Decision No. 14534

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Sacramento Navigation Company, a corporation,

Complainant,

vs.

N. Fay & Son, a co-partnership, N. Fay and John Doe Fay,

Defendants.

CASE NO. 2057

Sanborn & Roehl and DeLancey C. Smith, by H.H.Sanborn, for Complainant.
Jones & Dall, by C.G.Dall, for Defendants.

BY THE COMMISSION:

OPINION

The complainant, Sacramento Navigation Company, is a corporation organized under the laws of the State of California, operating steamers for the transportation of freight only on the Sacramento River between San Francisco and Sacramento, also on the upper Sacramento River, above Sacramento, to Chico Landing.

In this proceeding it is alleged that certain freight rates published by the defendant, N. Fay & Son, a co-partnership, are unjust, unreasonable and insufficient, and will not yield the required revenue for the maintenance and operation of the vessels necessary to reasonably and adequately meet the public demand for

services in the territory involved.

Complainant further alleges that defendant was not operating vessels between Sacramento and Sycamore and points north thereof on August 16, 1923, when Chapter 388 of the Laws 1923 became effective and that the defendant has not since secured from this Commission a certificate of public convenience and necessity declaring that the services by the defendant were required between any of the points on the Sacramento River north of Sacramento, or any other points on the inland waters of this State.

It is further alleged that operations by this defendant on the Sacramento River at the rates named in Supplement No.4 to Defendant's Local Freight Tariff No.13, C.R.C. No.13, would result in great loss and hardship to complainant and would prevent complainant from furnishing the kind of service necessary to meet public requirements.

The complainant prays that this Commission exercise the authority conferred upon it by Section 50, subsection d, of the Public Utilities Act and make its order directing defendant to cease and desist from the operation of vessels between points on the Sacramento River north of Sacramento on the one hand, to Sacramento, Stockton, Port Costa, Vallejo, San Francisco and Petaluma on the other. Also that the Commission determine the kind and character of facilities and the extent of the operation thereof necessary to adequately serve the public, and to prescribe uniform rates, tolls, charges, classifications, rules, regulations and practices to be charged, collected and observed by all common carriers operating vessels between the points involved in this proceeding.

In answer to the complaint defendant denies that the rates published by it are unjust, unreasonable and insufficient; denies that on August 16,1923 it was not actually operating vessels between

the points mentioned in the complaint, and alleges that the rates assessed by it are reasonable and that it is furnishing services to the public to the extent of the facilities offered.

The particular rates complained of are those published in Supplement No.4 to N. Fay & Son Local Freight Tariff No. 13, C.R.C. No.13, issued September 24,1924, effective October 24,1924, and carried in Item No. 13-A of Page 5, covering grain in sacks, minimum 20 tons, as follows:

BETWEEN	AND	RATE PER TON
Points on the Sacramento River	Sacramento	$ 2.25
Between	Port Costa	2.50
Sacramento	Vallejo	2.50
And	Stockton	2.50
Sycamore	San Francisco	3.00
	Petaluma	3.00

From the files of this Commission it would appear that the defendant, N.Fay & Son, first filed tariff establishing rates at points north of Sacramento April 23,1918, as per their Local Freight Tariff No.5, C.R.C. No.5. At that time the rate between Colusa and San Francisco was made $2.25 per ton and between Colusa and Port Costa $2.00 per ton. These rates were blanketed at all points north of Sacramento. It will not be necessary to give in detail all the rate changes published during the past six years. The following tabulation, however, is

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illustrative of the grain rate situation at the points named, as it recently existed and as it is today:

TARIFFS

BETWEEN	AND	N.Fay & Son CRC 12 8/27/20	Sac.Nav. Company CRC.3 11/10/20	Sac.Nav Company CRC 3 6/1/22	N.Fay & Son CRC 13 9/21/22	N.Fay & Son CRC 13 10/24/24
Colusa	San Francisco	3.87½	3.90	3.60	3.30	3.30
	Port Costa	3.50	3.50	3.20	3.00	3.00
Points on Sacramento River Between Sacramento and Sycamore	San Francisco			3.60	3.30	3.00
	Port Costa			3.20	3.00	2.50
Points on Sacramento River Between Sacramento and Knights Landing	San Francisco	3.87½	3.90	3.30	3.00	3.00
	Port Costa	3.50	3.50	3.00	2.50	2.50

It will be noted from the above that in 1920 the rates of complainant and defendant were on a parity; that in 1922 the defendants' rate between Colusa and San Francisco was 30 cents and at Port Costa 20 cents per ton lower than the complainant's; from Knights Landing to San Francisco and Port Costa the rates were 30 and 50 cents per ton lower than complainant's. Effective October 24,1924 defendants published the rates set forth in the first tabulation to Sycamore, a point 70 miles north of Knights Landing, with the result of making the Sycamore to San Francisco rate of the defendants 60 cents per ton lower than that of complainant and the Sycamore to Port Costa rate 70 cents per ton lower than complainant's. Sycamore is approximately 11 miles south of Colusa, and it is

possible to truck the grain from the fields in the vicinity of Colusa to Sycamore, therefore if shipments are made from that point instead of Colusa the difference in the transportation charge would be 70 cents per ton, by reason of the fact that the Colusa-Port Costa rate of the Sacramento Navigation Company is $3.20 and that of Fay & Son, Sycamore to San Francisco, $2.50 per ton. This analysis shows that defendants' grain rates have been lower at certain points than complainant's since September 21, 1922, or for more than two years, and were in effect August 16, 1923, when the Public Utilities Act was amended.

