DOCKET NO. 47

BOARD OF COMMISSIONERS OF THE LAKE CHARLES HARBOR AND TERMINAL DISTRICT

v.

THE NEW YORK & PORTO RICO STEAMSHIP COMPANY

Submitted June 29, 1929. Decided September 11, 1929.

Practice of respondent carrier in establishing and maintaining rates from New Orleans on clean rice originating at interior Louisiana points and destined Porto Rico designed to extend to such traffic the same or lower through rate as for transportation of clean rice via Lake Charles and thence by other carriers to Porto Rico not shown to be violative of section 16 or section 18 of the shipping act, 1916, as alleged.

E. R. Kaufman and *A. A. Nelson* for complainant.
A. Pace for Lake Charles Rice Milling Co., intervener.
Roscoe H. Hupper for respondent.
Carl Giessow for New Orleans Joint Traffic Bureau, intervener.

REPORT OF THE BOARD

By complaint the Board of Commissioners of the Lake Charles (La.) Harbor & Terminal District allege that in connection with shipments of clean rice originating at interior Louisiana points[1] destined Porto Rico the respondent the New York & Porto Rico Steamship Co. violates sections 16 and 18 of the shipping act, 1916. The gravamen of the complaint is that in respect to such shipments the respondent charges for transportation from New Orleans to Porto Rico rates which when added to the rail rates from the points of origin to New Orleans make the total rate from point of origin to destination as low and in some cases lower than the through rate via Lake Charles, thereby inducing movement of clean rice through New Orleans rather than through Lake Charles. This practice, it

[1] Abbeville, Crowley, Gueydan, Iota, Mermentau, New Iberia, Rayne, and other places.

is alleged by the complainant, is unjust and unreasonable and subjects the port of Lake Charles to undue and unreasonable prejudice and disadvantage. Further allegation is made that the rates of the respondent are unjust and unreasonable in violation of section 18 of the statute, although no evidence in support of such allegation was adduced at the hearing. Interventions were filed by the Lake Charles Rice Milling Co. of Louisiana (Inc.), on behalf of the complainant, and by the New Orleans Rice Millers' Association and the New Orleans Joint Traffic Bureau on behalf of the respondent.

The bulk of the rice produced in Louisiana is grown within a radius of approximately 75 miles of Lake Charles. In November, 1926, Lake Charles was opened as a port and has since been served by ocean-going vessels. The average distance by rail from given southwestern Louisiana rice-milling points to Lake Charles is 59.5 miles and to New Orleans 164 miles. The railroad rates on clean rice from these points range from 16 cents to 23 cents per hundred pounds to Lake Charles, while to New Orleans a rate of 23 cents is in effect from all of such points. Rates and distances are shown below:

	Lake Charles		New Orleans	
	Miles	Rate	Miles	Rate
Jennings	33.8	16	185.0	23
Mermentau	38.7	17	180.1	23
Crowley	52.3	19	166.5	23
Iota	54.8	19	185.4	23
Rayne	58.8	19½	160.0	23
Gueydan	55.1	19½	170.9	23
Kaplan	70.0	20½	156.0	23
Abbeville	79.0	22	147 0	23
New Iberia	93.2	23	125.6	23
Average	59.5	19½	164.0	23

The ocean rate from Lake Charles to Porto Rico is 35 cents, which is the same as respondent's port-to-port rate from New Orleans.

Under date of October 22, 1926, the respondent issued a circular informing rice shippers that in order to equalize the through rates obtainable via Lake Charles on clean rice from Crowley, Rayne, Iota, Gueydan, Kaplan, and Abbeville, its rate from New Orleans to Porto Rico on clean rice from those points was thenceforth reduced by the amount of the respective differential in railroad rates (from 1 cent to 4 cents).

In 1927 a barge service from Crowley to Lake Charles was inaugurated whereby shipments of clean rice moved at a rate approximately 4 cents under the rail rate. The rail rate Crowley to Lake Charles

being 4 cents less than the rail rate to New Orleans, such shipments therefore reached Lake Charles at a transportation cost approximately 8 cents lower than the rail rate to New Orleans. On October 21, 1927, the respondent issued an amendment to its original circular, stating that it would absorb in its ocean rate from New Orleans to Porto Rico on shipments of clean rice originating at Crowley 8 cents per 100 pounds. Subsequently, other amendments were issued, until by circular dated October 17, 1928, "to equalize rates obtainable via Lake Charles" the amounts absorbed on shipments from Crowley, Kaplan, Mermentau, Jennings, Abbeville, New Iberia, Iota, and Gueydan were 10½ cents and from Rayne 9½ cents. As a result of these absorptions, most of the clean rice destined Porto Rico has been drawn to New Orleans and transported thence by vessels of the respondent instead of moving through Lake Charles.

CONCLUSIONS AND DECISION

Prior to the opening of Lake Charles as a port in November, 1926, the record shows that the respondent carrier transported practically all of the rice produced in southwestern Louisiana east of Lake Charles which was shipped to Porto Rico. In an effort to retain such traffic the respondent carrier has met or gone below the through rates now obtainable via Lake Charles. This situation is manifestly beneficial to the shippers concerned for the reason that they are afforded two routes for the movement of their product; and particularly so in that the route via New Orleans is shorter in total distance by from 94 to 213 miles, depending upon point of origin. Regarding the contention of the port of Lake Charles that because of its geographical location it is the normal outlet for shipments of clean rice to Porto Rico and extending to that contention every consideration to which it may be entitled, yet there is manifestly no provision of the shipping act which can be construed to forbid a carrier to meet competition or to enlarge the scope of its patronage and its volume of business if it can do so without unfairness to those whom it serves. The respondent does not now and never did serve the port of Lake Charles, and the complainant presents nothing to show that the rates involved are unremunerative or that they in any manner burden other traffic in the carriage of which the respondent is engaged. Nor does the complainant show that the respondent's membership along with other carriers in the United States Atlantic & Gulf-Porto Rico conference, referred to by the complainant as the West Indies conference, has bearing in support of its allegation that the practice attacked is unlawful.

Upon all the facts, circumstances, and exceptions of record in this proceeding, the board concludes and decides that the practice of the New York & Porto Rico Steamship Co. in establishing and maintaining rates from New Orleans on clean rice originating at interior Louisiana points and destined Porto Rico designed to extend to such traffic the same or lower through rate as for transportation of clean rice via Lake Charles and thence by other carriers to Porto Rico has not been shown to be violative of section 16 or section 18 of the shipping act, 1916, as alleged. An order of dismissal will be accordingly entered.

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. 47

Board of Commissioners of the Lake Charles Harbor & Terminal District *v.* The New York & Porto Rico 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 having on the date hereof made and filed a report containing its conclusions and decision thereon that the violations alleged have 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.]

SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

FORMAL COMPLAINT DOCKET NO. 50

ISAAC S. HELLER

EASTERN STEAMSHIP LINES, INCORPORATED

Submitted July 3, 1929. Decided September 18, 1929

Rates charged on automobiles accompanied by passengers from New York to Portland, Me., and from Boston to New York, not shown to be unjust or unreasonable in violation of section 18 of the shipping act, 1916, as alleged. Complaint dismissed.

Isaac S. Heller for complainant.
Arthur J. Santry for respondent.

REPORT OF THE BOARD

By complaint filed by Isaac S. Heller, a resident of New York City, it is alleged that the rates charged by the Eastern Steamship Lines (Inc.), for transporting passenger automobiles accompanied by passengers from New York to Portland, Me., and from Boston to New York are unjust and unreasonable in violation of section 18 of the shipping act. The board is requested to establish just and reasonable maximum rates for the future and to award reparation.

On August 5, 1928, complainant shipped upon respondent's vessel a sedan model automobile from New York to Portland, Me., and on August 29, 1928, he shipped the same automobile from Boston to New York. Upon each of these shipments the carrier assessed its tariff rate of $1 per 100 pounds applicable to automobiles accompanied by passengers, the total charge amounting to $35 in each instance.

The complainant shows that on a number of commodities the rates per hundred pounds charged by respondent for transportation between the same ports are considerably lower than on automobiles. The rates of the respondent are also shown to be generally lower between Boston and New York than between New York and Portland, except on automobiles accompanied by passengers.

The attention of the board is also directed to rates for transportation of automobiles accompanied by passengers charged by carriers operating services between New York and Albany, and between ports

on the Great Lakes. No evidence is submitted, however, either as to the movement of traffic under these rates or as to any substantial similarity of traffic or transportation conditions to render such comparisons of material aid in determining whether the rates under attack are unjust or unreasonable.

Respondent, in support of the reasonableness of the rates charged, testifies that on its vessels automobiles are always carried in space which might otherwise be used for other cargo and that in addition to their actual cubical measurement they require spacing at each side and involve a loss of approximately 3 feet between their tops and the ship's carlings which is utilized when other cargo is transported. Special attention is also shown to be required in loading automobiles to enable passengers to obtain delivery as soon as possible after arrival of the ship at destination. Although the risk of transporting automobiles loose was asserted to be greater than when crated, the rates assailed are 25 per cent lower to Boston and 38½ per cent lower to Portland than those on automobiles crated. The movement of automobiles accompanied by passengers is confined almost entirely to the summer months and is relatively small compared to the movement of a number of other commodities.

Respondent contends that passenger automobiles transported at the rates under attack yield less revenue per cubic foot of space occupied than do numerous other commodities transported at lower rates, and in support of this contention submits the following figures showing the relative earnings on a representative list of both high-grade and low-grade commodities actually moving each day between New York and Boston upon its vessels, as compared with the per cubic foot earnings on automobiles of the type of the complainant's:

	Weight per package	Measurement per package	Rate per 100 pounds	Revenue per cubic foot
	Pounds	*Cubic feet*	*Cents*	*Cents*
Leather per case	447	31.72	60	8
Do	177	7.87	60	13
Crude rubber per case	200	5.28	60	22
Cotton piece goods per case	609	25.8	36½	8.6
Woolen piece goods per case	196	10.6	44	8
Do	276	12	44	10
Rubber boots and shoes per case	110	5.6	66½	13
Shoe blacking per case	90	2.7	50	16.6
Cotton fish nets per case	245	10.7	66½	15
Rubber goods per case	327	8	66½	27
Canned goods per case	47	1.25	50	18
Coffee in bags	132	3.66	40	14
Cotton in bales	500	30	36½	6
Dry goods in cases	300	27	66½	7
Fish pickled in tierces	1,000	24	40	16
Grapefruit and oranges in boxes	87	2.33	60	22
Hardware in boxes	200	4.25	50	23
Ink and mucilage in boxes	58	2.16	66½	17
Oil, cottonseed, per barrel	468	12.75	50	18
Pianos, boxed	870	86.58	66½	6.6
Tea per case	117	5	66½	15.5
12-foot 8-inch passenger sedan	3,500	620	100	5.6
14-foot 8-inch passenger sedan	3,500	718	100	4.8

Between New York and Portland similar comparison shows even greater disparity between the revenue per cubic foot on automobiles (accompanied by passengers) and on other commodities, because of the higher commodity rates in effect between those ports.

Between Boston and New York, it is shown, the available space on respondent's vessels if not used in the transportation of automobiles would generally be filled with other cargo which at all times moves in considerable volume, whereas between New York and Portland the movement of general cargo is of less volume. For this reason the automobile rate to Portland was made the same as to Boston as an inducement to attract passengers to travel on the Portland boats on which extra space is available.

Contention of complainant, advanced in his brief, that if respondent's rates are based on bulk or displacement they should be expressed in terms of measurement has been accorded fullest consideration. It is not seen, however, that the manner of expressing the rate in the instant case has affected the reasonableness thereof. Space is an important factor, which carriers by water may properly take into consideration in fixing their rates, and the evidence of record is convincing that in the construction of the rates under attack in this proceeding this factor has not been unduly emphasized.

Upon consideration of the facts of record in this proceeding, the board concludes and decides that the rates of the Eastern Steamship Lines (Inc.), here concerned, for transportation of automobiles accompanied by passengers from New York to Portland, Me., and from Boston to New York, have not been shown to be unjust or unreasonable in violation of section 18 of the shipping act, 1916, 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 18th day of September, 1929

Formal Complaint Docket No. 50

Isaac S. Heller *v.* Eastern Steamship Lines, 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 that the violation alleged has not been shown, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the board.

(Signed) SAMUEL GOODACRE,
Secretary.

[SEAL.]

UNITED STATES SHIPPING BOARD

DOCKET NO. 45

ASSOCIATED JOBBERS AND MANUFACTURERS

v.

AMERICAN-HAWAIIAN S. S. CO., ARGONAUT S. S. LINE (ARGONAUT S. S. CO., INC.), ARROW LINE (LOS ANGELES S. S. CO. AND SUDDEN & CHRISTENSON), CALIFORNIA & EASTERN S. S. CO., CALMAR S. S. CORP., DIMON S. S. CORP., DOLLAR S. S. LINE, ISTHMIAN S. S. LINES (U. S. STEEL PRODUCTS CO.), LUCKENBACH S. S. CO., INC., MUNSON-McCORMICK LINE (MUNSON S. S. LINE AND McCORMICK S. S. CO.), OCEAN TRANSPORT CO., INC., PANAMA MAIL S. S. CO., PANAMA PACIFIC LINE (INTERNATIONAL MERCANTILE MARINE CO.), QUAKER LINE (COLUMBIA PACIFIC SHIPPING CO., CO.), TRANSMARINE CORP., AND WILLIAMS S. S. CO., INC.

Submitted November 1, 1929. Decided December 4, 1929

R. S. Sawyer, Associated Jobbers and Manufacturers of Los Angeles; *Seth Mann*, San Francisco Chamber of Commerce; *S. J. Wettrick*, Seattle Chamber of Commerce and Tacoma Chamber of Commerce; *J. L. McConnell* and *F. G. Taylor*, Western Confectioners' Traffic Association; *E. D. Rapp*, *C. L. Hilleary*, and *Rollins White*, F. W. Woolworth Co.; *E. G. Wilcox*, Oakland Chamber of Commerce; *A. C. Ball*, Retail Furniture Association of California, Inc.; *Jack D. Thruston* and *Joseph Elkins*, The American Linseed Company, the American Linseed Company of California, the Best Foods, Inc., and the Fanning Bread and Butter Pickle Co., Inc.; *W. F. Everding*, Brown Co.; *Frank A. Parker*, the Columbia Mills, Inc.; *William R. Moore*, Eastern Confectioners Traffic Bureau; *William E. Whelpley*, Walworth Co.; *R. A. Ellison*, the Witt Cornice Co., the Frank Tea and Spice Co., the Drackett Chemical Co., the Cincinnati Soap Co., the Crystal Tissue Co., the Troy Sunshade Co.; *F. J. Towse*, the Oswego Falls Corporation; *George F. Hich-*

born, United States Rubber Co.; *Frederick M. Varah*, Syracuse Chamber of Commerce; *D. D. Devine*, Continental Paper and Bag Corporation; *A. F. Grignon*, Casein Manufacturing Corporation; *C. E. Hippensteel*, Hazard Wire Rope Co. and the Okonite Co.; *Frank H. Tyler*, The Sperry and Hutchinson Co.; *C. A. Butler*, American Brass Co.; *V. F. Moran*, Gold Dust Corporation; *Charles S. Webb*, Parsons Ammonia Co., Inc.; *C. C. Furgason*, West Virginia Pulp and Paper Co.; *L. D. Hawkins*, Rome Brass and Copper Co.; *W. H. Pease*, Bridgeport Brass Co.; *Roy E. Ellegard*, Fuller Brush Co.; *H. G. Huhn*, Owens Bottle Co.; *Daniel D. Sanford*, National Licorice Co.; *J. F. Atwater*, American Hardware Corporation; *Roscoe H. Hupper*, *William J. Dean*, and *Herman Phleger*, American-Hawaiian Steamship Co., Arrow Line, California and Eastern Steamship Co., Dollar Steamship Line, Luckenbach Steamship Co., Inc., Munson-McCormick Line, Ocean Transport Co., Inc., Quaker Line, Transmarine Corporation, and Williams Steamship Co., Inc.; *R. I. Walker* and *Herman Phleger*, Panama Pacific Line; *Ernest E. Baldwin*, *Luke D. Stapleton*, *Jr.*, and *Walter Shelton*, Argonaut Steamship Line; *Charles S. Belsterling* and *Walter Shelton*, Isthmian Steamship Lines.

REPORT OF THE BOARD

The complainant is a voluntary association of persons, firms, and corporations engaged in wholesale trade and manufacture at Los Angeles, Calif., and points contiguous thereto. The respondents are all engaged as common carriers by water on regular routes from ports on the Atlantic coast to ports on the Pacific coast. Although the complaint includes allegations regarding operations of certain of these carriers from Gulf to Pacific coast ports, no showing was made relative to such operations.

The complainant attacks the according by the respondents to carload shipments from Atlantic ports which are "split" delivered in segments between from two to six Pacific coast ports the same rates as they assess carload shipments "straight" or solid delivered at one port; alleging that its members as receivers of solid delivered carload shipments are thereby subjected to undue and unreasonable prejudice in violation of section 16 of the shipping act, 1916, and that the said split-delivered traffic is unduly and unreasonably preferred in violation of that section. The complainant's members are further alleged to be subjected to the payment of unjust and unreasonable rates in violation of section 18 of the shipping act, but no evidence of probative weight directed to such further allegation was adduced. At the hearing and on the briefs the complainant's

principal petition is that the board require the respondents in the future to apply less-than-carload rates to carload shipments split delivered at two or more Pacific coast ports. In lieu thereof, such other relief as to the board may seem proper is prayed.

Petitions of intervention supporting the complainant were filed by the San Francisco, Seattle, and Tacoma Chambers of Commerce, and by the Western Confectioners' Traffic Association. Other interveners on the Pacific coast are the Oakland Chamber of Commerce and the Retail Furniture Association of California, who desire or are willing that a charge commensurate with any cost to the respondents be made for the split-delivering of carload shipments at two or more ports in the future.

Other petitions of intervention were filed by the F. W. Woolworth Co., American Linseed Co., American Linseed Co. of California, the Best Foods, Inc., the Fanning Bread and Butter Pickle Co., Inc., New England Manufacturing Confectioners Association, Brown Company, Blatz Gum Co., the Columbia Mills, Inc., Eastern Confectioners' Traffic Bureau, the Troy Sunshade Co., the Witt Cornice Co., the Crystal Tissue Co., the Frank Tea and Spice Co., Oswego Falls Corporation, United States Rubber Co., the Drackett Chemical Co., the Cincinnati Soap Co., the Fuller Brush Co., Syracuse Chamber of Commerce, United Grape Products Sales Corp., the Sperry & Hutchinson Co., National Licorice Co., the Diamond Match Co., Continental Paper & Bag Corporation, the Casein Manufacturing Co., American Brass Co., West Virginia Pulp & Paper Co., Parsons Ammonia Co., the Okonite Co., Bridgeport Brass Co., Beech-Nut Packing Company, Hazard Wire Rope Company, Wood Flong Corporation, the Howe Scale Company, the Griswold Mfg. Co., the Grabler Manufacturing Company, Gold Dust Corporation, the Chapman Valve Manufacturing Company, Rome Brass & Copper Company, S. C. S. Box Co., Inc., Walworth Company, the Owens Bottle Company, and the American Hardware Corporation. These interveners, or their members, are all shippers from Atlantic ports who use the westbound intercoastal service of one or more of the respondents. With the exception of the American Hardware Corporation, all of the thirty of these interveners who testified voiced the value to them of split deliveries and their desire that the respondents continue the making of the same, but are divided in that some of them are agreeable to a charge over and above the carload rate for such privilege. The American Hardware Corporation supports the position of the complainant.

Eleven of the sixteen carriers named as respondents aver that the granting of split deliveries of carload shipments at the same rates as charged for solid carload deliveries results from the respondents

Argonaut and Isthmian lines doing so, and that competitive conditions have forced them to adopt the same action. Of the other respondents represented one, the Calmar Steamship Corporation, asserts it was forced into the practice to meet the competition of lines that had already adopted it, and that it is both "willing and desirous to return to its former practice whereby appropriate additional charges were made for split deliveries." Two of the respondents presented no defense.[1] Throughout the proceeding the burden of defense was assumed by the Argonaut and Isthmian lines.

Subsequent to the organization of the present United States Intercoastal Conference in the early part of 1927 the following rule was adopted by the member lines,[2] which became effective September 1 of that year:

"Split deliveries of carload shipments between Pacific coast terminal ports will not be permitted except upon payment of L. C. L. rates on the entire quantity billed."[3]

Prior thereto the splitting of carload shipments, when permitted at all, varied greatly from time to time and with the different carriers. At intervals shipments were split-delivered without any charge over and above the solid carload rates as at present. During other periods of time charges up to 25 cents a hundred pounds were assessed for the split-delivery service. Sometimes the amount of the charge depended upon the number of segments, and in other cases the charge was made by one or more of the carriers against only that portion of the carload which was on-carried from the first port of discharge.

The practice pursuant to the rule quoted above appears to have been followed by all of the eleven members of the conference as well as lines outside the conference, including the Argonaut and Isthmian lines, for a period of approximately three months. At the time the complaint was filed, however, it had been abandoned by all concerned. As testified by witnesses for the complainant, not only were carloads being split-delivered at the different Pacific coast ports at the carload rate, but in many instances the individual less-than-carload segments delivered at a given port were being split by the carriers into still smaller segments for sundry receivers at that port, without extra charge. Subsequent to the complaint the respondents again changed their practice, until as of the last date covered by the evidence submitted, and except with respect to a few contracts previously entered into which have since expired, it appears that all of the respondents,

[1] Dimon S. S. Corp. and Panama Mail S. S. Co.

[2] American-Hawaiian, Arrow, C. & E., Dollar, Luckenbach, Munson-McCormick, Ocean Transport, Panama Pacific, Quaker, Transmarine, and Williams.

[3] L. C. L. rates of respondents are in most cases 50 cents per 100 pounds higher than their corresponding C. L. rates.

including the Argonaut and Isthmian lines, while according free split deliveries between two or more ports are no longer granting it to consignees at a single port. For splitting at one port a charge of 10 cents per 100 pounds over the carload rate is now made.

The complainant and supporting intervenors on the basis of figures exhibited contend at length that the cost to the respondents in connection with carload shipments split-delivered at two or more Pacific coast ports is considerable, and that it materially exceeds the cost accruing in connection with solid carload delivery shipments. They urge that this extra service rendered to their competitors' shipments is a burden which when not charged for has to be borne by other descriptions of traffic, more particularly their solid carload traffic; and, further, it is asserted the free split deliveries are even more burdensome because not granted on eastbound traffic. According to cost data exhibited by the complainant, a large number of commodities used for illustration and carried by the respondents at carload rates do not pay their out-of-pocket expense when granted the free split-delivery service between the various Pacific coast ports. In the compilation of this data the complainant segregates the "stevedoring cost per hour on the Pacific coast" upon a fixed ratio for handling general run less-than-carload freight and for handling solid carloads. By adding dockage or dock maintenance, interest upon the ship while in port and general office expense, apportioned upon the same ratio, the complainant arrives at a "one-handling cost" for segments of split carloads and for solid carloads. This one-handling cost is then multiplied to determine the cost of split deliveries.

The eleven respondents having confernce membership are emphatic that the splitting of carload shipments concerned is a substantial extra service which, solely because of the split delivering by the Argonaut and Isthmian lines, they aver they are required to perform free of charge against the best interests of themselves, shippers and consignees. Although presenting no definite figures respecting the cost of this service, none of the respondents except the Argonaut and Isthmian lines denies a considerable additional cost over and above that incident to carloads solid delivered.

In this connection witness for the Argonaut and Isthmian lines asserts that as to his lines there is no more expense attached to split than to solid carload delivery shipments "other than the negligible cost of paper—dock receipts and more copies of bills of lading." In reply to questions bearing on the details of handling at the Atlantic coast docks of these two carriers, the witness states "Our practice is to establish on the dock at places convenient to the several hatches of the steamer piles of cargo for each discharge port of the steamer

so that the steamer can as soon as practicable be loaded in an equitable manner and properly trimmed and the delivery at the ports expedited. * * * We mark the lots in various ways and in various colors—red, green, yellow, crosses, circles, crosses in circles, X's, and so forth. Each particular Pacific coast port of discharge has its separate and distinct port mark." In the same tenor with this reply is the testimony on behalf of the eleven carriers having conference membership that split delivery "involves breaking up a carload of freight at the Atlantic coast port into a number of smaller segments, the separation and stowage of them in the vessel, and the continued maintenance of the separate identity of the lots at destinations." In short, there is of record nothing which indicates any material difference between the respective carriers' methods of handling; nor is there upon the record any tenable ground for conclusion that the additional service and expense necessarily involved in connection with split delivery carload shipments over solid delivery carload shipments are as to any of the respondents negligible.

While extending to the complainant's figures every weight to which they are entitled, we are not unmindful of patent errors which they contain and of their essentially theoretical character due to the fact that the respective costs involved in practice vary, inter alia, between different classes of cargo, different carriers, and different ports. It is manifest, however, that although the complainant and supporting interveners have fallen short of meeting the almost insuperable difficulty of their proving the specific split-delivery service cost or range thereof, yet it is nevertheless established of record as a whole by the preponderance of evidence that the expense of that service as to each of the respondents exceeds by substantial amount the expense of making solid carload deliveries. The contention of the Argonaut and Isthmian lines that the considerable additional service performed does not result in substantial expense to them is, upon the record in this proceeding and as a matter of common knowledge and economics, unconvincing. Particularly is this the case when it is reflected that these two respondent carriers along with all the others make a charge of 10 cents per 100 pounds over the straight carload rate for splitting carload shipments into segments for delivery to consignees or receivers at one Pacific coast port. Of bearing on this point also is the fact that these two lines and the other respondents make a charge at Atlantic coast ports of 10 cents per 100 pounds over the carload rate for consolidating westbound less-than-carload shipments into carload lots.

Examination of Panama Canal traffic figures submitted in evidence by the complainant, which record the monthly tonnage move-

ment of westbound intercoastal cargo, shows that for the period beginning November, 1927, through June, 1928, during which all of the respondents permitted free split deliveries, there was no increase over the tonnage carried during the corresponding months of the preceding year when split deliveries were generally charged for. On the contrary, in every month of this period the tonnage was much less than during the corresponding months of 1926–27, and, except for three months, substantially less than in 1925. In corroboration, testimony on behalf of each of the eleven conference carriers is that there has been a more or less steady decrease in their tonnage, accompanied by a general decrease in their revenues attributed by them to free split deliveries. In brief, the evidence of record in no respect indicates that free split deliveries have at any time appreciably increased the movement of traffic. Confirmative on this point is the testimony of the witness for the Argonaut and Isthmian lines that as to the two lines named there had been "possibly a little better result due to split deliveries—more tonnage"—and "It was our experience that there was a little less volume of shipments moving to Pacific coast ports in toto without split deliveries."

Section 16 of the shipping act relied upon by the complainant and supporting interveners, in so far as it has application to the present proceeding, provides—

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

That the free split-delivering of carload shipments disadvantages and prejudices those here attacking it, and prefers and advantages their competitors, is abundantly demonstrated throughout the record. It will be observed from the provision of the statute above quoted, however, that the character of preference and advantage on the one hand and the prejudice and disadvantage on the other which comes within the prohibition of the statute is that which is undue or unreasonable. In the language of a well considered Federal court decision construing an identically phrased provision of another regulatory statute it is said—

"The standard by which to determine when an advantage to one or a prejudice to some other is undue or unreasonable is not difficult

to determine. Whenever it is sufficient in amount to be substantial and of importance to either the one receiving the advantage or to the one suffering the prejudice, it must be held to be undue or unreasonable." [4]

Of pertinence in this relation is the testimony of many witnesses representing Pacific coast jobbers, wholesalers, manufacturers, and retailers setting forth the deleterious effects of the respondents' free split-delivery service upon their respective businesses ranging from five to ninety per cent shrinkage in volume. Significant also is the testimony by a considerable number of eastern manufacturers affirming the great advantage accruing to them by virtue of their use of such service, and the expressions by shippers that the use of the split-delivery privilege is of value to them and that they are willing to pay for it. In short, by the preponderance of evidence the prejudice and disadvantage encountered by the complainant and supporting interveners and their traffic, as well as the preference and advantage accorded to their competitors and such competitors' split-delivered traffic, are upon the record established to be both undue and unreasonable. Although not of influence to the above determination, reference is appropriate at this point to the testimony of a number of receivers of less-than-carload shipments setting forth the detrimental effect upon their businesses due to competitors' ability to avail of the free split-carload delivery privilege.

Section 22 of the act authorizes the board after investigation upon complaint alleging violation of section 16 or other regulatory sections of the statute to make such order as it deems proper. After examination of all the facts, argument and exceptions of record, we conclude and decide in the instant investigation that for the future the according by the respondents herein to carload shipments from Atlantic coast which are split-delivered at two or more Pacific coast ports the same rates and/or charges as are assessed similar carload shipments from Atlantic coast delivered solid at one Pacific coast port will constitute undue and unreasonable preference and undue and unreasonable prejudice as between persons and descriptions of traffic in violation of section 16 of the shipping act, 1916. To remove the undue and unreasonable preference and the undue and unreasonable prejudice determined in this proceeding to exist the respondents will be required to effect an adjustment in rates and/or charges which will adequately reflect the substantial additional service shown to be performed in connection with split-delivering carload shipments at two or more ports.

An appropriate order for the future will be entered.

[4] I. C. C. *v.* C. & O., 128 Fed. 59, 70.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 4th day of December, 1929

Formal Complaint Docket No. 45

Associated Jobbers and Manufacturers *v.* American-Hawaiian Steamship Company et al

This case being at issue upon complaint, answers 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, which report is hereby referred to and made a part hereof; now, therefore, it is

Ordered, That the carriers respondent in this complaint proceeding and each of them shall on or before thirty days from date hereof cease and desist and thereafter abstain from the undue and unreasonable preference and the undue and unreasonable prejudice determined in this proceeding to exist; and shall thenceforth adjust their rates and/or charges to adequately reflect the substantial additional service performed and expense incurred by them in split-delivering carload shipments from the Atlantic coast at two or more Pacific coast ports over their service and expense in delivering similar carload shipments solid at one Pacific coast port.

By the board.

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

UNITED STATES SHIPPING BOARD

DOCKET NO. 52

THE GELFAND MANUFACTURING COMPANY

v.

BULL STEAMSHIP LINE, INC.

Submitted December 6, 1929. Decided February 19, 1930.

Rate charged on mayonnaise Baltimore to Tampa in excess of maximum rate on file

Abner Pollack for complainant.
Hunt, Hill & Betts for respondent.

REPORT OF THE BOARD

The complainant Gelfand Manufacturing Company is a corporation engaged in business at Baltimore, Md. The respondent Bull Steamship Line, Inc., is a common carrier by water in interstate commerce and subject to the applicable regulatory provisions of the shipping act, 1916.

The complainant alleges that on less-than-carload shipments of its product mayonnaise, a salad dressing, in glass containers packed in boxes, from Baltimore to Tampa, the respondent's rate of $1.35½ per 100 pounds charged and paid was and is in excess of the respondent's applicable maximum rate on file with the board, in violation of section 18 of the shipping act. The board is requested to award reparation, including interest.

The respondent's tariff naming class and commodity maximum rates applicable to its service from Baltimore to Tampa[1] provides a less-than-carload maximum commodity rate on canned goods of 74 cents per 100 pounds. Such tariff further provides that this rate shall apply on canned goods as described by item 15 of the tariff, which item includes salad dressing. In relation to a number of articles described by this item, including salad dressing, no restriction is made as to the kind of receptacle in which such articles shall be contained. The complainant's contention is that, in view of the

[1] Bull Steamship Line, Inc., Tariff S. B. No. 1.

absence of any such restriction, the less-than-carload commodity rate of 74 cents was and is the highest rate applicable to its shipments of mayonnaise contained in glass packed in boxes, rather than the second-class rate of $1.35½ exacted. On the contrary, the respondent urges that in the absence of a specific provision in the tariff that articles in glass will be carried at the canned-goods rate of 74 cents, such rate is applicable only to articles in tin cans; and, on the theory that the classification governing a tariff establishes rate applicability in cases where tariffs are not specific in regard thereto, the respondent insists that the class rate of $1.35½ per 100 pounds was applicable to complainant's shipments in glass.

Much of the respondent's defense is directed toward an endeavor to show that the term "canned goods" means only goods in tin cans; and dictionary definitions are presented, including among others [2] definitions from the 1890 edition of Webster of canned goods as "a general name for fruit, vegetables, meat, or fish, preserved in hermetically sealed cans," and the 1923 edition of that dictionary of "canned" as "preserves in cans, as canned goods." Examination discloses, however, that the latter edition defines the word "can" as "a vessel or case, tin; *also, U. S., glass or earthenware jar.*" Of pertinence in this connection also are the definitions in other and more current dictionaries of canned goods as "prepared meat, vegetables, fish, fruit, etc., hermetically sealed in suitable receptacles, as cans, glasses, etc." [3]; and of "can" to include "a glass or earthenware jar used in preserving food." [4]

It is generally recognized that canned goods are edibles preserved in either metal or glass.[5] Examination shows that the freight classification itself which the respondent represents as governing the tariff concerned in the instant case provides that canned vegetables and fruits may be in metal cans, or glass or earthenware containers. In short, nothing advanced by the respondent in evidence is dissuasive of the fact of record as established by the complainant that canned goods include goods in glass containers.

A principle of tariff construction is that tariffs should be specific and plain. The board's tariff regulations throughout direct the carriers to this end, and provide that tariffs filed and kept open to public inspection in compliance with section 18 of the statute shall be explicit. Where a question of tariff interpretation is in issue,

[2] Latham, Dictionary of the English Language (1876); Murray, New English Dictionary (1893); Wright, English Dialect Dictionary (1898); Practical Library Encyclopedia (1899).

[3] Funk & Wagnalls' New Standard (1928).

[4] Webster's New International (1926).

[5] U. S. Department Agriculture Bulletin No. 1471.

indefiniteness and ambiguity of tariff provisions, which in reasonableness permit of misunderstanding and doubt by shippers, require interpretation of such provisions against the carrier. In the instant case if it was the intention of the respondent to exclude from the application of its canned goods commodity rate salad dressing in glass, it was plainly the responsibility of the respondent to set forth in connection with the published commodity rate appropriate exceptions thereto. In this respect the respondent's tariff is lacking entirely in language indicating that the maximum rate of 74 cents per 100 pounds on canned goods described in item 15 to include salad dressing was not applicable to salad dressing in glass containers. As published and on file the respondent's tariff must accordingly be interpreted to apply to less-than-carload shipments of the complainant's product here concerned the maximum commodity rate of 74 cents per 100 pounds.

The respondent's contention in the instant case that its less-than-carload maximum commodity rate provided by it to apply on less-than-carload shipments as described in item 15 of its tariff is inapplicable because, the respondent avers, item 15 is limited to carload lots, is patently inconsistent. In view of the less-than-carload rate specifically provided, as to less-than-carload shipments the description plainly relates to the commodity rather than to the quantity to be shipped.

Bearing further on the contention of the respondent as to the applicability of the class rate of $1.35½, is the fact that although its tariff concerned stated it was governed by the Southern Classification, until July 8, 1929, the respondent had no classification on file. On that date the respondent's power of attorney was filed in compliance with the requirement of rule 15 of the board's tariff regulations authorizing the agent of the Southern Classification to publish, post, and file the classification by which its tariff was stated to be governed. Accordingly, as to those of complainant's shipments which moved prior to July 8, 1929, there was no authoritative basis provided by the respondent for determining class rating for its carriage of the complainant's shipments from Baltimore to Tampa. Its contention, therefore, that the second class rating and its second class rate were applicable is plainly untenable. Effective November 3, 1928, however, the respondent by supplement to its tariff S. B. No. 1 concerned provided a less-than-carload commodity rate of $1.35½ per 100 pounds on salad dressing in glass. Subsequent to such date, therefore, no overcharge exists.

Upon consideration of all the facts and exceptions of record in this case, the board concludes and decides that the class rate of

$1.35½ per 100 pounds charged the complainant on less-than-carload shipments of its product mayonnaise, a salad dressing, in glass containers, packed in boxes, from Baltimore to Tampa was to and including November 2, 1928, in excess of the respondent's maximum rate on file in violation of paragraph 3 of section 18 of the shipping act, 1916; that complainant made shipments as described, paid and bore the charges thereon at the rate herein found inapplicable, and further, that as a result of said violation the complainant was injured in the amount of the difference between the rate paid and 74 cents per 100 pounds herein determined to have been the maximum rate applicable, and that the complainant is entitled to reparation including interest at the rate of 6 per cent per annum. Complainant and respondent are directed to comply with Rule XXI of the board's rules of practice to determine the exact amount of reparation due. 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. 55

UNITED STATES PIPE AND FOUNDRY COMPANY

v.

TAMPA INTER-OCEAN STEAMSHIP COMPANY AND KERR STEAMSHIP COMPANY

Submitted May 1, 1930. Decided May 7, 1930

Rate charged on cast-iron pipe continental United States to Manila, P. I., not shown to be unjust or unreasonable

J. K. Hiltner for complainant.
Ira A. Campbell and *Roger B. Siddall* for respondents.

REPORT OF THE BOARD

The complainant in this proceeding is a New Jersey corporation engaged in the manufacture of cast-iron pipe, with general offices at Burlington, N. J. By complaint filed under authority of section 22 of the shipping act, it alleges that on five shipments of cast-iron pipe transported by the respondents from ports in continental United States to Manila, P. I., it was charged an unjust and unreasonable rate in violation of section 18 of the shipping act. Reparation in the sum of $1,606.73 is prayed.

One of the shipments moved on a vessel of respondent Kerr Steamship Line, the other four shipments on vessels of respondent Tampa Inter-Ocean Steamship Company. At the time these shipments were transported, respondents' rates on cast-iron pipe were quoted on ship's option weight or measurement basis. On the shipments involved in this proceeding, the rate quoted by the respondents was $8 per 2,240 pounds or 40 cubic feet. Under the method of measurement employed by the respondents, a greater charge was obtained than if the freight were calculated on the weight basis, and the respondents in the exercise of ship's option accordingly charged on the measurement basis.

On January 23, 1929, subsequent to the movement of the five shipments here concerned, the carriers changed their tariff on cast-iron pipe to a straight weight basis on all pipe up to 24 inches in diameter, the new rate varying from $8 per 2,240 pounds on the smaller sizes to $16 on pipe 16 inches to 24 inches in diameter. The respondents show this tariff change of January 23, 1929, was made for the benefit of the complainant herein upon its representation that in view of competitive conditions in the sale of pipe a change was necessary. On pipe over 24 inches in diameter the old weight or measurement basis was retained.

The complainant's evidence and argument are directed largely to its contention that the method of measurement employed by the respondents in determining the charges to be assessed was improper. As provided by the carriers' tariff in effect at the time the five shipments moved,[1] the extreme outside measurement of the larger pipe end was used. This measurement was then squared and the resulting product multiplied by the over-all length of the pipe. The complainant suggests two different methods of measurement, either of which, it asserts, would have been fairer than the method employed by the respondents. The first method offered by the complainant is to ascertain the size of an actual pile of pipe by multiplying the outside dimensions of the pile, and then divide the number of cubic feet thus obtained by the number of pipe in the pile. The second method suggested is to square the mean of the bell end and spigot end diameters, and multiply the product thus obtained by the over-all length of the pipe.

The complainant also submits exhibits and other evidence designed to show two different methods of loading pipe, one or the other of which, it contends, is customarily used on all steamers, including those of the respondents. The exhibit covering the first method of loading shows a pile of pipe with the bell ends of the pipe in the first tier all one way, the bell ends in the second tier all one way but in the opposite direction to the first tier, and so on, alternately, to the top of the pile. In the exhibit covering the second method, the bell ends and spigot ends are alternated in the first tier, and the pile built up with spigot ends on top of bell ends, and bell ends on top of spigot ends. Calculations are submitted by the complainant designed to show that neither method of loading would have required as much space as was charged for by the respondents under their method of measurement. The complainant contends that pipe loaded according to the method first described above, and measured according to the first measurement method suggested by it, would have been assessed under the eight-dollar weight or measurement rate practi-

[1] Far East Conference Freight Tariff No. 6, page 9, Rule 17 (b).

cally the same amount as under the straight-weight rate adopted by the respondents on January 23, 1929. The complainant also places in evidence a letter dated October 11, 1928, and addressed it by a representative of the respondent Tampa Inter-Ocean Steamship Company in which the writer expressed the opinion that the measurement rule was "rather drastic."

In defense, the respondents contend that both the measurement method used by them and the rate charged were just and reasonable. With respect to the measurement method itself, the respondents show that it was in strict accordance with the general practice or custom of ocean carriers to measure irregularly shaped cargo by multiplying "the three maximum dimensions; that is, to charge for the space of the smallest rectangular box which would hold the article." They point to the fact that, on the record, the complainant admits the existence of this general practice or custom.

The respondents also illustrate that in practice a shipment of pipe can not be so loaded in a ship as to permit the calculation of the actual cubical displacement, in the manner contemplated by the first method of measurement suggested by the complainant; and that practically pipe can not be stowed on a ship in regular, rectangular piles as pictured in complainant's exhibits.

It is further shown by the respondents that pipe properly stowed requires much more space in the ship than either measurement method suggested by the complainant allows for. As affirmed upon the record, pipe is a type of cargo that must be well buttressed to prevent breakage, shifting or breaking out of piles. In addition to the necessary dunnage between tiers, other dunnage in substantial amount must be used at the sides of each separate pile of pipe. Pipe can not be stowed to conform to the shape of the hold. In the forward and after holds, especially, the contours of the hull prevent full space utilization and necessitate the use of considerable dunnage. Stanchions and hatch coamings often cause gaps that must be filled in with dunnage. Not only is this dunnage an item of expense to the carrier, but it takes up space that otherwise might be utilized for paying cargo. The respondents stress that the complainant in no respect demonstrates that ship's space actually used for the carriage of the five shipments involved was any less than the amount of space charged for.

In support of their contention that the rate attacked was just and reasonable, the respondents point to the fact that the basis upon which it was assessed existed for 6 years, that it applied not only to cast-iron pipe but to some 30 other categories of iron and steel articles, and that because of its shape and liability to breakage cast-iron pipe is a difficult and slow-working cargo to handle. In refer-

ence to an exhibit submitted by the complainant for the purpose of comparing pipe with practically all other commodities moving on a straight-weight basis as listed in the applicable tariff, the respondents emphasize the probative insufficiency thereof, due to complainant's failure to adduce any additional evidence showing the respective commodity values, volume of movement, and other recognized elements requisite to a demonstration of unjustness and unreasonableness. In this connection, moreover, it is observed that the average rate per long ton on the 22 commodities listed by the complainant in this exhibit is $13.46, whereas the average rate per long ton paid by the complainant on the shipments involved in this proceeding was $12.10.

