Decision No. 18222

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

California Transit Company,
a corporation,
Complainant,

vs.

Southern Pacific Company,
a corporation,
Defendant.

Case No. 2208.

Earl A. Bagby, for Complainant.
H.W. Hobbs and F.W. Mielke, for Defendant.
W.P. Geary, Rate Department, for the Commission.

BY THE COMMISSION:

O P I N I O N

This is a matter initiated upon complaint of the California Transit Company asking that the Southern Pacific Company be directed to make reparation to it on account of certain alleged excessive and discriminatory charges for the transportation of its automobile stages between San Francisco and Oakland Pier on defendant's vehicular ferry under certain named tariffs, together with interest from December 15, 1925, and further praying that defendant be required to adjust its tariffs for said carriage in the future. Specifically; defendant is charged with having improperly rated complainant's automobile stages and busses as "trucks" under its said tariffs, rather than as "automobiles." The reasonableness per se of the rates charged or the fares of passengers transported in the stages are not involved.

Defendant filed a petition to dismiss this complaint on jurisdictional grounds, and later filed its answer alleging that this Commission possesses no jurisdiction over the transportation services covered by this complaint, and further that the service performed by

defendant for complainant in transporting its automobile stages between said points are not covered by the tariffs mentioned in said complaint. Further answering the complaint, defendant alleges that it has collected charges for the transportation of complainant's stages while engaged in the operation of complainant's common carrier service in the sum of $1.40 for each auto stage so transported, this being the rate as provided in defendant's tariffs for "trucks" plus a sum, prior to December 16, 1925, of eight cents for the driver and each passenger so transported, and since December 16, 1925, the sum of five cents for the driver and each such passenger. It denies that the lawful or authorized tariff rate or charge per vehicle for the transportation of complainant's auto stages while engaged in complainant's common carrier service is the sum mentioned in said complaint, and finally alleges that the amount of such charges is a matter for arrangement, understanding or contract between the complainant and defendant and is not a matter subject to the jurisdiction of this Commission.

A stipulation was filed presenting the salient and agreed facts of the transportation here involved. This stipulation discloses that during all of the times mentioned in the complaint, defendant has operated a common carrier ferry between San Francisco and Oakland Pier for the transportation of vehicles and their drivers together with the passengers or property transported therein; that during said time defendant has maintained certain published tariff rates and regulations governing such transportation, which tariffs are designated as "Southern Pacific Local Freight Tariff No. 380-K, C.R.C. No. 2612," and "Local Passenger Tariff BM-No. 1, C.R.C. No. 2979", both effective July 1, 1921, together with revisions thereof and supplements thereto; "Southern Pacific Company Local Passenger Tariff A-No. 1, C.R.C. No. 2909", effective August 26, 1920, together with the revisions therewith and supplements thereto, and "Southern Pacific Company Local Passenger Tariff A-No. 2, C.R.C. No. 4176", effective

January 25, 1926. It is further stipulated that, during said time, defendant has accepted and transported indiscriminately on said vehicular ferries between San Francisco and Oakland Pier, all automobiles, taxi-cabs and rent cars applying to defendant for transportation between San Francisco and Oakland, regardless of whether such vehicles were operated for private or public use, or as a common carrier, or were being operated for compensation, or otherwise, charging therefor the same rate or charge fixed by said published tariff of defendant for the transportation of "automobiles" on said ferries, and also all motor vehicle stages or busses and sightseeing busses, including complainant's stages and busses, that applied for such transportation, regardless of whether such vehicles were being used for public or private purposes, or as common carriers, and regardless of whether or not the same were then transporting passengers for compensation, or otherwise, charging therefor the same rate or charge as is fixed in said published tariff for the transportation of auto "trucks". The stipulation further shows that no express contract or agreement, as distinguished from the general implied contract of carriage, has existed between complainant and defendant covering said transportation, and that defendant has not at any time refused to transport complainant's vehicles upon the ground that they are being used in the business of transporting persons or property as a common carrier.

After the first hearing in this matter, voluminous briefs were filed by the parties upon the question of jurisdiction raised in defendant's Motion to Dismiss. The position of defendant on that Motion, as restated in its Reply Brief on the merits filed with the Commission March 25, 1927 was "based wholly upon the proposition that defendant is not a common carrier insofar as regards complainant's stages while employed by complainant in its common carrier service and that, therefore, the tariff does not apply to those stages, but that the charges are a matter of private contract between the com-

plainant and defendant and not subject to regulation by this Commission." The same brief declares further that Defendant's Motion "was based upon the sole ground that defendant could not be made a common carrier with respect to transportation of complainant's stages while in common carrier service."

This Motion to Dismiss was denied by the Commission upon the ground that, irrespective of whether complainant's stages were being used in the common carriage of persons or property at the time of their transportation upon defendant's ferry, defendant has never refused to receive and transport such stages and has by its acts dedicated its ferry service to the transportation of such auto busses or stages and their passengers and such property as is carried thereon. We shall not discuss this matter at length, it being our opinion that the determination so made upon said Motion to Dismiss was proper, and that defendant is in no position to contend, at this time, that it is not transporting the stages and auto busses of complainant in its general business of common carriage by vehicular ferry upon the Bay of San Francisco. We are further of the opinion that the decision of the United States Supreme Court in the so-called "Express cases", 117 U.S. 1, 29 L. Ed., 791 has no application to the situation herein presented.

