

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application
of the ATCHISON, TOPEKA & SANTA FE
RAILWAY (coast lines), BOCA & LOYAL-
TON RAILWAY COMPANY, SAN PEDRO, LOS
ANGELES AND SALT LAKE RAILROAD COM-
PANY, SOUTHERN PACIFIC COMPANY (pa-
cific system), TONOPAH AND TIDEWATER
RAILWAY COMPANY, and WESTERN PACIFIC
RAILWAY COMPANY, to amend local and
interdivision joint tariff No. 1 CRC
Supplement No. 1 to CRC No. 2 cover-
ing baggage rules, rates and charges
by limiting the size of any piece of
baggage which will be handled free.

Case No. 256.

- Geo. D. Squires, Chas. S. Foe, F. S. Howard and
E. B. Carson, for Southern Pacific Company;
- E. W. Camp, J. J. Byrne, E. Isaacs and P. Walsh,
for Atchison, Topeka & Santa Fe Railway Com-
pany;
- T. C. Davison and T. C. Peck, for San Pedro, Los
Angeles and Salt Lake Railroad Company;
- E. L. Lomax and C. R. Miller, for Western Pacific
Railway Company;
- Seth Mann, William R. Wheeler and Austin Sperry,
for Traffic Bureau of the Chamber of Commerce
of San Francisco;
- E. K. Clintsman, for Pacific Coast Commercial
Travelers;
- J. C. Berendsen, for Einz & Landt, Incorporated;
- G. M. Belden, for Andrew A. Jacob & Company;
- George James, for Holm Millinery Company.

LOVELAND, Commissioner.

O P I N I O N.

The practice of common carriers of extending to their patrons the privilege of having transported free their personal effects or baggage has existed for many years and the use or alleged misuse of this privilege has, from time to time, been the subject of disagreements between the carriers and their patrons, resulting in litigation and judicial decisions.

Previous to the passage of the amendment to the act to regulate interstate commerce, of June 16, 1910, the act contained no specific provision relating to the interstate transportation of baggage, except in connection with the issuance of joint interchangeable mileage tickets. Previous to that, under the authority granted the Commission by Section 6 of the act, carriers

had been required to publish and file their general baggage regulations and their schedules of excess baggage. Section 1 of the act, as amended on June 18, 1910, reads as follows:-

It is hereby made the duty of all common carriers subject to the provisions of this act to establish, observe, and enforce * * * just and reasonable regulations and practices affecting classifications, * * * the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, * * * the carrying of personal, sample, and excess baggage.

Previous to the passage of this amendment, the term baggage had been understood to mean personal baggage, consisting of wearing apparel, toilet articles and similar effects necessary and appropriate for the wear, use, comfort and convenience of the passenger and for the purposes of the journey, but not intended for other persons or for sale. The passage of the amendment, as will be observed, included samples as baggage.

The necessity for the regulation which the carriers now ask for, it is alleged, arises from two sources: first, the coming into use of "wardrobe" or "innovation" trunks, bulging at the top or sides and frequently at the top and one or two sides, and the extending of the definition of baggage to include samples.

Wardrobe or sample trunks are purposely constructed with the bulging end or sides or end and sides to prevent other baggage being piled upon them. If only trunks of this character were to be loaded into a baggage car, it would be an easy matter to handle them, but the varying sizes and shapes of articles offered as baggage make it absolutely necessary that the different pieces be piled in tiers in the car, which cannot be done or, at best, can only be done with difficulty with the wardrobe or innovation trunks.

With the passage of the amendment to the act to regulate commerce, including "samples" as baggage, carriers allege that the traveling representatives of commercial and manufacturing establishments began to offer as baggage trunks or containers of unusual

shape, large and unwieldy in size. They further allege that the handling of baggage of this sort interfered with the time schedules of passenger trains, thus inconveniencing the public generally and that such forms of baggage which were piled with difficulty in the baggage cars were also dangerous to their employees.

After various conferences extending over a period of about two years, the carriers, subject to the Interstate Commerce Commission, finally adopted a rule, known as Rule 10, as to handling baggage of excess size, which rule was regularly promulgated and filed with the Interstate Commerce Commission as required by law. Immediately thereafter, the Commission received many protests against the rule and its effective date was suspended pending investigation by the Commission.

