Decision No. 30965

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

The WESTERN PACIFIC RAILROAD COMPANY, a corporation, SACRAMENTO NORTHERN RAILWAY, a corporation, Complainants, vs. SOUTHERN PACIFIC COMPANY, Defendant.	)	Case No. 4066.

L. N. Bradshaw, for Complainants.
J. E. Lyons, for Defendant.

BY THE COMMISSION:

O P I N I O N

Complainants allege that defendant's failure and refusal to accord switching service at a charge of $2.70 per car, to or from two certain tracks in Sacramento, on carload shipments of freight upon which complainants have performed a line-haul is violative of Section 13(a) and (b), Section 17(a) 2 and Section 22 of the Public Utilities Act.[1]

Public hearings were had at San Francisco and Sacramento before Examiner Freas.

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[1] More specifically, complainants allege that by such failure and refusal defendant violates Section 13(a) in demanding and receiving unjust and unreasonable charges; violates Section 13(b) in failing to furnish, provide and maintain adequate, efficient, just and reasonable service and facilities; violates Section 17(a) 2 in charging, demanding, collecting and receiving different compensation for service rendered than the charges applicable as specified in its schedules lawfully in effect; and violates Section 22(a) in failing and refusing to afford reasonable, proper and equal facilities for the prompt and efficient interchange of tonnage and cars without discrimination between shippers or carriers.

Complainants' allegations rest on the contention that the tracks here involved[2] are industry tracks or private sidings within the meaning of Item 3860 of defendant's Tariff No. 230-J, C.R.C. No. 3183, which (with certain exceptions not pertinent here) provides a charge of $2.70 per car for switching carload traffic between complainants' interchange tracks and defendant's industry tracks and private sidings in Sacramento. Complainants concede that the charge of $2.70 is inapplicable if the two tracks are not, in fact, industry tracks or private sidings. Defendant contends that the tracks are not industry tracks or private sidings, but are team tracks and that carload shipments handled thereon are not subject to the tariff item in question. Therefore, the question presented for determination is whether the two tracks here involved are industry tracks or private sidings as contended by the complainants or whether they are team tracks as contended by defendant.

The record shows that the track from which the Grocery Company takes delivery of shipments consigned to it was formerly located near the center of "R" Street, necessitating the use of runways from warehouse to car door to permit loading or unloading. This arrangement interfered with street traffic on "R" Street and in response to complaints the track was relocated so that its center line is now 10 feet from the face of the Grocery Company's warehouse. A statement of the cars delivered thereon in 1935 and part of 1936 shows that approximately 75% of them were wholly unloaded by the Grocery Company and that it had a partial interest

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[2] Both tracks are located on "R" Street in Sacramento. One lies east of 19th Street and extends to 21st Street, and the other extends from midway between 3rd and 4th Streets to near 6th Street. The former track serves the Valley Wholesale Grocery Company (henceforth called Grocery Company) and the latter serves the J. L. Russill Company (henceforth called Russill Company).

in at least some of the others.

The track from which Russill Company formerly took deliveries[3] is part of a spur originally built in 1908 for the Sacramento Van and Storage Company under a plan whereby it bore a portion of the cost of construction. However this concern later abandoned its interest therein and complete ownership and control reverted to defendant, and the record shows that deliveries are made therefrom to the general shipping public.

The governing tariff contains no definition of the terms "industry tracks," "private sidings" or "team tracks." Complainants point out that the Interstate Commerce Commission has defined industry tracks as "those connecting the line of the carrier with an industry and which are exclusively used for the purpose of the industry or in which the industry has a preferential use."[4] Numerous other decisions involving switching and classification of delivery tracks were also cited by complainants, particularly the decision of this Commission in Case No. 3074, W. H. Growney vs. W.P. R.R. Co. et al. (36 C.R.C. 730). There the Commission found that "the tariffs have no definition for the term industry tracks and the use to which a track is put therefore governs its classification for rate purposes." From this complainants argue that the tracks here involved are industry tracks within the meaning of defendant's tariff.

Defendant states that its usual practice is to apply the terms "industry tracks" and "private sidings" to tracks on which

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[3] The Russill Company plant was occupied at the time this complaint was filed but is now vacant.

[4] Valuation Docket No. 2, Texas Midland Railroad (75 I.C.C. 1).

the cost of construction or maintenance has been borne at least in part by the industry served, or to tracks which have been leased to industries at a fixed rental. In either case, the industry is said to have priority of right in the track by which it is served. Conversely, defendant states that the term "team tracks" connotes tracks forming part of a carrier's terminal facilities which are open to the general public. Such tracks are wholly owned and maintained by the carrier and no shipper has prior right therein.

The issues in the Growney Case, supra, involved a determination of the proper charges to apply on three carloads of gasoline destined to a delivery track in Sacramento. The evidence therein showed that the track served three oil companies and could not be used conveniently except for delivery of petroleum oil. Under the terms of the governing tariff, inflammable liquids could be delivered only on sidings (or delivery tracks) equipped with facilities for piping such liquids to permanent storage tanks. From these facts the Commission found that the track involved was an industry track. It is apparent that that proceeding dealt with a different factual situation from that here presented and that the findings therein are not controlling here.

The record does not establish as a fact that defendant has dedicated the tracks in question to the exclusive or preferential use of either the Grocery Company or the Russill Company. Although the Grocery Company handles the majority of the shipments from and to one of these tracks it should be observed that such a condition may normally arise from the amount of business done by the Grocery Company and the convenient location of its plant with respect to said track.

From consideration of all the facts of record it is concluded that the tracks here involved have not been shown to be industry tracks or private sidings within the meaning of Item 3860 of defendant's Tariff 230-J, C.R.C. No. 3183. On this conclusion no violation of Section No. 17(a) 2 of the Public Utilities Act, as alleged, is shown to result from defendant's application of its tariff. Inasmuch as complainants offered no evidence in support of the alleged violations of Sections 13 and 22, it must be likewise concluded that no violation of those sections of the Act is shown to result from defendant's failure and refusal to switch cars at a charge of $2.70 per car to or from the tracks here involved.

The complaint will be dismissed.

O R D E R

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order,

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

Dated at San Francisco, California, this 23rd day of August, 1937.

Commissioners.