

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

NORTHERN PACIFIC RAILWAY
COMPANY AND NORTHWESTERN
IMPROVEMENT COMPANY,

Defendants.

Civil No. 2277

Filed May 26, 1949

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, complains and alleges upon information and belief as follows:

I

Jurisdiction and Venue

1. This Complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", commonly known as the Sherman Act, in order to prevent and restrain violations by defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act.

2. The alleged unlawful acts and violations hereinafter described have been conceived, in part, and have been carried out and made effective, and are being carried out and made effective in part within the Western District of Washington, Northern Division, and many of the unlawful acts pursuant thereto have been performed and are being performed by the defendants and their respective representatives within the Western District of Washington, Northern Division. Each of the defendants has

offices, transacts business, and is found within the Western District of Washington, Northern Division. The interstate trade and commerce as hereinafter described are carried on in part within the Western District of Washington, Northern Division.

II

Definition of Terms

3. The term "Northern Pacific Railroad Owned Lands", as used herein, means any and all lands or interests in lands which are owned or leased by the Northern Pacific Railway Company, its subsidiaries and predecessors, including timber lands, mineral bearing lands, oil and gas lands, coal and clay lands, grazing lands, and industrial sites.

4. The term "Northern Pacific Railroad Controlled Lands", as used herein, means any and all lands or real estate formerly owned, or whether ever owned, by the Northern Pacific Railroad Company which are encumbered with traffic clauses.

5. The term "traffic clause", as used herein, means an agreement relating to the sale, lease, or use of Northern Pacific owned or Northern Pacific controlled lands, under the terms of which the grantee is required to ship or have shipped over the lines of the Northern Pacific Railway Company any and all products of whatever nature coming from Northern Pacific owned and Northern Pacific controlled lands.

6. The term "Controlled Products", as used herein, shall mean products taken from, or raised upon, or manufactured upon Northern Pacific owned or Northern Pacific controlled lands, as well as incoming products shipped to such lands from points located outside such lands.

III

Description of Defendants

7. Northern Pacific Railway Company (referred to hereinafter as Northern Pacific) is hereby made a defendant herein. It is a corporation

organized under the laws of the State of Wisconsin on March 16, 1870, under the name of Superior and St. Croix Railroad Company. Its name was changed to Northern Pacific Railway Company on June 10, 1896, when it acquired the properties of the then bankrupt Northern Pacific Railroad Company, which was chartered by a special act of Congress (13 Stat. 365) on July 2, 1864.

8. Northwestern Improvement Company is hereby made a defendant herein. It is a Delaware corporation which, in 1942, became the successor in interest to a wholly-owned subsidiary of Northern Pacific which was incorporated in New Jersey on October 19, 1897, under the name of Northwestern Improvement Company, for the purpose of acquiring certain properties of the Railroad. On September 25, 1942, the property and assets of the New Jersey corporation were transferred to the Absaroka Oil Development Company, a wholly-owned subsidiary of defendant, Northern Pacific, incorporated under the laws of the State of Delaware. On that date, the name of the Absaroka Oil Development Company was changed to Northwestern Improvement Company. Defendant Northwestern Improvement Company is a wholly-owned subsidiary of defendant Northern Pacific.

IV

Nature of Interstate Trade and Commerce Involved

9. Northern Pacific Railroad Company, the predecessor of defendant Northern Pacific Railway Company, was a land grant railroad. By Act of Congress of July 2, 1864 (13 Stat. 365) it was chartered to construct a railroad from Lake Superior to Puget Sound, with a branch by way of the Columbia River to Portland, Oregon. In aid of this construction, a land grant was made by the Federal Government of every alternate section of public land, not mineral, in the amount of twenty sections per mile on each side of the railroad line, through territories, and ten sections per mile through States. In the event some of this land should be found to have been granted already, or sold, or occupied, the company

was privileged to select in lieu thereof alternate odd-numbered sections located not more than ten miles beyond the limits of the original grant. In lieu of mineral lands, the Railroad was given the privilege of selecting land suitable for agricultural purposes provided land so selected was located within fifty miles of the Railroad line.

10. By the Act of Congress of May 31, 1870 (16 Stat. 378) the Northern Pacific Railroad Company was authorized to construct the mail line by way of the Columbia River to Portland, Oregon, and a branch across the Cascade Mountains to Puget Sound. By act of Congress in 1869 (15 Stat. 346) the Northern Pacific Railroad Company was authorized to construct a line between Portland, Oregon, and Puget Sound. This authorization provided no land grant. However, the Act of Congress of May 31, 1870, made a grant of land to the Railroad in connection with the construction of the line between Portland, Oregon, and Puget Sound upon the same terms as those contained in the original grant of July 2, 1864. In addition to the land grants already described, the Acts of 1864 and 1870 granted the Railroad a right-of-way two hundred feet in width on each side of the definite location of the railroad line.

