

Railroads, Rates of. Rates, Chargeable at Intermediate Points.

Under an existing contract conferring trackage rights to the Northern Pacific Railway Company over the Great Northern tracks between Prickley Pear Junction and Boomerang Wye, through rates between points on the Northern Pacific Railroad and Boulder, or other points upon the Elkhorn branch, must be effective at intermediate points between Boulder and Prickley Pear Junction.

The trackage rights conferred under contract is held to constitute intermediate points as part of the route of the Northern Pacific Railway Company.

Under the constitution intermediate points upon the line or route of a railway may not be charged more than more distant points for the same class of service.

Helena, Montana, April 29, 1910.

The Railroad Commission of Montana,
Helena, Montana.

Gentlemen:

This in reply to your letter of April 14, referring to my letter to you of March 14, and your letter of March 29 to this office, concerning the question of rates to intermediate points between Helena and Boulder.

The facts in this case seem to be as follows:

Prior to April 1, 1905, the Northern Pacific operated trains between Helena and Boulder, and beyond Boulder to Elkhorn; that on the date last mentioned an agreement was entered into between the Northern Pacific Railway Company and the Montana Central Railroad Company whereby, in consideration of the abandonment by the Pacific Company of its track between Prickly Pear Junction and Boomerang, Wye., and the lifting of its rails, the Montana Company granted to the Pacific Company the right to handle its cars between these points over the tracks of the Montana Company, the power and operatives to be furnished by the Montana Company, or, at the option of the Pacific Company, to be furnished by themselves, the rental under the first alternative to be at the rate of \$5.00 per day, and, under the second alternative, at the rate of fifty cents per train mile.

This contract also included a clause providing that in consideration of the trackage rights accorded by the Montana Company, the Pacific Company would not undertake to handle local business, which clause, I take it, means that the Pacific Company should do no business to or from any stations between Helena and Boulder.

This contract was executed several months prior to July 1, 1905, at which date the Montana codes took effect, and the statutory provisions of these codes, therefore, are not to be considered in construing this contract, as they could not impair its obligations.

The question to be considered is: Where the Northern Pacific Railway puts in a rate from some point upon its line to Boulder, is it liable then to accord the same rate to points between Helena and Boulder.

We must look to the state constitution for a determination of this question.

Section 7, article XV., of the constitution provides, among other things:

"No railroad or transportation, or express company shall be allowed to charge, collect, or receive, under penalties which the legislative assembly shall prescribe, any greater charge or toll for the transportation of freight or passengers to any place or station upon its route or line, than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this state."

This provision of the constitution seems to cover the facts in this

case in their entirety, and it only remains to interpret the language employed. There is no difficulty in interpreting and applying the language generally used, but it is necessary to give the proper meaning and effect to the words "route" and "line."

The Northern Pacific Railway Company is certainly not required under this constitutional provision to protect intermediate points which are not upon its line, unless the word "line" is limited in this section by the use of the word "route." A shipment billed from Livingston, say, to Elkhorn passes from Prickly Pear Junction to Boomerang, Wye., not over the line of the Northern Pacific Railway Company, but over the line of the Great Northern Railway Company. However, the shipment is cared for between these points under the contract and agreement between the two railroad companies; and, therefore, I think it can be said, both in law and under the usage of transportation companies, that all the points intermediate to the last named points are on the "route" of the Northern Pacific Railway Company.

The dictionaries agree that a "route" is "a course or way which is traveled or passed, or to be passed," and in railroad parlance I think there can be no question that the shipment just mentioned would be said to be routed by the Northern Pacific over its route between Livingston and Elkhorn.

You are therefore advised that, in the opinion of this office, the constitutional provision above mentioned is binding upon the companies, and that the contract entered into cannot be in violation of its provisions.

I am returning herewith your copy of the contract herein referred to.

Yours very truly,

ALBERT J. GALEN,
Attorney General.