

Decision No. 24483

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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PACIFIC FREIGHT LINES COMPANY,  
a corporation, )

Complainant, )

vs. )

LAWRENCE WAREHOUSE COMPANY, a )  
corporation, and BAY CITIES TRANS- )  
PORTATION COMPANY, a corporation, )

Defendants. )

) Case No. 3016

**ORIGINAL**

Sanborn, Roehl & Brookman, by A. B. Roehl  
and Douglas Brookman, for Complainant

Thelen & Marrin, by Paul S. Marrin, for  
Defendant

Gwyn H. Baker, for Interurban Express Cor-  
poration and Kellogg Express, Intervenor

H. W. Hobbs, for Southern Pacific Company,  
Intervenor

HARRIS, Commissioner:

OPINION

Pacific Freight Lines Company is a certificated com-  
mon carrier by truck between San Francisco and Oakland and  
other East Bay points (Dec. 22925, App. 16826, 35 C.R.C. 232).  
Lawrence Warehouse Company, among other things, is engaged in  
a warehouse business and in certain drayage operations both in  
San Francisco and Oakland. Bay Cities Transportation Company  
is a common carrier operating barges across San Francisco Bay.

The complaint herein alleges that the latter two companies are conducting certain unauthorized and unlawful operations. Said complaint was filed on February 21, 1931, and on April 29, 1931, in response to an Order to Satisfy or Answer, defendant Lawrence Warehouse Company filed its Satisfaction. Order to Answer was issued thereafter and Answer was filed by Lawrence Warehouse Company on June 4, 1931, and by Bay Cities Transportation Company on June 9, 1931.

Lawrence Warehouse Company maintains a fleet of trucks both in San Francisco and in Oakland. Merchandise is picked up at shippers' places of business in San Francisco and transported by truck to Pier 5 on the San Francisco waterfront. It is then unloaded from trucks into barges of the Bay Cities Transportation Company, and carried by that company to Clay Street dock in Oakland. At that point shipments consigned in care of Lawrence Warehouse Company are loaded into trucks of Lawrence Warehouse Company and delivered to store doors of consignees. Shipments from East Bay cities to San Francisco are handled in a similar manner. Two pick-up and delivery services per day are available on each side of the bay. Lawrence Warehouse Company holds no certificate of public convenience and necessity authorizing common carrier trucking service and has no trucking tariff on file with the Commission. It issued and circularized among shippers a tariff, effective July 1, 1930 (Exhibit No. 18), naming class rates between San Francisco and Oakland, Alameda, Emeryville, Piedmont, Berkeley, and Albany. It described itself therein as "Fast Freight Forwarders over the lines of the Bay Cities Transportation Company 'Twice a day we bridge the Bay'". This tariff contained two rate schedules, one applicable from shipper's door to consignee's door and the other from Bay Cities Transportation Company's terminals to consignee's door. Dif-

ferent shipping zones were provided for on either side of the bay, an additional charge being applicable on shipments between certain zones.

Attached to the Satisfaction of defendant Lawrence Warehouse Company is a second tariff, effective April 15, 1931, (subsequent to the filing of the complaint), which this defendant states is circularized among shippers. This tariff names class and commodity rates between the points set forth in the tariff before described, that is, between San Francisco on the one hand and certain East Bay cities on the other hand. It bears the heading "Lawrence Warehouse Company. Draymen", and has appended thereto the following note:

"Above rates are secured by adding to the drayage charges the published tariff rates of Bay Cities Transportation Company, which company transports the freight across San Francisco Bay."

The rules which are a part of the tariff circular show that the rates shown in Schedule No. 1 (class rates) "apply from the shipper's door (San Francisco or East Bay) to the consignee's door (East Bay or San Francisco)". The rates shown in Schedule No. 2 (class rates) "apply from the Bay Cities Transportation Company's terminals, (Clay Street Dock, Oakland, or Pier 5, San Francisco) to the consignee's door (San Francisco or East Bay)". The minimum charge of Lawrence Warehouse Company is the same as that specified in the tariff of Bay Cities Transportation Company.

