Decision No. 26664

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Warehousemen's Association of the Port of San Francisco,

Complainant,

vs.

Encinal Terminals, a corporation, Howard Terminal, a corporation, Parr-Richmond Terminal Corporation, a corporation, Parr Terminal Company, a corporation,

Defendants.

Case No. 3378.

Reginald L. Vaughan and Scott Elder, for complainant.

Thelen and Marrin and Morrison, Hohfeld, Foerster, Shuman and Clark, by F. C. Hutchens, for Parr-Richmond Terminal Corporation and Parr Terminal Company, defendants.

McCutchen, Olney, Mannon & Greene, by Allan P. Matthew and F. W. Mielke, for Howard Terminal and Encinal Terminals, defendants.

Markell C. Baer, for Port of Oakland.

E. G. Wilcox, for Oakland Chamber of Commerce.

HARRIS, Commissioner.

O P I N I O N

In this proceeding, complainant, an unincorporated association whose members are public utility warehouse companies operating in San Francisco and Oakland under the jurisdiction of the Railroad Commission, attacks defendants' lower wharf demurrage and storage rates on beans, canned goods, dried fruit, flour, pipe, sheet iron, sugar, tomato puree and merchandise, including the latter's 10 to 21 days' free time allowance as

being unduly and unreasonably low and insufficient. It is further contended that unfair and unwarranted competition of defendants has depressed said wharf demurrage and storage rates below the level of complainant's warehouses and the rates for similar services on the public docks in San Francisco, resulting in unlawful concessions and undue preference and advantage to receivers and shippers of freight via San Francisco Bay. It is further alleged that an essential and extensive part of the warehouse business conducted at the warehouses operated by complainant's members consists of merchandise that is transferred to said warehouses from the docks and wharves situated about the Bay; that defendants are extensively storing merchandise for the public generally upon and within the docks, wharves and terminal structures and applying as storage charges thereon their wharf demurrage rates.

The Commission is asked to fix just, reasonable and uniform wharf demurrage and storage rates and charges.

Defendants, hereinafter referred to as the terminals, are public utility wharfingers and/or warehousemen operating on the east shores of San Francisco Bay, the Encinal Terminals being situated at Alameda, Parr-Richmond at Richmond and Parr Terminal and Howard Terminal at Oakland. They maintain lower wharf demurrage and/or storage rates than complainant's member warehouses on certain of the commodities involved. They also maintain lower charges than apply at the San Francisco public docks but deny that these facts result in preference and advantage or diverts business from complainant's terminals to defendants' warehouses. The municipal Port of Oakland actively competes with both complainant and defendants. The Board of State Harbor Commissioners of the Port of San Francisco does not permit storage on the docks. Grain is stored at Islais

Creek and various commodities at State Terminal.

Apparently the underlying cause of complaint is the alleged encroachment by the defendant tidewater terminals upon certain storage business heretofore enjoyed by complainant warehouses, which latter are usually situated in the hinterland, at least, sufficiently removed and back from the docks as to necessitate drayage for storage purposes. This loss of business, it is claimed, has become a growing and serious menace to complainant's members. The inference is that the terminals, through the inclusion of all manual labor in their wharf demurrage rates, extend incidental and gratuitous services to this particular phase of operations, resulting in unduly depressed charges at the expense of other terminal operations.

Considerable of the traffic here involved is originally received by water and the consignees as a rule take delivery at whatever terminal the steamship carrier regularly docks. Any of the remaining tonnage by rail may, generally speaking, be switched to either dock or warehouse according to the industrial trackage serving either. In the case of water-borne tonnage the terminals usually provide 10 days' free time period in which to remove the freight before wharf demurrage accrues and the record shows that much of the more rapid moving tonnage here involved clears the terminals for final distribution within this free time limit or within 30 to 45 days, thereby incurring but a minimum of wharf demurrage or storage. Averages computed on typical lots of major commodities stored reflect from 42 to 206 days in warehouses as against 88 to 150 days at the terminals. Long-time storage owing to market price fluctuations apparently is the exception rather than the rule.

