

Decision No. 28215.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation and Suspension by the Commission on its own motion of reduced proportional rates published by SAN DIEGO-SAN FRANCISCO STEAMSHIP COMPANY for the transportation of fibreboard and other articles grouped therewith between Long Beach and Antioch, and waste paper from Long Beach to Antioch.

Case No. 4054.

ORIGINAL

Brobeck, Phleger & Harrison, by J. S. Moore, for San Diego-San Francisco Steamship Company, respondent, and Fibreboard Products Company.

Berne Levy and G. E. Duffy, for The Atchison, Topeka and Santa Fe Railway Company.

T. S. Louttit and J. R. Townsend, for Stockton Port District.

H. W. Hendricks, for Pacific Coastwise Conference.

Frank Beatty, for Antioch Chamber of Commerce.

BY THE COMMISSION:

O P I N I O N

This proceeding involves the reasonableness, lawfulness and propriety of proportional rates published by the San Diego-San Francisco Steamship Company for the transportation of board (binder-board, boxboard, fibreboard, pulpboard or strawboard) and related articles between Antioch and Long Beach, and of waste paper from Long Beach to Antioch.

The matter was submitted at a public hearing had in San Francisco August 30, 1935, before Examiner Freas.

For some time prior to June 17, 1935, respondent maintained a rate of 13½ cents per 100 pounds for the transportation of board between Stockton and Antioch on the one hand and Long Beach on the other, and one of 11½ cents for the transportation of waste paper from Long Beach to Stockton and Antioch. On that date the waste paper rate became subject to a 7% emergency increase. (There was no emergency increase on the board.) On July 18, 1935, the board rate was advanced to 15½ cents and that on waste paper to 12½ cents plus the 7% emergency increase. These rates applied between the points mentioned either via respondent's line direct or via respondent's line between Long Beach and San Francisco and via Island Transportation Company between San Francisco and Stockton and Antioch.¹ On June 29, 1935, respondent filed its Terminal Tariff No. 2, C.R.C. No. 6, effective July 30, 1935, in which it published a rule reading:

"ABSORPTIONS - IN GENERAL: This carrier will absorb 52.6 cents per 2000 pounds on Fibreboard and other articles as described in Item 15 Series, and on Waste Paper as shown in Item 105 Series, both as published in this Carrier's Local and Joint Freight Tariff No. 2, C.R.C. No. 5, originating at or destined to Stockton, Cal., when loaded or unloaded at Antioch, Cal., at this Carrier's convenience."

Before this item became effective respondent filed an application for authority to advance the effective date on less than statutory notice.² By this application it was represented that because of labor conditions the San Francisco waterfront had become so congested and the available dock space limited to such an extent that large quantities of these commodities could not be handled properly, nor could Freighters, Inc.³ handle the cargo to Stockton.

The granting of this application was protested by the Port of

¹ Section 3 of San Diego-San Francisco Steamship Co. Tariff C.R.C. 5.

² Application 15-20202 of July 10, 1935.

³ Successor in interest to Island Transportation Co.

Stockton, which likewise sought suspension of the absorption rule published to become effective July 30, 1935. The protest was based primarily upon the contention that the proposed rule was unduly preferential to shippers at Antioch and unduly prejudicial to those located at Stockton; that it was not based on any published rate lawfully on file with the Commission; that it permitted rebating, and was a departure from usual practices of transportation companies; that if published to meet an emergency it should bear an expiration date, and that there were no emergency conditions existing at Stockton which justified such action but that on the contrary Stockton tonnage might be delivered at Stockton more economically than it could be transshipped from Antioch.

Following an informal discussion before the Commission the interested parties were notified that the item as it then read and as proposed in the pending application was objectionable and that the informal applications would accordingly be denied unless withdrawn meanwhile. The Commission further advised however that should respondent make the necessary application therefor, it would be permitted to establish on one day's notice proportional rates applying between Antioch and the Southern California points involved of the volume of the local rates concurrently applying between the same Southern California points and Stockton less 52.6 cents per ton, the amount respondent sought to absorb, provided that such proportional rates were flagged so as to apply only on traffic originating at or destined to Stockton and transported between Stockton and Antioch via a rail carrier. It was furthermore required that the publication be restricted so as to expire within 30 days and that loading or unloading at Antioch was to be performed under the same conditions as performed at Stockton under the then existing local and joint rates. The Commission stated that the authority just referred to was granted in view

of existing emergency conditions, the duration of which was uncertain, and that for that reason the publication was to be made to expire within 30 days, but with the understanding that should the same conditions prevail at that time respondent might apply for another 30-day extension.⁴ The Commission also advised that should the carrier desire to publish these rates on a permanent basis or for a period beyond the existing emergency, it should do so on full statutory notice. On July 19, 1935, respondent, in addition to publishing the rates for the limited period authorized, published them on a permanent basis. The Port of Stockton again requested that they be suspended. Its request was granted by order dated August 12, 1935, the order here under consideration.

