

Decision No. 25678.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Investigation
on the Commission's own motion into
the rates, rules, regulations,
charges, contracts, practices and
operations, or any of them, of
American-Hawaiian Steamship Co.,
Arrow Stevedore Company,
Associated Terminals Company,
Occidental Forwarding Company,
Burton-Portland & Company,
A. Fox,
M. E. Galvan & Son,
General Stevedore & Ballast Company,
W. R. Grace & Company,
Harbor Car Service Bureau,
Luckenbach Gulf Steamship Co., Inc.,
Luckenbach Steamship Company, Inc.,
McCrone & Font,
Munson McCormick Line,
Pacific Argentine Brazil Line, Inc.,
Fremont R. Nash,
Oceans Terminals, Inc.,
Pacific Lighterage Corporation,
Pacific Ports Service Corporation,
Panama Mail Steamship Company,
San Francisco Stevedoring Company,
State Products Terminal,
Western Terminal Company,
M. E. Galvan & Company,
Marine Terminals,
Matson Navigation Company,
Paul Hartman Company,
Walter Sullivan,
MacNichol & Company,
California Stevedore Company,
John Doe Nos. 1, 2, 3, 4, 5, 6, 7,
8, 9 and 10.

Case No. 3323.

McCutchen, Olney, Mannon & Greene, by Allen P. Matthew,
F. W. Mielke and John O. Moran, for Howard Terminal,
State Terminal Company, Ltd., and Encinal Terminals.
E. G. Wilcox, for the Oakland Chamber of Commerce.
Markell C. Baer, for the City of Oakland, Port Commission.
Eal Remington, for the San Francisco Chamber of Commerce.
Tinning & De Lap, for McCrone & Font.

HARRIS, Commissioner:

C O P I N I O N

The above entitled proceeding, instituted on the Commission's own motion into the rates, rules, regulations, charges, contracts, practices and operations, or any of them of respondents, is to determine if they are operating as car loading or unloading companies as defined in Section 2(1) of the Public Utilities Act or are otherwise subject to the jurisdiction of the Railroad Commission of the State of California.

Section 2(1) of the Public Utilities Act provides that "the term common carrier when used in this act includes every * * * * * carloading and every other car corporation or person, * * * , operating for compensation within this state; * * *."

The services of car loading and unloading are commonly carried on as a unit, and, as the terms imply, embrace the handling of freight from point of rest on the wharf into the car and from the car to point of rest on the wharf, respectively. The term "car loading" includes both car loading and unloading. A car loader performs both services.

Various accessorial services as weighing, strapping, stenciling or marking, labeling, sacking, bracing, reconditioning and other similar services are commonly performed as incidental to car loading and unloading.

Stevedoring ordinarily embraces the handling of freight from point of rest on the wharf or dock into the vessel and discharging from vessel to point of rest on the dock, and is performed by or under the control of the steamship company.

Car loading and unloading operations center about the docks and wharves of the several public terminals on San Francisco Bay including Encinal Terminals at Alameda, Howard Terminal, Parr

Terminal and the Port of Oakland at Oakland, Parr-Richmond Terminals at Richmond, and at docks, wharves and other terminal facilities comprising the Port of San Francisco.

The service of car loading and unloading is performed by professional car loading and unloading companies, by the steamship companies, by wharfingers including the various terminals and by stevedoring companies. The car loading, unloading and stevedoring companies in some cases confine themselves to one or more docks or wharves and in others offer their services generally. The steamship companies and wharfingers operate only on their own docks or wharves but in all cases the service is offered to the public for compensation.

The practice and situation in regard to car unloading about San Francisco Bay is as follows: Howard, Encinal, Parr-Terminal (Oakland) and Parr-Richmond Terminal Corporation, Ltd., of Richmond and State Terminal Company, Ltd., of San Francisco have been declared wharfingers and have filed tariffs with this Commission covering car loading and unloading services by them. (See Decision No. 20531 of November 30, 1928, 32 C.R.C. 453, also Decision No. 21146 of May 24, 1929, 33 C.R.C. 112.)

The City of Oakland through its Board of Port Commissioners operates the Port of Oakland Municipal Terminals, maintaining similar rates for car loading and unloading by it.

The Port of San Francisco is owned by the State of California and is under the management of the Board of State Harbor Commissioners which leases the piers, wharves and terminal facilities to private operators, as for example, the State Terminal Company, Ltd. The actual handling of cargo is not assumed by the Board but left to the lessees who either perform their own car loading and unloading or rely on the services of professional car

loaders and unloaders. The exceptions are where particular steamship companies do their own loading and unloading.

