Decision No. 25956.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

CHAMBERLIN STEAMSHIP COMPANY,
CHRISTENSON-HAMMOND LINE,
LOS ANGELES-SAN FRANCISCO NAVIGATION COMPANY,
LOS ANGELES STEAMSHIP COMPANY,
LUCKENBACH STEAMSHIP COMPANY,
McCORMICK STEAMSHIP COMPANY,
NELSON STEAMSHIP COMPANY, and
PACIFIC STEAMSHIP COMPANY,

Complainants,

vs.

SAN DIEGO-SAN FRANCISCO STEAMSHIP COMPANY,
LOS ANGELES-LONG BEACH DESPATCH LINE,
SOUTH COAST STEAMSHIP COMPANY, and
SUDDEN STEAMSHIP LINE,

Defendants.

Case No. 3332.

Ira S. Lillick and Joseph J. Geary, for complainants.
John C. Scott and Wm. Gissler, Jr., for Los Angeles-Long Beach Despatch Line, defendant.
G. H. Baker, for South Coast Steamship Company and San Diego-San Francisco Steamship Company, defendants.
Frank M. Chandler, for Armstrong Cork Company, Congoleum-Narn, Inc., Sloane-Blabon Corporation, Certainteed Products Corporation, El Rey Products Company, Pioneer Paper Company and Johns-Manville Corporation.
Edwin G. Wilcox, for Oakland Chamber of Commerce.
C. S. Connolly, for Carnation Company of California and Albers Bros. Milling Company.
C. S. Booth, for California Truck Company, Inc., Pioneer Truck and Transfer Company of Los Angeles, and Star Truck and Transfer Company.
A. W. Brown, for Paraffine Companies, Inc.
Charles A. Bland, for Board of Harbor Commissioners of Long Beach.
H. A. Lincoln, for Fibreboard Products, Inc.

SEAVEY, Commissioner:

O P I N I O N

Complainants and defendants are common carriers engaged

in the transportation of property by vessel between San Francisco, Oakland and other points in Central California on the one hand, and Los Angeles Harbor, Long Beach and San Diego on the other.[1] Complainants allege that the rates maintained by defendants are unreasonably low and otherwise unlawful, in violation of the Public Utilities Act. They ask that the Commission exercise the authority conferred upon it by Section 32(c) of the Act[2] and issue such orders as may be necessary to bring about uniformity and stability at reasonable and lawful rates. Complainants contend that the rates maintained by them are reasonable and suggest that the defendants be required to increase their rates to that basis.

Public hearings were held at San Francisco February 15, 16, 23, 24, March 8, 28, 29 and 30, 1933, at which numerous parties intervened.[3] The matter was submitted on briefs. A number

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[1] A number of them also maintain joint rates to and from Los Angeles and other inland points on rail and truck lines with which they connect.

The amended complaint adds the Island Transportation Company as a defendant. However, no testimony was introduced as to it. Throughout this decision the term "defendants" will therefore embrace only the four lines originally named.

[2] Section 32(c) of the Public Utilities Act reads:

"The Commission shall have power and it shall be its duty, upon a hearing, had upon its own motion or upon complaint, to determine the kind and character of facilities and the extent of the operation thereof, necessary to reasonably and adequately meet public requirements for service furnished by common carriers between any two or more points, and to fix and determine the just, reasonable and sufficient rates for such service and whenever two or more common carriers are furnishing service in competition with each other the Commission shall have power, after hearing had upon complaint or upon its motion, when necessary for the preservation of adequate service and when public interest demands, to prescribe uniform rates, * * * rules, regulations and practices to be charged, collected and observed by all such common carriers."

[3] They are: Armstrong Cork Company, Congoleum-Narm, Inc., Sloane-Blabon Corporation, Certain-teed Products Corporation, El Rey Products Company, Pioneer Paper Company, Johns-Manville Corporation, Oakland Chamber of Commerce, Carnation Company of California, Albers Bros. Milling Company, California Truck Company, Inc., Pioneer Truck and Transfer Company of Los Angeles, Star Truck and Transfer Company, Paraffine Companies, Inc., and Board of Harbor Commissioners of Long Beach.

of the interveners allege that both complainants' and defendants' rates on roofing materials and floor covering are unduly prejudicial and discriminatory.

Complainants operate 56 vessels having a total value in excess of $15,000,000, and maintain facilities and equipment at California ports worth approximately $250,000. The Los Angeles-San Francisco Navigation Company's vessels are wooden steam schooners operating between San Francisco and Los Angeles Harbor on a schedule of from 36 to 40 hours. Those of the other complainants are of steel construction. Certain of them require the same running time, while others are faster. The fastest vessels make the trip in 22 to 26 hours. Complainants' sailings aggregate approximately 18 round trips per week.

