

Decision No. 13648

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Jacobs, Malcolm & Burt.

Complainant.

VS.

Berkoley Transportation Company.

Defendant.

CASE NO. 1974.

Harold A. Bishop. for the Complainant

Gwyn E. Baker. for the Defendant

BY THE COMMISSION:

### O P I N I O N

Complainant alleges that the defendant operates as a common carrier of property by vessel between San Francisco and the California State Prison, at San Quentin; that it has not filed with this Commission tariffs covering such carriage, as required by the Public Utilities Act; that it is engaged in the transportation of property in violation of Section 17 of the Act and that the rates charged complainant for the transportation of potatoes, onions and fresh fruit between said termini are unjust and unreasonable. We are asked to ascertain and fix the just and reasonable rates for such carriage; to award complainant reparation for charges paid by it in excess of such rates, and to direct the filing of tariffs to apply to such carriage in future.

By its answer defendant declares it is not a common carrier of property between San Francisco and San Quentin, but admits it is a common carrier between San Francisco and Berkeley, for which latter service proper tariffs have been published and filed. As a further defense it avers that the property transported between San Francisco and the Prison dock, within the California State Prison, is rendered by virtue of a contract with the State Board of Prison Directors of the State of California, and that the rates assessed were not unjust or unreasonable.

A hearing upon this matter was held before Examiner Geary on February 26, 1924, at which time complainant filed a detailed statement of shipments upon which it claims reparation. These shipments moved between January 1, 1922 and December 31, 1923, and consisted of the following:

<u>Commodity</u>	<u>Weight</u>	<u>Rate Per Cwt.</u>
Potatoes in Sacks -	806,769 lbs.	15¢
Onions in Sacks -	132,927 lbs.	( 15¢ * 20¢ # 15¢ ©
Lemons - - -	13 boxes	20¢
Bananas - - -	13,870 lbs.	20¢
Oranges - - -	5 boxes	20¢

\* Applicable from January 1, 1922 to November 17, 1922  
 " " " November 18, 1922 to February 25, 1923  
 " " " April 28, 1923 to December 31, 1923.

To support its contention that the rates assessed were

unjust and unreasonable, complainant presented Exhibit No.3. which is set forth below:

COMPARATIVE RATES ON LESS CARLOAD SHIPMENTS OF  
POTATOES AND ONIONS ON SAN FRANCISCO BAY AND TRIBUTARIES

FROM	:	TO	:	VIA	:	DISTANCE	:	Rates in Cents Per Cwt.
Sacramento	:	San Francisco	:	Calif. Trans. Co.	:	125	:	15 <sup>1</sup> / <sub>2</sub>
Stockton	:	San Francisco	:	Cal. Nav. & Imp. Co.	:	103	:	15 <sup>1</sup> / <sub>2</sub>
San Francisco	:	Petaluma	:	Pet. & Sta Rosa Ry.	:	30	:	10 <sup>1</sup> / <sub>2</sub>
San Francisco	:	Berkeley	:	Berkeley Trans. Co.	:	5	:	7 <sup>1</sup> / <sub>2</sub>
San Francisco	:	San Quentin	:	Berkeley Trans. Co.	:	10	:	15 ¢
								20 (Note)

NOTE: Rate 20¢ per cwt. charged on onions  
period November 18, 1922 to February 25, 1923.

It is the complainant's position that the rates from San Francisco to San Quentin should not exceed those contemporaneously in effect under defendant's tariffs from San Francisco to Berkeley.

The haul from San Francisco to Berkeley is five miles and from San Francisco to San Quentin ten miles. The operating conditions between San Francisco and Berkeley and between San Francisco and San Quentin are entirely dissimilar. There is a steady flow of tonnage in the Berkeley service which is not offered in the San Quentin operations. The round trip San Francisco to Berkeley consumes approximately two hours and fifteen minutes under favorable conditions, while the barge used to transport the freight between San Francisco and San Quentin requires five days to make the round trip, because of the fact that the dock at San Quentin is within the Prison yard, and the Prison authorities will not permit any boat to

land until after the prisoners are confined for the night, or subsequent to 5:15 p.m. At low tide the dock is unapproachable by boats and defendant can only operate with the high tide, which, in many instances, necessitates moves in the night to meet the tidal conditions. Present regulations require that the barges remain at San Quentin until unloaded, making necessary an additional trip of the motor vessel in order to pick up the returning empty or loaded barges.

Comparison of rates to be of value must be with rates established to meet similar conditions, and because of the peculiar operations at San Quentin the service is in no way comparable with the services rendered by the carriers operating under the rates shown in complainant's Exhibit No.3, and no exhibits were presented to show the costs of the service between San Francisco and San Quentin.

