

Decision No. 26458.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension)
by the Commission on its own)
motion of Local Express Tariff)
C.R.C. No. 3 of CALIFORNIA MER-)
CHANTS' ASSOCIATION, LTD.)

ORIGINAL
Case No. 3676.

Rex W. Boston, for California Merchants' Association, Ltd., respondent.

W. K. Downey, for Motor Freight Terminal Company, protestant.

WHITSELL, Commissioner:

O P I N I O N

Upon protest of a competing common carrier alleging that many of the rates and ratings contained in California Merchants' Association, Ltd., Local Express Tariff C.R.C. No. 3 were unduly low, non-compensatory and detrimental to its interests, the Commission suspended the said tariff pending a determination of its lawfulness.

A public hearing was held at Los Angeles September 22, 1933.

Respondent is engaged in the transportation of freight between Los Angeles and San Diego.¹ Under a former management it has engaged in this business since at least December 22, 1931. On

¹ The record is not clear as to what northbound business respondent performs. It does hold itself out to transport property in both directions and apparently does so when requested to, but does not actually solicit northbound traffic. Substantially all of its business is southbound.

July 1, 1932, the stock and assets of the company were acquired by the stockholders and officers of System Arizona Express Service, a concern engaged in transportation between other points. Its operations briefly are as follows:

Freight is picked up by truck within a defined area in Los Angeles by the System Arizona Express Service, taken to its dock and there loaded into the equipment of the Motor Freight Terminal Company, by which latter carrier it is hauled to respondent's dock in San Diego. It is thereupon unloaded by respondent, placed in other equipment and delivered to the consignees within the San Diego city limits. Shipments from San Diego to Los Angeles are made via the store door service of the Atchison, Topeka and Santa Fe Railway. For the pickup and handling service at Los Angeles the System Arizona Express Service charges 5 cents per 100 pounds. The line-haul service from Los Angeles to San Diego is performed by the Motor Freight Terminal Company at a rate of 15 cents per 100 pounds, minimum 20,000 pounds, named in Item 739 of its Local Freight Tariff C.R.C. No. 7. At San Diego delivery is made for respondent by the C. & R. Transfer Company at a rate of 6 cents per 100 pounds, which rate it is understood would be increased to 7 cents if the proposed schedule were permitted to become effective. Thus on lots aggregating 20,000 pounds or over respondent's actual cost for the physical handling under the proposed tariff will amount to 32 cents per 100 pounds. If the shipments do not aggregate 20,000 pounds the line haul charge will be increased in the proportion that the weight shipped bears to 20,000 lbs.²

Respondent testified that the proposed tariff was filed

² In July, 1933, the tonnage shipped was less than the minimum on six, and in August 1933 on eighteen different dates. The exact tonnage shipped is not of record, although the testimony does show that there have been instances where the weight did not exceed 5½ or 7 tons.

because of a desire to enlarge its commodity items, to add a fourth class rate, to make various changes in rates, and to conform to a tariff established or proposed by the San Diego Forwarding Company. It contends that under its present tariff it is at a disadvantage with its competitors. Shipments transported are said to average second class and the revenue derived therefrom to exceed even this amount because of the large number of minimum charge shipments. During the month of August, 1933, 73 per cent. of the shipments transported are said to have been subject to a minimum charge. Respondent admitted that at the proposed fourth class rate of 28½ cents it would lose money on each shipment, but stated that customers expected such a rate and that the loss would amount to very little. It offered at the hearing to increase its proposed first class rate from 45 cents to 50 cents, and to change the classification on automobile parts from third to second class.

This proceeding largely centered around Exhibit 1-A, submitted by respondent, purporting to show a net profit of \$183.22 in June, \$311.16 in July and \$289.46 in any subsequent month. It is noted however that in making its estimate for the subsequent months respondent has taken the gross revenue received and the line-haul costs paid in July, whereas its pickup charge is figured on a lesser tonnage. It was pointed out by protestant that had the pickup charge been figured on the tonnage on which the gross revenue is based, it would have resulted in a loss of \$303.28 instead of a profit of \$289.46. Consideration must also be given to the fact that the suspended tariff proposes substantial reductions and that therefore, while the line haul and other charges on the same traffic would remain unchanged, the gross revenue would undoubtedly be considerably less. Protestant challenged the 5-cent pickup charge

at Los Angeles, and offered testimony to show that it should be at least 6 cents. At San Diego it formerly had a contract with this same C. & R. Transfer Company, first at a 6- and afterwards at an 8-cent rate. These rates it was later requested to increase first to 9 and then to 10 cents. The pickup and delivery figures submitted by respondent do not include the cost of handling at the docks, which protestant contends amounts to at least 75 cents per ton. Protestant testified that its competing service is being operated at a loss, although its rates are substantially higher than those here proposed. It objects to the exceptions to the classification contained in Items 20, 50, 140, 150, 160, 200, 220, 270 and 330 on the ground that they are lower than reasonable and than the ratings uniformly applied to such articles. The minimum per shipment, it contends, should not be less than 50 cents.

Although certain other items shown in respondent's Exhibit 1-A were challenged, a detailed discussion thereof is unnecessary. The general explanation was that because of the intimate connection with the System Arizona Express Service these charges were proper.

It is clear from this record that unless a substantial portion of the operating costs are absorbed by the System Arizona Express Service, respondent cannot conduct a transportation service under the rates proposed. Even on its own figures, as has been pointed out by protestant, if the pickup charge at Los Angeles is corrected in accordance with the tonnage used in determining the gross revenue, the losses would be substantial. While the tariff under which respondent is now operating is no doubt inadequate, there is nothing in this record to show that respondent could not compete fairly on a tariff substantially similar in volume and effect to those filed by its competitors, the Motor Freight Terminal

Company, Coast Truck Line and The Atchison, Topeka and Santa Fe Railway Company. The Commission should find that the proposed tariff has not been justified and should direct its cancellation.

I recommend the following form of order:

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that respondent California Merchants' Association, Ltd., be and it is hereby directed to cancel its Local Express Tariff C.R.C. No. 3 on or before November 4, 1933, on not less than three (3) days' notice to the Commission and the public.

IT IS HEREBY FURTHER ORDERED that upon the cancellation of said tariff this suspension order be and it is hereby vacated and this proceeding discontinued.

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 23rd day of October, 1933.

C. C. Harvey
Leon Williams
W. A. Linn
W. B. Brown
W. H. ...
Commissioners.