UNITED STATES MARITIME COMMISSION

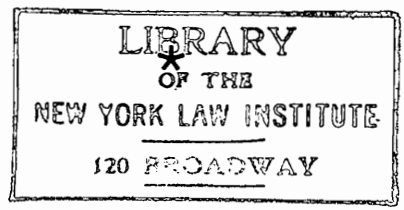
VOLUME 1

DECISIONS OF THE UNITED STATES SHIPPING BOARD, DEPARTMENT OF COMMERCE UNITED STATES SHIPPING BOARD BUREAU, AND UNITED STATES MARITIME COMMISSION

UNDER REGULATORY PROVISIONS OF THE SHIPPING ACT, 1916, AND RELATED ACTS

NOVEMBER 1919 TO NOVEMBER 1938

REPORTED BY THE COMMISSION



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UNITED STATES MARITIME COMMISSION

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TABLE OF CASES REPORTED

[NOTE.—"Et al." in parentheses indicates other complainants or defendants in other cases reported in same decision]

TABLE OF CASES CITED

DECISIONS OF THE

UNITED STATES SHIPPING BOARD, DEPARTMENT OF COMMERCE UNITED STATES SHIPPING BOARD BUREAU, AND UNITED STATES MARITIME COMMISSION

Ex Parte 1

ALASKAN RATE INVESTIGATION

Submitted May 19, 1919. Decided November 14, 1919

Rates, regulations, and practices of common carriers by water operating between Puget Sound and Alaskan ports not shown to be unreasonable. Respondents' practice of assessing freight charges on weight-or-measurment basis, ship's option, and rule under which steamers will not move to private docks for less than 25 tons of freight not shown to be unreasonable. Present method of handling cannery traffic not shown to work any undue discrimination.

Rates charged for transportation of blacksmith coal and farm products from Anchorage to Juneau, Alaska, held relatively unreasonable and unduly discriminatory, to the extent that they exceed rates contemporaneously maintained, on like traffic, from Puget Sound ports to Juneau.

W. H. Bogles for Alaska Steamship Company; *B. S. Grosscup* for Pacific Steamship Company; *L. L. Bates* for Seattle Steamship Company; *S. J. Wettrick* for Seattle Chamber of Commrce and Commercial Club; *W. L. Clark* for Association of Pacific Fisheries; *Phil Ernst* for Nome Chamber of Commerce; *Ed. G. Russell* for Commercial Association of Juneau; *J. J. Kennedy* for Alaska Labor Union, Local No. 4, of Juneau; *R. M. Courtney* for Chamber of Commerce of Anchorage; *E. G. DeSteuiger* for Ellamar Mining Company; *M. G. Munly* for Thlinket Packing Company.

Report of the Board

By schedules filed to become effective March 3, 1918, and later dates, the Alaska Steamship Company and the Pacific Steamship Company proposed to increase all-water rates between Puget Sound and Alaskan ports. Upon protests filed on behalf of Alaskan commercial organizations and shippers, the Alaska Steamship Company on February 25, 1918, was ordered by the Board to suspend the operation of its increased schedules. On March 15, 1918, the Board, allowed the suspended schedules, and others which had been held in abeyance, to become effective, subject to revision if after hearing the increases should be found to be excessive. Thereupon the Board, of its own motion and pursuant to the provisions of the Federal

shipping act of September 7, 1916, instituted a general investigation into the rates, regulations, and practices of common carriers by water engaged in the transportation of property between ports in the State of Washington and ports in Alaska. The carriers serving Alaska and representatives of Alaskan industries, commercial organizations, and shippers were duly notified of the proposed investigation, and hearings were held in May and June, 1918, at Seattle, Wash., and at Ketchikan, Juneau, Cordova, Seward, and Anchorage, Alaska.

The port-to-port Alaskan business is handled principally by the Alaska Steamship Company and the Pacific Steamship Company, hereinafter called the Alaska Company and the Pacific Company, respectively, and at certain seasons of the year by the Seattle Steamship Company and the Humboldt Steamship Company. The testimony and data with respect to these two latter companies are very meager, but that which was offered in respect to their rates indicates that the rates of the Seattle Company are generally in line with those of the Alaska and Pacific Companies, while the Humboldt Company's rates are as a rule lower than the rates of the two latter companies. It was testified that the Humboldt Steamship Company was able to operate in the Alaskan trade on a lower schedule of rates only because it engaged in more remunerative trades during four months of the year. This company, although seasonably notified, was not represented at any of the hearings.

THE RATE SCHEDULES AS A WHOLE

The protests in effect are against the rate schedules of the Alaska and Pacific Companies, respectively, as a whole, and the general investigation instituted by the board involves primarily the determination of the reasonableness of respondents' rate schedules. The carriers urge that the primary object of the increased rates hereinbefore referred to was to provide additional revenue urgently needed by them to meet increasing costs of operation. Protestants, on the other hand, contended that said rates were excessive and unreasonable. To illustrate the general range of increases, a table showing the old and new rates on a number of representative commodities, together with the distances from Seattle to representative ports of destination on the southeastern, southwestern, and Nome routes, is presented below. The southeastern route embraces the coastal section between Dixon Entrance and Cape Spencer; the termini of the southwestern route are Cape Spencer and Unimak Pass; and the Nome route extends northerly beyond Unimak Pass and via St. Michael to points on the Yukon River. Rates are stated in dollars and cents per ton of 2,000 pounds or 40 cubic feet, whichever produces the greater revenue, unless otherwise specifically provided.

Commodity	Seattle to—								
	Ketchikan, 754 miles			Cordova, 1,603 miles			Nome,[1] 2,500 miles		
	Old rate	Present rate	Increase	Old rate	Present rate	Increase	Old rate	Present rate	Increase
			P. ct.			P. ct.			P. ct.
Boots and shoes	$6.50	$7.50	15½	$15.00	$15.50	3	$15.50	$23.00	48
Canned vegetables	6.50	7.50	15½	11.50	12.00	4	15.50	23.00	48
Cement	4.25	4.75	12	8.00	8.25	3	15.50	22.75	46
Clothing	6.50	7.50	15½	15.00	15.50	3	15.50	23.00	48
Structural iron	6.50	7.50	15½	12.50	13.00	4	15.50	23.00	48
Machinery	6.50	7.50	15½	12.50	13.00	4	15.00	22.50	50
Meats (not refrigerated)	16.50	18.50	12	30.00	30.50	2	32.00	41.00	28
Meats (refrigerated)	23.10	25.70	11	45.00	45.50	1	40.00	62.50	56
Salt	3.50	4.75	36	5.00	6.25	25	15.50	22.75	46
Sugar	6.50	7.50	15½	11.50	12.00	4	15.50	23.00	48½

[1] Rates to Nome are landed rates and include cost of lighterage at Nome.

The foregoing table has been compiled from exhibits of record and tariffs of the Alaska Company on file with the board. Rates of the Pacific Company vary in some instances from those of the Alaska Company, and its increases are allocated in a different manner, but for the purposes of this case such variations are not material.

The additional revenue estimated to be derived by the Pacific Company from increased rates in 1918 appears in the following table:

	Actual, year 1917	Estimated, year 1918	Increase
Freight revenue	$1,351,052.46	$1,701,704.80	$350,652.34
Passenger revenue	699,896.12	745,304.67	45,408.55
Miscellaneous	159,655.93	167,638.72	7,982.79
Gross earnings	2,210,604.51	2,614,648.19	404,043.68

As an offset to the estimated additional revenue accruing to the Pacific Company from increased rates, that company shows that its cost of operations in 1918 will be found to have been materially greater than in 1917. A table indicating the sources of increased operating costs follows:

Increased costs of operations, 1918 over 1917, on Alaska steamers of Pacific Steamship Company, not including overhead or charter hire payable on leased vessels

	Year 1917	Per cent of total	Year 1918	Per cent of total	Increase 1918 over 1917	Per cent increase
Fuel	$253,241.78	15.10	$401,703.07	17.58	$148,461.29	58.6
Wages	368,519.30	21.98	449,225.03	19.68	80,705.73	21.6
Longshore	180,319.47	10.76	216,383.36	9.48	36,063.89	20.0
Provisions	227,187.29	13.56	319,657.34	14.02	92,470.05	40.7
Repairs	323,646.37	19.30	516,215.96	22.62	192,569.59	59.5
Insurance	212,330.75	12.66	256,872.37	11.26	44,541.62	20.8
Miscellaneous	111,284.02	6.64	122,412.42	5.36	11,128.40	10.0
Grand total	1,676,528.98	100.00	2,282,469.55	100.00	605,940.57	

The Alaska Company did not submit an estimate of additional revenue calculated upon increased rates or an estimate of increased operating costs. The record discloses, however, that crews' wages paid by the Alaska Company in May, 1918, were 40 per cent higher than in 1917. Based on actual 1917 consumption the estimated increase in cost of fuel oil in 1918 will amount to $140,346.87. During the first three months of the year the cost of meals advanced 20 per cent over the 1917 basis. These cited increases are typical of increased operating costs of the Pacific Company on similar items. The conditions surrounding the operations of the Pacific and Alaska Companies' fleets are not materially dissimilar, and it may be assumed that the increases in earnings and operating expenses of the Alaska Company will be relatively as great as those of the Pacific Company.

The fundamental obligation of the carriers under the shipping act is to charge only such rates as are just and reasonable. The reasonableness of the rates depends largely upon whether they yield a fair return upon the value of the carriers' property devoted to the public service. *Smith* v. *Ames*, 169 U. S. 466; *Minnesota Rate Cases*, 230 U. S. 352; *San Diego Land and Town Company* v. *National City Company*, 174 U. S. 739; *Wilcox* v. *Consolidated Gas Company*, 212 U. S. 19.

The Alaska Steamship Company owns the vessels which it operates in this trade. With the exception of one vessel owned by it the Pacific Company, prior to and at the time of the investigation, was operating vessels held under charters from other companies. By the terms of these charters the carrier obligated itself to pay the cost of ordinary maintenance, an annual charter hire of 10 per cent of the agreed value of the vessels for the year ended November 1, 1917, 11 per cent for each of the next three years, and 12 per cent thereafter. The figures shown in the last preceding table are exclusive of this charter hire; that is, the charter hire has not been charged as an operating expense.

The following data as to the value of the fleets, capitalization, volume of traffic, operating revenues, expenses, and income of the Alaska and Pacific Companies, respectively, have been compiled from testimony and exhibits of record:

[Dec. 31, 1917]

	Alaska Steamship Company	Pacific Steamship Company
Value of fleet	$3,178,574.60	$3,017,398.14
Capitalization	$4,500,000.00	$1,000,000.00
Operating revenues	$4,081,590.45	$2,210,604.51
Operating expenses	$2,876,898.00	[1] $1,890,426.05
Net operating revenues	$1,204,692.45	$320,178.46
Taxes	$230,231.69	
Depreciation	$236,500.62	$140,445.62
Net operating income	$743,432.46	$179,732.84
Volume of traffic (tons)	499,378	256,654.4

[1] Including taxes.

The values of the fleets shown in the foregoing table are book values. It was vigorously insisted by the carriers that such values were not fairly representative of the actual values of their fleets. A marine surveyor and naval architect, who had appraised the fleets in May, 1918, and who testified on behalf of both companies, placed a value on the fleets 100 per cent higher than the book values herein given. The auditor of the Alaska Company testified that the company had sold one of its vessels in 1916 for more than twice its book value. The unprecedented demand for tonnage, the prevailing high prices of labor and material entering into the construction of vessels, and the practical impossibility of reproducing or duplicating the fleets were advanced as the main contributing elements of increased value. In addition to the vessels the carriers have other property investments in the way of wharves, docks, lands, terminal and other facilities devoted to the Alaskan service, the extent and exact value of which do not appear of record.

The capitalization represents the total amount of stock issued and outstanding on December 31, 1917. Neither company has any bonds or funded debt outstanding. In respect to the Pacific Company, the operating revenues and expenses are those properly chargeable to the Alaskan trade. The volume of traffic figures of both companies include Alaskan business only. Of the Alaska Company's total 1917 net income of $743,432.46, however, only $478,691 was earned in the Alaskan service. It was testified on behalf of this company that the net book value of its property and assets employed in the Alaskan service in 1917 was in excess of $5,000,000, and that on the basis of the valuation of the fleet, as determined by the marine surveyor and naval architect, the value of said property and assets amounted to more than $10,000,000. Thus it appears that, without charging off any portion of the loss due to the wrecking of the steamer *Mariposa*, in 1917, the earnings of the Alaska Company amounted to 9½ per cent on a net book value of $5,000,000 and to 4¾ per cent on said appraised value of its property devoted to the Alaskan service. The Pacific Company's earnings were relatively lower than those of the Alaska Company.

Owing to the peculiar geographical, industrial, and economic conditions of Alaska, its transportation problem is decidedly unique. In the early part of the year the preponderance of traffic is northbound with very little southbound traffic. Just the reverse condition obtains in the fall of the year. The movement of traffic is poorly balanced, in consequence of which the transportation facilities are only partly used at one season of the year and are insufficient at other seasons to handle the traffic. Obviously the cost of operating transportation facilities under these conditions is far in excess of what it would be if the movement of traffic were properly balanced.

The routes traversed by the vessels of these carriers are beset with dangers. The shores of Alaska are exceedingly rocky and consist almost entirely of elevated islands and peninsulas carved by glacial action and separated by deep and narrow fiords. Rugged mountain ranges with sharp jagged peaks lying just beneath the surface of the water, and currents of great volume flowing through the bays and tortuous passages along the coast constitute an ever-present menace to navigation. During a considerable portion of the year the vessels are compelled to fight their way through ice and snow, and on the Nome route are frequently icebound for several days at a time. Storms are of frequent recurrence, often rendering the discharge of cargoes impossible and making it necessary for vessels to steam for the open sea and ride out the gales. Operating costs of these carriers have been rapidly mounting for some time and continue to rise. Not only have substantial advances in wages been made, but demands by employees for other increases were pending at the time of the hearings. Moreover, it was asserted that the efficiency of labor had materially decreased. The cost of fuel, insurance, and other important items entering into the operation of steamers has greatly increased. The estimated additional revenue to be derived by the Pacific Company from increases in rates is $201,896.89 less than the estimated additional operating costs for 1918. While generally the recent increases in rates are not large, yet in some cases they are as high as 50 per cent; but manifestly the reasonableness of the rates can not be determined by considering only the amount of the percentage of increase, which may indicate that the former rates were too low rather than that the present rates are excessive. The freight movement on the Nome route, where the most substantial increases apply, is almost entirely northbound, the southbound loads of the Pacific Company's steamers averaging 150 tons per trip during the 1917 season. The southbound cargoes on the vessels of the Alaska Company also are negligible. Furthermore, it is necessary to lighter all cargo at Nome and St. Michael, which practice is hazardous, slow, and expensive. In 1917, the Pacific Company operated three vessels on this route at a total operating deficit of $51,902.81.

It was not seriously contended at the hearings that the increased rates were unreasonable. The assertion was made by certain shippers that these carriers were paying exorbitant dividends and that the increased rates would only serve to augment their profits. No evidence of probative force, however, was offered to substantiate this assertion. On the other hand, it affirmatively appears of record that, with the exception of an extra stock dividend paid in 1916 as the result of proceeds realized from the chartering of several vessels to companies engaged in South American and Oriental trades and a profitable sale of

certain property, the dividends paid by the Alaska Company have averaged 7.7 per cent per annum. The Pacific Company, which has been operating only since November, 1916, had not paid any dividends up to the time of the investigation.

There was a significant absence of protests or complaints from important commercial interests and localities directly affected by the increased rates. Many of the interests represented at the hearings admitted the carriers' need of additional revenue, and expressed their willingness to pay such increased rates as might be found to be reasonable. Representatives of substantial commercial interests in southeastern Alaska stated that while they did not invite increases in rates, yet if the carriers showed insufficient earnings under the old rates they would acquiesce in increased rates. The opinion was expressed that, in comparison with what they could make in other trades, the carriers were not earning very much on their Alaskan business. A representative of the Alaska Labor Union at Juneau withdrew the protest of that organization against the rates. Witnesses at Cordova testified that they had no complaint to make either against the rates or against the general conditions of transportation. Witnesses at Anchorage stated that they had paid so much greater increases in freight rates in other directions than they paid on the Alaskan lines that the advances applied by the respondent carriers seemed very moderate; that, in fact, much greater increases had been expected. Representatives of fishing interests admitted the necessity for increased earnings on the part of the carriers due to increased costs of operation.

It was suggested that the decreasing earnings of these carriers were in large measure due to the fact that Canadian lines were handling all-water traffic between ports in the State of Washington and Alaska which rightly belonged to the American lines. The amount of business, if any, so diverted by Canadian steamship lines does not appear of record, for which reason the effect of the operations of such lines on the earnings of the American carriers can not be determined. Some witnesses testified that under the increased freight rates they will probably not realize net profits as large as those formerly enjoyed. While this character of testimony is admittedly of value, the effect upon the shippers' business is not conclusive as to the reasonableness of the transportation rates.

Upon consideration of the whole record and according due weight to the various factors and elements involved in a general investigation of this character, it can not be said that the rate schedules as a whole are unreasonable.

LABOR SITUATION

Representations were made to the board that owing to excessive freight rates Alaska was being rapidly depopulated. The testimony

shows that the laboring element in Alaska is of a roving, venturesome spirit; that generally when laborers come to the Territory they have little intention of remaining permanently, their average residence in Alaska ranging from two to four years. It was testified that wages in Alaska have not kept pace with those paid in the United States; that alluring reports of high wages paid in shipyards and other industries in the States have induced many men to leave Alaska for more remunerative employment in the States. It was further testified that weather conditions had a great deal to do with the exodus of laborers; that all things being equal, men preferred the milder climate of the States, and that, in the absence of advantage of higher wages in Alaska, they would migrate to the States. Various employers admitted that the freight rates had very little, if anything, to do with the situation, and stated that they could not hope to hold their men in the face of the conditions described. Other witnesses expressed the opinion that the exodus of men from Alaska was due not only to the lure of higher wages in the States, but to heavy enlistments in the Army and Navy, hundreds of men having left the Territory to enlist in the military service. It appears, therefore, that the exodus of men from Alaska is attributable to causes over which the respondent carriers have no control.

SPECIFIC COMPLAINTS

Manifestly neither the carriers nor the shippers attempted to deal with all the specific rates between particular ports on the three Alaskan routes. In a general investigation of this character testimony relating to specific rates and localities would have been of little assistance to the board in arriving at a proper conclusion as to the reasonableness of the rate schedules as a whole. However, considerable testimony was introduced in respect to certain practices and rates of the carriers which will be presently considered. In other instances specific rates of the carriers were assailed, but the evidence introduced by complainants to support their allegations of unreasonableness consisted principally of general statements affording no adequate basis or a decision or conclusion in the premises.

With respect to the method of constructing rates on copper ore, it was contended that ore valued at $10 per ton or less should not rightfully pay as high a rate as ore valued at $50 per ton. Representatives of operators in the Ellamar district, mining low-grade ore said to approximate one-third of the ore shipments from Alaska, suggested a graduated scale of charges according to the values of the ore, beginning with ore valued at $10 per ton or less and increasing the freight charges for every $5 in values or fraction thereof. Mine operators in Latouche, Skagway, and other districts where the remaining two-thirds of Alaskan copper ore is mined, did not express an opinion on this sub-

ject. We are not, therefore, prepared to say that the application of the specific scale proposed by Ellamar operators would be practicable and equitable to operators in the other districts. This suggested method of constructing copper rates, however, is recommended to the carriers for their earnest and early consideration.

The specific complaints which we shall now proceed to consider seriatim are briefly as follows:

1. That the practice of applying rates on weight-or-measurement basis at ship's option is unjust and unreasonable.
2. That the rule under which steamers will not move to a private dock for less than 25 tons of freight is unjust and unreasonable.
3. That the differentials between rates from Anchorage and Seattle to Juneau, Alaska, are unduly preferential of Seattle and unduly prejudicial to Anchorage.

(1) The carriers' practice of assessing freight charges on the weight-or-measurement basis at ship's option was attacked by various shippers who urged that such practice be abandoned in favor of an exclusive weight basis. Representatives of the carriers claimed that a strictly weight basis was not practicable on the Alaskan routes. They stated that an elaborate and complex classification was an indispensable prerequisite to its adoption, and that the cost of handling freight would be substantially greater than under the present system. Furthermore, it was asserted that in order to maintain the present level of earnings the rates on heavy articles must be increased and the rates on light and bulky articles reduced, thereby disarranging the whole rate fabric. To illustrate, the rates on denims and bolts of calico, which are heavy but of comparatively low value, would be increased, while the rates on eiderdown quilts and quilted dressing gowns, which are light but of high value, would be reduced. A vessel has only so much space where freight can be placed, regardless of its weight. In some cases the weight and measurement, from a revenue standpoint, will be the same; in other cases the measurement will exceed the weight several times. It was maintained that under the weight basis shippers would have little incentive to compress their shipments, in consequence of which they would occupy more space than otherwise would be required. The advantage would be with the careless shipper, and the disadvantage would be with the shipper who really seeks to conserve space. At the same time the freight capacity of the vessels would not be efficiently utilized. The carriers contended, and there is considerable force in the contention, that the ultimate effect of the weight basis would be to raise the rates on necessities and to lower the rates on luxuries.

It was argued by the shippers that no two men will measure the same thing alike, and instances of variations in charges assessed on

identical shipments were cited. They claimed that it costs less money to weigh goods than it does to measure them, adding that the solution of the weight problem on the California routes and on railroads demonstrates that it is practicable on the Alaskan routes. On behalf of the carriers it was testified that the weight basis was used by the Pacific Company between Seattle and California, not because it was considered more scientific, but because the company was subjected to active competition by rail lines using the weight basis, and it had finally adopted that basis for purely competitive reasons. No parallel conditions exist in the Alaskan trade.

The record does not justify a conclusion or decision that the practice of assessing freight charges on the weight-or-measurement basis is unjust or unreasonable, or that the application of an exclusive weight basis, even if practicable on the Alaskan routes, would be more equitable or satisfactory to shippers generally.

(2) The carriers have in effect a tariff rule that no vessel will move to a private dock for an offering of freight under 25 tons. A minimum of 10 tons, with no increase in freight charges, was suggested by certain interests handling fresh fish. Occasionally a fishing vessel comes into port with less than 25 tons of fish. If it delivers the cargo at a private dock and the carrier declines to go there for less than 25 tons, the fish must lie on the dock until 25 tons have accumulated or be transported by the shipper to the steamship company's dock. It was pointed out that the tariffs provide a minimum of only 15 tons on salt fish southbound, with higher rates on shipments below 15 tons. Manifestly it costs more to handle several small shipments, issue separate shipping receipts, make separate waybills and expense bills, and separate entries in accounts than it costs to handle one large shipment of the same commodity shipped by one consignor to one consignee. The conditions surrounding the operations of salteries and the fresh-fish business were shown to be substantially dissimilar. Thus a minimum adapted to one industry would not necessarily be appropriate for the other. It appears of record, moreover, that the fishing industry generally adheres to the practice of shipping in 25-ton and even larger lots, and that there is no real demand from other industries for a reduction of the present minimum. The beneficiaries of a reduced minimum would be a comparatively few shippers who would thereby be relieved of the trouble and expense of transporting fish from private docks to those of the carriers.

The record does not disclose any justification for requiring the carriers to reduce the minimum amount of tonnage for which a ship will move to a private dock below the present minimum of 25 tons. Futhermore, it appears that if the minimum were reduced the ships would be seriously delayed by calling at various landing places for

small shipments, necessitating more circuitous routes of travel and resulting in decreased efficiency of operation. We think the interest of the public will be better conserved if such minimum be not disturbed at this time.

(3) Representatives of farming and coal interests at Anchorage contended that the maintenance of higher rates from Anchorage to Juneau territory than from Puget Sound ports to such territory subjected Anchorage to undue discrimination and prevented it from marketing its products in Juneau. The contention was limited to two classes of commodities, namely, farm products and coal, which were alleged to be competitive with like commodities shipped from Puget Sound ports to Juneau. The record shows that there is a considerable movement of blacksmith coal from Anchorage to Juneau, but that there is not likely to be a movement of bulk coal between said ports for some time to come. Further consideration of this question with regard to bulk coal is not deemed necessary. It is pertinent to say in passing, however, that when shipments of this commodity are offered to the carriers for transportation to the Juneau territory they will be expected to apply just and reasonable rates thereto.

It was testified that the production of vegetables at and near Anchorage has steadily increased for several years past until it has now reached substantial proportions. Some of these commodities are being shipped to Juneau, which was shown to be the logical market therefor, in competition with like commodities reaching that point from Puget Sound ports. The evidence adduced by the shippers amply supports their allegation that the shipment to Juneau of much larger quantities of these commodities is precluded by the present differential in rates which permits Puget Sound merchants to lay down their goods in Juneau more cheaply than Anchorage merchants.

The distance from Anchorage to Juneau is 1,051 miles and from Seattle to Juneau is 880 miles, but the rates from Anchorage to Juneau are between 40 and 50 per cent higher than from Seattle to Juneau. On routes of this great distance a difference of 171 miles of itself is not regarded as sufficient justification for this disparity in rates. The carriers have failed to show any circumstances which would warrant the maintenance of such differentials. On the contrary, representatives of the carriers admitted that Puget Sound ports and Anchorage should be placed on an equalized basis so far as the rates on blacksmith coal and farm products to Juneau are concerned. We therefore conclude and decide that with relation to the transportation to Juneau of farm products and blacksmith coal, Puget Sound ports and Anchorage are substantially similarly situated and that the maintenance of rates on these commodities from Puget Sound ports to Juneau lower than rates from Anchorage to Juneau is unduly preferential to Puget Sound ports and unduly prejudicial to Anchorage.

THE CANNERY TRADE

Considerable testimony was introduced in respect to the cannery trade, particular emphasis having been placed upon the fact that the carriers have in effect special contracts and rates governing the transportation of cannery products. The record shows that approximately 50 percent of the southeastern Alaskan business handled by the carriers is cannery business. Many of the canneries are located at out-of-the-way points, and steamers frequently make a detour of more than 20 miles waste. In view of these facts of record, we do not deem it necessary or expedient at this time to order the cancellation of existing cannery contracts or the alteration of the present method of serving canneries.

CONCLUSIONS SUMMARIZED

Upon consideration of all the evidence of record the Board concludes and decides as follows:

1. The rates, regulations, and practices of the respondent carriers have not been shown to be unreasonable.

2. The practice of assessing freight charges on the weight-or-measurement basis at ship's option has not been shown to be unreasonable; nor has the substitution of an exclusive weight basis in lieu thereof been justified.

3. The maintenance of rates on blacksmith coal and farm products from Puget Sound ports to Juneau, Alaska, lower than rates contemporaneously maintained on like traffic from Anchorage to Juneau, is unduly preferential to Puget Sound ports and unduly prejudicial to Anchorage; and the resulting undue discrimination must be removed.

4. The rule under which vessels of the carriers will not move to a private dock for less than 25 tons of freight has not been shown to be unreasonable; and the reduction of such minimum below 25 tons is not deemed warranted by the record.

5. The present method of handling cannery traffic, and the rates applicable thereto, have not been shown to work any undue discrimination necessitating a cancellation of existing cannery contracts between shippers and carriers.

No order will be entered at this time. The carriers, however, will be required to establish, on or before December 31, 1919, rates for the transportation of blacksmith coal and farm products from Anchorage to Juneau, Alaska, which shall not exceed the rates contemporaneously maintained and applied for like traffic from Puget Sound ports to Juneau. If this requirement is not met on or before the date specified an appropriate order will be entered.

EX PARTE 2

IN THE MATTER OF THE APPLICATIONS OF WATER CARRIERS OPERATING ON THE ATLANTIC COAST, GULF OF MEXICO, AND GREAT LAKES FOR AUTHORITY TO INCREASE RATES

Submitted August 20, 1920. Decided August 24, 1920

Certain advances in rates, fares, and charges authorized

George P. Wilson for Philadelphia Chamber of Commerce; *William J. Pitt* for Paint Manufacturers Association of the United States, National Varnish Manufacturers Association, and the Philadelphia Paint, Oil & Varnish Club; *George Koehler* for Importers First Aid Service; *William Allen* for New Orleans Association of Commerce; *Walton C. Wright* for Associated Industries of Massachusetts; *Frank E. Williamson* for Buffalo Chamber of Commerce; *C. F. MacDonald* for Duluth Board of Trade; and *F. R. Levins* and *F. S. Keiser* for Commercial Club of Duluth, Minn.

A. D. Stebbins, *T. W. Kennedy*, and *J. B. Sweeny* for Merchants & Miners Transportation Company; *J. T. Green* for Clyde Steamship Company, Mallory Steamship Company, and Gulf & Southern Steamship Company; *F. H. Mickens* for Eastern Steamship Lines Inc.; *A. J. Townsend* for Baltimore Steamship Company; *George A. Parker* for Starin New Haven Line; *A. E. Paterson* for Panama Railroad Steamship Company; *A. J. Outerbridge* for Quebec Steamship Company; *Edwin H. Duff* for Colonial Navigation Company and Pere Marquette Line Steamers; *Charles A. Donlin* for Michigan Transit Company; *Fred A. Pixley* for Chicago, Racine & Milwaukee Line and for Wisconsin Transit Company; *L. J. Lewis* and *John B. Annis* for Detroit & Cleveland Navigation Company; *F. A. Stanley* and *W. R. Evans* for Great Lakes Transit Corporation; *H. R. Rogers* and *A. T. Zillmer* for Cleveland & Buffalo Transit Company; *Ewing H. Scott* and *Francis B. James* for Milwaukee, Chicago & Michigan City Line; and *Charles B. Hopper* for Goodrich Transit Company

REPORT OF THE BOARD

This proceeding was instituted by the board of its own motion, to determine the justness and reasonableness of certain proposed advances in the rates, fares, and charges of water lines engaged in interstate commerce, on the Atlantic coast, Gulf of Mexico, and Great

Lakes. The tariffs and applications naming the rates, fares, and charges in question were filed with the board on and subsequent to August 11, 1920, and were proposed to be made effective on August 26, 1920, contemporaneously with the effective application of the rates, fares, and charges approved by the Interstate Commerce Commission, as to rail-and-water traffic, in its Ex Parte Docket No. 74 (58 I. C. C. 220).

Section 18 of the Shipping Act of September 7, 1916, imposed upon common carriers by water in interstate commerce subject to the jurisdiction of the board, an obligation to give to the public and the board 10 days' notice of proposed advances. By the terms of the act such advances can not become effective until their approval by the board.

Prior to the expiration of the statutory period, following the receipt by the board of the tariffs and applications here under consideration, protests against the operation of the same were lodged with the board by shippers and commercial organizations. The board thereupon directed that the tariffs then on file, together with those which thereafter might be filed, be suspended, and that all applications for permission to advance rates be consolidated. An order was so entered on August 12, 1920, instituting a general investigation in the premises, and the matter was set down for hearing on August 18, 1920.

Commercial organizations, shippers, and the public were duly notified by telegraph, by mail, and through the press of the time and place of the hearing, and all interested parties were given an opportunity to be fully heard. Notwithstanding the protests which had been filed with the board in advance of the hearing, however, it developed at the hearing that there was no concerted opposition to a general increase in rates. Representatives of shippers stated frankly that they did not object to reasonable advances in rates, as they realized that the carriers had been and were confronted with increases in the cost of operation, including labor, materials, and other items; and they recognized the fact that in many, if not in most, instances some increases should be made in the rates, in order that the revenues of the carriers might be fairly remunerative. Most of the testimony on behalf of shippers was directed toward specific situations, which they conceived to be discriminatory or detrimental to their respective interests. It will be recognized, of course, that howsoever important these matters may be to individual shippers, such evidence is not illuminative in determining whether or not the proposed advances in rates as a whole are reasonable and will yield a fair return, or more than a fair return, upon the value of the property of the carriers devoted to the public service.

ATLANTIC COAST AND GULF LINES

The general advances proposed by the lines operating between Atlantic coast and Gulf ports were as follows:

	Freight	Passenger
	Per cent	*Per cent*
Between ports on the Atlantic coast north of Norfolk, Va.	40	20
Between Norfolk and New Orleans, La.	25	20
Between New Orleans and the Mexican border	35	20

These applicants seek to justify the proposed advances on the ground that the present rates are not sufficiently remunerative, in view of the prevailing high operating cost, and that the rates should be advanced to enable them to earn a reasonable return upon the value of their property devoted to the public service.

Inasmuch as the board is not empowered to prescribe accounting rules and systems to be observed by the carriers subject to its jurisdiction, the financial and statistical data submitted in support of the proposed advances were in varied and dissimilar form, not susceptible of reduction to a common basis. It has, therefore, been necessary to consider such data by individual carriers rather than *en bloc*. The operating results reflected by these varied statistics are substantially identical, however, and may be illustrated by the following summaries:

An examination of the exhibits and testimony submitted by the Merchants & Miners Transportation Company shows that on June 30, 1920, the book value of its property devoted to the public service, including floating equipment, wharves, and other necessary terminal property, was $3,842,419.56; that for the six months ended June 30, 1920, its total operating revenues were $3,021,971.31, and that its total operating expenses during the same period were $3,574,972.46, leaving an operating deficit for the six months noted of $553,001.15. After making allowances for miscellaneous income and expenses, this deficit was increased to $694,196.25. Figures submitted by this carrier showed an insured valuation of the above-described property of more than $6,000,000, which it was stated represents only 80 per cent of its actual value.

The advances proposed by the Merchants & Miners Transportation Company, in addition to those allowed that carrier by the Interstate Commerce Commission, assuming that the volume of traffic to be handled by it does not diminish, were estimated to yield, for six months, increased revenues of $1,019,051.95, practically all of which it was anticipated will be absorbed by operating expenses. It was asserted that the revenue requirements of the Merchants & Miners

Transportation Company, as a matter of fact, necessitate a larger increase than that petitioned for, but that any greater increase would seriously disturb existing rate relationships and thereby retard the movement of traffic.

The six months covered by the above statistics were represented as comprehending a period when the company was operating at maximum capacity; and it was stated that the volume of traffic handled at any other period would not be nearly so heavy. It was testified that the costs of operation resulting from increases in the cost of materials, fuel, supplies, labor, and every other element of transportation, were abnormally heavy, and that there was no present indication that they would decline to any great extent in the very near future.

Conditions governing the operations of other Atlantic coast and Gulf lines are substantially similar to those above set forth, except that at some ports not served by the Merchants & Miners Transportation Company conditions are even more unfavorable. The record shows that for the period ended June 30, 1920, the Eastern Steamship Lines, Incorporated, sustained a loss of $539,831.07, and that for the year ended December 31, 1919, the operating deficit of the Clyde Steamship Company was $1,357,953 and of the Mallory Steamship Company $643,165.

Applications and data submitted by certain carriers in respect of water-line operations between New York, on the one hand, and the Canal Zone, the Virgin Islands, and Porto Rico, on the other hand, reflect the operating conditions shown above, including unprecedented costs and inadequate returns with resultant losses.

GREAT LAKES LINES

The advances proposed by the Great Lakes carriers approximate 40 per cent on freight and 20 per cent on passenger traffic. It appears from the record that the expenses incident to the operation of vessels on the Great Lakes have increased substantially to the same extent as on the Atlantic coast. For example, it was shown that these carriers are now paying for bunker coal approximately 100 per cent more than they paid in 1919, and they claim to be receiving a poorer quality than was then available. These carriers also claim that they are paying 60 per cent more for materials and supplies and 40 per cent more for labor than they paid in 1919.

A situation existing on the Great Lakes which does not confront the carriers operating on the Atlantic and Gulf coasts is that the Great Lakes operations are seasonal, and during several months of the year some of the carriers are obliged to discontinue operations on account of weather conditions. During this nonoperating period the overhead and fixed charges of the carriers remain fairly constant.

Some stress was laid by shippers upon the fact that the past performances of a few of the Great Lakes lines had shown substantial returns on their property. It must be borne in mind, however, that we are dealing with present conditions; and, whatever those statistics may show for past years, they can not be said to reflect the results of operations under the high costs and other unfavorable conditions existing at the present time.

The book value of the terminal facilities and fleet operated by the Great Lakes Transit Corporation is $4,087,887, according to the record. For the six months ended June 30, 1920, the gross revenue of this company was $1,077,295; its operating expenses were $1,194,411.38, making a deficit of $117,116.38. It was claimed that the market value of the company's property is $10,000,000. The Cleveland & Buffalo Transit Company showed a net loss to June 30, 1920, of $193,115.89. The Goodrich Transit Company sustained a net loss of $77,905.83 for the year ended June 30, 1920. These figures fairly represent the results attained by other Great Lakes carriers in the operation of their respective lines.

There is ample evidence of record to support the claims of the Atlantic, Gulf, Great Lakes, and Territorial Lines, regarding the increased costs of their operations, and their need for additional revenue; and the increases for which they have respectively applied will produce not more, and in all probability less, than a reasonable return upon the value of their properties devoted to the public service.

RELATION OF PORT-TO-PORT AND PROPORTIONAL RATES

We are urged to allow the proposed advances to become effective on August 26, 1920, contemporaneously with the increased rates authorized by the Interstate Commerce Commission in its Ex Parte Docket No. 74 (58 I. C. C. 220); this, it is claimed, being necessary to preserve proper rate relationships.

If the instant increases should be denied, the carriers would, of course, be confronted with the unnatural and objectionable situation of having port-to-port rates which would be lower than their proportional water rates between the same ports on traffic handled in connection with rail lines. It was also indicated that such a state of affairs would permit shippers so to handle their freight as to avail themselves of the preferential port-to-port rates, instead of paying the higher proportional rates, thereby tending to deplete the revenues which should properly accrue to the carriers from through rail-and-water business. As against this situation it is shown that the cost of handling port-to-port traffic is generally in excess of the cost of handling through traffic.

