

Decision No. 28252.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

VALLEY EXPRESS CO.,
a corporation,

Complainant,

vs.

CARLEY & HAMILTON, INC.,
a corporation,

Defendant.

ORIGINAL

Case No. 3928.

In the Matter of the Suspension by
the Commission on its own motion of
Freight Forwarding Tariff No. 2, C.R.
C. No. 2 of CARLEY & HAMILTON, INC.

Case No. 3946.

Gwyn H. Baker, for Carley & Hamilton, Inc.

McCutchen, Olney, Mannon & Greene, by F. W. Mielke,
for The River Lines.

W. S. Johnson, for Valley Express Co.

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

James E. Lyons and A. L. Whittle, for Southern Pacific
Company and Pacific Motor Transport Company.

HARRIS, Commissioner:

O P I N I O N

By the order in Decision No. 27102 of May 28, 1934, Carley & Hamilton, Inc.¹ was authorized and directed to file with the Commission a tariff naming rates, rules and regulations for "freight forwarding between San Francisco and other California points served by common carriers". The order however was subject to the following conditions:

1. The tariff shall conform to the rules prescribed by the Commission for the construction and filing of freight tariffs.
2. It shall set forth specifically all rates and charges to be made for drayage, marking, stenciling or other incidental services to be performed by applicant.
3. It shall provide that to the charges referred to in Condition No. 2 shall be added the charge of the carrier over whose line the shipment is forwarded or received as shown by such carrier's tariffs on file with the Commission for the transportation of like kind and quantity of property, except as provided in Condition No. 4 next below.
4. If shipments are to be transported at rates less than those contemporaneously maintained by the carrier performing the line haul service, such charges shall be specifically shown.
5. The authority herein granted shall not be construed as a finding by the Commission as to the reasonableness of the rates to be established.

Defendant filed its Tariff No. 1, C.R.C. No. 1, effective July 17, 1934. In it, it provided a rate of ten cents per hundred-weight for drayage, handling, consolidating, forwarding, marking, stenciling or other incidental services. The tariff further provided that this charge should be added "to the tariff rates of common carriers lawfully on file with the Railroad Commission of the State of California over whose line shipments are forwarded".

Complainant alleges that the tariff does not conform to the conditions of the order in Decision 27102, and that the practices con-

¹ Carley & Hamilton, Inc. is the defendant in Case 3922 and the respondent in Case 3946. Throughout this decision it will at all times be referred to as defendant.

ducted under said tariff are in violation of Sections 13, 17 and 19 of the Public Utilities Act.² It seeks an order directing defendant to -

1. File a tariff conforming with said Decision No. 27102.
2. Forthwith cease and desist from assessing and collecting rates and charges which are lower than the rates and charges contemporaneously assessed and collected by the transporting common carrier on like kind and quantity of property.

After the complaint had been filed, but before a hearing was had, defendant filed its Freight Forwarding Tariff No. 2, C.R.C. No. 2 with the Commission. This tariff was issued to become effective December 15, 1935, and was intended to supersede C.R.C. No. 1. Among other things it contained rates for the transportation of property between San Francisco on the one hand and Sacramento and Stockton on the other. It was protested by The River Lines on the grounds that defendant had not up to that time been operating a freight forwarding service between the points named, held no certificate of public convenience and necessity, and thus was without a right to operate. The effective date of C.R.C. No. 2 was accordingly postponed and the operation thereof deferred, pending a determination of its legality.

Both matters were heard at San Francisco upon a common

² More specifically it is alleged "that said tariff contains provisions, rules and regulations which are contrary to and not in accordance with the five conditions contained in said Decision No. 27102 * * * in that said tariff does not provide that the charges of the common carrier over whose line the shipment is forwarded or received" (shall be) "as shown by such carrier's tariffs on file with the Commission for the transportation of like kind and quantity of property", and that it "is further violative of condition No. 4 of said Decision No. 27102 in that it does not specifically show rates that are less than those contemporaneously maintained by the carrier performing the line haul service, notwithstanding the fact that defendant actually assesses lower charges than are contemporaneously assessed by the underlying or transporting carrier".

record. They were submitted upon briefs and will be disposed of in one decision.

