

Decision No. 29570

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA CANNING PEACH GROWERS,
a corporation,

Complainant,

vs.

THE WESTERN PACIFIC RAILROAD COMPANY,
SACRAMENTO NORTHERN RAILWAY,
SOUTHERN PACIFIC COMPANY,

Defendants.

Case No. 4072

ORIGINAL

Stanley J. Cook, for complainant.

J.E. Lyons and Burton Mason, for Southern
Pacific Company, defendant.

BY THE COMMISSION:

O P I N I O N

Complainant alleges that to the extent of a switching charge of \$2.70 per car the charges assessed by defendants for the transportation of 128 carload shipments of fresh peaches from Encinal to Oakland and San Jose, and of 33 carload shipments of empty lug boxes, returned, from San Jose to Encinal and from Oakland to Craig, were unreasonable in violation of Section 13 of the Public Utilities Act. It seeks an order directing defendants to waive the collection of undercharges or to pay reparation equal to \$2.70 per car, without interest.

The matter was heard before Examiner Freas at San Francisco and submitted on briefs.

Complainant alleges that the movements were in fact competitive and that, for this reason, Western Pacific should

absorb the disputed switching charge.¹ The Western Pacific and Sacramento Northern admit the allegations of the complaint. Southern Pacific Company denies that any charge assessed was unreasonable and alleges that all but 13 of the shipments are barred under the statute of limitations.

Encinal is on the Sacramento Northern Railway approximately nine miles north of Marysville, and is about one mile cross-country from the Southern Pacific station of Sunset. Craig is on the Western Pacific approximately fourteen miles north of Marysville, and about two miles cross-country from the Southern Pacific station of Honcut. The shipments from Encinal to Oakland and San Jose moved via Sacramento Northern to Sacramento, thence via Western Pacific to destination, and were switched by Southern Pacific at destination to industry tracks served exclusively by it. The shipments from San Jose to Encinal moved via the same route in the reverse direction. The shipments from Oakland to Craig originated on a Southern Pacific industry track and were switched by that carrier to its interchange track with Western Pacific, thence moved by the latter to destination.

In support of its contention that the traffic here involved was in fact competitive, complainant asserts that peaches are produced in the general area of Encinal and Craig and that on the average it is equally convenient to ship via either Western Pacific or Sacramento Northern on the one hand or Southern Pacific on the other.

In support of the principle that stations not located in a single

¹ Rail carriers commonly absorb switching charges upon competitive carload traffic. Item No. 160-C of Western Pacific's Terminal Tariff G.F.D. No. 35-J, C.R.C. No. 245, provides: "Upon carload traffic competitive with the connecting carrier performing the switching service, and upon which W.P.R.R. received the line haul, originating at or destined to industry tracks or wharves not reached by W.P.R.R. rails, located within the switching limits of connecting carrier, W.P.R.R. will absorb connecting carrier's charge for switching (as per tariffs lawfully on file with the I.C.C. and C.R.C.) to or from its interchange track with W.P.R.R."

The same tariff defines competitive traffic as "traffic which at time of shipment may be handled at equal rates (exclusive of switching charges) from same point of origin to same destination, via other carriers, one of which performs the switching service."

town may be competitive, complainant cites Decision No. 17358 of this Commission in Case No. 2214 (Coast Rock & Gravel Co. vs. S.P.R.R., 28 C.R.C. 549).

It should be pointed out that the Coast Rock & Gravel Co. case cited by complainant involved the exaction of discriminatory rather than unreasonable charges. Regardless of what probative value the evidence upon which complainant relies might have in support of an allegation of tariff violation or of discrimination, standing alone it fails to sustain the allegation of unreasonableness. In complaint proceedings the burden of proof rests upon the complainant. This burden has not here been sustained. The complaint will be dismissed.

O R D E R

This matter 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 1st day of March, 1937.

Walter H. Brown
Leon C. Sullivan
James R. Sullivan
Harold W. Sullivan
Ray L. Sullivan
Commissioners.