

Decision No. 32114.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Investigation )  
by the Commission upon its own mo- )  
tion into the rates, rules, regula- )  
tions, charges, allowances, con- )  
tracts, practices and operations of )  
all common carriers as defined in )  
the Public Utilities Act of the )  
State of California, as amended, and )  
highway carriers as defined in Chap- )  
ter 223, Statutes of 1935 of the )  
State of California, as amended, re- )  
lating to the pickup and delivery of )  
property incident to line haul trans- )  
portation. )

ORIGINAL

Case No. 4403.

CRAEMER, COMMISSIONER:

A list of the appearances in this proceeding is  
contained in Appendix "A" hereof.

INTERIM OPINION

This proceeding is an investigation by the Commission on its own motion into the rates, rules, regulations, charges, allowances, contracts, practices and operations of common carriers, radial highway common carriers and highway contract carriers, relating to the transportation of property to or from their terminals, stations or depots, incidental to line haul movements. It was instituted upon representations of various interested parties that certain common carriers were attempting to attract traffic by making excessive and discriminatory payments and allowances to draymen and warehousemen for the performance of pickup and delivery services, and that this practice was causing an unnatural routing of freight.

Preliminary public hearings were held at San Francisco on April 12, 1939, and at Los Angeles on May 10, 1939, at which time a member of the Commission's rate division submitted a report of his investigation into the matters here involved. He stated that line haul carriers were found to be paying widely varying amounts to local draymen, particularly those affiliated with public warehouses, for the performance of what appeared to be similar services, and were able, thereby, to obtain the traffic which those draymen controlled. He stated, further, that, in the absence of cost data, the rates of compensation paid could not be condemned as being in excess of the cost of performing the service, but that he was convinced that cost was only an incidental factor in determining the volume of the payments. The witness recommended that, as a preliminary measure, common carriers be required to file with the Commission, as public documents, all contracts covering pickup and delivery transportation.

The Commission's witness testified, moreover, that his investigation had disclosed that common carriers in the Los Angeles metropolitan district had executed contracts directly with public warehousemen in their capacity as such, for the purpose of influencing the routing of freight controlled by those warehousemen. As a consequence, he said, warehousemen were receiving greater amounts for bringing freight to the carriers' depots than were provided for in the carriers' tariffs to be paid shippers generally. He recommended that common carriers be directed to cancel such contracts.

At the conclusion of the testimony of the Commission's witness, the hearing was adjourned to a later date for the purpose of permitting the preparation of cost data. Prior to the adjournment, however, a motion was made that the Commission give consideration to issuing an interim order requiring (1), that drayage contracts of the nature here involved be filed with the Commission as public documents, and (2), that drayage contracts executed directly between common carriers and warehousemen in their capacity as such be required to be cancelled.

No one opposed the motion that drayage contracts be required to be reduced to writing and filed with the Commission, or that contracts between common carriers and warehousemen be required to be cancelled. However, rail carriers objected to the proposal that the former contracts be filed as public documents. They contended that there is no necessity for the filing of pickup and delivery contracts as public records; that the Commission's power to require public disclosure of information contained in contracts executed between carriers should be sparingly exercised; and that to make drayage contracts available as public records would impair the carriers' ability to obtain favorable contract rates.

It is evident from the testimony already of record that, in many instances, the volume of traffic controlled by draymen is a factor, at least, in determining the rate of compensation paid to draymen by line haul carriers and that the varying amounts being paid the different draymen are not warranted by differences in transportation conditions. The filing of pickup and delivery drayage contracts with the Commission is clearly an

essential step in controlling these practices. It appears, moreover, that contracts entered into directly between common carriers on the one hand and persons or corporations acting as shippers or shippers' agents on the other hand for the payment of drayage allowances different from those published in the carriers' tariffs and paid shippers generally are in violation of Section 17 of the Public Utilities Act, and should be required to be cancelled.

I am of the opinion and find from the record made thus far that the motion hereinbefore discussed should be granted, but subject to the proviso, however, that the contracts, when filed, shall not be subject to public inspection. However, this should not be construed as a finding that, on a more comprehensive record, the Commission might not be justified in finding that such contracts should be filed as public documents.

I recommend the following form of order:

INTERIM ORDER.

Preliminary public hearings having been held in this proceeding, and full consideration having been given to the record made thus far,

IT IS HEREBY ORDERED that all common carriers, as defined in the Public Utilities Act, be and they are hereby ordered and directed to file with the Commission, not more than fifteen (15) days after the effective date of this order, two (2) copies of all contracts executed with other carriers for the performance of pickup and delivery service, or pickup or delivery service, and two (2) copies of all sub-contracts executed

by said other carriers for the performance of services agreed to be performed under the principal contract, said contracts to contain, in addition to such other provisions as may be deemed desirable, (1), the permit number of the carrier with which the contract is executed; (2) a detailed description of the service agreed to be performed thereunder; and (3) the rate of compensation to be paid.

IT IS HEREBY FURTHER ORDERED that all common carriers, as defined in the Public Utilities Act, be and they are hereby ordered and directed to file with the Commission two (2) copies of all contracts or sub-contracts executed hereafter for the performance of pickup and delivery service, or pickup or delivery service, and two (2) copies of revisions, amendments or cancellations of the existing contracts for such service, executed in accordance with the preceding ordering paragraph hereof, such filings to be made not less than one (1) day prior to the effective date of the new contracts, revisions or cancellations.

