Decision No. 36856

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the operations, rates, charges, contracts, and practices of Frank Nolan, doing business as Frank Nolan Drayage Company.

ORIGINAL

Case No. 4568

BY THE COMMISSION:

Appearances

Dinkelspiel & Dinkelspiel by Fred S. Herrington for respondent.
Spurgeon Avakian for Transportation Department, Railroad Commission

O P I N I O N

This is an investigation instituted by the Commission on its own motion into the operations, rates, charges, contracts and practices of Frank Nolan, doing business as Frank Nolan Drayage Company. The purposes of the investigation are (1) to determine whether or not respondent, operating as a carrier under the City Carriers' Act (Statutes 1935, Chapter 312, as amended), performed transportation and accessorial service for the City and County of San Francisco at rates and charges less than those prescribed as minima in re Rates of San Francisco City Carriers (39 C.R.C. 636, as amended); and (2) to determine, if it should be found that rates and charges assessed and collected for the aforesaid service were less than the established minima, whether or not respondent should be ordered to cease and desist from performing service at lesser rates and charges than those prescribed as minima, and whether or not respondent's permit should be revoked or suspended for such violation of the Commission's minimum rate orders.

The matter was submitted at a public hearing had at San Francisco before Examiner Mulgrew.

In October, 1940, respondent undertook to transport cast iron pipe for the City and County of San Francisco from railroad facilities of the Southern Pacific Company designated as "Team Track No. 918" to the city's pipe yard located at Bacon and Boudoin Streets. This undertaking was covered by an agreement which specified that charges would be based on a rate of $1.70.[1] Pursuant to this agreement respondent transported 302.47 tons of pipe for the city in November, 1940, and collected $514.20 for the transportation. The pipe, however, was not transferred from rail cars to respondent's trucks at the team track specified in the agreement. Instead, the transfer was made at railroad facilities situated in the block bounded by Sixth, Seventh, King and Berry Streets. It was explained that respondent elected to have the pipe delivered to him at this location because these facilities included a derrick while those at "Team Track No. 918" did not. The use of the derrick made it possible for respondent to handle the pipe with greater safety and speed.

The minimum rates established in Rates of San Francisco City Carriers, supra, generally vary according to the classification of the property. They also vary according to the location of point of origin and destination with respect to the prescribed zoning arrangements. Cast iron pipe is classified at 4th class. "Team Track No. 918" is partially within Zone 1 and partially within Zone 2; the team track where the pipe was actually transferred is wholly within Zone 1; and the pipe yard is situated in Zone 3.

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[1] Rates will be stated in dollars per ton of 2,000 pounds throughout this opinion.

The prescribed 4th class rates for shipments in minimum quantities of 3 tons, which have been in effect since July, 1937, are $1.70 for transportation from Zone 2 to Zone 3 and $1.80 for transportation from Zone 1 to Zone 3.

No change was made in the agreement between respondent and the city. Respondent evidently made the arrangements to receive the pipe at a different point than that specified in the agreement on his own initiative and for his own benefit, without consulting the city. There is no indication, however, that this deviation from the shipper's instructions was intended to be used as a device or means of defeating or avoiding the prescribed minimum rates. That it was the city's purpose to have respondent receive the pipe at a point within Zone 2 is evidenced by the fact that the Zone 2-toZone 3 rate of $1.70 was incorporated in the agreement. Had respondent not chosen to accept the property at a point other than that specified by the city in its tender of this freight, there would be no question of the applicability of the $1.70 rate.

On the other hand, it is likewise clear that the pipe was transported from a point in Zone 1 to a point in Zone 2 and that a minimum rate of $1.80 has been established for this transportation. In the circumstances, however, we are constrained to view respondent's observance of a lower rate as a violation of the prescribed minimum rate structure which, because of the facts and circumstances surrounding the particular transaction here being considered, does not warrant punitive action. Respondent is admonished that he is not free to deviate from the established minimum rates without first obtaining the express approval of the Commission even though such a deviation may be occasioned by following a course of action designed solely for his own convenience and benefit.

There remains for determination whether the delivery service performed by respondent at the pipe yard was confined to that permitted to be performed under the basic transportation rate or whether the nature of this service was such that accessorial charges are properly applicable. Under the prescribed minimum rate structure the transportation rates include "truckside" delivery without additional charge. Subsequent to the movement of the traffic involved in this investigation, the Draymen's Association of San Francisco urged that the term "truckside" be defined as pickup or delivery from and to points not more than 20 feet distant from carrier's equipment. The Association contended that the draymen had generally considered "truckside" pickups and deliveries as being confined to within 20 feet from their equipment but that, nevertheless, the question of what minimum rates were applicable had arisen in connection with shipments handled for distances as great as 70 feet. In granting the Association's request and modifying the minimum rate structure accordingly, we observed that the proposed maximum distance of 20 feet appeared to be that generally applied by the draymen. We held that the adoption of such a limitation was desirable in order to remove the then existing uncertainty with respect to the meaning of the term "truckside" (see Decision No. 33874 of February 4, 1941).

The fact that the transportation of the pipe here in issue may have included deliveries at points somewhat more distant than the 20 feet then generally observed by the draymen on a voluntary basis as the limitation on "truckside" deliveries does not conclusively establish that these were not "truckside" deliveries. Until this limitation was adopted and prescribed by the Commission, there was no specific distance restriction in connection with "truckside" deliveries.

Upon consideration of all the facts of record, we are of the opinion and find that the investigation should be discontinued.

O R D E R

Based upon the evidence of record and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that the above entitled proceeding be and it is hereby discontinued.

Dated at San Francisco, California, this 5th day of February, 1944.

Richard Mack

James D. Coleman

Frank R. Havenner

Commissioners