SD

ORIGINAL

Decision No. 66115

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

| | |
|---|---|
| FIBREBOARD PAPER PRODUCTS CORPORATION,<br>Complainant,<br>vs.<br>SOUTHERN PACIFIC COMPANY,<br>Defendant. | Case No. 7308<br>(Filed March 29, 1962) |

Clifford Worth, for complainant.
Charles W. Burkett, Jr. and W. Harney Wilson, for defendant.

## O P I N I O N

This proceeding involves switching charges maintained by defendant for the transportation of carload shipments of plasterboard from complainant's plant at Southgate (Patata) to points within defendant's switching district at Los Angeles. The complaint alleges that the switching charges assessed were and are higher than the charges for line-haul service on identical shipments from the same origin to Industrial, the next station on defendant's line beyond the Los Angeles switching limits.

The complaint alleges that the charges assessed by defendant are in violation of Sections 451, 460 and 494 of the Public Utilities Code. The complainant requests that the defendant be required to refund the excess charges collected (plus interest) on shipments included in the complaint and shipments transported subsequent to the filing of the complaint and that the Commission determine proper rates for the future. In its answer, defendant denies all material allegations in the complaint.

Complainant is a corporation which engages in the manufacture and sale, among other things, of plasterboard at various locations within California, including Southgate. Defendant is a common carrier railroad operating within California and between California and other states.

A public hearing was held before Examiner Turpen on June 28, 1962, at San Francisco. The matter was submitted September 11, 1962, upon the filing of concurrent briefs.

The Southern Pacific Company's[1] switching limits at Los Angeles are defined in Item No. 6150 of its Tariff No. 230-K, I.C.C. No. 4960. This area is divided into nine separate zones, as described in Item No. 3530 of Tariff No. 230-K. The point of origin of the shipments at Fibreboard Paper Products Corporation's[2] plant at Southgate is located within Zone 8 (Patata Station). The destinations of the shipments involved are at Owens Park Lumber Company located in Zone 5 (Vernon Station), Atlas Building Material Co. located in Zone 2 (Whiteside Avenue Station), and at Los Angeles Materials and Supply Co. located on the line of the Los Angeles Junction Railway. On the latter movement, the traffic moves through Zone 4 to the interchange track of the two railroads. All of the aforementioned points are within the defined switching limits of Los Angeles published by the two railroads. Fibreboard also makes shipments of plasterboard from the plant at Patata to Lounsberry & Harris Lumber Co. at Industrial. The defendant's terminal tariff provides separately defined switching limits for Industrial. The

1/ Hereinafter sometimes referred to as Southern Pacific.

2/ Hereinafter sometimes referred to as Fibreboard.

switching limits of Los Angeles and Industrial are adjacent, except for a separation of about 25 feet not included in either district.

Switching rates are stated in cents per ton of 2,000 pounds, subject to stated minimum charges per car. The line-haul rate to Industrial is stated in cents per 100 pounds, subject to a minimum charge per car. During the period of the shipments involved in the complaint, the levels of rates changed several times, but at all times the line-haul rate to Industrial produced lower charges than the switching rates. The following table shows Southern Pacific's rates and charges effective June 2, 1962 and thereafter.

TABLE I

| | FROM: LOS ANGELES (ZONE 8) SOUTHGATE | |
|---|---|---|
| TO: | Rates (Cents Per Ton) | Minimum Charge Per Car (dollars) |
| Los Angeles: | | |
| Zone 2 | 215 | 43.34 |
| Zone 4* | 169 | 48.67 |
| Zone 5 | 169 | 39.37 |
| Industrial | 115# | 40.00 |

* Applies on portion of through movement to interchange track with Los Angeles Junction Railway.

\# Rate of 5-3/4 cents per 100 pounds converted to rate per ton.

Exhibits 1 through 4, presented by Fibreboard, list the shipments involved in the complaint. On the shipments shown in Exhibits 1 and 4, freight charges were paid on the basis of the switching rates. On the shipments shown in Exhibits 2 and 3, charges were originally assessed on the basis of the switching rates, but following submission of overcharge claims were revised to the basis of the rate to Industrial as maximum. Subsequently, balance due bills were issued seeking collection of charges on the original

basis assessed. The record shows and we so find that the complainant made the shipments in question and bore and paid the freight charges.

Complainant contends that:

1. A reasonable interpretation of the defendant's tariffs results in the application of the line-haul rate from Los Angeles to Industrial as maximum for the involved Los Angeles switching services;

2. The complained of switching rates (being higher than the line-haul rate to the more distant point, Industrial, over the same line) violate the long- and short-haul provisions of the State Constitution and Public Utilities Code; and

3. The Los Angeles switching rates in issue are unjust and unreasonable to the extent that they exceed the line-haul rate to the more distant point, Industrial.

