ORIGINAL

Decision No. 30498.

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 rates published by The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, and Pacific Freight Tariff Bureau, L. F. Potter, Alternate Agent, for the transportation of beverages and tonics between San Francisco and Los Angeles and other points in California.	Case No. 4137
In the Matter of the Investigation and Suspension by the Commission on its own motion of reduced rates published by Pacific Freight Tariff Bureau, L. F. Potter, Alternate Agent, for the transportation of beverages and tonics between San Francisco and Los Angeles and other points in California.	Case No. 4141
In the Matter of the Establishment of maximum or minimum, or maximum and minimum rates, rules and regulations of all Radial Highway Common Carriers and Highway Contract Carriers, operating motor vehicles over the public highways of the State of California, pursuant to Chapter 223, Statutes of 1935, for the transportation for compensation or hire of any and all commodities, and accessorial services incident to such transportation.	Case No. 4088 Part "B"

Additional Appearances

E. R. Hoerchner and Eliot Stoutenburgh, for California State Brewers Institute.

BY THE COMMISSION:

OPINION ON FURTHER HEARING

By Decision No. 29723 of April 26, 1937, in the above entitled proceedings the Commission found not justified certain suspended and proposed rail rates for the transportation of beverages and tonics between San Francisco, Oakland, Alameda, Sacramento and Stockton on the one hand, and San Diego and points in the Los Angeles Basin area on the other hand. It also established certain accessorial charges to be assessed in connection with the minimum rates theretofore established in Case No. 4088, Part "B", for the transportation of beverages and tonics by radial highway common and highway contract carriers between San Francisco and Oakland on the one hand, and Fresno and Los Angeles on the other hand.[1]

Responsive to petitions for modification and rehearing, a further hearing was had before Examiner W.S. Johnson at San Francisco on September 14 and 22, 1937.

The controversy at previous hearings in these proceedings arose from the desire of the rail lines to capture and the trucks to hold the large volume of beer traffic moving between San Francisco Bay points and the Los Angeles Basin and San Diego areas. At the further hearing the rails represented that they were still unable to attract more than an insignificant portion of this business and renewed their proposal to publish the 20-cent rate, subject to a minimum weight of

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[1] The rail rate in effect between San Francisco and Los Angeles, the established minimum truck rate and the proposed reduced rail rate found not justified are as follows:

(Rates are in cents per 100 pounds)

Current Rail Rate		*Minimum Truck Rate		Proposed Rail Rate	
Rate	Minimum Weight	Rate	Minimum Weight	Rate	Minimum Weight
25	30,000	25	18,000	20	50,000

* Accessorial charges of one-half cent per 100 pounds for loading or unloading, one cent per 100 pounds for split delivery service; and $40.00 per month per unit of equipment for the placing of advertising on carriers' vehicles, must be assessed by the highway carrier when such accessorial services are performed.

50,000 pounds, applicable between San Francisco and Oakland on the one hand and Los Angeles on the other. Clarence E. Day, the railroad cost witness in the original hearings, submitted supplemental cost data to show that the proposed rate would be compensatory.

The rails contended, also, that the various accessorial charges established in connection with minimum truck rates were insufficient to cover the value of the extra services to the shipper, or even the cost to the carriers of performing them, and should be increased. R. S. Frothingham, advertising specialist testifying for the rails, presented a comprehensive study of the value of advertising on vehicles operating between San Francisco and southern California points. Taking into account average display area, estimated circulation, attractiveness of moving signs and the various other factors which are said to influence advertising value, he arrived at an estimated value of $1.76 per trip per sign between San Francisco and Los Angeles. This value, he stated, would increase as the number of signs carried on a truck increased, but not in full proportion.

In addition, the rails insisted that the inability of the railroad to serve points not equipped with spur tracks should be given recognition by a rate differential.

The highway carriers protested any reduction in railroad rates. They sought, moreover, to strengthen their position by a reduction or elimination of the advertising charge. To this end they produced another advertising specialist, W. H. Settlemier, who agreed in theory with the methods employed by witness Frothingham, but took exception to the value accorded various factors. For example, he discounted the results of Frothingham's study because of the fact that trucks often travel at night, that the angle of vision with relation to passing automobiles is poor, that circulation according to prospective consumers cannot be controlled, and that the "story" told by the sign

cannot be impressed upon the individual by repetition.

Whereas the brewers originally adopted a favorable attitude toward the rate reduction proffered by the railroads, they now deny that the proposed reduced rate would influence their present allocation of tonnage to any appreciable extent. In addition, they argued that advertising on vehicles cannot properly be deemed an accessorial service and that in any event the charge fixed in these proceedings is discriminatory in favor of other types of traffic as to which advertising charges have not been established.