Defendants each operate one wooden vessel of the steam schooner type ranging from 379 to 653 net tons.[4] Except for the South Coast Steamship Company, which calls at Monterey, San Simeon and Port San Luis and for that reason takes 15 or 20 hours longer, their average sailing time between San Francisco and Los Angeles Harbor or Long Beach is substantially the same as that of the slower of complainants' vessels. Each of the defendants makes one round trip per week.

Complainants are members of the Pacific Coastwise Conference, through whose tariff bureau they publish uniform rates, rules

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[4] The San Diego-San Francisco Steamship Company operates the Steamer Cottoneva, purchased by Eberhart Stahlbaum in 1932 for $2000 and chartered to the Steamship Company for $25 per day. The Los Angeles-Long Beach Despatch Line operates the J. B. Stetson under charter at a fee of $750 per month. The South Coast Steamship Company and the Sudden Line respectively own and operate the Steamer Daisy and the Steamer Chehalis. The Steamer Daisy was purchased about three years ago by a Mr. Walsh for $15,000. It stands in the name of the Steamship Company, although there is no record of that company ever paying or promising to pay for it. The Steamer Chehalis is 31 years old and has always been owned by members of the Sudden family.

and regulations. The defendants do not belong to the Conference, and do not maintain uniform rates. However the rules and regulations of both complainants and defendants are largely similar.

The first Tariff Bureau of the Conference was established in 1925. From that time until 1931 there was little friction among the coastwise carriers. On February 28, 1931, the Los Angeles-Long Beach Despatch Line inaugurated service to and from Long Beach at rates substantially lower than those maintained by the Conference Lines.[5] The advent of the Los Angeles-Long Beach Despatch Line was followed in turn by the South Coast Steamship Company, the San Diego-San Francisco Steamship Company and the Sudden Steamship Line. The South Coast Steamship Company, relying on a statement of the owner of the Los Angeles-Long Beach Despatch Line that the latter company was making money, adopted in the main the rates of that line and in certain instances made further reductions. The San Diego-San Francisco Steamship Company based its rates largely upon the prevailing rates of both these lines. The Sudden Steamship Line adopted the San Diego-San Francisco Steamship Company tariff almost in its entirety.

In addition to the lower published rates of these defendants, the Los Angeles-Long Beach Despatch Line attracted tonnage to its vessels by various devices.[6] An arrangement whereby business

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[5] These rates were substantially the same as those published about a month previously by the Chamberlin Steamship Company for application between San Francisco and Los Angeles Harbor, and were lower than the Conference rates to Los Angeles by approximately the amount of the rail rates between Los Angeles Harbor and Los Angeles. The Chamberlin Steamship Company subsequently joined the Conference and increased its rates to the Conference basis.

[6] William Gissler, Jr., owner of the Los Angeles-Long Beach Despatch Line, also operated what was known as the North Pacific Steamship Company. This line did not file tariffs with the Commission nor recognize its regulatory authority. Freight was carried on the same vessel, the main difference being that when off-tariff rates were charged, yellow manifests headed "North Pacific Steamship Company"

was attracted to the South Coast Steamship Company is described in the Commission's Decision No. 25930 of May 8, 1933, In the Matter of the Investigation of the South Coast Steamship Company et al.[7] The San Diego-San Francisco Steamship Company is owned by Rolf and Eberhart Stahlbaum, who are respectively its Manager and Captain. Eberhart Stahlbaum is also engaged in the sale of produce which moves over that line.

At the present time coastwise shipping is in a very unhealthy and demoralized condition, as are other forms of transportation. The various lines are operating at little or no profit. Their credit has fallen to a point where they are unable to obtain capital to procure new ships. Tonnage has decreased and rate structures have been disrupted. Traffic is diverted from one line to another by means of cut rates and other devices. This not only affects the lines themselves but produces uncertainty among shippers and forces them to seek cheaper transportation even though the reasonableness of the rates they are paying is not questioned. For example, barley moved freely from San Francisco to Los Angeles at a rate of 11 cents until a competing shipper obtained an off-tariff rate of 9 cents from one of defendants. Under this differential the shipper paying 11 cents could not compete and was finally forced to discontinue shipping at that rate. The testimony indicates that the uncertainty among shippers regarding the rates paid by their competitors is frequently more disturbing than the volume of

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were employed, whereas freight carried at tariff rates was shown on white manifests of the Los Angeles-Long Beach Despatch Line. A practice of receipting freight bills to offset claims was extensively resorted to, and there is some indication of open rebating. While this is not a penalty proceeding, reference is made to these practices to show the nature of the competition then existing.

