

ORIGINAL

Decision No. 29745.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY, a corporation, **HOLTON INTER-**
URBAN RAILWAY, a corporation, **LOS ANGELES**
& **SALT LAKE RAILROAD COMPANY**, a corpora-
tion, **PACIFIC ELECTRIC RAILWAY**, a corporation,
SACRAMENTO NORTHERN RAILWAY, a corporation,
SAN DIEGO & ARIZONA EASTERN RAILWAY COMPANY,
a corporation, **SANTA MARIA VALLEY RAILROAD**
CO., a corporation, **SOUTHERN PACIFIC COMPANY**,
a corporation, **STOCKTON TERMINAL AND EASTERN**
RAILROAD, a corporation, **SUNSET RAILWAY**, a
corporation, **TONOPAH AND TIDEWATER RAILROAD**
COMPANY, LTD., a corporation, **VISALIA ELECTRIC**
RAILROAD COMPANY, a corporation, and **THE**
WESTERN PACIFIC RAILROAD COMPANY, a corpora-
tion, to alter rules and regulations in
connection with shipments of livestock fed-
in-transit so as to result in an increase
in rates.

Application No. 19877

G. E. Duffy, L. N. Bradshaw, E. E. Bennett, Frank Karr,
J. E. Lyons and H. H. McElroy for all applicants,
by H. H. McElroy.
E. W. Hollingsworth and Bishop & Bahler, protestants,
appearing for E. Moffat Company, Union Sheep Com-
pany, Henry Levy Company, Quinto Ranch Company
and Grayson-Owen Packing Company.
John Curry, for California Cattlemen's Association and
California Wool Growers' Association, protestants.

BY THE COMMISSION:

O P I N I O N

By this application the above named carriers seek an order under Sections 24(a) and 63 of the Public Utilities Act authorizing them to alter certain rules, regulations and charges relative to the feeding in transit of livestock. Particularly, applicants propose to amend rules published in Pacific Freight Tariff Bureau Tariff No. 198-E, C.R.C. No. 559, of F. W. Comph, Agent, and reissues thereof, as follows:

- (a) To provide that when back-haul or out-of-line service is performed charges will be assessed upon the basis of the rate from point of origin to final destination plus out-of-line and back-haul charges, or the rate from feeding point to final destination plus out-of-line and back-haul charges, whichever produces the higher charge.
- (b) To provide that when the route over which the shipment is transported entails a back-haul or out-of-line haul the charge will be no less than would accrue under the so-called California intrastate scale for the total¹ distance traversed.
- (c) To remove departures from the 24th Section of the Public Utilities Act resulting from the proposed changes.

California Cattlemen's Association, California Wool Growers' Association and various other livestock interests opposed the application. Public hearing was held at San Francisco and the matter was submitted on briefs.

Applicants state that the purpose of the changes is to

¹ The California intrastate scale was published by the Southern Pacific Company effective August 5, 1924, as the result of a compromise following negotiations with The American Livestock Association, California Cattlemen's Association and California Wool Growers' Association, who sought rates of the volume of those concurrently maintained on Arizona intrastate traffic. In constructing this scale the carriers took the feeder cattle rates in effect at the time between Arizona and California, regraded them to iron out the blanket rates and then established rates on fat cattle which would bear a relationship of 100% to 85% fat to feeder stock. Rates on sheep were made 10% higher than those on cattle. With certain exceptions an arbitrary of \$3.50 per car was added for each branch line involved.

clarify tariff rules which the Commission found to be ambiguous in Case No. 3146² and cause them to conform to the original intention of the framers of the tariff. They contend that the rates and charges resulting from the application of the present provisions of their transit tariff are "less than reasonable, illogical and discriminatory" and argue that shippers should not be allowed to seize upon a decision relating to an ambiguous tariff to perpetuate a rate situation which was not intended by the carriers and which has caused rates to be lower than maximum reasonable rates. As illustrative of the abuse to which the present transit provisions are said to be susceptible, applicants give the following example. On a carload shipment of cattle moving from Hayward to San Francisco and fed in transit at an intermediate point a minimum charge of \$52.00 plus \$5.85 transit charge would be applicable. If the transit stop were at Dagon (a point on the Ione branch of the Southern Pacific Company east of Galt), however, the additional charge for an out-of-line movement of 235 miles would be only \$36.00.³ The out-of-line scale is appreciably lower than the California intrastate scale and applicants assert that the former

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In H. Moffat Co. et al vs. Southern Pacific Company, et al, Decision No. 26380, October 2, 1933, unreported, the Commission held that Items 80 and 90 of P.F.T.B. Tariff No. 198-C, C.R.C. No. 487, of F. W. Gomph, Agent, must be interpreted as providing for the assessment of the rate from the origin point to final destination plus the out-of-line or back-haul charge or the rate from transit point to final destination without the addition of the out-of-line or back-haul charge, whichever produced the higher rate. Although Item 80 governs charges from first to second transit point and Item 90 governs charges from transit point to final destination, the problems and principles here involved are identical under both items.

