

Decision No. 30844.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of SAN DIEGO-SAN FRANCISCO STEAM-
SHIP COMPANY for leave to tempor-
arily discontinue regular service.

Application No. 20417.

In the Matter of the Investigation
by the Commission on its own motion
into the rates, rules, regulations,
charges, classifications, practices,
contracts, operations and schedules,
or any of them, of EBERHARD STAHLBAUM,
JAMES K. NELSON and FRANK L. STEARNS,
doing business as SAN DIEGO-SAN
FRANCISCO STEAMSHIP COMPANY.

Case No. 4210.

Leo Dunnell, for James K. Nelson and Frank L. Stearns,
respondents in Case No. 4210.
Rolf Stahlbaum, for applicant in Application No. 20417
and for Eberhard Stahlbaum, respondent in Case No.
4210.
C. C. Burgin, for Stockton Traffic Bureau.
Marcus Stanton, for P. L. Transportation Company, pro-
testant.

WAKEFIELD, Commissioner:

O P I N I O N

By Decision No. 28657 of March 23, 1936, in Application No.
20417, the San Diego-San Francisco Steamship Company, a copartnership,
was authorized to suspend scheduled service until March 13, 1937.¹

By supplemental applications two requests were filed for
an order authorizing further suspension of scheduled service. The

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The tariffs of the San Diego-San Francisco Steamship Company, on
file with the Commission, name rates for the transportation of prop-
erty between San Francisco, Stockton and other points on San Fran-
cisco Bay and waters flowing therein, on the one hand, and Long
Beach, San Diego and other points in southern California on the
other hand; between San Francisco, Stockton, Long Beach and San
Diego on the one hand and Monterey on the other hand; and also be-
tween Long Beach and San Diego.

first, filed March 13, 1937, by the San Diego-San Francisco Steamship Company, Rolf Stahlbaum, Manager, seeks authority further to suspend scheduled service for a period of nine months. The second, filed March 15, 1937, by Frank L. Stearns and James K. Nelson, alleging an interest in said partnership, requests that authority be granted the San Diego-San Francisco Steamship Company further to suspend its regular service for a period of six months.²

Case No. 4210 is an investigation instituted by the Commission on its own motion, particularly to determine whether or not Eberhard Stahlbaum, James K. Nelson and Frank L. Stearns, doing business as the San Diego-San Francisco Steamship Company, have abandoned any or all of their operations. Respondents were directed to appear and show cause, if any they had, why any or all operative rights³ possessed by them or any of them should not be annulled and the tariffs on file with the Commission cancelled.

2

In support of the allegation of Frank L. Stearns and James K. Nelson that they have an interest in the copartnership operated as the San Diego-San Francisco Steamship Company and therefore have a right to file the application herein, reference is made to Stearns vs. Stahlbaum in the Superior Court of the State of California in and for the County of Alameda, No. 131907, in which the court found that a copartnership consisting of plaintiff's assignor James K. Nelson and Eberhard Stahlbaum was formed in and between them on or about November 24, 1931, and continued until July 12, 1932, when it was dissolved; and adjudging and decreeing that plaintiff was entitled to an accounting and ordering that A. T. Shine be appointed referee to take such accounting. It is further alleged in the application that said referee had not made his findings and report to said Superior Court at the time of the filing of the application. The prayer is for authority to suspend regular service for the period sought in order to allow time for the aforesaid referee to make his findings and report to the court, and for such other and further relief as the Commission shall deem just in the premises.

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Such operative rights as the San Diego-San Francisco Steamship Company may possess and which are involved in Case No. 4210 arise by virtue of vessel operations conducted in good faith prior to August 21, 1933, the effective date of amendment to Section 50(d) of the Public Utilities Act, requiring coastwise vessel operators to secure a certificate of public convenience and necessity from this Commission.

A public hearing was held at San Francisco and the matters submitted.

Rolf Stahlbaum, Manager for the San Diego-San Francisco Steamship Company, testifying in support of his application and also on behalf of respondent Eberhard Stahlbaum in Case No. 4210, stated that the conditions heretofore made the basis for suspension of scheduled service had not sufficiently improved to warrant a resumption of such service on a compensatory basis. He expressed the opinion, however, that conditions were improving and would probably justify a resumption of service upon the expiration of the further period of suspension sought in his application.