Upon consideration of all the facts and argument of record in this proceeding it is clear that the complainant has failed to show that respondents' method of measurement concerned was unjust or unreasonable, or that the rate charged on the shipments herein involved was unjust or unreasonable in violation of section 18 of the shipping act, 1916, as alleged. An order of dismissal will be accordingly entered.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 7th day of May, 1930

Formal Complaint Docket No. 55

United States Pipe and Foundry Company *v.* Tampa Inter-Ocean Steamship Company and Kerr Steamship Company

Whereas 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 conclusions and decision upon the evidence as presented and of record, which report is hereby referred to and made a part hereof: Now, therefore, it is

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

By the board.

[SEAL.]

SAMUEL GOODACRE,
Secretary.

UNITED STATES SHIPPING BOARD

DOCKET No. 51

FOREIGN TRADE BUREAU, NEW ORLEANS ASSOCIATION OF COMMERCE

v.

BANK LINE; COMMERCIAL STEAMSHIP LINES; COMPAGNIE GENERALE TRANSATLANTIQUE; COSULICH LINE; CREOLE LINE; DIXIE MEDITERRANEAN LINE; DIXIE-U. K. LINE; GULF BRAZIL RIVER PLATE LINE; GULF-WEST MEDITERRANEAN LINE; HOLLAND-AMERICAN LINE; LEYLAND-HARRISON STEAMSHIP LINE; LEYLAND LINE; LLOYD BRASILEIRO; MACLAY LINE; MERCHANT FLEET CORPORATION; RICHARD MEYER AND COMPANY, INCORPORATED; MISSISSIPPI VALLEY-EUROPEAN LINE; MOBILE OCEANIC LINE; MUNSON STEAMSHIP LINE; NAVIGAZIONE LIBERA TRIESTINA LINE; NERVION LINE; NORTH GERMAN LLOYD AND ROLAND LINES; ODERO LINE; OZEAN LINE; SCANDINAVIAN AMERICAN LINE; SOCIETE GENERALE DE TRANSPORTS MARITIMES A VAPEUR; SOUTHERN SHIPPING AND TRADING COMPANY; SOUTHERN STATES LINE; STRACHAN LINE; SWEDISH AMERICAN MEXICO LINE; TAMPA INTER-OCEAN STEAMSHIP COMPANY; TEXAS MEDITERRANEAN LINE; TEXAS STAR LINE; TEXAS UKAY LINE; THE TRANSATLANTIC STEAMSHIP COMPANY, LIMITED; TRANSOCEANIA LINE; VOGEMANN LINE; WILHELMSEN LINE

Submitted April 10, 1930. Decided May 14, 1930

Refusal of respondent carriers to accept, receive, and unload hardwood lumber from box cars on marginal railroad tracks at New Orleans, or to assume expense of such unloading, not shown to subject that port to undue prejudice or disadvantage in violation of section 16, as alleged; nor to constitute an unjust regulation or practice in violation of section 17 as alleged. Complaint dismissed.

Max M. Schaumburger, Foreign Trade Bureau, New Orleans Association of Commerce; *George H. Terriberry*, Bank Line,

Compagnie Generale Transatlantique, Cosulich Line, Creole Line. Dixie Mediterranean Line, Dixie-U. K. Line, Gulf Brazil River Plate Line, Gulf-West Mediterranean Line, Holland-American Line, Lloyd Brasileiro, Maclay Line, Richard Meyer and Company, Incorporated, Mississippi Valley-European Line, Munson Steamship Line, Navigazione Libera Triestina Line, Nervion Line, North German Lloyd and Roland Lines, Ozean Line, Scandinavian American Line, Societe Generale de Transports Maritimes a Vapeur, Southern Shipping and Trading Company, Southern States Line, Strachan Line, Swedish American Mexico Line, Tampa Inter-Ocean Steamship Company, Texas Star Line, The Transatlantic Steamship Company, Limited, Transoceania Line, Vogemann Line, Wilhelmsen Line; *O. E. Duggan*, Commercial Steamship Lines; *E. J. McGuirk*, Leyland-Harrison Steamship Line and Leyland Line; *John B. Waterman*, Mobile Oceanic Line; *George Schadd, jr.*, Southern Hardwood Traffic Association; *A. A. Nelson*, Board of Commissioners of Lake Charles Harbor and Terminal District and Lake Charles Association of Commerce; *R. G. Cobb*, Mobile Chamber of Commerce and Business League; *S. P. Gaillard, jr.*, and *J. L. Cummings*, State Docks Commission and Terminal Railway Alabama State Docks; *J. A. Leathers* and *Lee Clark*. Gulfport Chamber of Commerce.

Report of the Board

The complaint in this proceeding alleges that the refusal of the respondent carriers to accept, receive, and unload shipments of hardwood lumber from box cars on marginal tracks at New Orleans, or to assume the expense of such unloading, subjects New Orleans to undue and unreasonable prejudice and disadvantage and gives to other Gulf ports where hardwood lumber is so accepted undue preference and unreasonable advantage in violation of section 16 of the shipping act, 1916, and that said refusal results in an unjust and unreasonable regulation and practice in violation of section 17 of said act. The complainant asks that the board require the establishment at all Gulf ports of a uniform practice.

Petitions of intervention were filed by the Southern Hardwood Traffic Association, Board of Commissioners of the Lake Charles Harbor and Terminal District, Lake Charles Association of Commerce, State Docks Commission and Terminal Railway Alabama State Docks, Pensacola Chamber of Commerce, Gulfport Chamber of Commerce, and Mobile Chamber of Commerce and Business League. All of the interveners except the Southern Hardwood Traffic Association oppose the complainant. This intervener, an organization composed of southern and southwestern lumber shippers, is in favor of equalization at the various ports, provided it is

accomplished by a change in steamship practice at New Orleans which will decrease the cost to the shipper using that port. It is opposed to such equalization, however, if accomplished by any increase in cost to the shipper using other Gulf ports.

The complaint as drawn involves the handling of hardwood lumber at all ports on the Gulf of Mexico. There is, however, practically nothing of evidence concerning ports other than New Orleans, Gulfport, Lake Charles, Mobile, and Pensacola. The Pensacola Chamber of Commerce, although an intervener, did not appear at the hearing, and the record indicates that there is practically no competitive movement of hardwood lumber through Pensacola. We shall, therefore, confine ourselves in this report to New Orleans, Gulfport, Lake Charles, and Mobile.

Only a few of the respondents serve all four of these ports. Some do not serve New Orleans and others serve New Orleans only. At all four ports hardwood lumber arrives at seaboard by rail in box cars, and is mostly destined to ports in Continental Europe and the United Kingdom. The hardwood lumber ocean rates to such foreign ports, as well as to many other points, are the same from each of the four Gulf ports concerned herein. From many inland points of production the rail rates to these Gulf ports are also the same. The tariffs of the various railroads serving the four ports provide that in all instances where the lumber is not unloaded by the railroad there will be no charge for unloading, or if the charge has already been collected by the railroad such charge will be refunded. This charge at New Orleans and Lake Charles is 2 cents per 100 pounds, and at Mobile and Gulfport 1 cent per 100 pounds. At Gulfport, Lake Charles, and Mobile the steamship lines accept delivery of hardwood lumber in box cars on marginal tracks, loading the lumber direct from car into ship. At these ports the shipper is accordingly relieved of the cost of unloading the cars. At New Orleans the steamship lines do not accept delivery in this manner. It is this variance in practice that is here complained of, the complainant alleging that due to the saving to shippers of unloading costs at the other ports there results a diversion of hardwood lumber from New Orleans to Gulfport, Lake Charles, and to Mobile.

To support its allegation of diversion from New Orleans, the complainant seeks to show that the movement of hardwood lumber through Lake Charles and Gulfport is increasing at a relatively more rapid pace than the competitive movement through New Orleans. According to exhibits furnished by the complainant, the volume of such movement through Lake Charles, Gulfport, and New Orleans for 1926, 1927, and 1928 was as follows:

1. U. S. S. B.

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	1926	1927	1928
	Feet	*Feet*	*Feet*
Lake Charles		158, 164	2, 054, 926
Gulfport	12, 364, 000	20, 798, 000	19, 872, 000
New Orleans	116, 850, 000	132, 200, 000	155, 922, 000

No figures were submitted as to the amount of tonnage moving through Mobile.

In further reference to its allegation of diversion, the complainant, through one of its witnesses, a freight broker doing business at New Orleans, testified that in some instances shippers for whom the broker was acting had instructed him to ship their hardwood through Lake Charles and Gulfport instead of New Orleans because of the saving of unloading costs at those ports. Another witness for the complainant, a shipper of hardwood lumber, testified that wherever everything else was equal he shipped through Lake Charles and Gulfport instead of New Orleans, in order to escape the cost of unloading the cars. This same shipper, however, testified that 90 per cent of his lumber now moves through New Orleans.

Apart from the subject of diversion, the bulk of the evidence submitted by the complainant is concerned with a description of port facilities and physical conditions at New Orleans, and with indicating that 2 [1] of the 39 respondents named would already have adopted the practice of taking hardwood lumber direct from car to ship, regardless of the other respondents, were it not that such independent action would probably have led to a rate war.

An exhibit furnished by the complainant lists 39 public wharves in the port of New Orleans, built parallel to the shore, with a total length of approximately 7.2 miles. On one bank of the Mississippi River these public wharves extend in an almost unbroken line for 6 miles. The remaining 1.2 miles is distributed between the opposite side of the river and the Industrial Canal. Of these 39 wharves, 9 are equipped with double marginal tracks and 3 with single marginal tracks. These public wharves are under the administration of the Board of Commissioners of the Port of New Orleans, referred to hereafter as the Dock Board. There are also three privately owned railroad wharves at New Orleans equipped with marginal tracks, two of them with double tracks and one with single track. Railroad wharves at New Orleans, however, are not permitted to compete for the general wharfage business of the port, and the use of each of such wharves is accordingly restricted to the receiving or discharging of cargo on which the particular railroad owning the wharf has a line haul. Two of these wharves are on the far side of the river.

[1] Leyland Line and Leyland-Harrison Steamship Line.

The tracks of the various railroads entering New Orleans do not extend to the public wharves, such wharves being served exclusively by the Public Belt Railroad. Practically all the wharves, whether they have marginal tracks or not, are equipped with sheds, and it is the present custom of the port for box cars of hardwood lumber, as well as most other freight, to be unloaded from tracks in the rear of the sheds. If hardwood lumber were to be taken direct from car to ship, these cars manifestly could not be brought to the wharves, unloaded, and the empties removed in advance of ship's arrival. The movement of cars would therefore have to be adjusted to suit ship's convenience. It is the testimony of the general manager of the Public Belt Railroad that the substantially increased demands upon the facilities of the Public Belt Railroad which the proposed change desired by the complainant in this proceeding would create would be met. The Public Belt Railroad, he asserts, is prepared to purchase any additional locomotives that may be needed. It now has six storage or distributing yards with a total capacity of 2,051 cars, and, this witness states, other car-storage space can be procured if necessary. The railroads serving New Orleans also are asserted by him to have ample car-storage space for any probable increased demand upon them. This witness qualifies his testimony, however, by stating that, due to the pressure of other matters, it is possible he has not given the question of physical conditions and facilities for marginal track handling at New Orleans the extensive consideration which it deserves.

Another witness for the complainant, the superintendent of docks, testified that in the past, although at times pressed for space, he has always been able to provide marginal track berths when desired, and believes that he would be able to do so in the future in case the respondents should adopt the practice of handling hard wood lumber at New Orleans direct from marginal track to ship.

Other opinion evidence submitted by the complainant is also to the effect that marginal track facilities and physical conditions at New Orleans are such that hardwood lumber could be handled direct from car to ship.

In defense, and with reference to the alleged diversion of cargo from New Orleans, certain of the respondents submit that factors other than the variance of practice under attack must be considered in analyzing the figures offered in evidence by the complainant. There are, they illustrate, a number of interior shipping points from which the hardwood lumber rail rates are not the same to the four ports. They show that Lake Charles has only recently become a port and that it naturally takes hardwood from certain districts. At Gulfport the practice of taking hardwood lumber

from box cars on marginal tracks is of many years' standing, but in the last year or two Gulfport is indicated to have made great commercial and industrial progress. Under cross-examination the complainant's chief witness on the question of diversion admitted that there has recently been a great improvement in the railroad service to Gulfport. On behalf of the Southern Hardwood Traffic Association, intervener, it was testified in this relation that the saving to the shipper of the cost of unloading is not a decisive influence in routing hardwood lumber.

The Leyland Line and the Leyland-Harrison Line, the two respondents, affirmed to be willing to adopt the practice suggested by the complainant, put on no witnesses, and submitted no briefs. A former manager of the Leyland Line, however, testified at length as a witness for the complainant; but on the question of diversion of tonnage from New Orleans to the other ports he could only say that he did not regard the small movement through Lake Charles as particularly important and that he did not know whether any of the hardwood which has moved through Gulfport would have moved through New Orleans had the cost to the shipper for unloading been the same at the two ports.

Both by witnesses of their own and by extensive cross-examination, the majority of the respondents endeavor to show that the marginal track facilities at New Orleans are not adequate for handling hardwood lumber direct from car to ship and that physical conditions at that port are quite different from those at the ports where the practice of loading from car to ship now exists.

As herein above indicated, only a small percentage of the many wharves at New Orleans are provided with marginal tracks. As acknowledged by a witness for the complainant, the present construction of wharves not so equipped is such that they would not sustain the additional weight of marginal tracks with engine and cars thereon. The 15 wharves (12 public wharves and 3 railroad wharves) now equipped with marginal tracks provide a total marginal track berthing space of 12,168 feet. Of this footage, 10,003 feet is double track. To meet the exigencies of the vast and varied commerce of the port, the rules of the Dock Board provide what is known as "First call on berth privilege," or preferential assignment, constituting a prior claim to the use of a particular wharf by a particular carrier, and applicable to all public wharves at New Orleans. Nearly all the carriers serving New Orleans regularly have these preferential assignments, for which they pay a fee to the Dock Board. These assignments carry with them the right to receive and assemble cargo for 10 days prior to the arrival of each ship. Technically, a preferential assignment does not give a carrier the exclu-

sive use of water front so assigned, the Dock Board reserving the right to accommodate other vessels in that same berthing space whenever the carrier having the preferential assignment is not using it.

Five of the 12 public wharves provided with marginal tracks are assigned to fruit-carrying lines who make extensive use of marginal tracks for cargo other than lumber. It is testified by the superintendent of docks that these fruit lines use their preferential space so constantly that the wharves are practically never available for berthing other ships. A substantial amount of marginal track berthing space at the other public wharves is likewise preferentially assigned, and therefore is only occasionally available for general use. Eliminating all preferentially assigned space, there is left at the port of New Orleans but 6,225 feet of marginal track berthing space, only 4,825 feet of which is double tracked. This total of 6,225 feet includes the three railroad wharves, each of which is restricted, as already stated, to the handling of line-haul traffic of the particular railroad owning the wharf. Two of the 12 public wharves equipped with marginal tracks, as well as 2 of the railroad wharves, are on the far side of the river from that on which most of the commerce of the port is carried on. The public wharves on the far side of the river are not shown to be used extensively, and the complainant does not stress their availability; nor does the Dock Board utilize them in giving preferential assignments. The respondents have accordingly eliminated both the railroad docks and the wharves on the far side of the river in their calculations, and have figured the available, nonpreferentially assigned marginal track space at New Orleans as only 3,500 feet.

There are approximately 35 so-called hardwood lumber carrying lines now serving the port of New Orleans. None of them carries full cargoes of lumber. Hardly any of them have marginal tracks on their preferentially assigned berths. It is the testimony of the superintendent of docks that all marginal track space not now preferentially assigned should be kept free. The respondents not having marginal track facilities emphasize the severe handicap which the failure to possess such facilities would impose upon them if they were ordered by the board in this proceeding to take hardwood lumber direct from car to ship. To get the lumber they would have to shift each ship from the preferential berth where other cargo is received and assembled to a berth with marginal tracks. The cost of each shift would be substantial. On behalf of some of the respondent lines it is testified that the average amount of hardwood lumber they get per ship is so small that this expense of shifting would more than exhaust their profits on it. Shifting

also involves other expense, they illustrate in detail—expense none the less real and substantial for being indirect.

But the proposed plan is also strenuously objected to by those few respondents who do possess marginal track preferential space, with the exception of the Leyland Line and the Leyland-Harrison Line. They point to disadvantages and handicaps arising from an insufficiency of leads, crossovers, and switches; the fact that some of the wharves are only single tracked and the nearness of the track to the edge of the wharves; the distance from the Public Belt Yards to many of the preferential berths with marginal tracks; the impracticability at New Orleans under the complainant's marginal track loading plan of loading all hatches of a ship at once, or simultaneously from shed and marginal track; and a variety of other circumstances and conditions quite different from those existing at the competing ports.

Even the one witness competent to speak for the Leyland Line and the Leyland-Harrison Line did not claim that physical conditions at New Orleans are similar to those at Lake Charles, Gulfport, and Mobile, but acknowledged freely that the tracks at New Orleans are much too near the edge of the wharf for convenience in loading. He also testified that the location of the joint preferential assignment of the Leyland and Leyland-Harrison Lines is exceptionally convenient in that it is close to the largest car storage yard of the Public Belt Railroad, so that cars can be assembled and switched to the marginal tracks with a minimum loss of time to the ship. Other testimony also indicates the advantages which these two lines have over other hardwood carriers at New Orleans, but it is not demonstrated of record that even their facilities are equal to those at the other ports for marginal track loading of hardwood lumber. In fact, there is direct competent evidence to the contrary, as well as a free admission that these two respondents themselves by no means consider their facilities entirely satisfactory for this purpose.

Turning from New Orleans to the other ports, we have before us among other evidence, the testimony of the only engineer who appeared as a witness. He, too, stated that physical conditions at New Orleans are quite different from those at the other ports. At Mobile, for example, all docks have marginal tracks, and over 14,000 feet of berthing space is equipped with two or more marginal tracks. At the State-owned piers, which provide berthage for 13 vessels, each pier has 3 marginal tracks. The docks are constructed at right angles to the shore, and crossovers and switches are so arranged that each ship has a direct lead from the car storage yards. According to this witness, and others, the absence of this direct lead for each ship would result in serious interference where two or more ships

were loading at the same wharf. Such deficiency of leads is manifestly one of the problems confronting New Orleans in connection with the marginal track loading of hardwood lumber contended for by the complainant. Another important advantage at Mobile emphasized by the respondents, is that in contrast to New Orleans large car storage yards are immediately in back of all piers. At Gulfport, also, all piers are shown to be equipped with marginal tracks, ample crossovers and immediately available storage yards. According to the record also, at Gulfport there is very little warehouse space, and facilities for assembling cargo are not adequate. According to several witnesses, one of them a contracting stevedore, there is no other practical way of handling lumber at Gulfport except from car to ship. Gulfport, it is testified, is essentially a lumber port, in illustration of which 98 per cent of the cargo loaded there by one of the respondents in this proceeding is testified to consist of hardwood and pine lumber. Practically all other commodities at this port are likewise taken direct from car to ship. At the recently created port of Lake Charles the public facilities consist of a wharf 1,600 feet in length specially equipped with double marginal or apron tracks to facilitate the handling of shipments direct from car to steamer.

In addition to dissimilarity of physical port conditions, the respondents show that New Orleans is a substantially more expensive port to a ship than the other Gulf ports concerned, and that to load from marginal tracks or to absorb the cost of unloading from cars would be an added burden of expense.

The board is also asked by the respondents to consider the fact that the variance of practice attacked in this proceeding has existed for many years, the present method of handling hardwood lumber at each port dating back practically to the port's establishment.

Upon the evidence of record it is clear that the ports of Mobile, Gulfport, and Lake Charles are basically different in layout from the port of New Orleans; that the particular preferential berthing system obtaining at New Orleans creates a situation materially different from that at the other ports named, and that, as distinguished from the relatively few wharves at New Orleans, equipped with marginal tracks, the facilities at Mobile, Gulfport, and Lake Charles were designed and constructed very largely for the express purpose of marginal track loading. Upon the record in the instant proceeding the failure of the respondent carriers to adopt marginal track loading of hardwood lumber at New Orleans, or in lieu thereof to assume the shippers' expense of unloading, has not been shown to subject the port of New Orleans to undue and unreasonable prejudice or disadvantage, nor to give to the ports of Mobile, Gulfport, and Lake Charles undue preference or unreasonable advantage in

violation of section 16 of the shipping act, 1916, as alleged; nor to constitute an unjust or unreasonable regulation or practice in violation of section 17 of that statute as alleged. An order of dismissal will be accordingly entered.

Following the hearing conducted in this case and subsequent to service of tentative report similar to the foregoing, the complainant has filed motion to dismiss its complaint without prejudice. At this stage of the proceeding dismissal without prejudice is precluded by the provision of section 24 of the shipping act requiring entry of report stating conclusions, decision, and order in every investigation in which a hearing has been held.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 14th day of May, 1930

Formal Complaint Docket No. 51

Foreign Trade Bureau, New Orleans Association of Commerce *v.* Bank Line et al.

Whereas 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 conclusions and decision upon the evidence as presented and of record, which report is hereby referred to and made a part hereof; now, therefore, it is

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

By the board.

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

UNITED STATES SHIPPING BOARD

DOCKET NO. 32

RUSSELL S. SHERMAN, INC.

v.

GREAT LAKES TRANSIT CORPORATION

Submitted May 16, 1930. Decided June 4, 1930

McCabe & Clure for complainant.
Mayer, Meyer, Austrian & Platt for respondent.

SUPPLEMENTAL REPORT OF THE BOARD

In its report in this proceeding entered January 31, 1928 (1 U. S. S. B. 138), the board determined that as respects the complainant's shipments concerned the respondent carrier had charged in excess of its maximum rates on file, in violation of section 18 of the shipping act, 1916. In said report the board also found the complainant entitled to reparation in the amount of the difference between the rates paid and the respondent's maximum rates on file, with interest at 6 per cent per annum. The parties were directed to calculate and furnish the board with statement of the exact amount of said difference to be considered by the board in reference to payment by the respondent of reparation pursuant to section 22 of the shipping act.

Following a series of efforts by the parties to arrive at mutual understanding in the above connection, they now file for record and action as provided by the board's rules of practice formal itemized stipulation of fact agreeing to the amount of said difference in rates as $337.39. Upon all the facts of record, including those set forth and agreed to by the parties in said stipulation, the board finds the complainant entitled to receive from the respondent as reparation the amount of $337.39 and interest thereon at 6 per cent per annum. 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 4th day of June, 1930

Formal Complaint No. 32

Russell S. Sherman, Inc., *v.* Great Lakes Transit Corporation

Whereas on January 31, 1928, the board entered its report in the above-styled proceeding, which report is referred to and made a part hereof; and the parties having filed with the board pursuant to the rules of practice stipulation of fact agreeing to the amount of the difference between the rates charged and those determined by the board to have been applicable to complainant's shipments; now, therefore, upon all the facts of record in this proceeding, including those set forth and agreed to by the parties in said stipulation, it is

Ordered, That the respondent Great Lakes Transit Corporation pay unto the complainant Russell S. Sherman, Inc., on or before 60 days from date hereof, as reparation on account of unlawful transportation charges exacted, the sum of $337.39 with interest thereon at the rate of 6 per cent per annum computed from the respective dates of payment by complainant of said charges.

By the board.

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

UNITED STATES SHIPPING BOARD

DOCKET No. 54

EASTERN GUIDE TRADING COMPANY

v.

COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR (CYPRIAN FABRE) AND THE EXPORT STEAMSHIP CORPORATION

Submitted May 17, 1930. Decided June 11, 1930

Respondents' rate on used pianos New York to Constantinople not shown violative of section 17 of shipping act, 1916, as alleged. Complaint dismissed

G. O. Apikian for complainant.
Burlingham, Veeder, Fearey, Clark & Hupper for respondents.

REPORT OF THE BOARD

Complainant is a partnership engaged in the exporting business in New York City. One activity of the company is the exportation of used pianos in small quantities to Constantinople (Istanbul), Beirut, and other Levantine ports, where it appears the instruments are reconditioned and sold in competition with pianos from Germany and other foreign countries. By complaint filed under authority of section 22 of the shipping act, 1916, the exporting company alleges that the respondent carriers' rate on used pianos from New York to Constantinople, Beirut, and other Levantine ports is violative of section 17 of the shipping act, in view of lower rates on pianos of foreign origin which are shipped to and marketed in such ports by complainant's foreign competitors.

As evidence of the rates available to its foreign competitors, the complainant includes of record a letter addressed it by a piano-

manufacturing firm in Hamburg, Germany, which states that the rate from Hamburg to Constantinople is $11.50 per piano. The complainant also incorporates into the record a letter addressed it by the American consul at Constantinople, which contains statement that "the cost of shipping from Hamburg to Constantinople a piano weighing between 300 and 350 kilograms varies between 47 and 50 English shillings." This latter communication also states that "the actual freight is said to be from 26 to 30 shillings and the remainder to be accounted for by harbor dues, documents, insurance, and other incidentals."

The rate of the respondents from New York to Constantinople under attack is $18 per ton of 40 cubic feet [1] or 45 cents per cubic foot, amounting to approximately $40.50 per piano. Asserting that in view of foreign competition there is no possibility of it exporting used pianos from New York to Constantinople or to Beirut at this rate, the complainant urges that the board reduce the amount of such rate to substantially the level of the rate of indirect transshipment, carriers furnishing service from New York to Constantinople and Beirut via Hamburg. This indirect or transshipment rate is approximately 35 cents per cubic foot, or per piano, boxed and measuring about 90 cubic feet, $31.50. If transshipment were made at Marseille, complainant states the through freight per piano would be $34.30. The price to the complainant's foreign customer of a reconditioned, used piano, the complainant asserts, is $45 and of a used piano not reconditioned, $25. Freight charges are additional. The complainant shows that the respondents' rate under attack is applicable to either used or new pianos.

In defense the respondents stress that they do not serve the foreign competitors of the complainant, and contend that their services are not in any respect comparable with services from Hamburg or other European ports, nor with the indirect transshipment service from the United States referred to by the complainant. They show that in the operation of their services from the United States to Levant and Black Sea ports no cargo is lifted at European ports and that their rate under attack by the complainant in this proceeding is a special base-port rate adopted approximately three years ago in an endeavor to facilitate the movement of pianos from the United States to Levant and Black Sea ports. Such rate was previously $21, or $3 higher than the rate here assailed.

Section 17 of the shipping act, 1916, provides in part that no carrier within its purview shall demand, charge, or collect any rate or charge which is unjustly prejudicial to exporters of the United

[1] To Beirut an arbitrary of $3 in addition applies.

States as compared with their foreign competitors and that whenever the board finds that any such rate or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct the unjust prejudice.

In this proceeding the complainant shows that rates available to its foreign competitors located in foreign countries tend to place such competitors in a more advantageous position than its own. The complainant frankly concedes on the record that it does not expect to have the same rates as its foreign competitors, but urges that the respondents should be compelled by the board to reduce their rate to about the level of the indirect transshipment rate from New York to its foreign market, and expresses the belief that it would then be able to extend its business. In short, the complainant's position is that the respondent's rate is excessive in that it exceeds in amount the indirect transshipment rate.

The record is that in connection with the complainant's pianos moving via the indirect line transshipping at Hamburg, approximately 20 days are required to reach Hamburg from New York. Following a varying and indeterminate interval in that port awaiting the departure of a vessel for Constantinople, shipments arrive at Constantinople in about 20 days after leaving Hamburg. Due, as asserted by complainant, to the slow sailing time of the indirect vessels and the delay incident to transshipment, collection of complainant's money for its pianos is not completed for from three to four months. Via the respondents' direct services, the record shows, shipments are in transit from New York to Constantinople for a period of only 24 to 25 days. In respect to frequency of sailings, the respondents provide five sailings per month, as contrasted with two sailings per month available via the indirect transshipment line. While voluntarily expressing the superiority of respondents' services over the transshipment service, the complainant contends that the difference of approximately 10 cents per cubic foot, or $9 per piano, between the direct and transshipment rates is not representative of the difference in service, although why such difference does not fairly reflect the difference in cost of service to the respondents and value of service to the complainant is not particularized. Likewise, in showing that the respondents charge the same rate for the transportation of used as for the transportation of new pianos, the complainant's argument is restricted to the general proposition that instruments of the former description are less valuable than those of the latter. Admitting this difference in value to be ordinarily the fact, manifestly it does not follow that the respondents' rate is

unduly prejudicial to the complainant as compared with its foreign competitors merely because it applies alike to used and to new pianos from the United States.

In its exceptions to the tentative report in this proceeding the complainant offers certain additional evidentiary statements and figures. Following hearings where all parties have had full opportunity of presenting all relevant facts, as was the case in the instant proceeding, our consideration must, as a matter of fairness and expediency, be restricted to testimony and exhibits produced of record by the parties at the hearing. The additional statements and figures contained in the complainant's exceptions must therefore be excluded.

Analysis of all the facts and argument of record in this proceeding fails to show that the service available to complainant's foreign competitors is comparable either in value or cost of rendering to that of the respondents. Upon the record, therefore, respondents' rate assailed herein is not shown to be violative of section 17 of the shipping act, as alleged, and the complaint will be accordingly dismissed. An appropriate order will be entered.

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ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 11th day of June, 1930

Formal Complaint Docket No. 54

Eastern Guide Trading Company *v.* Compagnie Francaise de Navigation a Vapeur (Cyprian Fabre) and The Export Steamship Corporation

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 that the violation alleged has not been shown, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the board.

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

UNITED STATES SHIPPING BOARD

DOCKET No. 56

LEE ROY MYERS COMPANY

v.

MERCHANTS & MINERS TRANSPORTATION COMPANY

Submitted May 23, 1930. Decided June 4, 1930

Complainant charged in excess of applicable maximum rates on file. Reparation awarded.

Thomas E. Grady & Company, Inc., for complainant.
H. P. Willmer and Frank W. Gwathmey for respondent.

REPORT OF THE BOARD

The complainant, Lee Roy Myers Company, is a corporation engaged in the manufacture of cigars at Savannah, Ga. The respondent Merchants & Miners Transportation Company is a common carrier by water in interstate commerce and subject to the applicable regulatory provisions of the shipping act, 1916.

The complainant alleges that between the dates of August 23, 1927, and August 31, 1928, it caused to be transported via the respondent carrier's line various shipments of empty tin cans ranging in weights from 3,669 to 5,264 pounds, from Baltimore, Md., to Savannah, Ga., and that the freight charges assessed and paid on basis of the first-class rate of 99 cents [1] per 100 pounds applicable to tin cans in less-than-carload quantity lots, instead of on basis of the respondent's carload quantity rate on tin cans of 34 cents per 100 pounds, minimum weight 10,000 pounds, were in excess of the maximum rate on file with the board, in violation of section 18 of the shipping act. In support of this allegation complainant relies on rule 15 of the southern classification governing the respondent's tariff which provides that charges on a less-carload quantity shipment shall not exceed the charges on the same shipment on basis of the carload

[1] $1 after Jan. 15, 1928.

quantity rate and the minimum carload quantity weight. The board is requested to award reparation.

In its answer the respondent denies the complainant's allegation on the ground that the complainant's shipments did not consist of cans. The respondent's contention is that the shipments were tin cigar boxes and were therefore not entitled to the application of its commodity rate for the transportation of tin cans. Shortly after the last of the 38 shipments herein concerned was carried, the respondent changed its tariff to apply the commodity rate of 34 cents to carload quantity shipments of tin boxes as well as to carload quantity shipments of tin cans. The sole question at issue in this case is whether the complainant's shipments made prior to such tariff change consisted of cans or boxes. If the former, the complainant was overcharged as alleged.

At the hearing complainant introduced in evidence one of the containers involved which was acknowledged on behalf of both parties to be representative of all of the containers comprising all of the complainant's 38 shipments concerned in this proceeding. It is cylindrically shaped, made of sheet metal, tinned, approximately 5 inches high, 5½ inches in diameter, and 17 inches in circumference, with bottom and a removable top. The bottom has four small holes or perforations, and is fastened to the cylinder portion by what appears to be a rolled seam. The top or lid is constructed so that it fits down snugly for about a half inch over the outer surface of the cylinder section in the same way that the top fits down on a baking-powder, coffee, or refuse can. This container is used for the packing, preservation, and display of cigars, and the name of the cigars to be placed therein is lithographed on the outside, together with other descriptive matter.

The Baltimore shipper from whom the complainant purchased the empty containers described them on 27 of the bills of lading exhibited as boxes rather than as cans. This, the record demonstrates, was an inadvertence and was due to the fact that the shipper, lacking knowledge of descriptive shipping terms, made use of its private form of bill of lading which contained the printed words "tin boxes." As respects each of 10 shipments made during the latter part of the period covered by the complaint, the bills of lading exhibited show the shipper billed the commodity as cans. Also, on all of its invoices covering all of the 38 shipments this shipper described the containers as cans, and the evidence shows that the containers were purchased by the complainant as cans for cigars and when sold were termed cans of cigars.

The respondent shows that stamped on the bottom of each container was the customary printed notice required by United States

Treasury Department regulations, forbidding the reuse of "this box" for cigars, or the revenue stamp thereon, or to remove contents of "this box" without destroying the revenue stamp to be affixed after the container is packed with cigars. The record is, however, that this notice, as used in reference to cigar containers, provides no criterion for determining the character of the container. The respondent also suggests that the empty tin containers comprising the complainant's shipments were boxes and not cans for the reason that the four small holes or perforations punched in the bottom thereof precluded their use for liquids. It is manifest, however, that the punching of holes or perforations in a can does not convert such container into a box.

The complainant conclusively shows that the containers comprising its shipments were and are commercially known as and called cans. Their appearance and physical characteristics as shown by the representative container in evidence clearly bear out the correctness of this trade description. In no respect does the respondent's evidence present anything showing the complainant's shipments were other than cans entitled to the rate of 34 cents per 100 pounds applicable under rule 15 of the classification as provided by the respondent's tariff on file.

Upon consideration of all the facts of record and the respondent's exceptions to the tentative report, the board concludes and decides that the charges exacted of the complainant on the shipments herein concerned were in excess of the respondent's maximum rate on file, in violation of section 18 of the shipping act, 1916, as alleged. The board finds that the complainant made the 38 shipments as described, paid and bore the charges thereon at the charges herein found unlawful, and has been injured in the amount of the difference between the charges paid and the maximum carload commodity rate of 34 cents per 100 pounds, minimum weight 10,000 pounds, applicable under rule 15 of the classification, with interest. The board further finds that upon the record the amount of said difference is $478.24, which sum together with interest will be ordered paid the complainant as reparation.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 4th day of June, 1930

Formal Complaint Docket No. 56

Lee Roy Myers Company *v.* Merchants & 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, decision and findings of fact, which said report is hereby referred to and made a part hereof; now, therefore, it is

Ordered, That the respondent Merchants & Miners Transportation Company pay unto the complainant Lee Roy Myers Company on or before 60 days from date hereof, as reparation on account of unlawful transportation charges exacted, the sum of $478.24 with interest at the rate of 6 per cent per annum computed from the respective dates of payment by complainant of said charges.

By the board.

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

UNITED STATES SHIPPING BOARD

Docket No. 60

ATLAS WASTE MANUFACTURING CO.

v.

THE NEW YORK & PORTO RICO STEAMSHIP CO. AND BULL INSULAR LINE, INC.

Submitted December 10, 1930. Decided January 14, 1931

Rates not shown unjust and unreasonable in violation of Section 18 of Shipping Act, as alleged. Complaint dismissed

Greenebaum & Levy for complainant;
Roscoe H. Hupper and *William J. Dean* for respondents.

REPORT OF THE BOARD

The complainant is a New York corporation engaged in the manufacture of filling material for mattresses, quilts, and comfortables, and of cotton wiping waste. By complaint duly filed under authority of Section 22 of the Shipping Act, 1916, it alleges that the rates of the respondents on shipments of cotton waste from New York to San Juan and Aguadilla, Porto Rico, are unjust and unreasonable in violation of Section 18 of the Shipping Act. Enforcement by the Board of just and reasonable rates for the future is prayed.

Complainant's shipments here concerned are composed of cotton waste of two grades, i. e., filling material and wiping waste, selling in New York City for 4 and 7 cents a pound, respectively. This commodity is shipped by the complainant in compressed bales measuring from 45 to 50 cubic feet and weighing from 575 to 625 pounds. For the transportation of said commodity so shipped from New York to San Juan, a distance of 1,399 miles, and to Aguadilla, 68½ miles from San Juan, the respondents' rates charged are respectively 17 cents per cubic foot.

The complainant's testimony is that on similar shipments of cotton waste to various other destinations, and particularly to Cuban ports, rates of carriers other than the respondents are assessed on a weight basis. The complainant emphasizes the low value of its commodity, and establishes upon the record the steady movement of such commodity being shipped by it via the respondents' lines to Porto Rico. According to the record the volume of the complainant's consignments is from 20 to 25 bales a week, or, in tonnage, from 5 to 7½ tons a week. This tonnage is alternated weekly as between the two respondents, and is testified to constitute the whole of the cotton waste movement from the United States to Porto Rico. In order to meet lower C. I. F. quotations of a foreign competitor, it is testified, the complainant during the past two years has absorbed continuing losses on its shipments of cotton waste to its largest customer in San Juan, where the bulk of its product moves and such losses are averred to be attributable to the higher freight rate charged the complainant by the respondents. In support of this the complainant cites an instance two years ago where a shipment of cotton waste moved from Germany to San Juan at a freight rate of 81¢ per 100 pounds and avers that the current freight rate from Germany to Porto Rico "runs between 75 cents and 90 cents a hundred" pounds. The complainant, however, has failed to establish of record the relative values of cotton waste in Germany and in New York. Reasonableness of rates, of course, is not to be gauged by the ability or inability of shippers to market their products with profit.

The complainant shows that cotton waste baled identically to that which it ships via the respondents' lines to Porto Rico is continuously shipped by it from New York to Havana at the weight rate of 70 cents a hundred pounds. Four carriers other than the respondents, it is shown, are and have been engaged in such service at that rate for a number of years. The complainant also shows that for much greater distances than from New York to Porto Rico transportation rates on its commodity are lower, e. g., to United Kingdom and European ports from 60 cents to $1 per one hundred pounds. Nothing is presented, however, tending to show the operating and traffic conditions prevailing in the trades indicated, or that the circumstances surrounding such trades and the carriers engaged therein are comparable to the respondents and to the New York-Porto Rico trade. The probative value of the complainant's evidence in this connection is therefore essentially impaired.

The percentage relationship of the rates on cotton waste attacked in this proceeding to the value of that commodity is reviewed by the complainant. Value is an important element of rate making, but cost of service is also a factor, and hence it is often true that charges

for transporting a cheap article are greater in proportion to its value than charges for transporting a high grade article. Nothing is presented respecting the relative percentages which the rates on other commodities carried by the respondents to Porto Rico bear to their values, nor is there furnished by the complainant any valuation figures of any kind except as to cotton waste and except as to northbound shipments of old rags. The undisputed testimony of the respondents is that both with regard to character of cargo and operating conditions their south and northbound services are entirely different. Likewise concerning the southbound transportation here involved, nothing is adduced by the complainant relative to the important factors of space displacement and volume of movement in connection with any commodity except cotton waste. The record shows, however, that the transportation of the complainant's shipments to San Juan and Aguadilla is not attended by any special difficulty or problems, and that the risk incurred in its carriage is not high.

Where as in the instant case issue is raised as to the justness and reasonableness of rates and a violation of the regulatory statute is charged, the burden of proof manifestly rests upon the complainant. Clearly in the absence of definite evidence of comparative volumes of movement, values, bulk, and other established elements recognized as requisite for the necessary tests and rate analysis, there can be no proof by the preponderance of evidence such as is required to sustain the complainant's allegations.

After due consideration of all the facts presented of record in this proceeding we conclude and decide that the rates assailed in this proceeding have not been shown to be unjust and unreasonable in violation of Section 18 of the Shipping Act, 1916, as alleged. The complaint will be accordingly dismissed.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 14th day of January, 1931

Formal Complaint Docket No. 60

Atlas Waste Manufacturing Co. v. The New York & Porto Rico Steamship Co., and Bull Insular Line, 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 that the violation alleged has not been shown, which said report is hereby referred to and made a part hereof; now, therefore, 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. 45

ASSOCIATED JOBBERS AND MANUFACTURERS

v.

AMERICAN-HAWAIIAN S. S. CO., ARGONAUT S. S. LINE, ARROW LINE, CALIFORNIA & EASTERN S. S. CO., CALMAR S. S. CORP., DIMON S. S. CORP., DOLLAR S. S. LINE, ISTHMIAN S. S. CO., LUCKENBACH S. S. CO., INC., MUNSON-McCORMICK LINE, OCEAN TRANSPORT CO., INC., PANAMA MAIL S. S. CO., PANAMA PACIFIC LINE, QUAKER LINE, TRANSMARINE CORP., WILLIAMS S. S. CO., INC.

Submitted December 16, 1930. Decided January 14, 1931

Ernest E. Baldwin, Argonaut Steamship Line; *Charles S. Belsterling*, Isthmian Steamship Co.; *R. S. Sawyer*, Associated Jobbers and Manufacturers of Los Angeles, San Francisco Chamber of Commerce, Tacoma Chamber of Commerce, Western Confectioners' Traffic Association; *Seth Mann*, San Francisco Chamber of Commerce; *S. J. Wettrick*, Seattle Chamber of Commerce, Tacoma Chamber of Commerce; *H. R. Brashear*, Los Angeles Chamber of Commerce; *E. G. Wilcox*, Oakland Chamber of Commerce; *I. N. Wolfe*, Retail Furniture Association of California; *E. D. Rapp*, F. W. Woolworth Co.; *W. R. Moore*, New England Manufacturing Confectioners' Association, Eastern Confectioners' Traffic Bureau, National Licorice Co., Columbia Mills, Inc.; *Frank A. Parker*, American Brass Company, American Linseed Company, American Linseed Company of California, Best Foods Company, Inc., Bridgeport Brass Company, Brown Company, Chapman Valve Manufacturing Company, Cincinnati Soap Company, Columbia Mills, Inc., Crystal Tissue Company, Drackett Chemical Company, Eastern Confectioners' Traffic Bureau, Fanning Bread and Pickle Company, Frank Tea and Spice Company, Fuller Brush Company, Griswold Manufacturing Company, Hazard Wire Rope Company,

New England Manufacturing Confectioners' Association, Okonite Company, Oswego Falls Corp., Owens Bottle Company, Parsons Ammonia Co., Rome Brass and Copper Company, S. C. S. Box Company, Sperry & Hutchinson Company, Troy Sunshade Company, United States Rubber Company, Walworth Company, West Virginia Pulp and Paper Company, Witt Cornice Company, Wood Flong Corp.: *R. H. Hupper* and *Herman Phleger*, American-Hawaiian S. S. Co., Arrow Line, California & Eastern S. S. Co., Dollar S. S. Line, Luckenbach S. S. Co., Inc., Munson-McCormick Line, Ocean Transport Co., Inc., Panama Mail S. S. Co., Panama Pacific Line, Quaker Line, Transmarine Corp., Williams S. S. Co., Inc.

