

Decision No. 28776.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ALBERS BROS. MILLING CO.,
a corporation,
Complainant,

vs.

ATCHISON, TOPEKA & SANTA FE RAILWAY CO.,
a corporation,

SOUTHERN PACIFIC COMPANY,
a corporation,
Defendants.

Case No. 3540.

ORIGINAL

BY THE COMMISSION:

O P I N I O N

By complaint filed March 9, 1933, it is alleged that a switching charge of \$2.70 per car assessed and collected by defendants in addition to the applicable line haul rates for the transportation of shipments of grain and grain products between complainant's mill on the Southern Pacific Company at Oakland and points on the line of The Atchison, Topeka and Santa Fe Railway Company was and is unreasonable and unduly prejudicial in violation of Sections 13 and 19 of the Public Utilities Act and in violation of the long and short haul provisions of Section 24(a) of the Act. Reparation on all shipments moving during the three-year period immediately preceding the filing of the complaint and rates for the future are sought.¹

¹ Section 71(b) of the Public Utilities Act reads in part as follows: "All complaints for damages resulting from a violation of any of the provisions of this act, including sections 13, 19 and 24, and excluding sections 17(a)2 and 17(b), shall * be filed * * * within two years from the time the cause of action accrues, and not after". Any shipments on which the cause of action accrued more than two years prior to the filing of the complaint are thus barred.

On January 25, 1934, complainant asked that the complaint against the Southern Pacific Company be dismissed in its entirety, and that against The Atchison, Topeka and Santa Fe Railway Company it be dismissed in so far as allegations of unreasonableness and undue prejudice under Sections 13 and 19 of the Act are concerned.

As the proceeding now stands, it is on a parity with Case 2864, Albers Bros. Milling Co. vs. A.T. & S.F. Ry. Co., where by Decision No. 26518 of November 13, 1933, we found that the collection of charges for transportation to and from complainant's plant at Oakland which exceeded those contemporaneously in effect for like transportation to and from a point on the Howard Terminal Railway was in violation of the long and short haul provisions of Section 24(a) of the Act. Defendant was directed to cease and desist from collecting charges on complainant's shipments there involved in excess of those contemporaneously in effect for the transportation of like shipments to or from points on the Howard Terminal Railway, and to refund all such charges collected within the two-year period immediately preceding the filing of the complaint.

The Atchison, Topeka and Santa Fe Railway Company has stated that it will abide by the Commission's decision in the Albers Bros. case, supra, and will pay reparation on the shipments involved in this proceeding upon the issuance of an appropriate order by the Commission. The prayer for the future has been satisfied by the publication made pursuant to our order in the Albers case.² Therefore, under the issues as they now stand, a public hearing will not be necessary.

Upon consideration of all the facts of record we are of

² Item 4410-D, Supplement 32 to A.T. & S.F. Ry. Co. Tariff No. 8117-N, C.R.C. 659, effective January 25, 1934.

the opinion and find that the collection by defendant The Atchison, Topeka and Santa Fe Railway Company of charges for the transportation of shipments of grain and grain products between complainant's mill on the Southern Pacific Company at Oakland and points on its line, which were in excess of those concurrently applicable for like transportation between points on the Howard Terminal Railway and points on its line, was in violation of the long and short haul provisions of Section 24(a) of the Public Utilities Act, and that complainant is entitled to reparation together with interest at 6 per cent. per annum on all shipments on which the cause of action accrued within the two-year period immediately preceding the filing of the complaint. We further find that in all other respects this proceeding should be dismissed.

The exact amount of reparation due is not of record. Complainant 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

Upon consideration of all the facts of record,

IT IS HEREBY 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 complainant Albers Bros. Milling Co. all charges collected for the transportation of the shipments here involved on which the cause of action accrued within the two-year period immediately

preceding the filing of this complaint in excess of those contemporaneously in effect on like traffic to or from points on the Howard Terminal Railway.

IT IS HEREBY FURTHER ORDERED that in all other respects this proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 5th day of February, 1934.

C. L. Leary
Leon Wherry
W. H. C.
M. B. Lewis
W. H. C. Lewis
Commissioners.