

Decision No. 31036

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Investigation on)
the Commission's own motion into the)
vessel operations, rates, charges,)
contracts and practices of JUHL BROS.,) Case No. 4280
a copartnership, HENRY A. JUHL, E. JUHL,)
and M. JUHL.)

In the Matter of the Application of)
HENRY A. JUHL and M. R. JUHL, copartners)
doing business under the name and style)
of JUHL BROS., for a permit under the)
For-Hire Vessel Act of the State of) Appl. No. 21659
California to operate vessels for)
transportation of property for compensa-)
tion on the inland waters of the State)
of California.)

ORIGINAL

APPEARANCES

- J. Richard Townsend and E. R. Bolander, Jr., by
H. R. Bolander, Jr., for respondents
- A. L. Whittle, for Southern Pacific Company,
Northwestern Pacific Railroad Company and
Petaluma and Santa Rosa Railroad Company, as
their interests may appear
- G. T. Hurst and G. E. Duffy, by C. R. Bishop,
for The Atchison, Topeka and Santa Fe Railway
Company, as its interests may appear
- Gwyn H. Baker, for Bay Cities Transportation
Company, as its interests may appear
- L. N. Bradshaw and J. L. Amos, for The Western
Pacific Railroad Company and Sacramento Northern
Railway, as their interests may appear
- McCutchen, Olney, Mannon & Greene, by F. W. Mielke,
for The River Lines, as its interests may appear

BY THE COMMISSION:

O P I N I O N

Case No. 4280 is an investigation instituted by the
Commission on its own motion for the purpose of inquiring into
the operations, rights, charges, classifications, contracts and
practices of Henry A. Juhl, E. Juhl and M. Juhl, as individuals

and as copartners doing business as Juhl Bros.¹

Application No. 21659 is an application of Henry A. Juhl and M. R. Juhl, copartners doing business as Juhl Bros., seeking a permit to operate vessels as a "for-hire" carrier for the transportation of all kinds of lumber between any and all points on San Francisco Bay, San Pablo Bay, Suisun Bay, the Sacramento River, the San Joaquin River and their respective tributaries and sloughs, under written contracts with four named shippers.

More particularly, Case No. 4280 involves a determination of (a) Whether or not the prescriptive common carrier vessel operative right for the transportation of hay and grain determined by Decision No. 28282 of October 14, 1935, in Case No. 4012, has been abandoned by reason of the failure of Juhl Bros. to conduct operations under and pursuant to said operative right; and whether or not said operative right should be declared cancelled, revoked and annulled by reason of said abandonment;

(b) Whether or not said Juhl Bros., or any of the members of said copartnership, have or are engaged or any of them has or is engaged in operating any vessel for the transportation of persons or property as a common carrier between points other than those embraced in said prescriptive operative right above mentioned, without first having obtained from the Railroad Commission a certificate of public convenience and necessity, therefor, in violation of Section 50(d) of the Public Utilities Act.

(c) Whether or not said Juhl Bros., or any of the members of said copartnership have or are engaged or any of them has or is engaged in operating any for-hire vessel for the transportation of persons or property for compensation or hire between points exclusively on the inland waters of this State without first having secured a permit from the Commission, in violation of the For-Hire Vessel Act; and

(d) Whether Henry A. Juhl has operated any for-hire vessel for the transportation of persons or property for compensation or hire between points or for shipments other than those authorized by the for-hire vessel permit issued on July 27, 1937 to said Henry A. Juhl by Decision No. 29989, in Application No. 20469, in violation of the latter decision, and whether said Henry A. Juhl has charged or collected rates greater, less, or different than those lawfully applicable for such service, as specified in his tariff filed with the Commission, and if such violation occurred, whether or not said permit should be revoked for such violation.

Public hearings were had at San Francisco before Examiner E. S. Williams and the matters were submitted on briefs.

It was stipulated at the hearing that the copartnership consisting of Henry A. Juhl, H. Juhl and M. Juhl had not transported any property by vessel under their prescriptive common carrier rights for approximately three years; that such operative rights had been abandoned; that there was no intention of resuming service; and that said common carrier rights should be revoked.

Insofar as the propriety of past for-hire vessel operations is concerned the record shows that during 1936 and 1937 numerous shipments of lumber were transported by Henry A. Juhl between points from and to which he had no authority or right to render service either as a common carrier or as a for-hire vessel carrier. Shipper witnesses, representing Napa Lumber Company, Hobbs Wall & Company, and Charles R. McCormick Lumber Company, testified that Henry A. Juhl had been willing at all times to transport their shipments and that no request for transportation service had ever been refused by him; and, further, that no written contracts had ever been executed by any of said shippers with him. They stated that when their firms had shipments to move they communicated with Henry A. Juhl, informed him that shipments were available, requested a rate quotation and, if the rate was satisfactory, tendered the shipment for transportation. The record indicates, moreover, that the partnership, of which Henry A. Juhl is the active managing partner, had performed transportation services for which neither a certificate of public convenience and necessity nor a for-hire permit were held. Henry A. Juhl conceded this to be true, the only justification offered by him in defense of these admittedly unlawful operations being that the transportation of the traffic referred to was necessary to enable him to make a living.