REPORT OF THE BOARD

Upon the evidence and argument presented at the original hearing in this case the Board determined in its report (1 U. S. S. B., 161, 168) that the according by the respondents of the same rates and/or charges on carload quantity shipments from the Atlantic Coast which are split delivered at from two to six Pacific Coast ports as on similar carload quantity shipments delivered solid at one Pacific Coast port constitutes undue and unreasonable preference and undue and unreasonable prejudice between persons and descriptions of traffic in violation of Section 16 of the Shipping Act, 1916. All respondents were by order directed to adjust their rates and/or charges to adequately reflect the substantial additional service performed and expense incurred by them as shown by the evidence to be incident to split delivering carload quantity shipments at two or more Pacific Coast ports over their service and expense in connection with similar carload quantity shipments solid delivered at one Pacific Coast port.

Following the report and order noted above, the respondent Isthmian and Argonaut lines filed petitions for rehearing, asserting they could not comply with the Board's order for the reason that as to them "no substantial or any additional service is performed, or any expense incurred" in split delivering carload quantity shipments from the Atlantic Coast at two or more Pacific Coast ports over their service and expense in delivering similar carload quantity shipments solid at one Pacific Coast port, and praying opportunity to submit further evidence respecting this contended absence of substantial additional service or expense. The Board suspended its previous order and granted these petitions for rehearing, preserving to all parties full opportunity of cross-examination and rebuttal.

The regular loading ports of the Isthmian Line on the Atlantic Coast are Portland, New York, and Baltimore. The regular Atlantic

loading ports of the Argonaut Line are New York and Baltimore. As testified by these carriers at the rehearing, from 60 to 70 per cent of the Isthmian's westbound intercoastal tonnage moves out of New York,[1] and about 70 per cent of the Argonaut's tonnage moves out of Baltimore. With respect to their intercoastal operations from the Atlantic Coast, however, the two petitioners testify at length only as to the port of New York. Of the freight they there receive, the record shows, 60 per cent arrives by *truck*, 34 per cent by *lighter*, and 6 per cent by *rail*. (1) Goods reaching the dock by truck are testified to be unloaded by the shipper. Convenient to each hatch of the ship there is a pile designated by the steamship company for each port of destination. If a carload quantity is to be split delivered between ports the truckman is instructed by an employee of the steamship company to deposit each segment in its proper port pile on the dock. One of the steamship company's clerks is present during the entire unloading of the truck to see that the truckman places the freight in its proper pile, to make the necessary checking to insure that the steamship company receives what it receipts for and that the freight is handled the way the steamship company desires it handled. (2) Relative to cargo arriving by lighter the obligation of the lighterman terminates with the placing of the cargo within reach of ship's tackle. Checking clerks of the steamship company are stationed on the lighters to check the cargo as each slingload is removed. In ordering cargo to the lighter for lighterage to a steamer, it is customary in the port of New York to designate such cargo according to port marks. Consequently, lighter cargo commonly arrives as shipside segregated as to ports of destination; and, further, the petitioners testify, unless the cargo when brought to shipside is so segregated the lighterman bears the expense of that work. Where such work on the lighter itself is impracticable because of lack of space, the freight is discharged by the lighterman upon the steamship company's dock, and by him segregated into respective piles under the direction of the steamship company's dock foreman, a checker of the steamship company being present during the entire operation. Lighter cargo is also discharged upon dock pending delayed arrival and readiness of steamer to load in instances where lighter demurrage charges may be thus obviated. (3) Freight arriving by rail at the New York dock of the Isthmian and Argonaut lines is unloaded by stevedores employed by the steamship companies, and by these stevedores segregated on the dock in piles according to ports of destination. For this work the steamship lines pay the stevedores a flat rate per man per hour, but on carload quantity shipments bill the shipper or consignee for this service at the rate of 50 cents a ton whether the shipment is to

[1] Approximately 25 per cent of this tonnage out of New York is proprietary cargo.

be delivered solid or split between ports, and at the rate of $1 a ton for less-than-carload shipments.

On all cargo however received these two carriers accept shipper's weight, but not shipper's count. Symbols and colored markings are by the carrier placed on enough packages to prevent a longshoreman from picking up a case from the wrong pile, thus leading to wrong stowage in the ship. In loading the ship effort is made to so place the cargo that easy delivery may be effected at the various ports of unloading, and so that all hatches can be worked simultaneously. The cargo for a particular port is not assigned to one particular hold but is distributed throughout the ship. Upon cross-examination it is testified by the petitioners that, in addition to the stevedores, they have on the dock, clerks, a dock foreman, checkers, and a man from the steamship company's office. In the words of petitioners' witness, "These employees are charged with responsibility of seeing that this cargo is properly separated and properly marked."

When a vessel leaves the Atlantic Coast, stowage plans are forwarded to the carriers' agents at the Pacific Coast ports of call showing where the cargo for each port is stowed in the vessel. These agents at the Pacific Coast ports also receive copies of the manifests. The stowage plan does not show each shipment separately but is a rough plan of the vessel, and by colors or other designation indicates the location of the cargo for each of the different ports of discharge. The manifest specifies each shipment for each destination, and freight bills, delivery orders, and arrival notices are made up therefrom. A copy of this manifest is also furnished the Pacific Port Service Corporation, which organization operates at all Pacific Coast ports, furnishing supervisory and clerical service on the docks, for which it charges the steamship company a flat rate per ton of cargo based upon cost plus profit. Copy of the stowage plan is sent to the stevedore under contract with the steamship company to discharge the ship. The cargo is usually taken out of the ship in full slingload lots without regard to consignee, and is then by the stevedores, under the direction of the Pacific Port Service Corporation, assorted on the dock in piles[2] arranged according to consignee. When a shipment is finally removed from the dock by the consignee a clerk of the Pacific Port Service Corporation checks it out. Packages are counted, numbers on cases are verified against corresponding numbers on bills of lading, and a receipt taken.

It is the repeated contention of the Isthmian and Argonaut lines that nowhere in connection with the operations detailed above do

[2] Very small lots of cargo, collectively termed "plunder," are placed in a single pile and arranged in such pile alphabetically according to consignee.

they have any substantial additional service or expense in effecting split deliveries of carload quantity shipments between two or more Pacific Coast ports over the service performed and expense incurred in handling carload quantities solid delivered at one port. The majority of the respondents, however, continue to support the complainant in its position that as to both the petitioners and themselves there is such substantial additional expense and service. These other respondents, the complainant and supporting interveners, confirm through their own witnesses and by cross-examination that it is relatively more expensive to handle small than large units or lots.[3] By a Pacific Coast contracting stevedore of demonstrated extensive experience, it is testified on behalf of complainant that from a stevedoring viewpoint a carload quantity shipment split delivered between Pacific Coast ports "automatically becomes less-than-carload freight." Modern stevedoring equipment, it is affirmed, effects a greater economy in the handling of large than in the handling of small units or lots, and the larger the unit the more efficient the labor aboard ship. A freer flow of cargo to the wharf results, with a corresponding saving in time on the wharf itself. "On the general run," it is also testified by witness for complainant, stevedores unload a carload quantity shipment and place it in the proper pile on the dock "two and one-half times" as fast as they can a like quantity of cargo consisting of a number of units of lesser weight. Under cross-examination the Pacific Coast contracting stevedore for the Isthmian and Argonaut lines acknowledges that it takes longer and is more expensive to distribute cargo in small lots than to place the same amount of cargo in a single pile, and that the more cargo under a particular consignee's name the less the cost of discharge. As the split delivering of carload quantity shipments between ports makes for a greater number of small lots of cargo to be distributed at each of the ports, manifestly this witness's testimony bears out that the time consumed and expense incurred in connection with stevedoring are relatively increased by reason of such split delivering. Again, witness for the Isthmian and Argonaut lines admits that in connection with discharging cargo there is as much documentation or office work on a quarter of a carload quantity as on a full carload quantity and that with respect to a carload quantity split delivered at four ports on the Pacific

[3] As shown by petitioners, in some instances certain of the individual segments of carload shipments split delivered between ports have been so large in weight quantity as not strictly to be characterized as "small lot" or "small unit" cargo. However, the fact, as shown by petitioners' testimony and exhibits, that a great many of such segments are smaller than a slingload, and, further, the reason why shipments for split delivery between ports are made, leave no doubt that generally the individual segments of such shipments are clearly within the designations "small lots" and "small units" as used by the witnesses of the complainant and of the petitioners.

Coast there is four times as much office work as when delivered solid at one port.

The record of rehearing is corroborative of the record of the original hearing that as to the operations of all of the respondents, including those of the Isthmian and Argonaut lines, it takes materially longer and is substantially more expensive to the carrier to handle and deliver a carload quantity of cargo in segments between ports than to handle and deliver a carload quantity for one consignee at one port. It is true as reiterated by the Isthmian and Argonaut lines upon the rehearing that as to cargo arriving at New York by truck and lighter the manual work of segregating carload quantities into segments for split delivery is not performed by their own employees. In the case of freight arriving by truck, however, this work of segregation is both supervised and checked by the steamship company; while the segregation of freight arriving by lighter, although commonly performed before the lighter reaches the ship, is verified and the cargo checked against the manifest by steamship clerks. In the case of cargo reaching the New York dock by rail, the ship's stevedores unload the cars and make the necessary segregation for split delivery between ports.[4] Since for the unloading of a car that is to be split delivered between ports the steamship company assesses the shipper or consignee the same arbitrary charge of 50 cents a ton as is assessed for the unloading of a solid carload, it is evident that no charge is made the shipper or consignee for the not inconsiderable manual work of segregation in this instance performed by the steamship company. At the other Atlantic ports served by these two respondents, the great majority of tonnage reaches their docks by rail. The petitioning carriers do not attempt any showing that in such instances they do not directly bear the expense of the manual as well as the supervisory segregation in connection with carload quantities to be split delivered between ports. In this relation and as respects Baltimore, from which port 70 per cent of its tonnage moves, and of which said 70 per cent 80 per cent is received in railroad cars, the Argonaut Line's witness confirms that the railroad in unloading cars does not separate the cargo according to ports of destination, but preserves the identity of the car on the dock.

That the problems of stowage appreciably increase with an increase in the number of ports to which an individual shipment is to be delivered is obvious. And, when the unloading and delivery at the ports of destination are considered, we find conclusive evidence destructive of the contention of the petitioners. The record of the rehearing at San Francisco contains much testimony of substantial

[4] One out of every six cars received at New York by petitioners is for split delivery between ports.

extra labor and expense at Pacific Coast ports due to the making of split deliveries between such ports. Among them is specific admission by witness for the petitioners, under cross-examination, that at Los Angeles [5] there is just as much work and expense involved in connection with a segment of a carload quantity shipment split delivered between ports as there is with a less-carload shipment of the same weight.[6]

In addition to the extra work and expense already detailed, there is extra documentation service and expense. The petitioners have never denied this, but have contended such expenditure to be negligible. Similarly, as in the record of the original hearing, the record of the rehearing does not sustain this contention. The evidence is clear that carload quantity shipments when split delivered between ports require additional bills of lading, cross referencing from one bill of lading to another, extra entries and notations on the ship's manifests and on the carrier's recapitulation records, additional "spot-book" entries, additional notices of arrival to and receipts from consignees, and additional freight bills and delivery orders. In no sense can this additional documentation service and expense be considered of negligible character. Of pertinence in this connection and here covered in the margin are two provisions of the tariff which the petitioners follow, and from which it is seen that paper service and expense thereof is recognized as something more than negligible in instances where the documentation work required is manifestly much less than in the case of split deliveries.[7] The position taken on behalf of the petitioners that the cost of the extra documentation service for split deliveries is covered by the minimum bill of lading charges instanced below is clearly untenable, for, as testified by petitioners, only shipments aggregating the minimum carload quantity weight are extended free split delivery. In no case of a carload quantity shipment split delivered between ports, therefore, could a minimum bill of lading charge be applicable, unless the petitioners were to assess the minimum bill of lading charges on underweight segments of such split shipments, and thus, contrary to their evidence, regard such shipments not as

[5] Where approximately 9 per cent of Isthmian-Argonaut general cargo is split delivered cargo.

[6] Petitioners' less-carload rates are in most cases 50 cents per 100 pounds higher than their corresponding rates for carload quantity shipments split delivered between ports.

[7] Rule 32, section (a), Westbound Minimum Rate List No. 4, provides that where reconsignment of a shipment "involves only a change in the name of the consignee or consignor, a charge of $1 per bill of lading for each bill of lading surrendered or reissued will be made for the alteration made in the billing." Rule 8 of the same tariff provides various minimum bill of lading charges ranging from $1.25 to $3, depending on whether shipment moves under commodity or class rate.

carload quantity units but as aggregations of less-than-carload quantity shipments.

Exhaustive examination of the petitioners' stevedoring contracts and of all of their other evidence bearing on their costs furnished by them at the rehearing fails to disclose any ground for their position that the split delivering between ports here under attack by the complaining parties is not of material expense to them. None of such evidence in any manner shows or indicates that in this connection the carriers itemize or separate the different classes of cargo, but on the contrary it is shown that they pay for stevedoring and for supervisory and clerical services upon generalized and averaged bases for all cargo handled for them. In short, the stevedoring contracts and other cost information presented at the rehearing merely corroborate the testimony at the original hearing that stevedoring is paid for by the steamship companies at a flat rate irrespective of whether the stevedores are handling solid, split, or less-than-carload shipments, and that the same method also controls in the payment of supervisory and clerical services. As other parties to the proceeding point out,[3] it does not follow from a display of such methods of payment that substantial additional expense to the petitioners does not result from the substantial extra work involved in split delivering between ports. As affirmed by the representative of the stevedoring corporation which under contract performs the stevedoring of the Isthmian-Argonaut lines at all Pacific Coast ports, the different classes of cargo as well as the stevedore costs are "commingled," and the rates in the contracts introduced in evidence by the petitioners are based "on how much it costs to take the cargo out of a vessel per ton and distribute it on the dock at a point designated." The stevedore does not know "whether it is split delivery, less-than-carload, or carload" which he handles, and, the witness affirms, in the ascertainment of the rate charged the steamship companies, the stevedoring costs are "just averaged straight through. * * * We don't know whether it is a part of a split car or a carload, or anything else. We get the same pay per ton in all cases." It is further of record in this proceeding that the petitioners' stevedores, both on the Atlantic and on the Pacific Coast, do much overtime work for the petitioners for which they receive extra compensation. Similarly, it is the testimony of a representative of the Pacific Port Service Corporation appearing as witness for the petitioners that the rate charged petitioners by that corporation for supervisory and clerical services

[3] Including the other respondents who aver that solely because the Isthmian-Argonaut lines perform the assailed split delivery service free of charge they too must do so against the best interests of themselves, shippers, and consignees. (1 U. S. S. B., 165.)

is based on its own cost plus a profit, and that it costs the corporation "more to handle some kinds of cargo than other kinds of cargo." This corporation, it is testified by witness for petitioners, also performs much overtime work for the petitioners for which it receives extra compensation. The record is that during the past several years the rates charged the petitioners on the Pacific Coast for stevedoring and for supervisory and clerical services have not changed; also that during such period, except for approximately three months when less-carload rates were exacted, carload quantity shipments have been split delivered between ports by the petitioners either, as now, without charge, or at a charge of 10 cents per 100 pounds. Manifestly, as the stevedoring, supervisory, and clerical costs to the petitioners are averaged on the total cargo, such averaged costs are substantially greater by reason of inclusion in their calculation of the free split delivery cargo, which cargo it is clear from the evidence requires substantially more service and time than carload quantity cargo delivered solid at one port to one consignee, and which in important aspects is fairly comparable to less-carload quantity cargo.

In their intercoastal operations the Isthmian and Argonaut lines, along with the other respondents, have themselves recognized in a number of ways the added expense incident to the substantial extra work involved in handling cargo in smaller units. Thus, as shown by the record, they assess their rates on a so-called carload and less-than-carload basis with an average spread between the two classes of rates of 50 cents per 100 pounds. As heretofore noted, their rules provide for a minimum bill of lading charge of not less than $1.25. At various times in the past they have exacted charges for the particular split delivery service here under attack in this proceeding ranging from 10 cents a hundred pounds to the assessment of the full less-than-carload quantity rate. At the present time, where a carload quantity is to be delivered on the dock at one Pacific Coast port split into segments according to submarks, they assess 10 cents per 100 pounds over and above the carload quantity rate for such single-port split-delivery service. Similarly, where shipments each consisting of a less-carload quantity are consolidated at the Atlantic Coast into an aggregated carload, a charge of 10 cents per 100 pounds over and above the carload rate is assessed for such consolidation service. From the detailed evidence now before the Board respecting the service which the respondents perform in split delivering carload quantity shipments between ports, it is patent that the amount of extra labor and expense involved therein is at least equivalent to the extra labor and expense incident to the split delivering at one port for which a charge of 10 cents per 100 pounds over the

carload rate is exacted. Each of the two split delivery services, as well as the consolidation service at the port of shipment, permits the shipper or consignee to ship or receive a less-carload quantity without payment of the less-carload quantity rate. In this connection much evidence was adduced at the original hearing to the effect that the split delivery service between ports is of great value to the shipper, and as noted in the Board's report of December 4, 1929, supra, a number of the shippers concerned expressed themselves as agreeable to a charge for the service over and above the carload quantity rate. Value of service to a shipper is, of course, one of the recognized factors for consideration. Other evidence at the original hearing to the effect that the free split delivery service has not materially increased the traffic of the petitioners remains uncontroverted upon the rehearing, the testimony of the petitioners at the rehearing being that their tonnage as a whole is seriously decreasing. In this relation the record in this complaint proceeding is convincing that although there has been some increase in the movement of finished products under free split deliveries there has also been an accompanying substantial decrease in the movement of raw materials formerly manufactured on the Pacific Coast into finished products.

From extended consideration of all of the evidence, exceptions and argument upon the record of rehearing in the instant complaint proceeding it is clear that contrary to their contentions the Isthmian and Argonaut lines, as well as the other respondents, in fact perform substantial additional service and incur substantial additional expense in split delivering carload quantity shipments at two or more Pacific Coast ports over their service and expense in connection with similar carload quantity shipments which they deliver solid at one Pacific Coast port, and we so conclude and decide. Our order of December 4, 1929, prescribed in general terms the adjustment necessary to remove the undue prejudice and preference which our report of that date found to exist. In view, however, of the asserted inability of the two petitioners to determine the adjustment necessary to satisfy that order, upon the whole record we now decide and declare the measure of adjustment necessary to be made by the respondents to effect the removal of that undue prejudice and preference.

Upon the record of hearing and rehearing in this proceeding and pursuant to authority vested in the Board by Section 22 of the Shipping Act an order is accordingly entered directing each of the respondents to remove the undue and unreasonable prejudice and undue and unreasonable preference in violation of Section 16 of that statute determined in our report of December 4, 1929, to exist, by adjusting its rates and/or changes so that in the future for or

in connection with transporation of Atlantic Coast carload quantity shipments solid delivered at one Pacific Coast port it shall exact compensation no higher than 10 cents per 100 pounds below that which it contemporaneously exacts for or in connection with transportation of similar carload quantity shipments split delivered between Pacific Coast ports.

Argument on behalf of the Isthmian line upon exception that the adjustment here prescribed is not justified because it "represents the total out-of-pocket cost of stevedoring" of that carrier is without point. As established by the evidence, the stevedoring rates paid by this carrier are from $1.90 to $2.05 per ton[9] according to port, or from 9½ cents to 10¼ cents per 100 pounds. These rates are arrived at by the stevedores by lumping the carrier's solid, split and less-carload cargo, and are therefore averaged rates. Similarly as in the case of supervisory and clerical cost, and as in this report heretofore recognized, the amount of such averaged rates or cost to the carrier for stevedoring is substantially greater by reason of the greater service and time incident to handling carload quantity cargo split delivered between ports than to carload quantity cargo delivered solid to one consignee at one port. Further, as is amply apparent from the foregoing report, the adjustment prescribed is not predicated upon the factor of stevedoring alone. From a review of all of the evidence produced at the hearing and rehearing, and of the exceptions and argument presented, we are convinced that the adjustment here prescribed and ordered fairly reflects as to each of the respondents, including the petitioners, the change necessary to remove the undue and unreasonable prejudice and prefernce complained of in this proceeding and determined by us to exist.

It is not seen that in the public interest the request of the Argonaut Line for further and oral argument should be granted. Such request is therefore denied.

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[9] These figures do not include cost to petitioner of the overtime stevedoring shown to be performed for it.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 14th day of January, 1931

Formal Complaint Docket No. 45

Associated Jobbers and Manufacturers v. American-Hawaiian Steamship Company et al.

Whereas upon application by two of the respondent carriers in the above-entitled proceeding, namely, Isthmian Steamship Company and Argonaut Steamship Line, rehearing has been duly conducted 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 as provided by Section 24 of the Shipping Act, 1916, containing its conclusions and decision, which said report, and related report of the Board entered in this proceeding under said Section 24 on December 4, 1929, are hereby referred to and made a part hereof; now, therefore, in the premises and under authority of Section 22 of the Shipping Act, 1916, it is

Ordered, That the carriers respondent in this complaint proceeding, namely, American-Hawaiian S. S. Co., Argonaut S. S. Line, Arrow Line, California & Eastern S. S. Co., Calmar S. S. Corp., Dimon S. S. Corp., Dollar S. S. Line, Isthmian S. S. Co., Luckenbach S. S. Co., Inc., Munson-McCormick Line, Ocean Transport Co., Inc., Panama Mail S. S. Co., Panama Pacific Line, Quaker Line, Transmarine Corp., and Williams S. S. Co., Inc., and each of them, shall on or before thirty (30) days from date hereof cease and desist and thereafter abstain from the undue and unreasonable prejudice and undue and unreasonable preference in violation of Section 16 of the Shipping Act, 1916, determined in this proceeding to exist, by adjusting its rates and/or charges so that in the future for or in connection with transportation from Atlantic Coast ports of carload quantity shipments solid delivered to one consignee at one Pacific Coast port each of said respondent carriers shall exact compensation no higher than ten (10) cents per one hundred (100) pounds below that which it contemporaneously exacts for or in connection with the transportation of similar carload quantity shipments from Atlantic Coast ports split delivered between Pacific Coast ports.

By the Board.

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

UNITED STATES SHIPPING BOARD

Docket No. 62

YORK COUNTY CIGAR MANUFACTURERS' ASSOCIATION

v.

AMERICAN-HAWAIIAN STEAMSHIP CO., ARGONAUT STEAMSHIP LINE, ARROW LINE, DIMON STEAMSHIP CORP., DOLLAR STEAMSHIP LINE, HAMMOND LINE, INC., ISTHMIAN STEAMSHIP CO., LUCKENBACH STEAMSHIP CO., INC., MUNSON-McCORMICK LINE, NELSON STEAMSHIP CO., PANAMA MAIL STEAMSHIP CO., QUAKER LINE, TRANSMARINE CORP., AND WILLIAMS STEAMSHIP CO., INC.

Submitted December 19, 1930. Decided January 14, 1931

Rates of respondents on cigars not shown unjust or unreasonable, nor to subject complaining parties to undue or unreasonable prejudice and disadvantage, in violation of Sections 18 and 16 of Shipping Act, 1916, as alleged. Complaint dismissed.

Bernard N. Gingerich, York County Cigar Manufacturers' Association, and B. N. Gingerich & Associates; *Frank Lyon*, American-Hawaiian S. S. Co., Arrow Line, Dollar S. S. Line, Luckenbach S. S. Co., Inc., Munson-McCormick Line, Nelson S. S. Co., Panama Mail S. S. Co., Quaker Line, Williams S. S. Co., Inc., Argonaut S. S. Line, *Charles S. Belsterling*, Isthmian S. S. Co.; *Luke D. Stapleton, Jr.*, Argonaut S. S. Line.

REPORT OF THE BOARD

The complainants in this case are associated cigar manufacturers located in York County, Pa. The intervener, B. N. Gingerich & Associates, is a partnership located at York, Pa., which consolidates less-than-carload quantity shipments of the complainants' cigars into carload quantity lots and ships them by motor truck to Phila-

delphia and thence by water to Pacific Coast ports. The respondents' carload quantity rates on cigars from all Atlantic Coast ports served to the Pacific Coast are $1.75 per 100 pounds, minimum weight 24,000 pounds, and $2.25 per 100 pounds for less-than-carload quantities. For the carriage of cigarettes from Atlantic to Pacific Coast ports the respondents maintain rates of $1.25 [1] per 100 pounds for carload quantities, minimum weight 24,000 pounds, and $2 per 100 pounds for less-than-carload quantities. In view of the respondents' said rates on cigarettes and their rates on a number of other commodities, the complainants and intervener allege the respondents' rates on cigars are unjust and unreasonable in violation of Section 18 of the Shipping Act. The complainants and intervener further allege that the respondents' rates on cigarettes are unduly and unreasonably preferential and advantageous, and that as shippers of cigars they are subjected to undue and unreasonable prejudice and disadvantage, in violation of Section 16 of said Act.

On the issue of unjustness and unreasonableness the complainants and intervener present in evidence comparison of the following commodities and respondents' rates per 100 pounds thereon:

	Carload quantity	Less carload quantity
Cigars	[1] $1.75	$2.25
Cigarettes	[2] 1.25	2.00
Ice cream cones	[3] 1.60	
Shirts and hosiery	[4] 1.10	1.60
Electric percolators	[5] 1.50	2.00

[1] Minimum weight 24,000 pounds.
[2] Minimum weight 24,000 pounds.
[3] Minimum weight 12,000 pounds.
[4] Minimum weight 10,000 pounds.
[5] Minimum weight 10,000 pounds.

With the exception of cigarettes, however, nothing is adduced by the complainants or intervener relative to the respective commodity values, volume of movement, space displacement, or other recognized factors requisite to proof of unjustness and unreasonableness. Where, as in the instant proceeding the issue as to the justness and reasonableness of rates attacked is pitched upon a comparison of such rates with the rates on another commodity, the complainant to prevail must establish that the rates on such other commodity are themselves reasonable and fair. In the circumstances the complaining parties in the instant proceedings must be concluded to have failed to sustain the burden of proof of their allegation under Section 18.

The major portion of the complaining parties' evidence at the hearing and argument on the briefs is addressed to their allegation

[1] $1.10 contract rate.

that as port-to-port shippers of cigars they are, by reason of the respondents' lower rates on cigarettes, subjected to undue and unreasonable prejudice and disadvantage, and that the rates on cigarettes are unduly and unreasonably preferential and advantageous in view of the rates on cigars, in violation of Section 16 of the statute.

On this issue the evidence of the complainants and intervener is that 1,000 cigars of the average size which they ship occupy 3,079 cubic inches, weigh approximately 33 pounds, and are valued at $37.50, whereas 10,000 cigarettes occupy 3,565 cubic inches and weigh 37 pounds. The value of this quantity of cigarettes of the displacement and weight stated is testified to be approximately $64. Further, as exhibited on behalf of the complainants, the weight per cubic foot of cigarettes is 17.935 pounds and that of cigars 17.952 pounds, and the value per cubic foot $31.02 and $21.04, respectively. During the year 1929, the record shows, the complainants' intercoastal shipments of cigars aggregated 922 tons, as compared with an intercoastal movement of 2,582 tons of cigarettes. The respondents show that from January 1, 1930, until June 30, 1930, the last period for which figures are available, cigarettes have not moved intercoastal in any substantial quantity except over the line of one of their number from New York. This carrier, during such six months' period transported from the Port of New York 917 tons of cigarettes and 323 tons of cigars. From Philadelphia the complainants during this six months' period shipped 327 tons of cigars intercoastal.

Whether equalization of the respondents' cigar and cigarette rates would result in increased business for the complaining parties is on their behalf testified to be unknown. No evidence whatever is adduced by them that their respective businesses have decreased as a result of the rates they assail. Contra, the only evidence having any bearing on this point is the statement of one of their number that while the total production of cigars has decreased during the last decade that company's business has increased. Pressed to show any fact of deteriment to them attributable to the rates involved, the complaining parties advance that lower rates to them would provide more money for their advertising, their suggestion being that through such additional advertising the consumption of cigars might be augmented.

In defense of the lawfulness under Section 16 of the higher rates on cigars than on cigarettes, the respondents show that the cigarette rates represent a situation forced upon them by competition with transcontinental railroads, the details of which competition they review at length. Further, as justification for the higher rates on cigars than on cigarettes they testify the former commodity is more hazardous to handle, due to the greater susceptibility of that com-

modity to breakage, and to mold or mildew. Moreover, the higher cigar rates are justified, they testify, because it is necessary for them to go to the additional expense of extending special or "locker" stowage for cigars, which character of stowage is not required in the case of cigarettes. Absence of claims on cigars, the respondents submit, is accounted for by the "extraordinary service" which they furnish in handling and transporting that commodity. With reference to none of the above do the complainants or intervener present anything negativing that the respective spreads between the carload and less-than-carload quantity rates on the two commodities are not thereby justified. In short, examination of the record fails to produce sufficient ground upon which to predicate any conclusion that by the preponderance of evidence the complaining parties establish that the rates attacked are violative of Section 16 of the statute, as alleged.

Included in the complaint in this proceeding is an allegation that the respondents' split delivery service is violative of Sections 16 and 18 of the Act. At the hearing, however, this allegation was withdrawn.

According due consideration to all the evidence and argument of record, we conclude and decide that the respondents' rates complained of have not been shown to be violative of either Section 16 or 18 of the Shipping Act, 1916, as alleged. Accordingly an order of dismissal will be entered.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 14th day of January, 1931

Formal Complaint Docket No. 62

York County Cigar Manufacturers' Association v. American-Hawaiian Steamship Co., Argonaut Steamship Line, Arrow Line, Dimon Steamship Corp., Dollar Steampship Line, Hammond Line, Inc., Isthmian Steamship Co., Luckenbach Steamship Co., Inc., Munson-McCormick Line, Nelson Steamship Co., Panama Mail Steamship Co., Quaker Line, Transmarine Corp., and Williams Steamship Co., Inc.

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 conclusions and decision thereon that the violations alleged have not been shown, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the Board.

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

UNITED STATES SHIPPING BOARD

DOCKET No. 61

R. A. ASCHER & COMPANY

v.

INTERNATIONAL FREIGHTING CORPORATION

Submitted March 12, 1931. Decided March 31, 1931

Respondent carrier's rate not shown unjustly prejudicial in violation of Section 17 of Shipping Act, as alleged. Complaint dismissed.

A. Welles Stump for complainant.
Cletus Keating and *Roger B. Siddall* for respondent.

REPORT OF THE BOARD

The complainant is a partnership trading under the name of R. A. Ascher & Company and engaged in the business of exporting scrap materials. The respondent is a Delaware corporation operating as a common carrier between the ports of New York and Buenos Aires and as such is subject to the provisions of the Shipping Act, 1916, applicable to common carriers by water in foreign commerce of the United States. The rate charged by the respondent for the transportation of scrap iron from New York to Buenos Aires is $8 per ton. The complaint alleges that this rate is unjustly prejudicial to the complainant, an exporter of the United States, as compared with complainant's foreign competitors, in violation of Section 17 of the Shipping Act. The Board is asked to require the respondent to put in force and apply in the future such rate as the Board deems lawful and to award reparation in connection with two shipments made by the complainant.[1] The complaint also attacks a 17-cent per ton special loading charge collected by the respondent in instances where ship's stevedores load from lighter instead of dock, but at the hearing the allegation relative to this loading charge was withdrawn by the complainant.

[1] Oct. 31, 1929, and Mar. 27, 1930.

The foreign competitors referred to in the complaint are exporters who ship from the United Kingdom to Buenos Aires. The complaint alleges that these foreign competitors can transport scrap iron to Buenos Aires "at a freight and loading rate equivalent to $6.75 in United States currency." This allegation the respondent denies in its answer, and at the hearing the complainant confines itself on this point to the unsupported statement of a member of the complaining firm that at the time its shipments moved "British and European suppliers" of scrap iron had a freight rate to Buenos Aires of 27 shillings and 9 pence, or approximately $6.75. As evidence of the current rate from London to Buenos Aires the complainant submits a cabled quotation from the Blue Star Line of 30 shillings (approximately $7.29), which rate the respondent confirms is correct. Witness for the complainant also states that "as a matter of fact I do know that another steamship broker has quoted by cable, arrived here this morning, a freight rate of $3.90 in American money." The distance from New York to Buenos Aires [2] is somewhat less than the distance from London to Buenos Aires. The rate of approximately $7.29 quoted complainant by the Blue Star Line is for a 20-day passage. The $8 rate of the respondent covers a passage of 24 days.

Witness for the complainant testifies that the scrap iron moving to Buenos Aires from the United Kingdom is of the same quality as the scrap iron which the complainant shipped to Buenos Aires in the two instances in relation to which reparation is here sought and that he finds it necessary to quote a price from $1 to $1.50 higher than the price quoted by his competitors with a consequent loss of business. He attributes the ability of his foreign competitors to undersell him in the Argentine market solely to the lower freight rate which these competitors enjoy. This same witness also testifies, however, that scrap iron on the average is $1.50 to $3 per ton cheaper in New York than Liverpool. For comparative purposes in connection with the respondent's New York-Buenos Aires rate attacked in this proceeding further testimony on behalf of the complainant is that the rate from New York to the Far East on scrap iron is between $5 and $5.50 a ton, and that the rate to Japan from New York, a distance of approximately 12,000 miles, is from $5.90 to $6. The rate from New York to Italy, it is shown, is about the same as the rate from New York to the Argentine. No evidence is presented, however, either as to the movement of traffic under these rates or as to any substantial similarity of conditions tending to give such comparisons probative value.

[2] 5,871 nautical miles.

The testimony for the respondent is that scrap iron is difficult cargo to handle, and that whereas the stevedoring rate on general cargo paid by the respondent at New York is 95 cents a ton the rate paid on scrap iron is $2 a ton, by far the highest on any commodity. This stevedoring cost, the respondent testifies through witness of extended experience, is higher than the cost of loading scrap iron in England, due to the fact that wages are much higher in this country. In rebuttal, witness for the complainant testifies to four instances occurring in 1927–28 in which complainant employed a single stevedoring company to load large quantities of scrap iron into ships at the rate of $1.10 per ton. A portion of the respondent's defense is addressed to showing that scrap iron is awkward cargo to stow. In order to load other cargo above, the respondent affirms, board platforms are required and much difficulty in securing flooring level is encountered. Similarly, as at New York, the stevedore rate for handling scrap iron at Buenos Aires is testified to be the highest on any commodity carried by the respondent, or fifty cents a ton compared with a rate on general cargo of twenty-seven cents.

The respondent points to the fact that the present rate on scrap iron has been in effect for many years, and that it is one of the lowest of the rates in the conference tariff by which the respondent is governed. Analysis shows that approximately 93 per cent of these conference rates applicable to the respondent's service from New York to Buenos Aires are higher than the rate on scrap iron and that only three per cent are lower. At the hearing witness for the respondent reviewed at length the few commodities carrying rates lower than scrap iron. On most such commodities the record is that the movement is substantial, whereas except for the two shipments of scrap iron made by the complainant and involved in this proceeding neither the respondent nor any of the other conference lines appears to have carried any scrap iron to Buenos Aires for several years. On a few of these commodities the conference and the respondent as a member thereof have lowered rates at various times in the hope, it is testified, of enabling American exporters to meet foreign competitors, but in a number of instances without success. In the case of scrap iron, the respondent insists that it can not reduce the present rate in an effort to help the American exporter because of the high cost of handling and the fact that the rate is already one of the lowest in its tariff.

Upon the record the respondent maintains further that the difference between its rate of $8 and the only clearly established rate from England to Buenos Aires of $7.29 is not sufficient to keep the complainant out of the Buenos Aires market, since this difference of 71 cents is much more than offset by the lower cost of scrap iron in New York as compared with the cost in England. The respondent

points also to the fact that it is not clearly established of record that at the present time scrap iron is moving from the United Kingdom to Buenos Aires. Although witness for the complainant expressed a knowledge of such a movement, his statements in that respect were admitted to be based on hearsay, in which relation the respondent submitted a photostatic copy of a statement from the Custom House at London that in the first six months of 1930 there was no movement to the Argentine Republic of "iron and steel, old and scrap, fit only for remanufacture." As pointed out by the complainant, however, the printed form used by the British Custom House for its statement purported to cover only "Produce or manufacture of Great Britain and Northern Ireland." The complainant contends, therefore, that any scrap iron brought into England from another country and then exported to Buenos Aires would not be shown on this form.

The contention of the complainant that the conference, of which the respondent is a member and which fixes the rates from New York to Buenos Aires by which the respondent is governed, is dominated by British capital, and that such conference in establishing its rates is consequently unfavorably disposed to American exporters is not supported by the evidence. Although, as shown by the testimony, three of the sixteen lines comprising the conference also operate from England to South America, nothing of record even remotely indicates that the interests of the complainant or other American exporters have been in any way prejudiced by this fact.

The complainant's evidence furnishes nothing bearing upon whether the England-Buenos Aires rate is remunerative to the carriers in that trade nor whether such a rate if charged by the respondent would reimburse that carrier even for its out-of-pocket cost of service. Contra, witness for the respondent states that the present rate from New York to Buenos Aires yields but little more than the cost of handling and does not pay its fair share of the voyage expenses. Except in the matter of distances traversed, no similarity in the two trades and the operating or competitive conditions involved is shown. In this respect the record is convincing that there does exist a dissimilarity between terminal conditions at New York and at British ports. Extended analysis of the record in nowise supports any conclusion that such difficulties as the complainant may encounter in marketing scrap iron in Buenos Aires are due to the respondent's 71 cents per ton higher rate than the rate of another carrier or carriers from England to Buenos Aires, or that the respondent's rate is or has been unduly prejudicial. In short, the record fails to establish a violation of Section 17 of the Shipping Act as alleged and we so conclude and decide. The complaint will be accordingly dismissed.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 31st day of March, 1931

Formal Complaint Docket No. 61

R. A. Ascher & Company *v.* International Freighting Corporation

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 that the violation alleged has not been shown, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the Board.

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

UNITED STATES SHIPPING BOARD

Formal Investigation Docket No. 68

IN RE THAMES RIVER LINE, INC.

Submitted June 18, 1931. Decided July 28, 1931

Thames River Line, Inc., a common carrier by water in interstate commerce within meaning of Section 1 of Shipping Act, 1916, and as such required to comply with Section 18 of that statute. Order entered accordingly.

Arthur W. Rinke, Ernest E. Fuchs, and *B. Lepkoski* for respondent.

Report of the Board

Section 1 of the Shipping Act, 1916, defines, in part, a common carrier by water in interstate commerce subject to succeeding regulatory provisions of that statute, including Section 18 thereof, as a common carrier engaged in the transportation by water of property on the high seas on regular routes from port to port between one State and any other State of the United States. Section 18 of the Shipping Act requires, in part, that every such carrier shall file with the Board the maximum rates and charges for or in connection with such transportation.

The respondent Thames River Line, Inc., although duly apprised of these federal statutory provisions has in no instance filed with the Board the maximum rates and charges for or in connection with regular route common carrier transportation engaged in by it between New York, N. Y., on the one hand, and New London, Bridgeport, South Norwalk, and Norwich, Conn., on the other.

The instant proceeding was initiated by the Board upon its own motion under authority of Section 22 of the Shipping Act to inquire into the facts and to hear argument concerning the status under that Act of the said Thames River Line, Inc., and to make such order or orders as might be warranted by such facts and argument.

Although readily admitting under oath the common carrier character of its operations as above and the fact that such transportation performed by it is on regular routes, the respondent urges the contention that as to it regulatory jurisdiction of the Board does not attach, because, in its view, its operations on Long Island Sound do not constitute transportation on the "high seas" within the meaning of Section 1 of the Shipping Act.

To support its contention the respondent sets forth as authority, but without particular reference to its applicability, The Kodiak, 53 Fed. 126, which case involved a question as to whether a vessel seized within the entrance of Cook's Inlet, Alaska, was a seizure under the territorial jurisdiction of Alaska or upon the high seas. To further support its position the respondent cites *Bigelow* v. *Nickerson*, 70 Fed. 113, concerning a libel in personam claiming damages for wrongful death on Lake Michigan, brought under statutes of the State of Wisconsin, and in which Lake Michigan was held not to be high seas.[1] As further authority for its position the respondent presents in argument *U. S.* v. *Morel*, 26 Fed. Cas. 1310, relating to an issue as to whether defendant who had received stolen goods on a vessel owned by American citizens while such vessel was within the jurisdiction of a foreign sovereign could be tried in a court of the United States. Extended examination of the foregoing cases relied upon by the respondent fails to disclose their pertinence to the instant investigation, or wherein they furnish support of any substantiality for the contention that Long Island Sound is not high seas within the meaning of the shipping act.

Contra, Federal and State decisions directly involving the character of Long Island Sound under different statutes expressly hold that body of water to be high seas. Thus in *The Martha Anne*, 16 Fed. Cas., 868, 869, the Court declares—

> In this case the proof is clear that the libellant's vessel was come upon by the respondent and *The Martha Anne* near the center of Long Island Sound. The Sound is an arm of the sea within the common law acceptation of the term, being navigable tidewater, and more specifically an arm of the sea than mere rivers, bays, or inlets. * * * It more properly is a strait or inland sea, having communication with the ocean at each end and lying between a long extent of land on two sides of it. But what imparts an unquestionable maritime jurisdiction to the United States courts over its waters, and renders it within our jurisprudence, the high seas, is that it is not within the territory of any particular State of the Union.

