Decision No. 26831.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

OUTSEN BROS. MILLING CO., a co-partnership consisting of J. B. OUTSEN and A. C. OUTSEN,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation,

Defendant.

Case No. 3207.

Carl R. Schulz and Max B. Schulz, for complainant.

James E. Lyons and H. H. McElroy, for defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding complainant alleges that the failure of defendant to absorb a switching charge of $2.70 per car exacted by The Western Pacific Railroad Company for switching carload shipments of grain and grain products from the interchange track of the Southern Pacific Company to complainant's industry track was unduly preferential and advantageous to complainant's competitors and subjected complainant to undue prejudice and disadvantage in violation of Section 19 of the Public Utilities Act. Reparation only is requested.

A public hearing was held before Examiner Geary at San Francisco.

Complainant maintains a mill at San Francisco located

upon an industry track served by The Western Pacific Railroad Company. In the conduct of its business numerous carload shipments of grain and grain products are received from points on the Southern Pacific Company, line hauled by that carrier to its interchange track with the Western Pacific, and from there delivered by the Western Pacific Railroad to complainant's mill.[1] During the period the shipments here under consideration moved, the Southern Pacific Company absorbed $3.50 of the State Belt Railroad switching charge of $4.50 per car on all shipments originating at or destined to industries served by the latter company. On and after August 4, 1931, defendant also absorbed $1.70 per car of the $2.70 per car switching charge of the Western Pacific Railroad for moving cars from and to the industry track serving the Consolidated Milling Company. Complainant in purchasing grain does so in direct competition with industries located on the State Belt Railroad and with the Consolidated Milling Company.

The Commission in Consolidated Milling Company vs. Southern Pacific Company, 36 C.R.C. 388, where the facts were substantially the same as set forth above, held that the failure of defendant to absorb $1.70 of the $2.70 switching charge of the Western Pacific was unduly prejudicial to complainant and unduly preferential of complainant's competitors located on the State Belt Railroad. (See also Globe Grain and Milling Company vs. A.T.& S.F. Ry., 36 C.R.C. 80.) The same finding should be made here.[2]

Complainant also asks the Commission to find that the failure of the Southern Pacific Company to make any absorption of

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[1] The shipments involved in this complaint moved during the period from February 24, 1930, to December 31, 1931.

[2] Defendant has removed the undue preference and prejudice for the future.

the Western Pacific switching charge resulted in an "unreasonable difference as to rates", in violation of Section 19 of the Act. Section 19 contains two provisions. One prohibits granting to any corporation or person preference or advantage or subjecting any corporation or person to prejudice or disadvantage; the other makes unlawful the maintenance of any unreasonable difference "as to rates, charges, service or facilities * * * either as between localities or as between classes of service". The first prohibition relates to persons or corporations; the second relates to localities or classes of service. The evidence here presented is directed solely to the undue preference and prejudice between persons or corporations. There is no evidence in this record that an unreasonable difference of rates was maintained between localities or between classes of service.

Complainant requests reparation because of the undue preference and prejudice here found to exist. The Commission has long held that in proceedings of this nature complainant in order to recover reparation must prove that it has actually been damaged, and the amount of the damage thereof. Penn. R.R.Co. vs. International Coal Co., 230 U.S. 184; Albers Bros. Milling Co. vs. Southern Pacific Co., 31 C.R.C. 95 and cases cited therein; Consolidated Milling Company vs. Southern Pacific Co., supra; Globe Grain and Milling Company vs. A.T.& S.F.Ry., supra. The record contains no proof of damages. Reparation will be denied and the complaint dismissed.

O R D E R

This case having been duly heard and submitted,

IT IS HEREBY ORDERED that the above entitled proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 11th day of December, 1933.

Commissioners.