Decision No. 42377

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

TRIANGLE GRAIN COMPANY,
Complainant,
vs.
PACIFIC ELECTRIC RAILWAY COMPANY,
Defendant.

Case No. 4922

ORIGINAL

Appearances

L. H. Stewart, for complainant.

E. L. H. Bissinger, for defendant.

O P I N I O N

Triangle Grain Company, a partnership, alleges that certain demurrage charges assessed by defendant were unreasonable and inapplicable in violation of Sections 13 and 17 of the Public Utilities Act. It seeks an order (1) directing defendant to waive collection of outstanding demurrage charges, and (2) establishing reasonable rules and charges for the future.

Public hearing was had at Los Angeles before Commissioner Potter and Examiner Bryant. Briefs have been filed, and the matter is ready for decision.

The charges in question were assessed during March and April, 1947. About $438 is involved, representing demurrage on 19 intrastate shipments. However, during the same period there accrued nearly $3,000 in disputed demurrage charges on a large number of cars received from interstate origins. The interstate charges are in issue in a proceeding before the Interstate Commerce Commission which was heard concurrently.[1]

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[1] I.C.C. Docket No. 29872, heard by Examiner Howard Hosmer.

The assailed charges accrued on carload shipments of grain and related articles consigned to complainant at Bellflower, a station on defendant's lines in Los Angeles County. Complainant's plant is about two miles from the station, and is not located on a railroad. Prior to 1947 Triangle Grain Company received carload shipments on defendant's Bellflower team track, and transported the commodities to its plant by motor vehicle. The team track lacked capacity to handle the business adequately; and complainant, in order to expedite deliveries, arranged for construction of an industrial spur track serving certain property near the Bellflower station. The track, with a capacity of from 13 to 16 cars, was completed late in 1946. An elevator for bulk grains adjoins the track.

Complainant contends that it is not liable for the demurrage charges in question because defendant did not comply with its legal responsibilities in connection with placement of the cars. More particularly, the allegation is that defendant directly caused the car detentions by placing incoming cars on the industry spur without specific authorization and in disregard of instructions. Further contentions are that defendant erred in holding cars on constructive placement at times when the industry track was not filled to capacity;[2] that proper notice of constructive placement was not given; and that defendant made clerical errors in computing the car detentions and the demurrage charges. Lawfulness of the tariff rules and charges is not assailed.

Complainant undertook to show that during the period when the demurrage accrued the industry track was not usable for receipt of sacked grains for the reason that the private roadway by which

[2] "Constructive placement" occurs when, because of some condition chargeable to the consignee, a car cannot be delivered and is held at destination or nearest available hold point. Written notice that the car is held and the railroad is unable to deliver is given to the consignee.

motor trucks would approach the rail cars had not been fully prepared; that, because of rainfall which made the roadway unsuitable for heavy vehicles, cars on the industry track were not available for unloading except in the immediate vicinity of the bulk elevator; that the practical capacity of the track was thus reduced to three or four cars daily; that because of this condition complainant directed defendant to deliver cars containing sacked grain to the public team track; and that defendant nevertheless spotted the cars on the industry track or charged complainant with constructive placement.

The evidence does not establish that complainant, prior to accrual of the disputed demurrage charges, directed defendant to spot carloads of sacked grains on the public team track rather than on the industrial spur. Complainant's witnesses on this point were indefinite as to the form or date of any directions given prior to March, 1947, when accrual of the disputed charges started. On the other hand, defendant's clerk, who handled the incoming shipments, testified that it was his understanding during the period in question that all cars were to be delivered to the industry track unless otherwise ordered. He stated that he telephoned complainant's dispatcher daily concerning cars which had arrived in the Los Angeles yards; that the dispatcher informed him which cars he desired spotted during the night switch; and that nearly every day after March 20, 1947, some cars were ordered held back. The clerk testified that he frequently reminded the dispatcher which cars had been held back longest, and suggested that they be taken first in order to minimize demurrage charges. The indications are, however, that the cars were taken primarily in the order in which their contents were needed. The dispatcher, although still in complainant's employ, was not called to testify.

There is no contention that the industry track itself was not in good condition during March and April, 1947. It is established that rainfall impaired the roadway at certain unspecified times, but the record does not show that any particular intrastate shipment was spotted under weather conditions which made the roadway unusable.

No good basis appears for the contention that demurrage charges were increased because defendant improperly held cars in the Los Angeles yards on constructive placement at times when the industry track was not filled to capacity. The record shows, to the contrary, that the placement of cars during the period in question was directed by complainant, through its dispatcher.

There remain for consideration the contentions regarding failure to give proper notice of constructive placement, and regarding clerical errors in computation of demurrage charges. Constructive placement notices, as required by the tariff, inform the consignee that specified cars cannot be delivered on account of his inability to receive them. Two partners in the complainant company testified that they had no recollection of seeing any such notices. Their office manager stated that two or three such cards were received. One of defendant's witnesses, a clerk in the Bellflower station, explained the method by which the post card notices were prepared as a carbon copy of the original station record. He testified that he had written and mailed some of the notices in March and April, 1947. Upon this evidence the record cannot be said to show that written notice of constructive placement was not properly given.[3]

There is no necessity nor basis on this record for a determination by this Commission of the exact amount of demurrage charges payable. If there were in fact any clerical errors in the computation

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[3] Complainant makes a further contention that the notices of constructive placement were not proper for the reason that defendant mailed carbon copies of the station record rather than retaining as the station record an "impression copy." However, the term "impression copy," as used in one of the rules contained in the demurrage tariff, does not apply to constructive placement. There was no tariff requirement that defendant send or retain an "impression copy."

of charges, defendant will be expected to make the necessary corrections.

The burden of proof was upon the complainant, and in the absence of affirmative proof the complaint must be dismissed. Upon careful consideration of all of the facts and circumstances of record in this proceeding the Commission is of the opinion, and finds as a fact, that the demurrage rules and charges herein involved have not been shown to be unjust, unreasonable, or unlawful in violation of Sections 13 or 17 of the Public Utilities Act. The complaint will be dismissed.

ORDER

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and the Commission being fully advised,

IT IS HEREBY ORDERED that this complaint be and it is hereby dismissed.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 29th day of December, 1948.

R. E. Mitchell
Justus F. Craemer
Fred Kariell
Harold P. Huls
Kenneth Potter
Commissioners