[1] In this relation it is not inapropos to note that in a case involving a federal statute the Great Lakes, including Lake Michigan, were held by the U. S. Supreme Court to be high seas. (*U. S.* v. *Rodgers*, 150 U. S. 249.) This U. S. Supreme Court decision is quoted by respondent carrier's counsel, in addition to the three cases considered above, apparently to support respondent's position that Long Island Sound is not high seas; although in what particular Long Island Sound is without the description of waters constituting high seas as enunciated by the Supreme Court respondent does not set forth. Singularly in its filed brief the respondent ignores this case and argues the Great Lakes are not high seas.

And in *Manly* v. *People*, 7 N. Y. 295, 299 (3 Selden, 295), the language of the New York Court of Appeals as respects Long Island Sound is—

> Long Island Sound is by well-settled rules a part of the high seas, and no one of the States bordering upon it has the right by any statute or other act of sovereignty to extend her jurisdiction over it. The high seas include all those parts of the main ocean which are not within the fauces terrae—the mouth or chops of a channel; that is, the space between the headlands, so near to each other that a person on one of them can see with the naked eye what is doing on the other.

Also of bearing with reference to the character of Long Island Sound as high seas is *Providence & New York S. S. Co.* v. *Hill Mfg. Co.*, 109 U. S. 578, in which a plea by the carrier for the benefit of the Limitation of Liability Act (9 Stat. 635) was sustained by the United States Supreme Court. Owners of vessels engaged on rivers or in inland navigation were by that statute expressly excepted from its benefit, notwithstanding which fact the Court extended to the carrier the relief petitioned for under such statute in connection with transportation from Providence, R. I., to New York City over the waters of Long Island Sound.

The respondent's further contention that it is not engaged in transportation on the high seas, because, according to statement of its witness, its vessels at no time are more than three miles distant from land likewise finds no support in the decided cases. To the contrary, for illustration, is *U. S.* v. *Newark Meadows Improvement Co.*, 173 Fed. 426, wherein it was determined that although the place of offense was within a marine league of the coast of the State of New Jersey it was nevertheless high seas. Such place of offense was, as expressly recognized by the Court, also within the limits of New York Harbor as then prescribed by the United States Treasury Department for the observance by navigators of inland rules of navigation. Accordingly, this decision likewise disposes of the respondent's argument to the effect that Long Island Sound is not high seas because within lines now set by the Bureau of Navigation of the United States Department of Commerce for the information of navigators as to where the inland as distinguished from international rules of navigation become applicable.[2] Manifestly the Board in administering the regulatory provisions of the Shipping Act applicable to carriers engaged in interstate commerce is not bound by regulations promulgated by other federal agencies having distinctly different functions to perform.

Long Island Sound is approximately 110 miles long. It is entirely without the mainland, its waters are saline as well as tidal,

[2] Acts of Feb. 19, 1895, c. 102, 28 Stat. 672; Feb. 14, 1903, c. 552, 32 Stat. 829; Mar. 4, 1913, c. 141, 37 Stat. 736.

attain a width of over 20 miles, and are navigable at all times to vessels of every draft and burden engaged in interstate and foreign commerce of the United States.[3] Applying the criterion enunciated by the United States Supreme Court in *U. S.* v. *Rodgers*, 150 U. S. 249, 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,

and—

> the term (high seas), in the eye of reason, is applicable to the open, unenclosed portion of all large bodies of navigable waters, whose extent can not be measured by one's vision, and the navigation of which is free to all nations and people on their borders, by whatever names those bodies may be locally designated—

the attributes of Long Island Sound unmistakably identify it as high seas.

In every connection and for every purpose the regulatory provisions of the Shipping Act are as applicable to the carriers engaged in transportation over the waters of Long Island Sound as they are to other interstate carriers operating elsewhere on coastwise waters. Upon the decided cases and in reason we consider that in every respect such an extensive and important body of water as Long Island Sound is properly high seas within the meaning of Section 1 of that Act. None of the evidence or argument presented on behalf of the respondent in this proceeding indicates anything persuasive to the contrary, and we see no merit to the respondent's position that it should be excepted from the plain applicability of the shipping statute.

By brief reference in argument and collateral to the respondent's contentions noted above, its counsel advances that the Thames River Line is an "other person" within the meaning of Section 1 of the Shipping Act. This passing contention is evidently projected in view of the fact that the filing requirement of Section 18 of the Act is not applicable to such other persons. Due to the admission contained in the respondent's testimony that it is a common carrier, and to the total lack of any facts bearing out or indicating the contrary, it is clear upon the record that this phase of respondent's defense may be fairly disregarded.

Review of the testimony in this investigation indicates that in contesting application of Section 18 of the Shipping Act to its port-to-port services the respondent carrier is primarily influenced by an

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[3] Long Island Sound affords depths and widths sufficient for all classes of navigation, including the largest transatlantic vessels. Port Series No. 20, War Dept. Corps of Engrs., U. S. Army, and U. S. Shipping Board, Pt. 1, p. 8.

idea on the part of its operating officers that compliance with such section would in some manner result disastrously to that carrier's welfare. In the words of respondent's witness in this connection—

> The Thames River Line desires to point out that if it were to file tariffs for all of its so-called local business, the competition of the trucking companies, which is very keen, would be not only serious but might even be disastrous; and it is well within the possibilities that a sufficient amount of tonnage would be lost to either materially curtail the business of the Thames River Line or to drive it out of business. * * * I base my opinion on the facts that the Board requires a certain number of days in which to make any changes in rates. * * * If we were compelled to wait ten days in which to file or lower our rates to meet this competition, I fear that our business would leave us pretty soon.

We see no ground upon which the assertions on behalf of the respondent in this regard are or can be justified, and, as reference to paragraph 3 of Section 18 shows, the ten-day notice is not applicable to reductions in rates; nor is such notice in any case required by the Board. Moreover, the other carriers engaged in comparable interstate transportation on Long Island Sound that have voluntarily and without question for the past decade or more filed their tariffs of maximum rates, fares, and charges with the Board [4] have apparently experienced no such result as feared by the respondent.

Upon the record in the instant investigation we conclude and decide that the respondent Thames River Line, Inc., is a common carrier by water in interstate commerce engaged in the transportation of property on the high seas on regular routes from port to port between States of the United States, and as such is amenable to the regulatory provisions of the Shipping Act, 1916. An order directing the said Thames River Line, Inc., to comply with the provisions of Section 18 thereof will be entered accordingly.

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[4] Colonial Nav. Co., New York-Providence-New Bedford; Dyer Transp. Line, Providence-Fall River; Fishers Island Nav. Co., Fishers Island-New London; Montauk & New London S. B. Co., New London-Greenport; Pawtucket & New York S. S. Co., Successor to Blackstone Valley Transp. Co., Pawtucket-New York; Starin New Haven Line, New York-New Haven; Bridgeport & Port Jefferson S. B. Co., Bridgeport-Port Jefferson.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 28th day of July, 1931

Formal Investigation Docket No. 68

In re Thames River Line, Inc.

This proceeding being at issue pursuant to resolution of the Board on file and served, and having been duly heard, and full investigation of the matter 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 respondent Thames River Line, Incorporated, shall comply with Section 18 of the Shipping Act, 1916 (39 U. S. Statutes at Large, 728), in connection with port-to-port transportation engaged in by it between New York, N. Y., on the one hand, and New London, Bridgeport, South Norwalk, and Norwich, Connecticut, on the other, in this proceeding concerned; said compliance to be consummated on or before twenty (20) days from date of respondent carrier's receipt of copy of this order; the Board's Secretary to serve forthwith by registered mail certified true copy of this order upon the respondent, addressed Pier 32, East River, New York, N. Y.

By the Board.

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

UNITED STATES SHIPPING BOARD

Formal Investigation Docket No. 74

IN RE BALTIMORE-NEW YORK STEAMSHIP COMPANY

Submitted July 13, 1931. Decided August 4, 1931

Respondent, a common carrier by water in interstate commerce within purview of regulatory provisions of Shipping Act, including Section 18 thereof.

Janney, Ober & Williams and *Frederic Weiss* for respondent.

REPORT OF THE BOARD

Section 18 of the Shipping Act, 1916 (39 U. S. Statutes at Large, 728) requires, in part, that every common carrier by water in interstate commerce as defined by Section 1 of that Act,[1] shall file with the Board its maximum rates and charges.

The respondent Baltimore-New York Steamship Company, although engaged in the transportation of freight between Baltimore, Md., and New York, N. Y., and duly notified of the requirement of said Section 18, nevertheless in no instance filed with the Board the maximum rates and charges for or in connection with such transportation. In the premises the instant proceeding was initiated by the Board upon its own motion under authority of Section 22 of the Shipping Act, to establish of record the facts concerning the carrier named as a basis for such order or orders as might be warranted thereby.

According to the sworn testimony of the president of the Baltimore-New York Steamship Company at the hearing conducted by the Board's Bureau of Regulation, that company was incorporated under the laws of the State of Maryland, and, on January 17, 1931, with one steamship previously purchased by the witness from the United States Coast Guard,* inaugurated a common carrier

[1] A common carrier engaged in interstate transportation by water of property on the high seas or the Great Lakes on regular routes from port to port.

* S. S. "Comanche."

service by water between Baltimore, Md., and New York, N. Y. Having had no experience in the steamship business the witness testifies he entrusted the entire management of the company to two employees whom he believed to have such experience. These employees were the vice president and the secretary-treasurer of the company, located at New York and Baltimore, respectively, whose functions were to attend to all matters of the common carrier enterprise, including solicitation of cargo. Neither employee is now with the company.

From January 17, 1931, until about the middle of February, the company maintained two sailings a week in each direction, and during the latter part of February and all of March one sailing a week in each direction. The service was advertised to the public, and cargo solicited and carried at rates "applying on classes and commodities between Baltimore, Md., and New York, N. Y." The last trip, it is testified, was made on or about April 10, 1931,* since which time all common carrier operations of the company have ceased, due, according to the sworn testimony of the witness, to the unprofitable nature of the enterprise and to the fact that the company was "practically in the hands of a receiver." The company's only substantial asset, consisting of the one vessel, was sold by a United States Marshal on May 19, 1931, under a libel to foreclose a preferred mortgage, since which time the company has had no interest whatsoever in that or any other vessel.

It is clear upon the record that during its short operating period the respondent was a common carrier by water in interstate commerce within the purview of the regulatory provisions of the Shipping Act, 1916, and as such was by Section 18 of that statute required to file its maximum rates and charges with the Board. In view, however, of the cessation of the carrier's operation and of the circumstances involved, it is not seen that in the public interest other than an order of discontinuance of this proceeding is required. We therefore so conclude and decide, and enter an order accordingly; without prejudice, however, to any other regulatory proceeding upon complaint of shippers or otherwise in relation to any responsibility of the respondent carrier under the Shipping Act during any period in which it engaged or may in the future engage in transportation without prior compliance with Section 18 of the Shipping Act and the Board's Tariff Regulations promulgated under authority of that section.

*According to record of Bureau of Navigation, U. S. Department of Commerce, the S. S. "Comanche" has been tied up at Baltimore since April 9, 1931.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 4th day of August, 1931.

Formal Investigation Docket No. 74

In re Baltimore-New York Steamship Company

Whereas, the Board under authority of Section 22 of the Shipping Act, 1916, instituted a proceeding of investigation in re compliance by the Baltimore-New York Steamship Company with the requirements of Section 18 of the Shipping Act and the Board's Tariff Regulations; and

Whereas, 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; now, therefore, it is

Ordered, That the aforesaid section 22 proceeding against the Baltimore-New York Steamship Company be, and it is hereby, discontinued; without prejudice, however, to any other regulatory proceeding upon complaint of shippers or otherwise in relation to any responsibility of said carrier under the Shipping Act, as amended, during any period in which it engaged or may in the future engage in transportation without prior compliance with Section 18 of the Shipping Act and the Board's Tariff Regulations.

By the Board.

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

UNITED STATES SHIPPING BOARD

Formal Investigation Docket No. 65

IN RE BAYSIDE STEAMSHIP COMPANY

Submitted July 17, 1931. Decided August 19, 1931

Respondent a common carrier by water in interstate commerce as defined by Section 1 of Shipping Act, 1916, and as such required to file with the Board its maximum rates and charges as provided by Section 18 of Shipping Act.

Stephen L. Whipple for respondent.

REPORT OF THE BOARD

This proceeding was instituted by the Board upon its own motion under authority of Section 22 of the Shipping Act, 1916, to investigate and make of record for such action as the facts warrant the status of the Bayside Steamship Company in relation to the provision of Section 18 of that statute requiring subject carriers to file their maximum rates and charges with the Board. Such proceeding was instituted in view of informal information before the Board indicating that the company named was a common carrier by water in interstate commerce within the purview of the regulatory provisions of the Shipping Act, and after failure upon repeated effort by the Board's Bureau of Regulation to obtain response to registered and unregistered mail addressed that company.

At the hearing in this case the respondent was represented by its president, who upon oath testified that the Bayside Steamship Company now engages and has for some time past engaged in the transportation of freight between Los Angeles Harbor and San Francisco on the one hand and Seattle, Tacoma, and other Puget Sound ports on the other. The company, it is asserted, endeavors to furnish a weekly service from San Francisco and from Los Angeles Harbor, although as of the present time this regularity of schedule has not been found possible of maintenance. Cargo for Puget Sound ports other than Seattle and Tacoma, although accepted by the Bayside Steamship Company under its own bill of lading with

such ports named as destinations, is not ordinarily taken by that carrier itself to such ports but is transhipped to other carriers at Seattle or Tacoma. The freight charges of such other carriers are paid by the respondent and are not rebilled to the shipper. The respondent operates one steamer under bare-boat charter,[1] which vessel it utilizes in conducting both north and south bound common carrier transportation. In addition, and as respects northbound common carrier service, the respondent employs vessels owned by or under charter to various lumber companies engaged in the movement of their own lumber southbound. In some instances the respondent charters or subcharters these lumber company vessels for northbound voyages on a per diem basis, the vessel owner or charterer furnishing crew and fuel. In all cases shippers are issued bills of lading in the name of the respondent Bayside Steamship Company, and in connection with all of its operations the respondent holds itself out by paid advertisment and otherwise to the public as a common carrier in interstate commerce on regular routes, and maintains regular port facilities for the acceptance of freight for transportation between the ports named above.

According to the above facts of record supplied under oath at the hearing by the respondent's president it is clear that the Bayside Steamship Company is a common carrier engaged in interstate transportation of freight on regular routes within the definition of Section 1 of the Shipping Act, 1916, and we so conclude and decide. As such common carrier in interstate commerce it is amenable to the applicable regulatory provisions of that statute, including Section 18 thereof. This the carrier's witness at the hearing virtually acknowledges, and in reference to the failure to file maximum rates and charges with the Board and to respond to communications addressed the carrier in such regard the witness sets forth the absence of himself from the carrier's headquarters and various other circumstances and occurrences which he urges should be considered in extenuation. In this relation it is to be noted that as of the present date no shipper has at any time formally or informally complained in reference to the failure of the respondent to observe the requirements of Section 18 or of any of the other applicable provisions of the regulatory statute. Furthermore, in consonance with statement of intention expressed at the hearing by the respondent's president, since the date of hearing and prior to the date of this report there has been duly filed on behalf of the respondent tariff containing the current maximum rates and charges of that company which fully comply with the filing requirements of Section 18 and the Board's Tariff Regulations.

[1] S. S. "Yellowstone."

In view of all the facts and circumstances detailed above, this proceeding will be discontinued and an order entered accordingly; without prejudice, however, to any other regulatory proceeding upon complaint of shippers or otherwise in relation to any responsibility of the respondent carrier under the Shipping Act during any period in which it engaged or may in the future engage in transportation without prior compliance with Section 18 of the Shipping Act and the Board's Tariff Regulations promulgated under authority of that section.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 19th day of August, 1931

Formal investigation Docket No. 65

In re Bayside Steamship Company

This proceeding instituted by the Board under authority of Section 22 of the Shipping Act, 1916, being at issue, and having been duly heard, and full investigation of the matter 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; now, therefore, it is

Ordered, That the aforesaid Section 22 proceeding against the Bayside Steamship Company be, and it is hereby, discontinued; without prejudice, however, to any other regulatory proceeding upon complaint of shippers or otherwise in relation to any responsibility of said carrier under the Shipping Act, as amended, during any period in which it engaged or may in the future engage in transportation without prior compliance with Section 18 of the Shipping Act and the Board's Tariff Regulations.

By the Board.

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

UNITED STATES SHIPPING BOARD

Formal Investigation Docket No. 70

IN RE NORTH PACIFIC STEAMSHIP LINE

Submitted July 17, 1931. Decided August 19, 1931

Respondent, a common carrier by water in interstate Commerce, required to fully comply with the requirements of Section 18 of Shipping Act and the Board's Tariff Regulations.

William Gissler for respondent.

REPORT OF THE BOARD

Pursuant to the requirements of Section 18 of the Shipping Act and the Board's Tariff Regulations promulgated under authority of that section, the respondent carrier concerned in this case filed with the Board a tariff naming its maximum commodity and class rates. In connection with the class rates set forth therein the tariff purported to be "governed by Western Classification," although at no time did the respondent have filed for it [1] the classification necessary to an ascertainment of what articles of commerce the respective class rates applied. In short, the respondent's tariff, although furnishing to the Board the maximum rates applicable to shipments carried by it on commodity bases, in no manner supplied information as to which of the maximum class rates was applicable to any given cargo. In so far as it was engaged in transportation of property at class rates the respondent thus apparently failed to comply with Section 18 of the statute and the pertinent rule of the Board's Tariff Regulations having application.

Following repeated mail communications addressed the respondent by the Board's Bureau of Regulation concerning the above situation without response, the Board under authority of Section 22 of the Shipping Act instituted the instant investigation for the purpose of formally establishing the facts upon which to predicate such order or orders as such facts warrant.

[1] Through issuance of power of attorney as required by Rule 15 of the Board's regulations.

At the hearing before one of the Board's examiners the respondent was represented by a witness identifying himself as respondent's sole owner and operator, who upon oath testified that the North Pacific Steamship Line is a trade name which he has adopted and under which he conducts a freight transportation service north from San Francisco to the Port of Grays Harbor—i. e., Aberdeen and Hoquiam, Washington. The one vessel at the present time used by the North Pacific Steamship Line in such service [2] is owned by the A. P. Johnson Lumber Company with which vessel owner the respondent has an arrangement " in the nature of a charter." Sailing by the respondent North Pacific Steamship Line from San Francisco is made approximately every 21 days. On the return southbound voyages the vessel is utilized exclusively by the owning lumber company in the transportation if its own lumber, the respondent having nothing to do therewith. By paid advertisement and by solicitation the North Pacific Steamship Line holds itself out to the public as a common carrier of freight from San Francisco to Aberdeen and Hoquiam, and issues bills of lading under such name exclusively on all shipments received and carried. The payment of claims for loss and damage to cargo is as to the shipper the responsibility of the North Pacific Steamship Line, although, the witness asserts, the lumber company owning the vessel is as respects such claims in turn responsible to the North Pacific Steamship Line and carries claim insurance. The vessel owner furnishes crew and fuel, the operator of the North Pacific Steamship Line paying to the owner 95 per cent of the freight moneys received by him from shippers, less advertising and other incidental charges.

On behalf of the respondent North Pacific Steamship Line various circumstances are related and urged upon the record regarding its failure to fully comply with the requirements of Section 18 of the statute and the Board's Tariff Regulations, and to respond to mail communications addressed it on the subject. In this connection the witness exhibited copies of telegrams and letters addressed to and received from the Western Classification Committee, tending to corroborate the fact of an effort on its part to effect such compliance. In passing, also, it is to be noted that at no time to date has there been filed with the Board formally or informally any complaint by shippers or others concerning the respondent's disregard of any of the regulatory provisions of the Shipping statute. Moreover, subsequent to the date of hearing in this case, and in fulfillment of intention expressed at such hearing by its witness, the respondent has prior to the date of this report duly filed with the Board revised tariff of its current maximum rates and charges, which tariff fully

[2] S. S. Esther Johnson.

complies with the filing requirements of Section 18 and the Board's Tariff Regulations.

Upon the record in this case it is clear that the respondent is a common carrier by water in interstate commerce amenable to the applicable regulatory provisions of the Shipping Act, 1916; further that until the revised tariff noted above was filed, the respondent, in so far as it engaged in transportation of property at class rates, did not comply with paragraph 2 of Section 18 of the Shipping Act and Rule 15 of the Board's Tariff Regulations, and we so conclude and decide. In view of all the facts and circumstances of record as above detailed, however, it is not seen that in the public interest other than an order of discontinuance of this proceeding is required. Such an order will be accordingly entered, without prejudice, however, to any other regulatory proceeding upon complaint of shippers or otherwise in relation to any responsibility of the respondent North Pacific Steamship Line under the Shipping Act during any period in which it engaged or may in the future engage in transportation without prior complete compliance with Section 18 of said Act and the Board's Tariff Regulations.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 19th day of August, 1931

Formal Investigation Docket No. 70

In re North Pacific Steamship Line

This proceeding instituted by the Board under authority of Section 22 of the Shipping Act, 1916, being at issue, and having been duly heard, and full investigation of the matter 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; now, therefore, it is

Ordered, That the aforesaid Section 22 proceeding against the North Pacific Steamship Line be, and it is hereby, discontinued; without prejudice, however, to any other regulatory proceeding upon complaint of shippers or otherwise in relation to any responsibility of said carrier under the Shipping Act, as amended, during any period in which it engaged or may in the future engage in transportation without prior complete compliance with Section 18 of the Shipping Act and the Board's Tariff Regulations.

By the Board.

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

UNITED STATES SHIPPING BOARD

Formal Investigation, Docket No. 66

IN RE COAST STEAMSHIP COMPANY

Submitted September 15, 1931. Decided October 14, 1931

Respondent a common carrier by water in interstate commerce within the purview of regulatory provisions of Shipping Act. Carrier not now operating. Order of discontinuance entered.

Sanborn, Roehl & Brookman and *A. J. Houda* for respondent.

REPORT OF THE BOARD

This proceeding was instituted by the Board upon its own motion under authority of Section 22 of the Shipping Act, 1916, to inquire into the status of the Coast Steamship Company, of San Francisco, California, which company, according to information informally before the Board, was engaged in freight transportation service as a common carrier by water in interstate commerce,[1] although at no time had maximum rates and charges been filed by it with the Board. The attention of the carrier had been previously directed to the fact that all such common carriers are required by Section 18 of the Shipping Act, 1916, to file with the Board and keep open to public inspection their maximum rates and charges, but no explanation of its apparent delinquency in this respect had been forthcoming.

At the hearing it was stated under oath by the only witness testifying that the "Coast Steamship Company" was not the name of a corporation but was "a fictitious name" used by the witness for a period of approximately one year, terminating January 1, 1931, "as a gathering agency for freight." Under that name the witness advertised sailings, solicited freight, and issued bills of lading. The interstate carrier service thus held out to the public in the name of the Coast Steamship Company was between San Francisco on the one hand and Portland and Coos Bay on the other, with approximately weekly sailings. The steamers which moved the freight so

[1] Section 1 of the Shipping Act, 1916, defines in part a common carrier by water in interstate commerce as a common carrier engaged in the transportation by water of property on the high seas on regular routes from port to port between one State and any other State of the United States.

received for transportation were owned and operated by various lumber companies and others with whom the individual employing the name " Coast Steamship Company " had an arrangement whereby they received from him the prevailing freight rates on the cargo transported less a percentage thereof retained by him. This arrangement, according to the record, was " subject to cancellation at any time; what you might call a trip to trip proposition."

On January 1, 1931, the proprietor of the so-called Coast Steamship Company entered the employment of the Chamberlin Steamship Company, of San Francisco, and ceased operating as a common carrier on his own account. For some months thereafter the Chamberlin Steamship Company, which then as now maintained a Pacific coastwise service that included the ports named above, used the name " Coast Steamship Company " in its advertisements, in conjunction with its own name. At the time of the hearing, however, this practice had been discontinued.

Upon brief, counsel on behalf of the respondent acknowledges that maximum rates and charges for the services formerly furnished by the Coast Steamship Company should have been filed with the Board. It is acknowledged further that such failure can not be justified on the grounds, as projected at the hearing by the witness proprietor of the Coast Steamship Company, that he could not recall receiving notice that such rates and charges should be filed. In short, no defense of the failure to file is submitted other than the statement that it was not understood that such action was obligatory.

Upon the record the business conducted under the name " Coast Steamship Company " as described at the hearing was clearly that of a common carrier by water in interstate commerce on regular route within the purview of the requirements of the applicable regulatory provisions of the Shipping Act, 1916, including Section 18 of that statute, and we so conclude and decide. In view of the present nonexistence of the so-called Coast Steamship Company, however, it is not seen that in the public interest other than an order of discontinuance of this proceeding is required. We therefore enter an order accordingly, without prejudice, however, to any other regulatory proceeding upon complaint of shippers or otherwise, in relation to any responsibility of the respondent under the Shipping Act during the period in which it engaged or may in the future engage in transportation without prior compliance with Section 18 of the Shipping Act and the Board's Tariff Regulations promulgated under authority of that section.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 14th day of October, 1931

Formal Investigation Docket No. 66

In re Coast Steamship Company

Whereas the Board under authority of Section 22 of the Shipping Act, 1916, instituted a proceeding of investigation in re compliance by the Coast Steamship Company with the requirements of Section 18 of the Shipping Act and the Board's Tariff Regulations; and

Whereas 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; now, therefore, it is

Ordered That the aforesaid Section 22 proceeding against the Coast Steamship Company be, and it is hereby, discontinued; without prejudice, however, to any other regulatory proceeding upon complaint of shippers or otherwise in relation to any responsibility of said carrier under the Shipping Act, as amended, during any period in which it engaged or may in the future engage in transportation without prior compliance with Section 18 of the Shipping Act and the Board's Tariff Regulations.

By the Board.

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

UNITED STATES SHIPPING BOARD

Docket No. 75

LESEM BACH & COMPANY

v.

INTERNATIONAL MERCANTILE MARINE COMPANY AND RED STAR LINE (SOCIETE ANONYME DE NAVIGATION BELGE-AMERICAINE)

Submitted January 11, 1932. Decided February 10, 1932

Upon complainant's petition, proceeding discontinued

LeFevre & LeRoy, *Emanuel A. Obstfeld* and *Harold Korzenik* for complainant.

Burlingham, *Veeder*, *Fearey*, *Clark & Hupper*, for respondents.

REPORT OF THE BOARD

The complainant is a partnership engaged in the business of importing linens with headquarters at New York, N. Y. The respondents are New Jersey and Belgian corporations, respectively, and upon the record the respondent Red Star Line (Societe Anonyme de Navigation Belge-Americaine) is shown to be a subsidiary of the International Mercantile Marine Company. It is further shown to be a common carrier by water in foreign commerce subject to the applicable regulatory provisions of the Shipping Act, 1916, and to have carried all of the shipments involved in this complaint proceeding.

The rate charged complainant by respondent Red Star Line for the transportation of linen goods described as "linen tissues and crashes" from Antwerp to New York during 1929 and 1930 was $15 per cubic meter. During part of 1929 and during 1930 respondent Red Star Line transported for certain shippers linen goods of the same character and quality as complainant's but under the classifi-

cation of " oyster linen " at a rate of $10 per thousand kilos. This classification, it is testified, was not disclosed to complainant, resulting, as respects complainant's shipments, in alleged subjection of complainant to undue and unreasonable prejudice and disadvantage and unjust discrimination, in violation of Sections 16 and 17, respectively, of the Shipping Act, 1916. The Board is by the complaint asked to require respondent Red Star Line to cease and desist from said alleged violations, and to award reparation.

Although respondents were represented at the hearing by counsel, no witnesses on their behalf were presented, and no direct evidence in defense or justification of the violations of the Shipping Act alleged against them was offered. Counsel did, however, avail themselves of full opportunity to cross examine the complainant and to inspect documents put in evidence against respondents.

Subsequent to the hearing it appears the parties voluntarily adjusted and fully settled the controversy. Such adjustment and settlement is evidenced by statement in affidavit [1] filed of record with the Board by the complainant, and in such affidavit the complainant formally requests the Board in the premises to discontinue the instant proceeding, and to enter an order of discontinuance thereof.

In view of all the facts and circumstances of record, including the fact that the difference in rates upon which the allegations of the complaint are predicated has been removed, it is not seen that the instant proceeding should be further continued and we so conclude and decide. An order will be entered accordingly, without prejudice, however, to any other related proceeding by the complainant or others.

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[1] Dated January 7, 1932.

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ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D. C., on the 10th day of February, 1932

Formal Complaint Docket No. 75

Lesem Bach & Company *v.* International Mercantile Marine Company and Red Star Line (Societe Anonyme de Navigation Belge-Americaine)

Whereas, during the pendency before the Board of Formal Complaint Docket proceeding No. 75, Lesem Bach & Company *v.* International Mercantile Marine Company and Red Star Line (Societe Anonyme de Navigation Belge-Americaine), the said Lesem Bach & Company under oath records desire that no further action be taken by the Board in Formal Complaint Docket proceeding No. 75 and requests Board entry of an order of discontinuance of said proceeding; now, therefore, it is

Ordered That Formal Complaint Docket proceeding No. 75, Lesem Bach & Company *v.* International Mercantile Marine Company and Red Star Line (Societe Anonyme de Navigation Belge-Americaine), be, and it is hereby, discontinued, without prejudice, however, to any other related proceeding by the complainant or others.

By the Board.

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

UNITED STATES SHIPPING BOARD

Investigation Docket No. 78

IN RE MARGINAL TRACK DELIVERY

Armament Deppe, S. A., Castle Line, French Line, Hansa Line, Holland America Line, Larrinaga Line, North German Lloyd, Ozean Line, Richard Meyer Co., Richard Meyer Co. of Texas, Scandinavian American Line, Southern States Line, Strachan Line, Swedish America Mexico Line, Texas Continental Line, Unterweser Reederei, A. G., Wilhelmsen Line, respondents

Submitted August 1, 1932. Decided August 24, 1932.

A. A. Nelson, Board of Commissioners Lake Charles Harbor & Terminal District; *C. D. Arnold*, Board of Commissioners Lake Charles Harbor & Terminal District, Chamber of Commerce of the Port of Gulfport and D. M. Glaser & Company; *Cullen R. Liskow*, D. M. Glaser & Company; *J. A. Leathers*, Chamber of Commerce of the Port of Gulfport and Gulfport Port Commission; *Lee Clark*, Port of Gulfport; *T. M. Stevens*, *J. B. Waterman* and *W. B. Garner*, Waterman Steamship Corporation and Mobile Chamber of Commerce; *R. G. Cobb*, Mobile Chamber of Commerce and Pensacola Chamber of Commerce; *Marion M. Caskie* and *S. P. Gaillard*, State Docks Commission of Alabama; *Grover C. Dixon* and *S. A. LeBlanc*, Strachan Shipping Company; *H. C. Eargle* and *W. Scott Hammond*, Beaumont Chamber of Commerce and Beaumont Dock & Wharf Commission; *J. D. Hughett*, Orange Chamber of Commerce and Orange Wharf & Dock Commission; *E. S. Binnings*, *L. C. Frantz*, *Jr.*, *Edgar Moulton* and *C. A. Mitchell*; Armament Deppe, S. A., Castle Line, French Line, Hansa Line, Holland America Line, Larrinaga Line, North German Lloyd, Ozean Line, Richard Meyer Co., Richard Meyer Co. of Texas, Scandinavian American Line, Southern States Line, Strachan Line, Swedish America Mexico Line,

Texas Continental Line, Unterweser Reederei, A. G. and Wilhelmsen Line; *Edgar Moulton* and *C. A. Mitchell*, New Orleans Joint Traffic Bureau; *Carl Giessow* and *C. A. Mitchell*, Board of Commissioners of the Port of New Orleans; *J. H. Jordan*, Hansa Line; *D. H. Walsh*, Gulf/French Atlantic Hamburg Range Freight Conference.

REPORT OF THE BOARD

The carriers named respondent in the above caption, along with the Mobile Oceanic Line, comprise the membership of the Gulf/French Atlantic Hamburg Range Freight Conference, which conference exists by reason of a cooperative agreement between such carriers on file with and approved by the Board on July 2, 1930,[1] in pursuance of Section 15 of the Shipping Act. The agreement on file and as approved sets forth the scope and salient particulars of the matters represented by the carriers as having been agreed upon by them to govern them in their collective control of the trade from Gulf ports of the United States to French Atlantic, Belgian, Dutch, and German ports. Not all of the conference carriers operate from all Gulf ports, nor, incidentally, to all the foreign ranges indicated. Thus, the Mobile Oceanic, which in this proceeding is in the character of a complainant against its fellow conference members, operates only from east Gulf ports (Key West to Gulfport inclusive).

At the Gulf ports served by the conference carriers hardwood lumber for export arrives by rail in box cars, and the ocean rates applied thereon to any given destination port in the foreign ranges are the same from all such Gulf ports. From many United States inland points of origin the rail rates on such lumber to the Gulf ports are also the same. The tariffs of the various railroads provide that where hardwood lumber is unloaded by the railroad there will be a specified charge per 100 pounds for unloading. Private contractors also render this service. When at the particular Gulf port cars are placed on " marginal tracks," i. e., tracks adjacent to or close by the vessel, the lumber is by the steamship loaded " direct from car to ship," thus relieving the shipper of the unloading charge. Accordingly, dependent upon the availability and use of marginal tracks, there exists a difference in expense to the shipper by the amount of the unloading charge.

The above matter of marginal track receipt of hardwood lumber at Gulf ports was the subject of attack before the Board in 1930 upon complaint of the Foreign Trade Bureau of the New Orleans Association of Commerce, in which proceeding several of the same carriers respondent in the instant proceeding vigorously defended

[1] Including 2 modifications approved Mar. 25, 1931, and June 24, 1931, respectively.

their practice of refusing to absorb out of their ocean rates the railroad unloading charge, which practice the New Orleans complainant alleged subjected the Port of New Orleans to undue prejudice and constituted an unreasonable practice, in violation of Sections 16 and 17 of the Shipping Act. In the decision of such case (*Foreign Trade Bureau, New Orleans Association of Commerce* versus *Bank Line et al*, 1 U. S. S. B. 177) the facts involved were reviewed by the Board at length, including the facts that only a small percentage of the many wharves at New Orleans have marginal tracks and that there exists a predominance of marginal tracks at other Gulf ports. Much of the limited marginal track berthing space at New Orleans, it was shown, was preferentially assigned and therefore only a small amount of such space was available for general use. Hardly any of the hardwood-carrying lines serving New Orleans had marginal tracks on their preferentially assigned berths. In the case cited above it was urged in evidence by the respondents not having marginal track facilities that any requirement of the Board that those carriers equalize hardwood lumber transportation costs through Gulf ports by adopting marginal track loading at New Orleans similarly as at other Gulf ports, or in lieu of such adoption assume the shipper's expense of unloading, would inflict upon them a severe handicap. Opposition to the proposed equalization was also expressed by those few respondents (with two exceptions) having preferentially assigned marginal track berthing space, who cited the disadvantages and handicaps occasioned by insufficiency of tracks, leads, cross-overs and switches at their berths, distance of such marginal track berths from the Public Belt Yards and by numerous other circumstances and conditions. The respondents there also showed that such a requirement would force their departure from a recognized practice of long standing.

However, on December 10, 1931, the carriers here respondent,[2] including several of those who opposed equalization in the proceeding referred to above, at one of their conference meetings agreed as follows:

> This Conference hereby defines Shipside Delivery at all U. S. Gulf ports covered by the Conference Agreement on Heavy and Light Hardwoods (as classified in Tariff), Redwood, Oak Planks and Rails, Flooring (common), Flooring (Parquetry), Veneers, Billets, etc. (as classified in Tariff), and any other commodities which may be subsequently agreed upon by the Conference, as follows:
>
> (1) Wharf delivery: Piled on wharf (in transit shed) for convenient tallying in ship's berth constructively within reach of ship's tackle, or:
>
> (2) Marginal track delivery: In cars on marginal tracks, alongside steamers' loading berth.

[2] Except Hansa and Strachan Lines.

The steamer to have the option as to the method of delivery shipside.

If the steamer or her agent or stevedore undertakes to unload the cargo from cars onto wharf as defined above, a charge shall be made and collected from owner of the cargo for this service of not less than one and one-half cents per one hundred pounds.

This practice is to be effective March 1, 1932.

In accordance with this resolution contract rates on these commodities are adopted as follows:

To Antwerp. Heavy lumber n. o. s.:

(1) Wharf delivery ..... .30

(2) Marginal track delivery ..... .31½

In cases of rate changes on any of the commodities covered by this action, the rates shall automatically be established with the same differential between wharf and marginal track delivery.

Prior to its effective date formal petitions protesting against this agreement were filed with the Board by the Board of Commissioners Lake Charles Harbor & Terminal District, the Chamber of Commerce of the Port of Gulfport, and the Waterman Steamship Corporation, which corporation is owner and operator of the Mobile Oceanic Line, one of the conference carriers. In such petitions it was alleged that the agreement quoted above was beyond the scope of the organic conference agreement approved by the Board, and that if carried out would unlawfully prevent and destroy competition of the ports of Lake Charles, Gulfport, Mobile, and other Gulf ports with New Orleans, and effect violation of Sections 16 and 17 of the Shipping Act.

Predicated upon the allegations of such petitions the Board initiated a proceeding of investigation,[3] pursuant to which hearing was duly conducted by the Board's Bureau of Regulation. Shortly subsequent to the conclusion of such hearing and receipt of briefs the carriers respondent have filed sworn petition which sets forth that the respondents have rescinded their agreement of December 10, 1931, and that there is "no intention on the part of the respondents now to do the things or acts provided therein, or carry into effect the said suspended and rescinded resolution of December 10, 1931, either in whole or in part * * * Wherefore, said respondents pray that the cause herein be dismissed, without prejudice, and the proceeding be discontinued."

The Board of Commissioners Lake Charles Harbor & Terminal District, State Docks Commission of Alabama and the Waterman Steamship Corporation object to dismissal. Following dismissal, the Waterman Steamship Corporation avers, the respondents would "attempt by a different and concealed manipulation of ocean rates to nullify the benefits which the other ports of the Gulf have obtained

[3] By resolution of Feb. 16, 1932 (copy attached to this report).

over New Orleans through the construction at great expense of modern terminals," e. g., "treat deliveries of lumber in cars on the tracks in the rear of the transit sheds at New Orleans as deliveries at shipside" and "that to treat lumber so delivered in cars as being at shipside will be a pure subterfuge whereunder the ship will pay the necessary expense of handling from car to transit shed, however the same may be manipulated or concealed." The Waterman Steamship Corporation also urges as a ground for its objection to dismissal that—

> A majority of the conference whose interests are identified with New Orleans are busy and resourceful in their efforts to work out through their majority control of the Conference every possible advantage and benefit to the Port of New Orleans, and this complainant as a minority member is constantly on the defensive

and concludes with the request that—

> the United States Shipping Board go into the entire situation with the utmost fullness and make a chart, so to speak, which will define the limits within which the majority of the Conference must stay in its efforts by force of such majority to take from this complainant and the ports which it serves the business to which they are entitled.

Extended consideration of all of the objections to dismissal advanced by the Board of Commissioners Lake Charles Harbor & Terminal District, State Docks Commission of Alabama, and the Waterman Steamship Corporation, however, fails to disturb the fact that the issue upon which the proceeding of investigation in the instant case was solely pitched has been completely removed by the respondents' undisputed rescission of their agreement of December 10, 1931. In the language of a pertinent decision by another federal regulatory body—

> There being no longer a controversy in these cases upon which a judgment could be pronounced, the question which had been in issue has now become abstract, and may never again be of practical importance. * * * It is obviously, therefore, a dictate of prudence as well as of propriety to decline to consider the question now. It will be more in accordance with sound principle to assume that if the conduct complained of was illegal, * * * they (the parties) will continue in their observance of the law from this time on.[4]

The above and other cases are of one accord in reference to issues which have become moot, and the United States Supreme Court in *U. S.* v. *Hamburg American*, 239 U. S. 466, enunciates the established rule and pronounces the disposition applicable in the instant proceeding before us. In that case interruption to steamship business incident to war was determined to make moot an issue respecting alleged violation of a federal statute, and by direction for

[4] *P. Co.* v. *L. N. A. & C.*, 3 I. C. C. 223.

dismissal the court in recognition of " fundamental principles of public policy " declined to render decision as to " predicted future conduct " of the defendant steamship company. Clearly, also, there is no tenable ground for treating the issue concerned in the instant proceeding as an issue permitting of a decision in the nature of a panacean chart.

We accordingly conclude and decide that, in view of the rescission by the respondent carriers of their suspended agreement in controversy, and their sworn statement tending to negative any purpose of " trifling with * * * the Board " by reagreement after dismissal as averred by the Waterman Steamship Corporation, dismissal is in order. We are constrained, nevertheless, to safeguard affirmatively every privilege of the objectors to dismissal in the event of reagreement by the respondents in their conference, or, as further averred by the Waterman Steamship Corporation, of " attempt by a different and concealed manipulation of ocean rates " to achieve the same result. We therefore state for the complaining petitioners' information that the record of testimony taken at the hearing in the instant case may be available to them or others for every appropriate use in any future related proceeding brought upon complaint, or in any future related proceeding initiated by the Board; and, further, our order of dismissal will be expressly without prejudice to the complaining petitioners or others as respects any future proceeding involving the same or related issue.

