

Decision No. 41597

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the establishment)
of rates, rules and regulations for)
the transportation of property by)
common carriers as defined in the)
Public Utilities Act and highway car-)
riers as defined in the Highway Car-)
riers' Act.)

Case No. 4246

Appearances

Willard S. Johnson, for Hills Transportation Co.
petitioner.

Garrett McEnerney II, for Hearst Publishing Co.,
Inc., intervener in support of
petitioner.

J. M. Souby, Jr., for The Atchison, Topeka and
Santa Fe Railway Company, and William
Meinhold, for Southern Pacific Com-
pany, protestants.

SUPPLEMENTAL OPINION

Minimum rates, rules and regulations established for line-haul transportation of general commodities throughout the State by radial highway common and highway contract carriers are set forth in Highway Carriers' Tariff No. 2 (Appendix "D" of Decision No. 31606, as amended, in this proceeding). Under the provisions of the tariff, the transportation of "newspapers (not scrap or waste)" is exempt from the established minimum rates. By petition, Hills Transportation Co. seeks interpretation of these provisions to the effect that straight shipments of "The Comic Weekly" and "The American Weekly" sections of the San Francisco and the Los Angeles Examiners are shipments of newspapers within the meaning of the aforesaid exemption. Should such an interpretation be deemed improper, petitioner seeks specific exemption of the newspaper sections in question.

A public hearing was had at San Francisco before Examiner

Jacopi.

The San Francisco and the Los Angeles Examiners are daily newspapers. The record shows that their Sunday issues are comprised of a number of different sections including "The Comic Weekly" and "The American Weekly." Most of the sections are printed in the respective plants. However, the "American Weekly" section for both newspapers is printed in the San Francisco plant and the "Comic Weekly" section is printed in the Los Angeles plant. The printing of these sections is usually completed seven to eight days prior to the publication date of the Sunday newspapers of which they are to become a part. Petitioner transports them between Los Angeles and San Francisco. The northbound and southbound movements average 60 and 65 tons per week, respectively.

A witness for petitioner testified that he had participated in the negotiation of the contract under which the transportation service in question has been performed. He said that after careful consideration of the character of the sections, the provisions of Highway Carriers' Tariff No. 2, supra, and the definitions of the terms "newspaper" and "news," it was concluded by those concerned that transportation of the sections separately from the complete newspaper was exempt from the established minimum rates.

The witness asserted that he had reviewed the matter and that he was still of the opinion that the minimum rates are not applicable to the transportation involved. He urged that the term "newspapers" used in the exemption provision has the effect of exempting all publications that possess the contents and characteristics of a newspaper. The witness contended that component parts of newspapers which possess such characteristics are newspapers

within the meaning of the exemption from the moment they are published. He asserted that transportation of any component part separately from the newspaper of which it is to become a part does not change the character of the component part and remove it from the scope of the aforesaid exemption provisions. The witness urged that the sections in question contain comment, news stories, articles dealing with current events and other matters of general interest, comics and paid advertising, and that they therefore separately possess the characteristics of a newspaper. He asserted that his basic views find support in a recent decision of the U.S. District Court of New Jersey in Friedman's Express, Inc. vs. Mirror Transportation Company, Inc. (71 Federal Supp. 991) involving transportation of comic sections similar to that involved here. In any event, he said, if it was not intended to exempt the sections in question from the minimum rates, the tariff provisions are ambiguous and uncertain because they fail clearly to express that intent.

The traffic manager of the San Francisco Examiner testified that the separate sections comprising the Sunday issues are assembled into a unit which is regularly sold to the public as a complete newspaper. He asserted that the "Comic" and "American" sections are regular component parts of such issues. The witness introduced in evidence copies of typical Sunday issues of both papers. He pointed out that the newspaper mastheads and publication dates appeared on all sections comprising the newspapers and that the "Comic" and "American" sections were specifically designated in the mastheads as sections of the newspapers in question. The mastheads, dates and designations, he said, were printed at the same time as the sections themselves. The witness corroborated other testimony to the effect that in addition to the comic material and other matters of general reader interest, the sections contained

illustrated news and editorial comment.