This witness further testified that the vessel "COTTONEVA", which was formerly owned by Eberhard Stahlbaum and operated by the copartnership in the service involved on a charter basis, had been lost to said Eberhard Stahlbaum through foreclosure proceedings in July, 1936; that the vessel had subsequently been operated by him as an individual on a charter basis for the transportation of lumber but had been lost on its first voyage through a marine disaster; and that for this reason the copartnership was without a vessel with which to resume scheduled service on the date the prior authorization expired. He stated that efforts to obtain finances to construct new vessels or to charter vessels to operate in this service had been unsuccessful. He expressed the belief, however, that he would be able to complete such arrangements and that the copartnership or its successor would be in a position to resume service on or before the expiration of the period of suspension sought in his application. It appears that his failure to file the application herein until one day subsequent to the expiration of the prior period of suspension was the result of an oversight and that upon the matter coming to his attention he proceeded immediately to file such application.

James K. Nelson, a witness appearing for himself and Frank

L. Stearns in support of their application and on behalf of these respondents in Case No. 4210, testified that should these applicants obtain the operative right of the San Diego-San Francisco Steamship Company upon the settlement of the pending court action, they were prepared to resume service within 30 days thereafter. He admitted, however, that neither he nor Frank L. Stearns owned or had made any definite arrangement for the use of any vessel or vessels but expressed confidence in their ability to obtain such vessels. He stated that these applicants were unaware that the authorized period of suspension would expire March 13, 1937, until shortly prior to said expiration, and that as soon as they found out about the expiration they did all within their power to file the application as quickly as possible, but due to unavoidable delays the application was not filed until several days subsequent to the expiration of the said authorized period of suspension.

The granting of any further extension of the period of suspension heretofore authorized was protested by the P. L. Transportation Company. Protestant takes the position that a common carrier should not be allowed to suspend service for long periods awaiting better conditions, as such suspensions are not fair to those carriers who continue to render service during lean periods. Counsel for protestant urged that the operative rights now possessed by the San Diego-San Francisco Steamship Company and involved in Case No. 4210 be revoked. No other protest was made.

Ordinarily, repeated and lengthy suspensions of service are not in the public interest. However, it is of record in this and numerous other formal proceedings before the Commission that the results of labor and other conditions existing in connection with the coastwise steamship business during the past several years have made it difficult if not impossible for such carriers to maintain uninterrupted service.

During this period several carriers formerly engaged in these services abandoned their operations while others sought and were granted authority by this Commission temporarily to discontinue their services for varying periods. The Los Angeles Steamship Company⁴ and the Pacific Steamship Lines Ltd.⁵ were recently granted authority further to suspend their intrastate coastwise vessel operations beyond the period to which applicants are here seeking to suspend their operations for somewhat similar reasons to those advanced in the instant applications.

Upon consideration of all the facts and circumstances of record I am of the opinion that the San Diego-San Francisco Steamship Company should be authorized to suspend its scheduled service until January 1, 1938. It should, however, be placed on notice that it will be expected on or before the expiration of the period of suspension herein authorized either to resume its scheduled service or relinquish its operative rights. I am of the further opinion that Case No. 4210 should be dismissed.

The granting of the application herein will not deprive the public of a means of transportation, as the territory is served by other carriers.

The following form of order is recommended:

O R D E R

A hearing having been held in the above entitled matters,

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By Decision No. 29730 of May 3, 1937, in Application No. 20152, Los Angeles Steamship Company was authorized to suspend its freight and passenger service until May 1, 1938.

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By Decision No. 29732 of May 3, 1937, in Application No. 20789, Pacific Steamship Lines Ltd. was authorized to suspend its freight service, and by Decision No. 29727 of May 3, 1937, in Application No. 20778 to suspend its passenger service, until May 1, 1938.

and the proceedings having been submitted,

IT IS HEREBY ORDERED that the San Diego-San Francisco Steamship Company, a copartnership, be and it is hereby authorized to suspend its service until January 1, 1938, provided it promptly supplement its tariffs on file with the Commission to show that its service has been suspended as authorized herein.

IT IS HEREBY FURTHER ORDERED that Case No. 4210 be and the same is hereby dismissed.

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 16th day of August, 1937.

Nathan D. Brown
Leon A. Whaley
Frank B. Smith
Robert A. Brown
Carl A. Riey
Commissioners.