

ORIGINAL

Decision No. 35397

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PACIFIC FREIGHT LINES, a corporation,)
SOUTHERN CALIFORNIA FREIGHT LINES, a)
corporation, SOUTHERN CALIFORNIA)
FREIGHT FORWARDERS, a corporation, and)
CITY TRANSFER AND STORAGE COMPANY, a)
corporation,)

Case No. 4412

Complainants,

vs.

A.R. READER and PHIL READER, co-partners,)

Defendants.)

H. J. BISCHOFF and WALLACE K. DOWNEY,
for Pacific Freight Lines, Southern
California Freight Lines, Southern
California Freight Forwarders, and
City Transfer and Storage Company,
complainants.

ARTHUR GLANZ, for A. R. Reader and PHIL
READER, co-partners, defendants.

BY THE COMMISSION:

OPINION ON REHEARING

By Decision No. 33843, rendered in this matter on
January 28, 1941, (43 C.R.C. 280), we found unlawful the operations
conducted by defendant co-partners, A. R. Reader and Phil Reader,
as a highway common carrier "between the city of Los Angeles
(original grant) on the one hand, and that portion of said city
known as Wilmington and San Pedro, other than from or to steamship
docks or wharves located therein, on the other hand;" and said
defendants were directed to cease and desist from conducting such
a service between those points. By that decision we held, in

(1)
substance, that Decision No. 12823, rendered in the Hodge case, defined the scope and extent of defendants' operative rights between the points mentioned; that said decision was conclusive upon defendants, since it had become res adjudicata; and that said decision, standing alone, and in the light of admissable extrinsic evidence, did not authorize defendants to engage in the operations in question.

By their petition for rehearing, seasonably filed, and which operated as a stay, defendants contend that the decision in the Hodge case was misconstrued; and that due weight was not accorded certain extrinsic evidence offered in aid of that decision, viz.: the stipulation entered into between certain parties to that proceeding and referred to in said decision, and the tariffs filed by certain defendants therein pursuant to said decision, both of which were binding upon and inured to the benefit of the predecessor in interest of defendants herein. Defendants concede that the Hodge decision determined the scope and extent of their operative right, and, also, that it must be deemed res adjudicata.

Argument on the petition for rehearing was had in Los Angeles on November 6, 1941, when the matter was submitted.

We shall consider the major points urged by defendants as grounds for rehearing. In support of their first contention that the decision in the Hodge case was erroneously construed, defendants assert that in that proceeding the determination of the

(1) Hodge Transportation System, et al, v. Ashton Truck Company, et al, (Decision No. 12823, in Case No. 1571, rendered November 14, 1923) 24 C.R.C. 116.

territory that could lawfully be served by defendants therein was but a secondary issue; and that, since it was conceded by our decision herein that the terms, "Harbor District," and those of similar import, wherever they appeared in the Hodge decision, were synonymous with the term "Docks and Wharves," that decision should not be construed restrictively so as to limit defendants' service to the steamship wharves alone.

It is true that, in that proceeding, the major issue presented for determination involved the Commission's jurisdiction to certificate an operation conducted by a "transportation company," as highway common carriers were then known, between different parts of the same city over routes extending in part beyond the city limits. However, as we pointed out in our decision herein, the pleadings in that case clearly raised an issue as to the territorial scope of the operative rights in question, and evidence bearing upon that issue was offered and received.

