Decision No. 27527

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

CALIFORNIA PACKING CORPORATION, a corporation, Complainant, vs. THE WESTERN PACIFIC RAILROAD COMPANY, a corporation, Defendant.	Case No. 3161.
CALIFORNIA PACKING CORPORATION, a corporation, Complainant, vs. THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a corporation, Defendant.	Case No. 3162.

Pillsbury, Madison & Sutro, by Hugh Fullerton, for complainant, California Packing Corporation.
Irving F. Lyons, for California Packing Corporation.
J. R. Bell and G. H. Muckley; and J. E. Lyons and H. H. McElroy, for Southern Pacific Company.
Gerald E. Duffy and E. C. Pierre, for The Atchison, Topeka and Santa Fe Railway Company.
L. N. Bradshaw, for The Western Pacific Railroad Company.
Fred T. Leonard and John M. Desch, for interveners the Pacific Bag Company, et al., and Rosenberg Bros. Company.

BY THE COMMISSION:

O P I N I O N

The issues in these two proceedings are parallel, were submitted on the one record, and will be disposed of in the one opinion and order.

Joint hearings were conducted at San Francisco August 14 and 15, 1933, before Examiners Leo J. Flynn of the Interstate Commerce Commission, and W. P. Geary, of the Railroad Commission

of California. The Interstate Commerce Commission cases are Dockets No. 25351 with Subs. 1 and 2.

The complaint alleges that during the period November 1, 1929, and December 31, 1931, both dates inclusive, defendants performing the line hauls have refused to absorb the total charges assessed by the State Belt Railroad, hereinafter referred to as the Belt, between the interchange points with the defendant railroads and complainant's packing plant located in San Francisco on property bounded by Hyde, Leavenworth, Beach and Jefferson Streets; and that the charge of $1.00 per car, the difference between the $4.50 assessed by the Belt and the $3.50 absorbed by defendants, violated Sections 13, 17 and 19 of the Public Utilities Act. Otherwise stated, it is alleged that Section 13 was violated because the charges assessed and collected were unjust and unreasonable, that Section 17 was violated because defendants did not correctly apply their tariffs and that Section 19 was violated because the charge of $1.00 per car subjected complainant to prejudice and disadvantage, by reason of the practice of defendants in assuming all charges assessed by the Belt for rendering the service between defendants' car barges and defendants' own team and shed tracks located east of Van Ness Avenue, while at the same time refusing to absorb all Belt switching charges to complainant's industry tracks. The prayer is for reparation and an order requiring defendants to cease and desist from the said violations of the Public Utility Act.

Pacific Bay Company, Diamond H. Bag Company, Pacific Diamond H. Bag Company and Rosenberg Brothers and Company were permitted to intervene with the stipulation that their testimony and claims for reparation would not broaden the original issues.

No controlling testimony was presented in support of the alleged violation of Section 13 of the statute and this part of the

complaints will be judged to have been abandoned.

The plant of the California Packing Corporation is served by four tracks, three owned by the Southern Pacific Company and one by The Western Pacific Railroad Company, all leased to this complainant without compensation to the owners. It is complainant's contention that the Belt is defendants' agent and also that the tracks being actually owned by the line haul railroads are included within the San Francisco switching limits by reason of the language of the tariffs. The Santa Fe switching limits are described in Tariff 8117-M - C.R.C. No. 629, Item No. 530, as follows: "All Santa Fe tracks in San Francisco, California, including the transfer tracks with the State Belt Railroad of California and industries located on the joint Illinois and Quint Street tracks."

The Western Pacific, in Tariff G.F.D. No. 35-J - C.R.C. No. 245, Item No. 730, provides: "All tracks in San Francisco, Cal." The title page of this Western Pacific tariff, however, refers to "all points on the line of The Western Pacific Railroad Company."

According to the exact wording of the Santa Fe tariff the industry tracks located within complainant's plant are not embraced within the San Francisco switching limits of the Santa Fe and the testimony shows they were never so considered or so treated by this defendant.

A study of this record and the terminal tariffs of The Western Pacific leads to the same conclusion that the industry tracks used by complainant are likewise not within the San Francisco switching limits of The Western Pacific. Tariffs must be read in their entirety and their plain intent cannot be destroyed by the use of only detached parts thereof. Our views on this point were clearly expressed by Commissioner Eshleman April 12, 1913, Case

No. 362, Golden Gate Brick Co. vs. The Western Pacific Railway Co. (2 C.R.C. 607-609).

We find no merit in the contention that the Belt is merely an agent of the defendants and this record confirms our conclusions in Case No. 876, California Canneries Co. vs. Southern Pacific - The Atchison, Topeka and Santa Fe, and The Western Pacific [1] (12 C.R.C. 488-492). The Belt is an independent common carrier and is entitled to assess reasonable charges for the services which it renders.

This part of the issues, involving Section 17, has not been sustained by the complainant.