11. The Northern Pacific Railroad Company completed its line between Lake Superior and Puget Sound in August 1883. Northern Pacific now operates and controls approximately 6,900 miles of railroad extending from Minneapolis and St. Paul to the Pacific Northwest, passing through the northern tier of States bordering on Canada. States furnished with transportation services and facilities by Northern Pacific include Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon. The lines of the Northern Pacific substantially parallel the lines of the Great Northern Railway Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

12. Under the land grants made by the Acts of Congress of 1864 and 1870, Northern Pacific acquired approximately 40,000,000 acres of land in the States in which its lines now operate. Defendant Northern

Pacific, or its predecessors, have sold approximately 36,000,000 acres of such land. The lands sold were sold subject to a reservation in the vendor, its successors and assigns forever, of all minerals of any nature whatsoever, together with the right to use such of the surface as might be necessary for exploring and mining or otherwise extracting and carrying away the same. Defendant Northern Pacific and defendant Northwestern Improvement Company still own approximately 4,000,000 acres of such lands. The lands so sold by defendant and its predecessors, and the lands still owned by defendants contain timber, iron ore, coal, oil, clay, and other natural resources. In addition, a part of such lands have been used as grazing lands and a part devoted to industrial developments of various kinds. In addition to the sale of lands, defendants are engaged in the sale of rights to use certain of said lands still owned by them for grazing, for the location of industrial sites, and in the sale of rights to remove therefrom timber, oil, gas, metals, clay, coal, other minerals, and other products. Defendants have reserved mineral rights in a substantial part of the lands sold by them.

13. A substantial part of the approximately 36,000,000 acres of land sold by defendants has been sold subject to so-called "traffic clauses" under the terms of which the grantee agrees to ship or to have shipped over the lines of Northern Pacific any and all products and commodities coming from or delivered to such lands. In addition, a substantial part of the remaining 4,000,000 acres still owned by defendants is leased for various purposes to others. Those leases are also subject to the same type of "traffic clauses" as the land which has been sold.

14. Many commodities produced on or derived from, or distributed through the use of, lands now or formerly owned by defendants, and many products manufactured from such commodities are sold and shipped in interstate commerce. These commodities include, but are not limited to, timber, lumber, millwork, plywood, pulp wood, paper, coal, oil, gas, metals, minerals, animals and animal products, and a variety of manu-

factured products, machinery, foodstuffs, mining and lumbering equipment and supplies, are shipped in interstate commerce from other states to states in which lands owned and formerly owned by defendants are located.

15. The defendant Northern Pacific is engaged in the business of transporting commodities and products in interstate commerce. Many of the commodities and products referred to hereinbefore are transported in interstate commerce by defendant Northern Pacific. Means of transportation other than the lines of defendant Northern Pacific are available for the transportation of a substantial part of said commodities and products during all or a part of their interstate shipment, including the railroad lines of the Great Northern Railway Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, numerous motor freight lines, and steamship lines. Such carriers are in competition with, or, but for the illegal conduct hereinafter described, would be in active competition with defendant Northern Pacific for the transportation of said commodities and products.

v

Offenses Charged

16. For many years prior to the date of the filing of this Complaint, the defendants, each well knowing all the matters and things hereinbefore alleged, and continuing thereafter up to and including the date of the filing of this Complaint, have been and are now engaged in the making of contracts and in a conspiracy to make contracts to restrain unreasonably, and have conspired and combined to monopolize and have attempted to monopolize the interstate trade and commerce involved in the business of transporting commodities and products shipped from and in transporting commodities and products shipped to persons and concerns occupying both Northern Pacific Railroad owned lands and Northern Pacific controlled lands, all in violation of Sections 1 and 2 of the Act of

Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", as amended (15 U.S.C.A. Secs. 1 and 2), commonly known as the Sherman Act. Defendants threaten to continue such offenses and will continue them unless the relief hereinafter prayed for is granted.

17. The aforesaid contracts in restraint of trade, the combination and conspiracy in restraint of trade, and the monopolization and attempts to monopolize said interstate trade and commerce, have consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been that defendants

- a. Require grantees of rights in or to the use of Northern Pacific owned and Northern Pacific controlled lands to agree to supply railroad traffic to Northern Pacific;
- b. Require said grantees, under the terms of traffic clauses, to agree to do, and to do, the following:
 - (1) To ship or cause to be shipped over the lines of Northern Pacific commodities raised or produced on or coming from Northern Pacific owned or controlled lands;
 - (2) To ship or cause to be shipped over the lines of Northern Pacific, products manufactured in whole or in part from commodities raised or produced or coming from Northern Pacific owned or controlled lands;
 - (3) To ship or cause to be shipped over the lines of Northern Pacific, commodities raised or produced on or coming from lands other than Northern Pacific owned or controlled lands in which the grantees have a right or interest;
 - (4) To ship or cause to be shipped over the lines of

Northern Pacific products manufactured in whole or in part from commodities raised or produced on or coming from lands other than Northern Pacific owned or controlled lands in which the grantees have a right or interest;

