

Decision No. 11259

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

UNITED DREDGING COMPANY,  
Complainant,

-vs-

THE ATCHISON, TOPEKA & SANTA FE  
RAILWAY COMPANY, SOUTHERN PACIFIC  
COMPANY, and PACIFIC ELECTRIC  
RAILWAY COMPANY,  
Defendants.

Case No. 1725.

Bishop & Bahler, R. T. Boyd and  
E. W. Hollingsworth for complainant.

E. W. Camp, B. Levy, H. W. Klein and  
G. F. Squires for defendants.

BY THE COMMISSION:

O P I N I O N

In March, 1920, the complainant, a corporation engaged in the dredging business, shipped from Oakland to San Diego six cars and to Long Beach two cars each containing used pontoons and timbers. Charges were assessed on the basis of the second class rate of 60.5 cents applicable to pontoons. The complainant contends first, that the shipments were overcharged, the lawful rate being the Class "A" rate of 37.5 cents applicable to used contractor's outfits, and second, if the lawful rate was assessed it was unjust and unreasonable. Reparation is asked.

Each car contained four used pontoons and four used pine timbers 10" x 10" x 35'. The timbers weighed about 1000 pounds each and the average weight of the eight shipments was

43,175 pounds. The position of the complainant is that the pontoons come within the description of Outfits "Bridge-builders', contractors', or graders', N.O.I.B.N." found in Item 3, page 301 of Consolidated Classification No. 1, Note 8 of which reads as follows:

"NOTE 8 - Ratings apply on mixed carloads of used (not new) Outfits, commonly known as Contractors' Outfits, and including Implements, Machines, Vehicles other than Motor Vehicles, Pulley or Tackle Blocks, Tools, Chain, Rope, Ladders, Scaffolds, Tents and Tent Fixtures, Portable Houses K.D., Scows, Dump Cars, Narrow Gauge Locomotives, Rails or Track or other used (not new) construction equipment, but will not include Furniture, Household Goods, Personal Effects, nor Construction Materials."

The complainants lay particular stress on the words "or other used (not new) construction equipment". If complainant's contention be correct the Class A rate was properly applicable. The defendants, on the other hand, insist that the shipments were properly rated as "Pontoons and pontoon wagons, bridge construction, with or without necessary bridge equipment" under Items 20 and 21, page 328 of the Classification. They assert, first, that construction outfits do not ordinarily include pontoons and, second, that the rating contended for by complainant applies only on mixed carload shipments while those here involved were actually straight carloads of pontoons, and as such subject to the second class rate, minimum weight 10,000 pounds.

The issue is one of tariff interpretation requiring first a determination of the actual consist of the shipments. The pontoons in question are described as water-tight boxes, com-

pletely decked, with a man-hole leading into the box. They were made of pine lumber, sheathed with redwood and caulked with oakum and cost when new, with the timbers, about \$200.00 each. By simply changing the position of the saddles the pontoon could be used lengthwise or in catamaran shape. The timbers are used only when the pontoons are placed in catamaran shape, thus giving greater stability in rough water. A witness for the complainant testified that "from a dictionary standpoint" a scow and pontoon are synonymous and, because of their general similarity, there was no justification for a higher rating on the one than on the other and no reason why pontoons should be rated higher than other articles transported as contractor's outfits or equipment. They are said to be of less value than many of the other commodities named in the item in question. Another witness testified that he regards the pontoons as a "part of a hydraulic suction dredging equipment". On behalf of the defendants it was shown that scows were included in the classification item covering contractors' outfits in 1887, and were at that time intended to cover small open boats in use by some contractors, while the designation pontoons covers pontoons of particular design used in engineering and dredging work, also by the army.

It is clear beyond question that the shipments here involved consisted not of scows but of pontoons. It is likewise clear that timbers are not a necessary part of a pontoon, the latter being complete in and of itself. Upon arrival at destination the particular pontoons here involved were placed lengthwise, making unnecessary the use of the timbers. This fact, however, is of little importance since neither the rating nor rate may be determined from nor predicated upon the use made of the article

at destination. The facts of record indicate that the shipments consisted of pontoons with supporting timbers and that the rate legally applicable to such shipments was assessed. This rate has not been shown to be unreasonable and the complaint will be dismissed.

O R D E R

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the complaint in this proceeding be, and it is hereby dismissed.

Dated at San Francisco, California, this 23<sup>rd</sup> day of November, 1922.

W. H. B. Bunting  
Spring Maitland  
Charles W. Brown

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Commissioners.