In its Decision No. 26307, Encinal Terminals et al. vs. Parr-Richmond Terminal Corporation, Cases 3325, 3342 et al., of

August 28, 1933, the Commission said, "wharf demurrage is defined as the charge assessed against merchandise which remains on the terminal beyond the free time period." As to "free time," it found, "that the purpose of free time allowance is to permit a reasonable opportunity to assemble cargo for steamer without imposition of any charge by way of penalty or compensation," and fixed the basis of certain wharf demurrage charges including the 10 day free time rule, on canned goods, dried fruit, beans, steel sheets, and tomato puree applicable at defendants' terminals herein.

Cases 3325, 3342 et al. were in process of deliberation when the instant case was instituted and decision in the former was rendered simultaneously with the submission of the latter proceeding and by stipulation the record as to wharf demurrage and free time in the so-called Parr-Richmond Terminal Cases 3325 and 3342, was made a part of the record in the instant case.

Complainant's comparison of warehouse storage rates and wharf demurrage rates in effect in the San Francisco Bay District is based upon the commodities of beans, canned goods, dried fruit, tomato puree, flour and sugar, the terminal wharf demurrage rates for the first four of which, as hereinbefore stated, have just recently been prescribed. The terminal costs submitted herein are based upon similar information contained in the more comprehensive record of the so-called Parr-Richmond Terminal cases supra. By an arbitrary allocation of warehouse and terminal revenues and expenses per 1000 square feet of 75 and 80% respectively of occupiable space complainant purports to show the sufficiency of its own storage charges and the deficits created at typical terminals by wharf demurrage rates. These calculations make no attempt at actual allocation of floor space to individual commodities or for

substitutions of tonnages, including multiple uses, of the arbitrary allocations made. They have been considered in the light of their numerous assumptions and allowances employed, including accounting differences inevitably encountered in such attempted comparisons. Variables on account of traffic density and property values are noted.

In the course of these contentions it is shown the revenue in the case of warehouses accrues from two sources, a monthly storage charge and a labor charge for handling the goods in and out of the warehouse. This labor charge is collected as a part of the first month's storage bill. In the case of wharf demurrage, revenue accrues from a daily charge per ton which commences after a period of "free time," usually ten days.

It will be noted that under the warehouse tariffs the first month's charge is greater than for each succeeding month, while for the terminals the rates are less for the first month or so than for those following due to the allowance of free time, hence the quest for a practical method of equalization of the so-called "daily" rates of the terminals with the monthly charges of the warehouses. The record shows the common issuance of either negotiable or non-negotiable receipts or possession receipts and the holding of merchandise on open account with the privilege of partial deliveries without extra charge. The feature of financing incidental to the negotiability of warehouse receipts was not particularly stressed by warehouse witnesses.

Much of the testimony herein pertains to the practices surrounding the handling and storage of beans, canned goods, flour, coffee, sugar, vegetable oil, paper and chemicals. Lower rates and superior service are generally assigned as controlling factors

in the selection of storage and in certain instances as with coffee and flour, for example, shipper witnesses stressed the desirability of concentration at a single place of storage owing to the necessity of mixing lots and blending brands in order to meet the requirements of the trade. Also the objection to loss and damage from repeated handlings of sacked goods, such as the draying of flour from docks to warehouse and vice versa was advanced by shipping interests as factors influencing their storage at the terminals where first landed by the steamship lines furnishing the transportation.

In other words, so far as this particular case is concerned the testimony seemed to center over a few major commodities adaptable to either terminal or warehouse storage, the determining factors as to the storage of which are rates and service. Under complainant's proposed equalization of rates it appears necessary to find some agency of absorption of drayage and handling charges that go with the average warehousing operation before such utility is in a position to successfully compete at an equality of storage rates with the wharf demurrage of the tidewater terminals or docks. The record shows that in a number of instances the storers of merchandise, particularly major commodities of rapid transit, went over from the warehouses of the immediate hinterland to terminals at tidewater, which were directly served by the carriers transporting the bulk of the tonnage; that in many instances of importing and exporting both the inbound and outbound movements were accommodated by the same terminal unit thereby eliminating duplicate handling and cartage costs and at the same time facilitating desirable privileges and services, which of themselves, constitute quite a factor in influencing choice of