COLLATERAL COMPLAINTS OF SHIPPERS

Some evidence was introduced by shippers tending to show that the lines in certain instances have not given to commercial organizations and to shippers sufficient notice of proposed embargoes, and that the carriers' equipment has been inadequate to handle the traffic offered. It is, of course, desirable that close cooperation be maintained between the carriers and the shippers, with a view, at all times, to acquainting the latter with the fact of proposed embargoes, as in this way only is it possible to prevent unnecessary movement of freight to wharves and terminals. It is also important that the carriers shall exert every effort to provide a transportation service that will fully meet the needs of the shipping public. In this connection, representatives of several of the carriers expressed themselves as willing to improve their facilities, if it should hereafter develop that their financial condition will so warrant.

CONCLUSIONS AND DECISION

After careful consideration of the applications and supporting statements, and all the facts and evidence of record in the instant case, the board concludes and decides that, to the extent hereinafter indicated, the advances proposed to be made have been shown to be just, reasonable, and necessary. The rates, fares, and charges of the water carriers operating in the sections involved may be increased as follows:

	Freight	Passenger
	Per cent	*Per cent*
Between Norfolk, Va., and ports on the Atlantic coast north thereof	40	20
Between Norfolk and New Orleans, La	25	20
Between New Orleans and the Mexican border	35	20
Between ports on the Great Lakes	40	20
Between New York and the Canal Zone	10	33⅓
Between New York and the Virgin Islands	[1]	33⅓
Between New York and Porto Rico	20	20

[1] No freight rates involved.

The increases authorized on freight traffic may be made applicable to weighing, lighterage, storage, floating, transfer, diversion, reconsignment, switching, and transit services; and the passenger fare increases authorized may be applied also to excess baggage.

On the Atlantic and Gulf coasts the through rates between ports located in different coastal sections, which are made on a combination basis, should be increased by applying to each factor of the through rates its respective percentage.

Local or joint through rates between ports in one coastal section and ports in any other coastal section should be increased 33⅓ per cent.

For rate-making purposes, Norfolk, Va., will be considered in the Norfolk-North-Atlantic section to and from ports in said section, and in the Norfolk-New Orleans section to and from ports in the latter section; New Orleans, La., will be considered in the Norfolk-New Orleans section to and from ports in said section and in the New Orleans-Mexican border section to and from ports in the latter section.

With regard to increases in terminal charges Norfolk will be considered in the Norfolk-North-Atlantic section, and New Orleans will be considered in the New Orleans-Mexican border section.

The increases in rates, fares, and charges herein authorized may be made effective not later than January 1, 1921, on one day's notice to the public and the board.

An order will be entered accordingly.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on August 24, 1920

Ex Parte 2

In the Matter of the Applications of Water Carriers Operating on the Atlantic Coast, Gulf of Mexico, and Great Lakes for Authority to Increase Rates

It appearing That by its report entered in the above-entitled proceeding, which report is hereby made a part hereof, the United States Shipping Board has authorized certain increases in the port-to-port rates, fares, and charges of certain interstate water carriers subject to its jurisdiction:

It is ordered, That all tariffs and supplements effecting the increases authorized in the aforesaid report shall bear on their title page the following notation:

Rates published herein under authority of order of United States Shipping Board entered in Ex Parte Docket 2, August 24, 1920.

And it is further ordered, That a copy of this order be served upon each common carrier by water so authorized to increase its rates, fares, and charges.

By the board.

[SEAL.]

JOHN J. FLAHERTY,
Secretary.

INVESTIGATION AND SUSPENSION DOCKET NO. 1

WOOL RATES FROM BOSTON TO PHILADELPHIA

Submitted February 2, 1921. Decided February 17, 1921

Proposed advances on wool and related articles from Boston to Philadelphia found not justified. The suspended tariff ordered canceled

REPORT OF THE BOARD

By schedule filed to become effective October 15, 1920, the Merchants and Miners Transportation Company proposed to increase rates on wool and related articles from Boston, Mass., to Philadelphia, Pa., by canceling existing commodity rates and applying class rates in lieu thereof. Upon protest the carrier was directed to suspend the application of its tariff, and the Board instituted this proceeding and investigation into the reasonableness of the proposed increases. Below is a table showing the present rates on the commodities involved, the proposed rates, percentages of increases which the proposed rates would effect over the present rates and over the rates applicable immediately prior to the 40 per cent advance authorized by the Board under Ex Parte 2 and made effective by the carrier.

Commodity	Present rate (cents per 100 pounds)	Proposed rate (cents per 100 pounds)	Percentage increase proposed	Percentage increase over rates effective immediately prior to Ex Parte 2
Wool, scoured:				
Carload	55.5	66.5	19.8	68.3
Less than carload	74	92.5	25	74.5
Wool, in grease:				
Carload	51	55.5	8.8	52.1
Less than carload	66.5	74	11.2	55.8
Wool noils, carload	55.5	66.5	19.8	68.3
Wool tops, less than carload	74	92.5	25	74.5
Wool waste, carload	55.5	66.5	19.8	68.3
Mohair, scoured:				
Carload	51	92.5	81.3	153.4
Less than carload	66.5	92.5	39	94.7
Mohair, in grease:				
Carload	51	74	45	102.7
Less than carload	66.5	74	11.2	55.7
Mohair noils:				
Carload	51	92.5	81.3	153.4
Less than carload	66.5	92.5	39	94.7
Mohair tops:				
Carload	66.5	92.5	39	94.7
Less than carload	74	92.5	25	74.5
Mohair waste:				
Carload	51	92.5	81.3	153.4
Less than carload	66.5	92.5	39	94.7

The carrier seeks to justify the proposed advances on the grounds that it is sustaining a deficit on its operations as a whole, that the revenue derived from the transportation of wool and mohair from

Boston to Philadelphia under existing rates is not sufficiently remunerative, and that the present rates on these commodities are below the level of the rail rates applicable from and to the same points.

While the evidence submitted by the transportation company to the effect that its common carrier operations as a whole were unprofitable is admittedly of value, obviously this is not a controlling determinant of the reasonableness of the particular rates in question. Indeed, rates on particular commodities may be unreasonably high and yet the carrier fail to realize a fair return from its entire operations. The carrier contended that the water rates should be on a level with the rail rates and offered some evidence on this point. In this connection we believe it sufficient to state that there is such a manifest difference between transportation via rail and via water that rail rates cannot be regarded as a proper criterion or measure of water rates. However, the evidence adduced on these points has been accorded every consideration to which it is entitled in a proceeding of this nature.

Some evidence was introduced regarding the revenues on wool and other commodities, such as shoes, and cotton piece goods, which indicated that the revenue per cubic foot on wool was 4.7 cents on carload and 6 cents on less-than-carload shipments, as against 7 cents per cubic foot for shoes and 11.3 cents per cubic foot for cotton piece goods on any-quantity shipments. The probative force of this evidence is considerably impaired because of the dissimilarity of these commodities from a transportation standpoint. The difference in the average value of the commodities upon which the comparison is based is wide. Shoes were claimed by a witness who testified on behalf of protesting shippers to have a value ranging from $5 to $25 a pair. We can not but feel that the valuation figures are too high and should be liberally discounted—$3 to $10 value per pair is certainly conservative, which figures will be used. These shoes pack 24 pairs to a case and the weight of the shipment averages 70 pounds per wooden case and 60 pounds per fiber case. The value of a case of shoes, therefore, ranges from $72 to $240, or approximately from $103 to $400 per 100 pounds. The any-quantity rate on this product of manufacture, as published and charged by the Merchants and Miners Transportation Company, is 42 cents a case, or approximately 65 cents per 100 pounds, while the proposed carload and less-than-carload rates on wool in grease are 55½ cents and 74 cents per 100 pounds, respectively. The any-quantity rate on cotton piece goods, Boston to Philadelphia, is 48½ cents per 100 pounds in bales or cases. This commodity includes white sheeting averaging 50 yards to the 100 pounds, the value of which is as high as $1 a yard; gingham and printed goods, valued from 40 cents to 80 cents per yard, and cotton

duck, as high as $1.20 per yard. Wool in grease, which was admitted to constitute by far the greater proportion of the southbound movement of the commodities on which increased rates are sought, was shown by the record to have a value of $25 per 100 pounds.

Wool is a raw unmanufactured farm product, transported in uniform bags or bales weighing from 350 to 1,000 pounds when in grease, and 100 to 350 pounds when in a scoured state. The various grades and several forms of wool and mohair, according to the record in this case, are substantially similar in character and their respective values vary but slightly. Shoes and cotton piece goods are considerably more valuable per pound than wool and are subject to far greater risk in transportation, particularly as to theft and damage in transit.

Much of the evidence of the Merchants and Miners Transportation Company was directed toward maintaining that wool and mohair are commodities of exceptional bulk, and that the principal kinds of wool moved by it from Boston to Philadelphia are wool in grease and scoured wool which do not load to the same density as other merchandise traffic. By deductions from the record at various stages of the proceeding, it is shown that approximately the following cubic measurement of space is displaced by 100 pounds of each of the commodities named:

	Cubic feet
Wool in grease (in bags)	14.00
Wool in grease (in bale)	7.77
Mohair in grease (bale and sack)	11.11
Wool, scoured (in bag)	21.00
Wool, scoured (in bale)	13.33
Wool noils (in bag)	17.50
Wool tops (bag or bale)	15.63
Shoes (case)	7.14
Cotton piece goods (bale or case)	4.27

It will be seen that the average displacement per cubic foot of the commodities shown above on which the Merchants and Miners Transportation Company seeks to justify increases in rates is 14.33 pounds, as against an average of 5.70 pounds per cubic foot for the two commodities used by the carrier in making its comparison. Again, the displacement of 100 pounds of wool in grease and scoured, both in bag and bale, which the carrier states comprises the largest tonnage of the commodities upon which increased rates are sought, averages 14.02 cubic feet. However, the fallacy of basing rates solely upon relative bulk and weight when the commodities are greatly dissimilar in other important respects is apparent. Evidence in justification of increases in rates ranging from 8 to 81 per cent upon the ground of the relatively greater displacement of space by wool and mohair than by articles which are products of a high degree of

manufacture, of much higher value and which require far greater care in handling, is not convincing.

Exhibits and testimony of record are conclusive of the large volume and regularity of movement of wool from Boston to Philadelphia by the Merchants and Miners Transportation Company. Wool grown in all parts of the world is brought to Boston, which, due it is claimed to favorable banking arrangements, has become the first wool market in the United States. Because of advantageous scouring facilities at Camden, N. J., wool in grease is shipped from Boston to Philadelphia, and from the Merchants and Miners Transportation Company's docks in the latter city it is teamed to Camden. In addition there is a large tonnage of wool carried by this transportation company from Boston to Philadelphia which is consigned to mills situated in and about Philadelphia.

This large and regular movement of wool by the carrier from Boston to Philadelphia is of importance in a consideration of the reasonableness of the rates proposed over those now in effect. A large volume of port-to-port traffic consisting of a commodity which is uniform in package, adaptable and convenient for stowage, desirable from a labor standpoint, low in value and entailing minor risk, undoubtedly requires the most substantial reasons to justify the higher rates projected by the suspended tariff. The record indicates that the volume of shoes and cotton piece goods carried by the Merchants and Miners Transportation Company from Boston to Philadelphia is not at all comparable with that of the commodities upon which advances in rates are proposed.

Evidence was offered on behalf of the carrier to the effect that if the contemplated advances were not applied the offerings of wool and mohair shipments would be increased, as a result of which it might be necessary during more normal times than now prevail to place an embargo on general merchandise to meet the situation. It was added, however, that at the present time practically all of the transportation company's vessels are leaving Boston for Philadelphia with very light cargoes and that shipments of any character are desirable. It was testified that a depression now exists in the wool trade, but that if the present rates be not disturbed the great bulk of wool will move from Boston to Philadelphia via vessels of the Merchants and Miners Transportation Company; and that increases in the rates will result in the diversion of traffic from this carrier.

After careful consideration of all the facts and evidence of record the Board concludes and decides that the proposed advances have not been shown to be reasonable and have not been justified by the carrier. An order directing the cancellation of the suspended tariff will be entered.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on February 17, 1921

Investigation and Suspension Docket No. 1

Wool Rates from Boston to Philadelphia

It appearing, That by order dated October 12, 1920, the Board entered upon a hearing concerning the propriety of the increases and the lawfulness of the rates proposed by the Merchants and Miners Transportation Company in a certain schedule enumerated and described in said order, and directed that the operation of said schedule be suspended pending such hearing and decision; and

It further appearing, That a full hearing and investigation has been had in the premises; and the Board on the date hereof having made and filed a report containing its conclusion and decision, which said report is hereby referred to and made a part hereof; now, therefore,

It is ordered, That said Merchants and Miners Transportation Company is hereby notified and required to cancel said schedule on or before March 1, 1921, and that this proceeding be discontinued.

By the Board.

[SEAL.] (Signed) JOHN J. FLAHERTY,
Secretary.

UNITED STATES SHIPPING BOARD.

DOCKETS NOS. 8 AND 10.

BOSTON WOOL TRADE ASSOCIATION

v.

MERCHANTS AND MINERS TRANSPORTATION COMPANY.

Submitted October 27, 1921. Decided December 2, 1921.

Rates on wool and mohair in grease, scoured, noils, tops and waste, between Boston and Philadelphia, found unreasonable but not unduly prejudicial. Reparation denied. Reasonable rates for the future prescribed.

Respondent's practice of limiting its port-to-port rates from pier to pier and not including within the application of said rates all receiving and delivering points within the switching, free lighterage limits, and water-front locations of Boston and Philadelphia not found unreasonable or unduly prejudicial.

H. A. Davis for the complainant.

Otis B. Kent for the respondent.

REPORT OF THE BOARD.

In this proceeding a tentative report was prepared by the examiner and submitted to the parties. This report is based thereon with such modifications as seemed necessary after consideration of the record and of the exceptions which were filed.

The two complaints herein present the same general subject matter, were consolidated for hearing, and will be disposed of in one report. The complainant is a voluntary association of individuals, partnerships, and corporations engaged in the purchase and sale of wool, mohair, and other commodities, with headquarters at Boston, Mass. By complaints seasonably filed it alleges violations of sections 16 and 18 of the Federal shipping act of 1916 by the Merchants and Miners Transportation Company in respect of shipments of wool and related articles transported since February 14, 1919, between Boston, Mass., and Philadelphia, Pa. The Board is requested to establish reasonable and nonprejudicial rates for the future and to award reparation.

THE ISSUE OF UNREASONABLENESS.

The gravamina of the complaints, in so far as they allege violations of section 18, are that the respondent carrier's commodity rates from

Boston to Philadelphia on wool and mohair in grease, scoured, noils, tops, and waste, which range from 51 to 66½ cents per 100 pounds carload and from 66½ to 74 cents per 100 pounds in less-than-carload lots, as well as its class rates on those commodities from Philadelphia to Boston, which range from 55½ to 66½ cents per 100 pounds carload and from 66½ to 92½ cents per 100 pounds less-than-carload, are unjust and unreasonable; and that the carload rates on all port-to-port traffic moving between Boston and Philadelphia are unjust and unreasonable. Rates on wool and related articles which are deemed by the complainant to be reasonable are set out in detail in the complaint in Docket No. 10, and were pressed at the hearing. These rates represent decreases of from 10.8 to 41.2 per cent from those assailed and are designed to include delivery to, from, and between all receiving and delivering points within the free lighterage limits and waterfront locations of Boston and Philadelphia. For the purposes of this proceeding, mohair is shown to be similar to wool and to call for like treatment.

The published tariff rates of the Merchants and Miners Transportation Company on wool and related articles between Boston and Philadelphia, as compared with the rates of that carrier on boots and shoes, cotton piece goods, and iron and steel articles between the same ports, are as follows:

Rates between Boston and Philadelphia.

[In cents per 100 pounds.]

Commodity.	Boston to Philadelphia.	Philadelphia to Boston.
Wool in grease:		
Carload	[1] 51	[1] 55½
Less carload	66½	66½
Wool, scoured:		
Carload	[2] 55½	[2] 66½
Less carload	74	74
Noils:		
Carload	[2] 55½	[2] 66½
Less carload	74	74
Tops:		
Carload	[2] 66½	[1] 66½
Less carload	74	74
Waste:		
Carload	[2] 55½	[1] 55½
Less carload	74	66½
Boots and shoes, any quantity	[3] 65	74
Cotton piece goods, any quantity	48½	48½
Iron and steel articles:		
Carload	28½	28½
Less carload	34½	34½

[1] Minimum carload weight, 16,000 pounds.
[2] Minimum carload weight, 10,000 pounds.
[3] 42 cents per case.

NOTE.—Less-than-carload shipments of wool in grease, scoured wool, tops, and waste, Philadelphia to Boston, when uncompressed, are subject to higher rates than those shown above—i. e., 74, 92½, 92½, and 74 cents, respectively. Straight carload shipments of waste from Philadelphia to Boston, when uncompressed, are also subject to the second-class rate of 66½ cents, minimum carload weight 10,000 pounds.

Exhibits and testimony presented on behalf of the respondent set forth in detail the relative cubical space occupied by given units of

wool and boots and shoes and cotton piece goods, deductions from which in connection with statements of comparative revenue per cubic foot on traffic from Boston to Philadelphia are included in the following table:

Comparative spatial and revenue statement.

Commodity.	Cubic feet per ton (2,000 pounds).	Revenue per cubic foot (cents).
Wool, in grease, in bags, 150 pounds per bag	280	3.6 carload. 4.7 less carload.
Wool, in grease, in bags, 200 pounds per bag	210	5.0 carload. 6.3 less carload.
Wool, scoured, in bags, 100 pounds per bag	420	2.6 carload. 3.5 less carload.
Wool, scoured, in bales	266	4.2 carload. 5.5 less carload.
Boots and shoes	143	7.0 any quantity.
Cotton piece goods	85.6	11.3 any quantity.

As contended by the carrier during the hearing, the bulk of a commodity is one of the principal factors for consideration in constructing a rate for transportation by water, and great weight should be attached to this factor in a determination of the reasonableness or unreasonableness of such a rate. It is manifest, however, as urged by the complainant, that additional factors, such as value, revenue, and others, are to be considered which may negative the presumption of reasonableness arising from a calculation based upon the element of bulk alone. In this connection there is given below a table showing the values of wool in grease and scoured (which two classes comprise by far the greatest proportion of the wool traffic between Boston and Philadelphia), as compared with the values of shoes and cotton-piece goods, together with the revenue per ton and per ton-mile for each commodity computed upon the rates in controversy.

Comparative statement of values and revenues per ton and per ton-mile.

Commodity.	Value per ton of 2,000 pounds.	Revenue per ton.				Revenue per ton-mile.			
		Boston to Philadelphia.		Philadelphia to Boston.		Boston to Philadelphia.		Philadelphia to Boston.	
		Carload.	Less than carload.	Carload.	Less than carload.	Carload.	Less than carload.	Carload.	Less than carload.
Wool in grease, 14 cents per pound	$280	$10.20	$13.30	$11.10	$13.30	$0.021	$0.028	$0.023	$0.028
Wool, scoured, 42 cents per pound	840	11.10	14.80	13.30	14.80	.023	.031	.028	.031
Shoes, $6.50 per pair, $240 per 100 pounds (any quantity)	4,800	13.00		14.80		.027		.031	
Gingham and print cloth, 40 cents per yard, 400 yards per 100 pounds (any quantity)	3,200	9.70		9.70		.02		.02	

The foregoing table discloses wide differences in the values of wool and the commodities used in comparison, and inequalities with respect to the comparative revenues received for the transportation thereof. For example, the value of wool in grease is shown to be $280 a ton, from which the respondent receives a per ton revenue of $11.10, while boots and shoes valued at $4,800 per ton produce a per ton revenue of $13. The differences in values and the inequalities in revenues are further illustrated with respect to wool waste, a commodity the value of which it was testified during the hearing ranges from 1 to 4 cents per pound, or an average per ton value of $50. The revenue per ton and the revenue per ton-mile derived by the carrier from the transportation of this commodity are greater than from the transportation of gingham and print cloth, white sheeting, and cotton duck, each of which represents a high degree of manufacture and is of far greater value.

On behalf of the complainant it is strongly contended that the volume of the movement of wool in its various forms, especially wool in grease, between Boston and Philadelphia warrants the reduction in rates which the Board is requested to effect. It should be here stated, however, that the volume of movement, or any other single factor, should not dominate other factors necessarily entering into a determination of what is a reasonable rate to be applied for the transportation of a particular commodity. According to the record, Boston and Philadelphia are, respectively, the first and second largest wool markets in the United States, and the movement of this commodity between the two cities exceeds the movement between any other two points in this country. From 50 to 70 per cent of all the wool used in the United States is consumed in New England and Pennsylvania. In many instances wool is sent from Boston to Philadelphia, a distance of 475 nautical miles, to be cleaned and sorted, after which it is shipped back to Boston and placed in warehouses for sale and use by consuming mills. It is stated that under normal conditions around 50,000,000 pounds of wool move between these cities each year and that the cargo of every vessel of the Merchants and Miners Transportation Company leaving Boston and Philadelphia contains a large percentage of this commodity. On eight sailings from Boston to Philadelphia during the weeks of March 6, 13, 20, 27, and April 3, 1920, the tonnage of wool transported by the respondent, as compared with the tonnage of boots and shoes, dry goods, and iron and steel articles, is shown by the record to be as follows:

Commodity (tons).	Week beginning—				
	Mar. 6.	Mar. 13.	Mar. 20.	Mar. 27.	Apr. 3.
Wool	319	251	245	250	172
Boots and shoes	29	40	89	38	28
Dry goods	21	17	45	57	39
Iron and steel articles	63	18	36	27	3

The general freight agent of the respondent carrier stated that during the period September 1 to December 31, 1920, wool in grease constituted approximately 13.41 per cent of the respondent's total tonnage from Boston to Philadelphia, required 21.9 per cent of the available cargo space, and produced 13.47 per cent of the gross revenue; and that shipments of wool in other forms made practically the same showing. During the years 1919 and 1920 the movement of wool from Philadelphia to Boston is stated to have been 9,284 and 4,955 tons, respectively. Some effort was made to show that a decrease in the tonnage of wool and related articles moved by the respondent between Boston and Philadelphia during 1920 as compared with 1919 was due to high rates, and the relation between such rates and the values of the commodities. It is apparent on the record, however, that while this condition may have been one of the influencing factors, it was not alone responsible for the lower volume handled. A growing depression in business and unfavorable commercial conditions generally were admitted to have had a pronounced effect on the movement of this traffic.

Evidence was introduced on behalf of the complainant indicating that charges for labor and materials were receding and that the cost of business operations generally was lower at the date of the hearing than for an indefinite time prior thereto. Comparative figures were submitted, and deductions made therefrom, which purport to show that the revenue from the operation of the Boston-Philadelphia line of the respondent furnishes a return considerably in excess of the cost of operation, and that the per ton-mile revenue on that line is greater than the per ton-mile revenue on other lines operated by the respondent. Other than the presentation of general data in denial and a showing of deficits suffered by the respondent company on its operations as a whole, no evidence in refutation of the complainant's contention in this regard was offered on behalf of the carrier. In response to request made at the hearing for a statement showing the results of operation on the Boston-Philadelphia line for the year 1920 as compared with the year 1919 it was stated on behalf of the respondent that its accounts were not kept in such manner as to permit the segregation of revenues and expenses of that line from those of other lines operated by it.

Comparisons were made between rail rates and water rates, and the respondent's principal witness stated that its rates on wool should be on a level with the rail rates on that commodity. This statement, however, has not deeply impressed us in the absence of evidence of record from which such an inference could be drawn. Admission was made by the carrier that the only territory where it maintains rates on a parity with rail rates is between Boston and points north of Cape Hatteras. It was pointed out that switching charges at

both Boston and Philadelphia are absorbed out of the wool rates of the rail carriers, while the port-to-port rates of the Merchants and Miners Transportation Company under attack do not include this terminal service. Such port-to-port rates of the respondent do, however, absorb marine insurance. With reference to measuring water rates by rail rates, the Board said in Investigation and Suspension Docket No. 1 (1 S. B. 21), "there is such a manifest difference between transportation via rail and via water that rail rates can not be regarded as a proper criterion or measure of water rates," and we see no reason in the instant case to warrant a change of our views on this subject.

With regard to the risk involved in transporting wool and related articles as compared with boots and shoes and cotton piece goods, it was testified by the complainant that the only damage to which wool is subject is that occasioned by wetting, and that danger of damage by fire, theft, or careless handling is remote. Wool is shipped in uniform bags or bales, requires no special equipment and only a minimum amount of attention in handling, and is readily adaptable for stowage with other shipments. These facts are indicative of its greater desirability as traffic from the standpoint of liability assumed by the carrier for loss or damage. Data were submitted by the carrier indicating that the amount paid in settlement of claims for loss and damage to shipments of wool on the Boston-Philadelphia line during the year 1920 exceeded that paid with respect to claims for loss and damage to shipments of boots and shoes and cotton piece goods. In the light of the vastly greater volume of wool handled, however, these figures are insufficient to support the contention which they purport to sustain.

The complainant claims that reasonable port-to-port rates between Boston and Philadelphia should include terminal deliveries, and that the practice of limiting such rates strictly from pier to pier is unreasonable, but it submitted no evidence which would justify the Board in ordering a modification of the present practice of the transportation company in confining the application of the rates to the service which it holds itself out to perform as a common carrier.

THE ISSUE OF DISCRIMINATION.

The complainant alleges that the respondent's rates on wool and related articles between Boston and Philadelphia are unduly prejudicial when compared with its rates on boots and shoes, cotton piece goods, and iron and steel articles; and that its local carload rates on all commodities moving between these ports are unduly prejudicial by reason of the fact that they do not include terminal deliveries, whereas its proportional or joint through rates via said

ports absorb terminal-delivery charges—all in violation of section 16 of the shipping act.

It is manifest of record that no competition exists between wool and boots and shoes, cotton piece goods, and iron and steel articles. It is therefore recognized that the rates on wool can not be prejudiced by the rates on the latter commodities. Prejudice to shippers and receivers of wool can not be predicated upon the charges for transporting other products which differ essentially in character from wool and supply widely dissimilar demands.

Considerable evidence was presented by the complainant to sustain its contention that the refusal of the Merchants and Miners Tranportation Company to group, on the one hand, all receiving and delivering points in the cities of Boston, Cambridge, Everett, Chelsea, and Somerville, which are located within the so-called Metropolitan Boston Switching District, and, on the other hand, all receiving and delivering points within the free lighterage limits and waterfront locations of Philadelphia, and to apply the same rates to and from each point in such groups in connection with port-to-port traffic between Boston and Philadelphia, while observing this practice as to other traffic, constitutes undue prejudice. The record evinces, however, that the deliveries to and from points in the Metropolitan Boston Switching District and at Philadelphia upon which the allegation of undue prejudice is based are in every instance performed in connection with through rail-and-water traffic and are not in any respect governed by tariffs either filed with or subject to the jurisdiction of the Board. Clearly, the conditions compelling absorption by this respondent of terminal charges at Boston and Philadelphia in connection with through rail-and-water traffic do not apply with equal force to its local traffic.

Other issues were raised by the complaints, but inasmuch as no evidence was offered in support thereof it is unnecessary to consider them in this report.

According due consideration to all the factors pertinent to the issues involved and the facts and circumstances of record, we conclude and decide that the rates complained of were not and are not unduly prejudicial. The period during which the assailed rates were applicable was one of rapidly changing values and costs and of varying commercial and transportation conditions. It is impossible, therefore, to state that said rates were unjust or unreasonable in the past; but we find that the present rates of the respondent on wool and related articles between Boston and Philadelphia are and for the future will be unjust and unreasonable in violation of section 18 of the shipping act to the extent that they exceed the following rates

which we determine and prescribe as just and reasonable maximum rates to be applied on this traffic in the future:

Reasonable maximum rates on wool and related articles between Boston and Philadelphia.

[In cents per 100 pounds.]

Commodity.	Boston to Philadelphia.	Philadelphia to Boston.
Wool in grease:		
Carload [1]	40	40
Less carload	58½	58½
Wool scoured:		
Carload [2]	48½	48½
Less carload	65	65
Noils:		
Carload [2]	48½	48½
Less carload	65	65
Tops:		
Carload [2]	58½	58½
Less carload	65	65
Waste:		
Carload [2]	45	45
Less carload	55	55

[1] Minimum carload weight, 16,000 pounds. [2] Minimum carload weight, 10,000 pounds.

NOTE.—The above rates apply on the commodities as described and set forth in Merchants and Miners Transportation Company Tariff S. B. 171, in effect at the time of the hearing.

The rates found reasonable for the future apply from pier to pier only and do not include delivery to, from, and between receiving and delivering points within the free lighterage limits and water-front locations of Boston and Philadelphia.

We further find that respondent's practice of limiting its port-to-port rates from pier to pier and refusing to group, on the one hand, all receiving and delivering points within the so-called Metropolitan Boston Switching District, and, on the other hand, all receiving and delivering points within the free lighterage limits and water-front locations of Philadelphia and to apply its port-to-port rates to and from such points in connection with Boston-Philadelphia traffic, was not and is not unreasonable or unduly prejudicial.

In view of the foregoing conclusions, reparation is denied.

An order will be entered accordingly.

1 U. S. S. B.

ORDER.

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the second day of December, 1921.

Formal Complaints Nos. 8 and 10.

Boston Wool Trade Association

v.

Merchants and Miners Transportation Company.

These cases being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the Merchants and Miners Transportation Company, the above-named respondent, be, and it is hereby, notified and required to cease and desist, on or before January 1, 1922, and thereafter to abstain from publishing, demanding, or collecting its present rates for the transportation of wool and mohair in grease, scoured, noils, tops, and waste between Boston and Philadelphia.

It is further ordered, That said respondent be, and it is hereby, notified and required to establish, on or before January 1, 1922, upon one day's notice to the Board and to the general public by filing and posting in accordance with section 18 of the Federal shipping act and Tariff Circular No. 1, and thereafter to maintain and apply to the transportation of wool and mohair in grease, scoured, noils, tops, and waste between Boston and Philadelphia, rates not to exceed those herein prescribed as reasonable maximum rates.

And it is further ordered, That this order shall continue in force for a period of not less than two years from the date when it shall take effect unless otherwise ordered by the Board.

By the Board.

[SEAL.]

CLIFFORD W. SMITH,
Secretary.

DOCKET NO. 11

BOSTON WOOL TRADE ASSOCIATION

v.

MERCHANTS AND MINERS TRANSPORTATION COMPANY

Submitted September 30, 1921. Decided December 13, 1921

Practice of respondent in accepting only as less-than-carload traffic, and applying less-than-carload rates to, certain shipments of wool and related articles, not shown to be unjust or unreasonable. Practice, under existing embargoes, of accepting shipments of wool only after application for, and apportionment of, space not shown to be unduly preferential to shippers of other commodities, nor unduly prejudicial to shippers of wool. Complaint dismissed.

H. A. Davis for the complainant.
Otis B. Kent for the respondent.

REPORT OF THE BOARD

No exceptions were filed to the report proposed by the examiner in this case. The complainant filed a motion to reopen the case for the introduction of further evidence, which motion, after due consideration, is denied.

The complainant, a voluntary association of individuals, partnerships, and corporations, engaged in the purchase and sale of wool, with headquarters at Boston, Mass., alleges by complaint seasonably filed that certain practices of the Merchants and Miners Transportation Company in connection with the receiving of wool and related articles and the application of less-than-carload rates to shipments of these commodities between Boston and Philadelphia were unduly preferential to shippers of other commodities and unduly prejudicial to shippers of wool, in violation of section 16 of the shipping act, and unjust and unreasonable in violation of section 18 of that act. The Board is asked to effect a discontinuance of these practices and to award reparation.

According to the record, embargoes against carload freight were in effect on the Boston-Philadelphia line of the respondent carrier during the spring and summer of 1920, which, it is claimed, were made necessary by unprecedented traffic congestion throughout the Eastern States. The carload minimum weights applicable to wool shipments between Boston and Philadelphia during the period under consideration were 16,000 pounds on wool in grease and 10,000 pounds on scoured wool. The carload rates on wool in grease and scoured, Boston to Philadelphia, were 36½ cents and 39½ cents per 100 pounds, respectively, as compared with 47½ cents and 53 cents less than carload. The rates, Philadelphia to Boston, on these commodities, were 39½ cents and 47½ cents carload and 47½ cents and 53 cents less than carload. Exhibits were submitted by the complainant showing that on several occasions within the foregoing embargo period shipments from one consignor to one consignee which aggregated more than the minimum carload weight were tendered to the carrier on the same day as carload traffic, but were transported on separate bills of lading at less-than-carload rates. In this connection our attention is directed by the complainant to a rule of the Official Classification governing the service of the Merchants and Miners Transportation Company which provides in effect that carload rates shall be applied to carload freight offered by one shipper for delivery to one consignee, and that but one freight bill shall be issued for the transportation of such freight.

The action of the respondent carrier in refusing to accept and transport shipments at carload rates was predicated upon the existence of the embargoes against carload traffic then in effect, and the question at issue resolves itself into a determination of whether the embargoes were properly invoked. The right of a common carrier to declare an embargo when the circumstances warrant such action is established, as is also the fact that the necessity for placing embargoes is a matter to be determined in the first instance by the carrier. On the other hand an embargo is an emergency measure to be resorted to only where there is congestion of traffic, or when it is impossible to transport the freight offered because of physical limitations of the carrier. During the existence of the embargo, the common carrier obligations of the transportation company are suspended insofar as the embargo has application, and the reality of a situation sufficient to justify this suspension of obligations is requisite if the embargo is to be justified.

While the complainant contends that the embargoes were placed by the carrier in order to increase its revenue and were not justified by traffic conditions then prevalent, no convincing evidence in support of this contention is given. On the contrary, ample evidence is of record with respect to the severely congested condition of traffic

during the period under consideration. Contemporaneous embargoes were in effect by rail carriers which diverted to the water lines considerable volumes of traffic ordinarily handled by the railroads. In the case of some traffic the carrier embargoed it altogether, and numerous commodities were put on the prohibited list. Iron and steel articles and structural steel over 24 feet in length were prohibited from moving on all lines operated by the respondent, including the Boston-Philadelphia line. Evidence of record clearly shows that in common with the experience of other carriers, both rail and water, the respondent carrier found the situation beyond its control and that under the circumstances the exercise of its right to seek to remedy conditions through the medium of embargoes was justified.

That portion of the complaint alleging undue preference in favor of shippers of other commodities and undue prejudice against shippers of wool and related articles is addressed to the practice of the carrier in apportioning available space in its vessels among shippers of wool pursuant to a clause in its embargoes which provided that shipments of wool would only be accepted after arrangements for space had been made with the forwarding agent of the carrier. It was testified on behalf of the carrier that the purpose of this practice was to insure a degree of service to all shippers, and that if all the wool offered for transportation had been accepted no other commodities could have been transported. It was further testified in this connection that the space in the vessels of the respondent was apportioned as equitably as possible among the shippers who had previously notified the forwarding agent that they had wool to move, in consequence of which all shippers were able to have some of their traffic handled on each sailing. A table put in evidence by the complainant and designed to show the tonnage of all commodities handled on the Boston-Philadelphia line of the respondent for one month within the embargo period as illustrative of the relative amounts of tonnage handled during the whole of said period, is as follows:

Commodity	Week ending—				
	Mar. 6	Mar. 13	Mar. 20	Mar. 27	Apr. 3
	Tons	*Tons*	*Tons*	*Tons*	*Tons*
Boots and shoes	29	40	89	38	28
Dry goods	21	17	45	57	39
Hides and leather	69	49	58	47	20
Iron and steel articles	63	18	36	27	3
Machinery	11	3	10	14	10
Miscellaneous	441	240	224	212	114
Paper	15		19	9	6
Wool	319	251	245	250	172
Potatoes			166	206	203
	2 steamers	1 steamer	2 steamers	2 steamers	1 steamer

It will be noted from the above that over 31 percent of the total tonnage handled was wool, and that with possibly one or two excep-

tions this commodity comprised the largest tonnage of the cargo of each vessel operated. Moreover, the volume of wool shipments between Boston and Philadelphia was stated by the complainant to exceed that between any other two points in the United States, corroborating the testimony of the carrier's witnesses that a special rule of treatment for wool was necessary during the embargo period in order that other commodities as well might move.

A careful examination of the record fails to disclose evidence sufficient to warrant a finding that the practice of the respondent in accepting only as less-than-carload traffic and applying less-than-carload rates to the shipments involved in this complaint was unjust or unreasonable; or that its practice in apportioning available space in its vessels during the period under consideration was unduly preferential to shippers of other commodities or unduly prejudicial to shippers of wool and related articles. The complaint, therefore, will be dismissed.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 13th day of December 1921.

Formal Complaint No. 11

Boston Wool Trade Association

v.

Merchants and Miners Transportation Company

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Board.

[SEAL]

J. P. JAMES,
Acting Secretary.

DOCKET NO. 9.

BOSTON WOOL TRADE ASSOCIATION

v.

EASTERN STEAMSHIP LINES, INCORPORATED.

Submitted March 15, 1922. Decided March 27, 1922.

Rates on wool, mohair, camel hair, and alpaca hair, when in grease and scoured, between New York and Boston, found unreasonable but not unduly prejudicial. Reparation denied. Reasonable rates for the future prescribed.

H. A. Davis for the complainant.
W. L. Clark and *Edwin H. Duff* for the respondent.

REPORT OF THE BOARD.

A report proposed by the examiner which does not differ in substance herefrom was served upon the parties. Exceptions thereto were filed on behalf of both the complainant and respondent and have been given careful consideration.

The complainant, a voluntary association of wool dealers with headquarters at Boston, Mass., alleges by complaint seasonably filed that the rates exacted by the Eastern Steamship Lines, Incorporated (Metropolitan Steamship Line), since December 15, 1918, for the transportation of wool, mohair, camel hair, and alpaca hair, when in grease and scoured, between Boston and New York, were and are unduly prejudicial to shippers of these commodities and unduly preferential to shippers of other commodities in violation of section 16 of the Federal shipping act and unjust and unreasonable in violation of section 18 of that act. The board is requested to prescribe reasonable and nondiscriminatory rates for the future and to award reparation.