Thus, briefly, the issues to be decided are as follows:

1. To what extent, if at all, will the rails be justified in reducing rates below their present rates.

2. To what extent, if at all, should accessorial charges established in connection with the minimum highway carrier rates be modified.

Substantially all of the beer movement between the cities here involved is being handled by truck at the present time. This is true despite the existence of a rate structure which, on its face, should afford the rails at least a partial equality of opportunity. Several explanations for the brewers' apparent preference for truck transportation have been advanced. Among them are speedier transit resulting in lower refrigeration costs, flexibility in instances where the brewery or warehouse is not located on a railroad spur track, performance of accessorial services of greater value to the shipper or consignee than the extra charges provided, and failure of the highway carriers to assess and the brewers to pay the established.

charges for advertising on motor truck equipment.[2]

The public interest in the preservation of a sound transportation system and the peculiar adaptability of the railroads to long-haul transportation require that they be afforded a reasonable equality of competitive opportunity. The rails, the highway carriers and the brewers agree that the rails are entitled to compete with the trucks on equal terms; they disagree only in their views as to the method of effecting the desired equality without undue prejudice to any one of the three factions.

Assuming but not conceding that the reduced rail rates would be compensatory, it does not follow that a reduction of the volume proposed would accomplish the desired purpose. Under Section 10 of the Highway Carriers' Act a similar reduction would have to be accorded the highway carriers for transportation between rail points and the competitive position of the railroads would not be improved.[3] It is true that a shipment of the proposed 50,000 pounds minimum weight cannot be transported by highway carriers in a single piece of equipment; however under the statute referred to, those carriers may not be denied the right to meet the rate if the specified minimum quantity is tendered

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2 At the further hearing representatives of Willig Truck Transportation Company and Rueber Truck Company testified that brewers had been billed for the advertising charge, but that such bills had not been paid.

F. J. Wigle, in behalf of the Brewers Institute, admitted that all carriers were billing for the advertising charge but that in no instance were such bills being paid.

While compliance with the Commission's order is not at issue here, it is to be observed that the carriers are required to assess and the public to pay the minimum rates and accessorial charges established pursuant to the Highway Carriers' Act. The carriers are expected to take whatever legal action may be necessary to enforce collection of the outstanding undercharges.

3 Section 10 of the Highway Carriers' Act reads in part as follows:

"In event the commission establishes minimum rates for transportation services by highway carriers, such rates shall not exceed the current rates of common carriers for the transportation of the same kind of property between the same points."

to and accepted by them as a single shipment at one place and at one time. Only a reduction in rail rates to a level low enough to eliminate highway carriers from the field would seem to accomplish the desired end.[4] The only alternative then, if the law of the jungle is not to be allowed full sway, is to adjust highway carrier accessorial charges so that they will more nearly conform to the actual cost of performing such services and to their value to the shipper, and to allow the proposed reduction to become effective only as to traffic originating at or destined to off-rail points where the rails are able to perform only a portion of the through transportation.

As before stated, the truck advertising charge was subjected to particular attack, the railroads asking that it be increased, the highway carriers and the brewers seeking its elimination. The brewers strongly contend that the advertising service is not accessorial to transportation and hence an accessorial charge may not properly be fixed. Suffice it to say that the advertising service has a substantial value to the shipper, so much so that it is an important factor in influencing the routing of the traffic by truck. This value has an inseparable relation to the cost of the transportation to the shipper and thus enters directly into the transportation rate. It seems manifestly proper and necessary to establish reasonable minimum charges for the advertising service in order to establish an effectual minimum rate for the transportation. The evaluation of a service of this kind is largely a matter

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[4] Railroad witnesses frankly conceded that the proposed reduced rate would probably eliminate some of the truck carriers now engaged in this hauling. F. C. Nelson, Assistant General Freight Agent of the Southern Pacific Company, testified as follows (Transcript, Pages 328, 329 and 330):

Examiner Johnson: (Question) "Mr. Nelson, what, in your opinion * would be the result competitively if the Commission authorized a 20 cent rate on 50,000 pounds and also allowed the motor trucks to meet the rate? ***" (Answer) "Well, I do not think that there would be as many trucks in the beer business at that rate. There would be a lot of them that would not be attractive business to at that rate.***"

Mr. Berol: (Question) "I am asking what is your basis for your answer that there would not be so many trucks in the beer business?" (Answer) "Well, I would say that some of them would go out of business."

of judgment, based upon potential circulation, display area and consumer appeal. Judgment estimates of the two advertising specialists varied widely, but both recognized that vehicle advertising does have an actual monetary value; and, considering their testimony as a whole, the $40.00 per month charge now in effect appears to be substantially correct. However, it is desirable that, where possible, additional charges of this nature be set forth on a trip basis, rather than for a monthly period. Objections that the equipment may have been in use for only a few days during the month would thus be obviated. The charge of $40.00 per month will be converted to a charge of $2.00 per trip, loaded or empty, between San Francisco or Oakland on the one hand and Fresno or Los Angeles on the other hand.