storage. Some of this is attributable to transitory trends in transportation and the more recent tendencies of industry to gravitate toward combination water and rail situations. Readiness in marketing and convenience of inspection and grading have been assigned as reasons for concentration of storage of certain commodities at the ports. As with the commodity of beans it is shown that unduly depressed rates at the metropolitan warehouses and terminals have the effect of attracting business away from the interior warehouses at points of production and cleaning. Bean cleaners are prevalent at origin warehouses in production territories and in some instances have been installed at the metropolitan warehouses and tidewater terminals, at least for re-cleaning purposes. On the other hand if the metropolitan warehouses and terminals maintain too high a level the result is to store at points of origin of the traffic until forced to move. In the case of flour, for example, shippers would store at milling and other points in the Pacific Northwest rather than at California points owing to lower rates. As it is, some commodities only engage sufficient storage from complainant and defendants herein to meet a so-called standby service of marketing and trade requirements. In the case of flour it was testified that the costs were ten cents a month cheaper on the docks than the warehouses for a three months' period and that the flour usually moves out before the warehouse rates become lower than the rates of the terminals.

Complainant states that to adequately regulate the situation necessitates a common control embracing all such interests in the Bay area, including municipal and state facilities. The theory is advanced that if terminal wharf demurrage and ware-

house storage rates can be brought to a common level the warehouse industry will devise means of caring for the trucking charges incidental to the latter's storage. In urging a parity of charges, complainant advocates subordination of its customary rate making factors and substitution of "competition of the terminals" as the future rate-making rule and predicts that municipal and state terminal organizations would acquiesce in such arrangements for purposes of uniformity. The record is not clear as to the view of these latter agencies, but certain of defendants, at least, claim a lack of Commission jurisdiction to prescribe uniform rates for terminal and warehouse facilities.

Notwithstanding these suggestions it is not apparent how certain major commodities of rapid movement or turnover could escape the penalty of drayage charges incidental to warehousing. It just seems that such storage as to certain of these commodities, incurring only a minimum detention, if any, before final distribution is obsolete. Some of complainant's witnesses testified that even at equal rates they would still prefer the docks or terminals over the warehouses for the handling and storing of their commodities.

In the case of commodities like coffee and flour valid reasons have been cited for the concentration of these commodities under the peculiar trade requirements surrounding their transportation, marketing and distribution. These do not necessarily apply to sugar, the storage of which is determined by still different conditions. Transportation and handling facilities coupled with free time will doubtless prove determinate as to other commodities. Theoretically speaking it would appear that the terminals, due to the inherent transitory character of the traffic handled might reasonably refrain from so-called "tedious" accounts and long-time storage calculated to clog transit sheds and burden

such operations with multiple handlings and extreme details of accounting. In other words, each type of utility should handle the traffic which it can most economically handle.

The wide range of adaptability of hundreds of these commodities for handling and storing automatically dictates the type of storage. As to whether terminal or warehouse secures the business is often dependent upon the greater suitability of the one or the other to the needs of the service and the requirements of trade demands in which changing transportation practices exert an influence. Rate disturbances may very easily displace existing tonnages and disrupt established business. Manifestly greater stabilization is the objective desired. Complainant herein was a party of record in the terminal rate proceedings whereby defendants' rates were adjusted. As an outgrowth, informal negotiations looking to further stabilization are now in progress.

The record clearly shows both the practicability of and the shippers' desire for certain of these more general commodities to continue to move in their existing modes of terminal handling and that both types of handling and storage facilities are required in serving the public convenience and necessity.

There are hundreds of different commodities in each of the several tariffs of complainant and defendants, the great majority of which have received no consideration whatsoever in this proceeding. On the partial showing herein there is nothing to warrant reversal of this Commission's recent findings and order in the so-called Terminal cases, supra. Attempts at piece-meal revision seem inadvisable. Manifestly the record herein covers but a part of these highly interrelated operations.

Complainant having failed to prove the unreasonableness of defendants' rates the complaint should be dismissed.

I recommend the following form of order:

O R D E R

This case having been duly heard and submitted and basing this order on the findings of fact and the conclusions contained in the preceding opinion,

IT IS HEREBY ORDERED that this proceeding be and the same is hereby dismissed.

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 18th day of December, 1933.

COMMISSIONERS.