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Decision No. 23730.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

LOS ANGELES-SAN FRANCISCO NAVIGATION COMPANY, a corporation, Complainant, vs. CHRISTENSON-HAMMOND LINE, LOS ANGELES STEAMSHIP COMPANY, a corporation, McCORMICK STEAMSHIP COMPANY, a corporation, NELSON STEAMSHIP COMPANY, a corporation, and PACIFIC STEAMSHIP COMPANY, a corporation, Defendants.	Case No. 2851.

Sanborn, Roehl, Smith & Brookman, by A. B. Roehl, for complainant.
Hugh Gordon, for defendants Los Angeles Steamship Company and Pacific Steamship Company.
Thelen & Marrin, by Max Thelen, for Nelson Steamship Company.
Lillick, Olson & Graham, by C. G. Graham, for McCormick Steamship Company.

BY THE COMMISSION:

O P I N I O N

Under date of April 10, 1930, the Los Angeles-San Francisco Navigation Company instituted this proceeding against the Christenson-Hammond Line, Los Angeles Steamship Company, McCormick Steamship Company, Nelson Steamship Company and Pacific Steamship Company, alleging that these defendants had within the past two years performed transportation services by vessels upon the high seas between points within the State of California and had

charged and collected for such services compensations differing from those legally in effect as set forth in Pacific Coastwise Freight Tariff Bureau Local, Joint and Proportional Freight Tariff No. 1-A, C.R.C. No. 2, and had therefore violated the Constitution of the State of California and the Public Utilities Act.

It is specifically alleged that defendants absorbed railroad switching and other charges on property transported from Oakland and other points on the San Francisco Bay, to points in Southern California, in violation of the tariff items; there is also the general allegation that in many instances and at various times defendants assessed and collected rates different and less than those legally applicable. The prayer is that defendants be required to cease and desist from such violations of the Public Utilities Act and the Constitution of the State of California, and that there be imposed upon them the fines and penalties provided in the statute for the violations complained of. It is further alleged that defendant Nelson Steamship Company on or about August 14, 1929, September 11, 1929, and September 18, 1929 (the original complaint named the year 1928; this error was corrected at the hearing), transported burlap bags from San Francisco to Santa Barbara at a rate of 15 cents per 100 pounds, in lieu of a rate of 28 cents per 100 pounds provided in the tariff.

A public hearing was held at San Francisco on August 8, 1930, and the case having been duly submitted and briefed, is now ready for our opinion and order.

Defendants raised the technical point that because the complaint named the year 1928 instead of the year 1929, they were not prepared to defend, and objected to the continuance of the proceeding, but the tonnage of burlap bags comprising the only specific shipments was carefully described and the name of the vessel and the voyage number given, thus creating no doubt as to the identity of the shipments. The objection was over-ruled.

Complainant introduced a number of witnesses, among them being the agent of the steamship company at Santa Barbara, a shipper of automobiles, and the traffic representatives of three of the defendants. Defendants used but one witness, the president of the Los Angeles-San Francisco Navigation Company, the complainant in this proceeding. The testimony of the Santa Barbara agent of the Nelson Company was to the effect that of the three consignments of bags the first was billed at 15 cents per 100 pounds, the second two at 28 cents per 100 pounds, and that the charges against the latter two shipments were reduced to 15 cents per 100 pounds upon instructions from the Los Angeles agent of the steamship company. The testimony further showed that shortly after the consignments had been delivered and immediately after the Freight Traffic Manager of the Nelson Steamship Company discovered the transactions, balance due bills were presented and the legal charges collected on the basis of the tariff rate of 28 cents per 100 pounds.