It further appears that the cost of loading or unloading truck equipment and the value to the shipper of having this service performed by the carrier is in some instances considerably in excess of the ½ cent per 100 pounds additional charge now provided. On the other hand, under certain conditions the addition of even this amount may prejudice the truck carriers. In Decision No. 30370 of November 29, 1937, in Case No. 4088, Parts "U" and "V" and Case No. 4145, Parts "F" and "G", a rule was established which distinguishes between tailgate loading or tailgate unloading (simple loading or unloading operations) and an operation where the carrier first brings the shipment to a convenient loading point or moves it beyond a convenient unloading point. Substantially the same rule was adopted in connection with the establishment of minimum rates for the transportation of lumber and forest products

(Case No. 4088, Part "L", order entered this day) and of soap and canned goods (Case No. 4088, Part "W", order entered this day). A similar rule will be substituted for the loading and unloading rule heretofore established in the instant proceedings. The charge for miscellaneous accessorial services will be changed to $1.00 per man per hour, in order to reflect more closely the actual cost to the carriers of performing the additional services.

Admittedly, the railroads are at a disadvantage in competing for traffic having an off-rail origin or destination. Suitable absorption provisions must be provided to offset the cost of drayage beyond the railheads. Minimum drayage rates have already been established and are now in effect within San Francisco and Oakland, and range from 6¼ cents to 8½ cents for the transportation here required. Drayage rates have not yet been established in Los Angeles; however the rails have proposed only a 5 cent reduction and an absorption of this amount, at least, will be justified.

Upon consideration of all of the facts and circumstances of record, the Commission is of the opinion and finds:

1. That the reduced railroad rate of 20 cents, minimum weight 50,000 pounds, proposed to apply between San Francisco and Oakland on the one hand and Los Angeles on the other hand, is unreasonably low and not justified by transportation conditions, except as provided in paragraph 2.
2. That rates 5 cents less than present rates will be justified for transportation by railroad of shipments in continuous through movement between San Francisco, Oakland, Sacramento and Stockton on the one hand and the Los Angeles Basin and San Diego areas on the other hand, when originating at or destined to points not served by railroad track facilities.

3. That paragraph (a) of Item No. 50 of Appendix A of Decision No. 29723 should be amended to eliminate the charge for tailgate loading and tailgate unloading and to provide a charge for loading or unloading other than tailgate loading or tailgate unloading of not less than 2 cents per 100 pounds.

4. That paragraph (b) of Item No. 50 of Appendix A of Decision No. 29723 should be amended to provide a charge of $2.00 per trip, loaded or empty, between San Francisco or Oakland on the one hand and Los Angeles or Fresno on the other hand, for the placing or carrying of advertising signs upon any unit of equipment.

5. That paragraph (c) of Item No. 50 of Appendix A of Decision No. 29723 should be amended by substituting a charge of $1.00 per man per hour for the charge of 75 cents per man per hour therein now provided.

6. That in all other respects Decision No. 29723 should be affirmed.

O R D E R

Further public hearings having been held in the above entitled proceedings and based upon the evidence received at the hearings and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that the following item be and it is hereby substituted for Item No. 50 of Appendix A of Decision No. 29723 of April 26, 1937, in these proceedings:

"ITEM NO. 50-A - ACCESSORIAL SERVICES AND CHARGES

(a) LOADING AND UNLOADING

(1) Rates in this Appendix include tailgate loading (loading of the shipment into carrier's equipment from a point not more than 25 feet distant from said equipment) and tailgate unloading (unloading of the shipment from carrier's equipment and plac-

"ITEM NO. 50-A - ACCESSORIAL SERVICES AND CHARGES (Concluded)

ing it at a point not more than 25 feet distant from said equipment) at no additional charge.

(2) When loading or unloading, other than tailgate loading or tailgate unloading, is performed by the carrier, an additional charge of not less than 2 cents per 100 pounds for each of such services shall be assessed.

(b) ADVERTISING ON EQUIPMENT

An additional charge of not less than $2.00 per unit of equipment per trip, loaded or empty, between San Francisco or Oakland on the one hand and Los Angeles or Fresno on the other hand, shall be assessed by the carrier for the placing or carrying of any sign, or signs, or advertising matter upon such unit of equipment.

(c) MISCELLANEOUS ACCESSORIAL SERVICES

For stacking, sorting or any other accessorial service not otherwise provided for in this rule, an additional charge of $1.00 per man per hour shall be assessed."

IT IS HEREBY FURTHER ORDERED that in all other respects said Decision No. 29723 shall remain in full force and effect.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 13th day of December, 1937.

Commissioners