

ORIGINAL

Decision 93459 AUG 18 1981

TD-25

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation
for the purpose of considering and
determining minimum rates for
transportation of used household
goods and related property statewide
as provided in Minimum Rate Tariff 4-B
and the revisions or reissues thereof.

Case 5330, OSH 110
(Filed September 12, 1979)

And Related Matters.

Case 5433, OSH 73
Case 5436, OSH 290
Case 5437, OSH 309
Case 5438, OSH 124
Case 5440, OSH 112
Case 5603, OSH 216
Case 5604, OSH 66
Case 6008, OSH 41
Case 7857, OSH 171
Case 7783, OSH 164
Case 8808, OSH 50
Case 9819, OSH 39
Case 9820, OSH 17
(Filed September 12, 1979)

(Appearances are shown in Appendix A.)

O P I N I O N

In these proceedings, the staff of our Transportation
Division - Freight Economics Branch recommends that the motor carrier
movements within this State of commodities that have a prior or
subsequent movement in interstate or foreign commerce in a private

vessel (ex-vessel traffic) be exempted from the minimum rates set forth in tariffs named in footnote 1.^{1/}

Public hearing was held on the staff proposal before Administrative Law Judge (ALJ) Mallory on June 17, 1981 and the matters were temporarily removed from the calendar to be reset after a decision in United States Steel v Public Utilities Commission infra. Evidence was presented on behalf of the staff and Sunkist Growers, Inc. (Sunkist).

Background

Decision (D.) 90802 dated September 12, 1979 in Case (C.) 5432 (OSH 1019) et al. stated that as a result of the cumulative effect of several federal court and Interstate Commerce Commission (ICC) decisions, this Commission found that it had jurisdiction to regulate the rates for ex-vessel traffic. Prior to that decision, we had not assumed jurisdiction to regulate ex-vessel traffic, and the motor carrier rates generally assessed were rates filed with the ICC. In D.90802 we exempted ex-vessel traffic from the rates in our general - commodity MRTs so that carriers could continue to assess the generally lower rates filed by them with the ICC and because of the administrative burden resulting from the difficulty in determining whether the foreign shipment was transported in a private or a common carrier vessel. We did not define "private vessel" for the purposes of D.90802.

1/	Minimum Rate Tariff (MRT)	3-A - Livestock
	Minimum Rate Tariff	7-A - Livestock
	Minimum Rate Tariff	17-A - Bulk commodities in dump truck equipment
	Minimum Rate Tariff	20 - Bulk commodities in dump truck equipment
	Minimum Rate Tariff	4-B - Used household goods
	Minimum Rate Tariff	8-A - Fresh fruits, vegetables, and nuts
	Minimum Rate Tariff	12-A - New automobiles
	Minimum Rate Tariff	14-A - Bulk grain, rice, animal feeds, and oil seeds
	Minimum Rate Tariff	18 - Mobilehomes, and travel trailers.

D.90802 was challenged in the California Supreme Court by United States Steel Corporation (U.S. Steel). That court, in United States Steel Corporation v Public Utilities Commission Cal 3d ____ (S.F. 24165, order filed July 6, 1981), annulled D.90802. The court found that we had failed to consider the economic impact of the exemption of foreign steel on domestic steel producers and found that the exemption for imported steel would discriminate against domestically produced steel which would continue to be subject to minimum rates. By separate order issued today in C.5432 (OSH 1019) we deleted the exemption from the document titled "List of Commodities and Geographic Areas Exempt from Rate Regulation" (Exempt List) to which Transition Tariffs 1-B, 2, 9-B, 11-A, 15, and 19 refer.^{2/} We found that exemption was no longer necessary in view of the rate re-regulation plan established in D.90663.

