

Decision No. _____

ORIGINAL

Decision No. 5191

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Demurrage Rates)
and the Rules and Regulations Govern-)
ing the same of Common Carrier Vessels)
as Defined in Chapter 707 of the Laws)
of 1917.)

CASE NO. 1174.

Bishop & Bahler, by E. M. Wade, for Complainants,
Producers Hay Association;
Ira S. Lillick and J. A. Olson, for Carl Anderson,
M. Barletta, et al, Defendants;
Sanborn & Roehl, for Sacramento Transportation
Company;
Seth Mann, for San Francisco Chamber of Commerce.

Loveland, COMMISSIONER:

O P I N I O N

This is an investigation on the Railroad Commission's initiative into the rates, rules and regulations affecting demurrage on common carrier vessels engaged in intrastate traffic. A hearing was held in San Francisco January 7, 1918 and the matter is now ready for decision.

The situation which brought about the present proceeding resulted from Case No. 1141, a complaint filed on behalf of hay dealers of San Francisco alleging that demurrage regulation and rates published by certain carriers did not conform to the practice of such carriers as of July 27, 1917.

In the original case the Commission did not attempt to reach a conclusion as to what would be fair and reasonable rates

and rules covering demurrage, but recommended that an independent investigation, sufficiently large in scope to include all phases of the subject, be instituted. The order herein contains the result of the Commission's inquiry.

The principal questions discussed at the proceeding involve,- the rate of demurrage; free time allowed for loading and unloading; free time during legal holidays and inclement weather; notifications to be given consignor and consignee; bunching of vessels at either point of loading or unloading, and the amount of free time to be allowed when vessels are diverted after having reached the original billed destination. The testimony dealt principally with the scow type of vessels of small carrying capacity operated either by gasoline motor or sail and which, as a general rule, are devoted to single consignments on each trip. Under the tariffs now in effect demurrage is 25 cents per ton based on the gross register of the vessel used regardless of the actual weight of the cargo and begins 48 hours after the vessel arrives at destination.

Protestants contended that they should have 48 hours free time, computed from the first 7 A.M. after vessel reaches the dock and that no charge should be made for Sundays and legal holidays. Operators of vessels took the position that free time should begin to run immediately after arrival of vessel and that only the holidays observed by laboring men, such as January 1, Fourth of July, Labor Day, September 9, Thanksgiving Day and Christmas should be disregarded in computing time and amount of demurrage, also that the free time should be but 24 hours on all heavy commodities.

An exhibit was introduced giving the cost per day for operating a power boat with a capacity of 75 gross tons. This exhibit showed the actual out-of-pocket expense to be \$20.22 per day, including the salaries of one captain, one engineer, three sailors, board of the five men and incidental expenses of dockage and insurance. Based on the suggested demurrage rate of 25 cents per ton the owner of a vessel with a carrying capacity of only 75 gross tons would receive but \$18.75 in demurrage to meet the outlay of \$20.22, sustaining a loss of \$1.47 per day, while the vessels having a capacity of 80 tons and over would earn in demurrage charges amounts but little in excess of the out-of-pocket expense per day for maintaining the vessel. Upon this showing, which was not successfully controverted by protestants, I am of the opinion that a rate of 25 cents per ton per day, based on the gross carrying capacity of the vessel, would be reasonable.

All parties were agreed that when the inclemency of the weather rendered impossible the loading or unloading of freight within the free time allowance no charge should be made for necessary detention of vessel until discharge of cargo, but if the weather conditions were such that the cargo could have been unloaded during the free period, no credit be given for the inclement weather occurring after the cargo should have been unloaded under the free time privilege.

Rail carriers until recently made no demurrage charge during inclement weather, but the privilege, being a source of much complaint from both shippers and carriers, was eliminated from the tariffs. It is apparent that no hard and fast weather rule can be established for water carriers and when disputes arise under alleged conditions, making it impossible to load or

unload vessels, the matter should be referred to this Commission for adjustment.

I am of the opinion that the free time should be restricted to meet the absolute needs of the traffic, in order that vessels may not be unnecessarily delayed, and that in computing the same or assessing amount of demurrage only such holidays as are generally observed should be disregarded, also that 24 hours after the first 7 A.M. is ample time for the unloading of all commodities except hay and straw, upon which 48 hours after the first 7 A.M. should be allowed.

The assessment of demurrage charges is not intended as compensation, but is rather a penalty imposed upon shippers who, after ordering vessels, fail to provide cargo within a fixed time or to arrange for the prompt unloading of the cargo at its destination. A carrier should not be expected to provide storage on its vessels and when vessels are used for such purpose it is very apparent that reasonable amounts should be paid for storage facilities and for the detention of equipment. Rates assessed for the transportation of a commodity do not include unlimited free use of vessels at either point of loading or unloading and a carrier, being under obligation to conduct its business in the interest of all its patrons and the public, cannot have the full and free use of the vessels unless they are promptly released by shippers.

The establishment of demurrage rates and rules applicable to vessels is somewhat of an innovation, consequently the Commission has been largely without precedent or guide in some of the important phases of the subject. The rates and rules set forth in the accompanying order are more or less of an experimental

nature and may not prove to be a complete solution of all the problems. This, however, can only be determined after they have been given a fair trial.