On December 10, 1911, the common carriers mentioned as applicants in this hearing adopted local and interdivision joint tariff No. 1 CRC Supplement No. 1 to CRC No. 2 which contained, amongst other rules, the following:-

BAGGAGE OF EXCESS SIZE.

Rule 13¹ (a) Effective July 1st, 1912, for any piece of baggage (Baggage is defined in Rules 1 and 2) of any class (excepting immigrant baggage checked at port of entry) the greatest dimension of which exceeds forty-five (45) inches, an additional charge for each additional inch will be made equivalent to the charge for ten (10) pounds of excess baggage. The minimum charge for baggage of excess size is twenty-five (25) cents.

(b) Effective July 1st, 1914 for any piece of baggage (Baggage is defined in Rules 1 and 2) of any class (excepting immigrant baggage checked at port of entry) the greatest dimension of which exceeds forty (40) inches, an additional charge for each additional inch will be made equivalent to the charge for ten (10) pounds of excess baggage. The minimum charge for baggage of excess size is twenty-five (25) cents.

Examples effective July 1st, 1912, and remaining in effect until July 1, 1914:

1- If a trunk is forty-seven (47) inches long and the other dimensions do not exceed forty-five (45) inches, the extra charge would be computed on the basis of two (2) inches. Where ticket fare is six dollars (\$6.00) extra charge for excess size is twenty-five (25) cents. (The minimum charge for any shipment of baggage of excess size is 25 cents.)

2- If a trunk is forty-six (46) inches wide and

fifty (50) inches long and the third dimension does not exceed forty-five (45) inches, the extra charge would be computed on the basis of six (6) inches. Where the ticket fare is six dollars (\$6.00), extra charge for excess size is sixty (60) cents.

3- If a trunk is forty-seven (47) inches wide, forty-seven (47) inches high and fifty (50) inches long, the extra charge would be computed on basis of nine (9) inches. Where the ticket fare is six dollars (\$6.00) extra charge for excess size is ninety (90) cents.

Note.- The rule in regard to baggage of excess size does not apply to articles named in Rule 3 and Rule 19 (Public Entertainment Paraphernalia) and Rule 20 (Corpses).

The filing of this tariff with this Commission was followed, as in the case of the filing of Rule 10 with the Interstate Commerce Commission, by numerous protests from shippers and commercial bodies representing shippers, such protests relating to Rule 13 $\frac{1}{2}$ quoted above. As a result of such protests, the Commission approved of local and interdivision joint tariff No. 1 CRC Supplement No. 1 to CRC No. 2, except as to Rule 13 $\frac{1}{2}$, the approval of which was suspended pending the hearing which the Commission thought wise to hold on the matter.

The issues were finally joined and the case heard on May 16th, 1912, an adjourned hearing being also held on June 25th, 1912. At the later hearing, at the request of the carriers, the Commission and many of the protestants visited 3rd and Townsend Streets, San Francisco, where they were given a demonstration of the difficulties of loading baggage into a car, such baggage as they saw thus loaded being declared to be fairly representative of the baggage ordinarily received.

Considerable testimony was introduced at the hearings by the carriers in support of their contention that the rule which they desired to make was a reasonable one. Mr. E. L. Bevington, secretary of the Transcontinental Passenger Association, testifying for applicants, presented an argument setting forth the reasons why the carriers desired to adopt regulations as set forth in Rule 13 $\frac{1}{2}$.

Inasmuch as the carriers rested their case largely upon

the testimony of Mr. Bevington, as set forth in this argument, I quote the reasons advanced by him for the adoption of the rule:-

BASIS UPON WHICH FORTY (40) INCHES WAS DETERMINED AS THE
MAXIMUM DIMENSION:

Dimensions of baggage cars.

The largest baggage cars are 108 inches wide inside. From this we must deduct five (5) inches for radiators, leaving a net space of 103 inches. On account of bridges, tunnels, space between double tracks and for other mechanical reasons, it is not possible to extend the width of baggage cars. The maximum has also been reached in the length of baggage cars. Baggage car doors range from four (4) feet to six (6) feet wide and six (6) feet high.