The proportional rates published for the emergency period, as well as the permanent ones here under suspension, are \$2.524 per ton of 2000 pounds on the board and \$1.974 on the waste paper. These amounts were obtained by subtracting from the specifically published rates of 15½ and 12½ cents per 100 pounds 52.6 cents (the amount respondent sought to absorb) and, without regard to either the rail lines or to respondent's emergency charge. It was proposed at the hearing to substitute for the \$2.524 on the board a rate of \$2.574 up to July 1, 1936, and one of \$2.54 thereafter. Likewise on the waste paper the rate of \$1.974 is to be changed to \$2.199 up to July 1, 1936, and to \$1.99 thereafter.⁵

Respondent represents, and it is apparently not disputed,

⁴ Respondent did apply for and was granted an extension to and including September 17, 1935.

⁵ The figures for the period to July 1, 1936, are obtained by adding to the specifically published rates 5 cents a ton toll at Stockton and 34 cents per ton plus a 10% (.034 cents per ton) emergency charge for switching between complainant's plant at Stockton and the dock (also in the case of the waste paper an emergency charge of 7% of \$2.50 per ton), and deducting therefrom 90 cents a ton, the rail rate between Stockton and Antioch. The rates for the period after June 30, 1936, the date on which the emergency charge is to expire, are obtained in the same manner excepting that the emergency charge is excluded.

that the cargo offered at or for Stockton is not sufficient at this time to make it profitable for its vessel to call at that port.⁶ It moreover contends that if it were not for this Stockton cargo it could not operate profitably to and from Antioch. By combining the two it can afford to call at Antioch and thus hold to its line tonnage which is obviously highly essential to the operation of its vessel. It also argues that it is more economical for it to handle this Stockton tonnage via Antioch at the proposed rates than to deliver it to or receive it from a connecting carrier at San Francisco.⁷

Fibreboard Products, Inc., with plants both at Stockton and Antioch, and the shipper of the entire cargo here involved, intervened in respondent's behalf and urged that the proposed rates be allowed to go into effect.

Protestant's position has already been stated. Admittedly the tariff charges on shipments originating at or destined to Antioch for local delivery at that point exceed those under the rates here proposed on like shipments moving through that port in the course of transportation to or from Stockton. Undue preference and prejudice however cannot be presumed to follow automatically from this fact. On the contrary it must be conclusively shown. We find no such showing in this record. Nor is there anything in this record on which to condemn the rates on the ground that they are susceptible to rebating.

Protestants adduced considerable testimony to show that the tonnage could be received at or delivered to Stockton more economically

⁶ The witness testified that to make the operation profitable there should be transported at least 500 tons per trip. Exhibits one and two and the oral testimony indicate that the actual offerings fall far short of this amount.

⁷ On shipments interchanged between respondent and the Island Transportation Company the latter gets 90 cents per ton.

than it could be transshipped at Antioch. Without discussing this in detail we believe the record is convincing that when all costs are considered it will be substantially more profitable for respondent to transport these commodities via Antioch than to operate its vessel through to Stockton. Respondent's vessels called at Stockton as long as in the opinion of its manager sufficient cargo offered to justify it. Moreover the witness testified that the proposal here was resorted to in order to keep the vessel operating and that he would again call at that port if there was sufficient cargo offered.

Upon full consideration of all the facts of record we are of the opinion and find that under the circumstances here obtaining the rates proposed by respondent at the hearing have been justified. Inasmuch however as this is an investigation and suspension proceeding respondent should file applications under Sections 15 and 63 of the Public Utilities Act for authority to publish the rates it now seeks to establish. If in the future sufficient tonnage is offered to justify direct service to and from Stockton and respondent continues to transship it at Antioch, the matter may again be brought before the Commission.

ORDER

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that upon the establishment by respondent of rates of the volume of those proposed at the hearing and more specifically referred to in the opinion which precedes this order, our order of August 12, 1935, in the above entitled proceeding, suspending until December 10, 1935, the rates here in issue, be and

it is hereby vacated and this proceeding discontinued.

Dated at San Francisco, California, this 6th day of
September, 1935.

M. J. Carr

M. B. Harris

A. J. [unclear]
Frank R. [unclear]
Commissioners.