It was developed at the hearing that a large part of the wool transported via water between New York and Boston originates in foreign countries and in territory west of the Mississippi River, is transshipped at one of these ports from foreign or coastwise vessels, and moves on through bills of lading from the point of origin to the port of destination. The issues presented in this case, however, are confined to the local rates of the respondent between New York and Boston. While the volume of movement of foreign and domestic wool transshipped to the respondent's vessels for transportation between New York and Boston is northbound, it is indicated by the

record that the local wool traffic between these ports is more equally distributed as to direction. Included in such local traffic are shipments of mohair, camel hair, and alpaca hair, which commodities are similar in practically all respects to wool from a transportation standpoint and are carried under the same ratings. In our consideration of the issues involved, the terms "wool" and "wool and related articles" as used in this report comprehend wool, mohair, camel hair, and alpaca hair.

The local rates alleged by the complainant to be unjust and unreasonable are the same as the contemporaneous rail rates, and considerable evidence was presented by the parties regarding the cost of water transportation as compared with the cost of rail transportation. Data and exhibits were incorporated in the record on behalf of the complainant association which tend to show that the operating costs of rail carriers are in excess of those of water carriers: no evidence of particularity and definiteness sufficient to disprove which was offered by the respondent. Obviously there is objection to the application of data which are based upon the cost of service of water carriers at large to the cost of service rendered by the Metropolitan Steamship Line, and the probative force of the complainant's evidence on this point is weakened because of its generality. It was indicated on behalf of the complainant, however, that in the absence of unusual difficulties encountered in the operation of the respondent's vessels or of exceptional requirements calling for extraordinary expenditures in the maintenance of its service (such as do not appear of record in this case and which it was claimed do not obtain so far as the service performed by the respondent is concerned), the rates complained of should be lower than the contemporaneous rates of the rail carriers.

Changing commercial and economic conditions resulting in decreased operating costs are alleged by the complainant and urged as a pertinent factor for consideration in determining the reasonableness of the local rates of the respondent on wool between New York and Boston. Claim is made to the effect that the cost of labor and the prices of materials and supplies, which form the bulk of the operating expense of the carrier, have undergone a substantial decrease. The testimony offered on behalf of both parties in this connection is general in character, but it affords sufficient basis for the conclusion that the operating costs of the respondent carrier at the date of hearing were lower than those which prevailed at the time of the decision of the board in *Increased Rates, 1920*, 1 U. S. S. B. 13, on August 24, 1920, under authority of which the respondent's rates were advanced 40 per cent.

Much of the evidence of the complainant was addressed to the contention that the local rates of the carrier on wool and related articles between New York and Boston should not exceed the proportion of the through rates on these commodities which it receives in connection with through interstate traffic. In short, the complainant desires that the rates shown in the respondent's proportional tariff applying from New York to Boston on traffic received from southern coastwise steamship lines at New York be made the basis of the local rates between those ports. The following table shows a comparison of the local and proportional rates in effect during the period covered by the complaint:

Rates on wool and mohair between New York and Boston.

[In cents per 100 pounds.]

	Wool and mohair in grease.				Wool and mohair scoured.			
	Compressed.		Uncompressed.		Compressed.		Uncompressed.	
	Carload.	Less than carload.	Carload.	Less than carload	Carload.	Less than carload.	Carload.	Less than carload.
Local rates.								
Dec. 15, 1918, to June 16, 1919	31½	52½	31½	52½	41½	62	41½	77½
June 16, 1919, to Oct. 11, 1919	[1] 31½ [2] 29	52½	31½	52½	[1] 41½ [2] 36½	62	41½	77½
Oct. 11, 1919, to Apr. 28, 1920	[1] 30 [2] 29	47½	30	47½	[1] 39½ [2] 36½	53	39½	66½
Apr. 28, 1920, to Aug. 28, 1920	30	47½	30	47½	39½	53	39½	66½
Aug. 28, 1920, to date of hearing	42	66½	42	66½	55½	74	55½	92½
Proportional rates (1).								
Dec. 15, 1918, to Sept. 2, 1920	15½	15½	22	22	15½	15½	22	22
Sept. 2, 1920, to date of hearing	21½	21½	31	31	21½	21½	31	31

[1] Applies from Boston to New York. [2] Applies from New York to Boston.

It will be noted that at the date of the hearing the spread between the local and proportional carload rates on wool in grease, compressed and uncompressed, was 20½ cents and 11 cents per 100 per 100 pounds, respectively. The spread between the less-than-carload rates on this commodity in grease was 45 cents when compressed and 35½ cents when uncompressed; and in respect of scoured pounds, respectively; and on scoured wool, 34 cents and 24½ cents wool, 52½ cents compressed and 61½ cents uncompressed. While recognition is given to the fact that the cost of handling local traffic is generally greater than the cost of handling through traffic (*Increased Rates, 1920*, 1 U. S. S. B. 17), and due weight is accorded statements made on behalf of the respondent that the proportional rates involved are maintained for competitive reasons and do not afford a profit over and above the cost of service rendered, they

fall far short of furnishing a satisfactory explanation of the great excess of the local over the proportional rates. Further, in regard to the statements of the carrier's witness that the proportional rates on wool are not remunerative, it should be observed that the disparity between such rates and those alleged to be unreasonable strongly indicates that unduly high rates are exacted for the transportation of local traffic for the benefit of through interstate traffic.

The complainant rests its allegation of undue discrimination principally upon comparisons made between the rates under attack and those published by the respondent for application between New York and Boston on alum, sulphate of alumina, sulphate of ammonia, asphaltum, asphaltum substitutes, glucose, corn sirup, depilatory, molasses, pitch, sirup, and tar. The substantial dissimilarity existing between these commodities and wool, mohair, camel hair, and alpaca hair from a transportation standpoint is apparent. Admission was made on behalf of the complainant that its members are not in competition with manufacturers of or dealers in the commodities used for comparison, nor was it claimed that wool dealers were or are subjected to any disadvantage because the carrier accords rates on such commodities which are lower than the rates on wool and related articles. Some effort was also made to establish undue prejudice because of the fact that the rates assailed do not include certain terminal deliveries which are extended in connection with other traffic. According to the record, however, the terminal deliveries referred to are accorded by the respondent to through traffic and by rail carriers to through and local traffic between New York and Boston. It is shown that these deliveries are compelled by competition and other factors which do not so directly or immediately affect the local port-to-port traffic involved in this proceeding.

Other allegations contained in the complaint were not pressed at the hearing and need not be considered in this report.

Upon all the facts and circumstances of record the board concludes and decides that the rates complained of were not and are not unduly preferential or unduly prejudicial. The board further finds that said rates have not been shown to have been unjust or unreasonable in the past, but that they are and for the future will be unjust and unreasonable in violation of section 18 of the shipping act to the extent that they exceed the rates shown below, which we determine and prescribe as just and reasonable maximum rates for application by the respondent to this traffic in the future:

Reasonable maximum rates on wool and related articles between New York and Boston.

[In cents per 100 pounds.]

Commodiy.	New York to Boston.		Boston to New York.	
	Carload.	Less than carload.	Carload.	Less than carload.
Wool, mohair, camel hair, alpaca hair, in grease [1]	38	55½	38	55½
Wool, mohair, camel hair, alpaca hair, scoured [2]	46½	62	46½	62

[1] Minimum carload weight, 16,000 pounds.
[2] Minimum carload weight, 10,000 pounds.
NOTE.—The above prescribed carload rates include deliveries to and from all points within the lighterage limits of New York Harbor as shown in Group II of Eastern Steamship Lines, Incorporated, Tariff S. B. No. 96, in effect at the date of the hearing. All rates prescribed above include marine insurance as shown n said tariff.

In view of the foregoing conclusions, reparation is denied.

An order will be entered accordingly.

1 U. S. S. B.

ORDER.

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 27th day of March, 1922.

Formal Complaint No. 9.
Boston Wool Trade Association
v.
Eastern Steamship Lines, Incorporated.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the Eastern Steamship Lines, Incorporated, the above-named respondent, be, and is hereby, notified and required to cease and desist, on or before April 25, 1922, and thereafter to abstain from publishing, demanding, or collecting the rates for the transportation of wool, mohair, camel hair, and alpaca hair, in grease and scoured, between New York and Boston, herein found unjust and unreasonable.

It is further ordered, That said respondent be, and it is hereby, notified and required to establish, on or before April 25, 1922, upon one day's notice to the board and to the general public by filing and posting in accordance with section 18 of the Federal shipping act and Tariff Circular No. 1 of the board, and thereafter to maintain and apply to the transportation of wool, mohair, camel hair, and alpaca hair, in grease and scoured, between New York and Boston, rates not to exceed those herein prescribed as reasonable maximum rates.

And it is further ordered, That this order shall continue in force for a period of not less than two years from the date when it shall take effect unless otherwise ordered by the board.

By the board.

[SEAL.] CLIFFORD W. SMITH,
Secretary.

DOCKET NO. 15.

EDEN MINING COMPANY AND TUNKY TRANSPORTATION & POWER COMPANY

v.

BLUEFIELDS FRUIT & STEAMSHIP COMPANY AND NEW ORLEANS-BLUEFIELDS FRUIT & TRANSPORTATION COMPANY.

Submitted August 16, 1922. Decided October 11, 1922.

Exaction of higher rates from complainants than from shippers who had agreed to give the respondent their exclusive patronage subjected complaintants to undue and unreasonable prejudice and disadvantage, and constituted unjust discrimination between shippers, in violation of sections 16 and 17 of the shipping act. The unjust discrimination having been removed, and there being no proof of damage, complaint is dismissed.

G. F. Snyder, for the complainants.
John St. Paul, jr., for the respondents.

REPORT OF THE BOARD.

The proposed report of the examiner, which does not differ in substance herefrom, was served upon the parties. No exceptions thereto were filed on behalf of the carriers, but exceptions in respect to the question of reparation were received from the complainants and have been given careful consideration.

The complainants in this case are Delaware corporations engaged in the business of mining and furnishing power and transportation in the country of Nicaragua, Central America, with headquarters at Philadelphia, Pa. The respondents are corporations organized and existing under the laws of the States of Louisiana and Delaware, respectively, engaged as common carriers of property between ports in the State of Louisiana and ports in Nicaragua, and as such are subject to the provisions of the shipping act of 1916.

The complainants allege that in respect to shipments from New Orleans to Bluefields, Nicaragua, the respondents entered into unfair and unjustly discriminatory contracts with certain shippers

whereby such shippers received a discount of 40 per cent from the respondent's tariff rates, although noncontract shippers, including the complainants, were accorded a discount of but 25 per cent from said tariff rates, thereby subjecting the complainants to undue disadvantage and unjust discrimination, all in violation of sections 14, 16, and 17 of the shipping act. At the hearing it was stated the alleged unlawful discrimination is no longer practiced by the carriers and that part of the complaint requesting the board to order its discontinuance was withdrawn, thus confining the issue to the propriety of the carriers' actions and the right of the complainants to reparation. It is also to be noted that no evidence was presented against the New Orleans-Bluefields Fruit & Transportation Company. A witness for the complainants stated this company was named a party under a misapprehension that the Bluefields Fruit & Steamship Company and another company had been consolidated to form the New Orleans-Bluefields Fruit & Transportation Company. The complaint, therefore, must be considered to relate only to the Bluefields Fruit & Steamship Company.

Supplement No. 1 to Bluefields Fruit & Steamship Company General Merchandise Tariff No. 17, effective May 10, 1919, provides that—

> A discount of 25 per cent on tariff rates will be allowed on shipments to Bluefields, and 20 per cent on shipments to Cape Gracias, with the exception of lumber shipments, on which full tariff rates will apply to both points.

A further provision of Supplement No. 1 to this tariff reads:

> To contractors contracting subject to the provisions of the laws of the United States a discount of 40 per cent is allowed in lieu of 25 per cent hereinabove set forth on shipments of general merchandise to Bluefields (only), with the exception of lumber, on which 20 per cent will be allowed.

Although this supplement uses the expression "discount of 25 per cent on tariff rates," the facts developed in this case plainly show that in each instance the rate which the carrier held out to the public as its regularly established transportation charge was 75 per cent of the rate quoted in the tariff. In other words, the carrier used this phraseology merely as a method of stating the rate, and it does not appear that any shipper was compelled to pay more than such regularly established rate. The only discount involved in this case, therefore, is the difference between the rates charged the complainants and those charged contract shippers.

According to the record, the consideration moving to the Bluefields Fruit & Steamship Company in respect of the contractual relation referred to in the last quoted tariff provision was to bind the shipper in writing to patronize that carrier exclusively in connection with all freight, goods, or merchandise shipped by him or controlled by

him between the port of New Orleans and the carrier's Nicaraguan ports of call. Exclusive patronage contracts were available to all shippers at New Orleans without exception and regardless of the amount of freight or number of shipments which any shipper had to move, the only requirement being that he use the line of the respondent and no other. The evidence shows that such agreements were had by the respondent with many shippers via its line from New Orleans to Bluefields and in addition, with consignees who received shipments at New Orleans on through bills of lading from European ports. The complainants were invited to enter into such an agreement, but because of a desire to avail themselves at opportune times of the services of other carriers operating between New Orleans and Nicaraguan ports they refused to become party thereto and were accordingly denied the lower rates enjoyed by contract shippers. It appears that except for one other carrier which operated during a part of the period covered by this complaint, the respondent furnished the only regular service between New Orleans and Bluefields. From October 2, 1919, to December 25, 1919, the complainants made a total of 14 shipments of general merchandise from New Orleans to Bluefields via the respondent's line, in connection with which a discount of 25 per cent from current tariff rates was given. At the same time and in many instances upon the same vessels were carried similar shipments for contact shippers who were accorded a discount of 40 per cent. All of these discounts were deducted from the amount of freight payable on bills rendered three days after sailing date.

On behalf of the Bluefields Fruit & Steamship Company it is contended that the agreements and higher rates attacked in the instant case as unlawfully discriminatory were necessary for the protection of its interests against tramp carriers and requisite for the maintenance of the service rendered by it. Because of the existence of the contracts for exclusive patronage, it is stated, the carrier had knowledge from past transactions as to what shippers would have freight to move and the approximate amount of such freight. In this way, it is claimed, the respondent was enabled to arrange its schedules and provided necessary tonnage for the conduct of its business.

The facts as shown by the record of this proceeding are analogous to those involved in *Menacho et al.* v. *Ward et al.*, 27 Fed. 529. In that case injunction was sought to restrain common carriers by water from charging higher rates to shippers who refused to agree to give the defendants their exclusive patronage than to shippers who had so agreed. The question presented for determination, propounded in the words of the court, was, "Can the defendants lawfully require

the complainants to pay more for carrying the same kind of merchandise under like conditions to the same places than they charge to others because the complainants refuse to patronize the defendants exclusively, while other shippers do not?" The following language, in part, was used in disposing of this question:

> The vice of the discrimination here is that it is calculated to coerce all those who have occasion to employ common carriers between New York and Cuba from employing such agencies as may offer. Its tendency is to deprive the public of their legitimate opportunities to obtain carriage on the best terms they can. If it is tolerated it will result practically in giving the defendants a monopoly of the carrying trade between these places. Manifestly it is enforced by the defendants in order to discourage all others from attempting to serve the public as carriers between these places. Such discrimination is not only unreasonable, but is odious.

In regard to the contentions of the carriers in that case, the court made the following observation:

> The proposition is speciously put that the carrier may reasonably discriminate between two classes of shippers, the regular and the casual, and that such is the only discrimination here. Undoubtedly the carrier may adopt a commutation system, whereby those who furnish him regular traffic may obtain reduced rates, just as he may properly regulate his charges upon the basis of the quantity of traffic which he receives from different classes of shippers. But this is not the proposition to be discussed. The defendants assume to discriminate against the complainants, not because they do not furnish them a regular business, or a given number of shipments, or a certain quantity of merchandise to carry, but because they refuse to patronize the defendants exclusively.

The benefits which accrue to a common carrier if it may make lower rates to those who ship by it exclusively are plain, and that such a policy may be advantageous to the carrier which practices it may be granted, but it has long since been recognized that those who conduct a public employment must forego many methods of obtaining business and holding it which are permissible in private enterprise. In the case quoted from above, the status of the common law with respect to exclusive patronage contracts by common carriers is fairly represented. It pronounces the common-law doctrine that such contracts are lawful only in the event they are made with a view that in return for the lower rate the carrier shall receive from the shipper regular consignments of freight, or a given number of shipments, or a certain quantity of merchandise for transportation. The evidence in the instant case is conclusive that none of these elements was a consideration for the lower rate extended to contract shippers. In the words of witness for the respondent, "The one and only condition was that they confine shipments to our line. * * * Our idea in securing these exclusive contracts was to keep shippers from patronizing other lines." It is manifest, therefore, that regardless of how

desirable the giving of lower rates to those shippers who agreed to ship exclusively via its line might be to the respondent from the standpoint of business expediency, such practice was violative of the common law because of the absence of any proper consideration. For another reason, as will hereafter be shown, such practice was also violative of provisions of the Federal shipping act as constituting undue discrimination between shippers. It should be here remarked, however, that we do not decide whether under that act the according of lower rates to those shippers who contract to confine their shipments to a certain carrier or carriers are lawful when based upon regularity of consignments, number of shipments, or quantity of merchandise furnished for transportation, as in the instant case no such question is presented for determination.

By section 16 of the Federal shipping act of 1916 it is declared unlawful for any common carrier by water directly or indirectly "to make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." Again, by section 17 of that statute it is provided that "No common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers."

It is evident that the purpose of Congress in enacting these provisions of the statute was to impose upon common carriers within the purview thereof the duty of charging uniform rates to all shippers receiving a similar transportation service. The duty of the respondent under these sections was to serve the public impartially, and we think the language used in *W. U. Tel. Co.* v. *Call Pub. Co.*, 181 U. S. 92, in dealing with a similar statute, is entirely applicable to the case in hand. The court there said: "All individuals have equal rights both in respect to service and charges. Of course such equality of right does not prevent differences in the modes and kinds of service and different charges based thereon. But that principle of equality does forbid any difference in charge which is not based upon difference in service, and even when based upon difference of service must have some reasonable relation to the amount of difference and can not be so great as to produce an unjust discrimination." From the facts of record in the case before us it is manifest that the transportation service furnished the complainants and contract shippers was in all respects identical.

It is suggested on behalf of the carrier that as the complainants were extended full opportunity to avail themselves of the lower rates by agreeing to the same condition which contract shippers had ac-

cepted, they were accorded the substantial equality of treatment contemplated by sections 16 and 17 of the act. This contention, however, is as unconvincing here as when used in support of other kinds of unjust discrimination resulting from unfair conditions imposed by carriers upon shippers. Under the statute, the complainants, as members of the shipping public, were entitled to have their shipments carried at the same rates as other patrons who received identical service. This right attached to each individual transportation transaction as such, and was not to be predicated upon any condition imposed by the respondent restricting the complainants' freedom of choice as to what carrier or carriers they should elect to patronize in connection with subsequent shipments.

Some reliance is placed by the respondent upon the decision in *United States* v. *Prince Line, Ltd., et al.*, 220 Fed. 230, holding that in respect to commerce of the United States the practice of a combination of foreign carriers to give deferred rebates to all shippers who patronized their lines exclusively was not an unlawful restraint of trade in violation of the Sherman Antitrust Act. However, the question there involved was not one of undue discrimination between shippers, with which we are now concerned, but one as to the propriety of carriers combining to prevent competition by other lines. The inapplicability of this decision to the complaint before us is further evident when it is observed that Congress, by the subsequent passage of the shipping act, has inhibited and condemned as unlawful the very practice out of which the case arose. It is likewise to be noted, in connection with the case relied upon by the respondent, that the Supreme Court of the United States declined to affirm the decision there rendered. *United States* v. *Prince Line, Ltd., et al.*, 242 U. S. 537.

No evidence was adduced relating to any action of the respondent tending to show direct or indirect retaliation against the complainants for patronizing other carriers. Likewise, from the facts of record it is clear that the contracts for exclusive patronage complained of were not to any extent based upon volume of freight offered. That part of the complaint alleging violations by the carrier of paragraphs 3 and 4 of section 14 of the act is, therefore, without support.

In regard to reparation which the board is requested to award, the record shows that the total amount of freight paid by the Eden Mining Company and the Tunky Transportation & Power Company for the carriage of the 14 shipments relative to which complaint is made was $5,576.08. The difference between this amount and the sum which would have been paid had the complainants been given a discount of 40 per cent similarly as were contract shippers is $1,113.30. The complainants content themselves with showing these

facts, taking the position that as this latter amount represents the extent of the unlawful discrimination to which they were subjected, the fact and measure of their damage are thereby established, and that they are entitled to recover such amount as a matter of course under authority of section 22 of the act. No evidence is submitted relative to any expense incurred, loss of profits, or damage of any sort suffered as a result of the wrong of the respondent, the complainants insisting that, under the statute, mere proof of the amount by which the rates charged them exceeds those charged contract shippers for identical transportation service *ipso facto* establishes the fact of their injury and the amount of their damage.

We think that to accept the contention of the complainants in this connection would be to read into the statute a meaning which its plain wording does not warrant. Section 22 of the act provides that any person may file with the board a sworn complaint setting forth any violation thereof, and asking "reparation for the injury, if any, caused thereby." It further provides that in the event certain requirements of the statute are met, the board "may direct the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation." It can not be inferred from the language used that compensation for other than the actual damage incurred is to be granted. It may be that in a case of this character the injury sustained by the complainants because of the unlawful discrimination practiced was greater than the amount of the difference between the rates charged them and preferred shippers, or it may be that it was less. As was said in connection with this subject in a similar case involving reparation under a practically identical statute: "The statute gives a right of action for damages to the injured party, and by the use of these legal terms clearly indicated that the damages recoverable were those known to the law and intended as compensation for the injury sustained. It is elementary that in a suit at law both the fact and the amount of damage must be proved. And although the plaintiff insists that in all cases like this the fact and amount of pecuniary loss is a matter of law, yet this contention is not sustained by the language of the act, nor is it well founded in actual experience." *Pennsylvania Railroad Company* v. *International Coal Mining Company*, 230 U. S. 184.

While, as in the instant case, the fact of discrimination in violation of provisions of the shipping act may be proved and the board find accordingly, in respect to awarding reparation under section 22 of the act for injury alleged to have been caused by such discrimination, the fact of injury and the exact amount of pecuniary damage must be shown by further and other proof before the board may extend relief. We think it is clear that proof of unlawful dis-

crimination within the meaning of the act, by showing the charging of different rates from shippers receiving the same service, does not, as a matter of course, establish the fact of injury and the amount of damage to which the complainants may be entitled by way of reparation.

After full consideration of all the facts and evidence of record, the board concludes and decides that the exaction of higher rates from the complainants than from other shippers for like service under the circumstances involved in this case subjected the complainants to undue and unreasonable prejudice and disadvantage, and constituted unjust discrimination between shippers, in violation of sections 16 and 17 of the shipping act. Inasmuch as these violations have been discontinued, and no specific injury to complainants was proved, the complaint is dismissed.

An order will be entered accordingly.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 11th day of October, 1922.

Formal Complaint No. 15.

Eden Mining Company and Tunky Transportation & Power Company *v.* Bluefields Fruit & Steamship Company and New Orleans-Bluefields Fruit & Transportation Company.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed, without prejudice.

By the board.

[SEAL.] CLIFFORD W. SMITH,
Secretary.

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DOCKET NO. 12.

BOSTON WOOL TRADE ASSOCIATION

v.

GENERAL STEAMSHIP CORPORATION, OCEANIC STEAMSHIP COMPANY, AND UNION STEAMSHIP COMPANY.

Submitted June 14, 1923. Decided July 17, 1923.

Practice of respondents in routing shipments via water from port of transshipment to destination, charging of same through rates thereon as for shipments moving via rail from said transshipment port, and failure to absorb wharfage charges, State toll, and war tax not shown to have been unduly prejudicial, unjustly discriminatory, or unjust and unreasonable, in violation of sections 16, 17, and 18, as alleged. Complaint dismissed.

H. A. Davis for complainant.

Sherman L. Whipple for Oceanic Steamship Company and Union Steamship Company.

REPORT OF THE BOARD.

Exceptions to the examiner's proposed report in this case were filed on behalf of the complainant and have been given careful consideration.

The complainant is a voluntary association of wool dealers engaged in the purchase and sale of wool and other commodities, with headquarters at Boston, Mass. By complaint filed under authority of section 22 of the Federal shipping act, it alleges that during the years 1920 and 1921 the respondents improperly diverted and routed certain shipments of wool en route from ports in Australia to Boston on through bills of lading after their arrival at San Francisco; that its members were compelled to pay rates in excess of those applicable via the route transported, and extra charges thereon; and that on other shipments of the same commodity transported from Australia to Boston the complainant's members were required to pay charges in excess of the bill of lading rates. Said practice, rates, and charges are alleged to be unduly prejudicial, unjustly discriminatory, and unjust and unreasonable, in violation of sections 16, 17, and 18 of the act. The board is requested to effect a discontinuance of the alleged violations and to award reparation.

The complainant contends that all the wool concerned in this proceeding was shipped with the understanding that rail transportation was to be provided from San Francisco to Boston and that the car-

riers here respondent arbitrarily diverted certain shipments at San Francisco via the Panama Canal. In regard to the shipments claimed to have been thus diverted, the complainant association urges that its members are entitled to reparation in an amount equal to the difference between the rail rate and the water rate from San Francisco to Boston, together with the cost of marine insurance and wharfage charges at Boston, which it is indicated would not have been incurred had the wool been transported via rail. That part of the complaint alleging the exaction of charges in excess of the bill of lading rates is addressed to the fact that in respect to certain shipments the movement of which from San Francisco was via rail, the complainant's members were required to pay State tolls and war tax in addition to the prepaid through rates applicable from Australian ports to Boston.

A review of the evidence of record fails to disclose facts sufficient to substantiate the complainant's general allegation that the respondent carriers contracted for the transportation of all the wool shipments involved in this case "with the understanding that all-rail routing from the port of San Francisco" was to be provided. In fact, no evidence is presented which tends to prove the existence of any understanding between the parties relative to routing except such as is furnished by bills of lading and copies of letters submitted as exhibits. An examination of these bills of lading shows that in a number of cases rail routing from San Francisco is specified, and the evidence on this point is clear that rail routing was in fact accorded all shipments thereby covered, unless request was received from the consignees to ship via water. In respect to other bills of lading submitted as typical the routing from San Francisco is not specified, but, like the bills of lading designating rail routing just considered, there is stamped thereon the notation "Any increase in rail rate over $———[1] per 100 pounds charged at signing of this bill of lading is to be paid by consignee prior to delivery of goods." In this connection the record indicates that this notation was entered on all bills of lading during a part of the period covered by this complaint because of contemplated increases in rail rates from San Francisco to Boston, and that the purpose of its insertion was to insure protection of the respondents' revenue in those cases where circumstances made it desirable for them to route shipments via rail from San Francisco. In no instance is it shown by the record that this notation was intended to have the effect of compelling rail routing, and from the facts before us we think it is not possible to conclude that it did so require. We are of opinion, therefore, that in regard to all of those shipments covered by bills of lading which did not specifically provide for rail routing the complainant fails

[1] $1.66½ wool in grease; $2.16½ wool scoured.

to show the respondent steamship companies were obligated to forward via rail from San Francisco, and that the diversion alleged is unsustained in the premises.

In support of its allegation that the rates charged its members were unlawful and of its claim of right to reparation in connection therewith, the complainant directs our attention to the fact that its members were charged 1⅝ pence per pound on wool in grease and 1⅞ pence per pound on scoured wool for transportation from Australian ports to Boston, whether the shipments moved via water from San Francisco or overland therefrom. Emphasis is placed upon the contention that as the local water rates per 100 pounds from San Francisco to Boston during the period covered by this complaint were less than the corresponding rail rates, in respect to those shipments involved in this proceeding which moved via water from San Francisco the consignees were entitled to have the through rates of 1⅝ pence and 1⅞ pence per pound on wool in grease and scoured, respectively, reduced in an amount equal to the difference between such water and rail rates. This contention is based, it is asserted, upon the familiar traffic rule that a shipper is required to pay only the rate chargeable via the route which his goods are transported. Manifestly this rule is predicated upon the existence of alternative routes with differences in through rates.

The facts of record in this proceeding indicate that the agreement of the parties was one for a through service without regard to the method of transportation employed from San Francisco. The consideration for this through service was not a combination of the local rates to and from San Francisco, but a single through charge, regardless of whether the transportation was from Australia to San Francisco and thence via rail to Boston or from Australia to San Francisco and thence via the Panama Canal to Boston. Such through charge was the same via either route. In other words, in the instant case we have alternative routes, but no difference in rates. The rates assailed were likewise the same as the rates charged by the respondents for carriage from Australia to Pacific coast ports and the same as those charged by carriers operating from Australia direct to Boston via the Panama Canal. Out of its through rates the respondents absorbed the cost of carriage from San Francisco to Boston; and having in mind that no obligation is shown by the evidence to have rested upon the respondents to forward via rail, we think it obvious that no basis exists for the claim for refund of the difference between the local rail and canal rates or for the charge that the rates applied were unduly prejudicial or unjustly discriminatory in violation of sections 16 and 17 of the statute. It should be here stated that as section 18 of the shipping act relates to carriers in interstate commerce exclusively its requirements have no application to the respondents in this case.

Regarding the complainant's claim for reparation for amounts paid for wharfage at Boston and for marine insurance from San Francisco, we deem it sufficient to observe that nowhere in the record is it shown that the carriers agreed to absorb the former or that it was not properly payable by the consignees. In fact, upon each of the 11 bills of lading issued by the General Steamship Corporation and submitted as exhibits on behalf of the complainant is stamped the notation " Wharfage, storage, or handling charges if incurred at port of delivery to be borne by consignee." In connection with marine insurance, however, exhibits in the form of letters and telegrams are submitted which show that both the General Steamship Corporation and the Union Steamship Company agreed to absorb the insurance from San Francisco on shipments forwarded by them through the canal. The record as a whole substantiates the claim of the complainant that this agreement was not carried out, and that up to the time of the hearing reimbursement for premiums paid by consignees had not been made. In the circumstances, if the amounts referred to have not been refunded, the complainant's members concerned should present an appropriate claim to the respondents named, who should thereupon adjust the matter promptly.

Regarding the complainant's additional claim for refund of amounts paid by its members for State tolls and war tax on shipments carried via rail from San Francisco, it is shown by the evidence that neither is a transportation charge. The first is a charge upon cargo levied by State authorities to provide revenue for the maintenance of wharves over which the complainant's shipments moved. No provision is contained in any of the exemplar bills of lading presented at the hearing which would in any manner relieve the complainant's members from payment of this toll, nor is there evidence of any agreement by the carriers to absorb the same. With respect to the war tax of 3 per cent, which is levied upon the transportation charge as such, it is specifically provided by section 501 of the Federal revenue act, under authority of which the tax in this case was assessed, that it " shall be paid by the person paying for the services or facilities rendered."

Other allegations included in the complaint are unsupported by evidence of record and need not be considered in this report.

After examination of all the facts and circumstances of record in this proceeding, the board concludes and decides that the practice, rates, and charges of the respondent steamship companies complained of have not been shown to be unduly prejudicial, unjustly discriminatory, or unjust and unreasonable in violation of sections 16, 17, and 18 of the shipping act, as alleged. The complaint, therefore, will be dismissed.

An order will be entered accordingly.

ORDER.

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 17th day of July, 1923.

Formal Complaint No. 12.

Boston Wool Trade Association *v.* General Steamship Corporation, Oceanic Steamship Company, and Union Steamship Company.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the board.

(Sgd) CLIFFORD W. SMITH,
Secretary.

[SEAL.]

DOCKET NO. 13

AMERICAN TOBACCO COMPANY

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE)

Submitted May 24, 1923. Decided July 17, 1923

Charges exacted for transportation of collect shipments unduly prejudicial to complainant, unduly preferential of its competitors, and unjustly discriminatory, in violation of sections 16 and 17 of shipping act, to extent they exceeded prepaid charges on like shipments from and to the same ports, plus such additional costs as carrier was compelled to absorb over and above those accruing in connection with prepaid shipments.

Extent of injury, if any, to which complainant subjected not afforded by this record, and case assigned for further hearing in respect to any such injury and the amount of reparation to which complainant may be entitled.

Jonathan Holmes for the complainant.
Joseph P. Nolan for the respondent.

REPORT OF THE BOARD

Proposed report in this proceeding was served upon the parties, and exceptions thereto filed on behalf of the respondent carrier have been given careful consideration.

The complainant in this case is a New Jersey corporation engaged in the manufacture and distribution of tobacco products and cigarette papers, with principal offices in New York, N. Y. The respondent is a corporation organized and existing under the laws of the Republic of France, having an office in New York, N. Y., and is engaged as a common carrier in the transportation of property between ports in the United States and France, in which common-carrier capacity it is subject to the applicable provisions of the Federal shipping act of 1916.

By complaint filed under authority of section 22 of the shipping act the American Tobacco Company alleges that in respect to certain shipments transported by the respondent steamship company

it was subjected to undue and unreasonable prejudice and disadvantage and to the payment of unjustly discriminatory rates, in violation of sections 16 and 17 of that statute. Inasmuch as it was shown at the hearing that the alleged unlawful charges of the carrier are no longer exacted, that part of the complaint requesting the board to order the discontinuance thereof may be disregarded. Consideration of the case in this report, therefore, will be confined to a determination of the issue of unjust discrimination as relates to the charges of the carrier in the past. It should also be noted at this point that if unjust discrimination is found to have existed, the question whether the complainant is entitled to reparation will be determined from evidence to be submitted at a supplemental hearing.

According to the record, it appears that during the period April 7, 1919, to January 3, 1921, there were carried for the account of the complainant by the French Line from Bordeaux and Havre to New York 279 shipments of cigarette papers in books and cigarette paper in bobbins, for which service freight charges in the total sum of $99,755.47 were collected upon delivery at destination. It is shown by the evidence that these charges were calculated upon a fixed basis of 5 francs to the dollar in New York, and that on prepaid shipments of identical commodities carried for other of its patrons from Bordeaux and Havre to New York during the same period, and in many instances upon the same vessel, the respondent accepted payment in France of freight charges in francs at the current rate of exchange. The result was that the complainant paid more than its competitors for transportation of the same character of commodity from and to the same ports. Thus, for illustration, the freight on cigarette papers on December 19, 1919, was 60 francs per cubic meter. With respect to a shipment of 12.890 cubic meters of this commodity covered by bill of lading issued on that date the complainant paid as freight upon arrival at New York on January 5, 1920, the sum of $154.68, or at the rate of $12 per cubic meter. At the current rate of exchange of 11.18 francs per $1, as shown in the table following, it is seen that the charge to complainant's competitors in connection with shipments carried on the same vessel was but $5.36 per cubic meter, or $6.64 per cubic meter less than the amount paid by complainant. The difference between the charges on all shipments carried for the complainant on the basis of 5 francs to one dollar and what those charges would have been on the basis of the actual rate of exchange in effect on the dates such shipments were made is alleged to be $53,840, which amount is claimed as reparation.

Rate of exchange at port of origin on date of bill of lading

Date	Francs per dollar	Dollar per franc	Date	Francs per dollar	Dollar per franc	Date	Francs per dollar	Dollar per franc
1919			1919			1920		
Apr. 7	5.88	0.1701	Dec. 19	11.18	0.0894	June 30	12.15	0.0823
Apr. 22	6.02	.1661	Dec. 27	10.54½	.0948	July 20	12.23½	.0817
Apr. 25	6.11	.1637	Dec. 30	10.74½	.0931	July 23	13.14	.0761
Apr. 26	6.08	.1645				July 30	13.07½	.0765
May 17	6.45	.1550	1920			July 31	13.10½	.0763
May 21	6.64½	.1505	Jan. 5	10.75½	.0930	Aug. 4	14.04	.0712
May 22	6.63	.1508	Jan. 6	10.75	.0930	Aug. 7	13.93	.0718
July 9	6.84	.1461	Jan. 10	11.14	.0898	Aug. 14	13.82	.0723
July 10	6.87	.1455	Jan. 17	11.57	.0864	Aug. 20	14.12	.0708
July 19	7.07½	.1413	Jan. 31	13.22	.0756	Aug. 21	14.12	.0708
July 30	7.26	.1377	Feb. 13	14.33½	.0698	Aug. 26	14.19	.0705
Aug. 2	7.28	.1374	Feb. 15	14.11	.0709	Sept. 8	14.82½	.0675
Aug. 7	7.74	.1292	Feb. 24	14.24½	.0702	Sept. 10	14.85½	.0673
Aug. 15	7.79½	.1283	Feb. 29	14.29½	.0700	Sept. 24	14.84	.0674
Aug. 20	8.17½	.1223	Mar. 10	13.44	.0744	Sept. 25	14.84	.0674
Aug. 23	8.17	.1224	Mar. 13	13.41½	.0745	Sept. 27	15.01	.0666
Sept. 11	8.40½	.1190	Mar. 23	14.93½	.0669	Sept. 29	14.91½	.0670
Sept. 18	8.74	.1144	Mar. 26	14.40	.0694	Oct. 2	14.84½	.0674
Oct. 3	8.44½	.1183	Mar. 27	14.40	.0694	Oct. 12	15.30	.0654
Oct. 4	8.41½	.1188	Mar. 30	14.90½	.0671	Oct. 16	15.40	.0649
Oct. 10	8.49½	.1177	Mar. 31	14.97	.0668	Oct. 18	15.45	.0647
Oct. 18	8.62½	.1159	Apr. 7	15.34	.0652	Oct. 25	15.49½	.0645
Oct. 25	8.66	.1154	Apr. 8	15.26	.0655	Oct. 30	15.65½	.0639
Oct. 27	8.61½	.1161	Apr. 10	15.81	.0633	Nov. 9	17.29	.0578
Oct. 28	8.67½	.1153	Apr. 17	16.22	.0617	Nov. 24	16.40	.0610
Nov. 8	9.01½	.1109	Apr. 24	16.63½	.0601	Nov. 25	16.71½	.0598
Nov. 12	9.54	.1048	Apr. 30	16.66½	.0600	Dec. 2	16.45	.0608
Nov. 13	9.34	.1071	May 22	13.90	.0719	Dec. 6	16.79½	.0595
Nov. 18	9.61	.1041	May 29	13.75	.0727	Dec. 18	16.73½	.0598
Nov. 22	9.61½	.1040	June 7	12.98	.0770	Dec. 23	16.83½	.0594
Nov. 24	9.60	.1042	June 8	12.99½	.0769	Dec. 25	16.83½	.0594
Nov. 29	9.75½	.1025	June 14	13.22½	.0756			
Nov. 30	9.75½	.1025	June 19	12.50½	.0800	1921		
Dec. 6	10.78	.0927	June 26	12.03	.0831	Jan. 3	17.07½	.0586

Included in the record are copies of printed tariffs from which the charges for the transportation of the shipments involved in this proceeding were determined. Appearing upon each is the notation:

Important notice.—For shipments accepted with freight payable at destination, the rates of this tariff shall be converted into dollars on the fixed basis of five francs per dollar.