#-Originally, baggage cars did not exceed thirty-five (35) feet in length.

Length of longest baggage car (C&A) 73 feet, 2½ inches, buffer to buffer.

A very few baggage cars have doors wider than six (6) feet; hence, we have a space eight (8) feet and seven (7) inches in width in which to tier baggage and an opening of from four (4) feet to six (6) feet through which to load it. As these figures are approximately the maximum in baggage car construction, it follows that materials carried in baggage cars must conform in size to these dimensions.

WHAT CONSTITUTES REASONABLE REGULATIONS.

Any regulation which facilitates the loading, unloading and transportation of baggage and conduces to the comfort and convenience of the great majority of the traveling public, is, prima facie, a "reasonable regulation and practice" in the sense contemplated by the law. Transportation is facilitated by keeping the size of single pieces of baggage within a reasonable compass. To determine what constitutes reasonable limitations in that regard, we must consider the means and methods of transporting baggage and all of the operations incident thereto. These must be the controlling factors.

As previously stated, we have a width of 103 inches at our disposal in baggage cars. An aisle must be maintained through the center of the car between the tiers of baggage to provide working space for the prescribed duties of the baggageman and to enable him to load and unload his car. When large quantities of baggage of the wardrobe or "immovation" type, with hoods or apexes, or of the kind, five (5) feet or more in length, used by millinery houses, etc., are presented, it is practically impossible to tier the baggage so as to preserve an aisle or to utilize the space to the best advantage; hence, the question arises: What should be the maximum dimension of baggage to insure these necessary conditions? An aisle at least 23 inches wide is absolutely necessary; deducting 23 inches from 103 inches, the total available space, and we have 80 inches in which to tier baggage. Allowing one-half of this space on either side of the car establishes 40 inches as the maximum dimension of each piece of bag-

gage. Thus the limit is fixed by the inexorable conditions of transportation.

COMPARATIVE STATEMENT OF SIZE OF TRUNKS NOW IN USE.

Ninety per cent of the trunks now in use for personal wearing apparel measure forty (40) inches in their greatest dimension or less. Hence, not more than ten (10) per cent of the traveling public can possibly be incommoded by the new rule. Of that ten (10) per cent, probably the majority can fit into the new rule without pecuniary loss; the remainder will suffer no embarrassment except that arising from the payment of one-tenth of the excess baggage rate for each inch exceeding forty (40) inches. In connection with this argument, it may be claimed that if only ten (10) per cent of the trunks exceed forty (40) inches in length, the carriers might continue the present practice, but such an answer is untenable for the reason that the tendency of trunk manufacturers, commercial houses, and the traveling public generally is to manufacture and use the larger trunks, and, if no steps are taken to restrict the size, the ten (10) per cent will gradually increase to fifteen (15) per cent, then to twenty (20) per cent, and so on. The use of trunks of excessive size and "freakish" shapes has grown prodigiously during the past five years.

SAFETY OF MEN EMPLOYED IN BAGGAGE CARS.

Another important consideration is that of the safety of the men employed in baggage cars. It is sometimes necessary to tier large pieces on small ones. When rounding curves baggage so tiered oftentimes topples over, thus endangering the lives of train baggagemen. This danger would be minimized or avoided if the baggage were of uniform size.

In commenting on the large and unwieldy trunks, Mr. Wm. C. Likly of Messrs. Henry Likly & Co., Baggage Makers, Rochester, New York, and President of the Trunk Manufacturers Association, says:

EXTRACT FROM LETTER DATED 7-19/11 FROM WM. C. LIKLY, PRESIDENT, TRUNK MANUFACTURERS ASSOCIATION, ROCHESTER, N. Y.

"There are very few sample trunks carried that measure over 45 inches or 46 inches in the longest dimension. Some Manufacturers of what are known as Clothing Model trunks (that is, trunks that are made to carry samples of ready made clothing) make trunks as long as 68 or 70 inches. These trunks, we believe, should be cut out just as much as possible. In addition to the fact that they upset all the arrangement in a baggage car, they are bad things to handle AND SHOULD BE HANDLED WITH A DERRICK INSTEAD OF BY THE BAGGAGE MEN THEMSELVES."

