce Commission to the effect that in case of a conflict between the routing instructions and the through rate as specified in the

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<sup>2</sup> In certain instances the name of the consignee was followed by "c/o Albers Bros. Warehouse Co.", "c/o Albers Warehouse", "6130 Avalon Boulevard", or "6130 South Avalon".

bill of lading, it is the duty of the initial carrier to forward the shipment by the cheaper route or to obtain further and definite instructions from the consignor. We believe that this rule, which the Interstate Commerce Commission has adhered to over a long period of time, should be followed here.<sup>4</sup> We conclude therefore that the shipments involved in Case 3470 have been misrouted and that complainants are entitled to reparation thereon. In view of this finding it is unnecessary to determine whether or not the charges collected on these shipments were also in violation of Sections 13, 19 and 24(a) of the Act.

Cases 3502 and 3480

The charges on the shipments from Gustine to Bakersfield (Case 3502), Oakland and San Francisco (Case 3480) are alleged to have been assessed and collected in violation of Sections 13, 19 or 24(a) of the Act.

The showing made is too meager to support a finding of unreasonableness either as to the switching charges themselves or as to the aggregate charges collected on complainant's shipments.

But complainant also alleges that the collection of this charge subjects it to undue prejudice and disadvantage. In connection with the shipments to Oakland and San Francisco the prejudice is said to arise from the fact that on shipments to points on the State Belt Railroad at San Francisco the switching charges are absorbed, and also that no extra switching charges are made for deliveries of like traffic to industries on the Alameda Belt Line and the South San Francisco Belt Railway. In the case of the shipments to Bakersfield alleged prejudice is said to lie in the fact that a rate of the same volume as that applying from Gustine applies from

San Francisco and other points but that on such movements the  
<sup>4</sup> Alpha Portland Cement Co. v. Delaware. L. & W.R.Co., 19 I.C.C.297;  
Acme Brick Co. v. Houston & T.C.R.Co., 139 I.C.C. 20.

switching charge is absorbed.

Defendants frequently absorb connecting line switching charges on non-competitive and always on competitive traffic but it cannot be said on this record that their failure to do so in this instance results in undue prejudice or disadvantage to complainants. To justify a finding of undue prejudice and preference under the facts here disclosed it must be shown that defendants' actions result in an undue disadvantage to complainants and are a source of advantage to their competitors. (California Milling Corporation vs. A.T. & S.F. Ry. Co. et al., 37 C.R.C. 309.)

We turn now to the allegations that charges were assessed and collected in violation of the long and short haul provisions of Section 24(a) of the Act. During the period here involved the line haul charges on shipments transported from Gustine to Bakersfield by the Southern Pacific Company and there delivered to the Santa Fe for movement to a point within its switching limits were the same as those in effect from San Francisco, Oakland or Alameda to Bakersfield. This is true of shipments originating at these points either on the Southern Pacific Company or on the South San Francisco Belt Railway, the Howard Terminal Railway or the Alameda Belt Line. In all such instances however all switching charges are absorbed, whereas on complainant's shipments from Gustine they are not. San Francisco, Oakland and Alameda, like Bakersfield, are served by both the Southern Pacific Company and the Santa Fe and are therefore competitive. Gustine is not. In Re Joint Application of F. W. Gomph, 35 C.R.C. 46, defendants were authorized to depart from the long and short haul provisions of Section 24(a) of the Act, "for the purpose of meeting competition at the more distant points provided the same competition does not exist at the

intermediate points \* \* \* ". Complainants contend that there is no competitive reason for absorbing the switching charges of carriers such as the South San Francisco Belt Line and the Howard Terminal Railway, and that departures resulting from such absorptions therefore have not been authorized. This however is not a fact. In the instances in which the Santa Fe does not connect directly with the Belt Line its tariffs provide for the absorption of Southern Pacific Company bridge switching, and the traffic is therefore competitive.

Complainant abandoned its allegation that charges on shipments from Gustine to Oakland and San Francisco were assessed and collected in violation of Section 24(a) of the Act.

Upon consideration of all the facts of record we are of the opinion and find:

1. That all charges collected on complainants' shipments involved in Case 3470 in excess of 31½ cents were inapplicable and should be refunded.

2. That the charges collected on the shipments involved in Cases 3480 and 3502 have not been shown to be or to have been in violation of either Sections 13, 19 or 24(a) of the Act.

The exact amount of reparation due is not of record. Complainants will submit to defendants for verification a statement of the shipments made and upon payment of the reparation defendants 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

These matters having been duly heard and submitted,

IT IS HEREBY ORDERED that defendants The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company cease and desist and hereafter abstain from assessing, demanding, collecting or receiving charges for the transportation of the shipments of canned evaporated milk involved in Case 3470 in excess of those contained in their applicable tariffs.

IT IS HEREBY FURTHER ORDERED that The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund, with interest at six (6) per cent. per annum, to complainants Carnation Company of California and Albers Bros. Milling Co., as their interests may appear, all charges collected in excess of  $31\frac{1}{2}$  cents per 100 pounds for the transportation from Gustine to Wingfoot of the shipments of canned evaporated milk involved in Case 3470.

IT IS HEREBY FURTHER ORDERED that in all other respects these proceedings be and they are hereby dismissed.

Dated at San Francisco, California, this 13<sup>th</sup> day of November, 1933.

CL Leavelle  
Leon A. Leavelle  
W. H. Leavelle  
M. B. Leavelle  
W. H. Leavelle  
Commissioners.