Evidence is presented on behalf of the French Line to the effect that, owing to the stringent financial situation prevailing in France during the period covered by the complaint, the carrier found it desirable to obtain possession of freight money in France at the earliest possible date, and in order to induce prepayment of charges it was found expedient to adopt the method of conversion of rates indicated in the above-quoted tariff provision. In this connection no evidence is of record tending to show why the respondent did not resort to the fundamental right inherent in it as a common carrier to demand and receive payment of freight charges as a condition precedent to transportation.

Stress is laid by the carrier upon the contention that the complainant had equal opportunity with other shippers of cigarette papers to avail itself of the lower charges accorded prepaid ship-

ments, and that as it elected to pay for the service rendered upon delivery at destination it is precluded from alleging unjust discrimination under the statute. Knowledge of the lower charges to be had by prepayment is denied on behalf of the complainant, and the evidence as a whole on this point is conflicting.

Section 16 of the Federal shipping act declares it unlawful for any common carrier within the purview thereof, directly or indirectly, "to make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." By section 17 of that act it is provided "that no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers." The manifest purpose of these provisions is to require common carriers subject to the statute to accord like treatment to all shippers who apply for and receive the same service; in view of which purpose if the tariff condition subjected the complainant to undue discrimination, his knowledge or lack of knowledge of such condition is plainly immaterial. In order to determine whether the complainant in the instant case was in fact subjected to undue and unreasonable prejudice and disadvantage and paid unjustly discriminatory charges for transportation, as alleged, it is pertinent, therefore, under the provisions of the statute above quoted, to consider whether the service furnished the complainant differed from that furnished shippers of cigarette paper who prepaid their freight and who were accorded lower charges.

The evidence of record indicates that, from a transportation standpoint, the shipments of the complainant were similar in every respect to those of shippers of cigarette paper who prepaid their freight. In so far as their actual physical handling and transportation were concerned, the record is conclusive that the service rendered by the respondent in connection with the consignments of each class of shippers was in every particular identical. It follows that unless conditions incident to the handling and transportation of the complainant's collect shipments existed which warranted the higher charges exacted, discrimination within the contemplation of the statute is established. Conversely, such conditions, to justify the higher charges, must have resulted in some detriment to the carrier comparable in degree to the amount of such higher charges.

In this relation contention is made on behalf of the French Line that the higher charges paid by the complainant were justified because the service rendered in connection with its collect shipments

was of a more expensive character than that rendered shippers of cigarette paper who prepaid their freight. In support thereof it is shown that it was necessary for the respondent to insure the freight on collect shipments or to assume the risk of loss in the event of disaster at sea, as well as to absorb the cost of cabling the freight money collected at destination to France. On the other hand, it is shown by the complainant that the marine insurance rate was but 25 cents per $100 on paper in bulk and 75 cents per $100 on paper in books, and that war-risk insurance averaged 7.2 cents per $100 during the period covered by the complaint. The exact cost of cabling does not appear of record. As a whole, the evidence clearly indicates that the difference in the charges exacted from the complainant and from shippers who prepaid their freight greatly and unduly exceeded the total amount of the carrier's additional expenditures resulting from its transportation of the complainant's shipments freight collect. As these incidents of the transportation service in connection with the complainant's collect shipments resulted in added expense to the carrier, however, the cost thereof might properly be reflected in a higher charge than for prepaid shipments.

From a consideration of all the facts and evidence of record, the board concludes and decides that, under the circumstances of this case, the charges collected from complainant were unduly prejudicial to the complainant, unduly preferential of its competitors, and unjustly discriminatory between shippers, in violation of sections 16 and 17 of the shipping act, to the extent that they exceeded the prepaid charges on like shipments from and to the same ports, plus such additional costs as the respondent was compelled to absorb over and above those accruing in connection with prepaid shipments. The record does not afford a basis for finding the extent, if any, to which the complainant has been injured, and the case will be assigned for further hearing in respect to any such injury and the amount of reparation to which the complainant may be entitled.

DOCKET NO. 21

JUDSON L. THOMSON MANUFACTURING COMPANY

v.

EASTERN STEAMSHIP LINES, INCORPORATED

Submitted May 2, 1924. Decided August 5, 1924

Rates on iron and steel rivets, brass or copper coated, in less than carloads, from Boston to New York, found unreasonable. Reasonable maximum rate for the future prescribed; complainant entitled to reparation.

George F. Mahoney for complainant.

W. H. Blasdale for respondent.

REPORT OF THE BOARD

A report proposed by the examiner in this case was served upon the parties, and exceptions thereto filed on behalf of the respondent have been duly considered.

The complainant is a corporation organized and existing under the laws of the State of Massachusetts, and is engaged in the business of rivet manufacturing at Waltham in that State. By complaint seasonably filed it alleges that the port-to-port rates charged by the Eastern Steamship Lines, Incorporated, on less-than-carload shipments of its product from Boston to New York during the period September 3, 1921, to January 27, 1923, inclusive, were unjust and unreasonable in violation of section 18 of the Federal shipping act. The board is requested to effect a discontinuance of said alleged violation, to establish a just and reasonable maximum rate for the future, and to award reparation. Rates will be stated in cents per 100 pounds.

The commodity shipped was iron and steel rivets of different sizes, coated with brass or copper, in boxes containing 25,000, 50,000, or 100,000 rivets each, and weighing from 50 to 100 pounds per box. All the shipments concerned were consigned to the New York branch house of the complainant corporation. Fourth-class rates of 42 cents and 38 cents, published in the respondent's tariffs S. B. Nos. 96 and 165, effective August 28, 1920, and July 1, 1922, respectively, were exacted, whereas it is claimed contemporaneous commodity rates of 28 cents and 25 cents, provided in the same tariffs to apply on rivets as listed in special iron and steel list in respondent's Excep-

tions to the Official Classification S. B. No. 76 and its reissue S. B. No. 182, should have been charged.

The applicability of the lower rates contended for by the complainant is predicated upon the alleged similarity between the commodity shipped and plain iron and steel rivets in regard to which such lower rates were and are chargeable. The evidence presented on behalf of both parties is, as a whole, directed toward comparisons of the two classes of rivets, the complainant urging that they are in all respects the same, and the respondent that they are distinct and different. Comparisons are also drawn in regard to various other commodities in the rough and the same commodities when coated or when advanced in stage of manufacture over the primary article.

According to the record, shipments of the complainant's product are made to New York almost daily, and brass or copper coated iron and steel rivets are in direct competition with plain iron and steel rivets. The brass or copper coating is intended to make them more desirable for use in matching materials in which they are placed and enhances their value from 2 to 3 cents per 1,000 rivets (their commercial unit), but does not add perceptibly to their weight. The testimony and exhibits before us are conclusive that by all ordinary tests rivets made of iron or steel and coated with brass or copper are not distinguishable from plain iron or steel rivets except in the matter of color. In their various forms and sizes, the weight, packing, risk, and other elements incident to these commodities are practically the same; and in all respects, except as to value, they are, from a transportation standpoint, identical. A careful examination of the record indicates that this element of value is the sole reason for the maintenance on coated rivets of rates in excess of those applicable on iron and steel rivets uncoated. Value, of course, is a factor properly to be considered by carriers in the determination of rates for their service, but where two commodities are practically identical in transportation characteristics and are directly competitive, any difference in the values of such commodities should be appreciable and substantial in order to justify the application of higher rates on the one than on the other. This condition is not met in the instant case.

Evidence was adduced by both parties relative to a question of interpretation of the applicable tariffs conceived by the complainant to impose a duty upon the respondent to charge the lower commodity rates involved. In view of the above conclusions regarding the reasonableness of the rates attacked, however, consideration of such evidence is deemed unnecessary.

According due consideration to all the facts and evidence of record, the board concludes and decides that the rates assailed were, are, and for the future will be, unjust and unreasonable in violation

of section 18 of the statute to the extent which they exceeded, exceed, or may exceed 28 cents from September 3, 1921, to July 1, 1922, and 25 cents on and after July 1, 1922; that the complainant made the shipments as described, and paid and bore the charges thereon; that it has been injured thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable, and that it is entitled to reparation. The complainant is directed to comply with Rule XXI of the Rules of Practice.

UNITED STATES SHIPPING BOARD

DOCKET No. 23

THE PORT UTILITIES COMMISSION OF CHARLESTON, S. C., ET AL.

v.

THE CAROLINA COMPANY, ET AL

Docket No. 25

THE NORFOLK PORT COMMISSION

v.

ALGERIAN-AMERICAN LINES, ET AL.

DOCKET No. 26

THE PORT DIFFERENTIAL INVESTIGATION

Submitted November 25, 1924. Decided January 20, 1925

On export traffic to certain foreign destinations, existing differentials and rates not shown to unduly prejudice South Atlantic ports in favor of North Atlantic ports, as alleged; maintenance of same rates from Atlantic and Gulf ports on so-called parity commodities not shown to constitute undue prejudice or unjust discrimination, as alleged. Upon investigation, present rate adjustment between North Atlantic, South Atlantic, and Gulf ports to foreign destinations indicated not shown to be unduly prejudicial or unjustly discriminatory.

Tripartite conference agreement unfair as between carriers and operates to the detriment of commerce of the United States.

Charles S. Belsterling for Isthmian Steamship Lines; *Roscoe H. Hupper* for Anchor-Donaldson Line, Anchor Line, American Levant Line, Booth American Shipping Corporation, Bristol City Line, Chas. Hill & Sons (Inc.), Compania Transatlantica, Cosulich Line.

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Phelps Bros. & Co., Cunard Steamship Co. (Ltd.), Ellerman's Phoenix Line, Ellerman's Wilson Line, Fabre Line, Jas. W. Elwell & Co. (Inc.), Agents, French Line, Compagnie Generale Transatlantique, Furness Lines, Furness, Withy & Co. (Ltd.), Hamburg-American Line, Holland-America Line, International Mercantile Marine Co., American Line, Ellerman & Bucknall Steamship Co. (Ltd.), Frederick Leyland & Co. (Inc.), Red Star Line, White Star Line, Atlantic Transport Corporation of West Virginia, Lamport & Holt, Lloyd Sabaudo, National Steam Navigation Co. of Greece, N. Galanos & Co., Navigazione Generale Italiania, Italia America Shipping Corp., North German Lloyd, Royal Mail Steam Packet Co., Sicula Americana, Peirce Bros. (Inc.), Agents, Societa Nazionale Di Navigazione, Swedish American Line, Thomson Line, Transatlantica Italiana, McDonnell & Truda, Agents, United American Lines, United States Navigation Co., Ybarra Co., Donaldson Line; *Frank P. Latimer* for South Atlantic Steamship Conference; *W. Ainsworth Parker* for Donaldson Line; *N. O. Pedrick* for Gulf Operators of Emergency Fleet Corporation; *Robert Ramsay* and *W. A. Ramsay* for Donaldson Steamship Line; *Joseph Scott* for Transmarine Lines; *Matthew Hale* for South Atlantic Steamship Association.

William Allen for Board of Commissioners of the Port of New Orleans; *Geo. T. Atkins* for Missouri-Kansas-Texas Lines; *Chas. J. Austin* for New York Produce Exchange; *L. V. Beatty* for Kansas City Southern Railway; *A. E. Beck* for Baltimore Association of Commerce; *Elmer S. Chace* for City of Providence, R. I.; *W. H. Chandler* for Merchants Association of New York; *R. G. Cobb* for Mobile Chamber of Commerce; *Julius Henry Cohen* for Port of New York Authority; *Willis Crane* and *Fayette B. Dow* for Western Petroleum Refiners Association; *William C. Ermon* for Southern Traffic League; *C. J. Faga* for Chamber of Commerce of Newark, N. J.; *R. C. Fulbright* for Houston Cotton Exchange and Board of Trade; *E. B. Gaines* for City of Savannah and Savannah Board of Trade; *M. D. Greer* for The Texas Company; *H. H. Haines* for Chamber of Commerce of Houston, Tex., and Navigation and Canal Commission of Houston, and City of Houston; *Richard K. Hale* for Department of Public Works, Commonwealth of Massachusetts; *J. P. Haynes* and *Carl Giessow* for Chicago Association of Commerce; *G. Stewart Henderson* for Baltimore Chamber of Commerce; *Ernest E. Holdman* for Newport Company, Pensacola, Fla., and Bay Minette, Ala.; *B. Hoff Knight* for Port of Philadelphia Ocean Traffic Bureau; *Wilbur LaRoe, Jr.*, *F. S. Davis*, and *Frederick E. Brown* for Maritime Association of Boston Chamber of Commerce, Associated Industries of Massachusetts, Chamber of Commerce of Fall River, Mass., New Bedford (Mass.) Board of Commerce, New

London (Conn.) Chamber of Commerce, Chamber of Commerce of Portland, Me., and Chamber of Commerce of Providence, R. I.; *N. M. Leach* for Board of Commissioners of the Port of New Orleans; *R. L. McKellar* for Southern Railway System; *J. P. Magill* for Maritime Association of the Port of New York; *P. W. Moore* for Queensboro Chamber of Commerce (Long Island City, N. Y.); *Carl Giessow* and *Edgar Moulton* for New Orleans Joint Traffic Bureau; *J. V. Norman, T. J. Burke, and T. D. Guthrie* for Port Utilities Commission of Charleston, S. C., Municipal Docks and Terminals of the Port of Jacksonville, and Jacksonville Traffic Bureau; *O. C. Olsen* for Missouri Pacific Railroad; *P. W. Reed* for Pensacola Chamber of Commerce; *O. A. Reynolds* for Newport News Chamber of Commerce; *W. M. Rhett* for Illinois Central Railroad Company; *Gordon Saussy* for City of Savannah; *James H. Devlin* for the Commonwealth of Massachusetts; Samuel Silverman and *E. Mark Sullivan* for City of Boston; *H. Y. Taylor* for Chamber of Commerce and Shipping, Port Arthur, Tex., Chamber of Commerce, Beaumont, Tex., Chamber of Commerce, Orange, Tex., and Texas City Board of Trade; *E. H. Thornton* for Galveston Chamber of Commerce, Galveston Cotton Exchange, and Galveston Board of Trade; *A. G. King* and *H. J. Wagner* for Norfolk Port Commission and Hampton Roads Maritime Exchange; H. M. Thompson for Hampton Roads Maritime Exchange; *Jay R. Benton* for Division of Waterways & Public Lands, Commonwealth of Massachusetts; *George F. Feeney* for Portland, Me.; *F. A. Leffingwell* for Texas Industrial Traffic League and Southwestern Industrial Traffic League; *Malcolm M. Stewart* and *H. B. Arledge* for Middle West Foreign Trade Committee; *R. F. Clerc* for New Orleans Board of Trade and New Orleans Belt Railroad Commission; *Chas. E. Gurney* for Public Utilities Commission of Maine, and *Matthew Hale* for Macon, Ga., Chamber of Commerce, and Augusta, Ga., Chamber of Commerce.

Report of the Board

The Port Utilities Commission of Charleston, S. C. and The Municipal Docks and Terminals of the Port of Jacksonville, Fla., filed with the board on May 13, 1924, under section 22 of the shipping act, 1916, a complaint against The Carolina Co., Trosdal, Plant & Lafonta, and Tampa Inter-Ocean Steamship Co., which was given Docket No. 23, assailing as unjustly discriminatory and unreasonable, in violation of sections 17 and 18 of said act, the establishment and maintenance of rates from South Atlantic ports of the United States to European and certain other foreign ports differentially higher than corresponding rates contemporaneously

maintained from North Atlantic ports of the United States to said ports. On July 26, 1924, the Norfolk Port Commission filed a complaint, Docket No. 25, against the same and other water carriers wherein it attacked as unduly discriminatory, in violation of sections 16 and 17 of said shipping act, the practice of applying parity rates from North Atlantic, South Atlantic, and Gulf ports of the United States to said foreign ports. Numerous intervening petitions on behalf of ports from Portland, Me., to Galveston, Tex., as well as on behalf of other interests, were filed in both cases, and additional complaints involving substantially the same matters were about to be filed. At this juncture the board, in order to avoid multiplicity of hearings, and in the welfare of the general public, instituted upon its own motion by its order of August 5, 1924, The Port Differential Investigation, Docket No. 26, for the purpose of determining to what extent, if any, the rates and charges in respect to the transportation of freight traffic from North Atlantic, South Atlantic, and Gulf ports of the United States to United Kingdom, Baltic Scandinavian, Continental European, Portuguese-Spanish, Mediterranean, and/or Adriatic, Black Sea, and Levant ports, the practice of maintaining on certain commodities differentials in favor of North Atlantic and against South Atlantic and Gulf ports, and differentials in favor of North Atlantic and South Atlantic ports against Gulf ports of the United States, and the practice of maintaining on certain other commodities parity rates from said United States ports to said foreign ports via common carriers by water subject to the shipping act, 1916, are unduly prejudicial to or unduly preferential of particular ports, persons, or traffic, or unjustly discriminatory in violation of sections 16 and 17 of said shipping act, or are otherwise unlawful, and, if so found, to make such findings and order or orders as may appear proper in the premises.

Dockets 23 and 25 were consolidated with docket 26. A copy of the order instituting the investigation was served upon all common carriers by water subject to the shipping act and operating in the trades above described. A copy of the order was also served upon the parties and interveners in dockets 23 and 25, the combined issues of which are practically coextensive with the inquiry comprehended by the general investigation. Notice of the time and place of hearing was duly given to all parties and interveners, the general public was advised thereof through the press, and everyone was given full opportunity to be heard. The three cases were heard together before an examiner, were argued jointly before the board, and will be disposed of in one report. The record shows that the respondent Isthmian Steamship Line is not engaged in the trade comprehended within the proceeding.

The complaint in docket 23 alleges, among other things, that the rates involved are unreasonable, in violation of section 18 of the shipping act. It is only necessary here to point out that section 18 applies to interstate rates, charges, and practices of common carriers by water, whereas the rates, charges, and practices here under consideration apply in connection with the transportation of freight from ports in the United States to ports in foreign countries. Accordingly, this phase of the complaint will be given no further consideration in this report.

Sections 16 and 17 of the shipping act, in so far as they have application to the present proceeding, provide:

SEC. 16. That it shall be unlawful for any common carrier by water, or other person subject to this act, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. * * *

SEC. 17. That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the board finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial rate, fare, or charge.

It will be observed that the character of discrimination inhibited by these provisions of the statute is discrimination which is undue, unreasonable, or unjust. Whether that measure of discrimination is established by this record it is the province of the board to determine.

The record exhibits that for rate-making purposes the ports on the Atlantic and Gulf coasts of the United States have been placed into three distinct groups: namely, the North Atlantic group, which embraces all ports from Portland, Me., to Norfolk, Va., inclusive; the South Atlantic group, which embraces all Atlantic ports south of Norfolk, and the Gulf group, which includes all United States ports on the Gulf of Mexico. Prior to the war there was no such definite groupings of ports for the purpose of establishing fixed rate relationships. It is of record that on certain traffic moving from the Gulf to Hamburg at that time, the rate was 10 cents per hundred pounds in excess of the corresponding rate from New York; that on traffic moving from Boston to Europe the rate was sometimes lower than the corresponding rate from New York; and that with regard to Philadelphia and Baltimore, as compared with New York and Boston, the relationship between the rates varied. In

other words, it was not a matter of agreement between carriers as to what the rate relationship between ports should be, but was the exercise by individual carriers of their right to fix rates which to them seemed justified by the conditions. Following the cessation of the war, and some time prior to April, 1920, there was evolved a system of port grouping and differentials. In April, 1920, the grouping of ports was as above indicated and the rates to the foreign ports in question were applied on the differential principle, the amount of the differential in favor of the North Atlantic ports and against the Gulf ports generally being 15 cents per 100 pounds, or 5 cents per cubic foot, and against the South Atlantic ports 7½ cents per 100 pounds, or 2½ cents per cubic foot.

On April 22 and 23, 1920, the members of the North Atlantic, South Atlantic, and Gulf steamship conferences in joint meeting adopted the aforementioned grouping plan and also the differentials then existing. The details of this conference situation will not be gone into at this point, and reference is made thereto only for historical purposes. Generally speaking, the amounts of the differentials have remained the same up to the present time. Just what influenced the fixation or adoption of these differentials is not reflected by the record. There is some testimony, however, to the effect that when the differentials were agreed upon among the conferences the intent was to fix percentage differentials: for example, 15 per cent instead of 15 cents. Evidence is of record that in 1920, at the time the differentials were agreed upon among the conferences, the general level of rates from the North Atlantic ports to the foreign ports involved in this proceeding was $1 per 100 pounds, whereas now it is about half that amount, such change, of course, markedly affecting the relationship between the differentials and the rates. It is therefore manifest that the high percentage relationship which the differentials to-day bear to the rates is a matter of more concern to the shipper than was the relationship which obtained in 1920.

Neither the Charleston nor the Norfolk complaint challenged the propriety of the practice of grouping ports for rate-making purposes, nor the general fairness of the present grouping; and while at the hearing some criticism was made of the sweep of the North Atlantic group the record as a whole does not reveal any widespread dissatisfaction with the prevailing groups. Such criticism as was made in this connection was directed against the inevitable resultant of any grouping system, i. e., that there is always some disparity between the distance from the various points in a group to a common market.

It is natural and consistent with recognized principles of rate structures that the carriers should have in some manner grouped

these ports. The present grouping does not seem either unnatural nor is it established by the facts in this case that it is unduly discriminatory or otherwise in violation of the statute. It might be said in passing, that the board is not disposed to disturb port groupings which have prevailed for a considerable length of time and to which business has accustomed itself, except for very strong and compelling reasons.

Considerable stress was laid upon what were conceived to be wide differences in distance from a port in one group to the foreign ports as compared with the distance from a port in another group to the same ports. For example, it was shown that the distance from Boston to Liverpool was 3,058 miles, from Charleston to Liverpool 3,613 miles, and from New Orleans to Liverpool 4,686 miles, the North Atlantic carriers and some of the North Atlantic port interests contending that such marked difference in distance warranted the maintenance of rate differentials. The Gulf and South Atlantic interests on the other hand, contended that differences in distance should be largely ignored in this trade. The situation with respect to distances is adequately disclosed by the following table, which has been taken from data submitted of record:

Ocean distances in nautical miles from certain North Atlantic, South Atlantic, and Gulf ports to certain foreign ports

From—	Route	To—					
		Liverpool	Hamburg	Amsterdam	Havre	Barcelona	Marseille
North Atlantic ports:							
Boston	Winter	2,928	3,469	3,231	3,013	3,540	3,716
	Summer	3,058	3,588	3,350	3,132	3,576	3,752
New York	Winter	3,107	3,648	3,410	3,192	3,719	3,895
	Summer	3,219	3,749	3,511	3,293	3,737	3,913
Philadelphia	Winter	3,250	3,791	3,529	3,335	3,862	4,038
	Summer	3,362	3,892	3,630	3,436	3,880	4,056
Baltimore	Winter	3,393	3,934	3,696	3,476	4,002	4,178
	Summer	3,488	4,018	3,780	3,562	4,002	4,178
Norfolk	Winter	3,272	3,813	3,575	3,357	3,881	4,057
	Summer	3,367	3,897	3,659	3,441	3,881	4,057
South Atlantic ports:							
Charleston	Winter	3,540	4,081	3,819	3,625	4,131	4,307
	Summer	3,613	4,143	3,881	3,687	4,131	4,307
Savannah	Winter	3,613	4,154	3,892	3,698	4,201	4,377
	Summer	3,686	4,216	3,954	3,760	4,201	4,377
Brunswick	Winter	3,655	4,196	3,934	3,740	4,243	4,419
	Summer	3,728	4,258	3,996	3,802	4,243	4,419
Jacksonville	Winter	3,692	4,233	3,971	3,777	4,276	4,452
	Summer	3,765	4,295	4,033	3,839	4,276	4,452
Gulf ports:							
Pensacola	Winter	4,504	5,045	4,783	4,589	4,996	5,172
	Summer	4,577	5,107	4,845	4,651	4,996	5,172
Mobile	Winter	4,544	5,085	4,823	4,629	5,036	5,212
	Summer	4,617	5,147	4,885	4,691	5,036	5,212
New Orleans	Winter	4,613	5,154	4,892	4,698	5,105	5,281
	Summer	4,686	5,216	4,954	4,760	5,105	5,281
Average distance from North Atlantic ports.	Winter	3,190	3,731	3,488	3,275	3,801	3,977
	Summer	3,259	3,829	3,586	3,373	3,815	3,901
Average distance from South Atlantic ports.	Winter	3,625	4,166	3,904	3,710	4,213	4,389
	Summer	3,698	4,228	3,966	3,772	4,213	4,389
Average distance from Gulf ports	Winter	4,554	5,095	4,833	4,639	5,046	5,222
	Summer	4,627	5,157	4,895	4,701	5,046	5,222

Authority.—Table of Distances Between Ports (H. O. No. 117), issued by the Hydrographic Office, United States Navy Department.

It was undisputed that by far the greatest volume of traffic moves from the North Atlantic ports and that a substantial part thereof is high-class package freight, whereas the general run of cargo moving from the South Atlantic and Gulf ports is low class, unmanufactured articles. The record shows, moreover, that the South Atlantic and Gulf ports draw most of their traffic, with the possible exception of grain and a few Pacific coast products, from territory which is regarded as local to those port groups, and that the North Atlantic cargoes are comprised to a large extent of traffic originating in the Middle West or what is known as central freight association territory. It is also apparent that the situation in regard to return cargoes is greatly in favor of the North Atlantic ports as compared with either the Gulf or South Atlantic ports. The same may be said as to turn-around, insurance, voyage time, and other items directly connected with transportation.

That traffic originating in central freight association territory was referred to throughout the hearing, and will be designated herein as competitive traffic. No definite figures as to the relative volume of competitive as compared with traffic originating locally to the ports are available in the record. It does not appear, however, that any substantial amount of this competitive traffic moves from the Gulf or South Atlantic ports, representatives of those two groups contending that the existing differentials are prohibitive so far as obtaining any of this traffic is concerned. Instances were also cited by such representatives of efforts to solicit this business, resulting in refusal on the part of producers and manufacturers to patronize the southern ports on account of the higher freight charge which would be assessed against their commodities by the water carriers. The same witnesses admitted, however, that the normal flow of this competitive traffic is through the North Atlantic ports and that in the absence of congestion or inability of such ports to handle this traffic it is not likely, even with parity rates, that any appreciable volume of it will move through the Gulf or South Atlantic ports, principally by reason of the greater distance to the European market and longer voyage time.

Respondent carriers operating from the North Atlantic ports contend that cost of operation is the fundamental or most important factor in the determination of rates and a witness appearing on behalf of these carriers testified that it costs approximately 35 per cent more to operate from the Gulf than from the North Atlantic, and 15 per cent more from the South Atlantic than from the North Atlantic ports. This North Atlantic witness admitted that regarded strictly from a cost basis, 15 per cent was probably high for the difference in cost as between the South Atlantic and North Atlantic ports. Representatives of the Gulf and South Atlantic admitted a

heavier cost of operation from their ports but denied that it amounts to 35 per cent, or 15 per cent, respectively, one witness stating that 15 per cent was probably as near as anyone could get to the difference in cost of operating a vessel, for example, between Boston and Liverpool and Houston and Liverpool. The South Atlantic and Gulf interests, however, minimize the importance of cost for that purpose, some witnesses even going to the extent of advocating that it should be disregarded in the trans-Atlantic trade. As illustrative of the difference in cost of operation from the three port-groups an instance was cited of an 8,000-ton vessel operating from New York to Liverpool at a daily cost of $350, not including overhead charges or the very important item of fuel. On the basis of the difference in sailing time of two days as between New York and Charleston to Liverpool, this would mean a difference in cost of operation against Charleston of $700. The record shows that the sailing time from New Orleans to Liverpool is approximately six and two-thirds days more than from New York to that port, which results in a heavier cost of operation from the Gulf of $2,333. Furthermore, these same carriers claim that the cost of operating vessels has not materially decreased from the cost level of 1920. The Gulf operators, although admitting that generally speaking cost of vessel operation and stevedoring are about the same as they were at that time, contend that they themselves are operating their vessels somewhat more cheaply now, due to the lower cost of fuel and the absence of port congestion.

As hereinbefore indicated, the circumstances surrounding the adoption of the present differentials by the steamship lines do not reveal any clearly defined rule or reason for their particular amount or measure. At the hearing, however, the theory was injected that the primary purpose of the differentials was to offset the additional cost of operation from the south Atlantic and Gulf ports over the north Atlantic ports on the basis of the then existing level of rates. If that were the desideratum it is difficult to understand why these differentials have not varied with the exceedingly large variation in rates. In making this observation the board does not concur in the theory that a carrier is justified in burdening a port with a differential for the sole and only reason that the cost of operation from that port is greater than from some other port. It is obvious to the board that many elements, such as volume of traffic, competition, distance, advantages of location, character of traffic, frequency of service, and others are properly to be considered in arriving at adjustment of rates as between ports; but even assuming that the theory advanced is valid it is plain from the facts in this case that it had not been adhered to by the carriers.

Counsel for the south Atlantic ports raises the point that should the board countenance a continuance of the present or any differentials such action would be in contravention of article 9, section 1, of the Constitution of the United States, which prohibits preferring a port in one State over a port in another State. The fallacy of this contention, however, is sufficiently demonstrated by decisions of the United States Supreme Court. (See *State of Pennsylvania* v. *Wheeling-Belmont Bridge Co., et al.*, 59 U. S. 421; *South Carolina* v. *Georgia, et al.*, 93 U. S. 4; *Armour Packing Co.* v. *United States*, 209 U. S. 56.)

It was also urged upon the board by counsel representing North Atlantic interests that inasmuch as many of the carriers do not operate from more than one district they can not be held accountable for any undue discrimination which may result from the existing rate situation. Counsel for the South Atlantic and Gulf interests contend, on the other hand, that although many of these carriers do not operate from more than one district, they are nevertheless responsible for the alleged undue discrimination. An examination of cases cited by counsel reveals that they involve railroad transportation, privileges local to a particular railroad, and through joint rates, all of which present different facts from those here present. It is established by this record that these common carriers by water, possessing the ability among other things to shift vessels from one port to another, voluntarily met and entered into a definite agreement that the differentials against certain ports should be such and such, and that none of the carriers, no matter from which ports they operated, should depart from those differentials while a party to such agreement. In view of the disposition we are making of this case, however, we do not deem it necessary to pass upon this question; but we take this occasion to state that in considering such a question the totally different conditions arising in water transportation as compared with railroad transportation should not be lost sight of.

Against the objection of counsel for the North Atlantic lines evidence was admitted which tended to show that in other trades, for example, the trans-Pacific and West Indies trades, distance to a large extent is disregarded in rate making. While we deem this evidence admissible in a proceeding of this character, yet its probative force may or may not be considerable, and we do not consider it to be our province or right to adjust rates in this particular trade on a basis which obtains in other trades in which there may be present entirely different circumstances and conditions with regard to cost of operation, character of cargoes, competition, and other matters. Accordingly, the failure to show similarity of conditions in the trades

in these respects derogates greatly from the value of evidence adduced on this point.

The South Atlantic and Gulf interests contend that because parities are accorded to certain commodities the carriers should be compelled to grant parities on other commodities. The Norfolk Port Commission, on the other hand, takes the position that the carriers should establish the existing differentials on all these parity commodities thereby eliminating all parities. Both of these contentions overlook the great difference in circumstances surrounding the present parity commodities and nonparity commodities. They also overlook the different operating conditions with respect to the three districts, and that there are many things which the carriers for traffic and business reasons may do which the board can not legally compel them to do.

Permeating the record in this case is the thought advanced primarily by counsel for the Port of New York Authority and the New England ports that rail-and-water rates from Central Freight Association territory to foreign destinations should be equalized through all these ports. Without attempting to pass upon this matter, which is manifestly beyond the scope of the board's jurisdiction, the board can only state that in the great public interest it would seem obvious that rate structures should be so made as to permit the flow of traffic to pass through as many ports as the economies of transportation and distribution will allow.

After consideration of all the facts, circumstances, and evidence of record in this proceeding, the board concludes and decides that complainants in docket No. 23 have not shown that the existing differentials and rates applicable to the foreign ports herein involved unduly prejudice South Atlantic ports in favor of North Atlantic ports, in violation of section 16 of the shipping act; that complainant in docket No. 25 has not shown that the maintenance of the same rates from Atlantic and Gulf ports to said foreign ports on so-called parity commodities constitutes an undue prejudice or unjust discrimination against the port of Norfolk, in violation of sections 16 and 17 of the shipping act, and that the evidence submitted in docket No. 26 fails to show the present rate adjustment between North Atlantic, South Atlantic, and Gulf ports to be unduly prejudicial or unjustly discriminatory, in violation of sections 16 and 17 of the shipping act.

Having disposed of the discriminatory phase of the case there remains for consideration the steamship conference situation. According to the record the North Atlantic conferences are composed of regular lines operating between North Atlantic ports and United Kingdom and European ports, the two North Atlantic–United Kingdom freight conferences having been organized in 1918 and

1919, and the North Atlantic–Continental freight conference on March 9, 1922. The South Atlantic Steamship Conference, embracing the regular lines operating from South Atlantic ports, was organized on March 11, 1920, and the Gulf Shipping Conference, (Inc.), was organized on March 13, 1920. The general purpose of these conferences is to establish and observe conference rates, rules and regulations directly affecting the trade.

In April, 1920, the conferences above named met and entered into an interlocking arrangement or agreement for the avowed purpose of effectively controlling the acts of member carriers from all Atlantic and Gulf ports with respect to rates. It was at this meeting that differentials against the South Atlantic and Gulf ports were adopted and also the parity and neutral commodity lists. Apparently the differentials were the hub of the tripartite conference agreement, in the absence of which there would in all likelihood not have been any joint agreement. It is clear from the record that there was very little, if any, consideration given to the interests of the shipping public in negotiating the agreement. The point is made that the South Atlantic and Gulf lines consented to the differentials in exchange for the agreement on the part of the North Atlantic lines to permit the former to charge rates on a parity with the North Atlantic rates on certain commodities, most of which are indigenous to South Atlantic and Gulf ports. It is very doubtful whether the South Atlantic or Gulf lines fully realize the probable effect of their action with regard to future adjustments of rates. In any event, they have at subsequent meetings of the three conference groups sought to have the differentials modified or abolished. An outstanding feature of the agreement is that the differentials can not be changed except by the unanimous vote of the three parties. The result is, so long as the North Atlantic regards the differential as favorable to itself and withholds its required consent the other two parties are powerless to change the situation. In other words, the practical result is that the South Atlantic and Gulf lines have irrevocably bound themselves to apply the differentials.

It is urged that the tripartite conference agreement and procedure of the joint conference meetings is based on voluntary action. This may be substantially true with respect to new matters which come before the conference for adoption, but when a rate or rule is once adopted and one party consistently and selfishly refuses to cast its consenting vote which would remove or change that rule or rate the conference to all intents and purposes ceases to be voluntary. Representatives of conference members from all three port groups admitted that the existing differentials against the South Atlantic and Gulf ports were uneconomic or unfair, but nevertheless efforts to revise them have been futile by virtue of the

present conference situation. It is therefore obvious that the differential situation is effectively controlled by the North Atlantic lines. In this connection it should be pointed out that the membership of the North Atlantic conferences is predominantly foreign. This foreign membership with votes outnumbering by far those of the American members, dominates the tripartite conference and the rates applicable to American commodities moving in American bottoms from American ports. The result is effective control by foreign lines of an extensive portion of our commerce and of much of our shipping. Manifestly, in view of the responsibility imposed in it for the upbuilding of an American merchant marine, this situation calls for unequivocal action on the part of the board.

Section 15 of the shipping act, 1916, enjoins upon common carriers by water subject to the act the duty of filing with the Shipping Board agreements of the character now under consideration. The term "agreement" as used in that section is stated to include understandings, conferences, and other arrangements whether oral or written. Paragraph 2 of said section provides:

> The board may by order disapprove, cancel, or modify any agreement or any modification or cancellation thereof whether or not previously approved by it that it finds to be * * * unfair as between carriers, shippers, * * * or ports, or to operate to the detriment of the commerce of the United States.

and paragraph 3 provides:

> It shall be unlawful to carry out any agreement or any portion thereof disapproved by the board.

Upon the record in this case the board finds that the existing tripartite arrangement or agreement between the North Atlantic, South Atlantic, and Gulf conferences and the steamship lines operating from ports on the North Atlantic, South Atlantic, and Gulf coasts of the United States to the foreign ports hereinbefore mentioned, is unfair as between carriers and is detrimental to the commerce of the United States.

Appropriate orders will be entered.

ORDERS

At a GENERAL SESSION of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 20th day of January, 1925.

Docket No. 23

Port Utilities Commission of Charleston, S. C., et al., *v.* The Carolina Company, et al

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this case be, and it is hereby, dismissed.

By the board.

[SEAL] CARL P. KREMER,
Secretary.

