

**ORIGINAL**

Decision No. 25062.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

NORTHWESTERN PACIFIC RAILROAD COMPANY, )  
a corporation, and PETALUMA AND SANTA )  
ROSA RAILROAD COMPANY, a corporation, ( )  
Complainants. )

vs.

Case No. 3150.

SAN RAFAEL FREIGHT & TRANSFER COMPANY, )  
a corporation, ( )  
Defendant. )

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H. W. Hobbs, for Complainants.  
Edward Stern, for Railway Express Agency, Inc.,  
Intervenor,  
McGettigan, Toland & Baumgarten by  
T.C. McGettigan, for Defendant.

BY THE COMMISSION:

O P I N I O N

Northwestern Pacific Railroad Company and Petaluma and Santa Rosa Railroad Company have filed a complaint against San Rafael Freight and Transfer Company, alleging that said San Rafael Freight and Transfer Company is operating trucks between San Francisco and points north of Sausalito and San Rafael, in a manner which violates the conditions of certificates heretofore issued by this Commission and is, in other respects violating its certificates of public convenience and necessity as heretofore issued by this Commission and the rules and regulations of the Commission. Complainants pray for an investigation of the operation and practices of defendant and in the event that the complaint herein be sustained that suitable penalties be imposed together with revocation of defendant's certificate of public convenience and necessity.

Defendant duly filed its answer, generally and specifically denying the material allegations of the complaint.

A public hearing on this complaint was conducted by Examiner Handford at San Francisco, the matter was duly submitted on the filing of briefs, and is now ready for decision.

The record shows that on October 27, 1931, a shipment of one bale (4) tires and 4 cartons was received at San Francisco from the Interstate Motor Transport consigned to E. C. Craft, Santa Rosa. This shipment was forwarded on trip No. 3582 and the total weight of the shipment was 170 lbs. (Exhibit No. 1). The authorized weight of packages to be hauled by defendant's trucks is limited to 60 lbs. A. H. Marx, President of defendant company testified that he had issued strict instructions to all his shippers and employees that shipments weighing in excess of 60 lbs. each, should not be received and transported, and that he had specifically advised the Interstate Motor Transport that no shipments weighing in excess of 60 lbs. would be received and transported.

The record also shows that on November 4, 1931, a shipment of books was forwarded from the San Francisco News Company at San Francisco to Mrs. R. Louie, Readmore Library, c/o Enterprise Grocery Co., Lansdale, California. The weight of this case of books was 175 lbs., same moving on trip No. 3589. (Exhibit No. 7). As previously stated the weight limit on shipments by trucks of defendant is restricted to packages weighing not in excess of 60 lbs.

The record further shows that in September, 1931, eight crates of chickens were moved from Petaluma to Benich Ranch near Sausalito, shipment covered by Expense Bill No. 4858. (Exhibit No. 3). No weight appears on the expense bill although it is commonly known that crates of live chickens weigh in excess of

60 lbs. each. A witness for defendant, a former clerk in the San Rafael office testified that due to the insistence of the consignee this shipment was forwarded to destination, the consignee having threatened suit if the shipment was not delivered. The rate charged, 65¢ per crate, was for the time of the driver making special trip for the delivery of this consignment.

On September 29, 1931, four sacks of feed were shipped from Petaluma by the Poultry Producers' Association of Central California to the ranch of G. Benich at Sausalito. The memorandum covering shipment (Exhibit No. 5) shows no weight although it is well known that feed weighs in excess of 60 lbs. per sack. A witness for defendant, a former clerk at the San Rafael office testified that the tag was entered on the thought that it covered a shipment of eggs which was the principal item forwarded by the shipper.

The record shows that on October 28, 1931, San Rafael Freight and Transfer Company transported two bales of moss from Sevin Vincent Seed Company, San Francisco to San Rafael. The weight of this shipment was 300 lbs. and it was covered by Expense Bill of San Rafael Freight and Transfer Company going forward on Trip No. 3583, being delivered at San Rafael to Sausalito Express for forwarding to consignee A. W. Ellis at Santa Rosa. The amount of freight bill was 30¢ plus 1¢ toll, a total of 31¢. (Exhibit No. 6). Complainant alleges that this rate is not justified by current tariff which was in effect at the time of the movement. Defendant asserts that this shipment was a portion of a carload shipment picked up by boat at Pier 50, San Francisco, and transported to San Rafael and that a total charge of \$25.49 was assessed and collected for the carload movement of 22,050 lbs.