The instant application for a for-hire permit is supported by proposed contracts wherein the Pacific Lumber Company, Hobbs Wall & Company, Napa Lumber Company and Noah Adams Lumber Company would agree to tender to applicants annually a minimum amount of tonnage for transportation. By their terms, the contracts state that each shipper will offer to Juhl Bros. at least 60,000 board feet of lumber per year, at rates specified in applicant's proposed tariff attached to the application filed with the Commission. The term of the contracts are all for one year, with provision for extension from year to year thereafter unless canceled by notification upon ninety (90) days' notice by one party to the other.

Bay Cities Transportation Company, Crowley Launch and Tugboat Company, The River Lines, Southern Pacific Company, Northwestern Pacific Railroad Company, Petaluma and Santa Rosa Railway Company, Western Pacific Railroad Company and Sacramento Northern Railway, protested the granting of the for-hire permit here sought. They contended that the proposed operation will be that of a common carrier and not private in nature, that there is insufficient tonnage available to sustain the proposed operations and that applicants are not fit parties to hold a for-hire permit.

They argued (1) that the operations conducted during 1936 and 1937 were in the nature of common carrier services, (2) that the maximum board foot requirement of the proposed contracts is so small as to enable the lumber shippers to tender not more than one shipment during the entire year, and (3) that the evidence of past unlawful operations of Juhl Bros. indicated that applicants would, if granted a permit, again engage in operations in excess of those authorized in such permit.

In view of the admitted facts of record that Henry A. Juhl as an individual and Henry A. Juhl and M. R. Juhl as members of the copartnership, transported property on the inland waters

over a considerable period without regard to the requirements of the Public Utilities or For Hire Vessel Acts, or to the Commission's orders issued pursuant thereto, it does not appear that these applicants are fit or proper persons to hold or operate under a for-hire permit.

Applicant's counsel assumed the position that this Commission does not possess any discretionary power under the For-Hire Vessel Act to withhold or deny the permit sought herein. Briefly stated, it is his contention that while the Commission has the power to revoke a permit of any for-hire vessel carrier, upon good cause shown, it may not exercise any discretion thereafter, but must grant a permit to any carrier who files an application in conformity with the provisions of Section 4 of the Act. We believe that the power to revoke a permit is a nullity if discretion may not be exercised in granting a new permit to a former violator of the For-Hire Vessel Act. To deny such discretion would enable the applicant, after revocation of his prior permit, to demand immediately and secure a new permit for the same commodities between the same points over which he had been previously operating in violation of the law. We believe that the legislature did not intend such ineffectual and nugatory administration of the Act.

Upon consideration of all the facts of record in these proceedings the Commission finds

(1) that the prescriptive right to transport property by vessel as a common carrier held by Juhl Bros. under Decision No. 28282 in Case No. 4012 has been abandoned and should be revoked;

(2) that the permit granted Henry A. Juhl by Decision No. 29989, dated July 27, 1937, in Application No. 20469, should be revoked and annulled;

(3) that the permit sought by Henry A. Juhl and M. A. Juhl in Application No. 21659 should be denied.

(4) that Henry A. Juhl, an individual, and Henry A. Juhl, H. Juhl and M. A. Juhl, doing business as Juhl Bros. have during 1936 and 1937 engaged in the business of transporting property by vessel for compensation between points on the inland waters of the State of California without having secured a certificate of public convenience and necessity to operate as a common carrier or a permit to operate for-hire vessels; that such operations were unlawful and that they should be required to cease and desist from engaging in such unlawful operations.

O R D E R

These matters having been duly heard and submitted,

IT IS HEREBY ORDERED that the common carrier prescriptive right to transport property by vessel as a common carrier held by Henry A. Juhl, H. Juhl and M. Juhl, copartners doing business as Juhl Bros., be and it is hereby revoked and annulled.

IT IS HEREBY FURTHER ORDERED that all tariffs and schedules now filed with the Commission by Henry A. Juhl, H. Juhl and M. Juhl, copartners doing business as Juhl Bros., for the transportation of property by vessel as common carriers between points on the inland waters of the State of California, be and they are hereby cancelled.

IT IS HEREBY FURTHER ORDERED that Henry A. Juhl, an individual, and Henry A. Juhl, H. Juhl and M. Juhl, copartners doing business as Juhl Bros., be and they are hereby ordered immediately to cease and desist and thereafter abstain from transporting for compensation by vessel over the inland waters of the State of California as common carriers unless and until they shall have secured a certificate of public convenience and necessity authorizing such operation.

IT IS HEREBY FURTHER ORDERED that the permit to operate for-hire vessels granted Henry A. Juhl by Decision No. 29989, dated July

27, 1937, in Application No. 20469, be and is hereby revoked and annulled.

IT IS HEREBY FURTHER ORDERED that Henry A. Juhl, an individual, and Henry A. Juhl and M. Juhl, copartners doing business as Juhl Bros., be and they are hereby ordered to cease and desist and hereafter abstain from operating for-hire vessels for compensation for the transportation of property over the inland waters of the State of California as a for-hire vessel carrier.

IT IS HEREBY FURTHER ORDERED that Application No. 21659 be and it is hereby denied.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 27th day of June, 1938.

William W. Ware
Simon Whittell
Frank R. Kelly
Paul W. Whittell
Ray & Kelly
COMMISSIONERS.