There remains the question of the propriety of the charge of $1.00 per car and the demand for reparation. Complainant contends it has been subjected to prejudice and disadvantage, in violation of Section 19 of the Public Utilities Act.

The exhibits filed in these proceedings review the chronological history of the Belt per car switching charges beginning with July 1, 1909, at $2.50; July 1, 1918, at $3.25; March 1, 1919, at $2.50; April 15, 1920, at $3.00; November 1, 1920, at $3.50; November 1, 1929, at $4.50; January 1, 1932, at $4.00.

The charges prior to 1909 are not of record. The first tracks of the Belt were constructed in 1891 and until 1915 all of their charges were paid by the shippers using the Belt facilities into the industry tracks. The railroads since 1915 have absorbed

1. "The Belt Railroad is owned by the State of California and is operated by the Board of State Harbor Commissioners. Its tracks extend around the water front in the City of San Francisco. Its freight tariffs are on file with this Commission and among other items provide for a charge of $2.50 per car for switching between any two points on the same division. The locomotives of the Belt Railroad perform all services, receiving the cars either from the connecting tracks of main line carriers or from the boats or barges of the carriers. The road is operated as a common carrier and it permits the use of its facilities at a certain charge to all traffic which offers. It has, in other words, dedicated all its facilities to the use of any carrier that may desire to employ them. In this respect, there is an essential difference between the Belt Line and the Atchison, Topeka and Santa Fe Railway."

the changing charges of the Belt in sums as noted above of $2.50, $3.25, $2.50, $3.00 and $3.50, and during the period embraced in these reparation claims, November 1, 1929, to January 1932, absorbed only $3.50 of the $4.50 per car charged by the Belt. The tariffs also provided that the carriers would in no case assume the switching charges or any portion thereof to the industry tracks when the absorption resulted in a less net revenue than $11.50 per car. Thus, during the more than 40 years since the Belt commenced operations, the shippers of cars going to or from private industry tracks have paid certain of the Belt charges.

Complainant does not contend that the San Francisco line haul rates are unreasonable but maintains that the total charge line haul plus $1.00 per car violates the statute for the reason that deliveries are made to defendants' team tracks at only the line haul rates. Railroads are required to have accessible public team tracks for the convenience of all of the shipping public who have no private industry tracks. These team tracks are owned and maintained by defendants, serve a large district in that part of San Francisco, have existed ever since the trunk lines first established their services into this particular territory and the tonnage passing over them must be drayed at an extra cost, thus segregating and placing these shippers into an entirely different category from that held by the shippers having the use of industry tracks and paying no drayage charges.

The record and the briefs refer to many proceedings of courts and commissions dealing with the absorption of certain charges but none is directly concerned with situations involving team track versus private industry tracks where a second carrier is employed.

Undue and unreasonable prejudice and disadvantage ~~can only~~ exist where a shipper is charged a higher rate than is

accorded a competitor for a like service when there are substantially similar circumstances and conditions. Under normal practices the total charge to the industry tracks would be the line haul rate to San Francisco, plus the switching charge of the Belt.

The absorption in whole or in part of the Belt charges to the private industry tracks without discrimination as between this class of shippers is not to be compared with a service to the public team tracks operated by defendants where the line haul rates have always applied and to meet a public necessity always must apply. These public team tracks are also available to complainants should they elect to employ them.

As heretofore stated, defendants until November 1, 1929, absorbed the Belt charges to the industry tracks when such action did not result in a line haul revenue less than $11.50 per car. Effective November 1, 1929, the Belt increased its switching charge from $3.50 to $4.50 per car which new charge defendants declined to assume but they did continue absorbing the $3.50 per car subject to the $11.50 minimum.

It is within the managerial rights of carriers to decide in the first instance the amount of the switching charges it will absorb in effecting deliveries to private industry tracks located upon the rails of a connecting railroad at the terminal station and certainly the line haul carrier must use discretion and cannot be required to absorb any amount exacted by the delivering railroad. In the instant proceeding, the process of defendants in making deliveries to its own team tracks embraces circumstances and conditions not comparable with those existing when deliveries are taken at the private industry tracks located on the Belt.

We find that the tariff items assailed did not grant absorption allowances creating unreasonable differences in charges nor did they result in unlawful prejudice or disadvantage in

violation of Section 19 of the statute. The claims for reparation awards are denied.

Effective January 1, 1932, the Belt reduced its charge from $4.50 to $4.00 per car and on the same date defendants increased their absorption allowance from $3.50 to $4.00 per car thus satisfying complainant's demands for the future.

Defendants should collect all unpaid freight bills in conformity with the tariffs effective at the time the services were rendered.

Because of the determination of the issues as alleged by complainant it will not be necessary to discuss the intervener's petitions nor defendants' motion to reject them.

The complaint will be dismissed.

O R D E R

This case having been duly heard and submitted,

IT IS HEREBY ORDERED that the above entitled proceedings be and they are hereby dismissed.

Dated at San Francisco, California, this 13th day

of ~~January~~ November, 1934.

Leon Whitsell

Commissioners.