Defendants contend that a reduction of 70 cents per ton would reflect an annual loss of $56,000.00 in revenue, but presented no proof of this assertion.

The Sacramento Navigation Company operates between San Francisco and Chico Landing, a distance of approximately 267 miles. The company has 7 Tow boats, 3 Packet boats and 23 Barges, the Barges having a capacity of from 350 to 1000 tons. The scheduled service is three times a week between San Francisco and Sacramento, and twice a week, when water conditions permit, at points north of Sacramento. In addition, an irregular service is rendered with the Barges and Tow boats. This company and its predecessors have maintained the servise since 1862, but it will not be necessary herein to go into the historical details of the competitive features of the operations, the same having already been reviewed in a number of proceedings. (11.C.R.C.260; 13.C.R.C.643).

The Navigation Company is purely an operating company employing the facilities owned by the Sacramento Transportation Company and Farmers Transportation Company under an agreement executed in 1920, whereby it pays to these owning companies a

rental of $42,000.00 a year for properties given a value of $700,000.00 under the Lease Agreement, but which the owners claim has an actual value in excess of $1,000,000.00. No details were furnished by complainant as to arriving at the valuation of the properties, neither were any exhibits nor testimony presented giving the revenue, operating expenses, etc. However, it would appear from the record that under the terms of the Agreement the operating company turns back to the owning companies all of the net profits, in addition to the rental of $42,000.00 per annum. If the operating company fails to earn sufficient to pay the rental of $42,000.00 there is no recovery, but as the operating company was created purely for the purpose of eliminating the duplication of service rendered by the Sacramento Transportation Company and the Farmers Transportation Company, the ownership of the three companies is a mutual affair.

The testimony shows that in the territory north of Sacramento there are some thirty warehouses with landings on the Sacramento River. Of these 24 are owned by the Sacramento River Warehouse Company and are under the same ownership and control as the Sacramento Navigation Company. The Sacramento Navigation Company, by the terms of its agreement, has control of the bank landings between the river and the warehouses and will not permit vessels other than those operated by itself to use the landings at these 24 warehouses; therefore it is impossible for the vessels of this defendant or other independent operators to secure cargo from the controlled warehouses unless they arrange for the transferring of the tonnage from these warehouses to river bank landings, not under the control of the Sacramento Navigation Company, where boats may land, and since there is substantial expense for this transfer, defendants are excluded entirely from the transportation

of the tonnage in this district, except such tonnage as it can secure at the six independent warehouses and from landings on farms fronting on the river.

The testimony of defendants' witness, and the tariffs on file, show that operations have been conducted by N.Fay & Son on the Sacramento River since April, 1906, and at points north of Sacramento since 1918; that it now has in the service 2 Motor boats and 2 Barges; that the company does not at this time and never has maintained regular schedule trips, but has always conducted a tramp service, going after cargoes whenever orders are received.

The testimony further shows that defendants secure but a very small percentage of the total tonnage moved from points north of Sacramento.

Section 50(d) of the Public Utilities Act became effective August 16,1923 and, in part, reads as follows:

> "No corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall hereafter operate or cause to be operated, any vessel 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 public convenience and necessity require or will require, such operation, but no such certificate shall be required of any corporation or person which is 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."

From the facts before us we conclude that this defendant was actually operating vessels in good faith at the time the Act was amended and that it had tariffs and schedules on file, as provided by the Public Utilities Act. It is a fact that the defendant operated no vessels on regular schedule, but by this action it performs

a service no different than that rendered by practically all of the small vessels operating on the inland waters of this State which only move over the routes when tonnage is offered.

Section 32, paragraph c, of the Act, effective August 16, 1923, reads as follows:

> "The commission shall have power and it shall be its duty, upon a hearing, had upon its own motion or upon complaint, to determine the kind and character of facilities and the extent of the operation thereof, necessary to reasonably and adequately meet public requirements for service furnished by common carriers between any two or more points, and to fix and determine, the just, reasonable and sufficient rates for such service and whenever two or more common carriers are furnishing service in competition with each other the commission shall have power, after hearing had upon complaint or upon its motion, when necessary for the preservation of adequate service and when public interest demands, to prescribe uniform rates, fares, tolls, rentals, charges, classifications, rules, regulations and practices to be charged, collected and observed by all such common carriers."

We have nothing before us in this record to determine the public requirements for service, nor are there any exhibits or financial statements upon which the Commission could prescribe uniform rates, fares, tolls, rentals, etc. to be observed by the common carrier operators in the territory in controversy.

The burden of proof is, under the Statute, upon the complainant to show by clear and satisfactory evidence that the reduced tariff rates complained of are unreasonable and would not produce sufficient revenue to provide the funds necessary to continue and complete an adequate service to the public. Neither has the complainant furnished any proof of what the rates should be.

We are of the opinion and find that the complainant has

not justified its charges and that the proceeding should be dismissed without prejudice.

ORDER

This case being at issue upon complaint and answer on file, having been duly heard and submitted by the parties, a full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, that the complaint in this proceeding be, and it is hereby, dismissed.

Dated at San Francisco, California, this 5th day of February, 1925.

C. L. Seavey

George D. Squires

Ezra W. Decoto

Commissioners.

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