In the Satisfaction filed by Lawrence Warehouse Company it is stated that subsequent to the filing of the complaint certain of the documents used by Lawrence Warehouse Company have been revised in form. At the time goods are picked up, the shipping clerk of the consignor hands to the driver of

Lawrence Warehouse Company a bill of lading. Drivers are instructed to sign and attach to the copy of the bill of lading left with the shipper a blue sticker (except where shipper has a hand tag of his own), reading as follows:

"

:B-41 4-31 79 10		_____ 193_____	:
:Received articles on attached memorandum for	:		:
:drayage to dock of Bay Cities Transportation	:		:
:Company and delivery to said Company, consigned	:		:
:as above.	:		:
:	:	LAWRENCE WAREHOUSE COMPANY	:
:	:		:
: Total No.	:		:
: _____	:	By _____	:
:	:	Driver	:
:	:		:
: Packages	:		:

"

Original bills of lading are signed by Bay Cities Transportation Company and turned in by the driver to the Lawrence Warehouse Company. That company then handles the bills of lading as the shipper may direct, some being forwarded to the consignee, some being returned to the consignor, and others being retained by Lawrence Warehouse Company.

Upon arrival of goods shipped in care of Lawrence Warehouse Company at the pier in Oakland, the notice of delivery is placed in the Lawrence Warehouse Company's box, where its truck driver procures it, takes the shipment off the platform, loads it on his truck, signs for the shipment, and proceeds to destination.

All billing in connection with this service is made by Lawrence Warehouse Company, and a change has also been made in the form of bills rendered to shippers. Exhibit 13 is a bill dated April 7, 1931. It provides three squares headed "Store Door - Store Door", "Store Door-Terminal", and "Terminal-Store Door", respectively. In Exhibit 11 (a bill dated August 3,

1931) the headings of the three spaces referred to read "dray. S.F.-Dray.Oak.", "Dray-To Terminal", "Dray-From Terminal". Exhibit 13 provides columns headed "Weight", "Rate", "Freight", and "Total", while on Exhibit 11 appears "Weight", "Rate", "Drayage", "Trans-bay Freight", and "Total". No reference appears upon the face of either of the forms to Bay Cities Transportation Company and no change has been made since the filing of the complaint in the physical handling of shipments.

In the service rendered by complainant and by intervenors their trucks are transported across the bay by Southern Pacific-Golden Gate Ferry Company. The tariff of Bay Cities Transportation Company provides a rate for the carrying of loaded vehicles, but it is the testimony of defendants' witnesses that trucks of Lawrence Warehouse Company are not so transported.

Complainant contends that Lawrence Warehouse Company is operating in violation of the Auto Stage and Truck Transportation Act (Stats. 1917, Ch. 213, as amended) between San Francisco and the East Bay cities named. Lawrence Warehouse Company trucks do not move across San Francisco Bay, and it does not appear that its transbay service is in violation of the Auto Stage and Truck Transportation Act (Lawrence Warehouse Company's operations between East Bay municipalities will be discussed hereinafter.)

Complainant further takes the position that Lawrence Warehouse Company holds itself out to perform and does perform an express service between San Francisco and the East Bay cities over the line of its affiliated company, Bay Cities Transportation Company, and that its operations are such as to come within the definition of an "express corporation" as defined in Section 2(k) of the Public Utilities Act. Lawrence Warehouse Company replies that it has no contract with Bay Cities Transportation Company for

any transportation over the line of that company, and that it is not a freight forwarder, or in any other respect a shipper over the lines of the Bay Cities Company.

All of the stock of Bay Cities Transportation Company, with the exception of qualifying shares, is owned by Lawrence Warehouse Corporation of Nevada. Lawrence Warehouse Company, a California corporation, is incorporated for 10,000 shares of common stock and 10,000 shares of preferred stock. Of this, Lawrence Warehouse Corporation of Nevada owns 9,995 shares of the common stock and at least 8,393 shares of the preferred stock. As to voting power by virtue of stock ownership in Lawrence Warehouse Corporation of Nevada, out of about 90,000 votes, Mr. A. T. Gibson and Mr. J. C. Swain, together, have approximately 50,000 votes. Mr. Gibson is President and Mr. Swain is Secretary of all three corporations.

The complainant contends that the operations should be viewed as if one corporation, or a partnership consisting of Gibson and Swain, was the only entity involved, the through and continuous service being rendered under a single control and management under a through tariff of rates published by Lawrence Warehouse Company and widely distributed to its shippers and customers, although not filed with the Commission.

Section 2(k) of the Public Utilities Act defines an "express corporation" as follows:

"The term 'express corporation,' when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in or transacting the business of transporting any freight, merchandise or other property for compensation on the line of any common carrier or stage or auto stage line within this state."