In some cases the owners or operators of wharves do not permit professional car unloaders to operate on their premises.

There is overlapping of services such as stevedoring performed by car unloaders and vice versa. There is occasional direct service from car to ship and vice versa performed usually by the stevedore, sometimes by the unloader.

Car loading companies have not filed tariffs with this Commission and it has not heretofore asserted jurisdiction over them.

The revenues derived from car loading and unloading by the terminals are a substantial portion of their total revenues. Additional significance has recently attached to these revenues owing to the provisions in the railroad tariffs for absorption of car unloading charges where the rail carrier receives a line haul.

Car loading and unloading is an intermediate but integral part of through transportation. Common carriers, the car and the ship, both under regulation, are on each side of it, but this intermediate service is unregulated, and if it so continues, is in a position to nullify the purpose of regulatory laws to safeguard the public from rebates, discrimination and other bad practices.

Early in the year 1929, twenty-three of the major car loading and unloading concerns organized the "San Francisco Car Loading and Unloading Association" and adopted a uniform tariff, but the movement failed because of lack of enforcing authority.

Chaotic conditions obtain in the rates, practices and operations relating to car unloading; secret rate cutting is prevalent; operators are uncertain as to rate quotations of com-

petitors; shippers are being charged different rates for identical service; a demoralizing condition of rate instability exists.

Witnesses representing practically all of respondents concur in their desire for rate uniformity, in their approval of the exercise of jurisdiction by the Railroad Commission, and in the opinion that regulation to be effective must comprehend all of the operations which car unloaders commonly hold themselves out to perform.

Provisions of the Public Utilities Act directly applicable to this case are subdivisions (f), (l), (z) and the last sentence of subdivision (dd) of Section 2. Subdivision (f) defines the term "transportation of property" as, "every service in connection with or incidental to the transportation of property including in particular its receipt, delivery, * * transfer, * * switching, carriage, * * and handling * *."

Subdivision (l) groups under the term "common carrier" the various agencies having to do with the transportation of property (as well as of persons) in part as follows:

"The term 'common carrier,' when used in this act, includes every railroad corporation; street railroad corporation; express corporation; dispatch, sleeping car, dining car, drawing room car, freight, freight-line, refrigerator, oil, stock, fruit, car loaning, car renting, car loading and every other car corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, operating for compensation within this state."

The use in subdivision (l) of the expression "and every other car corporation or person", considered in connection with subdivision (f) which declares that transportation of property includes "every service in connection with or incidental to its transportation", manifests an all-inclusive legislative intent which, of course, comprehends under "every other car corporation or person" those engaged in car unloading.

The statute is therefore broad enough to include car unloaders, though it does not specifically name them. However, it appears from the evidence as hereinbefore stated that the term car loading as used in the industry includes both car loading and unloading. In construing the statute, this meaning should be given to it.

United States vs. Metropolitan Lumber Company,
254 Fed. 335.

Spiller vs. The A. T. & S. F. Ry. Co. et al.,
253 U.S. 117.

Compagnie Generale Transatlantique vs. American
Tobacco Company, 31 Fed. (2d) 663.

Moreover, car unloaders hold themselves out to the public to perform for compensation a service incidental to or connected with the transportation of property. It is my opinion that they are common carriers within the terms of the Public Utilities Act.

Subdivision (z) of Section 2 is as follows:

"The term 'wharfinger', when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees, appointed by any court whatsoever, owning, controlling, operating or managing any dock, wharf or structure used by vessels in connection with or to facilitate the receipt or discharge of freight or passengers for compensation within this state."

This subdivision was considered in the M. E. Galvan & Son case, 32 C.R.C. 453, rehearing 33 C.R.C. 112. The Supreme Court of California denied the petition for certiorari. M. E. Galvan & Son were managing and operating Pier 48 upon the San Francisco water front.¹ The Commission held as follows:

¹ The respondents operating in substantially the same manner as M. E. Galvan & Son and who own or control or operate or manage a dock or wharf used by vessels in connection with or to facilitate the receipt or discharge of freight for compensation within this state are as follows: Matson Terminals, Associated Terminals Company, Ocean Terminals, Inc., Marine Terminals, Pacific Lighterage Corporation, McCormick Steamship Company, Nippon Yusen Kaisha, Panama Mail Steamship Company, Luckenbach Steamship Company, Inc. and Luckenbach Gulf Steamship Company, Inc.