RESOLUTION

OF UNITED STATES SHIPPING BOARD, FEBRUARY 16, 1932

Whereas, by sworn petitions the Board of Commissioners Lake Charles Harbor & Terminal District, the Chamber of Commerce of the Port of Gulfport, and the Waterman Steamship Corporation, set forth purported agreement entered into on December 10, 1931, effective March 1, 1932, by the carriers comprising the membership of the Gulf/French Atlantic Hamburg Range Freight Conference, which purported agreement is averred to be beyond the scope of the approved organic conference agreement, and, if carried into effect, the petitions aver will unlawfully prevent and destroy competition of the ports of Lake Charles, Gulfport, Mobile, and other Gulf ports with New Orleans; and

Whereas, the Board is vested with authority by Section 15 of the Shipping Act, 1916, to disapprove, cancel or modify any agreement within the purview of that section, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, or ports, or to operate to the detriment of commerce of the United States, and/or to be in violation of said Shipping Act; now, therefore, be it, and it is hereby,

Resolved, That the Board institute a proceeding of investigation for the purpose of determining whether or not said purported agreement of the Gulf/French Atlantic Hamburg Range Freight Conference of December 10, 1931, fixing rates on hardwood lumber and lumber products, exceeds the scope of the approved organic conference agreement, and whether action thereunder by the carriers would result in unjust discrimination or unfairness as between carriers, shippers, exporters or ports, or operate to the detriment of the commerce of the United States, and/or be in violation of the Shipping Act, 1916; in pursuance of which proceeding the Board's Bureau of Regulation is directed to hold hearing and otherwise conduct said proceeding so far as practicable in harmony with the Board's Rules of Practice; and the carriers comprising the membership of the Gulf/French Atlantic Hamburg Range Freight Conference are hereby directed not to carry into effect in whole or in part said purported agreement of December 10, 1931, pending investigation, decision and determination by the Board in the premises; and it is

Further resolved, That each of the carriers concerned, namely, Armament Deppe Line, Castle Line, French Line, Hansa Line, Holland-America Line, Larrinaga Line, Mobile Oceanic Line, North German Lloyd Line, Ozean Line, Richard Meyer Co. Inc., Richard Meyer Co. of Texas, Scandinavian American Line, Southern States Line, Strachan Line, Swedish America Mexico Line, Texas Continental Line, Texas Star Line, Unterweser Reederei, A. G., and Wilhelmsen Line, shall by the Board's Secretary be forthwith mailed under registered cover a certified true copy of this resolution and copy of the aforesaid petitions of the Board of Commissioners Lake Charles Harbor & Terminal District, Chamber of Commerce of the Port of Gulfport, and Waterman Steamship Corporation.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 24th day of August, 1932

In re marginal track delivery

Investigation Docket No. 78

Whereas, during the pendency of the above-entitled proceeding initiated by the Board to determine the lawfulness under the Shipping Act of an agreement between carriers, and of action pursuant to such agreement by such carriers, said agreement has by said carriers been voluntarily rescinded, and the Board is petitioned by said carriers in view of such rescission to dismiss and discontinue the instant proceeding; now, therefore, as concluded and decided in accompanying report of the Board, it is

Ordered, That proceeding entitled "In re Marginal Track Delivery, Investigation Docket No. 78," be, and it is hereby, dismissed; without prejudice, however, to the petitioners at whose instance said proceeding was initiated, or others, as respects any future proceeding involving the same or related issue.

By the Board.

(Signed) SAMUEL GOODACRE,
Secretary.

[SEAL.]

UNITED STATES SHIPPING BOARD

Docket No. 72

THE ATLANTIC REFINING COMPANY

v.

ELLERMAN & BUCKNALL STEAMSHIP CO., LTD., THE UNION CASTLE MAIL STEAMSHIP CO., LTD., PRINCE LINE, LTD., AMERICAN SOUTH AFRICAN LINE, INC., R. P. HOUSTON & CO., AND THE CLAN LINE STEAMERS, LTD.

Submitted November 22, 1932. Decided December 14, 1932

Rates charged complainant on shipments of case oil from United States to South African ports not shown to be discriminatory or prejudicial in violation of Sections 14, 16, and 17 of the Shipping Act, as alleged. Complaint dismissed.

McChord, Curry, and Dolan, R. Granville Curry, Frederick M. Dolan, John H. Stone, and *J. Barton Rettew* for The Atlantic Refining Co.; *George W. Edmons* and *G. Coe Farrier* for The Port of Philadelphia Ocean Traffic Bureau; *Cletus Keating* and *Roger B. Siddall* for respondents; *Julius Henry Cohen, Wilbur LaRoe, Jr., Frederick E. Brown,* and *Walter P. Heddon* for The Port of New York Authority.

REPORT OF THE BOARD

The Atlantic Refining Company, complainant in this proceeding, is a Pennsylvania corporation engaged in the business of producing, refining, and marketing petroleum and petroleum products. The respondents are all common carriers by water in foreign commerce as defined in Section 1 of the Shipping Act, 1916, operating so far as the subject matter of this proceeding is concerned from the United States to South Africa. The complainant alleges that these respondents have subjected said complainant to undue and unreasonable prejudice and have given alleged competitors of the complainant, the Vacuum Oil Company of South Africa, Limited, and/or the Vacuum Oil Company, an undue and unreasonable preference, and have subjected the complainant to unjust discrimination, in viola-

tion of Sections 14, 16, and 17, of the Shipping Act. A cease and desist order, and reparation in the principle amount of $36,617.17 are requested. Petitions of intervention were filed by the Port of Philadelphia Ocean Traffic Bureau and the Port of New York Authority; the former supporting the complainant, the latter the respondents. As provided by Rule XVIII of the Board's Rules of Practice, tentative report, with which this report is in substantial accord, was prepared and duly served upon the parties by the Board's Bureau of Regulation and Traffic. Exceptions to such tentative report filed by counsel for complainant and for its intervener have been given our extended consideration, and in our view are well disposed of by respondents' answer to such exceptions. Extended consideration has also been given to requests contained in the exceptions and in letters addressed the Board for oral argument. Review of the record and of the considerable volume of argument already included therein is convincing, however, that receipt of additional argument would not be justified.

The main plant of the Atlantic Refining Company is located at Point Breeze in the City of Philadelphia, and the complainant's products are both distributed domestically along the Atlantic seaboard and exported to various foreign countries. It entered the South African market in 1924, and from that time until September 30, 1930, its shipments to South Africa were carried by the respondents in this proceeding. During that same period the respondents were carrying to South Africa for the Vacuum Oil Company of South Africa, Limited, and/or the Vacuum Oil Company, who have been in the South African market for many years. The Vacuum shipments during this period moved from New York; while the Atlantic shipments, with the exception of occasional small lots from New York, moved from Philadelphia. The shipments consisted chiefly of petroleum products; gasoline and kerosene in five-gallon tins packed two to a case, lubricating oil, grease, wax, turpentine substitute, etc. The shipments moved in accordance with terms and under rates specified in yearly and two-yearly contracts entered into by each of the shippers separately from time to time with Norton, Lilly & Company as joint agent for the respondents, who, with respect to their operations to South Africa, it is testified, were associated in conference relationship. In both sets of contracts, rates varied with different commodities and different South African ports of destination. The rate on case oil to Cape Town, however, was in each case used as a base rate. These base rates from the time of the entry of the Atlantic into the South African market to September 30, 1930, were as follows:

Date	Atlantic rate	Date	Vacuum rate
	Per case		*Per case*
July 1, 1924–June 30, 1925	$0.32½	Oct. 1, 1923–Sept. 30, 1924	$0.27½
July 1, 1925–Sept. 30, 1925	.33½	Oct. 1, 1924–Sept. 30, 1925	.27½
Oct. 1, 1925–Sept. 30, 1926	.32	Oct. 1, 1925–Sept. 30, 1926	.26¼
Oct. 1, 1926–Sept. 30, 1927	.32	Oct. 1, 1926–Sept. 30, 1927	.26¼
Oct. 1, 1927–Sept. 30, 1928	.32	Oct. 1, 1927–Sept. 30, 1928	.26¼
Oct. 1, 1928–Sept. 30, 1930	.32	Oct. 1, 1928–Sept. 30, 1930	.26¼

On September 29, 1930, the Atlantic entered into a contract with a nonconference line, the Hansa Line, whereby Hansa agreed to carry Atlantic shipments from Philadelphia to South Africa during 1931 at a base rate of 26 cents. The signing of this contract marked the reentry of the Hansa into the South African trade after an absence of many years. From the expiration of this contract up to the time of hearing, the Atlantic had made no shipments whatever to South Africa; the conference, of which the Hansa Line has now become a member, refusing to accord the Atlantic any lower rates than those specified in the conference contract which expired September 30, 1930, or a base rate of 32 cents. Since September 30, 1930, however, the respondents have been according Vacuum shipments out of New York a base rate of 25¼ cents. It is testified that the complainant has been unable to charge any higher price in the South African market than the Vacuum and that consequently it has had to absorb the difference in freight rates.

In defense of a differential in favor of Vacuum shipments out of New York, the respondents set forth certain dissimilarities between the shipments of the Vacuum and the Atlantic, both as to volume and regularity of movement; and allege further a fundamental and controlling difference in services which they are called upon to perform, in that the Vacuum delivers its shipments at the steamer's regular general cargo berth in New York, while the Atlantic cargo for the most part is taken by the carriers at the Atlantic's private dock in Philadelphia, a port at which the respondents claim there is available no substantial amount of general cargo [1] to South Africa.

Under the Vacuum contract the shipper agreed to ship a minimum of 150,000 cases a month, and the respondents agreed to carry at the rates specified in the contract only from this minimum quantity up to a maximum of 225,000 cases a month, with a 24-hour option to the carriers to transport shipments in excess of 225,000 cases at the contract rates. The Atlantic contract specified neither a minimum nor a maximum monthly total, but provided that the respondents, except where an inward steamer was making Philadelphia

[1] In this report the expression "general cargo" is used to designate all cargo other than Petroleum and its products.

the final port of discharge, would furnish a steamer to load Atlantic's cargo at Philadelphia only for a minimum quantity of 20,000 cases. During the period April, 1929, through September, 1930, hereinafter referred to as the reparation period,[2] Vacuum shipments were 83 in number and averaged 45,667 cases, or case equivalents,[3] per ship, while Atlantic shipments from Philadelphia were 14 in number and averaged 37,584 cases, or case equivalents, per ship. The Vacuum contract required the shipper to deliver its goods to the carrier's regular loading berth "free of expense to steamer upon 96 hours' notice at the average rate of not less than 7,500 cases per day, Sundays and holidays excepted." The Atlantic contract required the shipper to deliver its goods to the steamer only when shipping through New York or when tendering less than 20,000 cases to a ship making Philadelphia the final port of discharge. If 20,000 cases were tendered, the Atlantic was "granted the privilege" of having a vessel call at the Point Breeze Refinery to lift the cargo. In either event the Atlantic was required to deliver its shipments "at the average rate of not less than 10,000 cases per running day, Sundays and holidays excepted." During the reparation period the Atlantic shipments out of Philadelphia totalled in every instance more than 20,000 cases.

Point Breeze, Philadelphia, where the Atlantic's private dock is located, is on the Schuylkill River approximately 3⅛ miles from the point where that river empties into the Delaware River. It is about 85 miles from the ocean. The nearest general cargo pier to the ocean at Philadelphia is on the Delaware River approximately 4¼ miles above the junction point of the Schuylkill and Delaware Rivers, and therefore about the same distance from the ocean, but in a different direction, as the Atlantic dock at Point Breeze. The furthermost pier from the ocean in general use at Philadelphia is on the Delaware River about nine miles above the mouth of the Schuylkill. During the reparation period all but one of the Atlantic shipments out of Philadelphia were taken from the Point Breeze dock. The one exception moved on a vessel which made Philadelphia its final port of loading and arrived there with a deep draft. The Schuylkill River at that time had a depth of only about 22 feet at low water with a range of tides from four to six feet,[4] and it was thought best not to bring this loaded vessel up to Point Breeze.

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[2] The bulk of the statistical information furnished by complainant and respondents relates to this period, which, except for two small shipments, practically coincides with the period for which the complainant submits its reparation statement.

[3] For comparative purposes Atlantic and Vacuum products moving in barrels, drums, and certain other containers are converted into "case equivalents" on the basis of two cubic feet to a case.

[4] As of the date of hearing the work of dredging the Schuylkill River to a depth of 30 feet minimum at low water was nearly completed.

Ships going to Point Breeze have to be assisted up the river, and subsequently down the river, by tugs. The Atlantic has its own tugs which it supplies to ships coming to its docks at a cost to the ship somewhat less than if the ship used tugs belonging to outside concerns. In some instances, however, for reasons unstated in the record, the respondents chose to use the somewhat more expensive service. Vessels docking at public wharves in Philadelphia likewise employ tugs but the necessary towage is shorter and the cost less than to and from Point Breeze. The respondents also use tugs to some extent at New York but the expense involved, according to cost figures submitted by certain of the respondents, is considerably less than in docking and undocking at Philadelphia public wharves.

The Atlantic charges carriers who take cargo from the Point Breeze dock one cent a net registered ton per day wharfage, which in the customary wharfage charge assessed by refineries, and compares with a charge at the Philadelphia public wharves of two cents a net registered ton per day. Wharfage charges at New York are acknowledged by the respondents to be substantially in excess of the rate charged at Point Breeze. In some instances the respondents use piers at New York under lease by their agents at contract rates not offered in evidence. In addition to their agency fees these agents assess the carriers using the piers widely varying wharfage charges. One of the respondents, however, uses a pier owned by the City of New York at which the city's "legal wharfage rate" of 3½ cents per net registered ton per day is charged.

The Atlantic's shipments at Point Breeze were taken direct from dock to ship. The Vacuum cargo at New York was lightered to shipside at Vacuum's expense, and taken from lighter to ship. Stevedoring at Point Breeze on case oil costs the ship usually about one-half a cent less a case than if the oil were taken from lighters at a public wharf in Philadelphia.[5] General cargo stevedoring rates are cheaper in New York than in Philadelphia, but the stevedoring rate on case oil is slightly higher than at Point Breeze.

Certain witnesses for the respondents lay some stress on alleged disadvantages encountered at Point Breeze as compared with the public wharves at Philadelphia with respect to overtime, extra clerkage charges, and other minor matters, but for the most part the respondents appear in agreement with the complainant that as far as petroleum and its products are concerned facilities at Point Breeze are entirely adequate, and once a ship has docked at Point Breeze good dispatch is obtained. The respondents contend emphatically, however, that although the Atlantic permits them to receive general

[5] Witness for one of the respondents testifies, however, that his line has the same stevedoring rates on case oil at a public wharf in Philadelphia as at Point Breeze.

cargo at Point Breeze, the facilities afforded there for handling such cargo are wholly inadequate, and that Point Breeze, as compared to the public docks at Philadelphia, is inaccessible to the shipper. It is characterized by a representative of one of the respondents as " an impossible place to load general cargo " because of the distance from the center of the city and because of the natural disadvantage of loading general cargo at an oil refinery.

The respondents submit in evidence an exhibit showing the South African tonnage moving out of Philadelphia and New York during the fiscal years ending June 30, 1929, and June 30, 1930, segregated as to petroleum and general cargo. The complainant submits an exhibit showing Philadelphia and New York exports and imports in the South African trade without segregation as to nature of cargo. The following tabulation is compiled from the data so furnished, corrected for certain minor errors by reference to the source material [6] from which both exhibits were constructed and of which source material it was stipulated the Board would take judicial notice:

	1929			1930		
	Imports	Exports		Imports	Exports	
		Petroleum	General cargo		Petroleum	General cargo
	Tons	*Tons*	*Tons*	*Tons*	*Tons*	*Tons*
New York	133,646	112,904	164,068	164,731	98,786	139,960
Philadelphia	34,985	40,161	2,460	66,439	73,777	310

In considering these figures it must be remembered that by no means all the cargo indicated either out of New York or Philadelphia was available to the vessels of the respondents. Both the Atlantic and the Vacuum, for example, ship bulk oil in tankers, and it is testified that during 1929 the Atlantic shipped out of Philadelphia 7,567 tons in tankers, and in 1930, 15,241 tons. Of the general cargo export tonnage shown as moving out of Philadelphia to South African ports during the year ending June 30, 1929, approximately 1,200 tons comprised a single shipment of locomotives that moved on a chartered ship. As testified by a witness for respondents, ocean carriage of locomotives is customarily a matter of special negotiation.

Of the rest of the general cargo tonnage moving out of Philadelphia to South Africa and included in the two-year record tabulated above, the only shipments of any size consisted of sugar. The

[6] " Volume of Water Borne Commerce of the United States by Ports of Origin and Destination," a publication of the United States Shipping Board.

outward cargo from New York, other than petroleum, as revealed by the evidence and by the source material above referred to, included a wide range of items: automobiles, textiles, provisions, chemicals, sugar, and many others in substantial amounts.

The basis of the homeward cargo from South Africa is ore. One of the respondents, on the average, brings about eight times as much ore to New York as to Philadelphia, while another brings approximately the same amount of ore to Philadelphia as to New York. A third respondent, during the reparation period, brought most of the ore it carried to Norfolk and Philadelphia. The greater part of such other homeward cargo as there is goes to New York, although inbound vessels frequently discharge at a number of different ports on the Atlantic Coast. Many of respondents' ships that moved cargo from Philadelphia and/or New York during the reparation period came to the United States from other than South African ports. A substantial number of them arrived here in ballast. None of the inward cargo discharged at Philadelphia was discharged at the Atlantic Refining Company's dock.

Asserting that New York is the base of their operations in this country and that they do not solicit South African cargo to move from Philadelphia except for such vessels " as go there specially for the Atlantic Refining cargo," the respondents present in evidence certain detailed figures purporting to show a substantial extra cost to the ship in each instance where Atlantic cargo was loaded at Philadelphia during the reparation period over what it would have cost the ship had the Atlantic's cargo been delivered to the steamer's regular berth in New York in the same manner as were the Vacuum shipments. Taken at face value, these exhibits show an extra cost, on the average, of $2,966.27 per ship, or 7.9 cents per case. The respondents point to the fact that this compares with a rate differential actually charged by them against the Atlantic over the Vacuum of only 5.75 cents per case.[7]

In attacking this rate differential and the respondents' defense thereof, the complainant, while contending that in any event cost of service should not be accepted by the Board as the controlling factor in this proceeding, presents an analysis of respondents' cost exhibits which, taken at face value, reduces the figures of $2,966.27 per ship and 7.9 cents per case given by the respondents to $16 per vessel and four one-hundredths of a cent per case. The complainant argues further that if certain items, alleged to be improperly included in respondents' exhibits, were eliminated and certain claimed

[7] Based on the rate currently charged the Vacuum and the rate held out to the Atlantic by the respondents subsequent to the expiration of the last Atlantic contract, this differential would be 6.75 cents.

"advantages in favor of Philadelphia" were considered, the four one-hundredths of a cent per case would be "more than offset."

Complainant's destructive analysis is based in part upon the premise that the respondent carriers under the terms of their contract with the Atlantic and the actual operating conditions which prevailed could have loaded Atlantic's shipments without making special calls at Philadelphia, by utilizing their vessels which called at Philadelphia to discharge inward cargo. In support of the contended feasibility of such a practice is the testimony of steamship men operating in trades other than the South African and the testimony of a representative of the Hansa Line, which carried Atlantic cargo to South Africa during 1931. The respondents deny the feasibility of such a practice.

The cargo lifted at Point Breeze per ship during the reparation period ranged from 21,271 case equivalents to 64,345 case equivalents. The total extra expense per ship as set up by the respondents did not vary proportionately with the quantity of cargo lifted per ship but was dependent upon many factors, and ranged from $1,520.90 to $4,156.34. The alleged extra cost per case ranged from 3.32 cents in one instance to 19.53 cents in another.

Conclusions and Decision

Both respondents and complainant have cited for their differing purposes the familiar decision of the *Supreme Court in United States* v. *Illinois Central R. R.* (263 U. S. 515). In that decision, Mr. Justice Brandeis, speaking for a unanimous court, summarized certain principles governing the Interstate Commerce Commission in the determination under the Interstate Commerce Act of the lawfulness or unlawfulness of any alleged discriminatory treatment.

> The effort of a carrier to obtain more business, and to retain that which it has secured, proceeds from the motive of self-interest, which is recognized as legitimate; and the fact that preferential rates were given only for this purpose relieves the carrier from any charge of favoritism or malice. But preferences may inflict undue prejudice though the carrier's motives in granting them are honest. Self-interest of the carrier may not override the requirement of equality in rates. It is true that the law does not attempt to equalize opportunities among localities; and that the advantage which comes to a shipper merely as a result of the position of his plant does not constitute an illegal preference. To bring a difference in rates within the prohibition of Section three,[3] it must be shown that the discrimination practiced is unjust when measured by the transportation standard. In other words, the difference in rates can not be held illegal, unless it is shown that it is not justified by the cost of the respective services, by their values, or by other transportation conditions.

[3] Section three of the Act to regulate commerce declares unlawful with respect to transportation by rail "any undue or unreasonable preference or advantage" or "any undue or unreasonable prejudice or disadvantage."

These same principles, with due regard to the various differences between transportation by rail and transportation by water, must likewise control the decision of the Board in the instant proceeding. Sections 16 and 17 of the Shipping Act do not forbid all discriminatory, preferential, or prejudicial treatment, nor does Section 14 declare unlawful all contracts based on the volume of freight offered. To paraphrase the language of the Supreme Court in the case just cited: To bring a difference in rates within the prohibition of these sections it must be shown that such a difference is not justified by the cost of the respective services, by their values, or by other transportation conditions.

The cost figures submitted by the respondents are by no means acceptable in every particular, but the analysis submitted by the complainant on brief in an effort to utterly discredit them is still less persuasive. The evidence does not warrant acceptance by the Board of the contention of the complainant that the respondents could in all cases, or even in the majority of cases, have arranged to load Atlantic's cargo while at Philadelphia to discharge inward cargo. The record discloses that in certain instances respondents' vessels discharging cargo at Philadelphia did lift Atlantic cargo on the same call. In other instances ships loaded at Point Breeze, after arriving there in ballast from foreign ports, before going to New York to load. In one instance a ship, after loading its New York cargo, stopped at Philadelphia to pick up Atlantic's cargo on its outward voyage. It is to be presumed that all carriers operate both prudently and with a keen eye for net profits; and the complainant has fallen short of demonstrating that when the respondents made special trips to Philadelphia to pick up Atlantic's shipments they were thereby incurring unnecessary expense. With the exception of a representative of the Hansa Line, none of the witnesses who testified on behalf of the complainant to the expediency of loading Atlantic's cargo on vessels discharging at Philadelphia, expert in their own trades though they undoubtedly are, was shown to possess the thorough familiarity with the South African trade at the time complainant's shipments moved, and the problems facing the respondents in the operation of their vessels, to qualify as an expert in this particular trade. Controlling circumstances vary in different trades: the number of loading ports, the number of discharging ports, the types of cargo and the proportions of each type to the different ports of loading and discharge, et cetera. The testimony of the representative of the Hansa Line in this regard is more impressive, but his conclusions are plainly not predicated upon any study of the individual problems—of stowage, routing, maintaining sailing schedules, fueling, dry-docking, for example—which confronted

each of the respondents during the reparation period. The weight which might be accorded this phase of his testimony is further lessened by the fact that the Hansa Line does not now nor did not during the time when it handled the Atlantic's shipments serve the homeward trade from South Africa. Hansa ships customarily arrive in this country from Europe in ballast. Further, this witness acknowledges that in order to follow the practice of loading at Point Breeze with vessels at Philadelphia to discharge it might be necessary for the individual lines to exchange turns occasionally.

Complainant's analysis of respondents' expense figures attacks the inclusion therein of a charge of one dollar a dead-weight ton per month, employed by respondents on the theory that alleged extra time consumed by their vessels in taking Atlantic cargo at Philadelphia should be assessed against Atlantic's cargo. The complainant contends that due to the schedule of sailings established by the carriers from New York in advance of the monthly declaration by the Atlantic of its shipments, any time consumed in taking Atlantic cargo at Philadelphia would have otherwise been consumed by the ships idling at New York. Complainant further contends that in any event the time of the vessels was not worth a dollar a dead-weight ton. The former contention ignores the testimony on behalf of the respondents that had the carriers not been compelled to have available adequate facilities for living up to their contract with the Atlantic they might have operated with fewer ships. Nor is there any proof submitted that respondents' vessels not calling at Philadelphia to lift Atlantic's cargo lost any time idling at New York or elsewhere. In drawing conclusions to the contrary, complainant has failed to consider among other things time consumed in drydocking, the usual scraping and painting after a long voyage, the making of repairs and fueling. The figure of one dollar a dead-weight ton, however, appears somewhat high with respect to certain of the vessels, and in some instances a portion of the time charged by the respondents against Atlantic's shipments was plainly unjustifiably so charged. The respondents claim, and it is so testified in their behalf, that if the Atlantic cargo had been delivered to them at their regular cargo berths in New York it could have been loaded, together with all cargo actually so delivered and loaded, without delay to the ships. This contention the complainant has not refuted.

In the Illinois Central case (quoted above) Mr. Justice Brandeis declared:

> It is true that the law does not attempt to equalize opportunities among localities; and that the advantage which comes to a shipper merely as a result of the position of his plant does not constitute an illegal preference.

Each of the respondents has chosen to make New York its seat of business in this country. The main flow of traffic to South Africa runs from the Port of New York. The statistical evidence confirms the contention of the respondents and the admission of the representative of the Hansa Line that there is no general cargo movement from Philadelphia to South Africa of any substantiality. The fact that the respondent carriers have not actively solicited such general cargo warrants by itself no conclusion that such a movement could be developed, nor did the complainant offer any factual evidence in support of such a contention.

The evidence likewise unmistakably verifies the contention of the respondents that Point Breeze is an unsuitable place to receive or handle general cargo. From the necessary practical point of view of both shippers and carriers it possesses certain disadvantages inherent in the dock of any oil refinery, while its geographical location in relation to the business section of Philadelphia and the railroads serving that city constitutes a further serious drawback.

Despite the freight differential against it, the Atlantic was able to break into the South African market in 1924, to meet the price of its long established competitor, the Vacuum, and to build up a business. Were the Atlantic, in the absence of a Philadelphia service to South Africa, compelled to move its shipments from Point Breeze to the general cargo piers of the respondents in New York, the cost of such transportation would be, it is acknowledged, approximately 22 cents a case on gasoline and 13 cents a case on kerosene. By the terms of its contract the Atlantic was guaranteed a service at its own plant, subject to certain minimum requirements. No such pickup service was given the Vacuum. Value of service is of course one of the elements the Board must consider in any rate proceeding.

The complainant briefly, and its supporting intervener, Port of Philadelphia Ocean Traffic Bureau, at length, have quoted for support from the Board's decision in *Eden Mining Co.* v. *Bluefields Fruit & S. S. Co.* (1 U. S. S. B. 41), which condemned and found unlawful the giving by the carrier named of certain specified lower rates to shippers who signed contracts to patronize that carrier exclusively than to a shipper who refused to sign such a contract. But the contracts before the Board in the instant proceeding bear no substantial resemblance to the contract in the *Eden Mining case.* The rates accorded under the *Eden Mining* contract were conditioned on a specific pledge that the shipper would confine shipments to the carrier named, and the acknowledged purpose of the contract was to keep shippers from patronizing any other carrier. This was "the one and only condition." The complainant in the instant proceeding appears to have regarded its own contract with the

respondents as one of exclusive patronage, but the contract itself contains no such restrictive provision and the Board consequently can not so regard it. Although the contract of its competitor, the Vacuum, contains no specific guarantee of exclusive patronage, such a guarantee may possibly be read into the contract by implication; but it is obvious that the intent of the contract was to secure to the carriers an assurance of volume of traffic and regularity of movement rather than keep the Vacuum from patronizing other lines. Moreover, neither the Atlantic contract nor the Vacuum contract is terminable by the carrier in the event of the shipper patronizing another carrier. Further, in the *Eden Mining case* there existed no such dissimilarity of surrounding circumstances between the shipments made by the shipper therein held to be unduly prejudiced and the shipments made by the shippers therein held to be unduly preferred as in the instant proceeding exists between the Atlantic shipments and the Vacuum shipments.

There is a tendency for complainants in regulatory proceedings before the Board to so rely upon decisions of the Interstate Commerce Commission as to give too little consideration to the fundamental differences between transportation by rail and transportation by water. The unit of transportation by rail is a car with a capacity of a relatively few thousand pounds. The unit of transportation by water is a ship, and the ships involved in the instant proceeding had an average cargo capacity of around seventy-five hundred tons. The comparative ease with which a railroad by dropping or adding cars can adjust its operations to slight fluctuations in tonnage moving is obvious. Moreover, railroads are semimonopolistic in character and in any given competitive field relatively few in number; while operators of vessels in foreign commerce of the United States may at any time and without warning be subjected to most severe competition by tramp vessels of any nation or by vessels chartered by shippers with large quantities of cargo to be transported. The exigencies of ocean transportation are many and largely peculiar unto such transportation. They can not be neglected by the steamship operator if he is to survive, nor can the Board in arriving at its decisions fail to consider them.

Practically any cargo pays better than petroleum, which possesses but little attraction for a steamship line except when moving in volume and with comparative regularity, or when the carrier's vessels would otherwise be compelled to sail with empty space. The 150,000 cases a month minimum called for under the Vacuum contract constituted a sufficient movement to permit the Vacuum to employ chartered tonnage if it so chose. On the other hand, once secured by the respondents under contract, and moving in accordance

with the terms thereof from the only general cargo loading port in the South African trade, this monthly tonnage became a nucleus to the carriers, around which they could build up a more frequent and regular service than without it. Some weight must be given by the Board to the resultant benefits to the shipping public arising from such superior service. The potential competition of chartered tonnage and the nature of the cargo compelled a low rate, averaging to the carriers about $5.50 per revenue ton against an average revenue throughout the vessel of about $12.50 per ton, or from $16 to $17 per ton on all cargo excluding petroleum.

The Atlantic cargo averaged only about $6.75 per revenue ton. The circumstances surrounding the Atlantic shipments, and the terms of its contract, were quite different from the circumstances surrounding the Vacuum shipments, and the terms of the Vacuum contract. Atlantic's monthly tonnage was too small for the question of charter competition to be considered. There was no pledge in the contract that the Atlantic would make more than a single shipment of 20,000 tons, or in fact even any shipment at all. The Atlantic, in short, unlike the Vacuum, guaranteed neither volume nor regularity. During the reparation period the Atlantic shipments averaged approximately 30,000 cases a month, whereas the Vacuum shipments averaged over 210,000 cases a month. The Atlantic used relatively few of the sailings of the respondents, the bulk of its shipments being confined to fourteen voyages; whereas the Vacuum used all of the 83 sailings of the respondents during the reparation period. Practically all of Atlantic's tonnage moved from a port at which the respondents state they would not otherwise have loaded, and most of it from the Atlantic's private dock. Not only did the carriers incur direct extra expense in taking Atlantic's cargo at Philadelphia, but their stowage problems were considerably increased because of this special service. According to the testimony, gasoline and kerosene can be loaded in only two holds, the forward hold and the after hold, and general cargo can not as a rule be loaded in the same holds with these products. The ships serve a comparatively wide range of ports in South Africa and stowage difficulties when loading is done at two or more ports are much greater than if all the cargo, both general cargo and petroleum, is loaded at but one port. At New York the Vacuum cargo can be loaded from lighters simultaneously with general cargo from the dock or from other lighters.

A considerable proportion of the evidence submitted by the complainant has but an indirect bearing upon the issues. Such, for example, is the fact that the Hansa Line, a nonrespondent, carried Atlantic's shipments for a year at practically the same rate as was

then charged the Vacuum by the respondents. Of similar character is the fact that certain of the respondents together with other carriers are parties to joint contracts in other trades under which contracts Atlantic cargo moves from Point Breeze at the same rate at which petroleum and its products move from New York in such trades. Again, the evidence is that on general cargo moving out of Philadelphia to South Africa, with the exception of sugar, the respondents charge the same rates as from New York; but sugar is the only item of general cargo moving from Philadelphia that can not accurately be characterized as inconsequential in volume. Sugar, the rate on which is not fixed by the conference, is distress cargo and the rate fluctuates widely without regard to port of shipment. In connection with this evidence it must be remembered that carriers may do many things that the Board under its regulatory power can not compel them to do.

The respondents, on their part, likewise present considerable evidence of this type. They point particularly to the fact that one of their number, the American South African Line, although discharging cargo at Philadelphia with some regularity and carrying a few of the small Atlantic shipments that moved from New York, has not carried from Philadelphia either for the Atlantic or any other shipper, with the exception of one occasion in 1926, when the President of the line testifies, "we sent a vessel down to load oil for the account of the Atlantic. We found the business very unprofitable and decided not to do it again." The respondents also stress the fact that since the expiration of their contract with the Atlantic they have lifted a few shipments for the Vacuum at Vacuum's private dock in Paulsboro, New Jersey, at the same rate formerly charged the Atlantic, or 32 cents, against the current rate of 25¼ cents on Vacuum shipments out of New York. Further evidence of a similar nature is the fact brought out by the respondents that when, upon occasion and in other trades, they send their vessels to the Standard Oil Company dock at Constable Hook, where Vacuum shipments originate, they charge a differential on cargo lifted there of two and one-quarter cents over the rate on similar cargo delivered to them at their regular berthing place. Constable Hook is within the harbor limits of New York, and the lighterage costs to shippers of delivering case oil from that point to steamers at the general cargo piers of the respondents averages approximately three cents a case.

Upon the record there is no showing that the differential of 5¾ cents charged against complainant's shipments by the respondents, or the differential of 6¾ cents subsequently held out by them, is in any way violative of the Shipping Act as alleged, and the Board so

concludes and decides. In reaching this conclusion every possible allowance has been made for exaggeration and error in respondents' cost figures, and due consideration has been given to the fact that a small portion of the Atlantic's freight was delivered to the carriers at their New York docks. These latter shipments, it is admitted by the complainant, were casual and incidental to Atlantic's main movement from Philadelphia, and the evidence clearly shows they were in no wise comparable to Vacuum shipments in frequency, regularity, or volume.[9]

No violation of the Shipping Act having been shown, the complaint will be dismissed and an order entered accordingly.

At the hearing and upon brief, complainant asks that if the Board does not grant the relief under the discrimination sections of the statute as prayed for in the complaint, "the conference agreement filed with the Board be cancelled and disaproved; that the arrangements between the carriers be declared to be unlawful, and that the combination which is operating to injure the Atlantic and the city of Philadelphia be dissolved."

Section 15 of the Shipping Act by its second paragraph authorizes the Board to "disapprove, cancel, or modify any agreement or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this Act * * *".

This report has referred but in passing to the conference relationship of the respondents, in which relationship the Hansa Line is now also a participant. The complaint announced no attack nor set forth any protest against the terms of the agreements of the carriers with each other and their effect upon carriers, shippers, exporters, importers or ports, or upon the commerce of the United States. The respondents were not put upon notice that they would be called upon to defend these agreements, as such, in addition to refuting the allegations of statutory violations duly set forth in the complaint filed with the Board and served upon them; notwithstanding which much evidence adduced at the hearing by the complainant through cross-examination of the respondents' witnesses and through its own witness who represented the Hansa Line concerns the details of the agreements themselves and their effect upon carriers, shippers, ports, and the commerce of the United States.

[9] During the period April, 1929, through September, 1930, Atlantic shipments from New York were 21 in number and averaged 411 cases; during same period Vacuum made 83 shipments averaging 45,667 cases.

Complainant's request for Board disapproval of such agreements, it will be noted, is contingent; such disapproval being sought only in the event of a finding by the Board that the violations of the statute alleged in the complaint do not exist. In the *Port Differential case* (1 U. S. S. B. 61) the Board found an existing Section 15 agreement unfair as between carriers and detrimental to commerce of the United States, and disapproved and cancelled such agreement, although the three complaints out of which that investigation grew, did not request such action, but were confined to alleging violations of Sections 16, 17, and 18 of the Act. Subsequent to the filing of such complaints, however, there were received by the Board a number of intervening petitions, and in view of the fact that the issues raised involved all ports on the Atlantic Coast and the Gulf of Mexico, the Board by resolution instituted a general proceeding of inquiry and investigation with due notice to all shippers, ports and other persons through the public press. The complainant has referred to this *Port Differential case* in an evident effort to establish precedent for the Section 15 action by the Board requested in the instant proceeding. It is obvious that the two cases are not parallel. The Board can not predicate upon the present record either a disapproval of existing agreements or a finding of lack of merit in the complainant's attack against them. Not only the respondents in this proceeding but the other member of the conference, the Hansa Line, and not only the complainant in this proceeding, but all other shippers in the trade and all ports which might be affected must first be accorded a full and unmistakable opportunity to be heard upon the specific questions involved. Action of the Board in dismissing the instant proceeding in no way prejudices the right of anyone to file with the Board formal petition requesting modification or cancellation of such agreements and setting forth therein the basis for such request.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D. C., on the 14th day of December, 1932.

Formal Complaint Docket No. 72

Atlantic Refining Company *v.* Ellerman & Bucknall Steamship Co. Ltd., 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 conclusions and decision thereon that the violations alleged have not been shown, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the Board.

(Signed) SAMUEL GOODACRE,
Secretary.

[SEAL.]

UNITED STATES SHIPPING BOARD

Docket No. 73

FIR-TEX INSULATING BOARD COMPANY

v.

LUCKENBACH STEAMSHIP CO., INC.

Submitted December 27, 1932. Decided January 25, 1933

Respondent's rate on Fir-Tex not shown violative of Section 16, 17, or 18 of Shipping Act, 1916, as alleged. Complaint dismissed

Shelby Wiggins for complainant.
A. M. Stevenson for respondent.

REPORT OF THE BOARD

Complainant is a corporation engaged in the manufacture, sale, and distribution of boards, hereinafter referred to by their trade name Fir-Tex.

By complaint filed with the Board it is alleged that respondent's commodity rate of 75 cents for transportation of Fir-Tex from Portland, Oregon, to Boston, Mass., New York, N.Y., and Philadelphia, Pa., was and is unreasonably prejudicial and preferential, unjustly discriminatory, and unjust and unreasonable in violation of Sections 16, 17, and 18 of the Shipping Act, 1916. A rate of 40 cents for the future and reparation with interest on shipments made between October 18 and November 15, 1930, inclusive, are sought. Rates are stated in cents per 100 pounds.

Section 17 of the statute is inapplicable to common carriers by water in interstate commerce. The allegation of unjust discrimination prohibited by that section will not, therefore, be further considered.

Complainant began operation of its Fir-Tex plant at St. Helens, Oregon, on July 1, 1930, and shortly thereafter made application to respondent and other carriers by water operating from Pacific to

Atlantic coast ports of the United States for a rate on "Fir-Tex Insulating Boards (Pressed Wood Insulating Boards)." Pursuant thereto a commodity rate of 75 cents, minimum weight 24,000 pounds, was established effective September 19, 1930, for a period of thirty days. This rate was continued in effect by subsequent extension until establishment, effective November 15, 1930, of commodity rates of 75 cents on shipments exceeding 100 cubic feet per 2,000 pounds and 60 cents on shipments not exceeding 100 cubic feet per 2,000 pounds, minimum weight 24,000 pounds. Such rates are published in Item 140 of United States Intercoastal Conference Pacific-Atlantic Coast Domestic Eastbound Minimum Rate List No. 1 as applicable on "Board, pressed wood, insulating (Fir-Tex), in crates." Contemporaneously in effect has been a commodity rate of 40 cents, minimum weight 60,000 pounds, applicable on "Wood Pulp Board, in rolls or in bundles", published in Item 1195 of such minimum rate list.

Complainant contends before the Board that Fir-Tex is wood pulp board and entitled to the commodity rate of 40 cents referred to above. Stated by it the question at issue is "whether or not the rate of 40 cents per hundred pounds is applicable to the product of the complainant herein by classification or by the rule of analogy." The classification rule of analogy, of course, does not apply to commodity rates.

Fir-Tex is manufactured from sawmill refuse consisting of fir wood and some ten to twelve percent bark. Such waste is brought to complainant's plant at St. Helens in chip form and there softened in digesters by hot water, chemicals and steam under pressure. The softened chips are averred then to be reduced by a series of hammer shredders to pulp or fibers, which, after being cut by refiners to the desired length and waterproofed, are pumped to board-making machines, where by heat and pressure complainant contends they are dried and formed into wood pulp boards, not corrugated nor indented.

As support for its contention complainant compares Fir-Tex with sundry boards manufactured at New Orleans and in various inland cities which it contends to be wood pulp boards and which respondent urges are insulating boards, and whose substantial similarity to, and competitive relationship with, Fir-Tex are unrefuted. Such boards, however, move from New Orleans and points in Minnesota and Mississippi to eastern destinations by rail, the board produced at New Orleans having in addition the benefit of water transportation by carriers, other than respondent, operating from Gulf ports. None of them is shipped through Pacific Coast ports, and whether in event of their being so shipped the sought, assailed

or some other rate would be applicable to them is not a question for determination on this record. In this connection complainant asks that the Board take notice of decisions of the Interstate Commerce Commission wherein one of such competitive boards was considered to be fiber board or pulpboard, and in one of which decisions another of such boards is referred to as wood-fiber board. Examination of such decisions does not show that the Commission had before it for determination whether a commodity rate established upon such a description of traffic as in Item 140 here concerned was applicable to either of such competitive boards or that the product of complainant herein was there under consideration. A finding by the Commission in a particular instance or in certain cases that a commodity competitive with Fir-Tex is pulpboard or wood-fiber board manifestly is not determinative of the applicability or inapplicability to Fir-Tex of respondent's specific commodity rate here assailed.

Complainant also contends that if Fir-Tex were shipped in quantities less than 24,000 pounds it must be considered by respondent as wood pulp board, urging that Western Classification would govern respondent's rate on such shipments and that as no such description of traffic as "Board, pressed wood, insulating (Fir-Tex)" appears in that classification the rate on wood pulp board, not corrugated nor indented, which is rated therein, would apply. In this connection it is respondent's position that the classification rating on insulating boards, N.O.I.B.N., would be applicable.

On behalf of respondent it is testified that the term wood pulp board is inapplicable to any board that does not consist thoroughly of fibers, that Fir-Tex is devoid of fibers as such and, consequently, is not wood pulp board. It is further asserted that Fir-Tex is an insulating board composed of small particles of wood, as distinguished from pulp, and containing insulating air cells which the density of wood pulp renders impossible.

Witness for complainant acknowledges the insulating character of Fir-Tex, and exhibits of record show that it is advertised as an insulating and building board. He testifies that it is, nevertheless, manufactured similarly as other wood pulp board and has a base of coarse fibers, not wood as insisted by respondent. The record is convincing, however, that wood pulp board is a commodity such as is used in making egg separators, shipping cartons and candy boxes, as, for example, divider board and boxboard.

Using for comparison boxboard, which admittedly is wood pulp board, respondent establishes that complainant's shipments of Fir-Tex stowed between 144 and 173 cubic feet per ton as compared with an average wood pulp board stowage of between 75 and 80 cubic

feet per ton. Respondent further shows a loading rate for Fir-Tex of 12 to 16 tons per hour, whereas wood pulp board is averred to average a loading rate under ordinary conditions of approximately 30 tons per hour. Calculations based on exhibits introduced in evidence by complainant show that shipments of Fir-Tex made by it measured on the dock approximately 112 to 128 cubic feet per ton, while witness for respondent testifies that the dock measurement of wood pulp board is 65 cubic feet per ton. It is also testified that unlike wood pulp board, which is shipped in 800 to 4,400 pound rolls, Fir-Tex is packed in crates 8 to 12 feet long and 4 feet wide, which are described as " awkward " to handle and " all open ", and must be dunnaged. The record indicates that Fir-Tex is also shipped in cartons 4 feet long and 4 feet wide and when so packed requires no dunnage.