This definition of an express corporation has been held to embrace the operations of a freight forwarding company engaged in the business of consolidating and shipping goods over the line of a common carrier, although no contract exists with the common carrier, which affords any special rate to the forwarding company (In Re E. E. Frost & Company, Dec. 19664, 31 C.R.C. 668).

It appears that Lawrence Warehouse Company is doing an express business between San Francisco and the East Bay cities and that it should either publish tariffs for such service or discontinue its present operations.

Lawrence Warehouse Company Tariff Circular dated April 15, 1931, shows that it presently holds itself out to the shipping public as engaged in transporting freight between San Francisco and the East Bay cities. Rates and rules applicable to this service are quoted at length. Two complete services are rendered daily, in both directions. The record shows that the complete charge for the service is paid to Lawrence Warehouse Company by the shippers, and that the bill rendered to the shipper by Lawrence Warehouse Company does not mention Bay Cities Transportation Company.

The defendants place great reliance upon the fact that subsequent to April 29, 1931, (date of filing of so-called Satisfaction), the Lawrence Warehouse Company has not directly issued any bill of lading for transbay shipments, but has obtained the signature of Bay Cities Transportation Company to all bills of lading covering such shipments. By this device Lawrence Warehouse Company has sought to avoid acting as an express company. I am of the opinion that the device is wholly ineffective.

The management of Lawrence Warehouse Company which also controls Bay Cities Transportation Company cannot thus avoid regulation. The Lawrence Warehouse Company solicits transbay business under tariffs and rules showing a definite holding out to the public to perform such service. It does in fact render such service twice daily. It pays Bay Cities Transportation Company its rates for such service and Bay Cities Transportation Company does not bill the shippers or consignees for any charges on such shipments. Lawrence Warehouse Company collects the total charges for completed service from the said shippers or consignees. So far as the shipping public is concerned, the service is that of Lawrence Warehouse Company, and by trick and device regulation cannot be defeated by the bill of lading subterfuge above mentioned.

The Lawrence Warehouse Company will be directed, in the alternative, to file express tariffs and rules with the Commission covering its present transbay services, or to discontinue such operations.

Regarding trucking operations between Oakland and other East Bay cities it is urged that Lawrence Warehouse Company, not having a certificate therefor, should be ordered to cease and desist such operations. Lawrence Warehouse Company submits that a certificate is not required, because of the fact that such drayage operations are of precisely the same character now as before May 1, 1917, and that this defendant is a prior operator in good faith.

Witness Nystrom was employed by the warehouse company as a truck driver from August, 1916, until about August, 1917. The company then had a Ford ton truck and a small Lincoln truck. As driver of the Ford truck witness delivered merchandise from the warehouses to docks and railroads and to warehouse customers in

Oakland, Emeryville, Albany, Piedmont, Berkeley, Alameda and San Leandro. While goods were carried from warehouses to rail depots for rail shipment, the warehouse company did not at that time pick up goods at an individual's place of business in one city for transportation by truck to an individual's place of business in another city, the truck transportation being incidental to the warehouse business. However, for certain accounts goods were picked up at rail depots and at what is now the Oakland dock of Bay Cities Company and taken directly to customers.

Witness Blanchard was warehouse foreman from 1912 until 1922, and drove the Lincoln truck until the company acquired the Ford truck in June, 1916, referred to by Witness Nystrom. In the spring of 1917 a small Ford truck or roadster with a truck body was acquired. In the summer of 1917 the company acquired an Autocar, shortly thereafter a Dodge delivery truck, and later a Fageol. Lawrence Warehouse Company had contracts with certain draymen for the delivery of merchandise, and as it acquired trucks, made more of the deliveries itself.

Witness Cullin was also employed as a warehouse foreman from 1914 until 1922, and it was stipulated that his testimony would be substantially the same as the two preceding witnesses.