Though various terms were employed by the opinion in the Hodge case to designate the terminals at Wilmington and San Pedro, served by defendants therein, including the predecessor of defendants herein, viz.: California Truck Company, the findings announced in that decision are clear and definite in this respect. Throughout the body of the opinion appear such expressions as "Harbor," "Harbor District," "Los Angeles Harbor (Wilmington and San Pedro)," "Wilmington and San Pedro," the "Steamship Wharves and Docks located at Los Angeles Harbor (Wilmington and San Pedro)," the "Docks, Wharves and Warehouses located at Los Angeles Harbor (Wilmington and San Pedro)," and similar terms. In this respect, the decision, perhaps, was not so clear and definite as might

have been desired, but the findings of fact tell a different story. In three distinct paragraphs, dealing with all phases of said defendants' operations, it is stated specifically that certain defendants, including California Truck Company, had been operating as "transportation companies," on the "grandfather" date prescribed by the Auto Stage and Truck Transportation Act (Statutes 1917, Chapter 213) between the fixed termini of the city of Los Angeles (original grant) and the steamship wharves and docks located at Los Angeles Harbor (Wilmington and San Pedro) *****" (emphasis supplied).

These findings which bear upon their face evidence of careful draftsmanship, must now be accepted as a crystallization of the Commission's conclusions concerning the scope of the operations conducted by the defendants therein. Unlike the body of the opinion which, as we have shown, employed various terms to describe defendants' operations, each paragraph of the findings dealt with operations conducted to and from the "wharves and docks." We must conclude, therefore, that these terms were used advisedly and restrictively. They were designed to limit the operations of the defendant carriers to the steamship wharves and docks at Wilmington and San Pedro. In this respect, the decision in the Hodge case is clear and definite.

This brings us to the contention that our decision herein failed to give full effect to the stipulation of the parties in the Hodge case, and to the tariffs filed by the defendant carriers pursuant to that decision. Defendants herein assert that the stipulation and the tariffs, if admissible in aid of the decision in the Hodge case, compel the conclusion that by that decision we upheld as lawful the service thereafter conducted by defendants' predecessor, and subsequently by defendants herein,

to and from points at Wilmington and San Pedro other than the steamship wharves and docks. The Commission, they contend, was bound to give effect to the stipulation, which, they assert, indicates that California Truck Company at times had served points at Wilmington and San Pedro in addition to the wharves and docks. Defendants also assert that the service area described in the tariffs filed by California Truck Company, pursuant to the Hodge decision, was more extensive than the steamship wharves and docks at Wilmington and San Pedro. These tariffs, they contend, were received and accepted by the Commission, and the service conducted thereunder has thus been recognized as lawful.

Defendants also assert that, although the stipulation and the tariffs purportedly were received in aid of the decision in the Hodge case, to serve as a guide in arriving at the proper interpretation of that decision, the Commission, nevertheless, by its decision herein, has effectively precluded their use for this purpose. Such a result, they claim, flows from our having assertedly adopted a preconceived construction of the Hodge decision, and of our having thereupon rejected the stipulation and the tariffs to the extent they may have conflicted with such an interpretation. Because of this assumption, it is said, the Commission has erroneously construed that decision.

It is clear, however, that in the light of the construction we have now placed upon our decision in the Hodge case, we may not resort to extrinsic evidence such as the stipulation or the tariffs to arrive at the proper meaning of that decision. The specific findings of fact, as we have shown, were clear and definite. By their terms the operations of defendants' predecessor were limited to the steamship wharves and docks.

Moreover, the stipulation was but part of the evidence upon which the Commission relied in arriving at a final determination. If the decision was inconsistent with the stipulation, then the former must now be accepted as controlling. And the tariffs, no matter how extensive their provisions may have been, cannot now be resorted to for the purpose of expanding the meaning of the terms employed in the decision, which clearly and definitely fixed the scope of the operative right of defendants' predecessor.

For the reasons mentioned, we believe there is no merit in defendants' petition for rehearing, and accordingly it will be denied.

ORDER ON REHEARING

The defendants herein having applied for a rehearing; said petition having been duly considered and oral argument having been had thereon; and the Commission being now fully advised:

IT IS ORDERED that said petition for rehearing be and it hereby is denied.

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

Dated at San Francisco, California, this 19th day of May, 1942.

Justus F. Calver
Chas. L. Bailey

Richard Jackson
COMMISSIONERS