Upon the denial of this Motion to Dismiss, hearing was had upon the merits of the issues herein raised, and briefs dealing with the merits of the case were filed by the parties, the sole question before this Commission at this time being whether the defendant assessed and charged for the transportation of complainant's auto stages and busses upon the vehicular ferry above mentioned, rates in accord with its legally published tariff. No specific rate covering auto stages or auto busses is named in tariffs on file with this Commission, it appearing that the tariffs above mentioned provide only for a certain rate to be assessed for the transportation of "automobiles", and other rates to be assessed for "trucks" according to

weight, together with a rate for persons accompanying said vehicles. Complainant's stages were assessed the rate applicable to "trucks" weighing 4000 pounds or over, plus the passenger rate for the driver and each passenger.

The sole question now at issue is, therefore, whether defendant correctly rated the auto stages and busses of complainant by analogy as "trucks" instead of "automobiles". There is no provision in these tariffs providing that articles cannot be rated by analogy, and if defendant was correct in its rating of said vehicles, this complaint must be denied. If, on the other hand, these vehicles should have been rated as "automobiles", reparation should be directed to be paid in the amount of all charges collected from complainant in excess of the rates applicable to "automobiles", and defendant should be required henceforth to rate and assess charges for the transportation of said vehicles as "automobiles" rather than as "trucks", until it shall have filed and published tariffs specifically applicable to automobile stages or busses.

It appears to us that the question involved is a simple one, to wit: whether or not, from a transportation standpoint, the vehicles here in question are more similar in character to "trucks" than to "automobiles". In the absence of specific tariff provisions covering articles transported, it is necessary in determining the rate applicable to consider the transportation characteristics of the particular article in question. Thus, in the case of Chase Companies v. Director General, 81 I.C.C. 207, the Interstate Commerce Commission declared:

> "It is the character of an article from a transportation standpoint, and not the use of which parties may contract that it shall be put, that determines the rate or rating applicable."

While it is true that the tariffs above mentioned do not rate the vehicles which they purport to cover according to length or width, and while it is true that the only rating made is as between "automobiles" on the one hand and "trucks" on the other, a segregation

is made for the transportation of trucks which provides that trucks under 4000 pounds shall be assessed at a certain rate and trucks over 4000 pounds shall be assessed at another and higher rate.

The evidence shows that complainant's automobile stages or busses here in question are used by complainant in rendering its services as a common carrier. These stages or busses have a passenger vehicle body built on a chassis closely resembling a truck chassis and are 28 feet, 5½ inches long, 8 feet, 6 inches wide, weigh on an average of 9300 pounds, and have a passenger carrying capacity of approximately 26 to 28 passengers. The evidence also shows that the average length and width of 10 representative makes of automobiles was 12 feet, 8 inches, and 5 feet, 6 inches, respectively, and of 38 representative makes of automobile trucks, 21 feet, 10 inches and 6 feet, 6½ inches, respectively. In this respect it appears that complainant's auto stages bear a closer relationship to the transportation characteristics of an automobile truck than to an automobile.

Considering all of the conditions of the transportation here in question, it therefore seems evident to us that, from a transportation standpoint, the vehicles mentioned in this complaint are more properly to be rated under the heading of "trucks" than under that of "automobiles." Moreover, this has been the prevailing practice, extending over a long period of years, and the evidence in this case shows that, in all other instances of vehicular ferry service on the Bay of San Francisco where specific rates are not filed by carriers for the transportation of "auto busses" or "auto stages" the custom of the several carriers has been to apply the truck rate rather than the "automobile" rate to such auto busses or stages.

This case is in many respects similar to the recent case before this Commission entitled Gilmore Oil Co. v. A.T.& S.F. Ry. Co., et al., in which in our decision No. 17694, we determined that certain "refinery tops" transported for that complainant had, under general transportation practice, long been transported at rates applying to

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"gas oil", which established practice justified, in our opinion, the fair assumption that the term "gas oil" was and is meant to be descriptive of such "refinery tops". In the present case it appears that for a number of years it has been the practice of transportation companies by vehicular ferry not publishing commodity rates for auto stages or busses to charge for their carriage the truck rather than the automobile rate, and we believe that the evidence herein discloses such practice to be justified, in that such auto busses and stages are more nearly similar and analogous, from a transportation standpoint, to trucks than they are to automobiles. We are not impressed by the argument that the purpose for which the auto stages or busses are used, i.e., to transport passengers rather than goods, requires a determination from us that, from a transportation standpoint, they must be rated under this tariff as "automobiles."

We do not wish to be understood as holding that ordinary touring cars, sedans, or the like, which are being used to transport persons for compensation are to be rated as "trucks", and we believe that defendant should at once file with this Commission proper tariffs showing rates specifically covering the various types of auto busses and stages which it carries upon its vehicular ferries, in order that no further question or doubt may arise as to the proper rating of such vehicles.

O R D E R

Complaint having been made by California Transit Company, a corporation, against Southern Pacific Company, a corporation, asking for reparation as above outlined; hearings having been had; briefs having been filed; the Commission now being fully informed in the

premises; and it appearing that the proper tariff rate has been assessed for the carriage hereinabove mentioned,

IT IS HEREBY ORDERED that the complaint herein be and the same is hereby denied.

Dated at San Francisco, California this 13th day of April, 1927.

COMMISSIONERS.

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