Decision No. 26584

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

OOO

In the Matter of the Investigation on the Commission's own motion into the lawfulness of Joint Rates set forth in Local and Joint Freight Tariff C.R.C. No. 5 of SACRAMENTO MOTOR TRANSPORT and the suspension of supplement No. 4 thereof.) Case No. 3668

ORIGINAL

E. J. Foulds and R. S. Myers for Southern Pacific Company and Golden Gate Ferries and Sacramento Motor Transport

J. E. Monroe for Sacramento Motor Transportation Co.

Gerald E. Duffy and Berne Levy for Atchison, Topeka and Santa Fe Railway Co.

McCutchen, Olmey, Mannon & Greene, by J. C. Moran for The River Lines

Sanborn and Roehl, by H. H. Sanborn for Valley Motor Lines

BY THE COMMISSION:

O P I N I O N

The tariff under investigation in this suspension matter is one filed by the Sacramento Motor Transport Company establishing joint through rates between Sacramento and Oakland over the respondent's motor transportation line between Sacramento and Vallejo and over the water transportation line of the Southern Pacific-Golden Gate Ferries, Ltd. from Vallejo to Oakland via San Francisco. A similar tariff filed in 1925 covering through service over these connecting lines between Sacramento and San Francisco is also under investigation.

In instituting this proceeding the Commission's purpose was to determine the right of these carriers to enter into such joint rate agreements. The precise question raised is whether a motor truck carrier certificated to operate between fixed points may lawfully join in the tariffs of carriers by vessel on the inland waters of the state, likewise certificated to operate between fixed points only, thus permitting each to participate in traffic to and from points which under their certificates they are not authorized to serve.

Briefs were invited from all interested parties on this question, and counsel representing rail, water and highway carriers have submitted arguments in support of their respective positions.

The problem here presented is complicated by the fact that motor truck carriers are not certificated or otherwise subjected to regulation by virtue of the provisions of the Public Utilities Act. While Section 22 of that Act accords to the carriers subject thereto the right of entering into joint rate agreements with other common carriers, at least with those other carriers falling within that Act, there is nothing in the Auto Truck Transportation Act which accords to a highway carrier a similar right. The Commission has held that the latter act does not authorize motor carriers to enter into through and joint rate agreements as between themselves without express authority first obtained from the Commission. Re Western Motor Transport Co., 20 C.R.C. 1038; Blair v. Coast Truck Line, 21 C.R.C. 530; re Oakland-San Jose Transportation Co., 24 C.R.C. 660; re Highway Transport Co., 26 C.R.C. 942; Motor Service Express v. Baker, 31 C.R.C. 231.

In its opinion rendered in the application of Highway Transport Co. the Commission stated:

> "It is claimed that the right to publish joint or through rates is inherent in all transportation companies to the same extent as in railroad carriers, which freely publish such rates over their several lines. But there is a substantial difference between the two types of carriers in respect to their methods of operation. Since transportation over a public highway can be expanded or reduced with greater facility than over steel rails, a restrictive policy has been adopted with regard to transportation companies, requiring that their rights be expressly defined by a certificate granted by this Commission. These rights are measured by the certificate, and can not be extended without permission from the Commission." (26 C.R.C. 942, 949)

The Commission has not, however, adopted a similar policy in respect to the filing of joint rates by highway carriers in connection with rail and water lines. Although the question of the right of such carriers to enter into voluntary joint rate agreements has not heretofore been formally considered, the Commission has frequently permitted tariff filings which provide for through service at joint rates over the lines of water and highway carriers, and also tariffs joined in by rail and highway carriers.

We are of the opinion that the policy pursued by the Commission in the past should not now be altered. As between motor truck carriers themselves, joint rate agreements must be preceded by formal application and express authority granted. But when a carrier subject to the Public Utilities Act desires and effects a rate agrement with a highway carrier, we are of the opinion that neither should be prohibited from filing or concurring in a joint tariff.

The restrictive policy heretofore announced in respect to highway carriers was premised upon the theory that the certificate granted to each was expressly limited to the

the operation of trucks between fixed termini only, and since such highway operations may be expanded or reduced with great facility, a restrictive policy should be adopted with regard to these carriers which is not applicable to carriers of another class. It was held, accordingly, that a joint through rate agreement between two highway carriers was in effect a linking up of the operative rights of each.

But this policy need not be extended to prohibit a certificated highway carrier from participating in traffic originated by a carrier of an entirely different class where, obviously, no enlargement of the physical service of either is possible. Upon those carriers falling under the Public Utilities Act the law imposes the duty of entering into joint rate agreements. Whether or not that legal right and duty extends to the publication of joint rates with common carriers not falling within the statute, it should not be declared that as a matter of regulatory policy they be denied the right unless the occasion for the establishment of such a policy clearly appears. The right and custom belonging to one class must be considered and weighed against the restriction which has been imposed upon the other. Carriers certificated to operate equipment between fixed termini only, whether certificated under one statute or the other, are not necessarily precluded from participating in traffic originating at more distant points. We conclude, therefore, that a rate agreement between a water carrier and a highway carrier does not constitute an enlargement of the physical service or the expansion of the operative right of either.

By previous order made the suspension of the new

tariff in question was vacated pending our final determination of the matter. We are of the opinion that the investigation of the tariff presently effective should be dismissed.

O R D E R

The above entitled matter having been submitted after hearing and written arguments presented, and basing its order upon the conclusions reached in the foregoing opinion,

IT IS HEREBY ORDERED that the investigation upon the Commission's own motion into the Joint Rate Tariffs of the Sacramento Motor Transport be and the same is hereby dismissed.

Dated at San Francisco, California, this 25th day of November 1933.

Commissioners