Complainant offered testimony through its traffic analysis supervisor. Evidence in rebuttal was introduced by a traffic analyst and an assistant freight traffic manager of defendant. The complainant contends that the route of movement from point of origin (Zone 8) to Owens Park Lumber Company (Zone 5) is directly intermediate on the same line and route to Industrial. It concedes that movements to Atlas Building Materials Co. (Zone 2) and Los Angeles Materials and Supply Co., to which traffic is interchanged with the Los Angeles Junction Railway in Zone 4, are not intermediate on the same line and route from Zone 8 to Industrial. It asserts, however, that the so-called unit principle should be applied, as enunciated in decisions of the Interstate Commerce Commission.[3/] This principle is that

3/ Lautz Marble v. E.R.R., 115 ICC 534, 136 ICC 183; General Petroleum v. A.T. & S.F. Ry., 146 ICC 194; Lumber Rates on Pacific Coast, 147 ICC 13, 16; Laclede Steel Co. v. L & N R.R., 218 ICC 378, 381.

points within the switching limits of a station should be considered as a unit in construing the application of tariff intermediate rules or long- and short-haul provisions of the Interstate Commerce Act. The decisions cited by complainant cover situations involving the application of line-haul rates to unnamed points intermediate to named points. None of the cases cited involve the application of the unit principle to switching rates. Under the interpretation of the unit principle advanced by complainant, all points within a switching district, regardless of location, would be considered as a single point in construing the intermediate provisions of defendant's line-haul tariff. Under this concept, origin and all destinations of the involved shipments would be included in a single point, namely, Los Angeles. Defendant's intermediate rule (Item 85 of Pacific Southcoast Freight Bureau Freight Tariff 273-D), provides that in the absence of specific commodity rates, rates in that tariff will apply to directly intermediate points on the same line. Under the unit principle, the "points" involved in the application of the intermediate rule are Los Angeles and Industrial. These two points, for practical purposes, are adjacent. There is no intermediate point to which a commodity rate may be applied under the intermediate rule. We find, therefore, that the intermediate rule of defendant's line-haul tariff does not apply to the transportation in question. We further find that the defendant has correctly applied its tariff with respect to intermediate application of its line-haul rate from Los Angeles to Industrial, and that defendant has not violated Section 494 of the Public Utilities Code.

It appears from the evidence adduced, and we so find, that the Owens Park Lumber Company is located on the same line and route

and in the same direction as Industrial on movements from Fibreboard's plant at Southgate (Patata) (the shorter being included in the longer distance), and that the charges in the aggregate assessed by defendant were and are greater at Owens Park Lumber Company than at Industrial. We conclude that defendant, in the circumstances, has violated Article XII, Section 21 of the Constitution of the State of California, and Section 460 of the Public Utilities Code.

There remains for consideration the allegation that the assessed rates are unreasonable. Complainant testified that its allegation is based on the fact that the switching rates within Los Angeles are higher than the line-haul rate to Industrial. No comparison of rates, other than to Industrial, was made; nor was any showing made by complainant that the rate to Industrial is a reasonable rate for the movement of plasterboard. Defendant offered evidence showing the out-of-pocket costs of providing the switching service. The out-of-pocket costs so developed do not exceed the corresponding switching rates (or, with respect to movements in bulkheaded cars to Zone 4, the rates barely exceed such costs). Based on the evidence we find that the assessed switching rates have not been shown to be unreasonable, and we conclude that there is no violation of Section 451 of the Public Utilities Code.

Based on the foregoing findings and conclusions, the defendant should be required to waive collection of charges assessed but not collected on shipments moving from Southgate (Patata) to Owens Park Lumber Company (Vernon Station), as set forth in Exhibit 3, and to make reparation to complainant on shipments moving

subsequent to the filing of the complaint, to the level of the rate in effect at time of movement from Southgate to Industrial. The amount of reparation due to complainant on shipments moving after the date of the complaint is not of record. Complainant should submit to defendant for verification a statement of the shipments made, and upon payment of reparation, defendant shall notify the Commission of the amount thereof.

Defendant raised the question of the statute of limitations, claiming that certain of the shipments moved more than three years prior to the filing of the complaint. The applicable statute of limitations with respect to violations of Section 460 is two years as set forth in Section 735 of the Public Utilities Code. Recovery of reparation or damages on shipments made more than two years prior to the filing of the complaint are barred. (Re Application of Southern Pacific Company, 57 Cal. P.U.C. 328,330.)

## O R D E R

IT IS ORDERED that:

1. Defendant, Southern Pacific Company, shall waive collection of charges assessed but not collected or shall refund to complainant, Fibreboard Paper Products Corporation, all charges collected on carload shipments of plasterboard transported on and after March 29, 1960 from complainant's plant at Southgate (Patata) to Owens Park Lumber Company (Vernon) in excess of the rate and minimum charge per car in effect at time of movement from Southgate to Industrial. Interest at six percent per annum shall be paid on charges refunded.

2. In all other respects the complaint in this proceeding is dismissed.

The Secretary of the Commission is directed to cause a certified copy of this order to be served upon Southern Pacific Company in accordance with law and said order shall become effective twenty days after the date of said service.

Dated at San Francisco, California, this 1st day of OCTOBER, 1963.

President

Commissioners