Testimony in opposition to the adoption of Rule 13 $\frac{1}{2}$ was offered by the representatives of the various commercial organiza-

tions, proprietors or representatives of wholesale millinery establishments, dealers in general merchandise, trunk manufacturers and dealers in whips, such testimony tending principally to show the injury which the adoption of the rule would work to their business.

After a full and complete presentation of the case, counsel for applicants and protestants united in a request to this Commission that, inasmuch as the case before this Commission involved questions similar to those comprehended in the case before the Interstate Commerce Commission, the rendering of an opinion in this case await the decision of the Interstate Commerce Commission, when, if thought necessary, further hearing could be held.

Upon receipt of the decision of the Interstate Commerce Commission, this Commission communicated with counsel for applicants and protestants, with the result that the case was submitted without further hearing.

Inasmuch as the Public Utilities Act of California, effective March 23, 1912, under the provisions of which the Railroad Commission acquires and discharges its duties as a regulatory body, contains no specific reference to what may be termed "baggage privileges", I quote the following section of that act to show that the matters and things involved in this case are clearly within the jurisdiction of this Commission:-

Section 31- The railroad commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

From the testimony of Mr. Bovington which, in respect to the portion to which I am referring, was undisputed, it is evident that the practice of checking extraordinarily large and unwieldy pieces of baggage is growing and will continue to grow if not stopped. It is also evident that it is a serious inconvenience to the traveling public generally, tending as it does to delay passenger trains and make it difficult to store such baggage in the car and adding

also to the danger of the men working in the baggage car.

His testimony and exhibits offered by him show that little difficulty will be found in packing the commercial samples in 40 inch trunks. The wholesale interests most seriously affected will probably be the wholesale millinery business. But it is to be hoped that the necessity for large sample trunks or containers in this business, arising very largely from the craze for huge dimensions in women's hats, will not continue very long, and sample trunks or containers of forty-five inches, any dimensions, will, I trust, relieve the wholesale milliners from embarrassment in handling their samples.

He testified also, which testimony was supported by statistics, that less than five per cent of the total traffic carried as baggage is commercial traffic.

While this may be true, as to the commercial traffic being only five per cent of the total traffic, I am of the opinion that the carrying of this five per cent of commercial traffic as baggage, is of much greater importance to the public generally than a much larger per cent of other baggage traffic. The modern methods of conducting business demand that every reasonable facility be afforded to the representatives of our large commercial and manufacturing institutions in the transportation of their sample baggage.

While I am of the opinion that the best interests of the traveling public generally will be served and that no one will be greatly injured by limiting the length of trunks, I am not convinced that the limit should be that asked for in the application. After a careful consideration of the testimony offered and of all of the circumstances of the case, I find as follows:-

(1) That it is unreasonable to offer, for checking as baggage, trunks or other pieces of large and unwieldy size and that the carriers are entitled to charge extra for the transportation of such pieces of personal or sample baggage, subject to the excep-

tion of whips. noted hereafter.

(2) That, instead of limiting the size of baggage to be carried free, to forty inches, greatest dimension or dimensions, as prayed for in the application, with an excess charge of ten pounds for each inch over forty inches, such limitation shall be forty-five inches, greatest dimension or dimensions, with an extra charge of five pounds for each inch above forty-five inches.

(3) That the carriers are entitled to limit the length of any piece to be checked as baggage, to seventy-two inches, instead of to seventy inches, as prayed for, but that in view of the fact that it would work a hardship upon the owners and users of such pieces to at once discontinue their use, carriers should continue to accept such pieces as baggage for one year from the date of this Opinion and Order.

(4) That carriers may reasonably provide that, on and after one year from the date of this Order, trunks or other containers made of stiff material with more than two bulging sides or with two bulging sides that are not opposite to each other will not be accepted for checking as baggage.

(5) Salesmen's catalogues should be included in the definition of sample baggage.

(6) As to the exception to (1), as noted above, whips should be checked as baggage when offered in flexible cases not exceeding ninety inches in length nor twelve inches in diameter at the base nor one hundred pounds in weight. (We call the attention of any one who would criticize this as a discrimination in favor of whips, to the fact that the law does not provide that there shall be no discrimination, but simply that such discrimination shall not be undue. Whips are in a class by themselves and we believe that this discrimination in their favor is not undue.)