"The property is operated and managed by respondent under assignment from the Board of State Harbor Commissioners, and with the exception of tolls for dockage, demurrage and rentals which are made by that body under the provisions of its 'Tariff Charges', effective December 1, 1925, all other charges incidental to the receipt and discharge of freight, such as loading, unloading, stenciling, weighing, re-coopering and similar services are made directly by and subject to the sole control of respondent. To this extent it is a public utility wharfinger as defined in section 2(z) of the act, and as such will be required to file with this Commission its tariff setting forth its rates, rules and regulations incidental to the receipt and delivery of freight on Pier 48, except the above mentioned charges made, prescribed and regulated by the Board of State Harbor Commissioners."

The closing sentence of subdivision (dd) of Section 2 is as follows:

"Furthermore, when any person or corporation performs any service or delivers any commodity to any person or persons, private corporation or corporations, municipality or other political subdivision of the state, which in turn either directly or indirectly, mediately or immediately, perform such service or deliver such commodity to or for the public or some portion thereof, such person or persons, private corporation or corporations and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and the provisions of this act."

This language shows the legislative intent to bring within the scope of Commission regulation intermediate operations incidental to or a part of a public utility or common carrier service. The reason for the provision is as manifest as its purpose. If these intermediate services are not under regulation, they open the door to rate cutting, to secret rates, to rebates and to discriminations which render futile the regulation of the utility services of which they are in fact a substantial part.

Car loading and unloading and the accessorial services attendant thereupon are clearly intermediate services of the character referred to in subdivision (dd) and are subject to the jurisdiction of this Commission.

This construction of subdivision (dd) is upheld by the Supreme Court of California.

Western Canal Company vs. Great Western Power Company,
84 Cal. Dec. 452.

I find that each of the respondents named in the order is engaged in car unloading for the public for compensation and is performing common carrier and/or public utility wharfinger and/or public utility services within the meaning of Sections 2(1), 2(z) and 2(dd) of the Public Utilities Act.

Said respondents should be required to file with this Commission their tariffs setting forth their rates, rules and regulations covering their services of car loading and unloading and any accessorial services incidental thereto.

In addition to the Railroad Commission the following municipal and state departments have responsibilities with respect to the common carrier and/or public utility matters here involved:

1. City of Oakland, Port of Oakland, Board of Port Commissioners.
2. City of Richmond, Port of Richmond, Harbor Front and Terminal Port facilities.
3. The Board of State Harbor Commissioners, Port of San Francisco.

This Commission desires to cooperate with these departments and all local regulatory authorities to the end that all activities may be stabilized.

The Commission should retain jurisdiction of this case for the purpose of issuing supplementary orders if and when circumstances and developments warrant them.

I recommend the following form of order:

O R D E R

This proceeding having been duly heard and submitted, and basing this order on the findings of fact contained in the

opinion which precedes this order, which findings are hereby affirmed,

IT IS HEREBY ORDERED that respondents Arrow Stevedore Company, Associated Terminals Company, Burton-Portland and Company, California Stevedore and Ballast Company (substituted in lieu of California Stevedore Company), A. Fox, M. E. Galvan and Company, M. E. Galvan & Son, General Stevedore and Ballast Company, W. R. Grace and Company, Paul Hartman Company, Luckenbach Gulf Steamship Company, Inc., Luckenbach Steamship Company, Inc., McNichol and Company, Marine Terminals, Matson Terminals, (substituted in lieu of Matson Navigation Company), McCrone and Font, McCormick Steamship Company (in lieu of Munson McCormick Line and Pacific Argentine Brazil Line, Inc.), Fremont R. Nash, Occidental Forwarding Company, Ocean Terminals, Inc., Pacific Lighterage Corporation, Pacific Ports Service Corporation, Panama Mail Steamship Company, San Francisco Stevedoring Company, Walter Sullivan, Western Terminal Company and Nippon Yusen Kaisha, as John Doe No. 1, be and they are hereby ordered to file within thirty (30) days from the date of this order their respective tariffs containing rates, rules and regulations applicable to their several public utility operations of car loading and unloading and any and all accessorial services incidental thereto.

IT IS HEREBY FURTHER ORDERED that as to remaining respondents the proceeding is dismissed.

IT IS HEREBY FURTHER ORDERED that the Commission retain jurisdiction in this proceeding for the purpose of issuing supplementary orders if such become necessary.

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 27th day
of February, 1933.

W. A. ...
Leon ...
W. J. ...
M. B. ...
...
Commissioners.