Decision No._____

Decision No. 4916

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

PRODUCERS HAY COMPANY, et al.,
Complainants,

vs.

CARL ANDERSON, et al.,
Defendants.

CASE NO. 1141.

Bishop & Bahler, by H.M.Wade and L.R.Bishop, for Complainants.

Ira S. Lillick, for John Anderson, M. Barletta, et al.,
Defendants.

Creed, Jones & Dall, for Carl Anderson and Otto Dall,
Defendants.

LOVELAND, Commissioner:

O P I N I O N

This proceeding was initiated by the Producers Hay Company and five other dealers in hay and straw, each interested in the transportation of these commodities from interior producing points to San Francisco and the local markets. The complaint is directed against twenty-four owners or operators of vessels of the schooner type, barges and craft engaged in transporting hay, straw and various commodities upon the inland waters of this State; it alleges that the rates, rules and regulations filed by these utilities are not the rates, rules and regulations which they had in effect on July 27, 1917 and that therefore they are unlawful and that they are excessive and unreasonable per se.

The Public Utilities Act, which became effective March 23, 1912, by certain qualifying words limited the term "common carrier", as applied to vessels, to such as were "regularly"

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engaged over "regular" routes between points within this State. As amended by Chapter 707 of the Statutes of 1917, approved May 29, 1917, Section 2 (1), insofar as it applies to vessels, reads as follows:

> "The term 'common carrier' 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 vessel engaged in the transportation of persons or property between points upon the inland waters of this State, or regularly engaged in the transportation of persons or property for compensation upon the high seas on regular routes between points within this State. The term 'inland waters' as used in this subsection includes all navigable waters within the State of California other than the high seas".

Under subdivision (y) of the same section, as amended, the term "vessel" is defined in the following language:

> "The term 'vessel' when used in this Act, includes every species of craft by whatsoever power operated, which is owned, controlled, operated, or managed for public use in the transportation of persons or property, except row boats, sailing boats and barges under twenty tons dead weight carrying capacity, and vessels propelled by steam, gas, fluid naphtha, electricity, or other motive power, under the burden of five tons net register".

These amendments became effective July 27, 1917. Based thereon, the Commission's General Order No. 49 was issued, calling attention to the law and directing all common carriers affected to file rate schedules, including rules and regulations. In compliance with this general order defendants published and filed with the Commission rate schedules, effective August 17, 1917, including charges for the transportation of hay and straw between points located on San Francisco Bay, its adjacent waters and tributaries on the one hand, and the cities of Petaluma and San Francisco on the

other. These rates vary, from a minimum charge of $1.50 per ton covering a maximum haul of 40 miles (Petaluma to San Francisco), to $2.50 for a maximum haul of 127 miles (Sacramento to San Francisco), and form the basis of attack in the complaint now under consideration.

Briefly stated, the complaint alleges; that complainants are engaged in intrastate commerce, including the receiving and shipping of hay and other agricultural products and in so doing are dependent upon defendants for transportation; that defendants are common carriers subject to the provisions of the Public Utilities Act; that defendants published and filed with the Railroad Commission certain rate schedules; that the rates shown therein for the transportation of hay and straw were not the rates charged by defendants on July 27, 1917; that the schedules published and filed by defendant carriers did not embrace the entire bay and river region as traversed by the vessels of defendants; that the rates as published and filed are unjust and unreasonable; that defendants' demurrage rule, limiting free time to 48 hours, is unjust, unreasonable and not in conformity with the previous practice of these carriers; that the present tariff of defendants is defective, for the reason that there is no provision for the diversion of cargo to other points after its arrival at San Francisco, all of which matters, including rates, rules, regulations and practices, complainants desire to have corrected to the basis of rates, rules, regulations and practices alleged to have been in effect prior to July 27, 1917. Reparation is asked for on shipments moved on or after July 27, 1917.

For answer to these allegations and demands defendants, Carl Anderson and Otto Dall, deny that they are common carriers

subject to the provisions of the Public Utilities Act; that the rates filed by them are higher than the rates in effect on July 27, 1917, or that they are unjust or unreasonable; that their demurrage rule as filed differs from the practice previously in effect, or that complainants have been subjected to unjust or unreasonable charges in violation of Section 13 of the Public Utilities Act.