Commodity rates must be applied strictly and are applicable only to such articles as are clearly embraced within the commodity rate description. Extended examination of the record in this proceeding confirms us in the view that by nature and transportation characteristics the complainant's product materially differs from wood pulp board, and that clearly upon the record it is not shown to be within the description on which the commodity rate of 40 cents here sought is applicable. Nor is there shown any ground for determination by us that the rate complained of was not or is not lawful. Upon due consideration of all the evidence, exceptions and argument of record we accordingly conclude and decide that the rate assailed has not been shown to be unreasonably prejudicial or preferential or unjust or unreasonable as alleged.

Complainant in its exceptions makes request for oral argument. A review of the record and of the considerable argument already presented is convincing, however, that receipt of additional argument would not be justified. Such request is therefore denied.

An order dismissing the complaint will be entered.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D.C., on the 25th day of January, 1933

Formal Complaint Docket No. 73

Fir-Tex Insulating Board Company *v.* Luckenbach Steamship Co., 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 that the violations alleged have not been shown, which said report is hereby referred to and made a part hereof; now, therefore, it is

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

By the Board.

(Sgd.) SAMUEL GOODACRE,
Secretary.

(SEAL.)

UNITED STATES SHIPPING BOARD

Investigation Docket No. 84

DOLLAR STEAMSHIP LINES, INCORPORATED, LIMITED

v.

PENINSULAR & ORIENTAL STEAM NAVIGATION COMPANY, NIPPON YUSEN KABUSHIKI KAISHA AND OSAKA SHOSEN KABUSHIKI KAISHA

Submitted March 6, 1933. Decided March 23, 1933

Complaining carrier admitted to conference. Proceeding discontinued

Hugh Montgomery and *M. J. Buckley* for Dollar Steamship Lines, Incorporated, Limited.

McCutchen, Olney, Mannon & Greene for Peninsular & Oriental Steam Navigation Company.

Lillick, Olson and Graham for Nippon Yusen Kabushiki Kaisha.

Hunt, Hill & Betts and *Thomas A. Thacher* for Osaka Shosen Kabushiki Kaisha.

REPORT OF THE BOARD

This proceeding was instituted by the Board pursuant to allegation by the Dollar Steamship Lines, Inc., Ltd., that membership was denied it in the Japan China Straits/Bombay Conference. The text of the Board's resolution of July 20, 1932, initiating such proceeding is as follows:

Whereas the Dollar Steamship Lines, a common carrier by water, citizen of the United States, sets forth to the Board in writing alleged action by Peninsular & Oriental Steam Navigation Company (British), Nippon Yusen Kaisha (Japanese), and Osaka Shosen Kaisha (Japanese) excluding it from admission into membership in the Japan, China, and Straits/Bombay Conference: Now, therefore, it is

Resolved, That by authority of section 20 of the Merchant Marine Act, 1920, amending section 14 of the Shipping Act, 1916, as amended, there is hereby initiated a proceeding to determine after hearing and upon record

whether the said three foreign carriers, or any of them, are "party to any combination, agreement, or understanding, express or implied, that involves in respect to transportation of passengers or property between foreign ports, deferred rebates or any other unfair practice designated in section 14, and that excludes from admission upon equal terms with all other parties thereto, a common carrier by water which is a citizen of the United States and which has applied for such admission"; and the said Peninsular & Oriental Steam Navigation Company, Nippon Yusen Kaisha (Nippon Yusen Kabushiki Kaisha), Osaka Shosen Kaisha (Osaka Shosen Kabushiki Kaisha), and Dollar Steamship Lines (Dollar Steamship Lines, Incorporated, Limited) are hereby made parties in said proceeding; and it is

Resolved further, That the Board's Bureau of Regulation be, and it is hereby, directed to hold hearing, receive argument, and otherwise conduct said proceeding in consonance with the Board's Rules of Practice.

Following two postponements of date of hearing at the request of the complaining Dollar Company and the respondent foreign carriers, hearing was begun at San Francisco before a Board examiner on March 6, 1933. At the outset of such hearing, however, representative of the complaining American carrier recorded that it had been admitted by the respondent carriers in the conference concerned as an unrestricted member thereof and that it desired the proceeding discontinued.

In the circumstances the Board concludes and decides upon the record that discontinuance of the instant proceeding is appropriate. An order accordingly will be entered.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its office in Washington, D.C., on the 23rd day of March 1933

Investigation Docket No. 84

Dollar Steamship Lines, Incorporated, Limited *v.* Peninsular & Oriental Steam Navigation Company et al.

This proceeding having been conducted pursuant to authority of section 20 (2) of the Merchant Marine Act, 1920, and all parties in interest having been duly heard, and the Board having, on the date hereof, made and filed a report containing its conclusions and decision, which said report is hereby referrred to and made a part hereof: Now, therefore, it is

Ordered, That the aforesaid proceeding be, and it is hereby, discontinued.

By the Board.

(Sgd.) SAMUEL GOODACRE,
Secretary.

(SEAL)

UNITED STATES SHIPPING BOARD

Docket No. 81

IN RE: RATES IN CANADIAN CURRENCY

Submitted April 25, 1933. Decided May 18, 1933

H. W. Bunker for the Coos Bay Lumber Co.; *Wm. W. Payne* for the Pacific Export Lumber Co.; *Geo. J. Presley* for the San Francisco Chamber of Commerce; *L. L. Chipman* for the Long Bell Lumber Co.; *E. D. Kingsley* for the West Oregon Lumber Co.; *W. W. Clark* for the Clark and Wilson Lumber Co.; *Geo. T. Gerlinger* for the Willamette Valley Lumber Co.; *L. A. Morrison* for the Eastern and Western Lumber Co.; *E. A. Parker*, for the Sperry Flour Co. and the North Pacific Millers' Association; *Herman Steen* for the Millers' National Federation; *L. G. Coveney* for the Pillsbury Flour Mills Co.; *J. P. Williams* for the Pacific Coast-Australasian Tariff Bureau; *A. L. Wise* for the Pacific-Dutch East Indies Conference, and the Kerr Steamship Co.; *E. J. A. Watts* for the Pacific Westbound Conference; *L. G. Cushing* for the Pacific-Straits Conference; *Theodore M. Levy* and *R. S. Wintemute* for the Transatlantic Steamship Co., Ltd.; *Herman Phleger* and *Marshall F. Cropley* for the Oceanic Steamship Co. and the Oceanic and Oriental Navigation Co.; *F. F. Allen* for the Oceanic and Oriental Navigation Co.; *R. Back* for the Union Steamship Co. of New Zealand Limited; *M. J. Buckley* for the Dollar Steamship Lines, Inc., Ltd.; *J. B. Armstrong* for the American Mail Line, Ltd., and the Tacoma Oriental Steamship Co.; *E. J. Manon* for the Blue Funnel Line; *C. Winkler* for the Pacific-Java-Bengal Line; *R. A. McLaren* for the States Steamship Co.; *Robert Norton* for the Klaveness Line; *J. G. McNab* and *W. M. Kirkpatrick* for the Canadian Pacific Steamships, Limited; *Geo. E. Chapin* and *H. E. Hornung* for Nippon Yusen Kaisha; *H. H. Pierson* and *John W. Campbell* for Osaka Shosen Kaisha; *J. Sinclair* for the American Hampton Roads Line, American Line, American Merchant Line, Anchor Line, Anchor Donaldson Line,

Atlantic Transport Line, Bristol City Line, Canadian Pacific Steamships, Ltd., Cunard Line, Dominion Line, Donaldson Line, Ellerman's Wilson Line, Furness, Withy & Company, Ltd., Head Line and Lord Line, Lamport and Holt Line, Leyland Line, Manchaster Liners, Ltd., Oriole Lines, Thomson Line, United States Lines, White Star Line, American Diamond Lines, Baltimore Mail Steamship Company, Compagnie Maritime Belge (Lloyd Royal) S.A., Hamburg American Line, Holland America Line, Intercontinental Transport Services, Ltd. (County Line), Red Star Line, North German Lloyd, Yankee Line, Compania Espanola de Navegacion, S.A. (Gardiaz Line), Compagnie Generale de Navigation a Vapeur (Fabre Line), Compania Trasatlantica (Spanish Transatlantic Line), American Scantic Line, Inc., Black Diamond Steamship Corportation, Gdynia-America Line, Norwegian America Line, Scandinavian American Line, Swedish American Line, Swedish America Mexico Line, Transatlantic Steamship Company, America France Line, Compagnie Generale Transatlantique, Cosulich Line, Italian Line, Navigazione Libera Triestina, The Export Steamship Corporation, America-Levant Line, Ltd., National Greek Line.

Report of the Board

Following the departure by Great Britain from the gold standard and the subsequent substantial depreciation of the Canadian dollar in terms of the United States dollar,[1] the Board received a number of communications setting forth allegations that carriers operating in foreign commerce from the Pacific coast were unjustly discriminating against United States shippers by assessing freight charges on United States shipments in United States currency while assessing charges on Canadian shipments in depreciated Canadian currency. Communications of a like tenor received by the President of the United States, various Members of Congress, and the Postmaster General were referred to the Board.

Although the writers of these communications were advised by the Board of their right of complaint under section 22 of the shipping act and the requirements of that act and the Board's rules of practice in connection therewith, no formal complaints were forthcoming. Four trans-Pacific conference agreements approved by the Board under section 15, however, contain provisions which lay certain requirements upon the member carriers with respect to the quoting or collecting of rates in United States and Canadian currencies.

[1] The Canadian dollar of 100 cents represents 1.5046 grams of fine gold and, except during periods of disturbance in the foreign exchange markets, is on a practical parity with the United States dollar.

In the light of the informal allegations contained in the communications referred to it appeared possible that these provisions of the conference agreements should be modified. The Board, therefore, on May 17, 1932, instituted a proceeding to ascertain whether under section 15 of the shipping act the conference agreements of the Pacific Coast Australasian Tariff Bureau, the Pacific Westbound Conference, the Pacific Dutch East Indies Conference, and the Pacific-Straits Conference, or any of them, should be to any extent disapproved, canceled, or modified, and to accord those shippers and organizations who had informally complained of discrimination by carriers belonging to such conferences full opportunity to present facts and/or argument respecting any violation of sections 16 and 17 of the shipping act which might exist by reason of the charging of greater compensation on United States shipments than on Canadian shipments.

Copies of this resolution and due notice of the hearing conducted by a Board examiner at San Francisco to receive evidence and argument were furnished all persons and organizations who had informally complained, and notice of the hearing and the nature thereof was given to the public through the press.

During the course of this investigation the Board was furnished information setting forth that certain trans-Atlantic carriers, parties to approved section 15 agreements, were collecting by reason of the depreciation in Canadian currency greater compensation for transportation on shipments originating in the United States and moving through United States ports than on shipments originating in Canada and moving through Canadian or United States ports. The Board, therefore, on July 13, 1932, by resolution extended the scope of its investigation to include trans-Atlantic freight agreements to which these carriers were party: North Atlantic United Kingdom freight agreement, North Atlantic Continental freight agreement, North Atlantic Spanish agreement, North Atlantic Baltic freight agreement, North Atlantic-French Atlantic agreement, North Atlantic-West Coast of Italy agreement, and Adriatic, Black Sea, and Levant agreement. Notice of the hearing conducted at New York in connection with this second resolution was given to all who had expressed an interest in the subject matter thereof and, through the press, to the general public.

Each of the resolutions was served upon the carrier members of the conferences named therein, and all of such carriers were represented at the hearings, either in San Francisco or New York.[2] In opposition to the currency practices of the carriers in the conferences

[2] The membership of each of the conferences at the time of hearing is shown in the appendix to this report.

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named in the Board resolution of May 17 there appeared at the San Francisco hearing representatives of certain lumber interests and a representative of the North Pacific Millers' Association. An appearance was also entered for the San Francisco Chamber of Commerce, but on its behalf neither evidence nor argument was presented. At the hearing in New York in connection with the currency practices of the trans-Atlantic carriers, a prepared statement was read into the record by a representative of the Millers' National Federation. To such factual assertions as were contained in this statement this representative of the Federation was not in a position to take oath, and at his request a representative of the Pillsbury Flour Mills Company took the stand. No other shipper or shippers' organization appeared at this hearing. In short, the only two specific commodities concerning which evidence against the carriers has been presented for Board consideration during this entire proceeding are flour, from both the Atlantic coast and the Pacific coast, and lumber from the Pacific coast alone.

The following table, compiled from statistics of the Federal Reserve Board, shows each month's average of daily quotations of buying rates on Canadian dollars in New York, beginning with the month of August 1931:[3]

	Cents
August 1931	99.6898
September 1931	96.2476
October 1931	89.1025
November 1931	88.9914
December 1931	82.7064
January 1932	85.1301
February 1932	87.2936
March 1932	89.4530
April 1932	89.8808
May 1932	88.4430
June 1932	86.7427
July 1932	87.0658
August 1932	87.5513
September 1932	90.2636
October 1932	91.2332
November 1932	87.3000
December 1932	86.5989
January 1933	87.4600
February 1933	83.5084
March 1933	83.5205
April 1933	86.4300

Three of the four conference agreements named in the Board resolution of May 17 provide with identical wording that "no payment of freight shall be received in any currency other than that of the

[3] Great Britain departed from the gold standard on Sept. 21, 1931.

United States or its equivalent on cargo originating in the United States, or in any currency other than Canadian or its equivalent on cargo originating in Canada." The agreement of the fourth conference, the Pacific Coast-Australasian Tariff Bureau, forbids "acceptance of Canadian currency on cargo originating in or passing through the United States." The word "originating" used in these agreements, as testified at the hearing in San Francisco, refers to the *country* in which the product originates, not the port. It will be noted that under the agreement governing the Pacific Coast-Australasian Tariff Bureau the only cargo on which Canadian currency can be accepted by the member carriers is cargo originating in Canada and moving through a Canadian port, whereas in the other three conferences the sole criterion is the country of origin. It had been the custom of the carriers on conference-controlled items in all four conferences to quote rates in "dollars" and to quote the same number of "dollars" out of Canadian ports as out of United States ports. At the San Francisco hearing it was announced on behalf of the members of the Pacific-Dutch East Indies Conference and the members of the Pacific-Straits Conference, however, that these two conferences had adopted a resolution prior to the hearing in accordance with which rates out of Canadian ports (in Canadian dollars) had been established at a level 10 percent higher than the rates out of United States ports (in United States dollars). As a result of this action in these two trades conference rates out of the United States are on an exact parity of exchange with rates out of Canada whenever the United States dollar is at a 10-percent premium over the Canadian dollar. With the United States dollar at a 10-percent premium, the Canadian dollar is worth approximately 90.91 cents in United States money. At the same hearing it was announced on behalf of the members of the Pacific Coast-Australasian Tariff Bureau that that conference had adopted a resolution establishing rates (in United States currency) on a number of commodities when moving from United States ports 10 percent lower than the rates (in Canadian currency) on the same commodities when moving from Canadian ports. The commodities covered by this resolution, it was testified, are the only ones in this trade on which there is competition between the two countries. It was also testified, and evidenced by the terms of the resolution, that this 10-percent discount on United States shipments was established only until further notice, and that the conference from time to time would determine the proper discount to be observed. On the 10-percent discount basis, conference rates out of the United States in this trade are on a parity with conference rates out of Canada on these competitive commodities whenever the Canadian dollar is worth 90 cents in United States money,

or, expressing it from another point of view, whenever the United States dollar is at a premium over the Canadian dollar of approximately 11 percent.

Concerning the fourth and only other conference agreement covered by the Board resolution of May 17, the agreement of the Pacific Westbound Conference, it was testified that the member lines had discussed the question of making a similar adjustment to offset in part the depreciation in Canadian currency. Although some of the lines had favored such an adjustment others were opposed to it, and no action had been taken.

Of the three member lines in the Pacific-Dutch East Indies Conference, one has not operated from Canadian ports for about a year. The other two operate from both the United States and Canada. Of the four member lines in the Pacific-Straits Conference, one operates from the United States only, another has not operated from Canada for approximately a year, while the other two load both in the United States and in Canada. Concerning these two conferences it was testified on behalf of the member carriers that the movement of traffic from Canada in the trades covered is very limited. No shipper testified to any injurious effects upon his business of either past or present currency practices of the carriers in these trades.

In the Pacific Westbound Conference, with 12 members, 4 lines operate from the United States only, and 1 from Canada only. Another line, formerly loading in both countries, has not operated from Canada for about a year. Against the currency practices of the carriers in this conference there was submitted at the hearing but a paucity of evidence. The North Pacific Millers' Association presented a protest against the "granting to Canadian shippers the same rates of freight in Canadian dollars as they are requiring of American shippers in American dollars", but the evidence indicates that recent adverse conditions encountered by flour shippers from the Pacific coast of the United States to the Orient are due largely to the general depression in world trade. It further appears that competition from Australia has been more disturbing than competition from Canada. It is stated on behalf of the carriers, and admitted by the representative of the North Pacific Millers' Association, that Canada has done very little flour business in North China for some two years. In the Philippines, where both Australian and Canadian flour must pay a duty of 42 cents a barrel there has been "since 1930 an increase of approximately 6 percent in Australian flour imports and 5 percent in Canadian flour imports at the expense of American flour imports." No evidence was submitted that connects the relative increased movement of Canadian flour into the Philippine market with the depreciation in Canadian currency, which

began in September 1931, nor was it specifically asserted that the two are connected. The lumber interests who testified at the San Francisco hearing had very little to say about the trade covered by this conference. According to one representative of the industry the currency situation respecting freight rates "may have some slight bearing" on the shrinkage in the amount of lumber moving to China and Japan from the United States. Due to various adverse economic conditions there has been a substantial decrease in the export trade to nearly all markets and in nearly all commodities. Other witnesses representing the lumber industry made similar references to the status of their exports in this trade.

There are no "open" rate commodities[4] in either the Pacific-Dutch East Indies Conference or the Pacific-Straits Conference; but in the Pacific Westbound Conference lumber and flour, as well as a few other commodities, are open to a number of ports because of competitive conditions, such as the use by shippers of chartered tonnage and the existence of nonconference lines. In the trades covered by this latter conference the principal commodities moving from Canada which compete with the same commodities moving from the United States are flour, wheat, lumber, and logs, all of which frequently move in large quantities and in chartered tonnage. Among the users of chartered tonnage is one of the large shippers who testified at the hearing against the carriers. Although it is clear that in quoting rates on these open items the carriers are guided largely by competitive conditions, it was testified on behalf of some of the carriers that they were endeavoring to collect higher "dollar" rates out of Canada than out of the United States.

The bulk of the evidence and argument submitted by shippers at the San Francisco hearing was directed against the Pacific Coast Australasian Tariff Bureau. In this conference of five members one line operates from United States ports only and another from Canadian ports only. The rates on most lumber items are open, and in attacking the currency practices of the conference lines in this trade it is concerning lumber only that shippers have presented any evidence. Lumber is one of the commodities embraced by the resolution adopted by this conference prior to the San Francisco hearing whereby the "dollar" rates on commodities covered thereby were made 10 percent lower when the commodities move out of United States ports than when they move out of Canadian ports. Since most lumber items are open, the precise effect of this resolution on lumber shippers is problematical. On behalf of one of the principal lumber-carrying lines in the trade, it was testified that it is now that

[4] On some commodities conferences do not fix rates, leaving them "open" so that each carrier member may freely meet changing competitive conditions.

line's practice to quote lower " dollar " rates to United States shippers than to Canadian shippers. Freight rates on lumber in this trade, however, fluctuate considerably. In their effort to assure themselves a cargo nucleus, the carriers often book lumber some months ahead. In the words of one of the witnesses for the carriers:

> In booking lumber for our ships to Australia we have to protect ourselves against exporters who operate with outside time-chartered vessels. . . . We have to have a certain minimum amount of lumber to operate our ships. We have to know in advance what lumber we are going to have. It is our practice, therefore, of making a booking 2 or 3 months ahead to protect our minimum requirements for lumber. We get the best rate we can for these bookings, based on the competition of the outside time-chartered steamers. On this basis we may have to take more lumber before the ship finally loads, depending on the cargo offered, and in making these bookings we get the best rate we can.

Statistical and other information furnished by lumber interests who appeared at the hearing and who had previously made allegations to the Board and elsewhere of unlawful discrimination on the part of the carriers in this trade shows clearly that exports of lumber to Australia have recently dwindled almost to the vanishing point. According to the figures of the Pacific Lumber Inspection Bureau, out of the total lumber moving to Australia from the North Pacific (Washington, Oregon, and British Columbia) during the first quarter 1932, approximately only 117,000 feet, or about one half of 1 percent, moved from the United States as against around 25,600,000 feet from Canada. During 1930, 71.2 percent of the total moved from the United States, and during 1931, 34.5 percent. It is the contention of the carriers, however, that the loss to United States exporters reflected by these figures is not due to any disparity in freight rates but to preferential tariff treatment extended to Canada by Australia. This preferential treatment arising from a trade agreement entered into between Canada and Australia in July 1931, approximately 2 months prior to Great Britain's departure from the gold standard, extends to Canada lower import duties on a large number of commodities than are extended to the United States. Among these commodities are various forms of lumber, on some of which the preference amounts to as much as 20 shillings a thousand feet. The protestant shippers acknowledged the serious effect of this preferential treatment upon their exports to Australia from the United States. It was testified by one of these shippers that up to the beginning of this change in Australia's tariff regulations the United States shipped during 1931, 49.1 percent of all the lumber shipped from the North Pacific, and that during the remaining portion of 1931 the United States shipped only 15.3 percent. Several shippers, in response to interrogations, stated they had made no shipments to Australia since this preferential tariff went into

effect, and the general tenor of their evidence is to the effect that the tariff is practically prohibitive on most lumber items.

Relative to the instant investigation in connection with carriers operating from the Atlantic coast under the agreements named in the Board's second resolution, as testified at the New York hearing three of the section 15 agreements under which these Atlantic carriers operate, the North Atlantic-West Coast of Italy agreement, the Adriatic, Black Sea and Levant agreement, and the North Atlantic Spanish agreement, do not cover traffic moving through Canadian ports. According to the evidence, the respondent carriers in these trades quote all rates in United States currency, including rates on traffic originating in Canada and moving through United States ports. With these agreements, therefore, and the carriers operating thereunder, this report will not further concern itself.

The North Atlantic-French Atlantic agreement named in the second resolution of the Board was superseded during this investigation, and prior to the hearing in New York, by a new agreement. Only one of the lines participating in this agreement, the County Line, serves Canadian ports, and this line operates from Canadian ports only. This conference quotes rates in "dollars", and on shipments originating in Canada the County Line collects Canadian dollars; on shipments originating in the United States, United States dollars. The other carrier members, who operate out of United States only, collect all freight in United States dollars irrespective of country of origin.

In the North Atlantic-United Kingdom trade it is the practice of the conference lines to quote their agreed rates in "dollars" and to accept Canadian currency on cargo of Canadian origin moving through Canadian ports, or under through bills of lading through United States ports, but to require United States currency on cargo of United States origin, whether the cargo moves from United States ports or from Canadian ports. The same practice prevails in the North Atlantic Baltic Conference.

In the North Atlantic Continental Conference the practice is not uniform, although out of Canadian ports all the lines there operating accept Canadian currency on shipments of Canadian origin and exact United States currency on shipments of United States origin moving through Canadian ports. Out of United States ports the Hamburg-Bremen lines as a general rule collect United States currency on all cargo whether it originates in the United States or Canada, while the Antwerp-Rotterdam lines as a general rule collect in United States currency on cargo originating in the United States and in Canadian currency on cargo originating in Canada and moving under through bills of lading through United States ports.

As already stated in this report, notwithstanding the publicity given the instant proceeding, but one witness adverse to the carriers took the stand at the New York hearing and his testimony concerned a single commodity—flour. Although the statistical information furnished by this witness was meager, it is a safe conclusion from his testimony, and a matter of common knowledge as well, that the exportation of flour from this country has been decreasing rapidly for sometime. This witness estimated that during the year preceding the hearing, the company by which he is employed lost at least 50 percent of its total export tonnage and he expressed his belief that the United States export flour trade as a whole had lost even more than that percentage. To what extent, however, such decreases are due in any way to freight rates from United States ports and the currency practices of the carriers in connection therewith, no conclusion can be reached from the present record. It is obvious that many causes have been contributory.[5] In its foreign commerce this country has encountered tariffs, quota systems, and other trade barriers in ever-increasing number. High walls of protection which could be surmounted by our exporters only with great difficulty have been replaced by still higher walls. The company by which this witness is employed has done no business at all in either France or Belgium for a long time because of restrictions placed upon imports by those two countries. The United Kingdom, according to his testimony, was formerly one of the largest markets enjoyed by his company, but the British Government's imposition of a 10 percent tariff on flour except when originating in the dominions of Great Britain has made it necessary for this concern to make arrangements in Canada for the production of flour for sale in this particular market. Such preferential treatment of Canada by Great Britain, this witness acknowledged, is the main reason for the drastic decline of his company's export business to the United Kingdom.

There is one striking difference between the protestants' evidence and argument submitted at the New York hearing and the evidence and argument submitted against the carriers at the San Francisco hearing. At New York no attempt was made to single out the American-flag carriers for attack, while at San Francisco the president of one of the large owners of timber on the Pacific coast, speaking on behalf of his own company, and "in a measure" on behalf of a number of other producers and shippers of lumber represented at that hearing, explained their position as follows:

Now, we are protesting primarily as American taxpayers and secondarily as manufacturers and shippers. We are particularly protesting against the dis-

[5] In this connection, not only the export trade of the United States, but commerce within its own borders has suffered severely in the last 2 years.

crimination against us by these American-flag vessels, which are subsidized by the United States Treasury; and I wish to cite some illustrations later on. Our real specific complaint is against subsidized vessels going into Canada for commodities, all of which are procurable in the United States, and transporting them to other dominions of the British Empire at lower charges than they demand that we pay. That, Mr. Examiner, is the real basis of our complaint.

Similar statements were made at the Pacific coast hearing by other lumber representatives, and this position is reiterated in the joint brief filed on behalf of these lumber interests. Similarly, the representative of the North Pacific Millers' Association who testified at the San Francisco hearing in connection with alleged unjust discrimination on flour by carriers to the Far East, referred repeatedly to the discrimination by *American* lines and *American* shipping interests which are stated by him to be "subsidized" by the United States Government. The "subsidies" referred to are the mail contracts which certain of the American-flag carriers operating in these trades have entered into with the Post Office Department. If the desired currency "equalization" is not established as a result of this proceeding, then these protestants declare "that the subsidies should be cancelled or the vessels should be precluded from loading any competitive commodities at Canadian ports." The Board's power to do either of these two things is not made clear, nor is it shown how the protestants would be benefited thereby.

Although insisting that the mail contracts are in no way germane to this investigation, the American-flag carriers concerned have not been supine under this attack. Thus one of the carriers on brief states:

> This company has solicited and handled all the business in the trade which it was able to obtain from United States ports. Where the volume of these shipments offered at any particular time was small and would not approximately equal a load for the vessels scheduled to sail, it has of necessity engaged, booked, and loaded such additional cargo, be it lumber or any other commodity, to fill or partially fill the vacant space in its vessels and permit the successful operation of the line . . . . The compensation received by it under its mail contracts for the carriage of mail is calculated and intended to permit this company to continue to operate and in part to cover the differential in operating costs in favor of foreign-flag vessels. If this company is to continue operating in this trade and to aid in the upbuilding of American foreign commerce, it can only do so on competitive terms with foreign-flag and tramp vessels operating in the same trade.

These carriers also emphasize the fact that many of their foreign-flag competitors pay a large share of their expenses of operation, such as wages and repairs, in the depreciated currencies of the countries whose flags they fly, while the American-flag lines must meet the greater part of such expenses in United States currency.

It is not necessary to here examine the merits or demerits of this defense insofar as it bears on the attack against American-flag vessels operating under mail contracts. Neither the flag flown by a carrier nor the circumstance that it receives financial benefits from mail contracts tends in any way to prove or disprove that such carrier has been violating the regulatory provisions of the shipping act. This defense has been quoted from, however, not only in justice to the carriers but because the quoted matter, insofar as it describes the general competitive situation in the water transportation of the export commerce of the United States and Canada, is pertinent to the issues in this proceeding.

The purpose of this investigation as set forth in the Board's resolution of May 17 was to ascertain whether certain section 15 agreements should be to any extent canceled, disapproved, or modified, and in connection therewith to afford shippers and others an opportunity to present formally for Board consideration facts and argument respecting violations of sections 16 and 17 of the shipping act which various persons and interests had alleged informally to the Board, and elsewhere, concerning the currency practices of the carriers. A relatively small number of shippers and other persons, as indicated in the preceding pages of this report, availed themselves of the opportunity so furnished, and the evidence submitted in support of their contentions is unsubstantial. A conclusion by the Board that the statute has been violated must be predicated upon evidence that is concrete and directly pertinent to the issues raised. The record is replete with general statements but patently deficient in specific illustrations.

Some of the witnesses who appeared to protest against the currency practices of the carriers professed an almost total unfamiliarity with such matters as the import duties assessed by countries to which they export and the rates currently charged by the carriers. The statistical information furnished by the protestants concerning the export movement of lumber and flour is not only meager but rather uncertainly vouched for, and there is lacking any showing that such decreases in export movement as are indicated are in any way attributable to the currency practices of the carriers. The carriers have directed the Board's attention to other adverse conditions which they assert account for the decline in exports referred to by the shippers. This report has already referred to the tariff protection set up by various countries and to the preferential treatment now being accorded Canada by various parts of the British Empire. There is a further circumstance which has a powerful deterrent effect upon exports from this country as compared to exports from Canada, a

circumstance arising from the depreciation of the Canadian dollar in terms of the United States dollar. Other things being equal, there is always a strong financial incentive for the world to buy in a country whose currency has depreciated rather than in a country whose currency has not depreciated. Purchases in Canada are paid for in Canadian dollars, while purchases in the United States must be paid for in United States dollars. The potential Australian purchaser of lumber, as a result of the depreciation in the Canadian dollar, finds that his Australian currency will purchase more Canadian dollars than United States dollars. The result is well illustrated by an episode which one of the lumber-producing witnesses recounted in evidence at the San Francisco hearing in an attempt to illustrate how his company had lost business to a Canadian producer of lumber as a result of the currency practices of the carriers. About a month before the hearing his company submitted a bid for 1,500,000 feet of lumber for the Australian market, f.o.b. mill. This bid was on mining timber, on which, it is stated, Australia does not give Canada preferential tariff treatment. The bid was $8.50 a thousand feet. A Canadian competitor, however, also bid $8.50 and got the business. With the Canadian dollar at approximately 10 percent discount the Canadian quotation was obviously far more favorable to the Australian purchaser than the quotation from this witness. It is to this fact and not to the currency practices of the carriers that the loss of this business must be attributed.

A peculiarly striking illustration of this tendency of the world to buy in the country whose currency has depreciated is furnished by a portion of the testimony of the representative of the flour industry who testified at the New York hearing. In selling flour in the world market, in order to compete successfully with other producers of flour, it is necessary that the American flour manufacturer secure his raw material in the cheapest possible market. At the time of the hearing wheat, as testified to by this witness, was selling in Canada (Winnipeg) at 57 cents a bushel against only 51 cents in the United States (Chicago). Yet this witness testified that his company was purchasing most of its wheat in Canada. The reason is not far to seek. Due to the depreciation at that time of approximately 13 percent in the value of the Canadian dollar in terms of the United States dollar, the 57-cent Canadian wheat was cheaper than the 51-cent United States wheat.[6]

The carriers have been diligent in pointing to the workings of these powerful economic forces and urging upon the Board that it

[6] As this report is being written United States wheat is selling at approximately 72 cents a bushel against approximately 65 cents for Canadian wheat, and the Canadian dollar is worth approximately 87 cents in United States money.

is these forces and not their currency practices that have caused the loss of business described by various witnesses. These witnesses, on the other hand, have failed to present the Board any satisfactory evidence of having actually lost any business to a Canadian competitor because of the currency practices of the carriers.

In defending their practices, the carriers point to the fact that carriers operating out of Canadian ports only are in no way subject to the jurisdiction of this Board, and that in soliciting Canadian business to move either through Canadian ports or United States ports carriers subject to the Board's jurisdiction encounter this nonsubject competition. The record indicates the Canadian Government's opposition to the restoration of parity of exchange in rates from the two countries by means of any increase in compensation to the carriers out of Canada. In this connection it is noted that certain of the carriers operating out of Canada receive financial aid from the Canadian Government. It must be realized that, however much the depreciation of the Canadian dollar may have stimulated the comparative volume of freight moving from Canada, from the point of view of the Canadian shipper, who uses Canadian currency, there has occurred no reduction in freight rates. The Canadian shipper pays the carrier the same amount of his currency he would pay if the Canadian dollar were not depreciated. To the carrier receiving such currency, of course, there accrues lesser revenue only in so far as the carrier finds it necessary to convert the Canadian currency so received into other currencies in order to make disbursements outside of Canada. With respect to the expenses of the carrier in Canada, stevedoring rates and dockage, for example, it was testified that since the beginning of the present depreciation of the Canadian dollar there has been no increase in such costs in Canada. Depreciation in a country's currency is often followed by a compensating increase in domestic prices and the general expenses of doing business, and had the carriers encountered such an increase in cost of services furnished by them to the Canadian shipper, there would exist one of the main reasons by which carriers can justify exacting increased compensation from shippers.

Carriers serving both Canadian and United States ports whose major disbursements must be made in United States currency are naturally fully as desirous as the complainant shippers to have rates from Canada increased to offset the depreciation in the exchange value of the Canadian dollar. The position of these carriers in this respect is expressed in one of the carrier briefs:

> Further, it should be understood that the prejudice in the situation is quite as much upon the carriers as it is on the shippers. The carriers have to

accept the Canadian dollar from Canadian ports as they do the United States dollar from United States ports. The discount in exchange on the Canadian dollar is to the prejudice of United States carriers, which they would like to have corrected if possible, rather than a discrimination against United States shippers. If the United States shippers think they are suffering, let them remember that the carriers are sustaining more prejudice than they are.

When we consider the possibility of restoring parity of rates by decreasing the rates of the carriers on United States shipments we are confronted by the circumstance that these freight rates are already, generally speaking, quite low, and by the well-known fact that the steamship business today is being conducted upon an unprofitable basis. There is no claim advanced by anyone that any particular rate or the rates in any particular trade are too high, and the shipper witnesses have failed to produce any evidence convincingly indicative, in view of the many barriers to trade now existing, that a reduction in freight rates out of United States ports would sufficiently, if at all, increase the flow of traffic so as to compensate the carriers for the reduction in rates. Nor can it be taken for granted that, in the event of such a reduction out of the United States, nonsubject carriers out of Canada would not counter by reducing their own rates.

It was the suggestion of one of the shipper witnesses, and the same suggestion is contained in briefs submitted, that the carriers "equalize" rates from the two countries by quoting such rates in the currency of some other country, such as England. The fact is pointed to that it is now the practice of the carriers to quote rates on grain to the United Kingdom in sterling. These rates on grain, however, which are open, fluctuate from day to day and ship to ship, and the freight is paid at destination. Further, the proposal that this practice of long standing be extended to other commodities and other trades ignores the fact that the Board certainly has no power to compel carriers operating out of Canada to quote in sterling, and it is at least questionable whether the Board could compel carriers operating out of the United States to quote rates in the currency of any other country than the United States.

Two suggestions submitted by shippers are diametrically opposed. The Board is asked on the one hand to abolish open rates and on the other to withdraw approval of the conference agreements. To withdraw approval of the conference agreements would result in all rates becoming open. As pointed out on behalf of the carriers, the same currency practices are observed by the individual carriers on open-rate items as on items whose rates are controlled by the conferences. It is also stated by one of the carrier witnesses, and not denied, that lines not party to any conference agreements observe

similar practices. Curiously, the only two commodities concerning which testimony adverse to the carriers was presented at either hearing, lumber and flour, are open-rate items in many of the conferences, and, strikingly, the producers and shippers of lumber who entered appearances confined their testimony almost entirely to the Australian trade, yet in this trade most lumber items move under open rates.

Concerning one of their currency practices, the carriers are less persuasive in defending themselves than in their other testimony and argument. In some trades, as outlined previously in this report, carriers allow payment of freight on shipments originating in Canada and moving through United States ports to be paid for on a Canadian-dollar basis while exacting payment in United States dollars on shipments originating in the United States and moving either through United States ports or Canadian ports. The carriers testify that it is only by permitting the same rate on cargo of Canadian origin moving through United States ports as on cargo of Canadian origin moving through Canadian ports that they can secure business of Canadian origin to move through the ports of this country. They call attention to a similar practice with respect to rail transportation, over which, of course, the Interstate Commerce Commission exercises, by virtue of statutory authority conferred upon it, a greater measure of regulation than is vested in the Shipping Board in connection with transportation by water in foreign commerce. Under this practice the rail carriers on export traffic from points of origin in Canada moving through specified United States ports collect their freight charges in Canadian currency, in order to meet the competition of Canadian railways operating from the same points in Canada to Canadian ports. On export traffic originating in the United States, however, the railroads collect all charges in United States currency. With the Canadian dollar depreciated, were the rail carriers operating from the United States into Canada, or the steamship carriers operating out of Canada, to change this practice now and permit payment of "dollar" freight rates in Canadian currency on traffic originating in the United States, they would be, in effect, cutting the rate, with a resultant tendency to divert shipments of United States origin from United States ports to Canadian ports. The carriers contend that any change in these practices "would upset the whole rail and ocean structure" of freight rates.

Concerning this particular practice, the witnesses who testified against the carriers on the Pacific coast had conspicuously little to say. If they encounter Canadian competition through United States ports, they did not so testify and in their briefs do not argue against

it. In connection with the hearing held at New York the Millers' National Federation on brief specifically denounces the carriers for permitting flour of Canadian origin to move in certain trades through United States ports at the same rate in Canadian currency as United States exporters pay in United States currency. Neither the Millers' National Federation, however, nor the one shipper's witness who testified against the carriers operating from the Atlantic coast, presented a concrete case of business actually lost to American exporters because of this practice. At the present time the movement of traffic from Canadian points through United States ports is stated to be comparatively unsubstantial. The amount of competition which United States exporters encounter from Canadian exporters varies greatly not only in different trades but on different commodities in the same trade, and not only as respects Canadian products moving through United States ports but as respects Canadian products moving through Canadian ports. The situation is complicated by the fact that flour in the United Kingdom trade moves under open rates and by the further fact that in some trades Canadian shippers are permitted to pay in Canadian currency on shipments through United States ports only in the event such shipments move through Boston or Portland, Maine, through which ports it is testified there moves very little flour of United States origin.

The informative investigation initiated by the Board's resolution of May 17, 1932, was broad in scope and the carriers have necessarily defended their practices on broad general lines. The competitive conditions faced by the carriers vary greatly in the different trades, and, as already set forth more fully in this report, the terms of their section 15 agreements and their currency practices also differ in the different trades, depending largely upon competitive conditions. The carrier members of three of these conferences have seen their way to adjustments of rates that largely offset the effect upon rates of the depreciated value of the Canadian dollar. To what extent, if any, these particular adjustments have benefited any shipper remains in doubt. The Canadian dollar is fluctuating not only from day to day but from hour to hour. There have been single days when its value has moved over a 3-cent range. During this proceeding it has been worth as little as 80 cents in United States money and as much as 93 cents. With such erratic conditions prevailing, the difficulties confronting the carriers in any attempt to confer upon shippers the "equalization" asked for are obvious, nor has there been suggested any convincingly sound method by which they can accomplish such "equalization." It is no new thing for the carriers to accept Canadian funds on Canadian shipments while requiring United States funds on United States shipment. As tes-

tified, this practice is one of long standing, and it is the destruction of the normal relationship between the two currencies and not an act of the carriers that has given rise to the charges of discrimination. Moreover, these practices have persevered in the past during other periods when the Canadian dollar was substantially depreciated in value as well as during periods when the United States dollar was worth less than the Canadian dollar.

It is, of course, possible for practices long lawful to become unlawful due to changed conditions, but a showing of unlawfulness must be conclusive and definite, and the few shippers and other interests who availed themselves of the opportunity furnished by the Board to present facts and argument respecting the alleged violations of sections 16 and 17 of the act have signally failed to make such a showing. There is absent also any showing that the currency practices of any of the carriers in any trade are responsible for the present depressed conditions of the export business of such shippers as appeared, or that the other shippers—the great majority of the shippers in these trades who did not appear—have lost business or suffered otherwise because of these practices, or any of them. This report has detailed some of the other conditions prevailing which the carriers contend, with much logic, are responsible for the decrease in the export trade of the United States. Such arguments have not been refuted.

In writing section 15 into the statute, Congress gave sanction and encouragement to conferences; and the benefits that flow to shippers as a class from conferences are often as substantial as the benefits accruing to the carrier members themselves. It is the Board's function to afford relief from actual, not theoretical, wrongs; and it should not disturb conference relationships without compelling reasons and a reasonable certainty that any cancelation or modification of an agreement it might order under authority of section 15 would be of practical benefit.

From the information disclosed by this investigation there is nothing to warrant the issuance of any order requiring any change in the currency practices of the carriers. An order of dismissal will therefore be entered. Nothing in this report, however, should be considered in any way vindicatory of the currency practices of the carriers, or of any such practices; nor is this report in any way prejudicial to the right of any shipper or other person to complain formally to the Board under authority of section 22 of any of these practices in any trade, by any carrier or on any commodity. Upon a showing pursuant to that section that a violation of the statute exists, or a showing that cancelation or modification of any section 15 agreement will remove a detriment to the commerce of the United States, the Board will, of course, take proper corrective action.

