

ORIGINAL

Decision No. 42878

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,  
rates and practices of Charles J. )  
Worth Drayage Co. )

Case No. 5001

C. Allan Worth for respondent.  
Scott Elder and Frank Loughran for California Shippers  
Associates, and Gordon, Knapp and Hennessy by  
Wyman C. Knapp for Los Angeles, Wholesale Institute;  
and L. B. Raymond for Draymen's Association of  
San Francisco, interested parties.  
J. T. Phelps for Field Division, Public Utilities Commission  
of the State of California.

O P I N I O N

This proceeding is an investigation instituted on the Commission's own motion into the operations, rates and practices of Chas. J. Worth Drayage Co.,<sup>(1)</sup> a corporation, hereinafter called respondent.

The order instituting the investigation recites that (1) respondent is the holder of certain radial highway common carrier and city carrier permits and (2) it appears that respondent may have violated provisions of the Highway Carriers' Act (Stats. 1935, Ch. 223, as amended) and the City Carriers' Act (Stats. 1935, Ch. 312, as amended) by charging, demanding, collecting or receiving for the transportation of property rates or charges less than the minimum rates or charges established or approved by the Commission. Four transactions which occurred on August 9, 12 and 16, 1948, involving the transportation of shipments reaching San Francisco in railroad freight cars are specified in the order. The scope of the investigation is to determine (1) whether respondent may be violating, or has violated, the statutes mentioned by

---

(1) This corporation is the same as that described as "Charles J. Worth Drayage Co." in the order instituting the investigation.

charging, demanding, collecting or receiving rates or charges less than the prescribed minimum rates or charges and (2) whether the radial highway common carrier and city carrier permits granted to respondent, or either of them, should be cancelled, revoked or suspended.

A hearing was held before Examiner Bradshaw at San Francisco. The burden of the defense was assumed by California Shippers Associates and Los Angeles Wholesale Institute, whose members, it is claimed, are vitally interested in the outcome of this proceeding. A written stipulation was entered into by the parties with respect to certain matters and made a part of the record. Testimony was presented by respondent's treasurer and the president of California Shippers Associates who is also traffic manager for a large department store in San Francisco. A memorandum of points and authorities was filed by California Shippers Associates on behalf of respondent, to which counsel for the Commission's field division replied.

The salient facts concerning the transactions under consideration herein are not disputed. The questions presented for decision are (1) whether this Commission has jurisdiction over the operations involved, and (2) if so, do the minimum rates and charges established for city carrier operations within San Francisco apply to such transportation.

Respondent transports for compensation over public highways property from railroad cars in San Francisco to various destinations in San Francisco and Oakland. Upon the shipments listed in the order instituting investigation the charges assessed and collected were as stated therein. The minimum charges published

in City Carriers' Tariff No. 1-A, as amended, and Highway Carriers' Tariff No. 2, as amended, if applicable to the transportation in question, were as indicated in the same order. The charges assessed and collected were lower than those prescribed as minima.

California Shippers Associates is a non-profit corporation organized to secure favorable freight rates and to provide means for the economical handling of shipments for its members. It has about 35 members composed largely of department stores and similar establishments at San Francisco, Los Angeles, Oakland and a few other places. The Association arranges for transportation, pays the charges therefor, and is subsequently reimbursed by the members. The members also pay a management fee to cover overhead and administrative expenses. Los Angeles Wholesale Institute is a similar organization which operates jointly with California Shippers Associates. The two will be collectively referred to as the "associations".

The members of California Shippers Associates when purchasing merchandise request suppliers in the East to mark the address of the member's place of business on shipping packages and deliver the same to an agent of the associations at New York, Boston or Chicago. When sufficient shipments are accumulated the agent tenders a consolidated carload shipment to a railroad for transportation. Los Angeles Wholesale Institute appears as the consignee. The lading is usually transferred en route into two cars, one destined to San Francisco and the other to Los Angeles.

Upon arrival of cars at San Francisco they are spotted on a track pursuant to a standing order issued by respondent. In the meantime, respondent has usually received from the associations

(1) a manifest showing the consist of the freight and (2) freight bills in the name of California Shippers Associates covering the total charges on each individual consignment. Respondent unloads the car, delivers the shipments in accordance with the information appearing on the manifest and freight bills, collects the charges and remits the same to California Shippers Associates. The charges assessed by respondent for its service are fixed by agreement with Los Angeles Wholesale Institute. Respondent does not make any arrangements with the individual consignees regarding the service performed.

It is clear from the facts presented that the shipments herein considered are in interstate commerce from the time they are forwarded by the associations' agents in the East until delivered by respondent to the individual consignees in San Francisco or Oakland.