³

The short line distance from Hayward to San Francisco is 22 miles, from Dagon to San Francisco 139 miles and from Hayward via Dagon to San Francisco 257 miles.

Exhibit No. 3, presented by witness M. G. Smith, contains several similar examples. In this particular instance, however, the non-transit rate from Hayward to San Francisco is only \$21.50 per car, and on a shipment transited at an intermediate point the aggregate charge could in no case exceed the combination of rates over the transit point. Thus, the additional charge accruing by reason of the out-of-line movement would actually be \$36.00 plus the difference between \$57.85 per car and such combination of rates.

scale was never intended for use in constructing rates where the out-of-line movement so grossly exceeds the short line distance from point of origin to destination.

Protestants' objections are based on the proposition that under the proposed rules the volume of the rates and charges would not be related to the service performed, but would vary according to the distance from point of origin to point of divergence. They claim that the proposal is complex and confusing, and state that they can see no reason for the addition of an out-of-line charge in instances where the transit-point-to-destination rate is observed as minimum. They point out that the reasonableness of the California intrastate scale has never been determined by this Commission, and that its application in the past has been as a maximum charge rather than as a minimum charge.

Transit is a special arrangement which may be established in proper cases by the carriers in their discretion and reasonable freedom in amending existing transit rules to correct technical defects and to prevent abuse of the privilege extended should be allowed so long as the amendments do not result in unreasonable or otherwise unlawful rates and charges. It does not follow, however, that any rules which produce charges lower than the combination of local rates over the transit point must be found justified upon the bare assertion that such rules conform to the original intention of the carriers. On the contrary, it must appear affirmatively that the amendments will not result in discriminatory, unreasonable or otherwise unlawful charges. When livestock is transported from origin to destination via an off-line transit point and the aggregate charge is constructed on the basis of applicants' proposal here, it will be seen that in a sense the shipper has paid twice for the transportation from transit point

to point of divergence and not at all for the transportation from origin to point of divergence. While the example applicants cited indicates that the existing rules may be subject to abuse, the record is not convincing that the proposed amendment will produce a proper relationship between the volume of the charge and the volume of the service performed. In the absence of a showing that the proposed amendments to Items 80 and 90 of P.F.T.B. Tariff 198-E, or reissues thereof, will result in reasonable and non-discriminatory rates and charges it must be found that such amendments have not been justified.

The proposal to provide for the observance of the California intrastate scale as a minimum is an innovation in transit rate making which requires separate consideration. As previously explained, this scale was voluntarily established by the carriers as a maximum scale for the transportation of livestock between points in this state, and there are many specific point-to-point intrastate rates of lesser volume than the California intrastate scale. No attempt was made by the carriers to establish this scale as a minimum reasonable scale for general use, and justification for its use here is rested upon the assertion that it is necessary to produce a reasonably compensatory revenue on transit shipments, and that in any event it would apply only in isolated instances. This is not of itself sufficient justification for the proposal. Furthermore, the application of the California intrastate scale as a minimum scale where out-of-line transit is performed would appear to be unreasonable and discriminatory. For example, cattle originating at Orland, destined to San Francisco and fed in transit at the intermediate point of Lathrop would be assessed charges based on a rate of \$65.00 per car. The same shipments, fed in transit at Manteca,

a point 3.9 miles off line beyond Lathrop, would be assessed charges based on the California intrastate scale or \$85.00 per car. It must be found that the proposed use of the California intrastate scale as a minimum has not been justified.

O R D E R

This application having been duly heard and the matter submitted,

IT IS HEREBY ORDERED that this application be and it is hereby denied without prejudice.

Dated at San Francisco, California, this 10th day of May, 1937.

Walter W. ...
Leon ...
Paul R. ...
Barbara ...
Ray L. Riley
Commissioners