Docket No. 25

Norfolk Port Commission *v.* Algerian-American Lines, et al

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this case be, and it is hereby, dismissed.

By the board.

[SEAL] CARL P. KREMER,
Secretary.

Docket No. 26

Port Differential Investigation

It appearing, That by order dated August 5, 1924, the board instituted an investigation with a view to determining whether and to what extent, if any, rates, charges, and practices of carriers sub-

ject to the shipping act, in respect to transportation of freight traffic from North Atlantic, South Atlantic and Gulf ports of the United States to United Kingdom, Baltic Scandinavian, Continental European, Portuguese-Spanish, Mediterranean, and/or Adriatic, Black Sea, and Levant ports are unduly prejudicial to, or unduly preferential of particular ports, persons, or traffic, or unjustly discriminatory, or otherwise unlawful, and to making such findings and order or orders as might appear proper in the premises; and

It further appearing, That full investigation of the matters and things involved has been made, and that the board, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That this proceeding be, and it is hereby, discontinued.

By the board.

[SEAL.] CARL P. KREMER,
Secretary.

Docket No. 26

Port Differential Investigation

Whereas the board instituted an investigation into certain rates, charges, and practices of common carriers by water operating from North Atlantic, South Atlantic, and Gulf ports of the United States to United Kingdom, Baltic Scandinavian, Continental European, Portuguese-Spanish, Mediterranean, and/or Adriatic, Black Sea, and Levant ports; and

Whereas upon the record in that case, embracing facts and circumstances with reference to the joint or tripartite conference arrangement or agreement between said carriers in respect to rates, charges, and practices in connection with transportation of freight traffic from North Atlantic, South Atlantic, and Gulf ports to said foreign ports, the board found that said joint or tripartite conference arrangement or agreement is unfair as between carriers and operates to the detriment of commerce of the United States, within the meaning of section 15 of the shipping act; now, therefore, be it, and it is hereby,

Ordered, That said joint or tripartite conference arrangement or agreement be, and it is hereby, disapproved and canceled.

By the board.

[SEAL.] CARL P. KREMER,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET NO. 22

CONTINENTAL ROOFING & MANUFACTURING COMPANY

v.

BALTIMORE AND CAROLINA STEAMSHIP COMPANY

Submitted November 11, 1924. Decided March 3, 1925

Rate on prepared roofing paper, in carloads, from Baltimore, Md., to Miami, Fla., not shown to be unduly or unreasonably prejudicial. Complaint dismissed.

James B. McNally, for complainant.
L. Vernon Miller, for respondent.
G. B. Cromwell, for Certainteed Products Corporation, intervener.

REPORT OF THE BOARD

Complainant is a corporation organized under the laws of the State of Maryland and is engaged in the manufacture of prepared roofing paper at Baltimore. By complaint seasonably filed it alleges that the commodity rate of the respondent carrier applicable to carload shipments of its product from Baltimore to Miami, Fla., is unduly and unreasonably prejudicial, in violation of section 16 of the shipping act. The board is requested to effect a discontinuance of said alleged violation. No issue as to the reasonableness of the rate attacked is raised. Rates will be stated in cents per 100 pounds.

The complainant is the only manufacturer of prepared roofing paper at Baltimore. Its principal competitors for Florida business are located at York, Pa., chief of whom is the Certainteed Products Corporation, an intervener in this proceeding on behalf of the carrier. Other competing manufacturers who ship to Miami via Baltimore and the respondent Baltimore & Carolina Steamship Company are located at Rowlandville, Md., and Erie, Pa. On carload shipments originating at each of these competing rail points the respondent maintains a proportional rate of 41 cents for its service from Baltimore to Miami, as is shown by applicable tariffs filed with the Interstate Commerce Commission and made a part of the record in this proceeding. In the case of both York and Rowlandville, this proportional rate results in an equalization of the through

rail-and-water rate with the local port-to-port rate from Baltimore of 55 cents under attack. This equalization is asserted to be in keeping with the general practice of the respondent to group rail points within a radius of 60 miles from Baltimore and to accord them such proportional rates to Miami and other southern ports of call as will maintain them practically on a parity with Baltimore. The present local port-to-port rate of 55 cents complained of and the proportional rate of 41 cents are reductions from 63½ cents and 49½ cents, respectively, which it appears were made as a result of solicitation by the manufacturers of prepared roofing paper at York for a lower through rate from York to Miami in order to meet New Orleans competition. This competition existed by reason of the opening of a roofing material manufacturing plant at New Orleans and the inauguration of service from that port to Miami by the Gulf & Southern Steamship Company.

According to the record, the Gulf & Southern Steamship Company has discontinued operation to Miami and the New Orleans manufacturer is not now a competitor of importance. Inasmuch as the respondent is the only carrier by water operating direct from Baltimore to Miami, and as its carload rates on prepared roofing paper to Miami are lower than via other routes, practically all of the shipments from Baltimore territory to that port are made over its line. Via the Merchants & Miners Transportation Company and the Clyde Line, with transhipment at Jacksonville, the carload rates from York and Baltimore are 67 cents and 63½ cents, respectively, and a rate of $1.07 applies on this commodity from both York and Baltimore when moving via rail.

In support of its contention that the local port-to-port rate of 55 cents is unduly and unreasonably prejudicial, the complainant relies chiefly upon a comparison of that rate with the respondent's proportional rate of 41 cents accorded competitors' shipments originating at the rail points indicated. Stress is laid upon the amount of the differential between them, which, it is claimed, is of itself sufficient to warrant a charge of undue prejudice. Comparisons of this differential with those existing between local and proportional rates of the respondent from Baltimore to Miami applicable on other commodities are also made. Four of the commodities thus used, namely, slate roofing, asbestos tile, asbestos roofing, and wooden shingles, are shown to compete with prepared roofing paper; but in respect to each the local rate from Baltimore to Miami is the same or higher than the local rate on prepared roofing paper, and no effort is made to predicate the alleged undue prejudice upon comparison of the respective local rates. In addition, the complainant sets forth

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the respondent's local port-to-port rate and the water proportional of through rail-and-water rates on carload shipment of prepared roofing paper to Charleston, S. C. The comparison advanced in this respect may be summarized by the following table:

From	To					
	Miami			Charleston		
	Local port to port	Through rail and water	Respondent's proportional	Local port to port	Through rail and water	Respondent's proportional
Baltimore	55			26		
York		55	41		34½	23
Rowlandville		55	41		37	23
Erie		64	41		46	23

Attention is directed by the complainant to the fact that while the difference between the local water rate and the water component of the through rail-and-water rate in connection with shipments to Miami is 14 cents, the difference between the corresponding rates to Charleston is but 3 cents, or a spread of 11 cents. This spread is urged upon the record as conclusive of the undue prejudice alleged, notwithstanding recognized dissimilarity between the ports and competitive carrier conditions. As to the rate which the complainant conceives should be established in lieu of the one attacked, it is indicated that as on shipments from Baltimore to Charleston the local port-to-port rate is 8½ cents under the through rate from York to Charleston, the local port-to-port rate to Miami should be 8½ cents under the York to Miami through rate, or 46½ cents instead of 55 cents. No contention is made, however, that the rate complained of is unduly prejudicial when compared with the corresponding local port-to-port rate to Charleston.

The above is a résumé of the complainant's case, and the defense of the carrier is confined within the scope thereof. It will be seen that in its entirety the evidence relied upon to establish the undue prejudice alleged is based upon comparisons of local rates on the one hand and proportional rates on the other, and no attempt is made to attack the lawfulness of the rate assailed by comparison with a rate of like character.

While recognizing that a comparison of a local port-to-port rate with the water component of a through rail-and-water rate not subject to the jurisdiction of this board is of some value, yet it is also recognized that standing alone a difference between such rates can not be considered as determinative of the lawfulness or unlawfulness of the local rate. Manifestly, widely dissimilar conditions

enter into the establishment and maintenance of these two classes of rates.

After examination of all the facts and circumstances of record in this proceeding, the board concludes and decides that the rate complained of has not been shown to be unduly or unreasonably prejudicial in violation of section 16 of the shipping act, as alleged. The complaint, therefore, will be dismissed.

An order will be entered accordingly.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 3d day of March, 1925

Formal Complaint No. 22

Continental Roofing & Manufacturing Company *v.* Baltimore and Carolina Steamship Company

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the board.

[SEAL] (Sgd) CARL P. KREMER,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET NO. 24

AMERICAN PEANUT CORPORATION

v.

MERCHANT & MINERS TRANSPORTATION COMPANY, OLD DOMINION TRANSPORTATION COMPANY, AND PHILADELPHIA & NORFOLK STEAMSHIP COMPANY

Submitted May 25, 1925. Decided June 23, 1925

Rates on peanuts from Norfolk to Baltimore, Philadelphia, New York, and Boston not shown to be unduly prejudicial, but certain of said rates unjust and unreasonable. Reasonable maximum rates for the future prescribed.

C. R. Marshall, for complainant.

F. W. Gwathmey, for respondents.

H. J. Wagner, for Norfolk-Portsmouth Freight Traffic Commission.

REPORT OF THE BOARD

Exceptions to the proposed report in this case were filed on behalf of each of the parties and have been given careful consideration.

The complainant is a corporation organized and existing under the laws of the State of Virginia, and is engaged in buying and selling peanuts, with its principal office at Norfolk, at which place it has warehouses and a plant for shelling and cleaning its product. By complaint seasonably filed it alleges that the respondents maintain and apply to carload and less-than-carload shipments of peanuts from Norfolk to Baltimore, Philadelphia, New York, and Boston, according as they operate, rates which are unduly prejudicial in violation of section 16 of the shipping act and unjust and unreasonable in violation of section 18 of that statute. The board is requested to effect a discontinuance of said alleged violations, to estab-

lish nonprejudicial and reasonable maximum rates for the future, and to award reparation. In regard to reparation, however, no evidence was offered at the hearing, and in the opening brief the complainant states it desires to forego its demand therefor. Rates will be stated in cents per 100 pounds.

With respect to its rates on peanuts from Norfolk to Baltimore here involved, the respondent Merchants & Miners Transportation Company questions the jurisdiction of the board on the ground that Chesapeake Bay is not a part of the high seas. In this connection it is to be observed that with regard to common carriers by water engaged in interstate transportation on regular routes from port to port, section 1 of the shipping act brings within our jurisdiction all such carriers operating on the high seas or the Great Lakes. An examination of court decisions and authorities reveals that the term high seas has been variously interpreted. In some instances it has been construed to apply only to the open ocean capable of international commercial use and in others to embrace rivers, its meaning being determined by the purpose to be accomplished by some particular statute. Bearing in mind that one of the primary purposes of the shipping act is to regulate port-to-port transportation between States, and that in describing the waters upon which such transportation should be regulated Congress went so far as to include the Great Lakes, we think it clear that Chesapeake Bay is to be regarded as "high seas" within the meaning of the act.

In support of its contention that the rates attacked are unduly prejudicial within the meaning of section 16, the complainant and the Norfolk-Portsmouth Freight Traffic Commission, intervener, set forth comparisons of said rates with those maintained and applied to Baltimore, Philadelphia, New York, and Boston from Savannah, Ga. As shown by the record, however, but one of the respondents, the Merchants & Miners Transportation Company, operates from Savannah; and of the ports of destination involved but one (Baltimore) is served from both Savannah and Norfolk by this carrier. So far as the issue of unjust prejudice is concerned, therefore, it would necessarily be confined to the rates of the Merchants & Miners Transportation Company if that issue were not concluded for another reason. According to the record, the peanuts shipped from Savannah and from Norfolk are of an entirely different variety and are used for separate and distinct purposes. While disputed by the complainant, the fact as established by the weight of the evidence adduced is that there is no competition of importance between the peanuts shipped from the two ports. Such being the case further consideration of the claim of unjust prejudice must be denied.

Upon the issue of the reasonableness of the rates on peanuts from Norfolk, comparisons of rates applicable to that commodity from

Savannah and of the relative distances involved are advanced by the complainant. These comparisons are summarized in the following table:

From—	To—			
	Baltimore	Philadelphia	New York	Boston
Norfolk:				
Carrier	M. & M. T. Co.	P. & N. S. S. Co.	O. D. Trans. Co.	M. & M. T. Co.
Distance	198 miles	299 miles	336 miles	597 miles.
Rate, carload (shelled or unshelled).	31½ cents	38 cents	38 cents	41½ cents.
Rate, less carload (shelled or unshelled).	45½ cents	58½ cents	58½ cents	62 cents.
Savannah:				
Carrier	M. & M. T. Co.	M. & M. T. Co.	Ocean S. S. Co.	Ocean S. S. Co.
Distance	715 miles	772 miles	806 miles	1,057 miles.
Rate, carload—				
Shelled	31 cents	31 cents	31 cents	34 cents.
Unshelled	37½ cents	37½ cents	37½ cents	40 cents.
Rate, less carload—				
Shelled	31 cents	31 cents	31 cents	34 cents.
Unshelled	54½ cents	54½ cents	54½ cents	58 cents.

All rates exhibited above include marine insurance. Those from Savannah also include a terminal charge of 2½ cents per 100 pounds.

As none of the respondents operates from Savannah to New York or Boston, the complainant has used the rates of the Ocean Steamship Company for comparison with the rates of the respondent Old Dominion Transportation Company and Merchants & Miners Transportation Company from Norfolk to those ports. In this connection also, as no service from Savannah is maintained by the respondent Philadelphia & Norfolk Steamship Company, the rates of the Merchants & Miners Transportation Company are used by the complainant to contest the reasonableness of the rates from Norfolk. The rates on shelled peanuts from Savannah are any quantity, and class rates are applied on the unshelled product from that port. On the other hand, the rates from Norfolk are carload and less-than-carload and are applied without regard to whether the peanuts are shelled or unshelled. Reduced to a ton-mile basis, a comparison of the approximate earnings in cents produced by the rates shown above is as follows:

From—	To—							
	Baltimore		Philadelphia		New York		Boston	
	Carload	Less than carload	Carload	Less than carload	Carload	Less than carload	Carload	Less than carload
Norfolk: Shelled or unshelled	*Cents* 0.0318	*Cents* 0.0459	*Cents* 0.0254	*Cents* 0.0391	*Cents* 0.0226	*Cents* 0.0348	*Cents* 0.0139	*Cents* 0.0207
Savannah:								
Shelled	.0087	.0087	.008	.008	.0077	.0077	.0064	.0064
Unshelled	.0104	.015	.0097	.014	.0093	.013	.0075	.0109

From the above analysis it is seen that to the respective ports of destination the per-ton-mile earnings on shelled peanuts from Norfolk are in some cases five times as great as from Savannah and in no case less than two times as great. Even as respects unshelled peanuts upon which the higher class rates are applicable from Savannah, the per-ton-mile earnings range from 1.8 to three times as great from Norfolk as from Savannah. Aside from general statements that rates from South Atlantic ports are depressed by schooner competition under those from Norfolk and that the cost of service is greater from Norfolk than from Savannah, no evidence of moment was presented by the respondents which tends to explain the disparity in per-ton-mile earnings over and above that sanctioned by the principle that such earnings should be more for a shorter than for a longer distance. Admission was made by respondents' witness that peanuts are not affected by schooner competition, and a comparison of rates on many other commodities from Savannah and from Norfolk does not show a depression which corresponds with the difference in the rates on peanuts from those ports. As brought out by the evidence, the claim of greater cost of service from Norfolk is based on the fact of more sailings from that port than from Savannah. It would therefore seem that the greater cost referred to is gross and is dissipated by the greater tonnage which is affirmed to be carried.

Effort was made on behalf of the Merchants & Miners Transportation Company to show that its rates on peanuts from Savannah to Baltimore and Philadelphia, and from Norfolk to Baltimore are paper rates. This contention is attacked by the complainant on the grounds that it is predicated upon a period covering the first five months of 1924 only, that such period is not representative and that a check for another or a longer period of time would show a substantial movement from Norfolk. To accept as a fact that the rates from Savannah to Philadelphia are paper rates, of course, emphasizes the disparity between such rates and those of the Philadelphia & Norfolk Steamship Company from Norfolk to that port under attack. Further in this connection it is testified by witness for the Merchants & Miners Transportation Company that his company does not solicit shipments of peanuts from Norfolk to Baltimore, and by witness for the complainant that in the event the Merchants & Miners Transportation Company rates on peanuts from Norfolk to Baltimore were reduced that carrier would be preferred over a competing carrier now patronized.

In addition to its contention that the rates on peanuts from Norfolk are unreasonable by comparison with corresponding rates from Savannah, the complainant relies upon comparisons of the commodity rates on peanuts under attack with applicable class rates on that product from Norfolk, and with effective commodity rates on other articles from Norfolk.

According to their tariffs, the Southern Classification governs rates of the Merchants & Miners Transportation Company, Philadelphia & Norfolk Steamship Company, and Old Dominion Transportation Company from Norfolk to Baltimore, Philadelphia, and New York, respectively, while the Official Classification governs the rates of the Merchants & Miners Transportation Company from Norfolk to Boston. Peanuts are rated sixth class carload and fourth class less carload by the Southern Classification, and fourth class carload and third class less carload by the Official Classification. Normally, therefore, class rates as indicated would apply to shipments of peanuts from Norfolk to the designated ports of destination. All of the respondents have taken this article out of its respective class rate basis, however, and have assigned commodity rates to be charged thereon. Ordinarily such action by a carrier denotes a substantial movement of the commodity removed from the class rate status, and generally the commodity rate assigned is somewhat lower than the class rate which it displaces. In this connection it appears from the record that except to Boston the rates on peanuts from Norfolk involved in this proceeding are greatly in excess of the class rates.

Exhibits submitted on behalf of the complainant show rates in effect from Norfolk to Baltimore, Philadelphia, New York, and Boston on a large number of articles which have been removed by the respective respondents from the sixth and fourth classes of the Southern Classification and from the fourth and third classes of the Official Classification and given commodity rates as has been done in regard to peanuts. With the exception of the rates on peanuts and one other article, each of the commodity rates shown is as low or lower than the corresponding class rate. In respect to two articles only are the effective commodity and corresponding class rates the same. The average percentage relationships which the commodity rates included in these exhibits bear to the class rates from Norfolk to the ports of destination involved in this complaint, together with the respective per ton-mile earnings, are given below:

Norfolk to	Baltimore (M. & M. T. Co.)	Philadelphia (P. & N. S. S. Co.)	New York (O. D. Trans. Co.)	Boston (M. & M. T. Co.)
Number of articles exhibited as removed by respondents from class to commodity basis	27	21	18	5
Average percentage of commodity rates to class rates (except peanuts):				
Carload	74.2	74.9	79.3	60.2
Less carload	72.7	72.3	68.6	45.0
Average per-ton-mile earning (cents):				
Carload	.0194	.0138	.0137	.0105
Less carload	.0284	.0196	.018	.0094
Percentage of commodity to class rate (peanuts):				
Carload	121.2	138.2	131.0	79.8
Less carload	118.2	144.4	133.0	99.2
Per-ton-mile earning (cents):				
Carload	.0318	.0254	.0226	.0139
Less carload	.046	.0391	.0348	.0208

Classification ratings are generally the highest which a particular article should bear under normal conditions, and it may be stated as a matter of accepted principle that to assign an article a commodity rate which is higher than its applicable class rate is indicative of some unusual circumstance or circumstances incident to the transportation of that article which specially justifies the increased rate. No reason appears of record which in this relation would establish that from a transportation standpoint any exceptional conditions attend the respondents' carriage or handling of peanuts, or why, in their removal from a class to a commodity basis, they were not entitled to the same treatment as was given generally to other articles to which commodity rates were assigned.

Although the greater part of the volume of peanuts from Norfolk to the ports of destination involved in this complaint is from interior points and on through rail-and-water rates, it is shown there is a substantial and year-round movement of this commodity from Norfolk on port-to-port rates. Shipments of shelled and unshelled peanuts are made from Norfolk in about equal proportion. The value of shelled peanuts is shown to be slightly less than 10 cents per pound, and that of the unshelled product is indicated to be generally less than and in few instances more than the respective values of other enumerated commodities in regard to which the respondents' rates from Norfolk to Baltimore, Philadelphia, New York, and Boston are lower. According to their character as shelled or unshelled, they are shipped in burlap bags of uniform size, are easily and compactly stowed, and give rise to few claims for loss and damage. The evidence indicates that a bag of shelled peanuts weighs from 115 to 125 pounds and measures about 3 cubic feet, while a bag of the unshelled product weighs from 85 to 100 pounds and occupies approximately 6½ cubic feet of space. Per ton of 2,000 pounds their bulk is, shelled, 60 to 70 cubic feet, and unshelled, 134 to 160 cubic feet, both classes measuring in excess of a measurement ton of 40 cubic feet. Manifestly, this element of bulk as between the two classes of peanuts is entitled to consideration, notwithstanding the respondents' present rates from Norfolk are applied to shelled and unshelled peanuts indifferently. Regarding their bulk as compared to that of other commodities, there is included in the record statements by the Philadelphia & Norfolk Steamship Company intended to show that per measurement ton the average earning for all commodities carried is considerably in excess of that for unshelled peanuts. In respect to shelled peanuts the record is definite that from the standpoint of bulk they compare favorably with coffee, sugar, beans, and potatoes, in regard to all but one of which lower rates

are effective via the respondents' lines from Norfolk to each of the ports of destination involved.

Except on less-than-carload shipments to Philadelphia, the rates under attack are the same or slightly lower than the rates on peanuts published and maintained by rail carriers operating from Norfolk to Baltimore, Philadelphia, New York, and Boston. These contemporaneous rail rates are on a commodity basis, and except to Baltimore reflect certain differentials under ratings published in Exceptions to the Southern and Official Classifications. In the case of the less-than-carload rate of the Philadelphia & Norfolk Steamship Company to Philadelphia, which exceeds the corresponding rail rate, witness for that carrier asserts the same is out of line, and should have been constructed on a 3-cent differential under the less-than-carload rate via rail. As thus constructed, the rate of 58½ cents complained of would be reduced to 53½ cents, and be in consistent alignment with the other rates of the respondents in respect to the rail rates. Obviously, the rates of the respondents on peanuts complained of in this proceeding were established and are maintained in close relation to the corresponding rail rates. From our review of the record as a whole we are constrained to the belief that such relation is the principal if not the only consideration which governed, and that other and pertinent factors peculiar to transportation by water were disregarded. That rail rates are not to be regarded as a criterion or measure of water rates has been affirmed by the board in two cases previously decided by it. (Wool Rates from Boston to Philadelphia, 1 U. S. S. B. 20, 21; Boston Wool Trade Assn. *v.* Merchants & Miners Transportation Co., 1 U. S. S. B. 24, 29.)

According due consideration to all of the factors pertinent to the issues involved and the facts and circumstances of record, the board concludes and decides that the rates complained of have not been shown to be unduly prejudicial, but that certain of said rates are, and for the future will be, unjust and unreasonable in violation of section 18 of the shipping act, to the extent that they exceed the rates shown below, which we determine and prescribe as just and reasonable maximum rates for application by the respondents to this traffic in the future:

Reasonable maximum rates on peanuts from Norfolk to Baltimore, Philadelphia, New York, and Boston

[In cents per 100 pounds]

	Norfolk to—							
	Baltimore		Philadelphia		New York		Boston	
	Carload	Less than carload	Carload	Less than carload	Carload	Less than carload	Carload	Less than carload
Peanuts, shelled, not salted, in bags, boxes, or barrels, except in glass or earthenware	26½	36½	33	44	33½	45	39	49
Peanuts, unshelled in bags, boxes, or barrels	31½	41	37½	47	38	48	41½	51½

Minimum carload weight 24,000 pounds. The above rates include marine insurance, as shown in applicable tariffs of respondents in effect at the time of hearing.

An order will be entered accordingly.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 23d day of June, 1925

Formal Complaint No. 24

American Peanut Corporation *v.* Merchants & Miners Transportation Company, Old Dominion Transportation Company, and Philadelphia & Norfolk Steamship Company

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the Merchants & Miners Transportation Company, Old Dominion Transportation Company, and Philadelphia & Norfolk Steamship Company, the above-named respondents, be, and they are hereby, notified and required to cease, desist, and abstain, on or before July 15, 1925, and thereafter to abstain from publishing, demanding, or collecting the rates for transportation of peanuts from Norfolk, Va., to Baltimore, Md., Philadelphia, Pa., New York, N. Y., and Boston, Mass., herein found unjust and unreasonable.

It is further ordered, That said respondents be, and they are hereby, notified and required to establish, on or before July 15, 1925, upon one day's notice to the board and to the general public by filing and posting in accordance with section 18 of the Federal shipping act and Tariff Circular No. 1 of the board, and thereafter to maintain and apply to the transportation of peanuts here involved from Norfolk to Baltimore, Philadelphia, New York, and Boston rates not to exceed those herein prescribed as reasonable maximum rates.

And it is further ordered, That this order shall continue in force for a period of not less than two years from the date when it shall take effect unless otherwise ordered by the board.

By the board.

[SEAL.] (Sgd.) ROY H. MORRILL,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET NO. 20

BOSTON WOOL TRADE ASSOCIATION

v.

OCEANIC STEAMSHIP COMPANY AND LUCKENBACH STEAMSHIP COMPANY, INC.

Submitted November 13, 1925. Decided December 8, 1925

Routing of shipments via water from port of transshipment to destination, charging of same through rate thereon as for shipments moving via rail from said transshipment port, and failure to absorb wharfage, drayage, and marine insurance charges not shown to have been in violation of shipping act, as alleged. Complaint dismissed.

H. A. Davis for complainant.

Arthur J. Santry and *Irving H. Frank* for Oceanic Steamship Company.

Frank Lyon for Luckenbach Steamship Company, Inc.

REPORT OF THE BOARD

Examiner's proposed report in substantial conformity with the following was served upon the parties in accordance with the board's Rules of Practice. No exceptions thereto were filed.

The complainant is a voluntary association of wool dealers with headquarters at Boston, Mass. By complaint seasonably filed it alleges on behalf of Brown & Howe, one of its members, that the respondent carriers diverted certain shipments via a route other than that established by custom in the particular trade, exacted rates thereon in excess of those applicable via the route transported, and made necessary the payment of certain wharfage and other charges, thereby subjecting complainant's member to undue prejudice, to the payment of unjustly discriminatory rates and charges, to an unjust and unreasonable practice, and to the payment of unjust and unreasonable rates and charges, in violation of sections 16, 17, and 18 of the shipping act. The board is requested to effect a discontinuance of said alleged violations and to award reparation.

In regard to that part of the issue raised in respect to the justness and reasonableness of the rates and charges under section 18 of

the statute, it is observed that in the instant case both of the parties here respondent were engaged in through transportation from a foreign country to a destination in the United States. The fact that incidentally a part of this through transportation was between ports in the United States did not change the character of that portion from foreign to interstate. As section 18 of the statute concerns carriers engaged in interstate commerce exclusively, its inhibitions regarding unjust and unreasonable rates and charges have no application to this proceeding.

The complaint in this case is in connection with three shipments of wool in bond from Sydney, Australia, to Boston, Mass., claimed to have been arbitrarily diverted by the respondents at San Francisco from overland rail movements to carriage by water via the Panama Canal. As established by the evidence of record, these shipments were transported from Australia in vessels of the Oceanic Steamship Company to San Francisco, where they were transshipped and carried to destination by the Luckenbach Steamship Company. The prepaid rate of $2.55½ per 100 pounds covering this through service via San Francisco was the same as that charged for like shipments by other and competing water carriers operating direct from Australia to Boston. Out of this rate the Oceanic Steamship Company absorbed the Luckenbach Steamship Company rate of 90 cents per 100 pounds. Had the shipments moved via rail from San Francisco, this absorption would have been $1.25 per 100 pounds, or a difference on the three shipments of $1,159.32, which amount is requested by the complainant as reparation for the alleged exaction of rates in excess of those applicable via the route transported. Incident to the movement of the shipments via water from San Francisco were charges for additional marine insurance amounting to $591.72, wharfage charges at Boston amounting to $72.10, and charges for drayage at Boston to the complainant's warehouse amounting to $257.50, all of which sums are shown to have been paid by the complainant's member and are prayed for as an alternative award of reparation. According to the evidence, had the wool been transported overland by rail the shipments would have been delivered upon railroad siding at complainant's warehouse, thus rendering wharfage and drayage unnecessary, and of course no marine insurance covering the movement from San Francisco to Boston would have been required.

The bills of lading covering the three shipments, as shown by copies thereof introduced in evidence by the complainant, contain no mention of routing beyond San Francisco. On this point considerable of the complainant's evidence is directed toward the contention that with respect to Australian wool destined Boston via

San Francisco a custom prevailed in the trade of forwarding via rail from San Francisco, the existence of which custom is relied upon by the complainant as the basis for the charge of unlawfulness under the shipping act of the respondents' action in transporting via water from San Francisco rather than via rail. Other evidence introduced by the complainant, however, is directed toward showing that in regard to the three shipments here involved there existed an oral agreement made prior to the execution of the bills of lading by virtue of which they were to be forwarded via water from San Francisco. According to the complainant's witness furnishing this evidence, he was the representative of the consignee Brown & Howe who purchased the wool in Australia and had authority to arrange for its transportation. As such representative, it is affirmed, he orally agreed with the Oceanic Steamship Company's representative in Australia that the routing should be via the Luckenbach Steamship Company from San Francisco, with the provision, however, that the net cost to his principals, for delivery in their Boston warehouse, should not be more than if the wool moved from San Francisco overland. The fact of such agreement having been entered into, and its consequence, are questioned by the respondents. Manifestly, the effect of the complainant's own evidence in this regard is to negative its claim that the respondents' action in routing the shipments via water from San Francisco was an arbitrary diversion violative of the shipping act.

In regard to its allegation that the rate charged was in excess of that applicable via the route transported and unlawful under the shipping act, the complainant relies upon the fact that out of the through rate the Oceanic Steamship Company absorbed less for the movement via the canal than would have been required had the shipments moved overland. It is not seen that this circumstance supports the allegation, since the rate charged was a through rate and not a combination rate composed of the sum of local factors.

Wharfage charges assessed against the shipments for pier use at Boston were collected by the Luckenbach Steamship Company from Brown & Howe and remitted to State authorities. These charges are shown to have been in accordance with a fixed local tariff covering Boston wharfage rates generally, in which the Commonwealth of Massachusetts, as owner of the pier at which the shipments were unloaded, was a participating party. Drayage charges were collected direct from Brown & Howe by teamsters pursuant to arrangement with which the respondents had no connection. Marine insurance covering the movement from Sydney to Boston is shown to have been placed upon the shipments involved by Brown & Howe

under a blanket policy with the insurers. The premiums thereon were higher than would have been charged had the wool moved overland from San Francisco, as, for example, the rate of insurance paid per $100 valuation was 80 cents, whereas evidence submitted by the complainant establishes that a rate of 45 cents was applicable from Sydney to San Francisco at the time the shipments were transported. On a number of shipments of wool consigned to Brown & Howe and carried by direct-line steamers from Australia to Boston during the period covered by this complaint the premium charged is shown to have been 62½ cents. Similarly as in the case of the three shipments here in controversy, the marine insurance on these direct-line shipments, as well as wharfage and drayage charges, were not absorbed by the carriers but were paid by Brown & Howe.

Examination of the testimony and exhibits of record indicates that the service which the respondents held themselves out to perform did not include wharfage, drayage, or marine insurance as here involved, and no facts are advanced which tend to show that under the statute the practice of the respondents in this regard was unjust or unreasonable. Furthermore, in respect to the undue prejudice and unjust discrimination alleged, the record evinces no facts that the treatment extended the complainant's member either with reference to these wharfage, drayage, and marine insurance charges or the rates exacted for the transportation service performed was in any manner different from that accorded to Boston consignees generally. In brief, a review of the record shows that the evidence presented by the complainant in this case and conceived by it to establish the unlawfulness of the routing, rate, and charges under sections 16 and 17 of the shipping act is directly affected by or intimately involves the disputed oral agreement referred to by complainant's witness as having been entered into by the parties in interest. Whether such an agreement was entered into, its terms, and other matters looking to a determination of the contractual relations and rights of the parties pursuant to it is clearly not within the jurisdiction of the board to consider.

According due consideration to all the facts and circumstances of record, the board concludes and decides that the complainant's member is not shown to have been subjected to undue prejudice, to the payment of unjustly discriminatory rates and charges, to an unjust and unreasonable practice, or to the payment of unjust and unreasonable rates and charges in violation of sections 16, 17, and 18 of the shipping act as alleged.

The complaint will therefore be dismissed.

An order will be entered accordingly.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washigton, D. C., on the 8th day of December, 1925

Formal Complaint Docket No. 20

Boston Wool Trade Association *v.* Oceanic Steamship Company and Luckenbach Steamship Company, Inc.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed a report containing its conclusion and decision thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the board.

[SEAL.] (Sgd.) ROY H. MORRILL,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET NO. 24

AMERICAN PEANUT CORPORATION

v.

MERCHANTS & MINERS TRANSPORTATION COMPANY, OLD DOMINION TRANSPORTATION COMPANY, AND PHILADELPHIA & NORFOLK STEAMSHIP COMPANY

Submitted October 7, 1925. Decided December 18, 1925

Upon argument original report (1 U. S. S. B. 78) affirmed and proceeding, as reopened upon petition of Merchants & Miners Transportation Company for modification of said report, dismissed.

F. W. Gwathmey for Merchants & Miners Transportation Company.

C. R. Marshall for complainant.

REPORT OF THE BOARD

In our original report in the instant case (U. S. Shipping Board Reports, vol. 1, p. 78), specified rates in lieu of those determined to be unjust and unreasonable were prescribed and ordered to be established and observed in the future by the respondent carriers in connection with their respective services from Norfolk to Boston, New York, Philadelphia, and Baltimore. Such rate changes thereby directed were made by all of the respondents except the Merchants & Miners Transportation Company in regard to its service from Norfolk to Baltimore. Upon petition of that carrier the board reopened this proceeding for argument upon the question raised as to the board's jurisdiction, under the shipping act, over interstate port-to-port carriers on regular routes on Chesapeake Bay. This jurisdictional question was first presented in exceptions filed on behalf of the Merchants & Miners Transportation Company to the examiner's proposed report, and received attention by the board in its original report in this case as follows:

With respect to its rates on peanuts from Norfolk to Baltimore here involved, the respondent Merchants & Miners Transportation Company questions

the jurisdiction of the board on the ground that Chesapeake Bay is not a part of the high seas. In this connection it is to be observed that with regard to common carriers by water engaged in interstate transportation on regular routes from port to port, section 1 of the shipping act brings within our jurisdiction all such carriers operating on the high seas or the Great Lakes. An examination of court decisions and authorities reveals that the term high seas has been variously interpreted. In some instances it has been construed to apply only to the open ocean capable of international commercial use and in others to embrace rivers, its meaning being determined by the purpose to be accomplished by some particular statute. Bearing in mind that one of the primary purposes of the shipping act is to regulate port-to-port transportation between States, and that in describing the waters upon which such transportation should be regulated Congress went so far as to include the Great Lakes, we think it clear that Chesapeake Bay is to be regarded as "high seas" within the meaning of the act.

At the argument a number of court decisions and authorities were referred to by petitioner's counsel in support of the position that the term "high seas" has had, from time immemorial in this country and England, a well defined and established meaning contrary to that which we have given it. Among the decisions reviewed was *United States* v. *Grush*, 26 Fed. Cas. 48, wherein Judge Story in 1829 observed that to use the term was—

to express the open unenclosed ocean, or that portion of the sea, which is without the *fauces terrae* on the seacoast, in contradistinction to that which is surrounded or enclosed between narrow headlands or promontories,

and *Waring* v. *Clark*, 5 How. 440 (1847), wherein of the term "high seas" it was said:

It has frequently been adjudicated in the English common-law courts, since the restraining statutes of Richard II and Henry IV were passed, that high seas mean that portion of the sea which washes the open coast.

The language of the court in *Ex Parte Byers*, 32 Fed. 404, that "These words (high seas) have been employed from time immemorial to designate the ocean below low-water mark, and have rarely, if ever, been applied to interior or land-locked waters of any description," was likewise urged upon us.

Reliance is also placed by petitioner upon the definition of the term "high seas" contained in Benedict's Admiralty (fourth edition, sec. 160) that—

The high sea, the open sea, are phrases used to distinguish the expanse and mass of any great body of water, from its margin or coast, its harbors, bays, creeks, inlets. High seas, in the plural number, more properly means the oceanic mass of waters, which is composed of many subdivisions of seas and oceans.

These and other decisions and definitions advanced on behalf of the petitioner have had our painstaking consideration. Upon the question before us, however, we are directed to the later and more

convincing authority of the United States Supreme Court decision rendered in 1893 and entitled *United States* v. *Rodgers*, 150 U. S. 249, in which is discussed at length the character of the Great Lakes as high seas. In this decision practically all of the cases and text-writers relied upon by the petitioner receive the attention of the court, which in its discussion of the point at issue expresses itself in part as follows:

> If there were no seas other than the ocean, the term "high seas" would be limited to the open, unenclosed waters of the ocean. But as there are other seas besides the ocean, there must be high seas other than those of the ocean. * * * We prefer to use it in its true sense, as applicable to the open, unenclosed waters of all seas, than to adhere to the common meaning of the term two centuries ago, when it was generally limited to the open waters of the ocean and of seas surrounding Great Britain, the freedom of which was then the principal subject of discussion.

In its further treatment of the matter before it the court remarks:

> The Great Lakes possess every essential characteristic of seas. They are of large extent in length and breadth; they are navigable the whole distance in either direction by the largest vessels known to commerce; objects are not distinguishable from the opposite shores; they separate, in many instances, States, and in some instances constitute the boundary between independent nations; and their waters, after passing long distances, debouch into the ocean. The fact that their waters are fresh and not subject to the tides does not affect their essential character as seas.

And in addition we find embodied in that decision the statement that—

> Bodies of water of an extent which can not be measured by the unaided vision, and which are navigable at all times in all directions, and border on different nations or States or people, and find their outlet in the ocean, as in the present case, are seas in fact, however they may be designated.