The traffic manager asserted that the transportation characteristics of the two sections are similar to those of newspapers. He said that the sections are printed on the same basic stock as that used for the other Sunday sections and for the weekday issues. The witness maintained that preparation of the sections for shipment, and the density and damage risk are no different than for newspapers. He alleged that the value per 100 pounds compared favorably with that of newspapers.

Counsel for the Santa Fe and Southern Pacific railroads objected to petitioner's proposals. They contended that the existing exemption was intended to cover public distribution of newspapers and they requested that in reaching a conclusion in this matter the Commission review the evidence on which the exemption was based. They urged that, in the event the tariff provisions are considered ambiguous, they should be amended to exempt from the minimum rates only complete newspapers in accordance with the purpose of the exemption.

Petitioner introduced considerable evidence to show that "The American Weekly" and "The Comic Weekly" sections of the Sunday issues of the Los Angeles and San Francisco Examiners possess in and of themselves certain characteristics of newspapers. The evidence, however, also shows that the different sections of the Sunday issues of the newspapers in question are assembled into a unit which is regularly offered and sold to the public as a complete newspaper. Exhibits of record and evidence relative thereto further show that the "American" and "Comic"

are specifically designated in the mastheads appearing thereon as sections of particular issues of the two newspapers, and that the sections are not separately sold to the public. The exemption provision in Highway Carriers' Tariff No. 2 involved herein reads: "Newspapers (not scrap or waste)." It is well established that for transportation rate purposes the terms used in tariffs must be taken in the sense in which they are generally understood and accepted commercially. On this basis, the evidence of record indicates that the "American" and "Comic" sections are recognized as newspaper sections or component parts of newspapers, and that the term "newspapers" is recognized as indicating complete newspapers as distributed to the public. Moreover, Decisions Nos. 31606 and 33559 in this proceeding show that the exemption of newspapers was intended to cover the specialized transportation involved in distribution of complete newspapers. Nothing in that record indicates that the exemption was intended to cover sections or component parts of newspapers when shipped separately.

Friedman's Express, Inc. vs. Mirror Transportation Company, Inc., supra, cited by petitioner was an action to enjoin defendants from transporting "comic newspaper supplements" in interstate commerce without a certificate of public convenience and necessity. The action involved Section 203(b) of the Interstate Commerce Act which provides that the certificating provisions of the act do not apply to "motor vehicles used exclusively in the distribution of newspapers." According to the Court, it had to determine the intent of Congress when it enacted the exemption provision in question. No tariff provisions were involved. The Court held that a comic supplement

designed as a part of a newspaper is a "newspaper" within the statutory exemption there in issue, notwithstanding that such comic supplement has not yet been joined with other component parts of the newspaper. It will be noted that the Court indicated that the comic supplement involved and the other newspaper sections are "component parts of the newspaper." The conclusion of the Court is not controlling in the circumstances here.

With respect to petitioner's alternative request for specific exemption of the newspaper sections in question, the evidence of record shows that the transportation involved is performed from a newspaper plant in one city to one in another city where the sections transported are assembled with others into complete Sunday newspapers. It has not been shown that the established minimum rates are improper for such transportation, nor that it involves circumstances and conditions substantially similar to those attending the distribution of newspapers. Petitioner's alternative request will be denied. Authority to charge less than the established minimum rates as provided for in Section 11 of the Highway Carriers' Act was not sought here.

Upon consideration of all of the facts and circumstances of record, we are of the opinion and hereby find that "The American Weekly" and "The Comic Weekly" sections of the Los Angeles and San Francisco Examiners, when transported separately from the complete newspapers of which they are component parts, are not newspapers within the meaning of the exemption provided by Item No. 40 series of Highway Carriers' Tariff No. 2; and that the specific exemption of such sections sought herein has not been justified.

O R D E R

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

IT IS HEREBY ORDERED that the petitions of Hills Transportation Co. filed July 3, 1947, and of Hearst Publishing Company, Inc. filed February 9, 1948, be and they are hereby denied.

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

Dated at San Francisco, California, this 18th day of May, 1948.

R. T. Zimmerman
Justice F. Cravens
August B. Powell
Harold P. Kille
Benjamin F. Potter
Commissioners