California Shippers Associates contends that the distribution of the shipments by respondent is subject to regulation by the Interstate Commerce Commission and is therefore not within this Commission's jurisdiction. Section 203 (b) of the Interstate Commerce Act is relied upon. This section provides, among other things, that nothing in Part II of that Act, except the provisions of Section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment, shall apply to the transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to or commercially a part of any such municipality or municipalities, "except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or

from a point without such municipality, municipalities, or zone". It is asserted that the transportation performed by respondent is under a common control, management, or arrangement for continuous carriage to or from a point beyond San Francisco and Oakland and for that reason is not exempt from the provisions of the Interstate Commerce Act.

In reply, counsel for the Commission's field division takes the position (1) that the transportation described in the order of investigation did not fall within the exception to the exemption from Interstate Commerce Commission jurisdiction, because the common arrangement referred to means an arrangement between carriers and (2) that the associations, which are the only entities with which respondent has any arrangement, are not carriers.

These contentions have been considered. The decisions of the Interstate Commerce Commission cited in the memoranda of points and authorities have also been carefully examined. In our opinion, the phrase "under a common control, management, or arrangement for a continuous carriage" embraces transportation performed pursuant to an arrangement for continuous carriage between the carriers performing the transportation. The evidence does not disclose the existence of any such arrangement. The associations are admittedly not carriers or freight forwarders subject to the Interstate Commerce Act. They function only as agents of their members. Compare Pacific Coast Wholesalers Association Investigation of Status, 264 I.C.C. 134, 269 I.C.C. 504; Pacific Coast Wholesalers Assn. v. United States (U.S.D.C., Calif.), 81 F. Supp. 991.

We find that the transportation performed by respondent

was not subject to the jurisdiction of the Interstate Commerce Commission and that the State through this Commission has the legal right to require respondent to observe the minimum rates and charges established for such transportation.

Respondent and California Shippers Associates contend that, even if the transportation performed by respondent be subject to this Commission's jurisdiction, the minimum rates established for movements within San Francisco do not apply upon any of the shipments in question. Item 50 series of City Carriers' Tariff No. 1-A provides that the rates published therein apply for the transportation of all commodities, except, among other things, "unloading and distribution of freight forwarders' cars originating at points outside the State". It is urged that inasmuch as the term "freight forwarders" is not restricted to those which are subject to the Interstate Commerce Act and the distribution service rendered by respondent for the associations is the same as that conducted for freight forwarders, respondent's services herein under consideration should be regarded as within the exception provided in the tariff.

We do not agree with this contention. Freight forwarders have been recognized for many years as constituting concerns which hold themselves out to perform services for the general public. Neither California Shippers Associates or Los Angeles Wholesale Institute is in this category. The minimum rates established by the Commission for transportation within San Francisco are, therefore, applicable to shipments transported in the manner and under the circumstances described in this opinion.

Upon the facts of record, the Commission is of the opinion

and finds that respondent violated provisions of the Highway Carriers' Act and City Carriers' Act by charging, collecting and receiving for the transportation specified in the order instituting this investigation lower rates or charges than the minimum rates or charges prescribed and established for such transportation. In view of the nature of the questions involved herein, and respondent's apparent good faith in believing the established minimum rates were not applicable, disciplinary action is not justified in this instance. Respondent will be directed, however, (1) to take whatever steps may be necessary to collect the outstanding undercharges on all shipments which have been transported in the manner described in this opinion and (2) to refrain from charging on such traffic in the future any rates or charges which may be lower than the prescribed minimum rates and charges.

O R D E R

Public hearing having been had in the above-entitled proceeding, evidence having been received and duly considered, the Commission now being fully advised and basing its order upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED:

1. That Chas. J. Worth Drayage Co. be and it is hereby directed (1) to assess and collect on the shipments specified in the order instituting investigation in this proceeding and on all other similar shipments which it may have heretofore transported the difference between (a) the amounts collected and (b) those which would result from applying the contemporaneous rates or charges published in the Commission's Highway Carriers' Tariff No. 2, as amended, and City Carriers' Tariff No. 1-A, as amended,

and (2) to notify the Commission in writing upon the consummation of said collections.

2. That Chas. J. Worth Drayage Co. be and it is hereby directed to forthwith cease and desist from charging and collecting for the transportation of property arriving in San Francisco in railroad freight cars consigned to California Shippers Associates and Los Angeles Wholesale Institute, or either of them, rates and charges lower than the rates or charges prescribed and established by this Commission as minima for such transportation.

This order shall become effective 20 days after the date hereof.

Dated at San Francisco, California, this 17<sup>th</sup> day of May, 1949.

*R. E. [Signature]*  
*Justice J. [Signature]*  
*[Signature]*

COMMISSIONERS