Chesapeake Bay is approximately 200 miles long and commonly attains a width of 40 miles. At its ocean outlet between Cape Charles and Cape Henry it is 12 miles from shore to shore, across which distance objects are not discernible to the naked eye. Along its borders lie the States of Maryland and Virginia, and over its surface are navigated vessels of every burden and draft to one of the important North Atlantic ports of the United States. That these attributes fully meet the requirements of the definite language used in the decision referred to and establish its character as high seas we think unmistakable.

Our consideration has also been given to the contention advanced on behalf of the petitioner that as Chesapeake Bay is entirely within the territorial jurisdiction of Maryland and Virginia, it is not and can not be high seas. This is likewise the contention of one of the dissenting justices in *United States* v. *Rodgers* (*supra*), his objection being couched in the words, "The difficulty of applying

the term 'high seas' to the lakes arises not from the fact that they are not large enough, that the commerce which vexes their waters is not of sufficient importance, but from the fact that they are within the local jurisdiction of the States bordering upon them." He then specifies the boundary lines between the United States and Canada, and in regard to Lake Michigan, those between the States of Illinois, Wisconsin, and Michigan. The fact that the Great Lakes were held by this decision to be high seas necessarily disposes of the contention that State territorial waters can not be such. A further judicial recognition that waters within the borders of a State may be high seas is afforded by *United States* v. *Newark Meadows Improvement Co.*, 173 Fed. 426 (1909), wherein it was determined that notwithstanding the place of an offense was on territorial waters of the State of New Jersey, yet that place was high seas. The place of offense in that case was also stated to be within New York Harbor, as defined by the Treasury Department under legislation designed to provide information to navigators of the location where inland as distinguished from international rules of navigation become applicable.

Upon the additional point stressed by counsel that Chesapeake Bay is not high seas for the reason that the States of Maryland and Virginia exercise pilotage jurisdiction thereover, we are mindful of a number of Supreme Court decisions which have consistently held to the effect that the States of the Union may legislate and exercise certain regulatory powers over interstate affairs in the absence of Federal legislation in relation thereto. On this point it suffices to note that as late as 211 U. S. 621, the court observes with approval that—

> In *Cooley* v. *Board of Port Wardens of Philadelphia*, 12 Howard, 292, it was held that a regulation of pilots and pilotage was a regulation of commerce within the grant of the power to Congress, but further that "the mere grant of such a power to Congress did not imply a prohibition on the States to exercise the same power; that it is not the mere existence of such power, but its exercise by Congress, which may be incompatible with the exercise of the same power by the States, and that the States may legislate in the absence of congressional legislation."

Manifestly the pilotage supervision exercised by the States of Maryland and Virginia over carriers engaged in interstate commerce on Chesapeake Bay is sanctioned by this principle. It appears equally manifest that in the matter of regulation of the rates, fares, and practices of independent interstate port-to-port carriers engaged in regular service on Chesapeake Bay the Congress has seen fit to exercise through this board its undoubted privilege under the Constitution.

Supplementing its contentions predicated upon judicial and academic authority, the petitioner in argument lays stress upon senatorial discussion regarding the insertion of the phrase "on the high seas" in section 1 of the shipping act, 1916, and urges that the legislative intent is shown thereby to have been to indentify Chesapeake Bay with inland waters and to exclude all carriers operating on such waters from the jurisdiction of the board. Although it may be here suggested that such discussions are perhaps not the approved source of information from which to determine the meaning of the language of the statute,[1] yet in view of the importance of our conclusion in this case we have felt it desirable to review the legislative expressions having reference to the point involved.

As originally passed by the House and as delivered to the Senate section 1 defined a carrier contemplated to be subject to our authority in the following language:

> The term "common carrier by water in interstate commerce" means a common carrier engaged in the transportation by water of passengers or property between one State, Territory, District, or possession of the United States and another, or between places in the same Territory, District, or possession.

It is seen that this definition would bring within the purview of the act all interstate carriers by water, whether operating upon the high seas, the Great Lakes, or upon rivers. The Commerce Committee of the Senate amended this definition, however, to read:

> The term "common carrier by water in interstate commerce" means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States, and any other State, Territory, District, or possession of the United States, or between places in the same Territory, District, or possession.

In this latter form it became and is now the law. In commenting upon the insertion of the phrase "on the high seas or the Great Lakes," various remarks were made upon the floor of the Senate, as recorded in the Congressional Record,[2] which reflect the thoughts of the individual members of the Senate Committee on Commerce in charge of the bill. In justice to the position of the petitioning carrier, it may be observed that there is included in these remarks a statement which lends support to its belief that the amendment was intended to exclude such bodies of water as Chesapeake Bay. It is the assertion of one of the members that "If the committee amendment is agreed to, there goes out of the bill any power or authority or jurisdiction of the Shipping Board over the inland waterways, the rivers, and the bays that are inland."

[1] U. S. *v.* Freight Ass'n., 166 U. S. 317.
[2] 64th Cong., 1st sess., vol. 53, pts. 12 and 13, pp. 12363, 12793–12800.

There appear other statements by members of the Senate Committee on Commerce upon the point involved, however, which we believe outweigh this and other expressions urged on behalf of the petitioner. For example, the pages of the Congressional Record indicated show declarations by committee members as follows:

"There did not appear either before the Senate committee or in the hearings before the Merchant Marine and Fisheries Committee of the House that there was any particular need of regulating these carriers on the rivers of the country, and it was thought wise by the committee that we should for the present exclude or drop out of the bill this reference to inland waterways, and confine the regulatory features to commerce on the high seas and on the Great Lakes."

"* * * the commerce on the rivers is comparatively small. It is struggling. It is more or less undeveloped as yet. We felt that there was no call, there was no real reason, for giving any board the jurisdiction to require the fixing of maximum rates, and that sort of thing, on these rivers."

"There was a great demand which came from citizens of * * * river towns to give them immunity from the provisions of this paragraph, and it was in order to give them immunity, in order to relieve them from the rules governing this class of shipping, that that term 'on the high seas' was injected."

These and other statements of Senate committee members, we are convinced, identify the insertion of the phrase "on the high seas" in section 1 of our statute with an intent to exclude solely river transportation from our jurisdiction. Further, and we think final, persuasion that the legislative body may be considered to have designed the phrase "on the high seas" to function for no other purpose than to exclude river transportation is provided by the statements of the Senate sponsor of the shipping bill. When the amendment of section 1 of his bill by the injection of the phrase "on the high seas or the Great Lakes" was made, and in reference to a further proposal that from this phrase there be eliminated the words "or the Great Lakes," he remarked:

Before that amendment was put in, the bill provided for the regulation of rates, the regulation of domestic commerce, on the Great Lakes and on the high seas and on the rivers. By the insertion of this amendment the regulation of domestic commerce, so far as the rivers of the country are concerned, was eliminated.

The Senator was asked: "The bill as it came to the Senate did not include inland transportation on the rivers, did it?" To which his reply was: "Why, it included all domestic commerce from a port of one State to a port of another State, whether by river, by the Great Lakes, or by the high seas." To this the inquiry was made, "How has the river transportation been eliminated?" To which the reply was, "By limiting it to the Great Lakes and the ocean."

Other contentions developed on behalf of the carrier and conceived to support its position in regard to the jurisdictional question involved have been given careful attention.

After consideration of the record of argument in this case we conclude and decide that our original report herein should be affirmed, and that this proceeding, as reopened upon the petition of the Merchants & Miners Transportation Company for modification of such original report, should be dismissed.

An order will be entered accordingly.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 18th day of December 1925

Formal Complaint No. 24

American Peanut Corporation *v.* Merchants & Miners Transportation Company, Old Dominion Transportation Company, and Philadelphia & Norfolk Steamship Company

Whereas the above-entitled proceeding having been reopened for argument upon petition of the respondent Merchants & Miners Transportation Company, and said argument having been duly heard and full investigation of the matters and things involved having been had; and

Whereas the board having, on the date hereof, made and filed a report containing its conclusion and decision thereon, which said report is hereby referred to and made a part hereof; now, therefore, it is

Ordered, That the original report in this case be, and it is hereby, affirmed, and that this proceeding, as reopened upon said petition of the Merchants & Miners Transportation Company, be, and it is hereby, dismissed.

By the board.

[SEAL.] (Sgd.) ROY H. MORRILL,
Secretary.

DOCKET No. 13

AMERICAN TOBACCO COMPANY

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE)

Submitted September 30, 1925. Decided December 29, 1925

Upon further hearing reparation awarded on shipments of cigarette papers in books and cigarette paper in bobbins from Havre and Bordeaux to New York on account of injury due to unjustly discriminatory charges. Original report, 1 U. S. S. B. 53.

Junius Parker, *Clinton Robb*, and *Jno. H. Holmes* for complainant.

Jos. P. Nolan for respondent.

SUPPLEMENTAL REPORT OF THE BOARD

Exceptions filed by the parties to the proposed report in this case have been carefully considered.

This proceeding involves collect shipments of cigarette papers in books and cigarette paper in bobbins from Havre and Bordeaux to New York, moved during the period April 7, 1919, to January 3, 1921, and consigned to the complainant American Tobacco Company. In connection with these shipments the respondent French Line exacted charges for loading and carriage calculated upon a fixed basis of 5 francs to $1, while in regard to prepaid shipments of identical commodities carried for other of its patrons from Havre and Bordeaux to New York during the same period and in many instances upon the same vessel, the respondent accepted payment of such transportation charges in francs at the current rates of exchange ranging from 5.88 to 17.07½ francs to $1.

Under authority of section 22 of the shipping act, sworn complaint alleging violations of that statute by the carrier in connection with the higher charges thus exacted was filed by the American Tobacco Company, and hearing was duly conducted by the board in accordance with its rules of practice. In its report in this case, rendered on July 17, 1923 (1 U. S. S. B. 53), the board decided from the evidence submitted by the parties at such hearing that the charges complained of were unduly prejudicial, unduly preferential,

and unjustly discriminatory, in violation of sections 16 and 17 of the shipping act, to the extent which they exceeded prepaid charges on like shipments from and to the same ports and additional incidental costs, if any, which the carrier was compelled to absorb by reason of transporting collect. In regard to reparation contended for, however, it was decided that the record did not afford a basis for determining the extent, if any, to which the complainant had been injured, and the case was assigned for further hearing in respect to any such injury sustained and the amount of reparation to which the complainant might be entitled by reason thereof. Following extensions of time granted at the request of the parties, supplemental hearing was accordingly conducted on May 12, 1925, and the present report and decision are confined to a consideration of the issues whether in fact the complainant was injured within the meaning of section 22 of the shipping act by the payment of the charges found to have been unlawful, and, if injured, the pecuniary amount to which it is entitled as an award of reparation.

Much of the testimony of the complainant's witnesses examined at the supplemental hearing was addressed in detail to the several kinds of cigarette papers in books purchased and sold during 1919, 1920, and 1921 by the complainant and other tobacco companies with which it competed, and to the various brands of cigarettes in the manufacture of which the cigarette paper in bobbins was used. The facts of record as provided by the evidence of these witnesses are that during this period all of such cigarette papers in books were imported from France, and, with the exception of some Italian and Japanese paper imported by one of the companies, all paper in bobbins used in the manufacture of cigarettes by both the complainant and such other tobacco companies likewise came from France and was purchased direct or through New York representatives of French manufacturers. Each of the companies (American Tobacco Company, Liggett & Myers Tobacco Company, R. J. Reynolds Tobacco Company, Pierre Lorillard Company, Surbrug Company, and others) had upon the same market its particular cigarette papers or cigarettes which corresponded in general character and quality to respective papers and cigarettes of the other companies. While for short intervals the price of one brand or another was higher or lower than a corresponding brand or another company, it is shown that throughout 1919, 1920, and 1921 the prices obtained by the several companies for their respective products here involved were practically the same. Considerable evidence is of record evincing that at no time was the complainant able to recoup any part of the greater charges paid by it by increasing the prices of its papers or cigarettes.

Testimony was also presented on behalf of the complainant regarding cost of production, method of computing cost items, and other matters having bearing or conceived to have pertinence in a decision of the issues involved.

Although the respondent was represented at the supplemental hearing by counsel, who cross-examined the complainant's witnesses at length, no witnesses were presented or testimony offered on its behalf, and nothing was advanced by it tending to show the fact or amount of any additional cost incident to the carriage of the complainant's shipments collect rather than prepaid.

Upon all the facts in this case it is undeniable that the complainant suffered injury within the meaning of section 22 of the statute by reason of the unlawful charges paid. As upon the record the injury thus sustained is fairly comparable to the difference between the transportation charges exacted of the complainant and what they would have been had its shipments been accorded charges based on the current rates of exchange similarly as were those of its competitors, together with interest, that difference and interest constitute the sum to which the complainant is entitled as an award of reparation. The principal of this sum is properly to be calculated upon the basis of the rate of exchange on the dates of the complainant's bills of lading, rather than, as contended by the complainant throughout the proceeding, upon the dates on which the charges were approved by it for payment. As in connection with each of the complainant's shipments the interim between the bill of lading date and the date payment of the charges was approved was one of decrease in the rate of exchange, the principal amount of reparation to which the complainant is entitled is less than the $53,840 prayed for.

From a consideration of all the facts, circumstances, and conditions of record the board finds that during the period April 7, 1919, to January 3, 1921, the complainant American Tobacco Company made 279 shipments of cigarette papers in books and cigarette paper in bobbins, as set forth and described in exhibits of record in this proceeding, on which it paid and bore transportation charges in the sum of $99,755.47; that said charges on said shipments were unduly prejudicial to the complainant, unduly preferential of its competitors, and unjustly discriminatory between shippers, in violation of sections 16 and 17 of the shipping act, as decided by the original report of the board herein, to the extent which they exceeded $51,898.49; that said complainant has been injured by the respondent Compagnie Generale Transatlantique within the meaning of section 22 of that statute in the sum of

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$47,856.98 and interest thereon at the rate of 6 per cent per annum from the respective dates of payment of the transportation charges involved as specified in column 24 of complainant's amended Exhibit A, and that the complainant American Tobacco Company is entitled to an award of reparation in the amount of said sum and interest.

An order will be entered accordingly.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 29th day of December, 1925

Formal Complaint Docket No. 13

American Tobacco Company *v.* Compagnie Generale Transatlantique (French Line)

Whereas on July 17, 1923, the board entered its report in the above-styled proceeding, among other things assigning for further hearing the issues as to the fact of injury sustained by complainant and the amount of reparation, if any, to which complainant might be entitled by reason of any such injury; and

It appearing that such further hearing and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed its report thereon containing its conclusions, decision, and findings of fact, which said report is hereby referred to and made a part hereof;

It is ordered, That the respondent Compagnie Generale Transatlantique pay unto the complainant American Tobacco Company on or before ninety days from date hereof, as reparation on account of unlawful transportation charges exacted, the sum of $47,856.98 with interest thereon at the rate of six per cent per annum computed from the respective dates of payment by complainant of said charges as specified in column numbered 24 of amended Exhibit A of record herein.

By the board.

[SEAL] (Sgd.) ROY H. MORRILL,
Secretary.

UNITED STATES SHIPPING BOARD

FORMAL DOCKET NO. 28

EAGLE-OTTAWA LEATHER COMPANY

v.

GOODRICH TRANSIT COMPANY

Submitted August 12, 1926. Decided October 19, 1926

Less-than-carload rates on leather from Muskegon and Grand Haven, Mich., to Chicago, Ill., unjust and unreasonable, but not shown to be unduly prejudicial. Just and reasonable maximum rates prescribed for the future and reparation awarded.

R. A. Black, for complainant.
A. L. Nash, for respondent.

REPORT OF THE BOARD

Exceptions to the examiner's proposed report in this case were filed on behalf of each of the parties and have been given consideration.

The complainant is an Illinois corporation engaged in the manufacture of leather at Whitehall and Grand Haven, Mich., with general offices at Chicago, Ill. The respondent is a New Jersey corporation engaged as a common carrier by water in the transportation of persons and property on regular routes between ports in the States of Wisconsin, Michigan, and Illinois, and as such is subject to the shipping act, 1916.

By complaint filed under authority of section 22 of the shipping act, the leather company alleges the respondent carrier's rates on less-than-carload shipments of leather from Montague, Muskegon, and Grand Haven, Mich., to Chicago, Ill., subject it to an undue and unreasonable prejudice and disadvantage in violation of section 16 of that statute, and that said rates were and are unjust and unreasonable in violation of section 18 thereof. The prayer of the complaint is that the board effect a discontinuance of said alleged violations, prescribe nonprejudicial and reasonable rates for the future, and award reparation on shipments moving on and after January 1, 1924. The complaint was modified at the hearing, however, to exclude from

consideration the lawfulness of the rate on leather from Montague, upon a showing that practically none of the complainant's shipments moves from that port. The specific rates assailed are as follows: From Muskegon, 64½ cents to May 20, 1924, 61½ cents to September 10, 1925, and 60 cents thereafter; from Grand Haven, 61½ cents to September 10, 1925, and 60 cents thereafter.

Case, bag, strap, insole, upholstery, and shoe leather are manufactured by the complainant at its tanneries at Whitehall and Grand Haven, and shipped, chiefly in bundles, wrapped in sulphite paper or veneer board, to Chicago for distribution and sale. The leather produced at the Whitehall plant is trucked by the complainant to Muskegon. In all instances the freight rate is paid by the complainant and absorbed in the price of the leather sold by it upon the Chicago market in competition with leather manufactured in that city by other companies. No tanneries other than those of the complainant are located at or near Muskegon and Grand Haven, although plants of other producers manufacturing leather are located at Sault Ste. Marie, and across Lake Michigan at Sheboygan and Milwaukee. The Sheboygan and Milwaukee tanneries are served by the respondent at less-than-carload rates to Chicago of 33½ and 31½ (later 27) cents per 100 pounds, respectively, as against its less-than-carload rates of 60 cents per 100 pounds from Muskegon and Grand Haven. Regarding the issue of undue and unreasonable prejudice and disadvantage, the evidence of the complainant's witnesses as to whether the Sheboygan and Milwaukee tanneries compete with the complainant is in direct conflict. Upon the record, therefore, the allegation of the complaint as respects section 16 of the statute is not sustained.

The rates from Muskegon and Grand Haven complained of are class rates applied upon leather NOIBN, class 2 of the official classification. The carrier has accorded commodity rates to similar shipments from Sheboygan and Milwaukee, as it has also done with respect to shipments of leather of the character indicated from Manitowoc and from Holland. Comparison of the respondent's rates from these latter ports with those from Muskegon and Grand Haven has bearing upon the reasonableness of the latter and is entitled to consideration. In tabular form, the respondent's mileage, rates per 100 pounds, and per ton-mile earnings on less-than-carload shipments of leather NOIBN from the several ports involved to Chicago are shown below. All of such rates include marine insurance.

From—	Mileage	Rate	Earning per ton-mile
		Cents	*Cents*
Muskegon	125	60	9.6
Grand Haven	110	60	10.9
Holland	95	45	9.4
Manitowoc	156	33½	4.3
Sheboygan	132	33½	5.1
Milwaukee	85	31½	7.4
		[1] 27	6.4

[1] Since March 22, 1926.

It is noted from the above that for the service of 125 miles from Muskegon the respondent charges a rate nearly twice that applicable for the 156-mile service from Manitowoc. It also charges twice as much for the 110-mile service from Grand Haven as from Milwaukee, although the distance from Milwaukee is but 25 miles less. Referring to the comparison of earnings per ton-mile, it appears that from Muskegon and Grand Haven the respondent receives approximately 80 per cent more than from Sheboygan and Milwaukee. Noticeable also is the fact of the earnings of 9.6 and 10.9 cents from Muskegon and Grand Haven, respectively, and the earning of 9.4 cents from Holland. Ordinarily, per ton-mile earnings from properly aligned rates decrease as distance increases.

While often unimportant, distance is nevertheless a definite factor for consideration in determining the reasonableness of water rates, and from our study of the above tabular comparison as a whole, we think the disparities thereby shown strongly support the complainant's allegation that the rates from Muskegon and Grand Haven are unreasonable. Of pertinence in this connection also is the fact that as compared with the 60-cent rates from Muskegon and Grand Haven under attack, the respondent maintains carload rates of 35½ cents from those ports. Bearing further upon their questioned reasonableness is the fact, as shown by tariffs on file and of record with the board, that from January 1 to November 1, 1925, the respondent maintained a less-than-carload rate of 58½ cents on leather from Holland to Grand Haven by truck (a distance of approximately 20 miles) and thence to Chicago by boat. This service was revived at a rate of 57½ cents on January 2, 1926. Since December 17, 1924, the respondent has also maintained a proportional rate of 51 cents from Grand Haven and Muskegon to Chicago applicable to leather from inland points when delivered to it by truck. No reason is given to explain why since December 17, 1924, the complainant has not availed itself on this 51-cent rate on shipments trucked by it from Whitehall.

Stress is laid by the complainant upon the volume of movement of its product from Muskegon and Grand Haven to Chicago over the

respondent's line, it being exhibited that during the period January, 1924, to September, 1925, a total of 716 shipments aggregating 1,153,397 pounds went forward from Whitehall via Muskegon, and 2,102 shipments aggregating 1,257,288 pounds were carried from Grand Haven. This volume of leather is shown to be greatly in excess of that from Manitowoc, Sheboygan, or Milwaukee, although commodity rates on leather are applied by the respondent from each of the latter ports. As to general traffic, however, the volume moving from Sheboygan and Milwaukee is asserted by the carrier to be approximately twice that moving from Muskegon and Grand Haven. No evidence was submitted in any way indicating that any considerable amount of leather is carried from Holland on the respondent's 15-cent commodity rate.

The evidence shows that the leather comprising most of the complainant's shipments averages in value around $125 per roll These rolls weigh from 100 to 110 pounds and measure about 5 cubic feet. Other finer and more valuable grades of leather, such as that used for upholstery, are occasionally shipped. During the period covered by the complaint no claims for loss or damage to any of the shipments moved were made, indicating alike their nonsusceptibility to pilferage and injury, and the care in handling exercised by the carrier.

Other than general statements, nothing was presented by either party bearing upon a comparison from a transportation standpoint of shipments of leather with other commodities. Specific contention was made by the complainant that the value of leather NOIBN is lower than that of other commodities carried at the second-class rate. From a careful examination of second-class official classification articles in less-than-carload quantities, we are of the opinion that this contention is untenable. Examination also shows, however, that as to factors other than value, such as bulk, weight, risk, and handling adaptability, a number of second and lower classed articles demonstrate that leather NOIBN is clearly classified to the highest rating.

Throughout the hearing effort on behalf of the respondent carrier was addressed to the position that the rates from Muskegon and Grand Haven are in all respects reasonable in view of value of service and cost of service.

The Sheboygan-Milwaukee rates of 33½ and 31½ cents, respectively, are stated to have been established on a commodity basis in an effort to obtain leather shipments from those points to Chicago which ordinarily move via rail. It was testified by the carrier that these commodity rates are unremunerative and have not drawn any considerable amount of traffic. Notwithstanding this fact, they are

shown to have been maintained since 1923. Moreover, since the beginning of this proceeding, the carrier has still further reduced the rate from Milwaukee to 27 cents. Rail competition on leather also exists against the respondent's service from Muskegon and Grand Haven at rates of 63½ and 60½ cents, respectively, but is less acute because of the rail company's slower deliveries on less-than-carload shipments. Of material advantage to the complainant in this respect is the fact that nearly two days are required for the rail service, whereas the respondent ordinarily makes delivery in less than one day's time. Such expedition is of course an element of weight bearing upon value of service.

The carrier's cost of operation is asserted to be materially higher along the east than along the west shore of Lake Michigan, due principally to ice conditions with which its vessels have to combat. Vessels used in the east-shore service between Muskegon, Grand Haven, and Chicago are affirmed to represent a larger investment than those engaged in service along the opposite shore and to warrant the 60-cent rates under attack. These rates, it is asserted, barely cover the cost of service in connection with the complainant's shipments. The board of course recognizes known conditions encountered such as that referred to regarding ice, and attaches every possible weight to the conclusion concerning cost in respect to the one particular commodity involved. The probative value of the latter is necessarily impaired, however, by the absence of facts upon which it is based. Furthermore, the rate of 45 cents on leather from the eastern-shore port of Holland is not shown to be subject to dissimilar cost figures and tends directly to bring the reasonableness of the 60-cent rates into question. Nothing was presented of record as to comparative terminal costs at any of the ports involved.

Considerable of the carrier's evidence relates to its earnings for the years 1924 and 1925, during which two-year period a loss was sustained on its operations as a whole, including interest charge, of $56,090.50. For 1924 the carrier shows a loss of $52,346.38. The loss for 1925 was $3,744.12, or a reduction in loss of $48,602.26 during that year over 1924.

Of the four "runs" maintained by the respondent, three (Whitehall–Mackinac, Green Bay–Washington Island, and Milwaukee) show a loss for 1924. The fourth, or Muskegon run, included in which is the service from Muskegon and Grand Haven involved in this proceeding, shows a profit for 1924 of $135,868.90, of which $43,206.23 was derived from freight. The reproduction cost of the two vessels of the respondent engaged in service on the Muskegon run and used upon the record as the carrier's capital investment in that service is $1,800,000. This profit of $135,868.90 for 1924, it is

urged, is less than a fair return upon the $1,800,000 investment. It will be observed that it is 7½ per cent. Moreover, the reduction in loss of $48,602.26 upon the respondent's operations as a whole in 1925 as compared with 1924 indicates that during the later year the return upon investment as respects the Muskegon run exceeded 7½ per cent.

It is further urged by the carrier that the Muskegon run is not to be segregated from the others, but that the profit of $135,868.90 for 1924 is to be considered as merged in the losses incurred during that year on the other three runs and the four services treated as a whole. On this basis, the carrier contends that any reduction by the board of the leather rates under attack would be confiscatory. The unfavorable financial returns upon the respondent's operations as a whole can not justify the rates on leather assailed by the complainant if they are unreasonable, however, and a reduction of such rates if by the usual tests they are found unreasonable is not confiscation but is a proper exercise of the regulatory function. Furthermore, whether a carrier earns dividends on its operations as a whole affords little light upon the question as to the reasonableness of a rate on a particular commodity. "Indeed, the rates on particular commodities may be unreasonably high and yet the carrier fail to realize a fair return from its entire operations."[1]

From our review of the evidence in this case we think it manifest that the principal if not the only consideration which moves the carrier in maintaining the rates from Muskegon and Grand Haven here brought in question is the contemporaneous rail rates with which they are closely aligned. Giving the fullest weight to the testimony that the respondent's leather rates from the three west-shore ports are unremunerative and that operating costs are higher on the east than on the west shore, our conclusion from all the facts before us is that since January 1, 1925, the rates assailed have been and are higher than reasonable for the water service performed.

According due consideration to all of the factors pertinent to the issues involved and the facts and circumstances of record, the board concludes and decides that the rates assailed have not been shown in violation of section 16 of the shipping act, as alleged; but that said rates were, are, and for the future will be, unjust and unreasonable in violation of section 18 of the statute to the extent which they have exceeded since January 1, 1925, now exceed, or may hereafter exceed, 56 cents per 100 pounds from Muskegon and 51 cents per 100 pounds from Grand Haven; and that said rates of 56 cents and 51 cents, including marine insurance, are reasonable maximum rates for the future. Upon the record the board finds that the complainant made shipments as alleged, and paid and bore the rates thereon;

[1] Wool rates from Boston to Philadelphia, 1 U. S. S. B. 21.

that it has been injured in the amount of the difference between such rates paid and those which would have accrued at the rates herein found reasonable, and that it is entitled to reparation. As the exact amount of reparation can not be determined upon the record, the parties are directed to comply with Rule XXI of the board's rules of practice. In the case of shipments which have moved subsequent to the hearing the details thereof may also be included in the reparation statement if accompanied by appropriate proof in the form of an affidavit that the shipments were made and that the freight charges thereon were paid and borne by complainant. Should respondent object to proof in the form of an affidavit, it may request a further hearing with respect to such shipments. An appropriate order will be entered.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 19th day of October, 1926

Formal Complaint Docket No. 28

Eagle-Ottawa Leather Company *v.* Goodrich Transit Company

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed a report containing its conclusions, decision, and findings of fact thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the respondent, Goodrich Transit Company be, and it is hereby, notified and required to cease and desist on or before November 1, 1926, and thereafter to abstain from publishing, demanding, or collecting the rates herein found unjust and unreasonable.

It is further ordered, That said respondent be, and it is hereby, notified and required to establish on or before November 1, 1926, upon one day's notice to the board and to the general public by filing and posting in accordance with section 18 of the shipping act, 1916, and Tariff Circular No. 1 of the board, and thereafter to maintain and apply to the transportation of less-than-carload shipments of leather as involved herein from Muskegon, Michigan, and Grand Haven, Michigan, to Chicago, Illinois, rates, including marine insurance, not to exceed 56 cents and 51 cents per 100 pounds, respectively, which said rates are prescribed as just and reasonable maximum rates.

And it is further ordered, That this order shall continue in force for a period not less than two years from the date when it shall take effect unless otherwise ordered by the board.

By the board.

[SEAL.] (Sgd.) SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

EX PARTE 3

INTERCOASTAL RATE INVESTIGATION

Submitted September 1, 1926. Decided November 4, 1926

Charges and schedules thereof now recorded with the board on behalf of intercoastal carriers not maximum rates or tariffs thereof within meaning of section 18 of shipping act and board's tariff regulations. Respondent carriers ordered to publish, post, and file tariffs showing maximum rates in fact currently held out and/or charged.

John H. Bunch, Alaska Steamship Company; *Joseph N. Teal*, American-Hawaiian. Steamship Company; *John McAuliffe*, Argonaut Steamship Company (Inc); *A. P. Hammond*, California and Eastern Steamship Company; *G. B. Cromwell* and *H. J. Lang*, Certainteed Products Corporation; *W. T. Dingler* and *G. S. Hinkins*, Dollar Steamship Line; *Harry P. Mulloy*, Fels & Co.; *W. M. Campion* and *H. M. Runyon*, Garland Steamship Corporation; *L. B. Anderson*, Intercoastal Lumber Shippers' Association; *J. F. Schumacher*, Inter-Ocean Steamship Corporation; *Charles S. Belsterling*, Isthmian Steamship Lines; *Frank Lyon* and *R. C. Thackara*, Luckenbach Steamship Company (Inc.); *Frank S. Davis*, Maritime Association of Boston Chamber of Commerce; *W. H. Chandler*, Merchants' Association of New York; *Ira A. Campbell* and *C. B. Kellogg*, Munson-McCormick Line; *Semmes Steele*, Pacific-Caribbean Gulf Line (Inc.); *J. S. Mahool*, Panama Pacific Line; *B. Hoff Knight*, Philadelphia Ocean Traffic Bureau; *J. E. Bishop* and *Joseph Scott*, Transmarine Corporation; *W. P. Rudrow* and *Frederick H. Stokes*, United American Lines (Inc.); *C. A. Torrence*, United States Intercoastal Conference; *H. Robert Burney* and *J. A. Wells*, Williams Steamship Company (Inc.).

REPORT OF THE BOARD

By the second paragraph of section 18 of the shipping act, 1916, "every common carrier by water in interstate commerce" as defined in section 1 of that act is required to—

file with the board and keep open to public inspection, in the form and manner, and within the time prescribed by the board, the maximum rates, fares, and charges for or in connection with transportation between points on its own route, and, if a through route has been established, the maximum rates, fares, and charges for or in connection with transportation between points on its own route and points on the route of any other carrier by water.

Conformably with the above provision of the act the board on April 30, 1920, promulgated its tariff regulations governing the publication, posting, and filing of maximum rates, fares, and charges in tariff form. At various times the 15 carriers now operating on regular routes between Atlantic and Pacific coast ports and/or between Gulf and Pacific coast ports of the United States via the Panama Canal have recorded with the board's bureau of regulation, either directly or by formal concurrence pursuant to these tariff regulations, schedules of charges for freight transportation designated "Tariffs of Maximum Rates." Whether the charges thus recorded *are* maximum rates as contemplated by section 18 and the board's tariff regulations has been a question repeatedly presented to our attention and is the subject of inquiry in the instant proceeding. The proceeding was enlarged to permit evidence of the existence of carriers other than those having charges recorded to which the requirements of section 18 have application. As no facts were presented regarding any such carriers, however, consideration herein respecting such additional inquiry will not be given.

The testimony of respondent carriers' witnesses is that the "maximum rates" recorded with the board are not charged, that they greatly exceed the rates actually observed, and that they give no information to shippers or to the board as to any rates applied. As shown by examination they are in most instances higher than the present transcontinental rates via rail. One of the schedules in which they are contained is plainly made up of pages clipped from a rail tariff in effect in 1921, since which time rail rates have been materially reduced.

Seven of the lines here respondent are members of the United States Intercoastal Conference, an organization designed to promote commerce in the intercoastal service "by establishing reasonable rates and charges for the transportation of merchandise and providing just and economical cooperation between the steamship lines operating in such trade."[1] As developed at the hearing, this conference issues what are known as "Minimum Rate Lists," contained in which are rates westbound and eastbound, respectively, purporting to govern the services of the member carriers. These lists are comprehensive in scope and, together with supplements as issued, are

[1] Conference agreement, paragraph 1.

furnished by the conference secretary to subscribing shippers and others at an annual charge of $3.50. They are not filed with the board, nor does it appear that they are in any manner "posted" within the contemplation of the board's tariff regulations. Shippers not subscribers to the so-called minimum rate lists, as testified on behalf of one of the conference lines, are informed of rates charged "by correspondence, through the medium of interior offices or coast offices, or by personal contact with our freight solicitors, and in a variety of ways." The following comparison is illustrative of the "maximum rates" brought in question in this proceeding and the rates shown in the conference carriers' rate lists referred to:

WESTBOUND

	"Maximum rate" recorded	Conference list rate
Agricultural implements	$3.08½	$0.75
Boots and shoes, L. C. L.	5.73½	2.00
Coffee, roasted	2.42	1.00
Cotton, in bales, compressed	2.00	.75
Drugs, L. C. L.	4.16½	1.00
Flour, in bags	1.14	.50
Machinery	3.20	1.00
Paper, printing, N. O. S.	1.92	.65
Roofing material, prepared	1.92	.60
Tobacco, unmanufactured	3.08½	.70

EASTBOUND

Beans, dried	$1.42	$0.45
Canned goods	1.20½	.45
Drugs, L. C. L.	4.16½	1.20
Flour, in bags	1.75	.33
Fruits, dried	1.83½	.75
Hides, dry	2.16½	1.40
Leather, L. C. L.	2.08½	1.00
Nuts, in bags	2.33½	1.00
Stone, marble, onyx, rough	1.15	.55
Wool, in grease, L. C. L.	1.66½	1.00

Carload rates per 100 pounds, except as indicated.

According to the record, the respondent carriers not members of the conference follow generally the rates of the conference lines, in the main either observing the same or differentially lower rates. In illustration, it was testified by witness for one of the nonconference carriers that in rare instances his company might exceed the conference rate on a particular commodity, due to a difference of opinion as to classification. Ordinarily, however, his rates are affirmed to be from 5 to 15 per cent below conference rates. No lists or other schedules containing rates held out and/or charged of the character of the conference "minimum rate lists" are indicated to be published by any of the nonconference lines. Testimony on behalf of one of such carriers is that it is a subscriber to the conference rate lists

and quotes its rates by letter and verbally by using the conference rates as a basis.

From the foregoing it is manifest that each of the carriers respondent in this proceeding is in practice governed by a standard or scale of rates which it recognizes and observes. It is further established by the record that the carriers from time to time diverge from their respective standards or scales, by lowering their rates to meet competitive conditions. In no instance is there any indication that rates higher than those thus recognized and observed are in fact held out or charged at the present time.

At the hearing and upon briefs submitted on behalf of two of the respondents the contention is urged at length by counsel that the charges recorded with the board are maximum rates and that they furnish complete compliance with the requirement of the statute. Nothing is advanced in this proceeding, however, which persuades us that a maximum rate is anything other than that which the plain significance of its name implies. Our view is that a *rate* is a carrier's compensation for the performance of a transportation service. A *maximum* rate is a carrier's highest compensation for the performance of such service. Moreover, no uncertainty attaches to the term "maximum rates" as used in section 18 when considered in connection with the remainder of that section, or with any of the other regulatory provisions of the act. The requirement that carriers shall file with the board and keep open to public inspection, in the form and manner prescribed by the board, their "maximum rates," under penalty for misdemeanor as provided by section 32 of the statute, is in all respects consistent with and in furtherance of the purpose of Congress to regulate carriers by water engaged in interstate commerce. It definitely imposes upon carriers the obligation of keeping available in approved form information for use by shippers and others in connection with the substantial item of transportation cost involved in the purchase and sale prices of articles of interstate commerce. The compliance by carriers with this obligation is necessary to the administration of regulatory duties of the board, and, in practice, is conducive of adjustment as respects rate difficulties of the carriers themselves. While at the time they were recorded with the board the charges here brought in question may have represented the carriers' highest compensation for service, it is evident that as of the present time such charges are in no sense the *rates* of the respondents. Upon the record before us it is clear that they are mere figures bearing no relation to any rates in fact held out or applied, and that they signally fail to comply with the statute.

In all instances, so far as the present record discloses, the rates contained in the so-called "minimum" rate lists are in actuality the

existing highest or *maximum* rates of the conference carriers which should be on file with the board and open to public inspection as directed by section 18 and the board's tariff regulations. As evidenced upon the record it appears also that the highest rates observed by the nonconference lines are those generally based by them upon the conference carriers' maximum rates as here determined. Such rates are, under section 18, the present maximum rates of such nonconference lines which should be published, filed, and posted in pursuance of the statute.

Objection was indicated to change in the respondents' present manner of recognizing the requirement of section 18 here involved upon the ground that the filing and posting of the highest charges in fact held out and/or applied would establish such charges as maximum rates, and that higher rates could not under the statute be assessed by them as opportunity availed except after approval by the board and notice to the public. In this connection the third paragraph of section 18 directs that no carrier within the purview thereof—

> shall demand, charge, or collect a greater compensation for such transportation[2] than the rates, fares, and charges filed in compliance with this section, except with the approval of the board and after 10 days' public notice in the form and manner prescribed by the board, stating the increase proposed to be made, but the board for good cause shown may waive such notice.