In view of the foregoing the following order is recommended:

O R D E R

A proceeding having been instituted by the Commission in the matter of prescribing uniform rates and rules covering demurrage on vessels engaged in irregular service on the inland waters of this State, a hearing having been held, a full investigation of the matters and things involved having been had, and being fully advised in the premises,

IT IS HEREBY ORDERED that this Commission adopt the following General Order, to be known as General Order No. 52 the same to supersede and take the place of all demurrage rates and rules previously published or enforced for the class of vessels therein described, and to become effective on and after May 1, 1918.

General Order No. 52

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

DEMURRAGE RULES AND REGULATIONS

Applying to vessels operating upon the inland waters of this State, having no fixed sailing schedules, routes or termini.

Approved March 9, 1918.

Effective May 1, 1918.

All vessels held by or for consignor or consignee for loading, unloading, forwarding directions, or for any other purpose.

are subject to the following demurrage rules:

RULE 1

Ordering a Vessel for Loading

(a) When a shipper desires a vessel for loading, notice must be given carrier by mail, telephone or other convenient method (a proper memorandum, together with notation of acceptance, should be retained) indicating the date vessel is desired, the character and location of the freight and its destination.

(b) When a carrier accepts orders for the transportation of cargo and fails to furnish vessel as agreed it shall be subject to the payment of demurrage, at the rate fixed in these rules, for each day of unnecessary delay, not to exceed the time required for the despatch of a similar vessel to such loading point.

(c) When a shipper orders a vessel to report for cargo at a given time and place and fails to supply cargo as agreed, demurrage at the rate fixed in these rules will be charged for the number of days required by the vessel to make the round trip under ordinary conditions, provided that if cargo has been partially loaded and is shipped the only demurrage charge will be for the additional loss of time by the vessel while waiting at point of loading.

RULE 2

Notification of Arrival

Notice shall be given consignor and consignee by carrier's agent, in writing or as otherwise agreed to, within twenty-four (24) hours after arrival of vessel at point of loading or unloading. Such notice, when given at destination, to contain point of shipment and description of the commodity.

RULE 3

Free Time to Load Cargo

Where loading is performed by shipper twenty-four (24) hours' free time, computed from the first 7 o'clock A.M. after arrival of vessel at wharf, landing or loading chute and notification to party designated by shipper as provided herein, will be allowed to complete the proper loading of all commodities except hay and straw, which will be allowed forty-eight (48) hours' free time.

RULE 4

Free Time to Unload Cargo

(a) Where unloading is performed by consignee twenty-four (24) hours' free time, computed from the first 7 o'clock A.M. after arrival of vessel at destination wharf or dock and notification as provided herein, will be allowed to consignee for the unloading of all commodities except hay and straw, which will be allowed forty-eight (48) ^{hours'} free time.

(b) When cargo is unloaded by the carrier, twenty-four (24) hours' free time, computed from the first 7 o'clock A.M. after arrival and notification as provided herein, will be allowed consignee to arrange for the receipt of cargo.

RULE 5

Change in Destination

Twenty-four (24) hours' free time, computed from the first 7 o'clock A.M. after arrival at the billed destination, will be allowed when a vessel is diverted to another destination for unloading.

RULE 6

Bunching

When by reason of delay not attributable to consignor or consignee, more than four vessels of one carrier with cargo for the same consignee arrive and report at termini within the same twenty-four (24) hours, such consignor or consignee shall be allowed such free time as he would have been entitled to had the vessels arrived as ordered.

RULE 7

Days not Counted in Computing
Free Time and Demurrage

In computing free time and demurrage no account will be taken of Sundays and the following holidays:

- 1- The First day of January,
- 2- The Thirtieth day of May,
- 3- The Fourth day of July,
- 4- Labor Day,
- 5- The Ninth day of September,
- 6- Thanksgiving Day,
- 7- The Twenty-fifth day of December.

When a holiday, as specified, falls upon a Sunday, the following Monday will be regarded as the holiday.

RULE 8

Rate of Demurrage

After the expiration of free time allowed under these rules, demurrage will be charged at the rate of 25 cents per gross ton register of vessel per day of twenty-four (24) hours, or fraction thereof, such vessel is detained.

RULE 9

Unavoidable Delays

When it shall appear to the satisfaction of the Commission that the failure of a vessel to arrive at the loading or unloading point, or the failure of consignor or consignee to load or unload the same is due to causes beyond the control of such carrier, consignor or consignee, no payment shall be required to be made on account of such delay.

RULE 10

Disputes

Disputes arising between carriers and consignors or consignees concerning the interpretation of these rules or concerning any claim arising thereunder, shall be submitted to the Commission for adjustment.

RULE 11

Publication

These rules shall be immediately printed by the carriers, or their authorized agents, filed with the Commission and distributed to the agents of such carriers and shall constitute their demurrage tariff.

The Railroad Commission hereby finds as a fact that

all of the rules and regulations prescribed in the foregoing order are just and reasonable.

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 9th day of March, 1918.

Max Thelen
H. H. Leonard
Alex Gordon
Edwin O. Egerton
Frank R. Perkins
Commissioners.