

ORIGINAL

Decision No. 25118.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

THE HARBOR TUG & BARGE COMPANY,
a corporation,
Complainant,

vs.

ROY OSBORN, an individual,
JACK BORNHOLDT, an individual,
ROY OSBORN and JACK BORNHOLDT, and/or
FIRST RICHARD ROE and SECOND RICHARD ROE,
doing business as Osborn & Bornholdt,
WESTERN TERMINAL COMPANY, a corporation,
JOSEPH FAHY, an individual,
JOSEPH FAHY, and/or JOHN DOE WARNECKE,
doing business as Western Launch & Towboat
Company, and/or Western Terminal Company,
CAPT. E.W.GROPER, an individual,
CAPT. GEORGE H. MAWDSLEY, an individual,
CAPT. JOHN E. JOHNSON, an individual,
CAPT. G. H. BROKAW, an individual,
CAPT. S. BENSON, an individual,
CAPT. E. W. GROPER, CAPT. GEORGE H. MAWDSLEY,
CAPT. JOHN E. JOHNSON, CAPT. G.H.BROKAW,
CAPT. S. BENSON, FIRST JOHN DOE, SECOND JOHN
DOE and THIRD JOHN DOE, doing business as
East Bay Towboat Company and/or Oakland Harbor
Pilots Association.

Defendants.

Case No. 3257.

THE HARBOR TUG & BARGE COMPANY, a corporation,

Complainant,

vs.

JOSEPH McGUIRE, an individual,
GEORGE J. JOHNSON and ANTON J. JOHNSON,
individuals,
GEORGE J. JOHNSON and ANTON J. JOHNSON,
doing business as JOHNSON BROTHERS,
FRANK POPPIANO and LYLE DAVIDSON, individuals,
FRANK POPPIANO and LYLE DAVIDSON, doing
business as SAN FRANCISCO LAUNCH & TOWBOAT
COMPANY,

Defendants.

Case No. 3269.

Gwyn H. Baker, for the Complainants.
A. D. Schaffer, for Frank Foppiano
and Lyle Davidson, Defendants.
H. H. North, for George J. Johnson
and Anton J. Johnson, defendants.
Edward J. Jose for Osborn and Bornholdt,
defendants.
Jerome Duffy, for Joseph Fahy, defendant.

HARRIS, COMMISSIONER:

O P I N I O N

In cases No. 3257 and No. 3269 the complainants allege that the defendants are and each of them is operating vessels of over five (5) tons net registry in the transportation of passengers for hire in the inland waters of this state, to-wit: between wharves, piers and docks in Oakland, Alameda and San Francisco and vessels of the United States Navy at anchor in San Francisco Bay without authority of this Commission and without tariffs now or at any time in the past on file with this Commission, and praying for cease and desist orders.

Defendants Osborn and Bornholdt answered and admitted operating as charged without a certificate and without tariffs for passenger service at the time Section 50(d) of the Public Utilities' Act became effective, but allege that at said time they had tariffs on file for the transportation of property and that on being advised that the Commission did not consider such tariffs sufficient authority for conducting passenger service they ceased and are not now operating for passenger service and ask that their rights so to operate be determined in this proceeding.

Answers were filed by all the other defendants except Captains E. W. Groper and S. Benson and Western Terminal Company, making general denials of all material allegations of the complaints and denying the jurisdiction of this Commission

and alleging that the vessels served by the defendants were engaged in interstate commerce and were not points on inland waters and that defendants' vessels were enrolled and licensed in the United States Custom House at San Francisco.

The actions were consolidated for hearing and decision.

The evidence showed that each of the defendants was operating vessels of over five (5) tons net registry in the manner set forth in the complaint and accepted all persons applying for passenger service between the points named except that defendant Anton Johnson testified that he did not take all persons who applied but only all respectable looking persons. A fare was charged for the round trip and tickets were issued therefor. Trips were made not at regular intervals or on any schedule but only when a load for the boat was obtained. Boats returning from battleships honored the return tickets issued by any of the defendants but defendants did not account among themselves for services rendered on return tickets. A like service from the battleship to the land and return was rendered for the sailors on board the ships and compensation charged therefor.

Defendants contend that a battleship at anchor in San Francisco Bay is not a "point" within the meaning of the Public Utilities' Act and that therefore they were not engaged in the "transportation of persons or property for compensation between points exclusively on the inland waters of this state." (Pub. Util. Act. Sec.50(d)). A "point" they argue, must be fixed, permanent and on the land and a battleship is none of these things. It is my opinion that the word "point" as used in the Act means any place at which passengers or property are received or discharged by vessels engaged in transportation on inland waters in the ordinary course of transacting that business.

A battleship at the times involved here was certainly "exclusively on the inland waters of this state" and was the point or place of discharge and embarkation of the passengers carried by these defendants. Indeed, the objective point for defendants' vessels upon leaving the shore was the battleship.

Defendants contend that the Commander of the battleship could refuse to recognize the certificates issued by this Commission and to receive the passengers from any or all boats and that the giving of a monopoly to the plaintiff might result in debarring the public of the opportunity to visit the battleships. Such refusals, however, if they occur at all, are very infrequent, and moreover would not in any way change the character of the service rendered which is from the shore to the battleship and return.

The defendants, and the plaintiff for that matter, hold licenses issued under the act of Congress for licensing vessels to be employed in the coasting trade. (Sections 4320, 4321 and 4324, revised Statutes, Act of April 24, 1906.) Defendants contend that by virtue of this license they are rendered immune to all legislation of the state for the regulation of its intra-state commerce. Under their view the portions of the Public Utilities Act purporting to regulate intra-state transportation in our inland waters and upon the high seas are invalid so far as such licensed vessels are concerned. The acts of transportation involved in this proceeding are purely intra-state. The defendants are charged with carrying passengers back and forth between points on its inland waters. There is no evidence that interstate commerce is in any way involved. The acts complained of begin and end in California and for that reason the fact that the battleship itself may be said to be engaged in interstate commerce (as to which I express no opinion), is immaterial. The certificat-

ing and regulatory laws of the state relating to intra-state transportation in its inland waters when invoked to the limit do not affect the right of defendants' vessels to navigate such waters or entrench in any way upon the protection afforded them by these licenses as vessels of the United States.

I am of the opinion and find as a fact that said defendants, except the fictitious defendants hereinafter named, are and each of them is engaged in operating vessels of over five (5) tons net registry as common carriers in the transportation of passengers for hire on the inland waters of the state between wharves, piers and docks in Oakland, Alameda and San Francisco and vessels of the United States Navy at anchor in the San Francisco Bay and that none of these defendants has now or ever has had tariffs on file with this Commission.

The following form of Order is recommended.

ORDER

A public hearing having been held on the above entitled complaints, the same having been consolidated for purposes of hearing and decision and the matters having been duly submitted,

IT IS HEREBY ORDERED that the actions are hereby dismissed as to the fictitious defendants, First Richard Roe, Second Richard Roe, First John Doe, Second John Doe and Third Doe.

IT IS HEREBY FURTHER ORDERED that the other of said defendants and each of them immediately cease and desist from operating vessels of over five (5) tons net registry in the transportation of passengers for hire on the inland waters of the state, to-wit: between wharves, piers and docks in Oakland

Alameda and San Francisco and vessels of the United States
Navy at anchor in the San Francisco Bay.

Dated at San Francisco, California, this 29th day
of August, 1932.

Clarence
Leon Whitley
M. P. Curran
W. B. Harris
Fred G. Albert
Commissioners.