All other defendants admit that they are common carriers and that they have filed their rates with the Railroad Commission, as required by law, but deny all other allegations made by complainants.

The case was set for public hearing at San Francisco October 16, 1917, on which date and at subsequent adjourned hearings evidence was presented. The matters involved group themselves into the following classes:

Are all the defendants named in the complaint common carriers contemplated by the Public Utilities Act, as amended?

Were the defendants required to publish and file schedules showing rates, rules and regulations in effect prior to July 27, 1917, the day the amendments to the Public Utilities Act became operative?

Are the rates, rules and regulations as published and filed just and reasonable for the service performed?

As cited in the opening paragraphs of this opinion, the Public Utilities Act, as originally approved and made effective March 23, 1912, covered in the classification of common carriers, only such vessels as were regularly engaged in the transportation of persons or property for compensation upon the waters of this State or upon the high seas, over regular routes between points within this State". Obviously, so-called tramp vessels when

operated without regard to route or time schedule, picking up cargo wherever available, could not be classed as common carriers under the Act as then in effect. Under the amendment to the Public Utilities Act, approved May 29, 1917, subdivision (L) of Section 2 was extended and broadened to include as a common carrier "any vessel engaged in the transportation of persons or property for compensation between points upon the inland waters of this state"; inland waters being defined in the following language:

> "The term 'inland waters' as used in this subsection includes all navigable waters within the State of California other than the high seas".

By the same amendment Section 2 (y) of the Public Utilities Act was changed to read as follows:

> "The term 'vessel', when used in this act, includes every species of water craft, by whatsoever power operated, which is owned, controlled, operated or managed for public use in the transportation of persons or property, except row boats, sailing boats and barges under twenty tons dead weight carrying capacity, and vessels propelled by steam, gas, fluid naphtha, electricity, or other motive power, under the burden of five tons net register".

It will be seen that the amended sections are confined to vessels operating on the bays, rivers, sloughs, channels and other inland bodies of water, and apply in no way to vessels operated exclusively on the high seas. As to the latter class of vessels, the Commission's jurisdiction is still confined to those operated over regular routes between points within California.

These amendments became effective July 27, 1917 under the referendum provision of Section 1, Article IV, of the Constitution of the State of California (adopted October 10, 1911), such date being 90 days after the adjournment of the Legislature

enacting same.

All common carriers subject to the provisions of the Public Utilities Act are required to publish and file with the Railroad Commission rate schedules as therein provided, and to enforce the same without discrimination. Section 14 (a) relating to the matter of filing rates, reads, in part, as follows:

> "Every common carrier shall file with the Commission and shall print and keep open to the public inspection schedules showing rates, fares, charges and classifications for the transportation between termini within this State of persons and property from each point upon its route to all other points thereon".

Section 17 (a) of the Act prohibits a common carrier from engaging in the transportation of persons or property until its rate schedules shall have been published and filed, and subdivision (c) of the same section makes it unlawful for such common carrier to deviate, in any manner, from its schedules so filed and published. Under the foregoing provisions of the Public Utilities Act the rates which form the subject of this complaint were published and filed.

Although defendants, Anderson and Dall, claimed in their formal answer to the complaint that they are not common carriers within the meaning of the Public Utilities Act, no testimony was presented in support of this position. Their vessels fall within the tonnage limits contemplated by the amendment and, without protest, these defendants published and filed rate schedules in compliance with the Commission's General Order No. 49. I am of the opinion that all defendants named herein are common carriers, subject to the provisions of the Public Utilities Act.

