

Decision No. 11234

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

--oOo--

Island Transportation Company,)
 Complainant,)
 vs.)
 George W. Freethy,)
 Defendant..)

Case No. 1798.

ORIGINAL

A. B. Roehl, by Benjamin Walters, for the
 Complainant.
 Gwyn H. Baker, for the Defendant.
 Chaffee E. Hall, for Bay and River Boat Owners'
 Association, Intervenor.

BY THE COMMISSION:

O P I N I O N

On August 23, 1922, the Island Transportation Company, filed with the Railroad Commission a complaint against George W. Freethy. On September 28, 1922, at the first hearing in this proceeding the Bay and River Boat Owners' Association, by its Secretary, John S. P. Dean, filed a petition in intervention.

The complaint is to the effect that the defendant, George W. Freethy, is engaged as a public utility and common carrier of property on San Francisco Bay and its tributaries, in competition with the complainant, and has on file with the Railroad Commission tariff setting forth the rates, rules and regulations under which the common carrier business is transacted; and that, notwithstanding the filing of tariffs, the defendant has failed to observe such tariffs and has been charging and collecting rates in contravention of the tariffs and in violation of Section 17 of the Public Utilities Act. It is specifically

alleged in the complaint that the defendant on or about June 12, 1922, moved a consignment of lumber in barge-load lots from Bay Point to Stockton, against which there was charged and collected the rate of \$1.75 per M. ft. B.M. in lieu of the lawful published rate then in effect of \$2.25 per M. ft. B.M. The complainant prays that the defendant be compelled to cease and desist from the collection of unlawful charges, to return to its patrons all over collections, and to recover all under collections; also that the defendant, if found guilty, be penalized in conformity with the provisions of the Public Utilities Act.

The petition in intervention of the Bay and River Boat Owners' Association alleged that the members of the Association, of which both the complainant and the defendant are members, operated approximately ninety-five per cent. of the equipment employed in the tramp and irregular freight service upon the inland waters in the central part of the State of California, and that the Association was interested in the enforcement of the rates published in the regular tariffs on file with the Commission.

Public hearings were held before Examiner Geary on September 28 and October 27, 1922, at San Francisco, and the matter is now ready for decision.

The specific rate published for the movement of lumber in barge-load lots from Bay Point to Stockton, is \$2.25 per M. ft. B.M., as shown on Page 17 of Bay and River Boat Local Tariff No. 2, C.R.C. No. 4, issued August 25, 1920, and effective August 27, 1920. In support of its contention the complainant, through the testimony of the manager of the Island Transportation Company, endeavored to show that the particular consignment of lumber moved from Bay Point to Stockton was solicited by the agent of the complainant, but that the service was not secured by reason of the fact that the defendant had agreed to move the

consignment for the shipper, San Joaquin Lumber Company, at a rate less than the published rate of \$2.25, the inference being that the consignment, if given to the defendant, George W. Freethy, would be charged at a rate of \$1.75 per M. ft. B.M.

The defendant, George W. Freethy, was called as a witness on behalf of the complainant, and on direct examination, gave the following testimony:

MR. WALTERS: Q. Who did you make --who did you deal with particularly when you hauled this lumber?

A. (by Mr. Freethy) Who did I deal with?

Q. Yes, who did you make your bargain with to haul the lumber, who did you speak to?

A. Mr. Ingals.

Q. Mr. Ingals is the manager of the San Joaquin Lumber Company?

A. Supposed to be, ain't he?

Q. I am asking you, is he the manager of the San Joaquin Lumber Company?

A. As far as I know he is.

Q. What arrangements did you make with Mr. Ingals?

A. Arrangements did I make?

Q. Yes.

A. I made arrangements to haul his lumber.

Q. With Mr. Ingals.

A. Yes sir.

Q. To haul the lumber?

A. Yes sir.

Q. What price did you agree on?

A. \$2.25 a thousand.

Q. You did?

A. Yes sir, and that is what I got paid for it, too.

Q. Was that paid at one time?

A. Yes sir, every dollar of it.

Q. There was no conversation about a less rate than \$2.25?

A. No sir.

Q. Between you and Mr. Ingals?

A. No sir.

Q. You say, "No sir"?

A. He told me he thought the lumber could be hauled at less than \$2.25. He gave me about the same talk he gave you, I guess.