Defendant claims to have assessed a rate of 10¢ per cwt. on the shipment and to have classified it as fertilizer as shown on Item No. 82 in Supplement No. 12 to C.R.C. No. 5, as effective September 15, 1931.

The shipment of Peat Moss was evidently not properly classified when rated as "Fertilizer" in bags for which the rate of 10¢ per cwt. applies as per tariff reference above. The correct rate would appear to be Item 34 of Local Freight Tariff No. 3-B, as effective Nov. 26, 1928, and which covers "Freight for which specific rate, commodity or class, is not shown" which is given as 30¢ per cwt. between San Francisco Terminal and San Rafael Terminal.

The shipment of Books from San Francisco to Lansdale as covered by Expense Bill noted above (Exhibit No. 7) was not properly rated. There is no commodity rate on Books and Item 34 of Local Freight Tariff No. 3-B as effective Nov. 29, 1928, would properly apply. This covers "Freight, for which rate, commodity or class is not shown" and would, if so classified, result in a rate of 30¢ per cwt. or 52½¢ for the shipment from San Francisco Terminal to the Sausalito or San Rafael Terminal.

We have carefully considered the record and exhibits in this proceeding. It appears therefrom that not only has the San Rafael Freight and Transfer Company handled shipments by truck in excess of the 50 lb. minimum set forth in conditions of its operative tariffs and authorizing certificates but that little attention is given the proper classification of merchandise as to rates authorized and set forth in its tariff filings. Expense Bills and Freight Bills are prepared and do not show rates or in some instances weights of shipments. This practice makes it difficult to check the business handled and results in improper charges to the public in many instances. The principal cause of complaint is the resultant under charges at less than authorized tariff rates, which results in many instances of shipments accruing to this carrier by reason of the lesser rate charged.

In this Commission's Decision No. 23183, on Case No. 2652, decided December 15, 1930, San Rafael Freight & Transfer Company was ordered to cease and desist and thereafter abstain from the trans-

portation of package merchandise weighing in excess of sixty (60) lbs. each on the public highway between San Francisco and points north of San Rafael to and including Petaluma and Santa Rosa. The fact that this merchandise is transported by boat from San Francisco to San Rafael and is then transported by truck to its destination does not allow defendant herein to violate the terms of the cease and desist order. The opinion preceding the above mentioned order sets forth the fact that the defendant's manner of operation has been questioned several times in formal proceedings and sets forth that this Commission will not be disposed to deal lightly in the future, should defendant fail to observe strictly its certificated rights.

We find from the record herein that not only has defendant San Rafael Freight and Transfer Company violated the restriction limiting it to the carriage of package merchandise not in excess of sixty (60) lbs. per package but it has also violated its tariffs by assessing rates other than those duly filed and authorized effective.

#### ORDER

A public hearing having been held upon the above entitled complaint, the matter having been duly submitted on briefs of interested counsel, the Commission being now fully advised and of the opinion that defendant, San Rafael Freight and Transfer Company has violated the conditions of its certificates limiting the carriage of package merchandise to sixty (60) lbs. per package and has also failed to conform to its published tariffs as lawfully on file with this Commission

IT IS HEREBY ORDERED that San Rafael Freight and Transfer Company, a corporation, be and the same hereby is directed to appear before Commissioner Harris at 10:00 a.m., on Wednesday, September 7th, 1932, at the Courtroom of this Commission, Room 537 State Building, San Francisco, California, then and there to show cause, if any it has, why its certificates of public

convenience and necessity as heretofore granted by this Commission for the common carriage of property over the highways of this state should not be revoked, cancelled and annulled.

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

Clarence  
Leon Whitney  
W. A. C.  
W. B. L.  
Fred G. Alshut  
Commissioners.