

Decision No. 19653

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

COGGESHALL LAUNCH & TOWBOAT COMPANY,

Complainant,

vs.

COUSINS LAUNCH & LIGHTER COMPANY, a  
copartnership comprising WILLARD W.  
COUSINS, HENRY C. COUSINS, MRS. EDNA  
J. PHILLIPS and DORIS E. BALDWIN,

Defendant.

ORIGINAL

Case No. 2380.

Pierce H. Ryan, for Complainant.

Puter & Quinn, by L. F. Puter, for Defendant.

BY THE COMMISSION:

OPINION

Complainant has, for many years, been a common carrier by vessel on Humboldt Bay, operating chiefly between the points of Eureka and Samoa and between Eureka and Rolph (also known as Fairhaven). It alleges in its complaint that defendant is operating vessels illegally between the same points for the transportation of persons for compensation in competition with complainant and in violation of the latter's certificated rights. By its answer, defendant, in effect, admits the operations, but contends that it is doing so as a private, and not as a common carrier, and therefore not illegally. A public hearing was held before Examiner Vaughan at Eureka, the matter was duly submitted, and is now ready for decision.

The single question involved is whether or not defendant is a common carrier by vessel in conducting its operations between the above named points, and the pertinent facts, in so far as they relate to this question, are as follows:

For several years the employees and property of the Little River Redwood Company, maintaining an industrial plant at Little River Wharf, had been transported by defendant and its predecessors as common carriers between this point and Eureka. About 1926 the lumber company decided to move its plant and equipment from Little River Wharf to the Town of Rolph. Defendant filed an application (Application 13282) requesting authority to operate to and from Rolph, predicated upon its desire to continue the service theretofore rendered between Eureka and Little River Wharf. By and under Decision No. 17978 the Commission denied this application. Subsequently, defendant filed its Application No. 13713, requesting authority to cancel all freight and passenger tariffs naming rates, fares, rules and regulations for the transportation of persons and property by it between points on Humboldt Bay. This Commission granted such authority (Decision 18331) upon the condition that it should not be considered as a determination of the character of the operations of defendant.

Immediately after the shifting of the lumber company plant to Rolph, complainant commenced operating on a daily schedule between that point and Eureka under rates and tariffs lawfully on file with this Commission. Pursuant to an arrangement between complainant and the lumber company, the method of collecting rates and charges called for the transportation of the employees of the latter daily upon a monthly billing basis.

on May 27, 1927, complainant received a letter from the lumber company, advising that prior instructions were rescinded and that henceforth the employees would be carried by defendant.

On May 31, 1927, a contract was entered into between the lumber company and defendant, whereby the latter agreed to transport the employees of the former, irrespective of number, for the stipulated sum of \$100.00 per month. No deduction from the wages of employees is made by the lumber company for this transportation. The contract also provides for the transportation of lumber products from Rolph to other wharves owned or controlled by the lumber company to ships in Humboldt Bay at rates dependent upon tonnage and by whom loaded. Miscellaneous freight is agreed to be carried at the rate of \$1.50 per ton.

A verbal contract practically identical in terms exists between defendant and the Dolbeer-Carson Lumber Company for a similar operation between Eureka and Samoa, this being the other violation of law alleged in the complaint.

The Manager of defendant company testified that defendant was ready and willing, and considered itself under a duty to transport freight for any one to and from any points on Humboldt Bay at certain specified rates. He further testified that the company was willing and considered itself under a duty to carry at certain specified rates any persons who presented themselves for transportation to and from any point on Humboldt Bay.

From this showing, it is our conclusion that defendant is actually holding itself out as a common carrier, and furthermore, we believe that the record discloses that defendant has been acting as such. The only thing which might indicate otherwise is the existence of the two contracts above referred to,

which defendant, relying upon the rule announced by the United States Supreme Court in Frost & Frost v. Railroad Commission, (271 U.S. 583), contends to be private in nature, therefore rendering all operations thereunder not subject to our jurisdiction.

As is above noted, these contracts call for operations between the point of Eureka on the one hand, and the points of Rolph and Samoa on the other. The record is conclusive that defendant also holds itself out as a common carrier between these same points. Assuming these contracts to be purely private in nature, we do not think they can be lawfully exercised for the obvious reason that unjust discriminations would result against persons using the services as common carrier patrons, and in favor of persons using the services as private contract holders. See Washington ex rel Stimson Lumber Co. v. Kaykendall, Advance Opinions of the United States Supreme Court, 1927-28, 50; 72 L.ed. \_\_\_\_.

At the hearing defendant placed stress upon the fact that the Commission had permitted it to cancel its tariffs and that this was determinative of the character of its operations as being public or private. The answer to this is that the order authorizing such cancellation was upon the express condition that it should not be so considered. Furthermore, should a common carrier, after such authorization to abandon service, continue the same as a common carrier, as is being done here, without securing the proper and legally required authorization from this Commission, we believe it to be within our power to determine that such operations are public in nature and to order a cessation of same unless and until such authorization is secured.

From the foregoing, we hereby find that the operations of defendant as they are presently being conducted between

and other points on Humboldt Bay Eureka and Rolph and Eureka and Samoa, are common carrier services which defendant has no lawful right to perform. An order will be entered directing defendant to immediately cease and desist from such common carrier operations.

O R D E R

A complaint, as above numbered and entitled, having been filed with this Commission, a public hearing having been held thereon, the matter having been duly submitted, and being now ready for decision,--

NOW, THEREFORE, IT IS HEREBY ORDERED that defendant, Cousins Launch & Lighter Company, be, and it is hereby ordered to immediately cease and desist from all common carrier operations between any and all points on the Humboldt Bay, in the State of California, including such operations as defendant is now, and has been, conducting for the Little River Redwood Company and the Dolbeer-Carson Lumber Company, as such operations are defined in the opinion preceding this order; unless and until a certificate of public convenience and necessity authorizing such operations is first had and obtained from this Commission.

For all other purposes, the effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 21<sup>st</sup> day of April, 1928.

Leon Whitely

C. Seaver

Thor S. Loring

W. A. Linn  
Commissioners.