IT IS HEREBY FURTHER ORDERED that all common carriers, as defined in the Public Utilities Act, be and they are hereby ordered and directed to cancel, not more than fifteen (15) days after the date of this order, all contracts executed with persons or corporations acting as shippers or shippers' agents for the transportation of freight to or from common carrier terminals, which provide for rates of compensation different from those paid shippers generally for the same services.

This order shall become effective twenty (20) 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 27<sup>th</sup> day  
of June, 1939.

Robert W. Johnson  
George R. Deane  
Carl S. King  
H. W. Allen  
Justus J. Casner

Appendix "A"  
List of Appearances

- Amos, John L., Jr., for Western Pacific Railroad Company, Sacramento Northern Railway and Tidewater Southern Railway Company.
- Bailey, L. A., for California Warehousemen's Association and Warehousemen's Association of the Port of San Francisco.
- Baker, Gwyn, H., for Bay Cities Transportation Company, Berkeley Transportation Company, Richmond Navigation and Improvement Company, Besone Motor Express and Bakersfield-Wasco-Shafter Auto Freight Line.
- Bischoff, E. J., for Southern California Freight Lines and Southern California Freight Forwarders.
- Bissinger, E. L. H., for Pacific Electric Railway Company, Southern Pacific Company and Pacific Motor Trucking Company.
- Bradshaw, L. N., for Western Pacific Railroad Company, Sacramento Northern Railway and Tidewater Southern Railway Company.
- Brashear, H. R., for Los Angeles Chamber of Commerce.
- Brookman, Douglas, for California Motor Express, Ltd. and Valley and Coast Transit Company.
- Cantelow, H. C., for Pacific Coastwise Conference.
- Casselman, W. M., for Colgate-Palmolive Peet Company.
- Chandler, Frank M., for California Motor Express, Ltd.
- Costello, J. B., for Sperry Flour Company.
- Cron, George D., for General Motors Corporation, Chevrolet Division.
- Dartt, John L., for California Portland Cement Company.
- Differding, T. G., for Oakland Chamber of Commerce.
- Duffy, G. E., for Atchison, Topeka and Santa Fe Railway Company and Santa Fe Transportation Company.
- Fites, L. M., for Durkee Famous Foods Corporation.
- Forman, Emuel J., for Globe Grain & Milling Company.
- Foulds, E. J., for Pacific Electric Railway Company, Southern Pacific Company, Pacific Motor Trucking Company, Pacific Motor Transport Company, Visalia Electric Railroad Company, Northwestern Pacific Railroad Company and Petaluma and Santa Rosa Railroad Company.

Guthrie, Wm., for California Portland Cement Company.

Hart, E. H., for Pacific Motor Tariff Bureau and Draymen's Association of Alameda County.

Hartung, F. B., for Owens-Illinois-Pacific Coast Company.

Hays, Harold M., for Pioneer Express Company and Intercity Transport Lines.

Hendrick, Hugh, for Pacific Coastwise Conference.

Higgins, O. B., for Montgomery Ward & Company.

Hughes, Lloyd, for Montgomery Ward & Company

Hunton, G. M., for Valencia Truck Company.

Hurst, G. T., for Atchison, Topeka & Santa Fe Railway Company and Santa Fe Transportation Company.

Karr, Frank, for Pacific Electric Railway Company.

Keller, N. E., for Pacific Portland Cement Company.

Levy, Berne, for Atchison, Topeka & Santa Fe Railway Company and Santa Fe Transportation Company.

Love, Wade H., for Union Pacific Railroad Company.

Maher, E. A., for Automotive Council of Orange County.

McCutchen, Olney, Mannon & Greene, by Allen D. Matthew and F. W. Mielke, for the River Lines.

Merkelbach, Fred, for Albers Brothers Milling Company.

Miller, Charles G., for General Motors Truck Corp.

Moon, Norman, for Sperry Flour Company.

Mott, F. M., for Merchants Express Corporation and Walkup Drayage and Warehouse Company.

Munson, Charles G., for Los Angeles Warehousemen's Assn.

Rearden, J. D., for Union Oil Company of California.

Renwick, Edward C., for Union Pacific Railroad Company.

Riedy, C. J., for California Packing Corporation.

Rhode, Walter A., for San Francisco Chamber of Commerce.

Roney, J. L., for S & W Fine Foods, Inc., and Grocers Distributors Association of Northern California.

Schmitt, Fred P., for United Transfer Company.

Schumacher, A. F., for Owens-Illinois Pacific Coast Company.



Siddons, Lowe P., for Holly Sugar Corporation.

Smith, C. H. for Davies Warehouse Company.

Stern, Edward, for Railway Express Agency, Incorporated.

Stone, W. G., for Sacramento Chamber of Commerce.

Vaughan, Reginald L., for California Warehousemen's Association, Warehousemen's Association of the Port of San Francisco and Pacific Coastwise Conference.

Vizzard, J. F., for Draymen's Association of San Francisco and Federated Terminals, Inc.

Ware & Berol and Marvin Handler for Truck Owners Association of California.

Wilcox, E. G., for Cannery League of California and Dried Fruit Association of California.

Williams, E. G., for Grocers Distributors Association of Northern California.