Decision No. 30729

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CERTIFICATED HIGHWAY CARRIERS, INC., a corporation, Complainant, vs. PACIFIC MOTOR TRANSPORT COMPANY, a corporation, THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a corporation, SOUTHERN PACIFIC COMPANY, a corporation, and VISALIA ELECTRIC RAILROAD COMPANY, a corporation, Defendants.	Case No. 4219

ORIGINAL

BY THE COMMISSION:

Appearances

Wallace K. Downey, for the Complainant.
G.E. Duffy and E.C. Pierre, for The Atchison, Topeka & Santa Fe Railway Company, defendant.
R.E. Wedekind and J.E. Lyons by R.E. Wedekind, for the Southern Pacific Company, Pacific Motor Transport Company and Visalia Electric Railroad Company, defendants.

OPINION ON REHEARING

Complainant in the above entitled matter alleged that certain rules published by defendants with regard to the advancing of draying and trucking charges were unjust, unreasonable, discriminatory, prejudicial and contrary to the provisions of the Public Utilities Act. It prayed that defendants be required to cease and desist from maintaining said rules. After public hearing and the filing of briefs a decision was issued ordering defendants to cease, desist and abstain from maintaining the assailed rules unless the privileges and services therein granted to certain classes of common carriers were similarly accorded to all common carriers at like points and under like circumstances and conditions. (Decision No. 30729 of March 28, 1938, 41 C.R.C. 172). Thereafter, a petition seeking the setting aside of the decision and the

granting of a rehearing was filed by defendants. Rehearing was granted and, by agreement of the parties, the matter was submitted through the medium of written memoranda. The memoranda submitted were confined to legal argument based upon the record made at the original hearing.

The assailed rules provide, in substance, that charges directly incidental to the transportation of freight on which a line haul is received may be advanced to connecting railways, ocean carriers, inland water carriers, Railway Express Agency, Inc., Pacific Motor Transport Company, shippers, warehouses, storage houses, dray lines, motor truck lines or motor transportation companies. These rules contain an exception, however, providing that no drayage or trucking charges will be advanced to truck carriers or draymen for movements from points outside the switching limits or corporate limits of the point where freight is received. It is to this exception that complainant objects.[1]

---

[1] A rule typical of those here involved is contained in Item No. 3910 of The Atchison, Topeka & Santa Fe Tariff No. 8117-O, C.R.C. No. 724. This rule reads as follows:

"Charges directly incidental to the transportation of freight, on which this Company receives a line-haul, may be advanced (see Exceptions Nos. 1 and 2) to connecting railways, ocean carriers, inland water carriers, Railway Express Agency, Inc., Pacific Motor Transport Company, shippers, warehouses, storage houses, dray lines, motor truck lines or motor transportation companies. Parties to whom such charges are advanced must furnish satisfactory guarantee covering refund thereof in event collection cannot be made at destination.

"EXCEPTION NO. 1 - No drayage or trucking charges will be advanced for movements from points outside the switching limits or corporate limits (see Note) of the Point where freight is tendered to this Company.

"EXCEPTION NO. 2 - Customs duties, charges incidental to reconditioning of freight, the cost of the articles shipped or any part thereof, must not be advanced.

"NOTE - At Los Angeles, drayage or trucking charges will be advanced on shipments having origin within the following described area: ***"

There is little dispute concerning the facts of record. Complainant testified that the amount of money involved is small and that the objection goes to the "annoyance" to which truck carriers are put.[2] Defendants, in effect, admit that they do, or at least will if circumstances require, advance charges to connecting railroads, ocean carriers, inland water carriers, Railway Express Agency, Inc. and Pacific Motor Transport Company as provided by their tariffs, but decline to make such advances to trucking carriers in connection with movements outside the switching or corporate limits of the point where the freight is tendered to them.

By its Decision No. 30729, supra, the Commission found that defendants' practice of advancing charges to certain common carriers without doing so for all common carriers similarly situated resulted in a violation of Section 22(a) of the Public Utilities Act. No violation of any other provision of the Act was found.

There has been no factual addition to this record nor has complainant, by way of argument, made it appear that there has been a violation of any other section of the Public Utilities Act. The amount involved is small and there is no showing of any damage or injury to the shipping or receiving public. While the record suggests certain inconveniences to complainant, it likewise shows

---

[2] The following is from the testimony of the Auditor of the Pacific Freight Lines:

> Q. About how much, so far as the Pacific Freight Lines is concerned, how much would the advances amount to in the course of a month?
> A. It is a very nominal figure; I would say it would probably not exceed $50, probably less.
> * * *
> Q. Rather a small item, but a big annoyance, is that it?
> A. It is an annoyance; that is all.
> (Tr. pp. 25 and 26.)

that if the desired relief were granted, inconveniences at least as great as those here complained of would be placed upon defendants. As pointed out in Decision No. 30729, supra, it has been contended that defendants' practice results in delaying shipments, but only one instance of such delay was cited, and as to that, it was admitted that the delay could readily have been avoided by requiring prepayment of the charges. This does not constitute a showing of unreasonableness or undue preference and prejudice under Section 13, 17 or 19 of the Public Utilities Act.

Nor are we, as the matter now stands, convinced that the rule in question results in a violation of Section 22 (a) of the Act. That section requires common carriers to afford all reasonable, proper and equal facilities for the prompt and efficient interchange and transfer of passengers and property, and to make such interchange and transfer promptly without discrimination either as to compensation charged, service rendered, or facilities afforded. Upon further consideration, we are unable to conclude on this record that the advancing of charges constitutes a facility of interchange and transfer, or a compensation charged or a service rendered in connection therewith, within the meaning of Section 22 (a) of the Act. But even though it were within the provisions of that section, it could not be said that complainant had made a showing of undue discrimination.

Upon careful consideration of all the facts of record, we are of the opinion that no violation of the provisions of the Public Utilities Act has been shown and that Decision No. 30729 in this proceeding should be vacated and the proceeding dismissed.

O R D E R

A rehearing having been granted in the above entitled matter, the matter having been submitted upon the record made at the original hearing and upon written memoranda on rehearing, and the Commission having given careful consideration to the matters and things involved,

IT IS HEREBY ORDERED that Decision No. 30729 of March 28, 1938, in the above entitled proceeding, be and it is hereby vacated and set aside.

IT IS HEREBY FURTHER ORDERED that the complaint in the above entitled proceeding be and it is hereby dismissed.

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

Dated at San Francisco, California, this 11th day of February, 1941.

Commissioners.