[7] Briefly the South Coast Steamship Company, by the device of using a so-called freight forwarding company, accorded to less than carload shippers of canned goods rates lower than those contained in its lawfully published tariffs.

the rates.

There can be no question of the dire need for stabilization of the rates of these competing carriers.[8] How or on what basis that is to be accomplished is a more difficult problem.

Complainants contend that they are ready and able to serve the shipping public at just and reasonable rates, that their present rate structure is in fact greatly depressed because of the competition of the defendants' lines, and that continued competition of this nature will result in ruination of coastwise shipping. Both their tonnage and the revenue per ton therefrom have fallen off at an alarming rate.[9] They concede that the total tonnage available for movement between Central and Southern California has decreased since 1929 and that other forms of competition have forced rate reductions, but point out that defendants transported approximately 96,000 tons during 1932, an average of close to 500 tons per trip. Their own vessels frequently carried but a few tons, and in one instance only 300 pounds. Occasions are cited on which San Francisco was omitted entirely as a port of call because of lack of tonnage. In 1928 the Nelson Steamship Company operated four vessels per week between Southern and Central California, in 1929 three, in 1930 two, in 1931 less than two, and in 1932 but one. This reduction in sailings was likewise the result of lack of tonnage.

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8 Counsel for several of the defendants, while interrogating one of complainants' witnesses, propounded the following question: "Of course you believe, as all of us do, that there should be stability in the rate structure?" Transcript, p. 224.

9 Incomplete figures show gross tonnage for complainant lines of 428,313 tons in 1929, the peak year, 384,135 tons in 1930, 326,189 tons in 1931, and but 236,588 tons in 1932. The average revenue per ton of the Los Angeles Steamship Company for the years 1927 to 1932 inclusive was $8.41, $8.06, $7.82, $7.52, $7.03 and $5.66 respectively. For the Nelson Steamship Company for the years 1929 to 1932 inclusive it was $4.30, $4.20, $3.97 and $3.55 per ton respectively.

On six carload commodities actually transported from April 8, 1931, to December 31, 1932, complainants claim they suffered a net loss in revenue of $158,424.43 due to reductions in rates which they were forced to make to meet the competition of the defendant lines. The figure represents the difference between the charges collected on the tonnage actually moved and those that would have resulted had the rates in effect prior to April 8, 1931, been applied.

The rates maintained by defendants are frequently higher in one direction than in the other; certain of them are also higher to and from Oakland and other East Bay points than to or from San Francisco. Those of the San Diego-San Francisco Steamship Company and the Sudden Steamship Line are in many instances the same to San Diego as to Long Beach and Los Angeles Harbor. This complainants attack as unduly prejudicial and preferential.

Complainants deny that defendants have developed any appreciable amount of new traffic and insist strongly that the tonnage defendants did move was taken from them through an unfair advantage. They point out that in certain instances their vessels are of the same type and speed as those maintained by the defendants and urge that there is no reason why the rates of all competing carriers should not be on a uniform basis.

Defendants argue that they have an equal right to this traffic and that because of higher insurance costs, less frequent sailings and slower vessels they should be permitted to compete at lower rates. They point out that the intercoastal lines and lines operating to and from North Pacific Coast ports permit lower rates for slower and less frequent service and that at one time the rates of the Conference Lines themselves were so constructed.

Defendants do not concede that their rates are unduly low or otherwise unlawful but contend that those of the Conference Line are in many instances too high and that they are not properly adjusted as between Los Angeles, Los Angeles Harbor and San Diego and as between carload and less than carload commodities. They are apprehensive that anything the Commission might do to stabilize conditions would result in a fixed or frozen rate structure.

The record is contradictory as to the cost of insurance. However, if the insurance rate on cargo carried on defendants' vessels is higher than when carried by complainants the tariff may provide that the difference be absorbed.

Cargo is moving more and more on a price basis, and even a very small difference in transportation costs will attract traffic to the lower-rated lines.[10] Complainants with their numerous ships and frequent sailings still carry the bulk of the tonnage, but the record is convincing that their proportion will be materially reduced if the present rate structure prevails.

Although defendants have a minimum investment and overhead and procure material and labor at very low prices,[11] two of them suffered substantial losses for 1932, one exactly broke even, while the fourth showed a profit of $2,249.45. In 1931 this line showed a loss of $5,345.61. The line operating at a profit in 1932 and the one which exactly broke even are the ones that operate under charter. Under such conditions it is obvious that any material increase in charter hire, labor or materials must be re-

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[10] A witness testified that he could not pay 5 cents a ton more to have his barley move over one line as against another.

