

ORIGINAL

Decision No. 55926

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CENTRAL TERMINAL WAREHOUSE, et al,)
Complainants,)

vs.)

Case No. 5950

THE SOUTHERN PACIFIC COMPANY, and)
MONARCH BREWING COMPANY,)
Defendants.)

Charles E. Jones, for complainants.

E. D. Yeomans and Walt A. Steiger, by Walt A. Steiger,
for Southern Pacific Company.

Alfred F. MacDonald and Mrs. Lillian K. Stehlin, for
Monarch Brewing Company.

O P I N I O N

The complainants consist of the Central Terminal Warehouse Company, a public utility operating under the jurisdiction of this Commission, and five other companies which are not public utilities. All six of these complainants receive rail shipments along a spur track which is on property owned by the Monarch Brewing Company. The spur track is operated by the Southern Pacific Company. These last two named companies are the defendants in this proceeding.

The complaint alleges that the defendant brewing company has demanded from the complainants the sum of \$7.50 for the privilege of unloading each car, with a \$25 minimum for the first three cars each month. This charge, it is contended, is unreasonable and

unauthorized and constitutes interference with the business of the complainants. The answer of the defendant brewing company admits that it has established a uniform rental rate of \$25 per month for transporting the contents of a maximum of three freight cars per calendar month with an additional \$7.50 for each additional car.

The answer denies the jurisdiction of this Commission and sets up other defenses which were reiterated at the hearing.

The Southern Pacific Company's answer alleges the historical facts concerning the construction of the spur track and further sets out that it has not demanded nor collected any charges for the use of said spur track other than those charges specified in its tariffs.

A public hearing was held in Los Angeles before Examiner Grant E. Syphers on September 24, 1957, at which time evidence was adduced and the matter submitted.

The evidence discloses that the spur track in question was constructed partially in the year 1904 and partially in the year 1934. Under date of May 1, 1934, a written agreement was entered into between the Southern Pacific Company and the Balboa Brewing Company relative to the construction of this spur track. The Balboa Brewing Company was the predecessor in interest of the present defendant, the Monarch Brewing Company. In 1942 this first-named company having ceased operations as a brewery started renting some of its property, and on June 4, 1946, all of the property in question, including the land on which the spur tracks are located, was leased to the Central Warehouse and Storage Company. This lease ran from December 21, 1946 to December 20, 1956. After the termination of

the lease, Central Warehouse and Storage Company remained in possession of the warehouse building and subleased it to Central Terminal Warehouse.

Prior to the lease with Central Warehouse and Storage Company, the Monarch Brewing Company had made a charge for the use of the property along the spur track of \$5.00 per month. These charges were made and collected from June, 1943 to March, 1945. During the ten year period that Central Warehouse and Storage Company leased all of the property, the Monarch Brewing Company made no additional charges for the use of the spur track other than the rental it received from the Central Warehouse and Storage Company.

It was the contention of the defendant Monarch Brewing Company that the charges it now demands are executed for the use of its land located between the railroad tracks and the property of each defendant. The evidence discloses that the property of these defendants is located within eight feet of the nearest rail track.

Exhibit No. 1 is a map of the area showing the spur tracks in question while Exhibit No. 2 shows the property owned by the Monarch Brewing Company. Exhibit No. 3 is a survey map of the area, and Exhibits Nos. 4 and 5 are copies of agreements between the railroad and the Balboa Brewing Company concerning the construction of the spur tracks. It should be noted that there is one spur track which goes to the property of the Central Warehouse but it was testified by that company's representatives that this spur track could not be satisfactorily used. The spur track that can be used runs past the property of Central Terminal Warehouse to the property of the Monarch Brewing Company and other tenants.

An analysis of all of the evidence presented here discloses that there are two issues presented: (1) Is this a proper case for the jurisdiction of this Commission; (2) If so, does the Monarch Brewing Company have a right to charge for the use of its land located between the track and the property of the defendants when such land is used for the purpose of unloading freight cars from the railroad track.

As to the first issue, it is clear that all of the complainants, except the Central Terminal Warehouse, are not utilities. The Central Terminal Warehouse is a public utility as is the Southern Pacific Railway. However, there is no dispute here between these two utilities. The charges herein concerned are those demanded by a nonutility, the Monarch Brewing Company, for the use of its land.

There is no dispute on this record but that the fee title to the land is in the Monarch Brewing Company. According to the agreement, Exhibit No. 4, the track is under the control of the railroad "and may be used at discretion of railroad for its business or for shipment or delivery of any freight but not to the detriment of the business of the industry." It should be noted that the term "railroad" refers to Southern Pacific Company, and "industry" to the Balboa Brewing Company. It should also be noted that this spur track was installed at the expense of the Balboa Brewing Company and the evidence herein indicates that it is a private spur track.

While it may be unusual for a landlord to charge for the use of a narrow strip of land between the railroad track and the property of a receiver of freight, when the use of this land is the unloading of a freight car, nevertheless it does appear that this could well be a matter of private agreement.

There is no showing on this record that these rental charges affect the public interest. They are being paid not by the utility, Central Terminal Warehouse, but by that utility's lessor, the Central Warehouse and Storage Company. This last named company is not a public utility, neither are the other complainants herein. Therefore it appears that whether or not these charges are reasonable becomes a matter of the interpretation of a private agreement between nonutility companies. This is a matter for the courts and not for this Commission.

Having resolved this first issue, it becomes unnecessary to inquire into the second. The complaint will be dismissed.

O R D E R

Complaint as above entitled having been filed, public hearing having been held thereon, and the Commission being fully advised in the premises,

IT IS ORDERED that the above-entitled complaint be and it is dismissed.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California,
this 10th day of November, 1957.

[Signature] President
[Signature]
[Signature]
[Signature]
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Commissioners