(7) Any charge for excess baggage, whether from weight or dimensions, or both, should relate to the minimum charge and if a charge for both weight and dimensions does not exceed the minimum

charge, only the minimum charge shall be collected.

(8) Carriers' rules should permit checking of such articles as tents or blankets of campers or bundle of tents or blankets of workmen, the gun case or fishing apparatus of the sportsman, the easel of the artist or books of a student or other articles of analogous character necessary to the passenger and the checking of which has arisen from the fact of his making the journey.

It may be stated that this Opinion and Order are in conformity with the decision of the Interstate Commerce Commission, and also with the rule as to transportation of baggage recently adopted by the Dominion of Canada.

Common carriers not parties to this application should be notified that the filing of Baggage rules, rates, charges and classifications for their roads with this Commission, conformable to this Opinion and Order, and the approval of such rules, rates, charges and classifications by the Commission, will be sufficient to bring them within the operation of this Opinion and Order without the formality of an application therefor, but that until such rules, rates, charges and classifications have been filed with and approved by this Commission, they must adhere to and be governed by the rules, rates, charges and classifications now on file with the Commission.

I recommend the following Order:-

ORDER.

WHEREAS, on December 10, 1911, there was filed with the Railroad Commission of the State of California by the Atchison, Topeka & Santa Fe Railway (coast lines), Boca & Loyalton Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, Southern Pacific Company (pacific system), Tonopah and Tidewater Railway Company and Western Pacific Railway Company an application to amend local and interdivision joint tariff No. 1 CRC Supplement No. 1 to CRC No. 2; and

WHEREAS, said application has heretofore been granted in part and approved, except as to Rule 15 $\frac{1}{2}$, objections to which rule had been received by this Commission; and

WHEREAS, at later dates, to wit: on May 16th, 1912 and June 25th, 1912, hearings, after due notice, were regularly held by this Commission, at which hearings applicants and protestants appeared and gave testimony; and

WHEREAS, this Commission has made its findings, as set forth in the Opinion preceding this Order,

NOW, THEREFORE, BE IT AND IT IS ORDERED: that complainants, Atchison, Topeka & Santa Fe Railway (coast lines), Boca & Loydton Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, Southern Pacific Company (pacific system), Tonopah and Tidewater Railway Company and Western Pacific Railway Company, be and they are hereby granted permission to publish and put into effect ^{on intrastate business,} baggage rules, rates, charges and classifications comprehending the findings of fact by this Commission, the provisions of which shall be as follows:-

That the size of baggage, trunks or other containers shall be limited to forty-five inches, any dimensions, and that excess, at the rate of the charge for five pounds for each inch above forty-five inches, shall be charged.

That on and after one year from the date of this Opinion and Order, trunks or other containers made of stiff material with more than two bulging sides or with two bulging sides that are not opposite to each other will not be accepted to be checked as baggage.

That salesman's catalogues shall be included in the definition of baggage.

That whips, when offered in flexible cases not exceeding ninety inches in length nor twelve inches in diameter at the base nor one hundred pounds in weight, shall be checked as baggage.

That on and after one year from the date of this Opinion and Order, the length of any piece to be checked as baggage (except

whips), shall be limited to seventy-two inches.

That where excess, arising from weight or dimensions, or both, does not exceed the minimum charge, only the minimum charge shall be collected.

That such articles as tents or blankets of campers or tents or blankets of workmen, gun cases, fishing apparatus, artists easels and materials, books of students, or other articles of analogous character, necessary to the passenger and the checking of which has arisen from his making the journey, shall be checked as baggage.

Common carriers not parties to this application should be notified that the filing of Baggage rules, rates, charges and classifications for their roads with this Commission, conformable to this Opinion and Order, and the approval of such rules, rates, charges and classifications by the Commission, will be sufficient to bring them within the operation of this Opinion and Order without the formality of an application therefor, but that until such rules, rates, charges and classifications have been filed with and approved by this Commission, they must adhere to and be governed by the rules, rates, charges and classifications now on file with the Commission.

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 fourth
day of April, 1913.

John W. Fisherman
H. B. Loveland
Edwin U. Edgerton

Commissioners.