Decision No. 44671

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation of certain "carloaders" operating on piers, docks, wharves, or within marine terminal areas in the State of California.

Case No. 5105

ORIGINAL

Joseph J. Geary, John C. McHose and Edward D. Ransom for respondents.

C. R. Nickerson for San Francisco Bay Carloading Conference; E. F. Manning and Charles A. Bland for Board of Harbor Commissioners, City of Long Beach; Kenneth L. Vore and W. G. O'Barr for Los Angeles Chamber of Commerce; T. R. Stetson for Pacific Coast Borax Co.; James A. Keller for various manufacturers and exporters of cement; Walter A. Rohde for San Francisco Chamber of Commerce; and Jack E. Hale for Standard Oil Company of California, interested parties.

J. Thomason Phelps for Field Division, Public Utilities Commission of the State of California.

OPINION ON REHEARING

The respondents herein are engaged in the business of loading and unloading property into and out of railroad freight cars located upon piers, docks and other marine terminal facilities in California.

By Decision No. 43788, dated February 7, 1950, in this proceeding (49 Cal. P. U. C. 347), the Commission found that respondents are common carriers engaged in "car loading", within the meaning of Section 2 (1) of the Public Utilities Act, and that certain of them have been charging and collecting, and charge and collect, different rates and charges, and have been observing, and observe, different rules and regulations, than the rates, charges, rules and regulations specified in their tariffs on file with this Commission, in violation of Section 17(a) of the same Act. An order was entered directing said respondents to cease and desist from such violations.

Thereafter, respondents filed a petition for rehearing and reconsideration or, in the alternate, for oral argument. The petition alleged, in substance, that the Commission erred (1) in holding that it had jurisdiction over respondents' carloading and car unloading rates (the traffic involved being in the course of interstate or foreign commerce) and (2) in holding that the United States Maritime Commission did not have jurisdiction thereover. By order, entered March 28, 1950, the petition was granted, restricted, however, to oral argument upon the issues of law arising from the record herein. Oral argument was had on May 22, 1950.

The provisions of Section 15 and certain other sections of the Shipping Act, 1916, (46 U. S. Code, Sec. 801 et seq) are detailed in our prior decision and need not be repeated in this opinion. The statute relates to activities of carriers by water and "other persons" subject to the Act, which include respondents. Specific provisions deal with the regulation of rates and charges of carriers by water, but not with respect to rates and charges of so-called "other persons". The Act provides, however, (1) that they shall establish, observe and enforce, and the Maritime Commission may prescribe, just and reasonable regulations and practices; (2) that it shall be unlawful to make or give any undue or unreasonable preference or advantage to any person, locality or description of traffic or subject any person, locality or description of traffic to any undue or unreasonable prejudice or disadvantage; (3) that any agreements between "other persons" fixing and regulating rates or relating to numerous other matters shall be filed with the Maritime Commission and (4) that when such agreements have been approved they are exempt from the provisions of the anti-trust laws.

Respondents' contend that, having entered into agreements concerning their rates and charges, and the same having been filed with and approved by the Maritime Commission pursuant to Section 15 of the Shipping Act, that Commission is vested with complete jurisdiction to regulate their rates and charges and therefore this Commission may not exercise any control thereover. They rely upon various decisions of the courts and of the Maritime Commission, and lay particular stress upon the decision of the United States Supreme Court in Rice vs. Santa Fe Elevator Corp., 331 U. S. 218.

In the Rice Case, the Court held that, in determining whether regulatory jurisdiction is governed by federal or state statutes, the test is whether the matter on which the State asserts the right to act is in any way regulated by federal law. If it is, according to the Court (two of the justices dissenting), the federal scheme prevails though it is "a more modest, less pervasive regulatory plan than that of the State". While not convinced that the question has been definitely settled, nevertheless under this decision the federal statute prevails.

It was asserted by respondents' counsel during the rehearing that in instances where operators, such as respondents, do not have in effect a Section 15 agreement the Maritime Commission disclaims any jurisdiction over their rates and charges.

In our former decision, we construed Section 15 of the Shipping Act as limiting the Maritime Commission's jurisdiction to the approval or disapproval of agreements filed thereunder, rather than embracing authority to regulate the action taken by respondents pursuant to the provisions thereof after their approval. In other words, according to our conclusions, the matter on which this

Commission asserted the right to act, i.e., the regulation of respondents' rates, was not regulated by federal law.

The argument presented by respondents with their citation of authorities is sufficiently persuasive to justify us in discontinuing this proceeding. The shipments accorded respondents' carloading and unloading services are in the course of interstate or foreign, rather than intrastate, commerce. Virtually all of the carloading and unloading operations in this State of the nature involved in this proceeding are subject to agreements filed with and approved by the Maritime Commission. The Maritime Commission has asserted jurisdiction over respondents' rates and the rates prescribed by that Commission are observed. The statements of record received from shipper interests indicate that they desire that the control over respondents' rates be left to the Maritime Commission.

In conformity with their request a few years ago, respondents will be authorized to cancel their carloading and unloading tariffs on file with this Commission insofar as they apply on interstate and foreign commerce. It is unnecessary at this time to decide whether or not this Commission has jurisdiction over carloaders operating in interstate or foreign commerce who are not parties to a Section 15 agreement.

ORDER ON REHEARING

A rehearing having been had in the above-entitled proceeding and the Commission being fully advised in the premises,

IT IS ORDERED:

(1) That the order contained in Decision No. 43788, dated February 7, 1950, in this proceeding be and it is hereby vacated and set aside.

(2) That the respondents named in the order contained in Decision No. 43788 be and they are hereby authorized, on not less than five (5) days' notice to the Commission and the public, to cancel their rates, charges, rules and regulations governing carloading and car unloading services on shipments moving in interstate or foreign commerce.

This order on rehearing shall become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 15th day of August, 1950.

R. E. Mitchell

Justus F. Craemer

Ira H. Rowell

Harold P. Huls

Kenneth Potter

Commissioners