Our tariff regulations accordingly provide that "the board in exceptional cases and for good cause shown will permit tariffs naming increased rates * * * to become effective on less than 10 days' notice," and prescribe the form of application to be addressed the board by carriers to that end.[3] Even if, as apparently conceived by the carriers, the securing of board approval and the giving of public notice occasion inconvenience and possible detriment to them in advancing rates, these requirements are nevertheless the law as expressly set forth by Congress in the regulatory statute.

After consideration of all the facts, circumstances, and conditions of record, we conclude and decide that the charges now recorded with the board pursuant to section 18 of the shipping act, 1916, by intercoastal carriers respondent in this proceeding are not maximum rates within the meaning of that section; that the schedules of said charges thus recorded are not tariffs of maximum rates within the meaning of the board's tariff regulations, and that as maximum rates and tariffs said charges and schedules will for the future be unlawful for noncompliance with the statute. Each of the respondent

[2] Transportation between points on its own route, and between points on its own route and points on the route of any other carrier by water.

[3] Tariff regulations, rule 23.

carriers will be directed to publish, post, and file in compliance with section 18 of the act and the tariff regulations of the board tariffs showing the maximum rates in fact currently held out and/or charged by it for the performance of freight transporation service. An order will be entered accordingly.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 7th day of June, 1927

EX PARTE 3

Intercoastal Rate Investigation

Whereas by resolution of March 9, 1926, the board entered upon a proceeding of inquiry and investigation concerning schedules and charges for transportation recorded with the board on behalf of intercoastal carriers in pursuance of section 18 of the shipping act, 1916; and

Whereas the board, after hearing, made and filed a report and order dated November 4, 1926, and having thereafter, upon application of certain of said intercoastal carriers, held a rehearing on May 23, 1927; it is

Ordered, That the said report and order of the board of November 4, 1926, be, and they are hereby, rescinded; and it is further

Ordered, That every common carrier by water subject to the requirements of section 18 of the shipping act, 1916, engaged in intercoastal service through the Panama Canal, shall, in respect to such service, within 60 days from date hereof and in compliance with the provisions of said section 18, file with the board, and keep open to public inspection in the form and manner prescribed by the board's tariff regulations, revised tariffs of maximum rates. A copy of this order shall be forthwith served upon each of said carriers, namely, American-Hawaiian Steamship Co., Argonaut Steamship Co. (Inc.), Arrow Line, California & Eastern Steamship Co., Dollar Steamship Line, Finkbine-Guild Transportation Co., Gulf-Pacific Line, Interocean Steamship Corporation, Isthmian Steamship Lines, Luckenbach Steamship Co. (Inc.), Munson-McCormick Line, Ocean Transport Co. (Inc.), Panama Mail Steamship Co., Panama-Pacific Line, Transmarine Corporation, and Williams Steamship Co. (Inc.).

By the board.

[SEAL.] SAMUEL GOODACRE, *Secretary.*

UNITED STATES SHIPPING BOARD

DOCKET NO. 27

CONTINENTAL ROOFING AND MANUFACTURING COMPANY

v.

BALTIMORE AND CAROLINA STEAMSHIP COMPANY

Submitted November 26, 1926. Decided February 23, 1927

Rate on roofing from Baltimore to Miami unjust and unreasonable during a part of the period covered by complaint. Complainant entitled to reparation.

Manghum & Manghum and *Clinton Robb* for complainant.
Marbury, Gosnell & Williams for respondent.

REPORT OF THE BOARD

Exceptions were filed by both complainant and respondent to the report proposed by the examiner and have been given careful consideration.

Complainant is a Maryland corporation engaged at Baltimore in the manufacture of roofing and building materials consisting of prepared roofing, asphalt and asbestos shingles, roofing cement and coating, and roofing and building paper, hereinafter called "roofing." The respondent, also a Maryland corporation, is engaged as a common carrier by water in the transportation of persons and property on regular routes between Baltimore, Md., and Miami, Fla., among other ports, and as such is subject to the shipping act, 1916.

By complaint seasonably filed under section 22 of said statute it is alleged by the roofing company that the respondent maintains and applies to carload shipments of its products from Baltimore to Miami a commodity rate which is, has been, and for the future will be unjust and unreasonable in violation of section 18 of the shipping act. The board is requested to effect a discontinuance of said alleged violation, to prescribe a reasonable maximum rate for the future, and to award reparation. Rates will be stated in cents per hundred pounds.

The extent to which the complainant is able to sell roofing in Miami is asserted to be dependent largely upon the rate of freight, because that market, according to the record, is controlled by a roofing manufacturer at New Orleans. It is indicated that roofing manufacturers located at York, Pa., also compete with the complainant upon the Miami market. Usually the complainant sells roofing to Miami consignees at Baltimore at a price inclusive of freight. For example, an exhibit of record shows that complainant sold 515 rolls of roofing weighing 40,151 pounds for $1,015.70. From this sales price was deducted $220.83 freight charges, so that complainant actually received $794.87 for the consignment. As to shipments thus made, and to support its claim of interest therein in this proceeding, complainant presents assignments executed by the consignees transferring to it all rights to and interest in reparation thereon, if any found. On a few shipments complainant prepaid the freight charges.

The rate from Baltimore to Miami under attack is 55 cents, as published by the respondent in its Local Freight Tariff S. B. 147, effective November 17, 1923. This is a reduction from 63½ cents established on July 1, 1922. According to the record the respondent is the only boat line operating on a regular route directly from Baltimore to Miami, although several steamship lines on irregular routes are indicated to furnish service from Baltimore to Miami. These irregular lines, it is asserted, also quote a 55-cent rate on roofing.

The complainant submitted in evidence several exhibits which, together with testimony of record, show the following comparison of water rates on roofing applicable from Baltimore to Charleston, Savannah, Jacksonville, Miami, and Tampa, the relative distances involved, and the various carriers' per ton-mile earnings, as well as the water rates, distances, and earnings from New York, Philadelphia, and New Orleans to said ports:

From—	To—				
	Charleston	Savannah	Jacksonville	Miami	Tampa
Baltimore:					
Carrier	B. & C.	M. & M. T.	M & M. T	B. & C	Bull.
Distance	548	621	712	955	1,344
Rate	26	25	25	55	29½
Earnings [1]	9.5	8	7	11.5	4.3
Philadelphia:					
Carrier	B & C.	M & M. T.	M. & M. T.	B. & C.	Commercial.
Distance	[2] 643	670	761	1,004	1,394
Rate	[2] 30½	25	25	55	26
Earnings [1]	9.5	7.5	6.6	10	3.7

[1] In mills per ton-mile.

[2] Rate and mileage via Baltimore.

From—	To—				
	Charleston	Savannah	Jacksonville	Miami	Tampa
New York:					
Carrier	Clyde.	Ocean.	Clyde.	Clyde.	Mallory.
Distance	627	700	792	1,035	1,424
Rate	25½	30½	25½	[2] 59½	29½
Earnings [1]	8.1	8.7	6.4	11.5	4.2
New Orleans:					
Carrier				G. & S.	G. & S.
Distance				730	474
Rate				35	25
Earnings [1]				9.6	10.5

[1] In mills per ton-mile.

[2] Jacksonville combination.

Abbreviations:
B. & C..... Baltimore and Carolina Steamship Co.
Bull..... Bull Steamship Line, Inc.
Clyde..... Clyde Steamship Co.
Commercial..... Commercial Steamship Lines.
G. & S..... Gulf & Southern Steamship Co.
Mallory..... Mallory Steamship Co.
M. & M. T..... Merchants and Miners Transportation Co.
Ocean..... Ocean Steamship Company of Savannah.

From the above comparison it is observed that the only rate on roofing higher than the one under attack is that from New York to Miami, which is made on a combination of a 25½-cent local rate to Jacksonville and a 34-cent rate beyond. Other rates and per ton-mile earnings shown are substantially lower than the rate and per ton-mile earning from Baltimore to Miami in controversy. Complainant lays particular stress on the rate from New Orleans to Miami, which is 20 cents lower than the rate under attack. Recognizing, of course, that the services involved are by different carriers and from different ports, and that the geographical location of New Orleans affords a natural advantage in distance of 225 miles, it is observed that the respondent's per ton-mile earning is 1.9 mills greater for the longer distance.

While, as urged by the complainant, rates via other lines from various ports to Miami and between other ports may properly be compared with the rate under attack, the weight which can be accorded such comparisons is obviously limited. Of somewhat more definite bearing in the instant case, we think, is the rate maintained by the respondent from Baltimore to Charleston relied upon and exhibited by the complainant. The rate on roofing to Miami is 111 per cent higher than the Charleston rate, yet the distance increase is but 74 per cent. For the longer distance the respondent earns 2 mills more per ton-mile than to Charleston.

In regard to the rate on roofing to Miami from Philadelphia maintained by respondent on the same basis as its rate from Baltimore, there is, according to the evidence, no producer of roofing located at Philadelphia and nothing of record to show but that little,

if any, roofing moves therefrom on the respondent's local rate. It is clearly shown, however, that during the period covered by this complaint a substantial volume of roofing was carried by the respondent from Baltimore.

In addition to its contention that the 55-cent rate on roofing from Baltimore to Miami is unreasonable by comparison with rates between other ports, respective distances involved, and earnings, the complainant relies upon comparisons of commodity rates on other articles from Baltimore to Miami contained in respondent's same tariff, together with their respective relations, to establish classification ratings thereon. The following table shows the specific rates applicable to such other articles, class rates, carload minimum weights, cubic feet per ton, and value, as compared with roofing:

Commodity	Commodity rate	Class rate	Minimum weight	Cubic feet per ton (2,240 pounds)	Value per ton (2,000 pounds)
Asphalt and asphaltum	44½	68	40,000	53	$20.00
Canned goods	56	100	36,000	60	94.00
Coffee, green	60	100	30,000	62	230.00
Molasses, glucose, and syrups	48	100	36,000	56	80.00
Potatoes	54	87	36,000	63	29.00
Salt	18	68	40,000	61	17.60
Soap	51	87	36,000	58	130.00
Sugar, refined	35	100	40,000	53	168.00
Roofing	55	68	40,000	56	49.00

The average percentage relationship which the commodity rates other than on roofing included in the above analysis bear to the corresponding class bases provided by the Southern Freight Classification and removed by the specific rates is 52 per cent, whereas the commodity rate on roofing is 80.9 per cent of the rate under the classification. The earning on roofing, as heretofore shown, is 11.5 mills per ton-mile, while the average per ton-mile earning on the other commodity rates exhibited above is 9.6 mills.

As to bulk the comparison above shows that roofing occupies 2 cubic feet less per long ton than the average of the other eight commodities, yet the average rate per 100 pounds for the articles other than roofing is 9 cents less. It is also noted that the carrier's revenue from a cubic foot of roofing is 25 per cent more than from the average of the other exhibited articles.

Respecting the element of value, it is observed from the above table that the other commodities average $47.07 per short ton more than roofing. Particular stress is laid by the complainant upon the value of roofing as compared with soap, it being emphasized that soap is over 2½ times as valuable as roofing and the rate 4 cents per 100 pounds less.

Regarding risk involved in connection with the transportation of roofing, it is testified that since complainant has been shipping via the respondent's line it has had occasion to file only two loss and damage claims against it.

Out of a through rail-and-water rate of 55 cents on roofing from York, Pa., to Miami, via Baltimore, the respondent's proportion is 41 cents. This proportional as compared with the 55-cent port-to-port rate under attack, and in connection with other factors has bearing upon the reasonableness of the latter rate, considering that the services rendered by the respondent in regard to both are necessarily similar in many respects.

On behalf of the respondent it is shown that six lake-type boats of a carrying capacity of 1,414 tons each are operated by it on its Baltimore-Miami route. Whereas three weeks are ordinarily required to make a round trip, it is shown that because of congested port conditions at Miami, existing since early in the summer of 1925, it frequently takes one of these vessels about five weeks to complete its itinerary. Beginning about June 1 of that year, according to the record, it has been difficult to secure berthing, and respondent has paid as high as $1,900 rental for dock space, in addition to a charge of $25 for each ship a day. During much of the time since that date it is testified respondent's ships have been tied up from a week to 10 days on nearly every trip at a cost of $500 per day. In addition, and as illustrative of expense incurred incident to abnormal port conditions at Miami, the record shows that the cost to the respondent for dock labor for the month of December, 1925, was $5,900. Stevedores are paid $1 an hour, whereas before the congestion they received 30 cents an hour. Often, because of inability to discharge, it is testified, the respondent's vessels have been forced to return with either full or part cargo aboard.

The absence of practically all return cargo from Miami during both normal and congested times is stressed by the carrier. Ordinarly, prior to June, 1925, its vessels left Miami light for Charleston and Georgetown, at which ports cargo for Baltimore would be available. Since the congestion took place, however, respondent has not been able to call at the South Carolina ports with every ship, but has been forced in many instances to return empty from Miami directly to Baltimore.

From a review of the instant case as a whole, we are convinced that because of disparities shown herein the rate under attack was measurably unjust and unreasonable until the time congestion in the Miami service began, and this, notwithstanding allowance for the peculiarities which characterized that service, including recognized seasonal traffic and lack of return cargo. Because of well-

known conditions which have existed in the Miami service since congestion set in, however, as depicted by the respondent upon the record, we are equally convinced that complainant's allegation of subsequent unreasonableness of the 55-cent rate on roofing is without support. In this connection, complainant's traffic manager upon cross-examination testified that the complaint covered only normal conditions.

According due consideration to all the factors pertinent to the issue involved and the facts, circumstances, and conditions of record, we conclude and decide that prior to June 1, 1925, the rate on roofing under attack was unjust and unreasonable to the extent that it exceeded 46 cents, but that since June 1, 1925, and for the future, said rate has not been shown to be violative of section 18 of the act, as alleged. We find that the complainant made shipments of roofing over respondent's line from Baltimore to Miami as alleged, and has been injured to the extent that the rate paid exceeded 46 cents per 100 pounds hereby determined a reasonable maximum rate for the period involved; that the extent of said injury is the difference between the rate paid and said reasonable maximum rate for the period covered by this complaint up to and including May 31, 1925; and that complainant is entitled to reparation therefor, with interest. The amount of reparation can not be determined upon the existing record. Statement should be prepared by complainant showing the details of the shipments covered hereby, specifying dates between May 19, 1923, and May 31, 1925, inclusive, upon which the charges were paid, and same should be submitted to the respondent for verification. Upon receipt of a statement so prepared and verified in accordance with Rule XXI of our Rules of Practice, we will consider the entry of an award of reparation.

UNITED STATES SHIPPING BOARD

EX PARTE 3

INTERCOASTAL RATE INVESTIGATION

Submitted May 23, 1927. Decided June 7, 1927

Report and order of November 4, 1926, rescinded. Respondents ordered to file and post revised tariffs of maximum rates within 60 days

Ira A. Campbell, American-Hawaiian Steamship Co., Arrow Line, Dollar Steamship Line, Gulf-Pacific Line (Inc.), Luckenbach Steamship Co. (Inc.), Transmarine Corporation; G. S. Hinkins, Dollar Steamship Line; M. H. Hoskier, Panama-Pacific Line; C. B. Kellogg, Munson-McCormick Line; Frank Lyon, American-Hawaiian Steamship Co., California & Eastern Steamship Co., Luckenbach Steamship Co. (Inc.), Ocean Transport Co. (Inc.), Interocean Steamship Corporation; W. P. Rudrow, Arrow Line; Joseph Scott, Transmarine Corporation; R. C. Thackara, Luckenbach Steamship Co. (Inc.); C. A. Torrence, United States Intercoastal Conference; J. A. Wells, Williams Steamship Co. (Inc.).

Following the issuance of the board's report in this case on November 4, 1926, and subsequent extension of time to permit compliance with the order therein, seven [1] of the carriers respondent filed applications for rehearing. Such applications were granted and rehearing was accordingly conducted by the board on May 23, 1927.

At the outset of the rehearing suggestion was volunteered by the seven respondents that as they are now compiling revised tariffs of maximum rates to be filed with the board at an early date under section 18 of the shipping act, 1916, that it was unnecessary to argue on the board's order of November 4, 1926, and that in view of all the circumstances the record could be closed by rescission of the board's order in controversy.

The view of the board is that the respondents be given opportunity to file revised tariffs of maximum rates as suggested and that upon the record the order of November 4, 1926, together with the report upon which it was predicated, may be rescinded provided that nothing contained in said report or order be regarded as a precedent.

Accordingly the board's order now to be entered is that the report and order of November 4, 1926, be rescinded and that each of the respondent carriers file and post revised tariffs of maximum rates within 60 days.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 7th day of June, 1927

EX PARTE 3

Intercoastal Rate Investigation

Whereas by resolution of March 9, 1926, the board entered upon a proceeding of inquiry and investigation concerning schedules and charges for transportation recorded with the board on behalf of intercoastal carriers in pursuance of section 18 of the shipping act, 1916; and

Whereas the board, after hearing, made and filed a report and order dated November 4, 1926, and having thereafter, upon application of certain of said intercoastal carriers, held a rehearing on May 23, 1927; it is

Ordered, That the said report and order of the board of November 4, 1926, be, and they are hereby, rescinded; and it is further

Ordered, That every common carrier by water subject to the requirements of section 18 of the shipping act, 1916, engaged in intercoastal service through the Panama Canal, shall, in respect to such service, within 60 days from date hereof and in compliance with the provisions of said section 18, file with the board, and keep open to public inspection in the form and manner prescribed by the board's tariff regulations, revised tariffs of maximum rates. A copy of this order shall be forthwith served upon each of said carriers, namely, American-Hawaiian Steamship Co., Argonaut Steamship Co. (Inc.), Arrow Line, California & Eastern Steamship Co., Dollar Steamship Line, Finkbine-Guild Transportation Co., Gulf-Pacific Line, Interocean Steamship Corporation, Isthmian Steamship Lines, Luckenbach Steamship Co. (Inc.), Munson-McCormick Line, Ocean Transport Co. (Inc.), Panama Mail Steamship Co., Panama-Pacific Line, Transmarine Corporation, and Williams Steamship Co. (Inc.).

By the board.

[SEAL.] SAMUEL GOODACRE, *Secretary.*

UNITED STATES SHIPPING BOARD

EX PARTE 4

SECTION 15 INQUIRY

Submitted November 8, 1926. Decided August 16, 1927

Charles S. Belsterling for Isthmian Steamship Lines; Frank N. Bowers for International Freighting Corp.; Ira A. Campbell for A. H. Bull & Co., Bull-Insular Line, Dollar Steamship Line, McCormick Steamship Co., and Munson Steamship Line; M. F. Cropley for Matson Navigation Co. and Oceanic Steamship Co.; Harold S. Deming for Booth-American Shipping Corp. and Export Steamship Corp.; W. V. Harloe for United Fruit Company; Roscoe H. Hupper for American Diamond Lines, American Levant Line, American Line, American Merchant Lines, Anchor Donaldson Line, Anchor Line, Atlantic Transport Line, Baltic America Line, Blue Funnel Line, Bristol City Line, Cairn Thomson Line, Canadian Pacific Steamships, Ltd., Clyde Steamship Company Santo Domingo Line, Columbus Marine Corp., Compagnie Generale Transatlantique, Cosulich Line, Cunard Line, Cunard Steam Ship Company, Limited, Donaldson Line, Ellerman's Phoenix Line, Ellerman's Wilson Line, Export Steamship Corp., Fabre Line, Furness Lines, Hamburg-American Line, Head Line, Holland America Line, Inter-Continental Transport Services, Lamport & Holt, Ltd., Leyland Line, Lloyd Sabaudo, Lord Line, Manchester Liners, National Greek Line, Navigazione Generale Italiana, Navigazione Libera Triestina, New York and Cuba Mail Steamship Company, New York & Porto Rico Steamship Company, North German Lloyd, Norwegian-America Line, Oriole Lines, Pacific Steam Navigation Company, Panama Pacific Line, Red "D" Line, Red Star Line, Royal Holland Lloyd, Royal Mail Steam Packet Company, Scandinavian-American Line, Spanish Royal Mail Line, Swedish American Line, Transatlantica Italiana, United States Lines, White Star Line, and Yankee Line; Kerr Steamship Company, Inc., agents, for Wilhelmsen Line and Cia de Navegacao Lloyd Brazileiro; Frank P. Latimer for American Palmetto Line, Carolina Company, Donaldson Line, Henry Nan-

ninga Co., Trosdal, Plant & Lafonta, and J. A. VonDohlen Co.; John McAuliffe for Argonaut Steamship Line; E. K. Morse for American Despatch Line, Lone Star Steamship Co., McCormick Steamship Co., Munson-McCormick Line, and Munson Steamship Line; J. B. O'Reilly for American & Australian Line, American and Indian Line, American & Manchurian Line, Ellerman & Bucknall, and Norton, Lilly & Co.; A. W. Parry, jr., for Atlantic, Gulf & Oriental Steamship Co., Bank Line, Barber Steamship Line, Dollar Line, Fern Line, Furness, Withy & Co., Alfred Holt & Co., Kerr Steamship Line, Nippon Yusen Kaisha, Norton, Lilly & Co., Osaka Shosen Kaisha, and Suzuki & Co.; Forman B. Pearce for Maritimes à Vapeur and Societa Generale de Transports; N. O. Pedrick for American Delta Line, American Dixie Line, American Premier Line, Fern Line, Gulf & West Mediterranean Line, Head Line, Lord Line, Lykes Bros. Ripley Steamship Co., Inc., Maclay Line, Richard Meyer Co., Mississippi Shipping Co., Navigazione Alta Italia, Ross & Heyn, Inc., Societa Generale de Transports Maritime à Vapeur, Southern Shipping & Trading Co., Southern States Line, Hugo Stinnes Line, Swedish America Mexico Line, Tampa Inter-Ocean Steamship Co., Texas Star Line, Trans-Atlantic Steamship Co., Trosdal, Plant & Lafonta, and United Gulf Steamship Co., Inc.; W. P. Rudrow for Arrow Line; Joseph N. Teal for American-Hawaiian Steamship Co., Columbia Pacific Shipping Co., and Oregon Oriental Line; C. A. Torrence for American-Hawaiian Steamship Co., Argonaut Steamship Co., Inc., Arrow Line, Dollar Steamship Line, Luckenbach Steamship Co., Inc., Munson-McCormick Line, and Panama-Pacific Line.

Report of the Board

Section 15 of the shipping act, 1916, provides that a carrier subject to that statute shall file immediately with the board a true copy, or, if oral, a true and complete memorandum of "every" agreement[1] with another such carrier, or modification or cancellation of such agreement, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares, giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; alloting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any

[1] The term "agreement" in this section includes understandings, conferences, and other arrangements.

way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement.

Section 15 further provides that the board may by order disapprove, cancel, or modify any such agreement, modification, or cancellation thereof that it finds unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters of the United States and their foreign competitors, or to operate to the detriment of commerce of the United States, or to be in violation of the shipping act, and that it shall approve all others.

The fourth paragraph of section 15 provides that all agreements, modifications, or cancellations made after the organization of the board "shall be lawful only when and as long as approved by the board; and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation."

Agreements, modifications, and cancellations lawful under section 15 are by the fifth paragraph of that section excepted from the provisions of the Sherman Antitrust Act, Wilson Tariff Act, and amendments and acts supplementary thereto.

Owing to divergence of practice by conference carriers as to the character of material submitted for the board's attention, the board on June 16, 1926, initiated the instant proceeding for the purpose of ascertaining the meaning of the word "every" as used in section 15 in relation to agreements required to be filed. One hundred and ninety-two carriers having membership in 43 active conferences were named respondents.

In the case of nine of the forty-three conferences, copies or memoranda of agreements setting forth the plan and modifications thereof by which the respective conference organizations are governed are all that have been furnished the board. Twenty-five of the forty-three conferences furnish the board with copies of the minutes of their regular and special meetings, in which are noted the current conference activities. Twenty conferences furnish tariffs of rates and charges; six furnish circulars as issued by the conference secretaries to the member lines; eight furnish minutes and tariffs; three furnish minutes, circulars, and tariffs; two furnish minutes and circulars, and one furnishes circulars and tariffs. Unlike the other forty-two, one of the conferences is without a basic or so-called "organic" agreement on file but regularly furnishes minutes of its meetings. The carriers comprising the membership of this last conference, the board was informed, are now preparing such an agreement for filing.

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Of the carriers' representatives examined, the testimony of all but two is to the effect that the minutes, circulars, and tariffs of their respective conferences are not looked upon by the carriers as copies or memoranda of agreements required to be filed with or acted upon by the board; that the conferences furnishing the same do so to inform the board regarding their minor or routine understandings reached in pursuance of the organic agreements and modifications thereof which have been filed and have had board approval, and that copies or memoranda of their respective organic agreements, modifications, and cancellations thereof are all that section 15 contemplates.

Of the two conferences not in accord with the above, testimony on behalf of one is that its minutes are furnished the board because of a provision of its organic agreement making conference action within the scope of that agreement as binding upon the members as if expressly made a part thereof. By reason of this provision, it is contended, routine arrangements arrived at by the members of this conference respecting rate changes and other details of operation are an integral part of the organic agreement and required by the statute to be filed. It is apparent to the board, however, that such a provision can not convert routine arrangements between the carriers themselves into agreements under section 15. The position of the other of the two dissenting conferences is that its purpose in furnishing minutes is to insure that every arrangement effecting modification of the conference organic agreement "which might be made" by the conference members in the course of their meetings shall be filed. In the words of the conference representative, "We put it in the minutes, and if we do not hear from the board we consider it was in order. We leave it up to the board to conclude which was an agreement under section 15 and which was not." In this connection it should be stated that in the past the board has followed the practice of approving without comment agreements recorded in conference minutes, circulars, and tariffs furnished it which after examination have been found upon their face to be unobjectionable. This and other matters relating to the filing of section 15 agreements in the future will be the subject of regulations to be issued by the board separately from this proceeding.

In the nature of transportation by water, it is manifest that conference agreements within the purview of section 15 are those whereby the carriers propose to be governed in their conference activities as to matters specified in the first paragraph of that section. Agreements arrived at by conference carriers providing for fixing or regulating transportation rates or fares, and the other matters speci-

fied,[2] and agreements modifying or cancelling such agreements are within the meaning of section 15. By that section, the burden of filing copies or memoranda of all such agreements is put upon the carriers, and performance under them is unlawful until they have received board approval. Such agreements are to be distinguished from the routine of conference activities.

As contended by conference representatives in this proceeding, a too literal interpretation of the word "every" to include routine operations relating to current rate changes and other day-to-day transactions between the carriers under conference agreements would result in delays and inconvenience to both carriers and shippers. The usual though not invariable practice followed by conferences of sending the board copies of minutes of their meetings and of circulars and tariffs as issued to the members, which contain references only to routine arrangements for the carriers' record and guidance and not imposed by section 15, is not to be regarded as a filing under section 15, but as information on conference activities. By section 21 of the shipping act the board of course has authority to require the submission of such information, if needed in the administration of its regulatory duties; but no exercise of that authority in this connection has been evoked.

[2] Giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; alloting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 16th day of August, 1927

EX PARTE 4

Section 15 Inquiry

Whereas, by resolution of June 16, 1926, the board entered upon a proceeding regarding the meaning of the word "every" as used in section 15 of the shipping act, 1916, in relation to the character of steamship conference agreements required to be filed; and

Whereas full hearing and investigation having been had, and the board having on the date hereof made and filed a report, which said report is hereby referred to and made a part hereof: Now, therefore, it is

Ordered, That this proceeding be, and it is hereby, concluded with said report.

By the board.

[SEAL.] (Sgd.) SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET NO. 31

TRUMBULL-VANDERPOEL ELECTRIC MANUFACTURING COMPANY, INC.

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

Submitted May 23, 1927. Decided June 23, 1927

Rates not shown unjust, unreasonable, or illegal, as alleged. Complaint dismissed

George F. Mahoney for complainant.
Frank Lyon for respondent.

REPORT OF THE BOARD

Examiner's proposed report in substantial conformity with the following was served upon the parties in accordance with the board's rules of practice. Exceptions filed on behalf of the complainant have been duly considered.

Complainant is a Connecticut corporation operating a plant at Bantam in that State. The respondent is a Delaware corporation, engaged as a common carrier in the transportation of property on regular routes between Atlantic and Pacific coast ports of the United States via the Panama Canal, and as such is subject to the shipping act, 1916. By complaint seasonably filed under section 22 of said statute it is alleged that respondent's rates on shipments of complainant's product from New York City to Los Angeles and San Francisco, California, and to Portland, Oregon, were unjust, unreasonable, and illegal in violation of section 18 of the shipping act. The board is requested to award reparation. Rates will be stated in amounts per 100 pounds.

The 132 shipments involved in this complaint ranged in weight from approximately 100 to 9,160 pounds, and were made during the period January 7, 1924, to November 4, 1925. They were consigned to the Allied Industries, complainant's Pacific coast sales representatives. Some of the shipments were trucked from complainant's factory to ship side at New York and others were transported by rail to the respondent's piers at that port. From thence they were

carried by the respondent to destination upon local ocean bills of lading executed by the respondent carrier usually at $2.20, $2.45, and $2.50. Amounts in excess of the rate of $2.20, it is stated by the carrier's witnesses, were erroneously assessed as penalty charges because of packing, and respondent has offered to make refund thereof. In certain instances the carrier charged a rate of $1.20. This difference of $1 in the rate charged is apparently attributable to conflicting descriptions shown in certain shipping papers of record covering the shipments involved. When the complainant's product was described as a "steel switch box with necessary interior fittings and electric switches," or similarly, the higher rate was exacted, whereas when it was termed an "electric switch" the lower rate was charged.

The rates of $2.20 and $1.20 above referred to, together with their corresponding carload rates of $1.50 and 90 cents, are contained in a so-called Westbound Minimum Rate List, published by the United States Intercoastal Conference. The respondent is a member of this conference and generally observes the rates therein named. By reference to a copy of this minimum rate list made of record in the instant proceeding, it is noted that the l. c. l. rate of $2.20 complained of is 2d class under Western Classification, and that the corresponding carload rate of $1.50 is 4th class under that classification. The rates of $1.20 and 90 cents contended for by the complainant are commodity rates (l. c. l. and c. l., respectively), applicable to "Electrical Appliances N. O. S. classified 'Class A' under heading 'Electrical Appliances' in current Western Classification" and other generally related commodities. The complainant directs our attention to the fact that included in the description of articles to which these commodity rates are applied by the carrier is the following subheading: "Switches or Parts Thereof."

Both at the hearing and upon the briefs the effort of the complainant is to show that the article shipped was a switch, and hence within the commodity description of articles to which the rates of 90 cents carload and $1.20 less carload applied. The component parts of the complainant's product are a steel box, an insulated base, a mechanism which conducts or breaks an electric current, and fuse sockets or receptacles. Manifestly, this article is a switch box with interior fittings, and definitely within the classification "Conduit outlet boxes, with or without covers, or switch boxes, iron or steel, with interior fittings, other than switches."[1] The phrase "other than switches" does not, as contended by the complainant, exclude a switch box containing a switch. On the contrary it comprehends a switch box and interior fittings, one of which fittings may be a switch.

[1] Consolidated Freight Classification No. 4, p. 162, items 3 and 4.

The purpose of the phrase is merely to distinguish the article described from the item of the classification covering switches.[2] From the nature of the complainant's product as shown upon the record, it is evident that the rating as applied by the respondent was correct.

The complainant sets forth in evidence comparisons of the $2.20 rate charged with the respondent's rates on other commodities. The 4th class rate applicable in connection with carload shipments of the complainant's product is included. Of these commodities those taking rates for which the complainant contends, together with the respective weights and values per cubic foot, are summarized below:

Commodity descriptions	Rates (westbound minimum rate list)		Weight in pounds per cubic foot	Value in cents per pound
	C. L.[1]	L. C. L.		
Fans, electric	$0.90	$1.20	13	54
Magnetos	.90	1.20	46	158
Meters, electric	.90	1.20	33	96
Starters, gasoline engine	.90	1.20	63	83
Switches, knife	.90	1.20	35	29
Telephones	.90	1.20	32	60
Complainant's product	[3] 1.50	2.20	27	23

[1] Minimum weight 10,000 pounds unless otherwise indicated. [3] Minimum weight 30,000 pounds.

It is to be observed that while the rates on the complainant's product are 60 cents carload and $1 less-than-carload higher than the rates upon the other commodities, with one exception the complainant's product occupies considerably more space. The average greater weight of the other articles per cubic foot is 10 pounds, the complainant's product therefore requiring 37 per cent more space within which to be loaded on shipboard. At the rates of 90 cents carload and $1.20 less carload contended for, the carrier's revenue per cubic foot on the complainant's product would have been lower by 9 cents and 12 cents, respectively, than from the average of the other articles. While, as stressed by the complainant, its product per pound and per cubic foot is less valuable than any of the other articles above exhibited, we are not of opinion that such fact is determinative, in view of the factor of space and the recognized disturbed condition of intercoastal rates. Furthermore, no evidence was introduced regarding comparative volumes of movement, an important consideration in connection with commodity rates. The rates, weight, and value of numerous other articles, such as brushes, cigars, spark plugs, etc., are also compared by the complainant with its product. A painstaking review of all of the elements involved, however, fails to show

[2] Page 161, item 26.

that upon the record the allegation of unjustness and unreasonableness of the rates attacked can be sustained.

No evidence was adduced by the complainant to support the allegation that the rates in question were illegal because not filed with the board.

After examination of all the facts and circumstances of record in this proceeding, the board concludes and decides that the rates on the complainant's product have not been shown unjust, unreasonable, or illegal in violation of section 18 of the shipping act, as alleged. The complaint will be dismissed.

An order will be entered accordingly.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 23d day of June, 1927

Formal Complaint Docket No. 31

Trumbull-Vanderpoel Electric Manufacturing Company, Inc., *v.* Luckenbach Steamship Company, Inc.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having on the date hereof made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and attached:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the board.

[SEAL.] (Sgd.) SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET NO. 35

DOBLER & MUDGE

v.

PANAMA RAIL ROAD STEAMSHIP LINE

Submitted July 13, 1927. Decided August 23, 1927

Rate not shown unjust or unreasonable in violation of section 18 of the shipping act, 1916, as alleged. Complaint dismissed

Howard P. Rowe for complainant.
Richard Reid Rogers and *Anderson Woods* for respondent.

REPORT OF THE BOARD

Examiner's tentative report in substantial conformity with the following was served upon the parties in accordance with the board's rules of practice. No exceptions thereto were filed.

Complainant is engaged in the wholesale paper business at Baltimore, Md. Respondent is a common carrier by water engaged in the transportation of property between the ports of New York, N. Y., and Cristobal, Canal Zone, and as such is subject to the provisions of the shipping act, 1916. By complaint filed under authority of section 22 of the shipping act it is alleged that the rate of the respondent carrier applicable to shipments of paper towels from New York to Cristobal was when exacted and is unjust and unreasonable in violation of section 18 of that statute. The board is requested to effect a discontinuance of said alleged violation.

On August 10, 1926, complainant shipped via the respondent from New York 200 cases of paper towels, weighing 19,580 pounds and measuring 2,900 cubic feet, consigned to the Panama Canal, Cristobal. These paper towels were purchased by complainant at an invoice price of $1,050 delivered f. o. b. docks Panama Line, New York, and were sold for $1,200 delivered at Colon. The rate charged was 15 cents per cubic foot, or $435.

The authority for the rate assessed is respondent's Freight Classification and Tariff S. B. No. 6. Under the rule of said tariff governing the application of all rates contained therein (Item 22), it is specifically stated that—

> All rates * * * are to be charged per cubic foot or per 100 pounds, whichever yields the greater revenue, at the option of the carrier.

Further, Item 30, which publishes the class rates from New York to Cristobal, provides that rates will be "per cubic foot or per 100 pounds at the carrier's option." Two sets of fourth-class rates are carried in the aforesaid tariff, viz: 20 cents per cubic foot and 40 cents per 100 pounds, both subject to a reduction of 25 per cent on canal supplies. In the instant case, as when calculated on a measurement basis the shipment returned a greater revenue than when calculated on a weight basis, the former basis was used.

It appears from the record that complainant when filing its bid for the sale of the paper towels here concerned had in mind that the rate applicable thereto was the rate per 100 pounds, which impression was gained from the fact that on prior shipments to the Panama Canal the weight rate was charged. Examination shows, however, that such shipments were comprised of paper commodities other than towels, which by weight returned a greater revenue than by measurement. Complainant offered no evidence as to the unjustness or unreasonableness of the rate under attack other than to show that it approximated 36¼ per cent of the value of the shipment involved, whereas in respect to certain other of the complainant's shipments the rate approximated from 2 per cent to 6¼ per cent of the value thereof. While one of the factors for use in the consideration of the justness and reasonableness of a given rate, value when standing alone is not determinative. In defense of the lawfulness of the rate charged, the respondent sets forth the bulky character of the complainant's shipment, and the widely established practice of water carriers in charging for the transportation of bulky articles upon a measurement rather than upon a weight basis.

Upon consideration of all the facts of record, the board concludes and decides that the rate complained of has not been shown unjust or unreasonable in violation of section 18 of the shipping act, 1916, as alleged. The complaint, therefore, will be dismissed.

An order will be entered accordingly.

1. U. S. S. B.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 23d day of August, 1927

Formal Complaint No. 35

Dobler & Mudge *v.* Panama Rail Road Steamship Line

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Board.

[SEAL.] (Sgd.) SAMUEL GOODACRE, *Secretary.*

UNITED STATES SHIPPING BOARD

DOCKET No. 41

I. C. HELMLY FURNITURE COMPANY

v.

MERCHANTS AND MINERS TRANSPORTATION COMPANY

Submitted November 5, 1927. Decided December 28, 1927

Rates on furniture and carpet paper from Savannah, Ga., to Miami, Fla., not shown in violation of section 18 of shipping act, 1916, as alleged.