Q. And you agreed to haul it for \$2.25? A. Yes sir.

Q. But no less? A. No sir.

Q. And you got paid \$2.25 when you first received any payment at all? A. Yes sir.

Q. You did not at no time -- was this payment made at one time? A. I told you yes once.

Q. You did not accept any portion of that \$2.25 in payment at any previous date? A. No sir, not one nickel.

Q. And the only payment made was \$2.25 a thousand? A. Yes sir.

Q. In full? A. Yes sir.

Q. When was that paid? A. Oh, I sent him the bill there on the first of August.

Q. And the lumber was hauled when? A. Well, the last load was hauled --

Q. The first load? A. I don't know, June or July -- July, I think. I don't remember exactly the date." (Transcript, Pages 10 and 11.)

In connection with this testimony of defendant Freethy there was introduced as Exhibits 1, 2 and 3: a bill for 303,420 feet of lumber at rate of \$2.25 per M., making a total charge of \$682.69, photographic copy of a check dated August 28, 1922, issued by the San Joaquin Lumber Company in the sum of \$682.69 and the memorandum slip which accompanied the bank check.

At the second hearing, held October 27, 1922, the manager of the San Joaquin Lumber Company, the consignee of the cargo in question, appeared as a witness, having been subpoenaed by the complainant. This witness, after explaining on direct examination, the manner in which the lumber shipment was delivered to defendant, and the conversation which took place in connection with the movement, testified on cross examination

as follows:

"MR. BAKER: I show you a paper marked Defendant's Exhibit No. 1 and I ask you if that is a copy of the bill rendered you for the hauling of the lumber (handing to witness)?

(By Mr. Inglis)
A. Yes sir, this is a duplicate of the bill I have here.

Q. And that is the bill which you paid? A. Yes sir.

Q. Now, I show you a paper marked Defendant's Exhibit No. 2 and ask you if that is a copy of the check, a true and correct copy of the check (handing to witness)? A. Yes sir.

Q. I will ask you if the original of that check was cashed?

A. Yes sir.

Q. I will ask you if any refund of the amount paid by that check was ever made to you in any source whatever? A. No sir."

(Transcript Page 103).

The chief accountant of the Railroad Commission, acting under instructions, made an inspection of the books of the defendant, and rendered a report of his findings. The material part of this report was a verification of the testimony given by the defendant. The report showed that there was recorded in the journal book of the defendant items covering the shipments, showing their movements from Bay Point on June 12 and 13 and July 27, 1922. The journal showed the number of feet of lumber to be the same as covered by copy of invoice, entered as Exhibit No. 1. The check book of defendant also recorded the fact that under date of September 2, 1922, a check for \$682.69 was deposited in the bank. We, therefore, have a complete verification of the statements made in the testimony of the defendant and of the manager of the lumber company. Following the last meeting, as per stipulation entered into, a deposition was secured from the bookkeeper of the defendant. This deposition was taken in the office of the complainant's attorney, and verifies the report rendered by the chief accountant of the Commission and also the testimony of the principal witness.

The defendant presented no testimony, all of the testimony given by Mr. Freethy being secured while on the witness stand as a witness called by the complainant.

It is to the interest of shippers and consumers that carriers adhere strictly to published rates, and it is also essential that deviations from the published rates be discouraged by adequate liabilities and penalties; it is within the power of this Commission, under the provisions of the Public Utilities Act, to assess fines and terms of imprisonment. There have been frequent informal complaints filed with this Commission alleging that certain common carriers operating in the San Francisco Bay district have violated their published tariffs, but the Commission has received no substantial proof of such violations of the law, and none has been presented in this formal proceeding. It is not upon the charge alone that a party can be convicted; it takes the charge, supported by the evidence, to make a case. We here have the charge, but the evidence does not prove the charge.

Upon consideration of this whole case, we are of the opinion that the evidence does not sustain the charge that an offence against the law was committed by the defendant, and it follows that the case should be dismissed; and it is so ordered.

O R D E R

Complaint having been made that the defendant charged freight rates different from those published in lawful tariffs on file with the Railroad Commission, a public hearing having

been had, and it appearing to the Commission from the findings set out in the foregoing opinion that said complaint is not well founded and should be dismissed,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that the complaint herein be and the same is hereby dismissed.

Dated at San Francisco, California, this 14th day of November, 1922.

H. H. Brundage
W. H. Lane
J. H. Leonard

Commissioners.