A. T. Gibson, President of the warehouse company, was first employed in 1916, was manager in Oakland, became general manager in 1921, and president in 1923. In July, 1916, the company had certain customers who stored merchandise with the company and shipped through cars to it, some for storage and some for distribution. The company was not then engaged in

operating motor trucks but had been soliciting storage and drayage business in Oakland and other East Bay cities. It "farmed out" this business to various draymen and billed its customers at a higher rate than that charged it by the draymen, the difference being its profit in connection with drayage. It then acquired the Ford truck driven by Witness Nystrom and undertook to transport goods itself, adding additional equipment from time to time until it now has eighteen pieces of equipment in Oakland. It has always farmed out a certain amount of its drayage business, finding it more economical to re-contract peak load drayage. The service was of an "on call" nature and the income from drayage business was approximately \$3,000 in 1916 and \$10,000 in 1917.

In testifying as a witness for complainant Mr. Gibson stated that when he first came to the company in June, 1916, a Lincoln truck of about 3/4 ton capacity was used in the delivery of freight from warehouses of the company for customers to various points in the East Bay, being used in connection with the pick-up and delivery of freight to be stored in the warehouses or to be distributed.

E. E. Hart, secretary and manager of the Draymen's Association of Alameda County since 1919, of which Lawrence Warehouse Company is a member, testified as to an investigation made by him in 1931 of the records of the County Auditor's office for the years 1917 and 1918, stating that his investigation did not show that Lawrence Warehouse Company had any personal property tax for those years, that being where automobile taxation would appear.

C. E. Crocker, auditor and public accountant formerly em-

ployed by Lawrence Warehouse Company from 1920 to 1923, testified as to the number of trucks owned by the company. A. J. Williams, employed by complainant as warehouse superintendent, and formerly employed by Lawrence Warehouse Company from 1919 to 1925, stated that that company, in 1919, had two small trucks used chiefly for special deliveries, that in 1919 or 1920 three additional pieces of equipment were purchased, and that with the acquisition of larger equipment the company began to do more general hauling rather than emergency or special delivery service. Prior to that time draymen were employed to make deliveries.

Lawrence Warehouse Company has filed no tariff covering East Bay trucking operations, and it appears that the trucking service rendered by it on the effective date of the statute was of an "on call" nature and largely incidental to its warehouse business. At the present time the company is offering a twice daily pick-up and delivery service in this area in connection with shipments moving across the bay by Bay Cities Company. In so far as the warehouse company in performing this service operates between Oakland, Emeryville, Albany, Piedmont, Berkeley, and Alameda it is a common carrier within the meaning of the Auto Stage and Truck Transportation Act.

Section 5 of the Auto Stage and Truck Transportation Act provides in part that no certificate "shall be required of any transportation company as to the fixed termini between which or the route over which it is actually operating in good faith at the time this act becomes effective, or for operations exclusively within the limits of an incorporated city, town, or city and county".

While it is true that tariffs were never filed with the Commission, the record shows that on May 1, 1917, Lawrence Warehouse Company was actually operating in good faith as a common carrier by truck between Oakland, Emeryville, Albany, Piedmont, Berkeley, and Alameda.

#### O R D E R

Public hearings having been had upon the above entitled complaint, and the matter submitted, and basing its order upon all findings and conclusions set forth in the opinion herein,

IT IS HEREBY FOUND AS A FACT that Lawrence Warehouse Company, in the solicitation of freight business, and in the performance of freight service from San Francisco to the various East Bay cities above mentioned, and in the performance of said service from East Bay cities to San Francisco, is acting as an "express corporation" within the scope of Section 2(k) of the Public Utilities Act, and

IT IS HEREBY FURTHER FOUND AS A FACT that Lawrence Warehouse Company, on May 1, 1917, and continuously thereafter, was, and is operating a common carrier trucking service between the termini of Oakland, Emeryville, Albany, Piedmont, Berkeley and Alameda, and

IT IS HEREBY ORDERED that said Lawrence Warehouse Company, in the alternative, either discontinue its present trans-bay express service, or file with this Commission its rates, rules and regulations covering such express service within thirty (30) days from the date of this order, and in all other respects comply with the provisions of the Public Utilities Act.

IT IS HEREBY FURTHER ORDERED that said Lawrence Warehouse Company, in the alternative, either discontinue its common carrier truck service between the termini of Oakland, Emeryville, Albany, Piedmont, Berkeley and Alameda, or file with this Commission its rates, rules and regulations covering such service within thirty (30) days from the date of this order, and in all other respects comply with the provisions of the Auto Stage and Truck Transportation Act (Statutes 1917, Chapter 213, as amended.)

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15<sup>th</sup> day of February, 1932.

W. A. ...  
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...  
W. B. ...  
...  
Commissioners