In support of the allegation that defendants had in

effect prior to July 27, 1917, a system of rates lower than rates shown in tariffs, complainants presented Exhibit No.10, consisting of a number of paid bills rendered by Thompson, Collis & Co. and their successor, against Scott, Magner & Miller, one of the complainants, covering service during a large part of the years 1915 and 1916. It appears from Exhibit No. 10 that the rates collected for the transportation of hay and straw were, in fact, lower in many instances than the rates shown in defendant's schedules, effective August 17, 1917. It was admitted by witnesses for defendants that the rates carried in tariffs filed with the Commission are higher for some of the routes than have been charged on occasions during previous years; it is likewise in evidence that lower rates have been collected on some occasions. It is contended that from the year 1906 to July 27, 1917, a great variety of rates were charged for the transportation of hay and straw from points reached by their vessels to San Francisco and that such rates could not properly be called standard, nor did they prevail over any considerable length of time or remain constant as to any particular shipper or route. This contention, contained in defendants' answer to the complaint and supported by the testimony of their principal witness, shows, as I believe, conclusively, that a stable schedule of rates of uniform application had not at any time been in effect by defendants prior to the date their present schedules were filed with the Railroad Commission. The well known methods employed in unregulated public service by which rates are driven to a bed rock figure based in no way upon the value or cost of the service, seems to have been no exception in the present case. The fact of fairly constant rates shown to have been applied in the case of Scott, Magner & Miller for 1915 and 1916, as indicated by complainants'

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Exhibit No. 10 could at most show the condition with reference to but a small number of vessels engaged in bay and river freighting, since only eleven vessels were represented by these transactions. The Public Utilities Act, as amended by Chapter 707 of the Laws of 1917, brings these carriers positively under the jurisdiction of the Commission, but does not require them to file any particular schedule of rates.

I am forced to the conclusion that there existed prior to July 27, 1917, no standard or constant rates for the transportation of hay and straw between the points and on the class of vessels involved in this proceeding, and that such rates as were filed by defendants in compliance with the Commission's General Order No. 49 are lawful, therefore there remains for consideration only the reasonableness of the rates, rules and regulations contained in the tariffs effective August 17, 1917.

In Exhibits Nos. 1, 2 and 3, complainants seek to show by tables of comparative distances that rates charged by defendant boat lines for the transportation of hay are excessive when compared with railroad rates for like mileage. I cannot agree with the contention that all-rail rates fixed upon a strictly mileage basis are comparable to the rates of water carriers operated as in the present instance, limited on some of the runs to one trip a week, and that under the most favorable weather conditions. In the case of sailing vessels an even more unfavorable showing is disclosed by the record, being two trips a month in winter from Sonoma Creek to San Francisco. Many of the channels and sloughs where defendants' boats are called upon to go are difficult of access, overhung by brush, full of snags, narrows and shallows. I do not think a mileage basis fair for

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this kind of water transportation. Certainly, the difficulties of the route traversed should be reflected in the rate.

Complainants presented testimony to show that the power schooner "Regenia S" and sailing schooner "Mtn. View", owned and operated by Producers Hay Company, one of the complainants, had each made profits during the years 1913 to 1917 inclusive in service similar to that given by defendants, based upon rates which complainants contend were in effect prior to July 27, 1917. The financial results secured by these two boats, which are not common carriers and are devoted entirely to the private use of a very large hay selling company, cannot properly be made a fair basis of comparison with competing vessels dependent upon tonnage received at infrequent intervals and in varying quantities.

On the other hand, according to the testimony of defendants' witnesses, a different situation exists with reference to the great majority of the common carrier vessels engaged in this class of service. It was shown that eleven vessels out of a total of twelve operated by defendant Erikson have, in the course of five years, from April 1, 1912 to April 1, 1917, received, above operating expenses, a total of $1,850.11, or $370.02 per annum, which is equal to about 3/4 of 1% on $50,000.00, the estimated present value of the eleven vessels in question. A recapitualtion of the operating results of the vessels under the control of Erikson for a period of five years follows:

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Name of Vessel	Estimated Present Value	Profit	Loss
Surprise	$18,000.00	$11,280.11	
Matilda	10,000.00	2,119.27	
H.Eppinger	9,000.00	1,091.95	
Port Costa	4,000.00	2,837.23	
Crockett	8,000.00		1,625.94
Annie E.	3,000.00		1,064.46
Margaret C.	2,500.00		2,598.42
Nettie	2,000.00	859.03	
Montezuma	7,000.00	3,054.17	
St.Thomas	2,000.00	447.35	
Albertine	1,500.00		688.14
H. Templeton	1,000.00		2,581.93
	$68,000.00	$21,689.11	$8,558.89
Less "Surprise"	18,000.00	11,280.11	
	$50,000.00	$10,409.00	
Eleven vessels	$50,000.00	1,850.11	370.02 per annum

Average value of vessels $4,545.00
Average annual receipts above expenditures per vessel - $33.64

The gasoline schooner "Surprise" has been eliminated from consideration in the above tabulations, for the reason that the showing made by this boat for the past five years is due to outside runs in the grain trade between San Francisco and Pigeon Point, and that it transported no hay or straw on the inland waters of the State.