[11] For example, fuel oil, which represents approximately one third of defendants' operating expenses, costs less than one half of what it did ten years ago.

flected in the rate structure if service is to be continued. Complainants on the other hand have been operating for some time and have found it necessary to build up their equipment and overhead sufficiently to enable them to handle the tonnage offered in more prosperous times. Certainly it is not in the public interest to have permanent transportation agencies crippled or destroyed because new companies, by taking full advantage of temporary conditions, can for a time offer shippers reduced rates.

Defendants' vessels, while still serviceable, are from 16 to 31 years old and are rapidly approaching obsolescence. A modern and permanent steamer service is in the public interest and is entitled to an equality in rates. If older vessels can compete on an even basis they of course have the inherent right to do so, but it is hardly compatible with modern progress to permit them to undermine established lines by means of a rate advantage. Fluctuation in the volume of available tonnage will continue, and defendants unless they fail to equip themselves to serve properly in times of plenty, will be in the same position as complainants now are whenever their volume decreases.

The Commission under this record should find that public interest requires that the rates of these competing carriers be maintained on a uniform basis.[12] What this basis should be cannot be determined on this record. On the whole both complainants and defendants are in dire need of additional revenue, but this alone is not justification for an order of this Commission requiring defendants to increase their rates to the level of those maintained

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[12] For the purpose of this decision Long Beach and Los Angeles Harbor are considered as one port.

by complainants. Aside from the fact that complainants are making little or no profit and in many cases are operating at substantial losses, they have not shown that their rates are proper. Many of them no doubt are, but on this record it would be extremely arbitrary to require defendants to raise their rates to the standard set by complainants. Various forms of land transportation furnish substantial competition, and it may well be that increases, however slight, would in many instances divert the traffic from the water lines or stifle its movement.

Under the conditions now obtaining, complainants, if they so desire, should be permitted to reduce their rates to the level of those maintained by defendants, or if defendants' rates are higher than complainants', they in turn should be permitted the same privilege. Stability should be assured by the refusal of the Commission to permit further reductions unless a showing is made that such reductions are necessary to meet the requirements of shippers or to allow complainants and defendants to meet the competition of other forms of transportation. Competitive conditions other than those created by the water lines themselves will in the main affect the different water carriers to the same extent and should be treated uniformly.

This brings us to the interveners' allegation that the rates on roofing materials and floor covering are unduly prejudicial and discriminatory. Complainants maintain a rate of 40 cents per 100 pounds, minimum 40,000 pounds, between San Francisco Bay points and Los Angeles Harbor on asphalt base felt carpeting and rugs, linoleum and other articles, in straight or mixed carloads. They also publish a rate of 17 cents, minimum 30,000 pounds, between the same points on roofing and building material as described in the tariff, in straight or mixed carloads. The roofing and

building material description includes floor covering asphalted (printed or unprinted). Certain of the defendants publish a rate of 30 cents, minimum 40,000 pounds, and 40 cents l.c.l. on linoleum and articles grouped therewith, and 18 cents, minimum 30,000 pounds (14 cents from and to San Francisco only) on roofing and building material, including floor covering. Corresponding rates are also published to other points, but these will suffice to illustrate the adjustment.

In neither case is the quantity of floor covering that may be shipped with roofing and building material at the lower rate restricted. Thus by combining with a carload of linoleum one roll of roofing the lower roofing rate is made applicable. Interveners' Exhibit No. 23 shows the value of floor covering to be approximately four times that of prepared roofing. This is manifestly an improper method of rate publication. The carriers should be required to remove the discriminatory adjustment by restricting their respective roofing and building material items so as to include not to exceed 15% of floor covering at the roofing and building material rate.

The following form of order is recommended:

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that complainants be and they are hereby authorized on or before July 1, 1933, on not less than five days' notice to the Commission and the public, to reduce their rates to the level of those concurrently maintained by the defendants.

IT IS HEREBY FURTHER ORDERED that defendants be and they are hereby authorized on or before July 1, 1933, on not less than

five (5) days' notice to the Commission and the public, to reduce their rates to the level of those concurrently maintained by the complainants.

IT IS HEREBY FURTHER ORDERED that after July 1, 1933, neither complainants nor defendants shall reduce any rates or change any rules or regulations so as to result in a reduction unless the permission of the Commission has first been obtained.

IT IS HEREBY FURTHER ORDERED that both complainants and defendants within thirty (30) days from the effective date of this order, on not less than ten (10) days' notice to the Commission and the public, amend their tariffs by restricting to not to exceed 15% the amount of floor covering that may be included with carload shipments of roofing and building material and articles grouped therewith at the carload roofing and building material rate.

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 22nd day of May, 1933.

C. L. Seavey
Leon Whitsell
M. J. Carr
W. B. Harris
[signature]
Commissioners.