APPENDIX

Pacific Coast-Australasian Tariff Bureau Agreement No. 50

The Transatlantic S. S. Co., Ltd.
United Steam Ship Company of New Zealand, Limited
Oceanic and Oriental Navigation Company
Canadian Australasian Line, Limited
The Oceanic Steamship Company (Matson Navigation Company)

Pacific Westbound Agreement No. 57

American Mail Line, Ltd.
Canadian Pacific Steamships, Limited
The Blue Funnel Line
Dollar Steamship Lines, Inc., Ltd.
Pacific-Java-Bengal Line
Kerr Steamship Co., Inc.
Klaveness Line
Nippon Yusen Kaisha
Oceanic and Oriental Navigation Company
Osaka Shosen Kaisha
States Steamship Company
Tacoma Oriental Steamship Company

Pacific Dutch East Indies Agreement No. 162

Kerr Steamship Co., Inc.
Pacific-Java-Bengal Line
Klaveness Line

Pacific-Straits Agreement No. 143

Dollar Steamship Lines, Inc., Ltd.
Kerr Steamship Co., Inc.
Klaveness Line
Pacific-Java-Bengal Line

North Atlantic United Kingdom Freight Agreement No. 16

American Hampton Roads Line
American Line
American Merchant Lines
Anchor Line
Anchor Donaldson Line
Atlantic Transport Line
Bristol City Line
Canadian Pacific Steamships, Ltd.
Cunard Line
Dominion Line
Donaldson Line
Ellerman's Wilson Line
Furness, Withy & Company, Ltd.
Head Line & Lord Line
Lamport and Holt Line

Leyland Line
Manchester Liners, Ltd.
Oriole Lines
Thomson Line
United States Lines
White Star Line

North Atlantic Continental Freight Agreement No. 48

American Diamond Lines
Baltimore Mail Steamship Company
Canadian Pacific Steamships, Ltd.
Compagnie Maritime Belge (Lloyd Royal) S. A.
Ellerman's Wilson Line
Hamburg-American Line
Holland America Line
Inter-Continental Transport Services, Ltd. (County Line)
Red Star Line
North German Lloyd
United States Lines
Yankee Line

North Atlantic Spanish Agreement No. 138

Compania Espanola de Navegacion Maritime, S. A. (Gardiaz Line)
Compagnie Generale de Navigation a Vapeur (Fabre Line)
Compania Trasatlantica (Spanish Transatlantic Line)

North Atlantic Baltic Freight Agreement No. 147

American Diamond Lines
American Scantic Line, Inc.
Baltimore Mail Steamship Company
Black Diamond Steamship Corporation
Compagnie Maritime Belge (Lloyd Royal) S.A.
Gdynia-America Line
Hamburg-American Line
Holland America Line
North German Lloyd
Norwegian America Line
Red Star Line
Scandinavian American Line
Swedish American Line
Swedish America Mexico Line
Transatlantic Steamship Company
United States Lines
Yankee Line

North Atlantic-French Atlantic Agreement No. 409

America France Line
Baltimore Mail Steamship Company
Compagnie Generale Transatlantique
United States Lines

North Atlantic/West Coast of Italy Agreement No. 65

Compagnie Generale de Navigation a Vapeur (Fabre Line)
Cosulich Line
Italian Line
Navigazione Libera Triestina
The Export Steamship Corporation

Adriatic, Black Sea, and Levant Agreement No. 133

America-Levant Line, Ltd.
Compagnie Generale de Navigation a Vapeur (Fabre Line)
Cosulich Line
National Greek Line
The Export Steamship Corporation

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D.C., on the 18th day of May 1933

In re Rates in Canadian Currency

Docket No. 81

Whereas the Board by resolution adopted on May 17, 1932, instituted a proceeding of investigation into the currency practices of the Pacific Coast Australasian Tariff Bureau, the Pacific Westbound Conference, the Pacific Dutch East Indies Conference, and the Pacific-Straits Conference, and the carriers comprising the membership of said conferences; which investigation by resolution of July 13, 1932, was extended in scope to include the North Atlantic United Kingdom freight agreement, North Atlantic Continental freight agreement, North Atlantic Spanish agreement, North Atlantic Baltic freight agreement, North Atlantic-French Atlantic agreement, North Atlantic/West Coast of Italy agreement, and the Adriatic, Black Sea, and Levant agreement, and the carriers participating in said agreements; and

Whereas, pursuant to said resolutions a full hearing and investigation has been had, and the Board on the date hereof has made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof; now, therefore, it is

Ordered, That said proceeding and investigation be, and it is hereby, dismissed.

By the Board.

[SEAL] (Signed) S. D. SCHELL,
Acting Secretary.

UNITED STATES SHIPPING BOARD

DOCKET NO. 80

THE W. T. RAWLEIGH CO.

v.

N. V. STOOMVAART MIJ. "NEDERLAND", N. V. ROTTERDAMSCHE LLOYD, N. V. NEDERLANDSCH-AMERIKAANSCHE STOOMVAART MIJ., N. V. NEDERLANDSCHE STOOMVAART MIJ. "OCEAN", OCEAN STEAMSHIP CO., LTD., CHINA MUTUAL STEAM NAV. CO., PRINCE LINE (FAR EAST), LTD., DODWELL CASTLE LINE, THE BANK LINE, LTD., SILVER LINE, LTD., AND KLAVENESS LINE

Submitted May 24, 1933. Decided July 6, 1933

Respondents' assessment of freight rates under contract noncontract rate system not shown to be in violation of sections 14, 16, and 17 of Shipping Act, as alleged. Complaint dismissed.

A. W. Murray, for complainant.

Burlingham, Veeder, Fearey, Clark & Hupper (Roscoe H. Hupper and William J. Dean, of counsel), for respondents.

REPORT OF THE BOARD

Complainant is an Illinois corporation with principal office and factories at Freeport, Ill., and is engaged in the importation, exportation, manufacture and sale of spices and other products. It maintains an office and warehouse at Telok Betong. Sumatra, Netherlands East Indies, where it buys black Lampong pepper and other spices and products and ships them to itself in the United States.

Complainant competes with the spice trade in the common market, principally New York City. The price of black Lampong pepper,

the commodity concerned in this case, is subject to market fluctuation, and rate differences between contemporaneous consignments of the complainant and its competitors are reflected in the profit or return on a given shipment.

The carriers named respondent are engaged in transportation between the Netherlands East Indies and the United States. Except the Klaveness Line[1] they operate to and from United States Atlantic and/or Gulf ports and function in conference relation under an agreement dated Batavia, March 12, 1929, which agreement was approved by the Board under section 15 of the Shipping Act, 1916, on May 8, 1929. Modification thereof admitting the Bank Line into conference membership was approved by the Board on December 11, 1930.

The complaint is that as respects shipments of black Lampong pepper from the Netherlands East Indies to New York and New Orleans the respondents violated section 14, paragraphs 3 and 4, section 16, paragraphs 1 and 2, and sections 17 and 18[2] of the Shipping Act in that they charged the complainant a higher rate than the rate charged other shippers of black Lampong pepper for equivalent transportation service. The complaint sets forth prayer for award of $50,000 reparation, and by stipulation filed at the hearing it is stated the difference of $1,042.45 between rates charged complainant and rates of other pepper shippers during the period November 28, 1931, to January 24, 1932, is the basis of computation of reparation, if any, to be allowed. This difference in rates is due to the maintenance by the carriers of a so-called "contract rate practice", under which those shippers who agree with the contracting carriers to furnish them all of their shipments over a given period not exceeding a year[3] are accorded lower rates. Both the higher noncontract rates charged shippers who do not so agree and the lower or contract rates are duly shown in the carriers' tariff. The tariff also contains the express notation that when contracts exist between shippers and the lines, cargo will be accepted for shipment at the contract rates of freight shown in the tariff, and that in all other instances the noncontract rates of freight shown therein will apply.

The complainant's specific allegations[4] are that the respondents have—

(1) Resorted to discriminatory or unfair methods against complainant because complainant refused to agree to patronize respondent common carriers

[1] Klaveness operates to and from United States Pacific Coast.
[2] Sec. 18 has application to carriers in interstate commerce only.
[3] Except as respects 1 period of 14 months.
[4] As reproduced in opening brief, p. 11.

exclusively, "or for any other reason" in violation of section 14 (third) of the Shipping Act, 1916.[5]

(2) Made unfair or unjustly discriminatory contracts with shippers and unfairly treated or unjustly discriminated against complainant, in violation of section 14 (fourth) of said act;[6]

(3) Made or given undue or unreasonable preference or advantage to shippers who are competitors of complainant; and have subjected complainant to undue or unreasonable prejudice or disadvantage; in violation of section 16 (first) of said act;

(4) Allowed certain shippers to obtain transportation for property at less than the regular rates by an unjust or unfair device or means; in violation of section 16 (second) of said act.[7]

(5) Demanded, charged, and collected from complainant a rate or charge which is unjustly discriminatory between shippers, or unjustly prejudicial to complainant, an exporter of the United States as compared with its foreign competitors;[8] in violation of section 17 of said act.

The complainant was apprised of and offered the contract arrangement by the carriers similarly as were all other shippers, and it appears that the complainant was the only shipper of pepper who declined to contract.

Eight shipments of black Lampong pepper made during the period November 28, 1931, to January 24, 1932, aggregating 337,214 kilograms,[9] form the basis of the complainant's prayer for reparation. On such shipments the freight charges were 20,488.41 florins ($8,242.39) which were paid under protest. The amount of freight charges, it is exhibited, would have been less by 2,591.2 florins or $1,042.45 at contract rates. Although alleging violation by the respondents of paragraph 4 of section 14, no evidence was presented by the complainant either as to the volume of its competitors' shipments of pepper or to show that the rates charged on such shipments from the Netherlands East Indies by the respondents under the individual contracts were in any way predicated upon the shipment of any specific volume either per ship or during the period covered by the contracts.

[5] Sec. 14 (3) forbids any carrier to "retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason."

[6] Sec. 14 (4) of the Shipping Act forbids any carrier to "make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of (*a*) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (*b*) the loading and landing of freight in proper condition; or (*c*) the adjustment and settlement of claims."

[7] Sec. 16 (2) forbids any carrier to "allow any person to obtain transportation for property at less than the regular rates then established and enforced on the line of such carrier, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means."

[8] In this proceeding the complainant's evidence is solely that of an importer.

[9] 743,422 pounds.

The difference or spread between the contract and noncontract rates involved was approximately 15 per cent. The complainant does not in any manner include within the issue raised by it any question of amount of spread between the contract rate and the noncontract rate involved, however, but confines such issue to the lawfulness under the provisions of the Shipping Act above specified of the respondents' contract rate practice per se. The basis for complaint is expressed by complainant in the following words:

> The unjust exaction by respondent common carriers of higher rates from complainant for identical service than from other shippers, who had agreed to give the respondents their exclusive patronage, is objected to by the complainant as subjecting it to undue and unreasonable prejudice and disadvantage and as constituting unjust discrimination between shippers in violation of sections 14, 16, and 17 of the Shipping Act.

To further use complainant's language in this connection—

> The question of rates from our viewpoint, or the payment of the rates, contract rate, or the noncontract rate, or the spread of difference between them, is entirely immaterial and outside the scope of this proceeding.[10]

This proceeding, accordingly, does not present for determination anything other than the lawfulness in the trade concerned of the contract-noncontract rate practice itself, apart from and independent of any factor of quantum of spread.

The facts of the case set forth above were presented by complainant's witness and by stipulation between counsel entered into at the hearing. The stipulation also recites the absence of any "particular transportation service" furnished complainant's shipments not rendered to competing pepper shippers who paid the lower contract rate. By cross-examination of the carriers' witnesses conditions in the trade before and since the inauguration by the carriers of contract rates, detriment incurred by a noncontract shipper, and general conditions concerning the contract rate practice conceived by complainant to show unlawfulness are reviewed. From a summing up of complainant's evidence, there can be no doubt that the complainant's only disadvantage is as respects the rate. There is no evidence that any other shipper has been preferred over complainant or that complainant has been subjected by respondents to any unfair treatment in matters of space or other facilities, or that complainant has been treated differently from every other shipper except as to the rate disparity factor inherent in any contract rate practice. Complainant shows it used the facilities of seven different vessels of three of the respondents during the reparation pe-

[10] Also "the issue is whether or not the respondent common carriers have unjustly discriminated against this complainant by demanding and collecting from it rates, whether reasonable or unreasonable, which are higher than rates which are reasonable or unreasonable charged other shippers for similar service."

riod of 58 days; and in no particular are any of its shipments made at any time over any of the respondents' lines shown or testified to have received other than satisfactory accommodation as to space or other facilities, lading, landing, or in reference to claims. Further, nothing is produced tending toward any disclosure that the contract rates were other than regular rates currently established and enforced by the respondents. Such rates, along with the corresponding noncontract rates, were included in the carriers' tariff, and the contract form was openly distributed.

The respondents' evidence is directed to showing that the purpose and ultimate effect of the contract rate system in the trade is to enable them to estimate the approximate volume of cargo that will move over their lines and to insure stability of rates and regularity of service. Although the contracts lay no requirement upon the shippers to ship any specified amount of cargo, the fact that the shippers signing the contracts pledge themselves to ship all of their tonnage over the lines of the carriers named therein, coupled with estimates from shippers of their tonnage requirements, aids the carriers in arranging sailings to fill the requirements of the trade and enables them in a measure to avoid uneconomical operation of excess ships. The ability of shippers to make such estimates and the potential value thereof to the carriers where they have contracts with the shippers is well illustrated by statements of complainant's witness at the hearing in testifying that complainant exports from the Netherlands East Indies between 2,000 and 3,000 tons of pepper to the United States in a year, and that during the pepper season of 4 or 5 months in the fall and early winter practically every ship from the Netherlands East Indies to the United States carries some of its shipments. The respondents present that the contract system eliminates rate wars and traffic disturbances, and that shippers along with the respondents benefit by reason thereof. According to the testimony each respondent competes with the others relative to their respective services similarly as before the system was inaugurated, and their solicitation costs remain unaffected. The record is that due to the contract rate system an improvement in transit time has been effected by certain of the respondents. The respondents assert that the theory of steamship companies in setting up contract rate systems and establishing differentials in favor of shippers who sign such contracts is that the promise of a shipper's business is of value to the carriers, and that the existence of such a system is likewise of value to shippers in that it assures the trade a regularity of service and stability of rates which the carriers would otherwise be unable to make available. Reasonable certainty of rates and service, it is stated, enables shippers to compete with merchants of this and other

countries on an equivalent basis, and in many instances, it is testified, contracts have been sought by shippers for the purpose of securing such certainty.

The reasons advanced by complainant for its refusal to agree with the carriers and become a contract shipper are that "said agreement was illegal, against complainant's established business policy and practices, against sound public policy and in violation of the antitrust laws of the State of Illinois and United States of America." As developed under cross-examination of complainant's witness by counsel for respondents, the refusal of complainant to sign the contract form of the carriers was made despite the recommendation of its traffic manager that the contract be signed and the lower rate thus secured.

As support for its position that the respondents violated the stated regulatory provisions of the Shipping Act in assessing rates on its shipments higher than the rates assessed on shipments of contract shippers, the complainant urges for attention the decision of the Board in *Eden Mining Co. et al.* v. *Bluefields Fruit & Steamship Co.* (1 U.S.S.B. 41). As there disclosed, however, a single carrier sought by contracts with shippers to monopolize the trade by preventing use of the vessels of any other carrier over a period of 3 years. Shippers were permitted no choice of carriers, and participation by other regular carriers in the contracts was neither provided for nor contemplated. Also, in the case referred to, the lower rates to contract shippers on cargo transported from New Orleans to Bluefields, Nicaragua, were conditioned upon the shippers exclusively patronizing the carrier with all of their shipments [11] not only from New Orleans to Bluefields but from all of the carrier's Nicaraguan ports of call to New Orleans.[12] Moreover, there was no assurance against increase of rates at any time without notice.

In the instant proceeding the contract shippers were afforded by the terms of the contracts the services of at least 11 different carriers operating regularly in the trade at the time complainant's shipments moved, including not only the 10 conference members but also a nonconference line, the Isthmian line, the only other line regularly in the trade. Furthermore, according to the record, had any other regular carrier entered the trade it would have been eligible for admission to membership in the conference [13] and to partic-

[11] Except mahogany and other native woods from Nicaragua.

[12] No lower or contract rates applied on such northbound shipments.

[13] Clause 9 of the organic conference agreement approved by the Board provides that "any other reputable person, firm, or corporation operating vessels regularly in the trade covered by this agreement shall be admitted to membership on equal terms with all other members upon compliance with the terms of this agreement provided consent of a ma-

ipation in the contracts. Thus, we consider it in fairness and reason to determine, the respondents did not, either through their association in conference or by the adoption of the contract rate system, monopolize or seek to effect any plan to monopolize the trade concerned as in the Eden case; nor, correlatively, was a shipper signing a contract deprived, as in the Eden case, of all choice of the carriers it might elect to patronize, since the services of all of the 11 regular carriers in the trade were available. Again, in the instant case, the contracts with the shippers provided for shipment on the respondents' vessels only in connection with traffic on which the lower rates were accorded, and the rates specified by the contracts were testified to be maximum rates which could not be increased during the period of the contract but which, however, might be lowered.[14]

We are convinced, therefore, that the facts in the instant proceeding are in important aspects materially different from those involved in the Eden case, and that the decision in that case does not, as projected by the complainant, constrict the Board to a similar decision in this. We cannot agree that conclusions arrived at in one case must be accepted as constituting a precedent necessarily to be followed as of binding authority in a subsequent proceeding where dissimilar facts are presented.[15] Manifestly each complaint must stand on the facts disclosed on its own record.

As respects the reasons advanced by complainant for its refusal to agree with the carriers and become a contract shipper supra,[16] the respondents urge that if the complainant has any substantial reason for not becoming a contract shipper it must be that it desires freedom to avail itself of casual tramp or other competition at cut rates. In such relation the circumstance that the complainant has until now confined its shipments to respondents' lines and that at the moment there appear to be no carriers threatening the trade's rate stability, gives no assurance to the respondents that they may not at any time find a reverse situation confronting them. Operators of vessels in foreign commerce of the United States may at any time and without warning be subjected to severe competition by unregulated tramp vessels of any nation or by vessels chartered by

jority of the parties to this agreement is obtained and provided further that admission to such other reputable person, firm, or corporation shall not be denied without just and reasonable cause."

[14] Although the spread between the contract and noncontract rates is not at issue in this proceeding, it is to be observed that while in the instant case the noncontract rate is approximately 15 per cent higher than the contract rate, the noncontract rate in the Eden case was 25 per cent higher than the contract rate.

[15] *Brooks* v. *Marbury,* 11 Wheat., 78; *Parsons* v. *D.C.,* 170 U.S. 45; *U.S. Nav. Co., Inc.,* v. *Cunard et al.,* 284 U.S. 474.

[16] That said agreement is "illegal, against complainant's established business policy and practices, against sound public policy and in violation of the antitrust laws of the State of Illinois and United States of America."

shippers with large quantities of cargo to be transported. The exigencies of ocean transportation, and particularly in a long-voyage trade such as concerned in the instant case, too frequently approach such a vital character that they cannot be neglected by the vessel operator if he is to survive, nor treated as inconsequential by the Board in its determinations in complaint proceedings.

The complainant has been and is receiving frequent and satisfactory transportation service maintained with heavy investment by the respondents in a long-distance trade with the unqualified support of practically all other shippers than the complainant through the use of the contract rate system in its simple form.[17] The complainant, except as to rate, is accorded every advantage of such service similarly as are such other shippers, although it has the liberty of at any time patronizing any competition destructive of the stability and regularity of such service. In return for the rate disadvantage which it incurs in the capacity of a noncontract shipper there must, in fairness, be considered the prospect not only of recoupment by complainant but of its obtaining, through the exercise of such liberty, advantages in rates over those shippers who have agreed to confine their shipments to the respondents.

The contract rate practice as a practice is not new, and by implication it must be said to have received approbative attention at the hands of a committee of Congress after a lengthy and painstaking investigation of combinations and practices of carriers by water.[18] It has presently almost universal practical application, being used in multitudinous daily transactions by carriers the world over. Like the method of charging rates upon a weight or measurement basis, and, in interstate trades, the carload-less carload mode of rate making, it is a system of rate application which finds acknowledged adaptability in ocean transportation. An important attribute of it is equality of rate treatment as between large and small shippers. In the language of the congressional committee to whose report we have adverted above:

> The contracting lines agree to furnish steamers at regular intervals and the shipper agrees to confine all shipments to conference steamers * * *. The rates on such contracts are less than those specified in the regular tariff, but the lines generally pursue a policy of giving the small shipper the same contract rates as the large shipper, i.e., are willing at all times to contract with all shippers on the same terms.

[17] Contracts similar to that declined by complainant were proffered "all Netherlands East Indies shippers and contracted for by most of them on shipments to the United States." Stipulation, par. 11.

[18] Report of Committee on Merchant Marine and Fisheries, H.Res. 587, 62d Cong., vol. 4, p. 290.

By contracting with a group of lines under the contract system prevailing in this trade and here at issue, the small shipper is assured of adequacy of service and of receiving the same rate as that charged the large shipper of the same commodity. As emphasized by the respondents:

> So far from manifesting monopoly, this arrangement is the very antithesis of monopoly. It spreads its benefits among all carriers and all shippers who are willing to accept them. It protects the small shipper as well as the large shipper, and it justly deprives any large shipper who might occasionally seek special favors from playing off one carrier against another.

The Shipping Act, which closely parallels the recommendations of the foregoing legislative committee, does not forbid the contract rate practice as such; nor has the Board ever considered that the practice as a practice contravenes any of the regulatory provisions of the shipping statute. Similarly as in connection with other accepted modes of rate making, through it violation of the regulatory statute may be effected, as for example, in the Eden case, or where, as recognized by respondents upon brief, the spread between the contract and noncontract rates is such in amount as to constitute unlawfulness. This present proceeding, however, involves no issue respecting anything other than the lawfulness of the contract rate practice per se, and upon the record we have no hesitation in determining that, as urged by the respondents, their practice under attack has not upon such record been shown to be other than fairly justified by embrasive considerations of volume, regularity and flow of cargo. In this connection it is not persuasive that the respondents' practice is unlawful because of the absence of materially different service before and since the inauguration of such practice by them. Manifestly, a basic reason for the inauguration of the contract rate practice was to secure protection to the carriers of the established services, maintenance of which required heavy capital and overhead expenditures. These considerations, it would appear, justified adoption by the respondents of every reasonable measure, such as the contract rate practice per se, to assure the stability of competitive conditions necessary for the continuance of the regularity and frequency of service required by shippers in the trade and which, except for introduction of such practice, might well have become impossible.

Extended examination of all of the facts and argument and of complainant's exceptions to the tentative report prepared by the Bureau of Regulation and Traffic is convincing that upon the record in this proceeding the complainant fails to show violation by the respondents, or any of them, of paragraphs 3 and 4 of section 14, paragraphs 1 and 2 of section 16, or of section 17 of the Shipping Act, 1916, as alleged, and we so conclude and decide. An order of dismissal will be entered.

ORDER

At a Session of the UNITED STATES SHIPPING BOARD, held at its Office in Washington, D.C., on the 6th day of July 1933

Formal Complaint Docket No. 80

The W. T. Rawleigh Company v. *N. V. Stoomvaart Maatschappij "Nederland" 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 conclusions and decision thereon that the violations alleged have not been shown, which said report is hereby referred to and made a part hereof: Now, therefore, it is

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

By the Board.

[SEAL]

SAMUEL GOODACRE,
Secretary.

DEPARTMENT OF COMMERCE

UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 116

PASSENGER CLASSIFICATIONS AND FARES AMERICAN LINE STEAMSHIP CORPORATION

Submitted February 12, 1934. Decided March 2, 1934

Schedule of American Line Steamship Corporation (Panama Pacific Line) changing its present classifications and fares in the intercoastal passenger trade between New York, N.Y., and San Francisco, Calif., found justified. Order of suspension vacated.

Cletus Keating and *Roger Siddall* for American Line Steamship Corporation (Panama Pacific Line), respondent.

Parker McCollester for Panama Mail Steamship Co., and *W. Gwynn Gardiner* for Dollar Steamship Lines, Inc., Ltd., protestants.

REPORT OF THE DEPARTMENT

Oral argument on the examiner's proposed report was had before the advisory committee.

By schedule filed to become effective December 8, 1933, respondent proposed to change the present classification of passenger accommodations on its vessels operating in the intercoastal trade between New York, N.Y., and San Francisco, Calif., via the Panama Canal, from first class and tourist class to all first class, and to make the present minimum one-way tourist-class fare of $120 the minimum one-way first-class fare. Reduction of the fares for the present first-class accommodations, reductions, and increases of the fares for the present tourist-class accommodations, and changes in the differentials between the fares for the different staterooms are also contained in the proposed schedule.

Upon protests filed by the Panama Mail Steamship Co., hereinafter called the Grace Line, and the Dollar Steamship Lines, Inc.,

Ltd., hereinafter called the Dollar Line, alleging that the proposed fares and classifications will be unduly preferential and prejudicial and unjust and unreasonable, in violation of sections 16 and 18 of the Shipping Act, 1916, the proposed schedule was suspended until April 8, 1934.

Respondent maintains a fortnightly service each way between New York and San Francisco, calling at Habana, Cuba, Balboa, Canal Zone, and San Diego and Los Angeles Harbor, Calif., with the vessels *California*, *Virginia*, and *Pennsylvania*. The trip takes 16 days each way. Each of these vessels is about 5 years old, 600 feet in length, approximates 18,000 tons gross, 18 knots speed, and was designed and built to carry about 400 first-class passengers and 380 tourist-class passengers. The classification of first class and tourist class has been maintained from the time these vessels were placed in operation in this trade.

The Grace Line maintains a weekly service each way between New York and San Francisco, calling at a number of South and Central American ports, not served by respondent, with the first-class vessels *Santa Rosa*, *Santa Elena*, *Santa Lucia*, and *Santa Paula*, and the cabin-class vessels *Santa Ana*, *Santa Cecilia*, *Santa Teresa*, and *Santa Elisa*. These two types of vessels are used alternately. The four first-class vessels, built and placed in this service late in 1932 and early 1933, are equipped with all modern improvements for comfort and luxury in travel, are 508 feet in length, 11,200 tons gross, 19½ knots speed, and each has a berth capacity of 239. The four cabin-class vessels are 16 to 18 years old and up to the time the new Grace Line vessels were placed in the trade were all operated as first class. These cabin-class vessels are 375 feet in length, approximate 4,900 tons gross, 13½ knots speed, and each has a berth capacity of 125.

The Dollar Line operates two types of ships in this trade, the so-called "535's" and "522's"—referring to the length of the ships. The 535's are the *President Pierce*, *President Lincoln*, *President Taft*, *President Wilson*, and *President Cleveland*, all about 13 years old, each approximating 14,100 tons gross, 16½ knots speed, with accommodations for about 200 passengers, equally divided between first class and tourist class. The 522's are the *President Adams*, *President Polk*, *President Harrison*, *President Hayes*, *President Monroe*, *President Van Buren*, and *President Garfield*, about 13 years old, each approximating 10,500 tons gross, 13½ knots speed, with accommodations for 85 to 175 passengers, all in first class. A weekly service is maintained west-bound from New York to San Francisco, via Habana, Panama Canal, and Los Angeles, using the two types of vessels alternately, and a fortnightly service east-bound

over the same route, using only the 535's. The 522's take 19 days for the west-bound trip. The intercoastal trips of these Dollar Line vessels are in connection with its trans-Pacific and round-the-world services—the 535's continuing trans-Pacific to the Orient on their west-bound trips, except when they connect with the Dollar Line's trans-Pacific ships *President Hoover* and *President Coolidge* at San Francisco, and the 522's continuing on around the world and returning to New York via the Atlantic.

DEVELOPMENT OF THE INTERCOASTAL PASSENGER SERVICE

Respondent operated the steamer *Kroonland* in the intercoastal trade for a short time in 1914, with first-class, second-class, and third-class accommodations. During the war this service was discontinued but was resumed in 1923 with the steamers *Finland*, *Kroonland*, and *Manchuria*, with first-class, second-class, intermediate-class, and third-class accommodations. In 1927 the designation "intermediate" was changed to "tourist." These vessels were replaced by the *California*, *Virginia*, and *Pennsylvania*.

The Grace Line in 1925 purchased from the Pacific Mail Steamship Co. the steamships *Colombia*, *Venezuela*, and *Ecuador* and the goodwill of that company, which had commenced direct intercoastal operations through the canal in 1921[1] with these three vessels designated as first class. These vessels were later replaced by the *Santa Ana*, *Santa Cecilia*, *Santa Teresa*, and *Santa Elisa*, which were operated as first class until the new Grace Line vessels were placed in the trade late in 1932 and early in 1933, when they were changed to cabin class.

The Dollar Line first entered the trade in 1924 with the 522's purchased from the Shipping Board for 'round-the-world service. These vessels have been operated continuously as first class only. The 535's purchased from the Shipping Board in 1925 for the California-Orient service, were first placed in the intercoastal trade early in 1931 when the Manila-New York service was inaugurated, and were continuously operated as first class until about March 1933 when they were changed to first class and tourist class. The *President Hoover* and *President Coolidge*, built in 1930, were operated by the Dollar Line in the intercoastal service during 1932 with first-class and "special" or tourist-class passenger accommodations.

[1] The Pacific Mail Steamship Co. beginning about 1849 maintained a service between the Pacific coast and New York by transshipment across the Isthmus of Panama. This service was continuously maintained until the direct service through the Panama Canal was commenced in 1921.

INTERCOASTAL PASSENGER FARES

The Pacific Mail Steamship Co. in 1921 quoted a minimum first-class fare of $270, advanced to $300 in 1922, and reduced in November 1923 to $250 summer rate and $275 winter rate. In January 1932 its successor, the Grace Line, reduced the minimum first-class fare to $200, and in May 1932 made a further reduction to $175, applicable on the vessels which are now cabin class. When these vessels were changed to cabin class the fares were fixed at $145 and $150. The minimum first-class fare for the new Grace Line vessels is given as $240, but the published tariff lists five rooms on each of the four vessels at a minimum of $225 on the basis of two in a room.

The Dollar Line in 1924 established a minimum first-class fare of $250 which in 1931 was reduced to $200 on the 'round-the-world ships (522's). Presumably the minimum first-class fare of $250 was made applicable on the 535's when they were first placed in the trade in 1931. A minimum first-class fare of $225 and a special-class fare of $135 were maintained on the *President Hoover* and *President Coolidge* in 1932 when these vessels were in the intercoastal trade. In March 1933 the first-class fares were fixed at a minimum of $165 for the 522's and $200 for the 535's. At the same time a minimum tourist fare of $120 was established for tourist class on the 535's.

Respondent in 1923 established a first-class fare of $250, second-class $150, intermediate $125, and third-class $100. In 1925 the first-class fare was increased to $275 for the winter season, maintaining the $250 fare for the summer season. These fares were continued in effect until the new vessels *California*, *Virginia*, and *Pennsylvania* were placed in service during 1928 and 1929, when the minimum first-class fare was made $300 for the winter season and $275 for the summer season, with a tourist-class fare of $135. In 1931 these fares were reduced to $225 minimum first class and $120 minimum tourist class, without seasonal change, and are the fares in effect at the present time.

On April 27, 1933, the United States Shipping Board approved, under the designation "Bureau of Regulation and Traffic Conference Agreement No. 201", an agreement between respondent and protestants, filed by them in accordance with section 15 of the Shipping Act, 1916. The pertinent provisions of this agreement read:

2. It is agreed that rates and charges of said three (3) several lines shall be those as shown in their regular published tariffs, and no rates, fares and/or charges, or changes in rates, fares and/or charges are to be made under this agreement except by unanimous consent of the carriers party thereto.

3. Said several lines agree to cooperate in preparation of tariff to file with the United States Shipping Board pursuant to Intercoastal Shipping Act, 1933.

4. This agreement is not subject to cancellation by any of the parties and is effective until midnight, June 2, 1933. Any other carrier engaged in transportation of passengers in the trade covered by this agreement may become a party thereto upon the same conditions as the signatory lines.

It will be noted that the agreement was effective only until midnight June 2, 1933, and about this time tariffs containing substantially the same fares as those in effect under the agreement were filed by the three lines, pursuant to the provisions of the Intercoastal Shipping Act, 1933, and no material changes have since been made in those tariffs. The effective minimum fares of the three lines are as follows:

Respondent (two classes): First class, $225; tourist, $120.
Grace Line (one class): First class, $240.[2]
Grace Line (one class): Cabin class, $145.
Dollar Line's 535's (two classes): First class, $200; tourist, $120.
Dollar Line's 522's (one class): First class, $165.

PROPOSED CHANGES

By the tariff under suspension respondent proposed to abolish class distinction on its vessels in the intercoastal trade and sell all accommodations as first class, with a minimum one-way fare of $120. This proposed minimum fare will apply to 9 rooms on each ship on the basis of 2 passengers in a room, to 18 additional rooms on the *Virginia* and *Pennsylvania* and to 16 additional rooms on the *California* on the basis of 3 in a room, and to other 10 rooms on each ship on the basis of 4 in a room. The minimum fare will be increased by $5 up to $150 for all rooms listed in the present tariff as tourist class with fares in the same range; to $155–$165 for 18 rooms on each ship listed in the present tariff as tourist class at $140–$150 and first class at $225, referred to in the record as "interchangeable." None of the above mentioned rooms has private bath or toilet, but all have hot and cold running water. Rooms listed in the present tariff as first class with fares ranging from $225 to $325 (exclusive of suites and the so-called interchangeable rooms) on the basis of two in a room, are listed in the suspended tariff as first class with fares ranging from $150 to $290, on the same basis. Most of these rooms with fares between $150 and $180 and some with fares between $180 and $200 have no shower or toilet. Some rooms with toilet are listed with fares as low as $175 and others from $190 to $210; rooms with shower and toilet are listed from $175 to $250, and rooms with bath begin at $225 and run up to $290.

It will be seen from the above analysis of the suspended schedule that the increases above the minimum fare of $120 are gradual, and

[2] Five rooms (14 berths) on each vessel carry a rate of $225.

that the present lack of any accommodations between the maximum tourist fare of $150 and the minimum first-class fare of $225 under the existing tariff, is filled in with accommodations now listed as either first class or tourist (interchangeable) and accommodations now listed as first class. Rooms with bath under the suspended tariff begin at $225 instead of $275 as now listed. All first-class accommodations are reduced in price, and the present fares for tourist accommodations are in some instances increased and in other instances decreased.

It is stated by respondent that under the suspended tariff there will be no distinction as between passengers. All passengers will have entire freedom of the ship's decks, public rooms, swimming pool, and other facilities, and all will receive identical service. Each ship will have two dining rooms. Neither the present first-class dining room nor the present tourist-class dining room is large enough to accommodate all passengers as one class, and the two rooms cannot be thrown together because the galley where all food for both dining rooms is prepared is located between them. Both dining rooms are located on C deck and the present tourist dining room is more accessible and convenient for passengers occupying staterooms beginning with the 301 series, a few of which are located on B deck and the balance on C and D decks. The record indicates there will be no difference in service or food, linen or cutlery, and both dining rooms will be decorated alike. The lower-priced staterooms will be improved as to linen, rugs, and decorations, but no structural alterations are planned. All tourist rooms at the present time are equipped with beds and have hot and cold running water and the same type plumbing as the first-class rooms. The difference in the fare the passengers will pay under the suspended tariff will depend entirely on location and type of stateroom.

The primary purpose of the suspended tariff, as stated by respondent, is to increase its intercoastal passenger traffic by offering comfortable accommodations at reasonable prices, with no class distinction between passengers, which it assumes appeals to the American traveling public, thereby enabling respondent to meet the competition offered by cruises to the West Indies and elsewhere, and by trips to Europe. Statements submitted by respondent for 1932 and 1933 show operating losses in its intercoastal freight and passenger service, attributable in part to the large volume of unsold passenger accommodations on its three vessels in this trade.

The net result under the suspended tariff, figured on the basis of 642 passengers per ship (one way) at an average fare of $169 as compared with an average fare of $190 under the existing tariff for the same number of passengers, would be a reduction of $13,746 per

ship, to which must also be added the increased cost of food and service incident to handling all passengers as first class instead of as tourist and first class. Considering that respondent's ships averaged only about 177 passengers per trip for the 11 months from January 1 to November 30, 1933, it will be readily seen that the space available for additional passengers (465 at an average fare of $169) would afford an opportunity for a very substantial increase in revenue under the suspended tariff.

INTERCOASTAL PASSENGER TRAFFIC

The figures submitted covering the number of intercoastal passengers carried by respondent and protestants during the years 1932 and 1933 do not agree, but reconciling them as far as possible results in the following:

1932 traffic

	West-bound			East-bound		
	Trips	First	Tourist	Trips	First	Tourist
Panama Pacific	25	1,851	3,553	26	1,389	3,564
Grace	26	925		26	1,069	
Dollar	52	[1] 2,455	[1] 543	26	1,053	480
Total		5,231	4,096		3,511	4,044

[1] Includes through traffic trans-Pacific and 'round-the-world. The east-bound figures submitted did not cover Dollar Line through passengers from the Orient.

TOTALS FOR EACH LINE

	West-bound		East-bound		Total	
	Passengers	Percent	Passengers	Percent	Passengers	Percent
Panama Pacific	5,404	57.9	4,953	65.5	10,357	61.4
Grace	925	10.0	1,069	14.2	1,994	12.0
Dollar	2,998	32.1	1,533	20.3	4,531	26.6
Total	9,327		7,555		16,882	

PERCENTAGE OF SPACE OCCUPIED

	West-bound	East-bound	Both ways
	Percent	*Percent*	*Percent*
Panama Pacific	27.7	24.4	26.0
Grace	42.3	48.9	45.6
Dollar	31.4	24.0	28.4

1933 traffic (11 months)

	West-bound			East-bound		
	Trips	First	Tourist	Trips	First	Tourist
Panama Pacific	23	1,461	2,634	22	1,117	2,735
Grace (first class)	23	2,320	----------	22	2,272	----------
Grace (cabin ships)	23	1,171	----------	22	1,240	----------
Dollar	48	[1] 1,745	[1] 874	21	525	754
Total	----------	6,697	3,508	----------	5,154	3,489

[1]Includes through traffic trans-Pacific and 'round-the-world.

TOTALS FOR EACH LINE

	West-bound		East-bound		Total	
	Passengers	Percent	Passengers	Percent	Passengers	Percent
Panama Pacific	4,095	40	3,852	44.5	7,947	42
Grace	3,491	34	3,512	40.6	7,003	37
Dollar	2,619	26	1,279	14.8	3,898	21
Total	10,205	----------	8,643	----------	18,848	----------

PERCENTAGE OF SPACE OCCUPIED

	West-bound	East-bound	Both ways
	Percent	*Percent*	*Percent*
Panama Pacific	22.8	22.5	22.6
Grace (first class)	42.0	43.0	42.7
Grace (cabin class)	40.7	45.0	43.0
Dollar	36.4	30.5	34.0

From the above analyses it will be observed that for the year 1932 the space occupied on respondent's ships amounted only to 26 percent of the space available, and for the first 11 months of 1933 the space occupied amounted only to 22.6 percent of the space available. The other lines in the trade have had a larger percentage of space occupied on their vessels. For instance, the space occupied on the Grace Line ships during 1932, when it was operating only the four small ships, amounted to 45.6 percent, and with these same ships operated as cabin class during 1933, the space occupied amounted to 43 percent, while in the case of the new ships of the Grace Line the space occupied during 1933 amounted to 42.7 percent of the space available.

Protestants allege, in general, that the suspended schedule is unjust, unreasonable, and discriminatory—

1. In classifying as first class the present tourist accommodations on the Panama Pacific ships;

2. In classifying as first class the accommodations for which a minimum first-class fare of $120 is proposed;

3. In providing a minimum first-class fare of $120 between New York and Pacific coast points;

4. In providing fares in connection with the different accommodations on respondent's ships which are unreasonable and result in undue preference and prejudice as between the occupants of these accommodations;

5. In providing fares in connection with the accommodations on respondent's ships which are unduly preferential of the occupants thereof and unduly prejudicial of occupants of comparable accommodations on other ships in the trade;

6. In that if the proposed schedule is permitted to go into effect it will compel changes in classification and reduction of fares by competing steamship lines in the same trade and by steamship lines in other trades whose rates are related thereto, will disrupt existing conference arrangements, and bring about general demoralization of steamship fares for a substantial part of the American merchant marine;

7. In that the proposed schedule while causing such general demoralization and great financial loss to other lines would not substantially improve the financial condition of respondent.

The first objection of protestants to the proposed classification is based on the fact that the present tourist accommodations on respondent's ships are located in or near the stern and protestants claim that because of their location they cannot properly be designated "first class." As noted heretofore, the accommodations referred to are located on decks B, C, and D, and practically all are located aft. A number of these rooms with more desirable location on deck B have been sold interchangeably as first class or tourist. While it appears to be fairly well established that rooms located in the stern of a ship are generally rated lower than first class, there are exceptions to this general practice, and it may be fairly stated that there has been a long existing lack of uniformity in classification as between passenger vessels and likewise as between passenger accommodations on the same vessel. The particular classification under which a passenger travels is based on more than location and type of stateroom; it includes as a very important element the character and extent of the service in connection with the stateroom accommodations and the service on the ship generally, including the extent to which a passenger may enjoy the freedom of the ship. Based on the record in this case it would be impossible to set a standard for the several different classes of steamship passenger accommodations on ships in the intercoastal trade. Neither does the record warrant a finding that designation of the present tourist accommodations on respondent's ships as first class, with first-class service and full freedom of

the ship, is improper or unreasonable. In advertising the minimum first-class fare, respondent should avoid any statement that would be likely to lead prospective passengers to believe that the accommodations to be obtained for the minimum fare are anything but what they actually are; i.e., minimum stateroom accommodations with first-class service and privileges.

Furthermore, the record does not support a finding that the quotation of a minimum fare of $120 in connection with the designation "first class" is unjust or unreasonable. A comparison of the proposed minimum first-class fare of $120 for rooms without bath, toilet or shower (but having hot and cold running water) with the minimum fare of $240 on the new Grace Line ships for rooms with private bath or shower and toilet, shows an average fare per day of $7.50 for respondent's 16-day trip and $12.63 for the Grace Line's 19-day trip. For the five rooms on the Grace Line ships listed at $225 the average per day would be $11.84. On the basis of comparable accommodations, however, some of the fares under the suspended tariff are higher than those of the Grace Line. For instance, under the suspended tariff the lowest priced room with bath is $225 or an average per day of $14.06, while a room with bath on the new ships of the Grace Line may be had for as low as $240 or an average of $12.63 per day.

Restriction of the amount of spread between the minimum and maximum fares in the suspended tariff, in relation to the spread between first-class fares on ships in the trans-Atlantic or other foreign trades, or in fact in any other trade, which protestants seek to have applied in this case, cannot be justified on this record. The spread between the minimum and maximum fares in the suspended schedule does not appear to be unreasonable considering the difference in stateroom accommodations, and, therefore, the suspended schedule will not result in undue preference and prejudice as between the occupants of such accommodations.