On March 6, 1981 the United States District Court for the Northern District of California issued its order in Sunkist Growers, Inc. et al. v. California Public Utilities Commission, No. C-80-3090AJZ. That order granted this Commission's motion for summary judgment and denied Sunkist's motion for summary judgment. Sunkist sought a declaratory judgment that this Commission does not have jurisdiction to regulate rates for the transportation by truck of fresh citrus fruit from California packinghouses to California ports from which the fruit is shipped to foreign countries or to Hawaii in private vessels. The Court stated that there remains some question whether the vessels on which Sunkist exports its citrus fruit are "private (chartered) vessels", and that neither party submitted evidence to the Court on that issue. The Court further stated that this Commission has never formally asserted that the vessels carrying Sunkist's citrus are "private". The Court directed Sunkist to prove to this Commission that its vessels are not "private" if Sunkist believed that its vessels

^{2/} After D.90802 was issued, we issued D.90663, which established a rate reregulation plan, cancelled MRTs 1-B, 2, 9-B, 11-A, 15, and 19, and replaced those tariffs with the transition tariffs. Exemptions which appeared in the former MRT's were transferred to the Exempt List.

do not fall within that category. The Court stated that, as there still remained the possibility of administrative relief, there was not yet an adequate controversy which the Court could settle.

Staff's Evidence

The staff study introduced into evidence in this phase indicates the following imported commodities are involved: new automobiles, bananas, bauxite ore, cement, cement clinker, coconuts, gypsum rock, iron ore, limestone rock, phosphate rock, and rutile sand. The following exports are involved: animal feed, citrus fruit, clay, grain, petroleum coke, rice, and safflower seed.^{3/}

The staff investigation showed that most carriers were assessing their ICC based rates on ex-vessel traffic and that some of the rates assessed were below the levels of the minimum rates. The staff investigation also showed that bananas were transported at rates in MRT 8-A; that most movements of cement clinker, limestone rock, and petroleum coke were transported at or above the level of rates in MRT 7-A; and that some movements of iron ore were performed at MRT 7-A rate levels.

Export shippers indicated to the staff that assessment of minimum rates on ex-vessel traffic would put them at a disadvantage in foreign markets.

The staff study indicated that virtually all bulk commodities are transported in ocean commerce in private vessels. Carriers of bananas desire to continue to apply minimum rates, even though the ocean movements are in private vessels. For other non-bulk commodities, vessel identification problems occur because it cannot

^{3/} The staff investigation showed that no traffic subject to MRTs 3-A, 4-B, or 18 was involved.

readily be determined whether the ocean movement was in a private vessel. Thus, motor carriers have difficulty in making the vessel distinction necessary to determine whether an interstate or intrastate rate is to be applied.

The staff believes that exemption of ex-vessel traffic would create no current impact and tend to obviate the vessel identification problems described in the staff report. No investigation was made by the staff to determine whether any local producers would be subject to rate discrimination similar to that found to be unlawful in U. S. Steel vs Public Utilities Commission (supra).

Sunkist's Evidence

Evidence was presented by Sunkist in support of its request that the Commission adopt the following definition of private vessel.

PRIVATE WATER VESSEL is any water vessel transporting property when the vessel owner is the owner, lessee, or bailee of the property transported.

Sunkist urges that the order in Sunkist vs. Public Utilities Commission (supra) requires us to adopt a definition of private vessel.

The evidence shows that Sunkist contracts at the beginning of each yearly growing season for space on a refrigerator ship, and pays only for the space it uses on each voyage. The ship is not under Sunkist's control as to the order in which it arrives at foreign ports, nor does Sunkist contract for all of the space available. The definition of private vessel proposed by Sunkist would not include the type of service accorded to Sunkist under its contract arrangements. Thus, motor carrier transportation services performed for Sunkist from its packinghouses to the ports would not be subject to regulation by this Commission. As the Interstate Commerce Act exempts from regulation by the ICC the transportation by motor carrier of unprocessed agricultural commodities (including citrus), Sunkist would continue to be free to negotiate truck rates for export traffic:

Discussion

We believe that the definition offered by Sunkist is defective in two respects. First, a vessel common carrier (as opposed to a vessel charter operator) is bailee of the goods transported by it. The word "bailee" must be stricken since inclusion of the word "bailee" makes this definition overbroad and unclear. Second, the Sunkist definition does not include any classes of chartered vessel. While Sunkist's interest presumably extends only to its own shipments under shipping contracts, we must address the issue of vessels moving under various types of charter. We must do so because in the factual situation underlying the decision of the ICC in J. W. Allen et al., MC-C-6810, 126 MCC 336, (Allen) at least some of the involved transportation moved in chartered vessels, and in Allen the ICC found that subsequent motor carrier transportation within a single state was subject to the jurisdiction of that state. The Allen decision is one of the key decisions upon which our jurisdiction over ex-vessel traffic is established.

