

Decision No. 18695

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

BAY AND RIVER BOAT OWNERS' ASSOCIATION,

Complainant,

vs.

WILLIAM FRODSHAM,

Defendant.

ORIGINAL

Case No. 2297

Gwyn H. Baker, for Complainant.

Edward J. Lynch, for Defendant.

LOUTTIT, Commissioner:

O P I N I O N

The complaint of Bay and River Boat Owners Association filed in this matter on December 28, 1926, alleges that defendant, William Frodsham, is engaged in the operation of vessels on the inland waters of the State of California as a common carrier of freight for hire between Antioch and various points, more particularly between Antioch and Stockton; that the defendant was not operating vessels in good faith under tariffs and schedules lawfully on file with the Railroad Commission of the State of California prior to August 16, 1923, and that no certificate has ever been issued by the Railroad Commission of the State of California declaring that public convenience and necessity require such operation by the defendant, and that therefore such operation by him is unlawful and in violation of section 50(d) of the Public Utilities Act.

In answer to the complaint the defendant denies each of the above allegations. The issues in the case are, therefore, well defined.

A formal hearing in the matter was held before me at Antioch on March 15, 1927, at which time testimony was introduced by the parties. The record shows that the defendant is now operating, and since 1923 has operated, a mail boat from Antioch to certain points on the Sacramento and San Joaquin Rivers under contract with the United States Government. With this boat the defendant also performs a common carrier service in the transportation of light freight and passengers. This boat - a gasoline launch - is of a size under the burden of five tons net register, and therefore is not a "vessel" within the meaning of the term as used in the Public Utilities Act (Sec. 2(y), Public Utilities Act, 1915.) The operation of this vessel, therefore, is obviously not in violation of any provision of the Public Utilities Act.

The record further shows that the defendant owns a tugboat of eight tons net register, and a barge of about eighty tons net register. The tugboat is used as an auxiliary boat on the mail route service by the defendant, and occasionally as a tow boat for the barge. The barge is used three or four times a year by defendant for the transportation of hay and other products, between points in the vicinity of Antioch. In every instance the service performed with the barge is rendered under private contract with the shipper. The record shows that there has been no such holding out by defendant to serve the public generally with the barge as to impress upon his operations the status of a common carrier.

It appears that defendant's operation of the tug boat of 8 tons net register as an auxiliary boat for the service rendered by the mail boat of less than 5 tons net register, is in violation of the public Utilities Act, insofar as it is used in the performance of a common carrier service for the transportation of freight and passengers. The defendant therefore should be ordered to discontinue the use of