In the answers to the complaint and by testimony defendants contended that when the ocean-going vessels could not conveniently or economically call at the Oakland or Alameda docks they arranged to have carload shipments moved to San Francisco by rail and absorbed only the difference between the legal tariff charge by rail from the industry tracks to the docks at Oakland and the charges from the same industry track to the San Francisco docks, and that by this arrangement defendants did not absorb any of shipper's switching charges. The total transportation charges thus collected are at actual tariff rates from the vessel's terminal docks, whether it be San Francisco or other San Francisco Bay points. It is further maintained that the use of rail transportation to bridge the San Francisco Bay is of benefit to defendants, resulting in more economical operations than would prevail if the large ocean-going vessels were forced to move across the

San Francisco Bay for the purpose of picking up the tonnage.

Testimony was presented by complainant with reference to a shipment of grain forwarded from San Francisco to Wilmington, accepted by the steamship company at its San Francisco docks on the basis of the Oakland to Los Angeles Harbor rates. The facts developed in connection with this transaction are that the grain originated at points on the Southern Pacific Company, and that under the milling-in-transit rules contained in the tariffs, was entitled to an Oakland delivery without additional charges, this service being included in the line haul rates of the Southern Pacific Company. Defendants' testimony was to the effect that this milling-in-transit privilege was employed and they accepted the tonnage at San Francisco rather than passing through the idle motions of forcing the shipper to send the grain to Oakland and then having it brought back to the San Francisco docks for loading on vessels going to Los Angeles Harbor.

Complainant presented no positive proof of actual shipments moving from Oakland to Los Angeles Harbor where the same were accepted at San Francisco. The only tonnage of this character shown to have been handled under the practices complained of was the grain milled in transit. It was shown by competent testimony that all steamship companies, including this complainant, have followed the established practice of sending Oakland tonnage by rail to the San Francisco docks and absorbing or equalizing the difference between the charges the consignor would have paid to Oakland docks and what was actually paid to move the shipment to San Francisco. In other words, all steamship companies have found it more economical to pay the rail charges from Oakland to San Francisco than to send ocean-going vessels to the eastern side of the bay. This method of handling shipments when circumstances

make necessary has been in vogue for a great many years and is thoroughly understood by shippers and receivers of freight both at San Francisco and Los Angeles Harbor points. In every case, according to this record, the shipper paid the tariff rates and nothing more or less.

The record further discloses that the Nelson Steamship Company, handling the specific shipments of bags from San Francisco to Santa Barbara originally undercharged, is no longer operating into the port of Santa Barbara.

In reaching a conclusion of this controversy the different items of the Bureau Tariff must be taken into consideration and read together, and it is apparent upon this entire record that there has been no intent on the part of the steamer lines serving San Francisco, Oakland and Alameda on the north, and Los Angeles Harbor on the south, to violate any tariff requirements in the handling of the Oakland carload tonnage. The fault in the entire controversy is that the tariff does not contain an item providing for the optional handling of tonnage by either sending the ocean-going vessel to Oakland for the cargo or having the cargo sent to San Francisco by rail and equalizing the charges.

We are of the opinion the tariff should be amended to provide an item to the effect that the tonnage will be handled at the option of the steamer lines, either accepting it at the Oakland docks or at the San Francisco docks and equalizing the transportation charges as between the two shipping points in such a manner that the Oakland shipper will pay the same charges as would be assessed had the ocean-going steamers actually picked up the tonnage on the Oakland docks. Common carriers must adhere strictly to published rates, and where there is a desire to follow a practice such as here inaugurated, resulting in economical advantages and the saving of time not only to the shippers but to the

transportation companies, such practices should be properly covered by tariff items.

Upon consideration of this whole record we are of the opinion the evidence does not sustain the charge that any willful offense has been committed against the law by these defendants, and it follows that the case should be dismissed, and it will be so ordered.

O R D E R

This case having been duly heard, submitted, and briefs filed, 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 preceding opinion,

IT IS HEREBY ORDERED that the complaint in this proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 30th day of May, 1931.

C. L. Jarvis

Leon O. Whitsell

M. J. Carman

M. B. Harris

Fred G. Clarke

Commissioners.