In the Allen decision, the ICC stated, at page 347, "Although the record is not clear as to the type of charter involved, its exact nature is unimportant because it is not common carriage subject to regulation by the Federal Government." In footnote 7 on the same page, the ICC discussed the bareboat charter, the time charter, and the voyage charter.

Under a bareboat charter, the vessel is placed under the control of the charterer who assumes virtually full control of the vessel for a specific period of time, perhaps as long as the life of the vessel. A bareboat charter amounts to a lease of a vessel. All operating expenses, including the furnishing of a crew, are the responsibility of the charterer.

Under a time charter, an owner's vessel is made available to a charterer for a specific length of time. While specific ports of call and specific cargoes may be prohibited by the terms of the

charter party, the vessel is generally available to the charterer to go anywhere and carry any cargoes within the time period of the charter. The vessel owner must keep the vessel fit for service and is responsible for the manning and operation of the vessel.

- Under a voyage charter, the owner provides a vessel for the transportation of the charterer's cargo from a specific port (or ports) to a specific port (or ports) in a single voyage. The vessel owner is responsible for manning and operating the vessel.

Vessels obtained by a shipper under bareboat charter, time charter, or voyage charter should be included in the definition of private water vessel.

Under a shipping contract, sometimes referred to as a space charter, a shipper agrees to pay for a specified amount of shipping space, usually expressed in measurement tons, from a specific port (or ports) to a specific port (or ports) for transportation of specific cargo within a specified time period. The vessel owner agrees to make such space available to the shipper, usually in several voyages of one or more vessels.

The staff would include traffic moving on shipping contracts within the definition of private water vessel. We will not do so. There is a significant difference between the three types of charter on the one hand and shipping contracts on the other. The subject of a charter party is a vessel; the subject of a shipping contract is space that is made available on different sailings over a period of time.

We will define private water vessel as any vessel transporting property when the owner or lessee of the property transported is the owner or charterer of the vessel. We will define charterer as a party who obtains the use of a vessel through a bareboat charter, a time charter, or a voyage charter.

We will not adopt the staff's proposal that ex-vessel traffic be exempted from minimum rates because no study was made by the staff

to determine the economic impact on competing domestic and foreign shippers of the commodities to be exempted or whether unlawful discrimination would result from the exemption such as found by the Court in U.S. Steel v Public Utilities Commission, supra.

We believe that adoption of a strict definition of private vessel will sufficiently limit the vessel identification problem so that our enforcement of the minimum rates applicable to ex-vessel traffic will not be burdensome, thereby eliminating a principal reason advanced by the staff for exempting ex-vessel traffic.

We also believe that application of the minimum rates to ex-vessel traffic formerly transported at ICC based rates will not inevitably cause substantial rate increases or unduly burden traffic now subject to the minimum rates, since carriers are always free to seek rate deviations should they find the minimum rates to be excessive. Absent adverse cost or competitive factors, the Commission intends to give favorable consideration to such requests to assess the rates formerly assessed.

We intend to explore whether the reregulation plan applicable to general commodities should be extended to the MRTs involved in this proceeding. If that reregulation plan (or similar plan) is adopted for the bulk commodities tariffs, carriers will be free to make their own rates suitable to the specific transportation conditions encountered on each haul. An exemption for ex-vessel traffic would then become unnecessary to provide the rate freedom recommended by the staff witness.

Findings of Fact

1. A motor carrier movement within this State in conjunction with a prior or subsequent movement in interstate or foreign commerce in a private vessel is transportation subject to regulation by this Commission.

2. In order to effectively regulate the transportation described in the preceding paragraph, a definition of "private water vessel" is required.

