

Decision No. 28581

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Investigation upon)
 the Commission's own motion into the)
 dockage, wharfage, handling, loading and)
 unloading practices, rates, rules and)
 regulations and operations of SOUTHERN)
 PACIFIC COMPANY, WESTERN PACIFIC RAILROAD)
 COMPANY and THE ATCHISON, TOPEKA AND SANTA)
 FE RAILWAY COMPANY at Oakland, Alameda)
 County, California.)

Case No. 2500.

In the Matter of the Investigation upon)
 the Commission's own motion into the)
 dockage, wharfage, handling, loading and)
 unloading practices, rates, rules, regu-)
 lations and operations of ALBERS BROS.)
 MILLING COMPANY, PARR TERMINAL COMPANY,)
 HOWARD TERMINAL, and LAWRENCE TERMINAL)
 at Oakland, and of the ENCINAL TERMINALS)
 at Alameda, Alameda County, California.)

Case No. 2501.

In the Matter of the Investigation upon)
 the Commission's own motion into the dock-)
 age, wharfage, handling, loading and un-)
 loading practices, rates, rules, regula-)
 tions and operations of M. E. GALVAN &)
 SON at San Francisco, California.)

Case No. 2523.

- A. L. Whittle and W. S. Dawson for Southern Pacific Company, Respondent,
- L. N. Bradshaw and J. D. Mansfield for Western Pacific Railroad Company, Respondent,
- Berne Levy for The Atchison, Topeka & Santa Fe Railway Company, Respondent,
- Markel C. Baer for Board of Port Commissioners of the Port of Oakland.
- McCutchen, Olney, Mannon & Greene, by John O. Moran, for Encinal Terminals Co., Respondent.
- Nathan Moran for M. E. Galvan & Son, Respondent,
- A. R. Linn for Alameda Chamber of Commerce.
- C. S. Connolly for Albers Bros. Milling Company, Respondent,
- Charles P. Howard for Howard Terminal Company, Respondent.

BY THE COMMISSION:

O P I N I O N

The above entitled proceedings, instituted on the Commission's own motion require respondents to show cause why they should not file tariffs with this Commission as public utility wharfingers

within the meaning of Section 2 (z) of the Public Utilities Act.

A public hearing was held before Examiner Cannon at Oakland on May 29, 1928. By stipulation these proceedings were heard upon a common record and will be disposed of in one decision.

Respondents in Case 2500, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, and The Western Pacific Railroad Company, maintain wharves in Oakland mainly to facilitate the transfer of freight between car and vessel. The record shows that all charges for the receipt, transfer and delivery of the commodities handled over these wharves are now published in the individual terminal tariffs of these respondents already on file with the Commission, hence the proceedings will be dismissed as to these carriers.

The respondents in Case 2501, with the exception of Encinal Terminal and Lawrence Terminal, operate wharves at various points in the Oakland Harbor on property leased from the City of Oakland. The Encinal Terminal is situated in Alameda on land partly owned by it and partly leased from the City of Alameda. The Lawrence Terminal on April 30, 1928, abandoned its operation as a wharf-inger and the property is now being operated by the City of Oakland.

The record shows, and it is admitted, that the operations of Albers Bros. Milling Company, Parr Terminal Company, Howard Terminal and Encinal Terminal are those of public utility wharf-ingers as defined in Section 2(z) of the Public Utilities Act, but that tariffs covering the service rendered have never been filed with the Commission. An order will be entered requiring the said Parr Terminal Company, Howard Terminal and Encinal Terminal forthwith to file their ^{respective} tariffs with the Commission, but the matter will be dismissed in so far as it relates to

Albers Bros. Milling Company, as this company is a corporation organized under the laws of the State of Oregon and is therefore precluded from conducting a public utility business within the State of California under the provisions of Section 26 of the Public Utilities Act. Subsequent to the submission of these proceedings Albers Bros. Milling Company was ordered by our Decision No. 19874 of June 11, 1928, in Application No. 14706, to cease and desist from conducting any public utility operations within the State of California.

M. E. Galvan & Son, respondent in Case 2523, manage and operate Pier 48, San Francisco, on property leased from the Board of State Harbor Commissioners. This pier has been assigned to respondent solely for the purpose of handling outbound shipments in interstate or foreign commerce. Approximately 90 per cent. of the freight handled over this wharf is transferred direct from car to vessel, while about 10 per cent. is temporarily stored on the wharf, either awaiting arrival of a vessel or for definite instructions as to its ultimate interstate or foreign destination. Respondent contends that this Commission has no jurisdiction over its operation, first because the traffic handled by it is solely in interstate or foreign commerce, and second, because the control and regulation of Pier 48 rests with the Board of State Harbor Commissioners and cannot therefore be regulated by this Commission.

While it is true the traffic handled over Pier 48 is in interstate or foreign commerce, we do not believe that fact alone precludes us from assuming jurisdiction over the operations of respondent. It has been held that the regulation of wharves belongs prima facie to the states and would only be assumed by Congress when its exercise by the states interferes with commerce

(Parkersburg and Ohio River Transportation Company vs. City of Parkersburg, et al., 107 U.S. 691). Further, it has been held that warehouses, while they are used as instruments of commerce, are not necessarily a part of Commerce (Munn vs. People of Illinois, 94 U.S. 113), and we believe the principle is equally applicable to wharves.

Respondent's contention that its activities are regulated by the Board of State Harbor Commissioners is not sustained by the record. The property is operated and managed by respondent under assignment from the Board of State Harbor Commissioners, and with the exception of tolls for dockage, demurrage and rentals which are made by that body under the provisions of its "Tariff Charges," effective December 1, 1925, all other charges incidental to the receipt and discharge of freight, such as loading, unloading, stencilling, weighing, reepering and similar services are made directly by and subject to the sole control of respondent. To this extent it is a public utility wharfinger as defined in Section 2(z) of the Act, and as such will be required to file with this Commission its tariff setting forth its rates, rules and regulations incidental to the receipt and delivery of freight on Pier 48, except the above mentioned charges made, prescribed and regulated by the Board of State Harbor Commissioners.

O R D E R

These proceedings having been duly heard and submitted, and basing this order on the findings of fact contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that respondents, Parr Terminal Company, Howard Terminal, Encinal Terminal, and M. E. Calvan & Son, be and they are hereby ordered to file within thirty (30) days

from the date of this order their respective tariffs containing rates, rules and regulations applicable to their several public utility wharfinger operations as set forth in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that these proceedings in so far as they relate to The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Western Pacific Railroad Company, Albers Bros. Milling Company and Lawrence Terminal, be and they are hereby dismissed.

Dated at San Francisco, California, this 30th day of November, 1928.

Leon Whipple

C. Seaman
Spencer

M. H. C.
Commissioners.