It is conceded by E. L. Carley, Jr., defendant's president, that shipments have been received and forwarded while Tariff C.R.C. No. 1 was in effect, at charges less than those contemporaneously maintained for the transportation of like kind and quantity of property by the carrier over whose line the shipments moved. In fact the record shows that on certain shipments the charges collected from the shippers were lower than those defendant actually paid to the underlying carrier for the line haul transportation. (Tr. page 28.) Since these charges were not specifically shown in defendant's tariff, it is obvious that conditions 3 and 4 of the order of Decision No. 27102 have been violated.

Defendant in its brief contended that this part of the order was "not clear and definite". It was intended by these provisions to require defendant to show by specific publication any rates that would produce lower charges than those which shippers might obtain if the identical shipments were made directly via the line performing the line haul transportation. It is not apparent wherein this intention was not clearly and definitely expressed. Defendant will be required to cease and desist from assessing and collecting rates and charges which are lower than the rates and charges contemporaneously maintained by the common carrier performing the line haul for the transportation of like kind and quantity of property, unless and until defendant shall have complied with Condition No. 4 of Decision 27102. Moreover, defendant will be required to amend or reissue its C.R.C. No. 1 so as to bring it clearly within the terms of the order in Decision 27102.

Complainant made no attempt to sustain its allegations that Sections 13, 17 and 19 of the Act had been violated. As to these mat-

ters, therefore, the complaint will be dismissed.

Defendant did not attempt to justify its Freight Forwarding Tariff No. 2, C.R.C. No. 2, here under suspension, but on the other hand conceded "that neither Tariff No. 1 nor Tariff No. 2 was properly prepared or properly drawn". (Tr. page 5.) Obviously therefore Tariff No. 2 should be ordered cancelled.

At the hearing defendant offered a third tariff (Exhibit No. 1) which it seeks to file with the Commission in the event the Commission finds that it complies with the conditions in Decision 27102. If it does not comply with these conditions, an order modifying Decision 27102 so as to bring it into compliance is sought. This proposed tariff permits the transportation of shipments by defendant at charges less than those which would accrue if the shipper forwarded "like kind and quantity of property" over the line of the carrier performing the line haul without specifically publishing such rates and is therefore subject to the same objections as C.R.C. No. 1. No good cause why Decision No. 27102 should be amended has been shown. This request will therefore be denied.

In Application 19362, the proceeding in which defendant was authorized to file a tariff for the common carrier service involved, it was alleged that defendant has since 1901 "continuously performed local drayage and freight forwarding operations via the lines of common carriers between San Francisco and points in the State of California". The operations, moreover, were "said to be those of a common carrier as defined in Section 2(ka) of the Public Utilities Act". These allegations were not disputed. Here however defendant's status as a common carrier is challenged, particularly in so far as it involved service between San Francisco and Stockton and Sacramento and there is nothing in this record to show that defendant was operating as a

freight forwarder on or before August 1, 1933, or that it held a certificate of public convenience and necessity as required of carriers commencing to operate thereafter.³

The following form of order is recommended:

O R D E R

These proceedings having been duly heard and submitted,

IT IS HEREBY ORDERED that defendant Carley & Hamilton, Inc.:

1. On or before thirty (30) days from the effective date of this order file with the Commission on full statutory notice and in lieu of C.R.C. No. 1, a tariff fully complying with the terms of the order in Decision 27102, and with the practices to be engaged in thereunder, or in the alternative cancel C.R.C. No. 1.

2. On or before the effective date of this order, cease and desist and thereafter abstain from assessing and collecting rates and charges which are lower than the rates and charges contemporaneously maintained by the common carrier performing the line haul for the transportation of like kind and quantity of property, unless and until defendant shall have complied with Condition No. 4 of Decision 27102.

IT IS HEREBY FURTHER ORDERED that in all other respects Case 3928 be and it is hereby dismissed.

IT IS HEREBY FURTHER ORDERED that defendant Carley & Hamilton, Inc., on or before October 11, 1935, cancel its Tariff No. 2,

³ Defendant recalled having consigned and received shipments between San Francisco on the one hand and Stockton and Sacramento on the other hand but was unable to state whether or not the bill of lading designated it as the consignor or consignee.

C.R.C. No. 2, on not less than one day's notice to the Commission and the public.

IT IS HEREBY FURTHER ORDERED that upon the cancellation of said Tariff No. 2, C.R.C. No. 2, Case No. 3946 be and it is hereby discontinued and our suspension order of December 14, 1934, vacated and set aside.

This order will become effective ten (10) days from the date hereof.

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 30th day of September, 1935.

Leon C. Whately
W. H. Can
W. B. Lamin
Matthews
Frank R. Derby
Commissioners.