The unfavorable showing brought out by the foregoing figures is not, as the testimony indicates, confined to the period covered by unusual increases in operating expenses, but is greatly augmented thereby. Furthermore, these figures do not take into account any allowance for insurance, employers' liability or depreciation of equipment.

The cost of supplies and equipment for use of the vessels under consideration has increased during the past few years from 90% to 150%; it was also in evidence that the wages of captains, engineers and crews have been advanced from 33-1/3% to 75%. In cases where supply contracts for distillates exist

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defendants have already been served with notice that substantial increases in price will take effect upon expiration of present agreements. Taxes, liability insurance, repairs and every other necessary outlay contribute to the increased cost of operating the vessels represented in this proceeding.

A number of witnesses called by defendants, each owning or operating one or more vessels of the same class as are under the control of Erikson, testified to the same general facts as to increased cost of operating their vessels, each, with perhaps a single exception, claiming to have failed, under rigid economy and hard work, to realize even a moderate income on its investment.

Considerable importance was attached by complainants to the fact that defendants' vessels arriving in San Francisco with cargoes of hay had, in the past, at the instance of shippers, frequently diverted parts of a consignment to other points on the San Francisco bay without extra charge for the service. These additional hauls would in some instances be extended to points twenty miles, or even farther, beyond original destination. In extreme cases complainants thought reasonable compensation should be allowed for this service, but maintained that diversions to moderate distances beyond destination, without additional cost to shipper, should be the general rule. Witnesses for defendants stated that free hauls have frequently been made to various landings beyond San Francisco and that in such instances delays of three or four days, or longer, were not uncommon, during which time the owners of cargoes would use the vessels as warehouses, in most instances paying neither demurrage nor additional rates for diverting and distributing the hay. This custom caused unnecessary hardship to carriers and appears to have resulted in a demoralization of the service and, in some instances, to an entire dis-

continuance.

The subject of demurrage appeared to be of considerable concern to both parties and is covered by the following rule carried in defendants' tariffs: "Demurrage will begin after 48 hours". Complainants asked that demurrage rules be established similar to those governing rail lines, to which defendants objected, claiming that conditions are so entirely different in connection with freight cars such rules would not prove at all satisfactory either to shippers or receivers of cargoes. However, since this is a broad, general question affecting not only the parties to this proceeding, but all parties in the State of California interested in water transportation, it cannot be decided upon the meager facts presented in this particular case. A proceeding has been instituted for the purpose of adopting demurrage rates and rules for vessels within the jurisdiction of the Commission, at which all interested parties will be given an opportunity to be heard, to the end that a complete showing may be made upon which such demurrage rates and rules will be based.

The testimony plainly showed that there had been no uniform or regular rates charged by the carriers in question previous to the effective date of the Act giving the Commission jurisdiction of such carriers. The making of rates had been a bargain and sale matter between the shippers and the carriers and it was manifestly impossible for the carriers to file such rates. They, therefore, filed a schedule of regular uniform rates which the Commission investigated at the hearing, and hereby declares to be just and reasonable rates for the service performed.

I recommend that the complaint be dismissed and submit herewith

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the following form of order,

O R D E R

Producers Hay Company, et al., having complained to this Commission alleging that rates charged for the transportation of hay and straw by Carl Anderson and twenty-three (23) other owners and operators of vessels plying the inland waters of this State are excessive and unreasonable and not in conformity with rates which were in effect by these carriers on July 27,1917. and a hearing having been held and the Commission being fully advised in the premises,

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

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 1st day of December 1917.

Max Thelen

H D Loveland

Edwin O. Edgerton

Commissioners.