Decision No. 33263

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Investigation on the Commission's own motion into the operations, rates, charges, contracts, and practices of CONSOLIDATED FREIGHTWAYS, INC., a corporation.

Case No. 4494

Donald A. Schafer and Thomas J. White, for Consolidated Freightways, Inc.

Douglas Brookman, for California Motor Express, Ltd., interested party.

J. F. Vizzard, for Draymen's Association of San Francisco, interested party.

A. J. Gaudio, for Southern Pacific Company, interested party.

DEVLIN, COMMISSIONER:

OPINION

The basic question to be determined in this matter is whether respondent, who performs local transportation service in connection with the distribution of pooled shipments from out-of-state destinations, must adhere to minimum rates established by the Commission.

The proceeding was instituted to ascertain whether respondent Consolidated Freightways, Inc., was operating as a city carrier without a permit at rates lower than those prescribed by the Commission as minimum in Decision No. 28632, as amended, in Case No. 4084, and, if so, whether it should be ordered to cease. Respondent obtained a city carrier permit subsequent to the commencement of this case; hence, the only question remaining is whether respondent should be

ordered to desist if it does not abide by said minimum rates.

The case was submitted upon briefs filed after the taking of evidence at a public hearing held in San Francisco on April 19, 1940.

The facts are not in dispute. Respondent is a Washington corporation with its principal office in Portland, Oregon. It conducts two types of business, an interstate motor freight operation and a pool car distribution service. The latter is under consideration here.

The pools here involved consist of many articles or lots shipped by one out-of-state consignor to numerous consignees at various destinations, consolidated, to obtain lower freight rates, into a single shipment for transportation from place of origin to a distribution point. The pooled shipments move to the distribution point by rail or water carriers procured by the shipper. There, respondent, who has been notified by the shipper of the arrival of such shipments and furnished with distribution instructions including names and addresses of ultimate consignees of the various lots, breaks the bulk. Component parts intended for consignees beyond the distribution point are reshipped by respondent, while lots destined to consignees at the distribution point are delivered by respondent on its own trucks. Separate arrangements are made by the shipper with the pool carrier and the respondent. There is no connection through either ownership or management between respondent and the line-haul carrier. Neither is there any arrangement between them, as respects the distribution service, for joint rates, through bills of lading, advancement or absorption of charges. San Francisco is a distribution point and the local delivery in that city by respondent from pool to consignee raises the question to be disposed

of in this case.

Respondent solicits this distribution business from the out-of-state shipper at rates admittedly less than the minimum rates prescribed by the Commission for city carriers performing similar local transportation. Counsel for respondent does not challenge the reasonableness of the minimum rates established by the Commission, but does question the jurisdiction of the state to compel respondent to assess such rates for local delivery in connection with its pool distribution service on the grounds of interference with and burden upon interstate commerce.

It is obvious that if respondent's local delivery in San Francisco is intrastate commerce, the Commission has jurisdiction, under the City Carriers' Act (Stats. 1935, ch. 312, as amended), to prescribe minimum rates therefor. However, as it is conceded by counsel in this case that such transportation is interstate commerce, it will be so considered. The question to be decided, then, is whether the delivery of pooled shipments by respondent wholly within San Francisco is subject to the minimum rates established by the Commission. It is recognized that the power to regulate interstate commerce is conferred upon Congress by the Constitution. However, no federal regulation treats of the transportation here involved except the Motor Carrier Act, 1935, which confers upon the Interstate Commerce Commission jurisdiction over highway carriers engaged in interstate commerce. This Act, by Section 203(b)8, expressly exempts from its application such local delivery service as that performed by respondent. Said section reads in part as follows:

> ". . . nor unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the policy of Congress . . . shall the provisions of this part . . . apply to:

> (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality . . . except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality . . ."

It is evident from the agreed facts that the transportation performed by respondent in San Francisco is wholly within the municipal limits. Furthermore, it is not "under a common control, management, or arrangement for a continuous carriage or shipment" within the meaning of said section as construed by the Interstate Commerce Commission. See Bigley Bros. Inc., Contract Carrier Application No. M.C. 49296; Glenn Hughes, Common Carrier Application No. M.C. 88207; and A. L. Tucker, Common Carrier Application No. M.C. 66685.

It is too well settled to require citation of authority that where the federal government has not acted with respect to interstate commerce the state may do so if the matter is of local concern not requiring national uniformity. Here it is evident from the facts that respondent's local delivery in San Francisco is not contractually a part of the line-haul transportation, but is arranged by the shipper independently thereof. Thus, the local delivery is a matter of domestic concern subject to regulation by this state in the public interest. To require respondent to charge at least as much for local delivery as minimum rates prescribed for city draymen performing similar transportation would not burden interstate commerce. Respondent's charge is added to the line-haul rate and in no way affects it. There is no discrimination against interstate commerce, nor are tariff barriers erected against it. A minimum parity of rates is prescribed, applicable to all carriers performing a comparable service. Moreover, such state regulation is in nowise inconsistent with federal regulation as it harmonizes exactly with the control exercised over motor carriers by

the Interstate Commerce Commission pursuant to the Motor Carrier Act, 1935. Hence, it is concluded that the state through this Commission has the legal right to require respondent to adhere to the minimum rates established for city carriers when making local deliveries in connection with pool distribution.

The following form of Order is submitted.

O R D E R

The Commission having instituted the above entitled investigation, public hearing having been held thereon for the taking of evidence, briefs having been filed, the matter having been submitted for decision, and based upon the record and factual findings contained in the above opinion,

It is hereby found that Consolidated Freightways, Inc., has engaged in the transportation of property in the City and County of San Francisco as a city carrier at rates less than the minimum rates prescribed therefor by Decision No. 28632, as amended, in Case No. 4084. Now, therefore, good cause appearing,

IT IS ORDERED that Consolidated Freightways, Inc., cease and desist and hereafter abstain from charging and collecting for transportation, as a city carrier, rates less than the applicable minimum, lawful rates established by order of this Commission.

The Secretary is directed to cause a certified copy of this opinion and order to be personally served upon Consolidated Freightways, Inc.

The effective date of this Order shall be twenty (20) days

from and after the date of service thereof.

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, San Francisco, California, this 3rd day of July, 1940.

Commissioners