

Decision No. 20312.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PERALUMA AND SANTA ROSA RAILROAD  
COMPANY, a Corporation,

Complainant,

vs.

SAN RAFAEL FREIGHT & TRANSFER  
COMPANY, a Corporation,

Defendant.

**ORIGINAL**

Case No. 2429.

Donald Geary and E. H. Maggard, for complainant.

Edward R. Solinsky, for defendant.

R. W. Palmer, for the Northwestern Pacific Railroad  
Company, intervener on behalf of complainant.

W. S. Johnson, for Southern Pacific Company.

A. S. Weston, for American Railway Express Company.

BY THE COMMISSION:

O P I N I O N

Complainant is a common carrier of freight by vessel and train between San Francisco, Santa Rosa and the intermediate points. By complaint filed October 8, 1927, it is alleged that the San Rafael Freight & Transfer Company, a corporation, (a) is transporting individual articles of freight weighing in excess of 60 pounds between San Francisco, Santa Rosa and the intermediate points in violation of its certificate of public convenience and necessity, and (b) is transporting property at rates different from those shown in its tariffs lawfully on file with the Commission.

Public hearings were held before Examiner Geary at Petaluma May 17, 1928, and at San Francisco January 17 and June 1, 1928, and the case having been duly submitted and briefs filed, is now ready for an opinion and order.

The San Rafael Freight & Transfer Company is a common carrier of property between San Francisco, Santa Rosa and the intermediate points, and to some extent is in competition with complainant. Defendant's service is rendered by vessel and automobile truck, the service being performed by vessel between San Francisco and either San Rafael or Sausalito, and by automobile truck beyond the latter two points. Freight may be transported on defendant's vessels regardless of the weight, but the certificate of public convenience and necessity covering the automobile truck operations expressly prohibits defendant from hauling single articles of package merchandise weighing in excess of 60 pounds. The right to operate automobile trucks was acquired through purchase from A. E. Marx, an individual, and A. E. Marx and R. H. Clark, copartners, by authority of our Decision No. 12519 of August 22, 1923, in Application No. 9135.

The record shows that on or about July 14, 1927, defendant entered into a written agreement with Samuelson Bros., Inc., whereby the latter was to contract with shippers in San Francisco for the transportation of merchandise, regardless of weight, from San Francisco to points on the highway north of Sausalito and San Rafael. The agreement provided that the rates were to be fixed by Samuelson Bros., Inc., and from the proceeds defendant was to receive its regular tariff rates for the vessel service from San Francisco to San Rafael or Sausalito, the balance to be divided equally between the contracting parties.

While this arrangement was in effect it is in evidence defendant during the months of August, September and November,

1927, transported from San Francisco to Petaluma package merchandise consisting of some articles weighing in excess of 60 pounds and some weighing less than 60 pounds. The rates charged were lower than contained in defendant's Tariff C.R.C. No. 4, lawfully on file with the Commission and in effect at the time these shipments moved. The evidence and testimony however show that Samuelson Bros., Inc., only solicited the shipments and acted as draymen from the consignor's place of business to defendant's dock at Pier 9, San Francisco. Defendant performed the entire transportation service, rendered the freight bills and collected the freight charges from the individual consignees.

About February 1, 1928, defendant abandoned this method of operation and directly solicited shipments from wholesale firms, offering to haul all of their consignments regardless of weight from San Francisco to points on the highway between Sausalito, San Rafael and Santa Rosa. The offer to haul for these firms was in the form of a letter signed by defendant, with an opening statement reading: "We hereby contract to make store deliveries of all your shipments from Pier 9, San Francisco, to all points on the highway between Sausalito and Santa Rosa \* \* \* \* ". The rates quoted were considerably less than those shown in tariffs lawfully on file with the Commission. Under this arrangement defendant solicited the shipments, issued through bills of lading, and hauled the goods to San Rafael by vessel, where they were turned over to one Edgar Pomeroy, who by an agreement with defendant performed the automobile truck service with his own equipment beyond the terminals at a flat rate of 15 cents per 100 pounds.

Defendant admits it has held itself out to transport package merchandise weighing in excess of 60 pounds per single article and at rates lower than those provided in its tariffs,

but contends it was performing the service as a private contract carrier in a manner similar to that considered by the United States Supreme Court in Frost vs. Railroad Commission, 271 U.S. 583, also that its alleged contract service was separate and distinct from its common carrier operations. The Frost case however is not in point, for there private property was being transported by a private carrier, while here we have a common carrier endeavoring to transform itself into a private contract carrier for the obvious purpose of annulling a restriction imposed upon it as a common carrier by an order of this Commission.

After consideration of all the facts of record we are of the opinion and so find that defendant violated its certificate of public convenience and necessity granted by this Commission in Application No. 9135, supra, by transporting single articles of package merchandise weighing in excess of 60 pounds, and has transported property at rates lower than those published in its tariffs lawfully on file with this Commission. An order requiring defendant to cease and desist from the unlawful operations will be entered.

#### O R D E R

This case being at issue upon complaint, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendant, San Rafael Freight & Transfer Company, a corporation, be and the same is hereby ordered to immediately cease and desist from transporting single articles of package merchandise weighing in excess of 60 pounds between San Francisco on the one hand and points north of Sausalito

and San Rafael to and including Santa Rosa, on the other hand.

IT IS HEREBY FURTHER ORDERED that defendant, San Rafael Freight & Transfer Company, a corporation, be and it is hereby ordered to immediately cease and desist from applying, assessing or collecting rates for the transportation of property between San Francisco, Santa Rosa and the intermediate points different from those shown in its tariffs lawfully on file with this Commission.

Dated at San Francisco, California, this 10th day of October, 1928.

Leon Whitell

C. Seavey

Edmunds

Paul S. Lovell

M. J. Kim  
Commissioners.