

Decision No. 23183

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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PETALUMA & SANTA ROSA RAILROAD COMPANY, )

Complainant, )

vs. )

Case No. 2644

SAN RAFAEL FREIGHT & TRANSFER COMPANY, )  
EDGAR POMEROY, )

Defendants. )

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In the Matter of the Investigation  
upon the Commission's own motion into  
the practices, rates, rules, regulations  
and operations of SAN RAFAEL FREIGHT &  
TRANSFER COMPANY. )

Case No. 2652

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In the Matter of the Investigation on  
the Commission's own motion into the  
practices, rules, rates, regulations and  
operations of EDGAR POMEROY )

Case No. 2653

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In the Matter of the Application of  
SAN RAFAEL FREIGHT & TRANSFER COMPANY for  
an amendment of its certificate of public  
convenience and for the operation of an  
automobile truck for the transportation  
of freight between Sausalito and Santa  
Rosa. )

Application No. 15227

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Gwyn H. Baker for San Rafael Freight &  
Transfer Company  
Donald Geary for Petaluma and Santa Rosa  
Railroad Company  
Christopher M. Jenks for Northwestern  
Pacific Railroad Company  
W. S. Johnson for Southern Pacific Com-  
pany  
Edward Stern for Railway Express Agency

BY THE COMMISSION:

OPINION AND ORDER ON REHEARING  
AND ON PETITION FOR MODIFICATION

Decision No. 22792 (35 C.R.C. 121) ordered defendant San Rafael Freight and Transfer Company to cease and desist from transporting package merchandise weighing in excess of sixty (60) pounds per package between San Francisco and points north of San Rafael to and including Petaluma and Santa Rosa. It was also ordered to cease and desist from the transportation of eggs in crates and weekly periodicals weighing more than sixty (60) pounds per package.

Defendant petitioned for a modification of said decision in several respects. An order granting rehearing was issued "but only for the purpose of considering the issues in Cases 2644 and 2652 involving the transportation of dairy products".

Dairy products may now be transported regardless of weight. Defendant contended at the rehearing that eggs should properly be classified as "dairy products" and that the Commission erred when it held otherwise. Defendant, however, failed to produce any new evidence which might tend to justify viewing the matter in any different light. The present record does not show that eggs are generally considered as "dairy products". The rehearing will, therefore, be dismissed.

There are two standard packages or cases in which eggs are packed, one containing thirty (30) dozen and one containing thirty-six (36) dozen. While weights vary, the thirty-six (36) dozen cases consistently weigh slightly in excess of sixty (60) pounds. Turning now to a consideration of the petition for modification and of the record in the original proceeding, it will be observed that if eggs be

considered "package merchandise" rather than "dairy products" defendant may transport the smaller but not the larger cases. This appears to be an unreasonable and technical restriction on operative rights. We believe the record herein shows it to be in the public interest that such restriction be removed, and the petition for modification and Application No. 15227 will be granted to this extent.

Defendant's manner of operating has been questioned in formal proceedings before the Commission several times. It has endeavored by one means or another to circumvent weight limitations. Efforts have been made, in conjunction with Edgar Pomeroy, to defeat restrictions by so-called "private carrier" operations (Petaluma and Santa Rosa R. Co. v. San Rafael F. & T. Co., 32 C.R.C. 272.) Our order herein is not to be construed as in any sense condoning such practices, nor shall the Commission be disposed to deal lightly with defendant should it, in the future, fail to observe strictly its certificated rights.

#### ORDER

Petition for modification of Decision 22792 having been filed, rehearing having been had and upon further consideration of the entire record herein,

IT IS HEREBY ORDERED that the rehearing heretofore granted be dismissed.

IT IS HEREBY FOUND AS A FACT that public convenience and necessity require the transportation by San Rafael Freight and Transfer Company of eggs in standard cases regardless

of weight, and

IT IS HEREBY FURTHER ORDERED that the order in Decision No. 7694, Application No. 5581, dated June 8, 1920, as amended by the order in Decision No. 10579 in Case No. 1601, dated June 14, 1922 (21 C.R.C. 785,790) be further amended and modified by adding to it the following:

Eggs may be transported in standard cases only, regardless of the weight thereof.

IT IS HEREBY FURTHER ORDERED that San Rafael Freight and Transfer Company cease and desist, and thereafter abstain from transporting package merchandise weighing in excess of sixty (60) pounds per package between San Francisco and points on the public highway north of San Rafael to and including Petaluma and Santa Rosa, and

IT IS HEREBY FURTHER ORDERED that Edgar Pomeroy cease and desist from transporting property as a common carrier between San Francisco and points on the public highway north of San Rafael to and including Petaluma and Santa Rosa, and

IT IS HEREBY FURTHER ORDERED that San Rafael Freight and Transfer Company cease and desist and thereafter abstain from transporting weekly periodicals weighing more than sixty (60) pounds per package, and

IT IS HEREBY FURTHER ORDERED that Application No. 15227 is hereby denied, except as to the transportation of eggs in standard cases only, and

IT IS HEREBY FURTHER ORDERED that in all other respects the above entitled proceedings are hereby dismissed, and

Decision No. 22792 affirmed, except as modified herein.

Dated at San Francisco, California, this 15<sup>th</sup>  
day of December, 1930.

*Edmund G. Brown*  
*Leon C. Wilson*  
*W. H. ...*

Commissioners