

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 NORTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	CIVIL NO. 2277
v.)	
)	FINAL JUDGMENT
NORTHERN PACIFIC RAILWAY COMPANY)	
and NORTHWESTERN IMPROVEMENT)	FILED: January 28, 1959
COMPANY,)	
)	
Defendants)	

Plaintiff, United States of America, having filed its complaint herein; defendants, Northern Pacific Railway Company and Northwestern Improvement Company, having appeared and filed their answer to the complaint; the Partial Final Judgment entered herein on August 31, 1956, affirmed by the Supreme Court of the United States on March 10, 1958, having adjudged unlawful and ordered termination of every provision of any lease (except industrial leases as hereinafter defined) or sale of land or timber providing that the lessee or purchaser shall ship outgoing or incoming freight over the lines of Northern Pacific, and plaintiff and defendants, by their attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein with respect to the claims involved in this action based upon defendants' industrial leases and without said judgment constituting evidence or an admission by any party hereto with respect to any such issue; and counsel for defendants having advised the court that defendants have caused to be served upon each of their lessees who is party to an industrial lease a notice of cancellation of traffic clauses contained therein, a copy of such notice being attached hereto,

marked "Exhibit A" and made a part of this Judgment;

NOW, THEREFORE, without trial or adjudication of any issue of fact or law herein with respect to such claims based upon defendants' industrial leases, and upon consent as aforesaid, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I.

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states claims for relief against defendants under 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," commonly known as the Sherman Act, as amended.

II.

As used in this Final Judgment:

(A) "Northern Pacific" means the defendant Northern Pacific Railway Company, a Wisconsin corporation having its principal office at St. Paul, Minnesota;

(B) "Northwestern" means the defendant Northwestern Improvement Company, a Delaware corporation having its principal office at St. Paul, Minnesota;

(C) "Industrial leases" mean leases of sites leased for commercial and industrial purposes, and shall include grain elevator and grain warehouse leases;

(D) "Traffic clauses" mean clauses contained in leases which specify that the lessee shall ship incoming or outgoing freight over the railroad of the Northern Pacific or over the lines of a railroad to be designated by either defendant.

III.

The provisions of this Final Judgment shall apply to the defendants Northern Pacific and Northwestern, their officers, directors, agents, employees, subsidiaries, successors and

assigns, and to all persons in active concert or participation with any defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

Each of the defendants is enjoined and restrained from adhering to, enforcing, reviving or renewing any provision contained in defendants' industrial leases providing that the lessee shall ship any outgoing or incoming freight over the railroad of the Northern Pacific, or over the lines of a railroad to be designated by either defendant, and the defendants are ordered and directed to file within sixty (60) days from the date of entry of this Judgment proof by affidavit of service upon all holders of industrial leases from defendants of notice of cancellation of any provision contained in such leases providing that the lessee shall ship any outgoing or incoming freight over the railroad of the Northern Pacific or over the lines of a railroad to be designated by either defendant.

V.

Defendants Northern Pacific and Northwestern are enjoined and restrained from entering into, adhering to, or claiming any rights under:

(A) Any provisions of any industrial lease which are identical with or similar to those described in Section IV hereof, or

(B) Any contract, agreement or understanding restricting the mode of transportation which may be used to ship freight to or from any industrial site purchased or leased from either defendant.

VI.

For the purpose of securing compliance with this Final Judgment and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall,

upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted (1) access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matter contained in this Final Judgment, and (2) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers and employees of such defendant, who may have counsel present, regarding any such matter. Upon such request the defendants shall submit such reports in writing to the Department of Justice with respect to any of the matters contained in this Final Judgment as from time to time may be necessary to the enforcement of this Final Judgment. No information obtained by means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII.

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

GEO. H. BOLDT
United States District Judge

Dated: January 28, 1959

We hereby consent to the making and entry of the foregoing
Final Judgment.

For the Plaintiff:

/s/ Victor R. Hansen
VICTOR R. HANSEN
Assistant Attorney General

/s/ Margaret H. Brass
MARGARET H. BRASS
Attorney, Department of Justice

/s/ W. D. Kilgore, Jr.
WILLIAM D. KILGORE, JR.

/s/ Charles L. Whittinghill
CHARLES L. WHITTINGHILL
Attorneys, Department of Justice

For the Defendant:

The Northern Pacific Railway Company

/s/ M. L. Countryman, Jr.
M. L. COUNTRYMAN, JR.

/s/ Dean H. Eastman
DEAN H. EASTMAN

/s/ Harold G. Boggs
HAROLD G. BOGGS

For the Defendant:

The Northwestern Improvement Company

/s/ M. L. Countryman, Jr.
M. L. COUNTRYMAN, JR.

/s/ Harold G. Boggs
HAROLD G. BOGGS

/s/ Dean H. Eastman
DEAN H. EASTMAN

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EXHIBIT A

NORTHERN PACIFIC RAILWAY COMPANY

Department of Properties and Industrial Development

St. Paul 1, Minn.

P. D. Edgell
General Manager

July 15, 1958

Notice of Cancellation of Traffic Clauses

TO HOLDERS OF INDUSTRIAL LEASES, GRAIN ELEVATOR
LEASES AND GRAIN WAREHOUSE LEASES:

In order that equal treatment may be extended to all of its lessees, Northern Pacific Railway Company has decided to discontinue the use of traffic clauses in its industrial leases (including grain elevator leases and grain warehouse leases) which require the lessee to do all transportation business over the railroad of this Company, and to cancel the traffic clause in all such leases now in effect. Accordingly, you are hereby authorized to cancel and delete the traffic clause contained in any such lease now held by you.

NORTHERN PACIFIC RAILWAY COMPANY

By /s/ P. D. Edgell
General Manager, Properties
and Industrial Development

Receipt of notice of cancellation of traffic clause in
lease Nos. _____
is hereby acknowledged this _____ day of _____, 1958.