- (5) To ship or cause to be shipped over the lines of Northern Pacific products and commodities shipped to the grantees;
- (6) To offer to sell or otherwise dispose of and to sell or otherwise dispose of commodities raised or produced on or coming from Northern Pacific owned or controlled lands and lands other than Northern Pacific owned and controlled lands in which the grantees have a right or interest and products manufactured in whole or in part from said commodities, to vendees designated by defendants;
- (7) To ship or cause to be shipped over the lines of Northern Pacific an equivalent amount of traffic through the transportation over Northern Pacific lines of commodities originating from other sources, in lieu of commodities raised or produced from Northern Pacific owned or controlled lands in which the grantees have a right or interest;
- (8) To route shipments of commodities and products over the lines of Northern Pacific in such a way as to give Northern Pacific the longest possible haul;
- (9) To obtain from vendees of commodities raised or produced or coming from Northern Pacific owned or controlled lands and lands other than Northern

Pacific owned and controlled lands in which such grantees have a right or interest and products manufactured in whole or in part from said products, an agreement that said vendees will ship over the lines of Northern Pacific said commodities and products, and products manufactured by said vendees in whole or in part therefrom;

(10) To induce and persuade vendees of commodities raised or produced or coming from Northern Pacific owned or controlled lands and lands other than Northern Pacific owned and controlled lands in which said grantees have a right or interest, and products manufactured in whole or in part therefrom, to ship over the lines of Northern Pacific said commodities and products and products manufactured by said vendees in whole or in part therefrom, or, in lieu thereof, to present to Northern Pacific an equivalent amount of traffic by the transportation of other commodities over the lines of Northern Pacific;

(11) To supply commodities to these vendees who are willing to ship their products over the lines of Northern Pacific;

(12) To keep records and allow defendants access thereto for the purpose of enabling defendants to police and enforce the foregoing requirements set out in the various sub-divisions of sub-paragraph (b) of this paragraph.

c. Threaten to refuse and refuse to grant rights in or to the use of Northern Pacific owned lands to grantees who refuse to comply with some or all of the requirements set

forth in sub-paragraph (b) of this paragraph;

- d. Agree with manufacturers who consent to ship their products over the lines of Northern Pacific that defendants will direct or cause grantees of rights in or to the use of Northern Pacific owned and controlled lands to supply commodities to such manufacturers for processing or manufacture.

VI

Effects of Violations

The aforesaid contracts, combination and conspiracy to restrain trade, and the monopolization and attempted monopolization by defendants have had the following effects as intended by defendants:

1. Northern Pacific has secured a substantial monopoly of the transportation of products and commodities coming from and produced on Northern Pacific owned and controlled lands;
2. Northern Pacific has secured a substantial monopoly of the transportation of products and commodities coming from and produced on lands other than Northern Pacific owned and controlled lands in which grantees of Northern Pacific owned and controlled lands have a right or interest;
3. Defendants have secured a monopoly control over the sale or other disposition of substantial quantities of commodities and products which they do not own;
4. Grantees of rights and interests in Northern Pacific owned and controlled lands have been deprived of a free choice as to both the means of transportation to be used and of markets in which to sell commodities and products coming from such lands;

5. Grantees of rights and interests in Northern Pacific owned and controlled lands who have interests and rights in lands other than Northern Pacific owned and controlled lands have been deprived of a free choice as to both the means of transportation to be used as well as the markets in which to sell commodities and products coming from lands other than Northern Pacific owned and controlled lands;
6. Subsequent vendees of products and commodities sold by grantees of rights and interests in Northern Pacific owned and controlled lands have been deprived of the right to dispose of such products to buyers in markets of their own selection as well as of the right to select their means of transportation for such products;
7. Other buyers and potential buyers of said products and commodities who buy and sell in markets which are not served by the lines of the Northern Pacific are deprived of the right to purchase such products and commodities in a free market;
8. Competing railroads and competing motor truck and steamship lines have been deprived of an opportunity to compete in an open market for the business of transporting products and commodities coming from Northern Pacific owned and controlled lands as well as lands other than Northern Pacific owned and controlled lands in which grantees of defendants have rights or interests.

VII

Prayer

Wherefore, the Plaintiff prays:

1. That the Court adjudge and decree that each of the contracts, as well as the combination and conspiracy in restraint of interstate trade and commerce, and the monopolization and attempts to monopolize the interstate trade and commerce described herein, are illegal and are in violation of Sections 1 and 2 of the Sherman Act.
2. That each and every one of the contracts under the terms of which the grantees of Northern Pacific owned and controlled lands are required to ship via Northern Pacific lines, products coming from and products shipped to such lands, as well as products coming from or shipped to lands other than Northern Pacific owned and controlled lands, be cancelled forthwith.
3. That defendants be perpetually enjoined and restrained from entering into any contract, agreement, or understanding with grantees of Northern Pacific owned or controlled lands under the terms of which such grantees are deprived in any way of either a free choice of transportation medium or of markets for products coming from or shipped to Northern Pacific owned or controlled lands, or from lands other than Northern Pacific owned or controlled lands in which grantees of Northern Pacific owned and controlled lands have an interest.

4. That the plaintiff recover the costs and disbursements of this suit.
5. That plaintiff shall have such other and further relief as the Court shall deem just and proper.

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