

Decision No. 38266

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Clement Street Merchants Association,
Complainant,

vs.

Southern Pacific Company, The Atchison,
Topeka and Santa Fe Railway Company and
The Western Pacific Railroad Company,
Defendants.

ORIGINAL

Case No. 4774

BY THE COMMISSION:

Appearances

Edgar C. Levey, for complainant;
James E. Lyons, Wm. Meinhold and Charles
A. Burkett, Jr., for Southern
Pacific Company, defendant;
Starr Thomas and T. M. Calazza, for The
Atchison, Topeka and Santa Fe Railway
Company, defendant.
John E. Hennessey, for The Western Pacific
Railroad Company, defendant.
Russell Bevans, for Federated Terminals
Company.

O P I N I O N

Complainant is an unincorporated association of San Francisco merchants. Business establishments of its members are situated on Clement Street from Arguello Boulevard to Funston Avenue. It alleges that defendants have made pickup and delivery service available on Geary Street between these thoroughfares, have restricted such service on Clement Street to the block extending from Eighth to Ninth Avenue, have unjustly and arbitrarily refused to extend their Clement Street service from Arguello Boulevard to Eighth Avenue and from Ninth Avenue to Funston Avenue, and have thus

created and worked an unfair discrimination against these Clement Street merchants. An order is sought requiring defendants to extend the pickup and delivery area by including therein Clement Street from Eighth Avenue to Arguello Boulevard and from Ninth Avenue to Funston Avenue.

A public hearing was held at San Francisco on September 7, 1945, before Examiner Mulgrew.

Clement and Geary are parallel streets, one block apart, in the same business district. In this district, more retail stores and other business establishments are located on Clement than on Geary. Merchants situated between Arguello Boulevard and Funston Avenue on these streets deal in similar wares, sell like goods at equal prices, and in these and other respects actively compete for the available trade. Defendants provide pickup and delivery service for the Geary Street but not for competing Clement Street establishments. The latter are required to absorb drayage charges applicable to cartage from or to their places of business in order to secure pickup or delivery of freight destined to or originating at points beyond San Francisco over defendants' lines.

In their written answers to the complaint, all of the defendants denied its material allegations. At the hearing, however, counsel for Southern Pacific Company stated that it would enlarge its pickup and delivery area so as to include the locations covered by this complaint. The position of The Atchafalaya, Topeka and Santa Fe Railway Company and The Western Pacific Railroad Company, as expressed at the hearing, is that the complaint is sound and that, were it possible for them to do so, they would likewise voluntarily provide this service. They contend, however, that because of manpower and equipment shortages they are unable to

institute service at this time. They are supported in this stand by Federated Terminals which, under contract, renders their San Francisco pickup and delivery service. Its facilities assertedly are utilized to the fullest extent under existing obligations and cannot be expanded except with extreme difficulty and at increased costs.

It is not urged, and the record in no way suggests, that transportation conditions surrounding the rendition of pickup and delivery service for the Clement Street business establishments would differ in any important respect from those surrounding the providing of this service for the competing Geary Street concerns. These streets are in the same business district and are but one block apart. The record demonstrates that defendants' failure to supply pickup and delivery service to the Clement Street area in question prejudices and disadvantages merchants located in that area. Unreasonable differences are maintained between the service and rates available to these merchants and the service and rates available to their Geary Street competitors. Common carriers cannot escape their public utility obligation to maintain no such differences by a plea that their agent is unable, because of the manpower and equipment shortages and outstanding commitments, to provide required additional service. There is no essential difference between a refusal to extend the boundary of the pickup and delivery area so as to include all those similarly situated from a transportation standpoint and a refusal to accord service to new patrons located within an existing area. Like treatment must be given all who are so situated that there is no material difference in conditions surrounding the rendition of service. Facilities available to defendants for pickup and delivery service should be so utilized that all who are entitled to the service receive it to the full extent of

defendants' ability to perform. The service may not properly be withheld from the Clement Street area here involved while defendants continue to provide it for the Geary Street and other territory within the present boundaries. Defendants will, therefore, be ordered and directed to extend their pickup and delivery limits accordingly. The question of increased costs raised by defendants is not a matter requiring consideration in this proceeding. If increases in pickup and delivery rates should prove to be necessary, the remedy is to apply under Section 63 of the Public Utilities Act for the increases considered justified.

O R D E R

This case being at issue upon complaint and answer on file, full investigation of the matters involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendants Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, and The Western Pacific Railroad Company be and they are and each of them is hereby ordered and directed, within thirty (30) days from the effective date of this order, to extend their pickup and delivery limits at San Francisco so as to include all of Clement Street between Arguello Boulevard and Funston Avenue.

IT IS HEREBY FURTHER ORDERED that the tariff publications required to be made as a result of the order herein may be made on not less than three (3) days' notice to the Commission and to the public.

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

October Dated at San Francisco, California, this 2nd day of
September, 1945.

Harold Ruden
Justus F. Crauser

Maura O'Connell
Samuel J. Luce
Commissioners