It appears that this defendant operated, at the time the shipments in question moved, two distinct transportation services, one a daily between San Francisco and Berkeley, distance of five miles, the other on an irregular schedule of about once a week, between San Francisco and San Quentin, a distance of ten miles.

Complainant's contention that the just and reasonable rates over the San Quentin route could not exceed those contemporaneously in effect between San Francisco and Berkeley has not been maintained. Defendant's service to San Quentin is rendered primarily for the State of California, the contract for such carriage having been awarded annually for several years past after competitive bidding; this contract specifies rates to be charged for the transportation of certain commodities, the rates for 1922, 1923

and 1924 being shown below:

<u>From</u>	<u>To</u>	<u>Commodity</u>	<u>1922</u>	<u>1923</u>	<u>1924</u>
San Francisco:San Quentin		:Raw Jute (per bale)	.40	.30	.35
San Quentin	:San Francisco	:Jute Bags ( " " )	.40	.30	.35
San Quentin	:San Francisco	:Mfgd. Goods (per cwt.)	.30	.25	.30
San Francisco:San Quentin		:Coal and Coke(per ton)	--	.90	1.25
Freight not otherwise specifically provided for,either way,(per cwt.)			.12 <sup>1</sup> / <sub>2</sub>	.10	.15

The testimony shows that the item "Freight not otherwise specially provided for" was purposely given a low rate as a means of securing the contract. there being active competition for its award. Very little freight has been actually carried under this rate for the State. Complainant, however, was assessed a higher rate than that contemporaneously in effect in the contract and, it appears, defendant has been charging a higher rate on shipments made f.o.b. San Quentin than those made f.o.b. San Francisco upon the theory that title to the latter shipments was in the State before the carriage commenced and that the contract rate should,therefore, apply; whereas title in the former case was in the shipper until the goods were set down on the dock at San Quentin. Moreover, in the former case the freight charges appear usually to have been collected from the individual shipper, while in the latter they have been paid by the State.

There can be no question but that this defendant, in addition to transporting freight under contract for the State of California, had held itself out to the public to transport to San Quentin such goods as might be offered to it for shipment, and that as to such shipments it is a common carrier subject to the regulations of this Commission under the provisions of the Public

Utilities Act. The fact, however, that it is thus engaged as such common carrier would not render it unlawful for the defendant to assess a different rate on shipments of property for the State even if such carriage were to be considered a part of its common carrier service, for by Section 17 of the Public Utilities Act common carriers are specifically authorized to transport property for the State at free or reduced rates and the real question, therefore, which must be decided in connection with this complaint is whether or not the rates actually assessed to complainant are just and reasonable per se for the service rendered.

As complainant has offered no evidence to warrant a finding that the rates applied and the charges assessed are unreasonable, we must find that the charges assailed are not unreasonable, and the complaint will be dismissed.

On August 17, 1923, Section 50 of the Public Utilities Act was amended (Statutes 1923, Chapter 387, page 834) providing, in part, that carriers shall not operate between points exclusively on the inland waters of this State without first having obtained from the Railroad Commission a certificate declaring that present or future convenience and necessity require, or will require, such operation, but no such certificate shall be required of any corporation or person actually operating vessels in good faith, at the time this act becomes effective, between points exclusively on the inland waters of this State under tariffs and schedules of such corporations or persons, lawfully on file with the Railroad Commission. No tariffs covering the service here in question were on file with this Commission prior to August 17.

1923, and no application has been made by the defendant for a certificate of public convenience and necessity authorizing it to operate as a common carrier between San Francisco and San Quentin.

It seems that, beginning January 1, 1924, a new policy was put into effect on the part of the State Purchasing Department that bids for supplies for San Quentin Prison would generally be f.o.b. shipping point, and that the rates specified in the defendant's contract would, therefore, apply to such shipments.

If defendant desires to continue to transport property as a common carrier over this route, application for a certificate of public convenience and necessity should be made and a certificate secured from this Commission authorizing such operation.

### O R D E R

Complaint having been made that certain rates charged by the Berkeley Transportation Company for the carriage of property from San Francisco to San Quentin were unjust and unreasonable, a public hearing having been held, evidence having been taken, the matter having been submitted and being now ready for a decision, it is hereby found as a fact that

the rates herein complained of were not in fact unjust or unreasonable, but that in rendering such service defendant has held itself out as a common carrier between San Francisco and San Quentin.

IT IS HEREBY ORDERED that the defendant immediately take the necessary action to comply with all provisions of the Public Utilities Act in connection with the common carrier service performed between San Francisco and San Quentin.

IT IS HEREBY FURTHER ORDERED that this complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 3rd  
day of June, 1924.

C. Seaver

Dwight Martin

J. T. Whitney  
Commissioners.