3. The definition of "private water vessel" adopted in the preceding opinion as set forth in Ordering Paragraph 1 is sufficiently narrow to ensure that our jurisdiction extends only to those ex-vessel movements which clearly and unequivocally are private in nature.

4. The minimum rates for the transportation of bananas were specifically designed for the movement of bananas from the ports, and apply only to that movement which we cannot find unreasonable.

5. The minimum rates for petroleum coke, when added to the dump truck MRTs, were based on deviation rates assessed by carriers providing service to the ports, which rates also were specifically designed for that traffic.

6. New automobiles in secondary service historically have moved from the ports at minimum rates. Foreign manufactured new automobiles generally move in private vessels owned and operated by the manufacturer of the automobiles.

7. No vessel identification problems exist for other bulk commodities, as indicated in the staff report.

8. Insofar as imported commodities are concerned, there is no evidence to determine whether there would be any adverse economic impact on domestic producers, or whether any unlawful discrimination would result from the proposed exemption of ex-vessel traffic from the minimum rates.

9. Favorable consideration should be given to deviation applications filed by carriers seeking to assess rates on the levels of ICC or negotiated rates formerly considered to be applicable to ex-vessel traffic, if a showing is made similar to that required for rate reduction filings under the Commission's reregulation plan enunciated in D.90663.

Conclusions of Law

1. The definition of "private water vessel" found reasonable above and set forth in Ordering Paragraph 1 should be adopted to govern transportation of ex-vessel traffic.

2. For bananas, petroleum coke, new automobiles, and bulk commodities handled in ex-vessel traffic there is no need for an exemption from minimum rates.

3. The proponent of the exemption from the minimum rates has failed to supply the evidence concerning the economic impact of such exemption on domestic producers, as required under U.S. Steel, supra.

4. Carriers and shippers of traffic involved in the staff report in Exhibit 110-2 in this proceeding should be furnished a copy of this order which advises them of:

- a. The definition of "private water vessel" adopted in this order, and
- b. That this Commission intends to apply and enforce its minimum rates on ex-vessel traffic.

5. The captioned proceedings should be terminated.

O R D E R

IT IS ORDERED that:

1. In connection with the application of minimum rates to motor carrier transportation between points within this State of shipments having a prior or subsequent movement in interstate or foreign commerce in a private vessel, the following definition of "private water vessel" shall govern:

PRIVATE WATER VESSEL is any water vessel transporting property when the owner or lessee of the property transported is the owner or charterer of the vessel. As used herein, the term "charterer" means a party who obtains the use of a vessel through a bareboat charter, a time charter, or a voyage charter.

2. The Executive Director shall serve a copy of this order upon subscribers to Minimum Rate Tariffs 3-A, 4-B, 7-A, 8-A, 12-A, 14-A, 17-A, 18, and 20.

3. The captioned proceedings are terminated and closed. This order becomes effective 60 days from today.

Dated AUG 18 1981 , at San Francisco, California.

John E. Byron
President
Richard B. ...
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Commissioners

APPENDIX A

LIST OF APPEARANCES

Respondents: J. G. Fitzhenry for J.B.A. Company; and Nichols, Stead, Baileau & Lamb, by Raymond G. Lamb, Attorney at Law, for B & G Trucking, Carpinteria Motor Transport, and Arthur William Coulter Trucking.

Interested Parties: Richard W. Smith, Attorney at Law, and Joel Anderson, for California Trucking Association; T. W. Anderson, for California Portland, Inc.; R. N. Bona, for Mobil Oil Company; John C. Craig for Port of Sacramento and California Association of Port Authorities; Allen R. Crown, Attorney at Law, for California Farm Bureau Federation; William D. Grindrod, for Port of Los Angeles; Graham & James, by David J. Marchant, Attorney at Law, and Jim Healy for California Carriers Association; James D. Martens, for California Dump Truck Owners Association; Tuttle and Taylor, by Ronald C. Peterson, Attorney at Law, for Sunkist Growers; and Richard L. Quigley, for Safeway Stores. ✓

Commission Staff: Lynn T. Carew, Attorney at Law.

(END OF APPENDIX A)