W. R. Alexander for complainant.
Richard B. Gwathmey for respondent.

REPORT OF THE BOARD

Tentative report in substantial conformity with the following was served upon the parties in accordance with the board's rules of practice. No exceptions thereto were filed.

Complainant is engaged in the furniture business in Savannah, Ga. Respondent is a corporation engaged as a common carrier in the transportation by water of freight and passengers between ports in the State of Georgia and the State of Florida, and as such is subject to the shipping act, 1916.

By complaint filed under section 22 of the shipping act, 1916, it is alleged that on various shipments of furniture and carpet paper from Savannah, Ga., to Miami, Fla., during the period July 13 to August 10, 1925, inclusive, complainant was subjected to the payment of unjust and unreasonable rates in violation of section 18 of the shipping act. Reparation is prayed for in the amount of $104.76.

On January 1, 1925, the respondent published and filed its Local Freight Tariff S. B. No. 450, naming class and commodity rates between Savannah, Ga., and Miami, Fla., and governed by southern classification. The rates on complainant's shipments thereunder, according to article, were $1.41, 95, 85, and 79 cents. At time of shipments, three routes were available to the complainant—all rail; via the respondent carrier to Jacksonville and the Florida East Coast Railway to destination, and via the respondent carrier to Jack-

sonville and the Clyde Steamship Company to destination. The latter was the route of movement, and the rates charged via this route and now brought in issue were $2.50, $1.68, $1.48, and $1.30½.

It is contended on behalf of the complainant that inasmuch as the respondent Merchants and Miners Transportation Company published and filed with the board a tariff providing for direct service from Savannah to Miami at specified maximum rates, it held itself out to the public and was required by section 18 of the shipping act to furnish service from and to such ports at rates not in excess of those so specified. As the rates exacted were in amount greater than such rates, it is contended they were for that reason unjust and unreasonable.

The respondent carrier admits that prior to the movement involved in this complaint it published and filed through rates via direct service Savannah to Miami. It shows, however, that pier space was not available at Miami, and that owing to congestion at that port such direct service did not begin until October 5, 1925. Upon the record it further shows that immediately following the publication of its tariff, notice was given to the Savannah shipping trade, including the complainant, of its inability to furnish direct Savannah-Miami service until such time as adequate pier space was available in Miami; and that in reply to complainant's question as to the practicability of the route via respondent carrier to Jacksonville and rail beyond, the much lower rated water route via the respondent's line and the Clyde Steamship Company was called to his attention.

According to the record, it is manifest that the direct Savannah to Miami service of the respondent was under embargo at the time the complainant's shipments moved, and that the fact of such embargo was brought to the attention of interested shippers, including the complainant. During the period of the embargo the common carrier status of the respondent, as respects the direct Savannah-Miami service, was nonexistent, and the tariff covering such service was correspondingly inapplicable. No duty rested upon the respondent under section 18 of the shipping act to protect the direct service rates shown in such tariff as against the higher joint rates via its line and the Clyde Steamship Company, nor does it follow that because the rates charged exceeded the rates shown in such tariff the former were unjust and unreasonable.

According due consideration to all the facts and circumstances of record, the board concludes and decides that the rates charged have not been shown in violation of section 18 of the shipping act, 1916, as alleged. The complaint is accordingly dismissed.

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ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 28th day of December, 1927

Formal Complaint Docket No. 41

I. C. Helmly Furniture Company *v.* Merchants and Miners Transportation Company

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation having been had, and the board having on the date hereof made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and attached;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Board.

[SEAL.] (Sgd.) SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 34

BILTMORE FLOORING COMPANY AND CARR LUMBER COMPANY

v.

LAKE GILTEDGE STEAMSHIP COMPANY, LAKE TREBA STEAMSHIP COMPANY, RICHARD WALSH OF MOBILE, AND MOBILE LINERS, INC.

Submitted December 19, 1927. Decided January 24, 1928

Rates on hardwood flooring from Mobile, Ala., to Tampa, Fla., not shown unjust or unreasonable. Complaint dismissed

Burton G. Henson for complainants.
Pillans, Cowley & Gresham for respondents.

REPORT OF THE BOARD

Tentative report in substantial conformity with the following was served upon the parties in accordance with the board's rules of practice. Exceptions filed by the complainants and respondents' answer thereto have been duly considered.

Complainants are E. N. Whitmire, trading as the Biltmore Flooring Company, engaged in the purchase and sale of flooring and other lumber, with principal place of business at Tampa, Fla., and the Carr Lumber Company, engaged in the manufacture and sale of lumber at Pisgah Forest, N. C.

Respondent Lake Giltedge Steamship Company, present owner of the S. S. *Lake Giltedge*, hereinafter called the "*Lake Giltedge*," and respondent Lake Treba Steamship Company, present owner of the S. S. *Lake Treba*, hereinafter called the "*Lake Treba*," are Alabama corporations. They and respondent Richard Walsh, of Mobile, Ala., identified as former owner of both steamships, were engaged as common carriers in the transportation by water of freight between the ports of Mobile and Tampa at the time the shipments involved

in this controversy were made. Respondent Mobile Liners, Inc., a corporation engaged in business as steamship agent and forwarder at Mobile, Ala., acted as agent for the other respondents.

By complaint filed under section 22 of the shipping act, 1916, it is alleged that on two shipments of hardwood flooring from Mobile to Tampa in December, 1925, and January, 1926, complainants were subjected to the payment of unjust and unreasonable rates in violation of section 18 of the shipping act. The board is requested to effect a discontinuance of such alleged violation, to prescribe a just and reasonable maximum rate for the future, and to award reparation.

The commodity involved was maple and oak kiln-dried tongue-and-groove hardwood flooring. It was shipped in lengths of from 2 to 16 feet, in bundles; was a manufactured article, but not painted, varnished, or stained. It was thirteen-sixteenths of an inch thick and varied from 1½ to 2¼ inches in width.

The first shipment upon which reparation is sought left Mobile on December 12, 1925, in the *Lake Giltedge*, arriving at Tampa on December 16, 1925. It consisted of 15,265 bundles of oak flooring measuring 190,377 board feet and weighing 369,500 pounds. The second shipment left Mobile in the *Lake Treba* on January 9, 1926, arriving at Tampa on January 12, 1926, and consisted of 22,263 bundles of oak flooring and 2,543 bundles of maple flooring, measuring 303,133 board feet and weighing 523,120 pounds. Freight charges were assessed on the basis of 65 cents per 100 pounds and $16 per thousand feet, respectively. The weight per thousand feet of the *Lake Giltedge* shipment was 1,940 pounds, whereas that of the *Lake Treba* shipment was 1,720 pounds per thousand feet. This difference in weight was due to the fact that the flooring carried on the *Lake Giltedge* was 2¼ inches in width, while that carried on the *Lake Treba* varied from 1½ to 2¼ inches.

Evidence of the complainants is that on shipments of flooring from New Orleans and Philadelphia to Tampa, and from Mobile to Miami, lower rates than those attacked were charged, and that on April 21, 1926, the respondents quoted a rate on flooring of 35 cents per 100 pounds from Mobile to Tampa. While the disparity between the rates on the shipments from New Orleans, Mobile, and Philadelphia and the rates here under attack is recognized by the respondents, objection to the use of such comparison is made on the grounds, among others, that the lower rates were charged by different carriers under different operating conditions and from different points of shipment; and that in at least one instance the lower rate was pursuant to prior booking. The respondents' quotation of a rate of 35 cents from Mobile to Tampa on April 21, 1926, it appears, was made

in soliciting light cargo to fill space. No shipments are shown to have been carried by the respondents at this rate.

Transportation conditions in Florida during the latter part of 1925 and the first part of 1926 are developed upon the record in this case to have been abnormal, due to enormous demand for materials caused by the gigantic growth of the State at that time. The congestion was so great that the Florida rail carriers, in September, 1925, placed embargoes against movements to the city of Tampa and these were followed in October by a State-wide embargo which remained effective on everything but foodstuffs, medicines, etc., until May 17, 1926. The municipal wharf at Tampa, the terminal used by respondents, was so congested that freight had to be piled on the sand and in the streets, where it remained for a considerable period before removal by consignees. Witness for the complainants as well as respondents testified that unprecedented building operations in Florida and higher wages paid by builders during the period involved in this case had the effect of enticing labor away from the water as well as the rail lines, thereby causing increased labor costs. Respondents show that prior to the congested period the cost of discharging a vessel averaged from 60 cents to 75 cents a ton, and during the congestion from $2 to $2.50 per ton. Respondents also show that because of the congested condition of Tampa Harbor, vessels which ordinarily took 5 days to unload and depart averaged at least 15 days, and that the turn-around on the particular trips involved here was 11 days for the *Lake Treba* and 19 days for the *Lake Giltedge*. Whereas these two ships during normal times would average two round trips per month between Mobile and Tampa, including unloading at the latter point as well as other points in the vicinity of Tampa, during the period involved only one trip per month could be made.

At the time of shipment of the complainants' flooring here concerned, its value is shown to have been from $30 to $135 per 1,000 feet, or approximately $15 to $20 higher than its value during normal market conditions. The average rate charged was $14.31 per 1,000 feet, or less than the $15 rate on pine, of which latter commodity there is shown to have been a heavy movement. Prior to the congestion the rate on pine was $8 per 1,000 feet. According to the record a ton of hardwood flooring will stow in a space of 95 to 110 cubic feet, whereas pine lumber requires only from 65 to 70 cubic feet. In other words, a ton of pine lumber stows in about 65 per cent of the space required for a ton of flooring. Hardwood flooring is brittle and greater care is required in handling it than in handling pine and other common lumber. Its movement from Pisgah Forest via Mobile is shown to have been unusual, and it appears that the sporadic shipments involved in this case would have moved all-rail to Tampa had such a movement not been embargoed.

The respondents further show that the rates on flooring assailed in this proceeding produced less revenue than the rates between the same points on other commodities such as cement, iron and steel articles, lime, and wall plaster.

According due consideration to all the facts and evidence of record, the board concludes and decides that the rates assailed have not been shown unjust or unreasonable in violation of section 18 of the statute, as alleged. The complaint will be dismissed and an order entered accordingly.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 24th day of January, 1928

Formal Complaint Docket No. 34

Biltmore Flooring Company and Carr Lumber Company *v.* Lake Giltedge Steamship Company, Lake Treba Steamship Company, Richard Walsh of Mobile, and Mobile Liners, Inc.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation having been had, and the board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and attached:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the board.

[SEAL.] (Sgd.) SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET NO. 29

MUIR-SMITH MOTOR COMPANY

v.

GREAT LAKES TRANSIT CORPORATION

DOCKET NO. 32

RUSSELL S. SHERMAN, INC.

v.

GREAT LAKES TRANSIT CORPORATION

Submitted November 21, 1927. Decided January 31, 1928

Rates charged on automobiles from Detroit, Mich., to Duluth, Minn., in excess of maximum rates on file

McCabe and *Clure* and *T. H. Trelford*, for complainants.
Mayer, Meyer, Austrian & Platt, for respondent.

REPORT OF THE BOARD

These two cases involved the same subject matter, were heard together, and will be disposed of in one report. Tentative report in substantial accord with the following was duly served upon the parties, and exceptions and answer thereto have been considered at length.

The complainants are Minnesota corporations engaged as dealers in automobiles at Duluth. Respondent is a New York corporation engaged as a common carrier upon regular routes from port to port

on the Great Lakes, and as such is subject to regulatory provisions of the shipping act, 1916. The complainants allege that upon shipments of automobiles transported from Detroit, Mich., to Duluth, Minn., during the period June 27, 1923, to November 20, 1924, the respondent charged rates which were illegal, unjust, and unreasonable in violation of section 18 of the shipping act. The evidence of the complainants was confined, however, to the issue of illegality, i. e., whether under a correct interpretation of the carrier's tariffs the rates charged were in excess of the maximum rates on file. The alternative application note out of which this question of interpretation arose has since been removed by the respondent from its tariff covering shipments of automobiles from Detroit to Duluth. Rates will be stated in cents per 100 pounds and in dollars per automobile.

During the period in which complainants' shipments moved respondent carrier had in effect its local class and commodity tariffs S. B. 12 and S. B. 19, governed by official classification except as otherwise provided therein. By such official classification the rating assigned "Automobiles, passenger, loose or in packages, carload, minimum weight 10,000 pounds, subject to rule 34," was 110 per cent of first class. This applied to carrier's tariffs made a rate of 93 cents. The rating provided for "Automobiles, freight, S. U., loose or in packages, carload, minimum weight 12,000 pounds, subject to rule 34," was second class, which applied to carrier's tariffs made a rate of 72 cents. Specific maximum any-quantity commodity rates in dollars per machine were also published in said tariffs ranging from $35 to $60. The maximum commodity rate of $35 published in respondent's tariff S. B. 12 was assessed upon each automobile involved in Docket 29. Commodity rates lower than the maximum commodity rates contained in respondent's tariffs were assessed on the shipments involved in Docket 32, as follows: Passenger automobiles, $27.50; trucks having a wheel base between 139 and 146 inches, $45.50; and trucks having a wheel base between 147 and 168 inches, $50.50. Such lower rates were quoted by the carrier to the automobile trade on May 3, 1924.

It is contended on behalf of the complainants that under a correct interpretation of the respondent's tariffs class rather than commodity rates should have been applied to the shipments here in controversy, and that since such shipments equaled or exceeded in weight the carload minima required under the classification of 10,000 and 12,000 pounds,[1] flat carload rate of 93 cents should have been applied to passenger automobiles and to mixed shipments of passenger automobiles and trucks, and a flat carload rate of 72 cents to trucks. It is urged that these class rates were the carrier's applicable maximum

[1] Except 2 shipments of 5,346 and 9,167 pounds, respectively.

rates, that the rates charged were in excess thereof, and that reparation in the amount of the difference is due.

Respondent carrier's tariffs provided that "Whenever a carload (or less-than-carload) commodity rate is established it removes the application of the class rate on that commodity." No question would have been presented, therefore, but that the commodity rates were applicable, except for a note published under the particular commodity description on automobiles reading "*Wherever the official classification basis makes a lower charge than on basis of commodity rates, class* rates will apply." Of pertinence in this connection, rule 34 of the official classification, in part, provides that:

> When articles subject to the provisions of this rule are loaded in or on cars 36 feet 6 inches or less in length, they shall be charged at the minimum carload weights specified therefor in the separate descriptions of articles. * * * Weight in excess of the minimum weight provided for in this rule must be charged for.

Relative to the above rule, the following provision termed an "addition" is made thereto in each of the respondent's tariffs involved in the instant complaint proceeding:

> On all carload shipments delivered to docks, other than those delivered in cars, destined to Lake ports and subject to rule 34 of the official classification, the minimum weight provided in the official classification for cars 36 feet 6 inches in length will be applied,[2] unless actual weight of consignment is greater when charges based on the actual weight will be assessed.

On behalf of the respondent it is admitted that if lower charges could have been arrived at by the application of the official classification basis than on the basis of commodity rates the former would have governed. But, the respondent contends, the proper method of calculating the rates upon official classification basis under the alternative tariff note hereinbefore quoted, to ascertain if they made lower than the commodity basis, was, to use the words of the respondent's brief, as follows: "If there were four machines in the shipment, respondent calculated the official classification basis upon *two full minimum carloads* and in the case of a greater number of units, respondent assumed that number of minimum carloads which would be produced by dividing the number of automobiles by two, applied the carload rate thereto *and the commodity rate to the extra machine*, if any." This method of calculation, it is urged by the respondent, was justified, first, in that rule 34 of the official classification heretofore quoted was applicable to the instant shipments; and, secondly, because the word "consignment" contained in the tariff addition to

[2] The minimum weights thus provided by the official classification for passenger automobiles and trucks were 10,000 and 12,000 pounds, respectively.

rule 34 heretofore quoted meant the number of passenger automobiles or trucks which could be loaded in a freight car 36 feet 6 inches in length.

CONCLUSIONS, DECISION, AND FINDINGS

By its express provision rule 34 of the official classification related to shipments "loaded in or on cars." In and of itself it was therefore in no respect applicable to port-to-port shipments by water such as here concerned. Only by means of the tariff addition did that rule have any application to such shipments. According to the respondent it "intended to permit complainants and all other shippers to have the benefit of official classification when such basis made lower than the commodity rate," and

in order to afford that opportunity it became necessary to *specify the size of the hypothetical car* which would be considered in connection with rule 34. *This was done by the addition to rule 34*, and respondent stands ready to observe that addition to rule 34 as a part of official classification in every instance that it makes lower than the commodity basis.

It is manifest, however, that the sole function of the addition, as expressed by its language, was to prescribe a method of determining the minimum carload weights applicable to port-to-port shipments by water, which, if they had moved via rail, would have been subject to official classification rule 34. In this connection the phrase "subject to rule 34" contained in the addition was merely descriptive and can not be considered, as collaterally urged by the respondent, to have "specifically made" official classification rule 34 in and of itself, without the tariff addition, "applicable to port-to-port shipments by water." The respondent's further contention that the word "consignment" in the addition was to be interpreted to mean no more than the portion of a shipment which could have been loaded in a hypothetical freight car or cars 36 feet 6 inches in length rather than to the aggregate or total shipment is likewise not sustained by the language used. That word and its context permits of no other interpretation than as requiring the application of the carload rate to all excess weight of shipment over the carload minimum weight.

By the alternative note of the respondent's tariffs S. B. 12 and S. B. 19 reading, "Wherever the official classification basis makes a lower charge than on basis of commodity rates, class rates will apply," calculation of charges as respects shipments here concerned upon official classification basis correctly interpreted[3] made class rates as applied to the entire weight of shipment the maximum rates on file. As charges exacted on shipments evidenced of record were

[3] Rule 10 and substituted rule 15 apply.

higher than such maximum rates, the respondent must be held to have charged in excess of its maximum rates on file, and the board so concludes and decides.

The board finds that the complainants were the consignees of shipments herein concerned who paid rates thereon in excess of the respondent's maximum rates as herein determined. The board further finds that as to such of said shipments on which rates were paid within two years prior to the filing of sworn complaint with the board the complainants have been injured in the amount of the difference between the rates paid and the respondent's said maximum rates, and are entitled to reparation in that amount with interest at 6 per cent per annum. As the exact amount of reparation can not be calculated upon the record, the complainants and the respondent carrier are directed to comply with Rule XXI of the board's Rules of Practice. Upon receipt of statement in compliance with that rule, the board will consider the entry of award of reparation.

UNITED STATES SHIPPING BOARD

DOCKET NO. 39

BONNELL ELECTRIC MANUFACTURING COMPANY

v.

PACIFIC STEAMSHIP COMPANY

Submitted January 31, 1928. Decided March 6, 1928

Rate on iron pipe and iron pipe elbows New York to Miami not shown unjust or unreasonable as alleged.

Thomas C. Ringgold for complainant.
T. J. Kehoe and F. A. Steele for respondent.

REPORT OF THE BOARD

The complainant, Bonnell Electric Manufacturing Company, is engaged in business in New York City in the manufacture and sale of cast-iron pipe and cable fittings used for electrical purposes. The respondent. Pacific Steamship Company, at the time here involved operated one vessel on regular route between New York, N. Y., and Miami, Fla., and was subject to the shipping act, 1916.

By complaint filed on May 24, 1927, under section 22 of said act, it is alleged that on a shipment of iron pipe and elbows made by complainant in March, 1926, from New York to Miami, respondent's rate of $2.50 per one hundred pounds was unjust and unreasonable, in violation of section 18 of the shipping act. The board is requested to award reparation.

The shipment involved was invoiced to the Miami consignee at $1,047.81 f. a. s. New York. In making settlement of this invoice, the consignee deducted $293.61, the difference between the freight it paid the respondent on this shipment and the freight it presumably would have paid had the complainant made shipment via the Clyde Steamship Company, also operating a service from New York to Miami. Shortly thereafter the consignee went out of business, and complainant has never been able to recover any part of the $293.61 deduction.

About this same time the complainant made other f. a. s. shipments from New York to another consignee in Miami via the respondent's line and at the $2.50 rate. The invoices for these shipments were not subjected to deduction. It is indicated that not until notice of deduction in connection with the shipment here involved was the complainant aware of the difference between the rates of the two carriers.

The only evidence adduced by the complainant in support of its allegation that the rate of $2.50 was unjust and unreasonable is the fact that the Clyde Steamship Company had in effect at that time a rate of 73 cents.

In defense of the reasonableness of the rate attacked, the respondent carrier sets forth the peculiar character of the service performed and relates at length the extraordinary expense incurred by it, both in establishing the service and in operating. Its one steamer in the service, the *H. F. Alexander*, was primarily a passenger and perishable-cargo vessel, and maintained a schedule of from 46 to 48 hours from New York to Miami. It was put into the New York-Miami trade in October, 1925, to meet the demands then incident to the Florida boom, and was removed in May, 1926. The respondent stresses that time was a prime factor when the complainant's shipment was carried, and that the schedule of the Clyde Line from New York to Miami was around 85 hours in contrast with the *H. F. Alexander's* 48 hours or less. The $2.50 rate assailed by the complainant in this case was the respondent's second-class rate shown in its tariff duly on file with the Shipping Board and open to public inspection in accordance with section 18 of the shipping act and the board's tariff regulations.

An allegation that a rate is unjust and unreasonable puts the burden of proving such unjustness and unreasonableness upon the complainant. This burden is not sustained in the instant case. Unjustness and unreasonableness of a given rate is not proved by merely showing that a lower rate existed over the line of another carrier. Upon the record, therefore, the complaint will be dismissed, and an order entered accordingly.

UNITED STATES SHIPPING BOARD

DOCKET NO. 38

THOMAS G. CROWE, TRADING AS THOMAS G. CROWE & COMPANY, DAVID POTTASH, TRADING AS PENN WASTE COMPANY, OSCAR SMITH & SONS COMPANY, AND THOMAS M. GLUYAS COMPANY

v.

SOUTHERN STEAMSHIP COMPANY

DOCKET NO. 43

BOSTON EXCELSIOR COMPANY, HARRY SCHIMMEL, DAVID POTTASH, TRADING AS PENN WASTE COMPANY, AND OSCAR SMITH & SONS COMPANY

v.

MALLORY STEAMSHIP COMPANY AND SOUTHERN STEAMSHIP COMPANY

Submitted February 21, 1929. Decided March 12, 1929

Rates on cotton linters and/or cottonseed hull fibre or shavings from Galveston to New York and from Houston to Philadelphia not shown to be in violation of Shipping Act, 1916, as alleged. Complaints dismissed.

Oberg & Gililland and *Frank B. Blocksom* for complainants.

M. Hampton Todd, *Robert G. Erskine*, *J. T. Green*, and *T. A. O'Brien* for respondents.

REPORT OF THE BOARD

These two complaints were heard together and will be considered in one report.

The complaint in Docket 38 is filed on behalf of Thomas G. Crowe, trading as Thomas G. Crowe & Company; David Pottash, trading as Penn Waste Company; Oscar Smith & Sons Company; and

Thomas M. Gluyas Company. The complaint in Docket 43 is filed on behalf of David Pottash, trading as Penn Waste Company; Oscar Smith & Sons Company, the Boston Excelsior Company, and Harry Schimmel. The complainants are all dealers in cotton and/or cotton products. The respondent in Docket 38 is the Southern Steamship Company, a common carrier operating from Houston to Philadelphia, and as such subject to the provisions of the shipping act, 1916. The respondents in Docket 43 are the Southern Steamship Company and the Mallory Steamship Company, the latter a common carrier by water from Galveston to New York, and as such subject to the shipping act.

The complaint in Docket 38 alleges that on certain shipments of cotton linters in compressed bales the respondent charged a rate of 55 cents per one hundred pounds, said rate being the rate for cotton linters in uncompressed bales, and that the rate of 55 cents was inapplicable, unlawful, illegal, unduly and unreasonably prejudicial, and unjust and unreasonable in violation of sections 16 and 18 of the shipping act.

The complaint in Docket 43 alleges violations of the same nature in respect to cotton linters and also cottonseed-hull fiber or shavings. The further allegation is made that certain shipments described on the bills of lading as cottonseed-hull fiber or shavings were actually linters and entitled to a lower linters rate.

In each of these complaints the board is asked to require respondents to cease these alleged violations, to award reparation, and to fix lawful, nonprejudicial, just, and reasonable maximum rates for the future.

The complainants seek primarily to prove that the bales of cotton linters and bales of cottonseed-hull fiber or shavings involved were compressed, although customarily described on the bills of lading as uncompressed. They present evidence indicating that all the linters and/or cottonseed-hull fiber or shavings covered by the complaints were actually compressed to an average density of about 15 pounds per cubic foot. This compression was effected at cottonseed-oil mills. Only occasionally, except for export trade, do these commodities move through a regular cotton press, which effects a compression of twenty-two and a half pounds.

The complainants base their contention that the compressed rate should have been charged on the fact that the tariffs in naming the rates on compressed and uncompressed bales contain no definition or qualification of the term "compressed." They argue that in the absence of such definition or qualification in the tariff the existence of "reasonable" compression required the charging of the compressed rate. They urge that tariffs must be construed according

to their language, and that the intent of the framers is not controlling.

In defense of the rates assessed, the respondents show trade custom, usage, or understanding of the word "compressed" in connection with linters and cottonseed-hull fiber or shavings. They introduce considerable evidence to the effect that a bale of linters or shavings as it comes from an oil mill is known to the trade as an uncompressed bale and that only when it has been put through a commercial press, where a density of twenty-two and a half pounds is received, is it known as a compressed bale. The respondents also put in evidence a photostatic copy of a letter written by one of the main witnesses for the complainants, a witness who was qualified by the complainants as an expert. It is sufficient to quote the third paragraph of this letter:

> Of course, I know to a cotton man, a compressed bale is one which has gone through a compress station and there compressed to a density of about 22½ lbs. per cubic foot. There is, too, the high-density bale which is of higher density. Freight shipments, however, are rated according to freight tariffs, and here is the crux in the situation.

It is true that tariffs must be construed strictly and that wherever they are ambiguous the doubt should be resolved against the carrier. Nevertheless, a fair and reasonable construction must be given. The terms in question must be construed in the sense in which they are generally understood and accepted commercially. Shippers can not be permitted to avail themselves of a strained and unnatural construction. In this case the trade custom is clearly shown. The complainants' interpretation of the tariff is constricted.

On the issue of unjustness and unreasonableness of the rates charged, the complainants exhibit rates assessed by the respondents on a number of commodities alleged by the complainants to be similar to cotton linters and cottonseed-hull fiber or shavings. In connection with this exhibit a witness for the complainants testifies that a number of these commodities occupy more space per pound than cotton linters or shavings, although moving at lower rates. The complainants also question the reasonableness of the rates on uncompressed bales of linters and hull fiber or shavings as compared with the rates on compressed bales. The respondents show, however, that other factors than space occupied, such as the degree of competition and the value of the commodity, enter into steamship rate making. With respect to the comparison of the compressed rate with the uncompressed rate, they further show that two compressed bales can be loaded in approximately the same space required for one uncompressed bale, and that in other trades uncompressed linters are customarily charged twice the rate on compressed linters. Upon the

record the complainants' burden of proof of unjustness and unreasonableness is clearly not sustained.

Respecting the secondary contention of the complainants in Docket 43, that certain shipments described on the bills of lading as cotton-seed-hull fiber or shavings were entitled to the lower linters rate, the complainants confine themselves to showing that fiber or shavings and linters are of the same general nature. Admittedly such is the fact, but there is, nevertheless, as shown by the evidence, a recognized distinction between them. Nothing is adduced on behalf of the complainants which in any manner warrants a conclusion that the rate charged on the several shipments of fiber or shavings involved was unlawful.

After consideration of the record, including complainants' exceptions, we conclude and decide that the rates assailed have not been shown in violation of either section 16 or section 18 of the shipping act, 1916, as alleged. We accordingly enter an order dismissing both complaints.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 12th day of March, 1929

Formal Complaint Docket No. 38

Thomas G. Crowe et al. *v.* Southern Steamship Company

Formal Complaint Docket No. 43

Boston Excelsior Company *v.* Mallory Steamship Company and Southern Steamship Company

The above-entitled formal complaints being at issue, and having been duly heard and submitted by the parties, and full investigation of each having been had, and the board having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and attached; it is

Ordered, That the said complaints be, and they are hereby, dismissed.

By the board.

[SEAL.] (Signed) SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET NO. 46

EVERETT CHAMBER OF COMMERCE AND BELLINGHAM CHAMBER OF COMMERCE

v.

LUCKENBACH STEAMSHIP CO., DOLLAR STEAMSHIP LINE, ARROW LINE, AMERICAN-HAWAIIAN STEAMSHIP CO., PANAMA PACIFIC LINE, MUNSON-McCORMICK LINE, CALIFORNIA & EASTERN STEAMSHIP CO., OCEAN TRANSPORT CO. (INC.), QUAKER LINE, TRANSMARINE LINES, WILLIAMS STEAMSHIP CO.

Submitted June 21, 1929. Decided September 11, 1929

Respondents' rule applying arbitraries of 12½ cents per 100 pounds to Everett and 15 cents per 100 pounds to Bellingham, Olympia, and Astoria not shown to subject said ports to undue and unreasonable disadvantage in violation of section 16 of the shipping act, as alleged. Complaint dismissed.

Williams & Davis, *Walter B. Whitcomb*, *Ralph L. Shepherd*, *George F. Yantis*, and *W. H. Nelson* for complainants and interveners.

Herman Phleger, *Roscoe H. Hupper*, and *William J. Dean* for respondents.

REPORT OF THE BOARD

The complainants, Everett Chamber of Commerce and Bellingham Chamber of Commerce, are associations of merchants, professional men, and residents of the cities of Everett and Bellingham, Washington. The respondents are all engaged as common carriers by water on regular routes between ports of the Atlantic coast and ports of the Pacific coast, and as such are subject to the shipping Act. 1916. As members of the so-called United States Intercostal Conference, they are governed with respect to the matter concerned herein by tariff of that conference known as Westbound Minimum Rate List No. 4. Two of these carriers (Luckenbach Steamship

Co. and Transmarine Lines) also operate between the Gulf coast and the Pacific coast; but, although the complaint alleges violation of the law regarding these operations, no attempt is made to sustain such allegations.

The complaint attacks the rules and regulations of the respondents, which provide specified higher rates for cargo destined to Everett and Bellingham than for cargo destined to Seattle and Tacoma. The allegation is made that in this respect these rules and regulations subject Everett and Bellingham to undue and unreasonable disadvantage in violation of section 16 of the shipping act.

By intervention, the port of Astoria alleges that the same rules and regulations, which assess cargo destined to Astoria, Oregon, a specified higher rate than cargo destined to Portland, Oregon, subject Astoria to undue and unreasonable disadvantage in violation of section 16 of the shipping act. Other interveners are the port of Olympia and the Olympia Chamber of Commerce, who allege similar violation with respect to Olympia, Washington, as compared with Seattle and Tacoma.

The rules and regulations in question provide that the Pacific coast ports of Seattle, Tacoma, Portland, Alameda, Los Angeles Harbor, San Francisco, and Oakland shall be known as terminal ports, and that cargo destined to those ports shall be assessed so-called terminal rates whether the carrier effects delivery from the Atlantic coast by discharging there direct or by transshipment. All other Pacific coast ports, including Everett, Bellingham, Olympia, and Astoria, are classified by the rules and regulations assailed as nonterminal ports, and, except as to Port San Diego, cargo destined to each of such ports is assessed an arbitrary amount over and above the terminal rate whether the respondent carrier effects delivery by calling with its own steamer or by transhipment. At Port San Diego terminal rates apply whenever the steamer of the respondent actually calls to discharge. If the respondents transhipment the cargo to San Diego an arbitrary of 30 cents per hundred pounds is charged. The arbitraries assessed against the complaining ports are as follows:

	Cents per hundred pounds
Everett	12½
Bellingham	15
Olympia	15
Astoria	15

The board is asked to order the respondents to remove the alleged undue and unreasonable disadvantage by ordering the cancellation of these arbitraries against these cities, thereby giving them terminal rates. The complainants and interveners argue that inasmuch as

the respondent carriers give the ports of Seattle, Tacoma, and Portland terminal rates not only when they effect delivery themselves, but even when they tranship the cargo at San Francisco they should do likewise with Everett, Bellingham, Olympia, and Astoria. They show that the length of haul from the Atlantic coast to Everett and Bellingham is slightly less than to Seattle and Tacoma; and that the length of haul to Astoria is slightly less than to Portland. Olympia, however, is a somewhat longer haul than any of the other ports involved. All four complaining ports are accorded the same rates via transcontinental railroads as Seattle, Tacoma, and Portland, and are represented by witnesses as being logical distributing centers for extensive and rapidly developing adjacent territory. All four cities, it is shown, have excellent harbor facilities and a substantial aggregate tonnage movement through their harbors.

The complainants and interveners urge that in determining whether or not their ports should be given terminal rates on the westbound intercoastal service, the respondent carriers should consider the eastbound intercoastal tonnage as well as the westbound. They also stress that the rule of the respondents governing shipments to Port San Diego assesses an arbitrary only when the respondents do not effect delivery direct but make transhipment. They argue that even if terminal rates are not given their cities when the cargo is transhipped they should at least be accorded the same treatment as Port San Diego and receive the advantage of the terminal rate whenever a vessel of the respondent does call and unloads. Some of the respondents, it is shown, frequently call at one or more of the nonterminal ports involved for the purpose of picking up eastbound cargo.

In defense of the rules and regulations imposing these arbitraries, the respondents direct attention to the lack of volume of tonnage moving over their lines to the complaining ports. For illustration, during the year ended August 31, 1928, the total tonnage both transhipped and direct carried by the respondents was as follows:

	Tons
Everett	457
Bellingham	1,749
Olympia	47
Astoria	246

In reference to the special rule for Port San Diego, the respondents show that during the same period they carried 22,319 tons destined to that port. The respondents show also that the instances in which cargo destined to the terminal ports of Seattle, Tacoma, and Portland is transhipped are relatively few. Two of the respondents [1] do not call either to load or unload north of San Francisco.

[1] Panama Pacific Line and Dollar Steamship Line.

In order to compete with such carriers as do proceed northward, these two carriers take cargo on the Atlantic coast for the northern terminal ports, tranship it at San Francisco over a Pacific coastwise line, and charge for the through movement the same rates as do the respondent carriers whose vessels actually touch the northern terminal ports. In the same manner they compete with the other carriers by taking cargo for Everett, Bellingham, Olympia, and Astoria, tranship it at San Francisco, and charge the same rates for the through movement as the respondent carriers operating to ports north of San Francisco.

CONCLUSIONS AND DECISION

Volume of traffic is undeniably a prime factor in constructing water transportation rates. As shown above, the total amount of freight moved in a year to all four complaining ports in all the vessels of the eleven respondents was only 2,499 tons. Nothing of evidence warrants the conclusion that the assessment of the specified arbitraries on the traffic to the four ports has resulted in materially reducing volume or that their removal would substantially increase it. In the instant case, justification for the respondents' arbitraries under attack manifestly lies in the small amount of freight moving to the complaining ports. Due to its lack of volume, practically all of the westbound tonnage carried by the respondents for the four complaining ports is transhipped at one of the northern terminal ports. And even when a vessel of the respondents calls at one of these four nonterminal ports in order to load cargo eastbound, such cargo as that vessel may have brought westbound for that nonterminal port is usually transhipped at a terminal port. As shown by the respondents, the transhipment is a matter of practical necessity in order that their westbound operation may be completed before their eastbound operation begins. It is of course normally an important consideration to the carriers to have their vessels bare of cargo before starting to load for the eastbound voyage.

The contention urged on behalf of the complaining ports that at least they are subjected to undue and unreasonable disadvantage by the arbitraries assailed when any of the respondents' vessels discharge direct is not persuasive in view of the infrequency of direct discharge and the negligible amount of cargo so delivered.[2] Nor is there support for the further contention that the specified arbitraries on the cargo for Everett, Bellingham, Olympia, and Astoria transhipped at San Francisco by the respondents Panama Pacific and Dollar Lines subject them to undue and unreasonable disadvan-

[2] In the case of Olympia the 47 tons carried for that port during the 12-month period ending Aug. 31, 1928, was all transhipped.

tage, in view of the slight amount of such cargo [3] and the practical competitive conditions involved which these two respondents have to meet in order to participate in the carriage of the northbound traffic.

The complaining ports are extended the same rates as the terminal ports on cargo loaded there by the respondents for their eastbound voyage. This cargo consists almost entirely of lumber, pulp, and canned goods. The position of the complainants and interveners that since this eastbound cargo is substantial in amount the carriers should be required to treat them as terminal ports as to the inconsiderable westbound cargo is untenable. The respondents' custom of separating for rate-making purposes their westbound from their eastbound operations is defensible in view of the recognized dissimilarity of operating conditions in the eastbound and westbound trades.

Upon consideration of all the facts, argument, and exceptions of record, we conclude and decide that in the instant proceeding the respondents have not been shown to subject the complainants and interveners to undue and unreasonable disadvantage in violation of section 16 of the shipping act, 1916, as alleged. An order of dismissal will be accordingly entered.

[3] For the 12-month period ending Aug. 31, 1928, Everett and Bellingham cargo transhipped at San Francisco amounted to only 88 and 194 tons, respectively.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 11th day of September, 1929

Formal Complaint Docket No. 46

Everett Chamber of Commerce and Bellingham Chamber of Commerce *v.* Luckenbach Steamship Co., Dollar Steamship Line, Arrow Line, American-Hawaiian Steamship Co., Panama Pacific Line, Munson-McCormick Line, California & Eastern Steamship Co., Ocean Transport Co. (Inc.), Quaker Line, Transmarine Lines, Williams Steamship Co.

This case being at issue upon complaint, answer and intervening petitions on file, and having been duly heard and submitted by the parties, and full investigation having been had, and the board on the date hereof having made and filed a report containing its conclusions and decision thereon that the violation alleged has not been shown, which said report is hereby referred to and attached; it is

Ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the board.

[SEAL.] (Signed) SAMUEL GOODACRE,
Secretary.