Although it is true that under the proposed tariff some rooms that may be compared with rooms on the New Grace Line ships are reduced in price, whereas under the existing tariff the price of these particular rooms is approximately the same as similar rooms on the Grace Line ships, this difference in price does not necessarily make improper the rating of these rooms by either line. The difference may very well be compensated for by difference in ships, appointments, service, length of trip, as well as other considerations. For instance, in this case it is admitted that the Grace Line ships are newer and more modern than respondent's ships and the Grace Line itinerary is longer and more attractive.

The statements by protestants relative to the effect of the suspended schedule on classifications and fares in the intercoastal and other trades, are mere conclusions based on the assumption that the existing differentials between the minimum fares of the three lines must be maintained. There is no evidence that these differentials were worked out on the basis of any definite formula. If the experience of respondent, gained from more than 5 years' operation of its present vessels in the intercoastal trade, prompts that line to make changes in its passenger fares and classifications applicable to these vessels, the complaint of competing lines in the same trade that they will be forced to reduce their fares to the extent necessary to maintain the existing differentials, does not make out even a prima facie case of unreasonableness or unlawfulness under the provisions of the Shipping Act, 1916. Moreover, the statements relative to reductions that competing lines will be compelled to make are not convincing when the tariffs of the three lines are analyzed with respect to the existing relation of fares for approximately similar accommodations. In other words, the minimum fare is not the controlling factor; there should more properly be an effort to grade all fares so as to put them as nearly as possible on a fair competitive basis, considering the age, size, speed, and itinerary of the vessel, the character of the accommodations and service offered, the peculiar characteristics of the particular trade involved, and the needs of the carrier. The suspended schedule is not unreasonable or unlawful when subjected to this test.

Our conclusions make it unnecessary to consider the effect on the Grace Line's fares to intermediate ports and through fares to South American ports of any action which the Panama Pacific Line might hereafter take in connection with its fares to intermediate ports.

Referring to the allegation of the Grace Line that the suspended tariff will result in severe loss of revenue to it because of the reductions in fares that it claims will be necessary to maintain the existing differentials, it is sufficient to call attention to the fact that this estimate of probable loss includes the Grace Line operations in the intercoastal, intermediate, and South American trades. There is no showing as to what the alleged loss would be as applied solely to reduction of its fares in the intercoastal trade, although such a statement would not be entitled to much weight when the necessity for such reduction of fares is not clearly demonstrated by the record. Estimates of loss in gross revenue to the Grace Line through possible diversion of passengers from Grace Line ships to the ships of respondent as a result of the suspended tariff if it is allowed to become effective, are, of course, based on the assumption that such diversion of passengers will take place. Even though some pas-

sengers may be diverted from other lines in the same trade, that result in and of itself would not make the suspended tariff unlawful.

The statements of protestants that the suspended tariff will disrupt the classifications and fares in the trans-Pacific trade are not supported by the record. Granting that the Dollar Line's 535's may be forced back to one-class ships, it is not clear or probable that disaster will follow either for the Dollar Line or for the trans-Pacific conference. These vessels were all first class for a number of years previous to March 1933 and the 522's have never been anything other than all first class; yet the record shows that such operation of vessels by the Dollar Line did not have any disturbing effect on the conference. The disastrous consequences predicted would only be caused, if at all, by the direct action of the Dollar Line itself, which it alleges will be necessary to protect its interests in the intercoastal trade. Respondent's ships involved in this proceeding are not in any way competing in the trans-Pacific trade and, therefore, the lawfulness of the suspended tariff should not be tested by unsupported forecasts of possible tumult and havoc in that trade. The Dollar Line would have the choice of action, and in this connection attention is directed to the testimony of its witness to the effect that the Dollar Line operations on the Pacific are more extensive than in the intercoastal trade and that the Pacific trade involves greater passenger revenue and that its business is much heavier there.

Upon this record it is found that the suspended schedule and the fares, classifications, regulations, and practices stated therein are not shown to be unduly preferential and prejudicial in violation of section 16 of the Shipping Act, or unjust and unreasonable in violation of section 18 of that act. An order vacating the suspension and discontinuing this proceeding will be entered.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 115

SCHEDULES OF GIRDWOOD SHIPPING COMPANY

Submitted February 20, 1934. Decided March 15, 1934

Respondent not shown to be a common carrier subject to the Shipping Act, 1916, as amended, and its schedules initiating commodity rates for transportation in intercoastal commerce between Gulf and Pacific coast points ordered stricken from the Department's files.

Neil Burkinshaw for respondent.
Frank Lyon and *Elisha Hanson* for protestants.
Roscoe H. Hupper for members of United States Intercoastal Conference other than Nelson Steamship Co., and *F. W. S. Locke* for Nelson Steamship Co., interveners.

REPORT OF THE DEPARTMENT

No exceptions were filed to the report proposed by the examiner, and the parties did not request to be heard in oral argument.

By schedules filed to become effective November 19, 1933, Girdwood Shipping Co., hereinafter referred to as respondent, proposes to initiate commodity rates for transportation in intercoastal commerce between Gulf and Pacific coast points. Upon protest of Gulf Intercoastal Conference, composed of Luckenbach Gulf Steamship Co., Inc. and Gulf Pacific Line, the operation of the schedules was suspended until March 19, 1934.

Respondent was incorporated on October 1, 1933, under the laws of the State of Washington. Its corporate purposes and powers are not disclosed of record. Its capital stock is apparently represented by 1,000 no-par value shares, 980 of which are owned by D. R. Girdwood and 20 by K. W. Gilmore. It owns no vessels and has none under charter. Neither does it own, lease, or otherwise

control any terminal facilities. However, if the suspended tariffs are approved, it has been assured by owners whose names were not divulged of three and possibly four vessels for berthing for account of owners with a view to eventual purchase.

Although the proposed schedules contain rates from and to numerous points, respondent intends only—

to establish and start a monthly sailing, same requiring about 30 to 35 days from Seattle, Wash. to New Orleans, La. and Mobile, Ala., via Columbia River, San Francisco Bay, and Los Angeles Harbor and the same time from New Orleans and Mobile to Seattle, via Los Angeles Harbor, San Francisco Bay, and Columbia River.

In 1933 prior to the date respondent was incorporated, the party shown to have been the owner of the greater number of shares of the capital stock of respondent engaged in three occasional instances in transportation by water under a trade name similar to that of respondent. Such services were performed only west-bound from the Gulf to Pacific coast destinations. One of such services was performed " on a 50–50 basis with the owners " of the vessel and the other two on vessels which were subchartered. On one of the vessels thus operated, the transportation of bulk corn was declined in order to accept more profitable cargo. There was no tariff on file with us covering one such service. The other two services were performed under a tariff issued by special permission of the Department therefor.

Interveners, United States Intercoastal Conference and Nelson Steamship Co., did not testify.

The Department finds that respondent is not shown to be a common carrier by water in intercoastal commerce subject to the Intercoastal Shipping Act, 1933.

In view of this decision it is not necessary to pass upon the lawfulness of the suspended schedules.

An order will be entered striking the suspended tariffs from the Department's files and discontinuing this proceeding.

DEPARTMENT OF COMMERCE

UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 100 [1]

OAKLAND MOTOR CAR CO. OF DULUTH, MINN.

v.

GREAT LAKES TRANSIT CORPORATION

Submitted February 2, 1934. Decided April 14, 1934

Rates charged for transportation of automobiles from Detroit, Mich., to Duluth, Minn., found in excess of maximum rates and inapplicable. Reparation awarded.

T. H. Trelford and *R. G. Palmer*, for complainants.

Mayer, Meyer, Austrian and Platt (Frank W. Sullivan and William J. Welsh of counsel), for respondent.

REPORT OF THE DEPARTMENT

No exceptions were filed to the report proposed by the examiner.

By complaints filed with the United States Shipping Board it is alleged that the rate assessed and collected by respondent on shipments of automobiles from Detroit, Mich., to Duluth, Minn., was illegal, unjust and unreasonable in violation of section 18 of the Shipping Act, 1916. An award of reparation with interest is requested. The two cases involve related subject matter and will be disposed of in one report.

The Oakland Motor Car Co. of Duluth, Minn., and the Gray Motor Car Co. of Duluth, Minn., are trade names under which one Martin Rosendahl and the Duluth Auto Exchange, Inc., respectively, engaged during the period of time herein involved as dealers in auto-

[1] This report also embraces no. 101, *Gray Motor Co. of Duluth, Minn.* v. *Great Lakes Transit Corporation.*

mobiles at Duluth. The Great Lakes Transit Corporation, respondent in both cases, is a New York corporation, engaged as a common carrier in interstate commerce upon regular routes from port to port on the Great Lakes, and as such is subject to section 18 of the Shipping Act, 1916.

During October 1923 five shipments (47 automobiles) weighing 37,420, 25,260, 12,980, 7,960, and 39,770 pounds, respectively, were consigned by the Oakland Motor Car Co. of Detroit to the Oakland Motor Car Co. of Duluth, complainant in Docket No. 100, and one such shipment (five automobiles) weighing 8,783 pounds was consigned by the Gray Motor Car Co. of Detroit to the Gray Motor Car Co. of Duluth, complainant in Docket No. 101. A rate of $35, published as a maximum commodity rate, was assessed upon each automobile. Complainants contend that 110 percent of first class, carload, minimum weight 10,000 pounds, was applicable under a provision in respondent's tariff which provided that the class basis would be applied, if lower. This contention places in issue the applicability of rule 34 of the governing classification. The questions involved in the instant cases were before the United States Shipping Board in *Muir-Smith Motor Co. et al.* v. *Great Lakes Transit Corporation*, decided January 31, 1928. The Board found, 1 U.S.S.B. 138, that rule 34 of the classification did not apply to all-water shipments and that the applicable maximum rate was 110 percent of the first-class rate, which resulted in a rate of 93 cents per 100 pounds, subject to a minimum weight of 10,000 pounds. No evidence was presented in support of the allegation that the rate collected was unjust and unreasonable, it being agreed at the hearing that the rate found to be applicable in the above-mentioned cases was the maximum legal rate applicable to the shipments involved herein. Therefore, the rates will not be considered further.

Sworn complaints in both cases were filed October 12, 1925, and upon request of complainants were entered on the informal docket. Negotiations on that docket proved unproductive of satisfactory adjustment and on September 19, 1932, complainants were advised that where settlement could not be effected by informal proceedings formal complaints may be filed. By stipulation at the hearing on formal complaints subsequently filed, the informal complaints and files relating thereto were made a part of the record, subject to respondent's objections to the validity of the informal complaints as originally filed.

The shipments were received at Duluth, Minn., on October 12, 19, and 24, 1923. The record does not disclose the dates charges on the respective shipments were paid. Parties, however, have stipulated that the date of receipt of each shipment was substantially

a few days prior to the date charges on each such shipment were paid. By this stipulation respondent has admitted that the informal complaints were filed within the statutory period prescribed by section 22 of the Shipping Act, 1916.

Respondent contends that the real party in interest in Docket No. 100 is one Martin Rosendahl, and in Docket No. 101, Duluth Auto Exchange, Inc., whereas complainants named in the complaints are Oakland Motor Car Co. of Duluth, Minn., and Gray Motor Car Co. of Duluth, Minn., respectively. It is contended said complaints were not filed by the real parties in interest. The record discloses that the Oakland Motor Car Co. of Duluth, Minn., and Gray Motor Car Co. of Duluth, Minn., are trade names under which Martin Rosendahl and Duluth Auto Exchange, Inc., respectively, operated, and that freight charges in Docket No. 100 were paid by Martin Rosendahl and in Docket No. 101 by Duluth Auto Exchange, Inc. The filing of a claim in the trade name of an individual or a corporation is a filing by the individual or the corporation that operates thereunder. A similar conclusion will be found in many published decisions of the Interstate Commerce Commission, including *Doniphan Brick Works* v. *Director General*, 88 I.C.C. 438 and *Froeber-Norfleet, Inc., et al.* v. *Southern Railway Co. et al.*, 190 I.C.C. 384. Respondent's contention is without merit.

The record in Docket No. 100 discloses that Martin Rosendahl was adjudged a bankrupt on December 26, 1928, and discharged by order dated July 6, 1929. Respondent contends that upon adjudication all right and title to this claim passed by operation of law to the trustee in bankruptcy, and that for this additional reason there is no complaint pending filed by the real party in interest. The claim here involved was filed with the United States Shipping Board prior to the institution of bankruptcy proceedings. A trustee in bankruptcy may prosecute a suit commenced by a bankrupt prior to adjudication either by the institution of a new action or by intervening in the proceeding commenced by the bankrupt. If, however, as in this instance, the trustee neither sues nor intervenes, there is no reason why the bankrupt himself should not continue the proceeding. If the trustee will not sue and the bankrupt cannot sue, it might result in the bankrupt's debtor being discharged of an actual liability. It is believed the law does not contemplate such a result. *Johnson* v. *Collier*, 222 U.S. 538. Hearing upon complaints filed with the United States Shipping Board discloses the assessment and collection of illegal charges in violation of section 18 of the Shipping Act, 1916. Section 22 of that act authorizes an award of reparation to the party injured. Martin Rosendahl was injured the moment he paid the charges and was the person directly

damaged by the collection in 1923 of the illegal rates. His claim accrued at once and the law administered by the Department does not inquire into later events. *Southern Pacific Co. et al.* v. *Darnell-Taenzer Lumber Co. et al.*, 245 U.S. 531.

Respondent also contends that, inasmuch as it has not been proved that complainants bore the charges on the shipments involved, an award of reparation is not in order. Under the *Darnell-Taenzer* case above cited, a showing of payment of the charges by complainants is sufficient.

When the informal complaints were filed the seal of the notary public was not affixed to the verification of complainants' affidavits. Respondent contends that, because of the absence of the seal, the complaints were not "sworn complaints" within the requirement of the statute. The record shows, however, that such complaints were duly sworn to before a notary public, whose authority to act respondent does not question; that the notary signed the respective verifications and affixed his stamp thereto; also that the notary before whom the complaints were verified affixed his seal to the respective verifications during July 1932, after the expiration of the statutory period. Respondent further contends that the act of the notary in thus affixing his seal did not operate to cure the defect alleged to exist at the time of filing.

Violations of section 18 of the Shipping Act, 1916, have been admitted, and complainants seek redress for injury resulting therefrom. If the absence of the seal is fatal, complainant's claims are barred and the carrier will be permitted to retain the amount of the overcharge collected to which it is not justly entitled. Under the circumstances of these cases such a ruling would result in a miscarriage of justice and is believed to be unwarranted. It is recognized as a general rule that remedial and procedural statutes are to be construed liberally with a view to the effective administration of justice. It has been held that a regulatory body, such as the Interstate Commerce Commission, ought not to be hampered in its proceedings by the hard and fast rules as to pleading and practice which govern courts of law, *Pennsylvania Railroad Co.* v. *United States*, 288 Fed. 88; that even when acting in a quasi-judicial capacity the strict rules which prevail in suits between private parties do not apply, and that inquiries should not be too narrowly constrained by technicalities. *Interstate Commerce Commission* v. *Baird*, 194 U.S. 25; *Interstate Commerce Commission* v. *Louisville and Nashville Railroad Co.*, 227 U.S. 88; *Spiller* v. *Atchison, Topeka and Santa Fe*, 253 U.S. 117. It has also been held that the Interstate Commerce Act should be liberally construed to advance the remedy and retard the wrong. *New York, New Haven & Hartford Rail-*

road Co. v. *Interstate Commerce Commission*, 200 U.S. 361; *American Express Co.* v. *United States*, 212 U.S. 522, 533. This view is further expressed in *United States* v. *Chemical Foundation, Inc.*, 272 U.S. 1, 10, and *Farbwerke Vermals Meister Lucius and Bruning et al.* v. *Chemical Foundation, Inc.*, 283 U.S. 152, wherein it is stated that the law should be liberally construed to give effect to the purposes it was enacted to subserve. The shipping statutes administered by the Department closely parallel the Interstate Commerce Act and, therefore, should be similarly construed. *U.S. Navigation Co.* v. *Cunard S.S. Co., Ltd.*, 284 U.S. 474. It is found that complaints, sufficiently verified to warrant recognition as "sworn complaints" within the purposes of the statute, were filed within the statutory period, and that the claims presented therein are properly before the Department for action.

It is further found that the applicable rate on the shipments involved was 93 cents per 100 pounds, subject to a minimum weight of 10,000 pounds; that Martin Rosendahl of Duluth, Minn., operating under the trade name of Oakland Motor Car Co. of Duluth, Minn., and the Duluth Auto Exchange, Inc., of Duluth, Minn., operating under the trade name of Gray Motor Car Co. of Duluth, Minn., made the shipments as above described and paid and bore the charges thereon at rates which are found inapplicable herein; that they were damaged thereby in the amount of the difference between the charges paid and those which would have accrued on the basis herein found applicable and are entitled to reparation in the sums of $478.51 and $82, respectively, with interest at the rate of 6 percent per annum.

The record does not show the exact dates the charges on the respective shipments were paid, and it appears parties are unable to definitely determine such dates. In view of the stipulation entered into that shipments were received a few days prior to the date charges on each shipment were paid, it is found that interest shall be computed from the first of the month next succeeding the date the shipments were received.

An appropriate order will be entered.

DEPARTMENT OF COMMERCE

UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 83 [1]

OAKLAND CHAMBER OF COMMERCE

v.

AMERICAN MAIL LINE, LTD., ET AL

Submitted February 26, 1934. Decided August 3, 1934

Rule prohibiting shifting of vessels to, or absorption of transfer charges from, docks other than named therein for less than 500 revenue freight tons or 500,000 feet of lumber from one shipper or supplier voluntarily amended by respondents.

Rule as amended found unjustly discriminatory, unfair, ambiguous, and disapproved.

Edwin G. Wilcox, Markell C. Baer, Robert M. Ford, and *Curtis H. Palmer* for complainants.

Chalmers G. Graham, Gilbert C. Wheat, and *Jerome Politzer* for respondents.

REPORT OF THE DEPARTMENT

Exceptions were filed by complainants and respondents to the examiner's proposed report.

Respondents are common carriers engaged in transportation by water from Pacific Coast ports of North America to Japan, Korea, Formosa, Siberia, Manchuria, China, Hongkong, Indo-China and the Philippine Islands. For the regulation of traffic, rates, tariffs, brokerage and matters directly relating thereto they are associated in what is known as the Pacific Westbound Conference under agreement approved June 26, 1923, as amended, pursuant to the provisions of Section 15 of the Shipping Act, 1916.

[1] This report also embraces No. 85, *City of Oakland* v. *Same.*

According to the agreement matters agreed to at meetings of the conference are binding upon all parties to the agreement. Such matters are promulgated in the form of so-called memoranda of decisions, Pacific Westbound Conference Circular No. 3–C. At the time the complaints were filed Item 100 thereof provided, in part—

Except as otherwise provided, steamers shall not be shifted to, nor absorb transfer charges from docks other than those named below, for less than 500 revenue freight tons or 500,000 feet of Lumber from one shipper or supplier, destined to port or ports under Conference jurisdiction, which quantity is to be available and ready for delivery when steamer is ready to load.

The authorized regular terminal docks at the various ports are as follows:

Vancouver	*Victoria*
C. P. R. Docks	Rithet—Consolidated
Great Northern Docks—East and West side	Ogden Point
Terminal Dock and Warehouse Company	
Vancouver Harbor Commissioners' Docks, viz: Ballantyne Pier	
Seattle	*Tacoma*
Atlantic Street Terminal	Commercial Dock
East Waterway Dock	Port Commission Dock
Great Northern Docks (Smith's Cove)	Shaffer Terminal No. 2 (Milwaukee Dock No. 1)
Pier 14	
Port Commission Lenora Street Dock	
Port Commission (Smith's Cove, Piers 40 and 41)	
Portland	*Astoria*
Albers Dock No. 3	Port of Astoria Municipal Terminals
Municipal Terminals, 1 and 4	
Oceanic Terminals	
San Francisco	*Los Angeles Harbor*
State Board of Harbor Commissioners' Docks	(To be decided by the Southern District)
At regular terminal docks, lines may at their discretion call direct or absorb charges regardless of quantity.	

Cotton.—Conference lines have the option of either loading Cotton at the Compress Dock or of absorbing the difference in the cost of transfer between the regularly appointed loading pier of the individual Member Lines and the Compress Dock. (Applies both to Los Angeles Harbor and San Francisco).

The complaints, as amended at the hearing, allege that the foregoing rule is unjustly discriminatory, unfair, unreasonable, unduly preferential of the ports and localities therein named and persons

using those ports and prejudicial to Oakland, Calif., and persons using that port.

As stated by a witness, "Any liner in the Pacific Westbound Conference is allowed to carry freight from any major port on the Pacific Coast and bring it down to its port, either take cargo from California to the north or take cargo from the north down to California and transship. * * * In other words, the freight rates of the Pacific Westbound Conference apply from the major ports, and you can either call direct or absorb the local rate." Thus at the time of hearing shipments from San Francisco, Calif., were assessed only at the direct-line rate to final destination whether made directly or transshipped at one of the northern conference terminal ports, whereas on competitive shipments from Oakland, approximately five miles across the bay from San Francisco, the additional transfer charge from Oakland to San Francisco also applied.

In the exceptions of some of the respondents to the examiner's proposed report attention is directed to the fact that the assailed rule has been amended. The statement is there made that "It is hoped this rule as now submitted may answer any claimed right Oakland may have asserted and that further hearings in this matter may be avoided by the Board's approval of the submitted Item 100." Copy of the rule as amended is contained in an exhibit attached to such exceptions.

Under the new rule, reproduced in the appendix hereto, each carrier party to the agreement is required to declare its terminal dock in each terminal port. At such terminal docks "carriers may, at their discretion, call direct or make divisional rate arrangements for delivery of cargo to their own terminal dock." Although the rule designates the regular terminal docks and conference terminal ports, it is not possible to determine from the rule the particular dock in each terminal port served by each member of the conference. If a carrier cannot secure berthing at its own terminal dock, it may declare another dock at the same terminal port for a particular voyage. Cargo booked for the regular terminal dock is charged the tariff rates, but cargo originating at such temporary dock is charged an additional $1 per revenue ton. It is clear that under this rule the use of temporary docks is permitted for the convenience of the carrier and there seems to be no persuasive reason that would authorize the carrier to maintain what is in fact two sets of rates from the same dock on the same commodity to the same destination. Such a situation results in undue and unreasonable preference and advantage to the shipper of the cargo specifically booked for the carrier's regular dock to the undue and unreasonable prejudice and disadvantage of the other shipper.

Carriers are also permitted under the new rule to call and accept freight in any quantity from one shipper or supplier at docks located within conference terminal ports other than the declared docks listed in clause "L" of the rule. The same rates apply from the undeclared as from the declared docks, but from the undeclared docks charges are assessed on a minimum of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles and/or logs. On any additional cargo taken for another shipper or supplier from the same undeclared dock in quantities less than the specified minimum an additional $1 per revenue ton is charged. In the northern district, by exception, carriers are permitted to load at such undeclared docks, or make divisional rate arrangements on quantities less than the specified minima, provided an additional charge of $1.50 per revenue ton over the tariff rates is assessed.

These provisions of the new rule open the door to discrimination; furthermore, on the face of it there is no justification for the extra charge of $1 on additional shipments taken at the same undeclared dock, since freight charges based on the specified minima are evidently considered sufficient to compensate respondents for the call. It is doubtful if the rule can be altered to meet these objections as long as the provision exists that the required minima must be tendered by a single shipper or supplier.

Carriers are also permitted by this rule to call for and load freight in any quantity from one shipper or supplier at docks located in ports or places other than the terminal ports listed in clause "L". Each carrier is also permitted to make divisional rate arrangements equalizing direct loading at such ports or places by other conference members. All such shipments are stated to be "subject to additional rates in accordance with the regular recognized cost of transferring cargo from nonterminal port dock to the terminal dock of the carrier." The quoted matter is ambiguous and indefinite. How the "regular recognized cost" is to be determined is not stated. Between a given nonterminal port and a terminal dock there may be several methods of transportation with widely varying costs. Furthermore, a conference carrier may serve several terminal ports, and it is not indicated to which of the several terminal docks the "recognized cost" will be assessed.

Although, as stated above, the carriers under this rule may call direct at nonterminal ports for freight in any quantity from one shipper or supplier, it is provided that such cargo must be assessed on a minimum of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles and/or logs. No such restriction, however, is placed on cargo moving from nonterminal ports under the divisional rate agreements permitted under the rule to meet the

competition of direct calls by conference members. Vessels handling cargo by direct call at nonterminal ports from one shipper or supplier, subject to the minimum rate requirement set forth above, "are permitted to accept any other additional cargo offering from the same dock in any quantity on the same terms, conditions and rates provided in (e) (1)." This provision of the rule is not free from ambiguity. It will be noted that while acceptance of additional cargo is permitted the words "same terms, conditions and rates" may mean that, for example, a shipper or supplier other than the shipper or supplier of the first lot if offering 50 tons is assessed freight charges on the basis of 500 tons. What has been stated in respect of the $1 extra on additional cargo from docks within conference terminal ports other than declared docks applies here with equal force.

In the light of the record and for the reasons stated the rule as amended is unjustly discriminatory, unfair, and ambiguous. An appropriate order will be entered.

APPENDIX

MEMORANDUM OF DECISIONS, ITEM 100

Each Carrier party to the Conference, hereinafter called the Carrier, shall declare its terminal dock in each terminal port. Cargo shall be delivered by the shipper at no expense to the carrier to the dock so designated by the carrier and shall be accepted by the Carrier at such dock. No cargo shall be accepted by a carrier at a dock other than that dock designated by it at a terminal port. The foregoing is subject to the following exceptions:

(a) At regular terminal docks Carriers may, at their discretion, call direct, or make divisional rate arrangements for delivery of cargo to their own terminal dock.

(b) Carriers are not permitted to name private industrial docks as terminal docks. Private industrial docks are defined as docks operated by shippers or subsidiaries of shippers, if such docks are located adjacent to their industrial plants.

(c) *Declaration of Terminal Docks within Terminal Ports for Particular Voyage.*—When any member Carrier cannot secure berthing at its own terminal dock, it shall have the privilege of declaring another dock at the same terminal port as its temporary terminal dock for that particular voyage. On cargo specifically booked for its regular terminal Carrier shall have the right to handle such cargo in accordance with tariff rules and conditions, but any cargo Carrier may accept originating at the temporary terminal dock shall be charged an additional $1.00 per revenue ton, but cargo to be delivered at ship's tackle without any expense to the Carrier. (In San Francisco ship's tackle shall mean place of rest on dock).

(d) *Cargo from docks located within Conference Terminal Ports other than those listed in clause "L."*

(d) (1) Carrier may call for and load at these docks a minimum quantity of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles and/or logs from one shipper or supplier destined to Port or Ports under Conference jurisdiction which quantity is to be available and ready for delivery when vessel is ready to load, but cargo to be delivered at ship's tackle without any expense to the Carrier. (In San Francisco ship's tackle shall mean place of rest on dock).

(d) (2) Carrier may call for and load at these docks less than the minimum quantities specified herein provided freight is paid on the minimum specified.

(d) (3) Carrier handling cargo in accordance with this clause is permitted to accept any other additional cargo offering from the same dock in any quantity provided however that in lots of less than 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling poles and/or logs from one shipper or supplier destined to Port or Ports under Conference jurisdiction which quantity is to be available and ready for delivery when vessel is ready to load, the rate applicable under (d) (1) plus an additional $1.00 per revenue ton shall be charged.

(d) (4) In Northern District Carriers may load direct or make divisional rate arrangements on quantities less than the minimum specified in (d) (1) provided however $1.50 per revenue ton is assessed, which will include handling charge from pile in shed to ship's tackle, over the Pacific Westbound Conference Local Tariff rate applying on such cargo.

(d) (5) When a Carrier calls at these docks for minimum quantities specified in (d) (1) the Carrier to save making an extra call at a regular terminal dock as listed in Item 100 (L) may load other cargo from other shippers or suppliers that would have ordinarily moved over a regular terminal dock as listed in Item 100 (L), regular wharfage charges shall be assessed against the cargo, but the Carrier may take such additional cargo from place to rest on dock the same as if loaded at regular terminal dock.

(e) *Cargo from Docks in Ports or places other than Terminal Ports listed in Clause "L."*

(e) (1) Carrier may call for and load at these docks a minimum quantity of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles and/or logs from one shipper or supplier in accordance with Rule (a) Rules and Conditions, Pacific Westbound Conference Local Tariff 1–Q, supplements thereto or reissues thereof, which quantity is to be available and ready for delivery when vessel is ready to load.

(e) (2) Carrier may call for and load at these docks less than the minimum quantities specified herein, provided freight is paid on the minimum specified.

(e) (3) Vessels handling cargo in accordance with this clause are permitted to accept any other additional cargo offering from the same dock in any quantity on the same terms, conditions and rates provided in (e) (1).

(e) (4) Carrier may make divisional rate arrangements equalizing direct loading as provided in (e) (1) from such docks on any quantity of cargo to meet direct loading Conference competition in accordance with rule (a) of Rules and Conditions, Pacific Westbound Conference Local Tariff 1–Q, Supplements thereto or reissues thereof.

(f) *Adjacent Docks.*—Where the vessel lies across the face of two docks and one of the docks furnishes a minimum of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles and/or logs subject to (d) (1) and (e) (1) any quantity of cargo may be loaded from the other dock at tariff rates, but in no case can the two docks combine to make up the minimum quantity.

(g) *Designation of Minimum on Initiative Commodities.*—The Northern and Southern Districts have the privilege of modifying the minimum quantity specified in (d) and (e) above on commodities on which they have the rate initiative.

(h) *Columbia River, Grays and Willapa Harbors.*—In order to cope with Non Conference and Tramp competition on Columbia River, Grays and Willapa Harbors, Conference Carriers are permitted discretion in the application of (d) (1) and (e) (1), but such carriers will limit variation therefrom to the extent that they are required to meet such competition.

(i) *Cotton.*—In Los Angeles Harbor Carriers shall have the option of equalizing the cost of handling cotton in any quantity from cotton compress or its loading dock to any Terminal dock.

(j) *Gasoline and Kerosene.*—To meet compulsory municipal regulations, Carriers shall be permitted to call at Pier 181 Los Angeles Harbor for any quantity of gasoline and/or kerosene at terminal rates.

(k) *Loading Docks for Transshipment Cargo.*—Cargo for transshipment, which does not originate at first Carrier's dock, may be loaded by first Carrier's vessel at its regular loading dock and/or the terminal docks listed in Clause (L) in accordance with tariff, rules and conditions, but any cargo first Carrier's vessel may accept originating at its own loading dock shall be charged an additional $1.00 per revenue ton, but cargo to be delivered at ship's tackle

without any expense to the Carrier. (In San Francisco ship's tackle shall mean place of rest on dock.)

(L) The authorized regular terminal docks at Conference Terminal Ports are as follows:

Vancouver

C.P.R. Docks, viz: Pier "B–C"
Great Northern Docks—East and West Side
Terminal Dock and Warehouse Co.
Vancouver Harbor Commissioners' Dock, Viz: Ballantyne Pier

Victoria

Rithet—Consolidated
Ogden Point

Seattle

East Waterways Dock
Great Northern Docks (Smith's Cove)
Milwaukee Ocean Dock
Pier 14
Port Commission-Lenora Street Dock
Port Commission (Smith's Cove) Pier 41

Tacoma

Commercial Dock
Milwaukee Dock No. 2
Port Commission Dock
Shaffer Terminal No. 2 (Milwaukee Dock No. 1)

Portland

Albers Dock Berths No. 2 and 3
Municipal Terminals 1 and 4
Oceanic Terminals

Astoria

Port of Astoria Municipal Terminals

San Francisco

State Board of Harbor Commissioners' Docks, Viz:
Pier 15
Pier 23
Pier 26
Pier 28
Pier 37
Pier 41
Pier 42
Pier 44
Pier 45
* Pier 48

Los Angeles Harbor

Piers 152, 153, 154, 155
Pier 187
Pier 188
Pier 228–E
Pier 229–230–A
Pier 230–E
Municipal Pier 60
Pier 53
* Pier 232–E

* Shows Pier designated by Participating Carrier.

"NOTE.—If Carriers change their terminal docks they shall forthwith report such change to the District Secretary of the Conference."

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 138

IN THE MATTER OF GULF INTERCOASTAL CONFERENCE AGREEMENT

Submitted July 21, 1934. Decided September 14, 1934

Withdrawal of approval to Gulf Intercoastal Conference Agreement found not justified. Petition denied.

Ira L. Ewers for petitioner.
Elisha Hanson and *Frank Lyon* for respondents.

REPORT OF THE DEPARTMENT

Petitioner, Nelson Steamship Company, is a common carrier by water in intercoastal commerce between Atlantic and Pacific Coast ports of the United States. Respondents, Luckenbach Gulf Steamship Co., Inc., Gulf Pacific Line, Swayne & Hoyt Ltd. (Managing Owners), and Gulf Pacific Mail Line Ltd., are common carriers by water and comprise the present membership of the Gulf Intercoastal Conference, a voluntary association to promote commerce between Gulf of Mexico and Pacific coast ports of the United States, under United States Shipping Board Bureau Agreement No. 2742, approved March 28, 1934. Petitioner alleges, in substance, that respondents have improperly and illegally refused it admission to the conference and that as respondents operate under contract rates it is impossible for it to obtain freight from shippers, parties to said contracts. The Department is requested under authority of Section 15 of the Shipping Act to withdraw its approval of Agreement No. 2742.

The agreement under consideration cancelled and superseded Conference Agreement No. 122, approved February 19, 1929. Paragraph 6 of the present agreement provides that any person, firm, or corporation engaged in the Gulf intercoastal trade may become a party to the agreement by consent of a majority of the parties thereto, and that such admission shall not be denied to any party except for just and reasonable cause. The agreement does not provide for admission to membership in the conference of parties not engaged in the Gulf intercoastal trade, and as at the time petitioner applied for membership it was not engaged in that trade, its right, if any, to membership is not specifically inured to it by the terms of the agreement.

Its application for membership was first denied by respondents on April 3, 1934, on the ground that there were then pending before this Department certain amendments to the agreement under consideration and on the further ground that there was more than sufficient tonnage in the trade to take care of cargo offerings. At the time of the application petitioner was a member of the United States Intercoastal Conference, the agreement of which provided that no vessel owned or controlled by any member thereof or by a parent, subsidiary, affiliated or associated company, or organization would be permitted by any of them to operate in any other branch of the intercoastal trade except in accordance with the rates, rules, and regulations prescribed under such conference agreement as covers such other branch of the intercoastal trade. The rates agreed upon by the present membership of the Gulf Intercoastal Conference do not vary according to the carrier performing the transportation service. The same rate is published and applies regardless of the service used. The agreement does not admit of pooling of revenues by the carriers. Respondents operate fortnightly but alternate their sailings and thus provide a weekly service. Although the application in question, or copy thereof, is not of record, the testimony of a representative of petitioner shows that when petitioner first took up negotiations to enter the conference it proposed to give monthly service and asked for either "a differential or a pool." The witness considered this to be "good trading." The Gulf Intercoastal Conference has been in existence for some years. No friction between the members thereof or dissatisfaction with the agreement on the part of shippers has come to the attention of the Department. To have acceded to the conditions which petitioner sought to impose would have resulted in radical changes of doubtful character in the structure of the conference.

The proposed amendments to Agreement No. 2742 in essence required any party seeking admission to the conference to make a showing that the requirements of the trade justified the additional service of the type offered by the applicant. The proposed amendments were disapproved by the Department on May 22, 1934. Thereafter petitioner renewed its application for membership in the conference. This time it offered to operate a fortnightly service and did not insist on its request for rates lower than those maintained by respondents or for a pooling of revenue in lieu of such lower rates. Respondents' letter of June 5, 1934, to the petitioner denied the renewed application "for just and reasonable causes in accordance with Paragraph Six (6) of Conference Agreement." At the hearing respondents enumerated their reasons for refusing petitioner admission in the conference. They stated petitioner is not engaged in the Gulf intercoastal trade and that the agreement was intended to include only carriers actually operating in that trade. Also that at present the carriers in that trade are furnishing ample service. In support of this they refer to a report of the Federal Coordinator of Transportation, transmitted on March 10, 1934, by the Chairman of the Interstate Commerce Commission to the Senate (Senate Document No. 152, 73d Congress, 2d Session), which states that the Gulf intercoastal traffic is well balanced, but the cargo tonnage is considerably less than could be handled by the present service, and that any increase in present frequency of service would not attract additional traffic. Respondents further stated that there are no serious demands for additional service, in spite of efforts by petitioner, who is said to have circularized the trade and asked shippers to insist upon additional facilities. Furthermore, the respondents stated, they have adequate facilities to take care of any normal increase in business that may develop. Emphasizing the request of petitioner in its first application for membership for either a pool or differential, respondents stated that they do not regard the petitioner "as a desirable applicant if the same methods are to be pursued in the Gulf Intercoastal Conference," as were followed while petitioner was a member of the United States Intercoastal Conference. No specific methods were testified to, but emphasis was laid upon the fact that as a member of that conference petitioner chose to operate only four of its fourteen vessels and thereby obtained a greater revenue from the pool provided by that conference. Rates lower on some commodities transported over the "B" lines than over the "A" lines and pooling of revenues by the carriers were characteristics of the agreement governing the United States Intercoastal Conference. Petitioner was a Class "B" line

during the last three months in 1932 and in the year 1933, and during this fifteen-month period petitioner contributed $32,726.46 to the pool and received $280,881.48 therefrom.

Petitioner's witness averred that petitioner could not operate in the Gulf-Pacific trade outside the conference because of the contract rate system employed by the conference members, stating that petitioner would be prevented from " enjoying the very heavy cargo that is contracted for." The witness, however, stated that he had only a general knowledge of the system, and could not explain how it operated. The contract rate system, although long in effect in this trade by the conference, is used only on westbound cargo and then only on certain commodities. The record does not disclose the volume of traffic moving under contracts. From time to time other ships than those controlled by the conference have operated in the trade, including some owned by petitioner and chartered by it to others. There is no showing that the existence of these contracts has prevented petitioner from operating in the trade outside the conference; nor has petitioner brought into issue the legality of the contracts, in which it seeks to share by becoming a conference member.

The evidence presented in this case does not support the finding requested by the petitioner. An order denying the petition will be entered.

DEPARTMENT OF COMMERCE

UNITED STATES SHIPPING BOARD BUREAU

DOCKET NO. 139 [1]

INTERCOASTAL RATES OF NELSON STEAMSHIP COMPANY

Submitted September 24, 1934. Decided November 27, 1934

Schedules proposing reductions in intercoastal rates of Nelson Steamship Company, Argonaut Steamship Line, Inc., Pacific Coast Direct Line, Inc. and Weyerhaeuser Steamship Company, except on iron and steel articles and eastbound lumber, found not justified. Suspended schedules ordered canceled and proceedings discontinued.

States Steamship Company having canceled and withdrawn proposed intercoastal rates and concurred in tariffs of Agent R. C. Thackara under special permission, proceeding discontinued.

Pacific-Atlantic Steamship Co. having canceled and withdrawn schedules proposing reductions in intercoastal rates under special permission, proceeding discontinued.

Proposed increases and reductions in westbound intercoastal rates of Shepard Steamship Company on various commodities, with exception of items 1068 and 1069A embracing certain reductions in the rates on milk of magnesia and face cream in straight or mixed carloads, justified.

Proposed exceptions to port equalization rule in westbound intercoastal tariff of American Line Steamship Corporation and Panama Mail Steamship Company found not justified. Suspended schedule ordered canceled and proceeding discontinued.

[1] This report also embraces Nos. 140, Intercoastal Rates of States Steamship Company and Pacific-Atlantic Steamship Company; 141, Intercoastal Rates of Shepard Steamship Company; 144, Intercoastal Rates of Argonaut Steamship Line, Inc.; 146, Rates of Panama Pacific and Grace Lines on Iron and Steel Articles; 148, Intercoastal Rates of Pacific Coast Direct Line, Inc. et al.; and 151, Eastbound Intercoastal Rates on Oranges, Lemons and Grapefruit over Luckenbach Steamship Company, Inc.

Proposed reductions in eastbound intercoastal rates of Luckenbach Steamship Company, Inc. on oranges, lemons and grapefruit, in carloads, found not justified. Suspended schedule ordered canceled and proceeding discontinued.

Edward B. Long, Jr. and *F. W. S. Locke* for Nelson Steamship Company.

L. D. Stapleton, Jr. and *James A. Farrell, Jr.* for Argonaut Steamship Line, Inc.

E. Farwell and *A. J. Mouris* for Weyerhaeuser Steamship Company and Pacific Coast Direct Line, Inc.

W. W. Nottingham and *R. A. Nicol* for States Steamship Company and Pacific-Atlantic Steamship Co.

Harold S. Deming and *Otis N. Shepard* for Shepard Steamship Company.

G. E. Talmadge, Jr. for American Line Steamship Corporation.

J. W. Chapman for Panama Mail Steamship Company.

Frank Lyon and *W. S. McPherson* for American-Hawaiian Steamship Company and Williams Steamship Corporation.

R. T. Mount and *H. W. Warley* for Calmar Steamship Corporation.

Elisha Hanson for Swayne & Hoyt, Ltd. (Gulf Pacific Line) and Gulf Pacific Mail Line, Ltd.

Frank Lyon and *O. P. Caldwell* for Luckenbach Steamship Company.

W. P. Rudrow for Sudden and Christenson (Arrow Line); *C. S. Belsterling* and *T. F. Lynch* for Isthmian Steamship Company; *Raymond F. Burley* for McCormick Steamship Company; and *R. A. Lauckhardt* for Dollar Steamship Lines, Inc., Ltd.

H. E. Manghum for Sacramento Chamber of Commerce; *Mason Manghum* for Richmond Chamber of Commerce; *Charles R. Seal* for Baltimore Association of Commerce; *H. J. Wagner* for Norfolk Port Traffic Commission; and *A. C. Welsh* for Brooklyn Chamber of Commerce.

C. M. Smith for Chain Store Traffic League; *George O. Griffith* for Sterling Products Company Inc. and National Industrial Traffic League; *W. F. Price* for J. B. Williams Company; *T. A. Bosley* for Virginia-Carolina Chemical Corporation; *R. F. Schaeffer* for Columbia Peanut Company; *H. D. Musick* for Blue Ridge Glass Corporation and Franklin Glass Corporation; *Daniel W. Longo* for Reynolds Metals Company, Inc.; *Frank Rich* for J. C. Penney Company, Inc.; *George T. Jenkisson* for Hercules Powder Company, Inc.; *K. L. R. Baird* for The New Jersey Zinc Company; *Henry M. Brooks* for The Pacific Coast Company; *A. D. Whittemore* for American Cyanamid Company; *D. M. Johnson* for Edenton Peanut Company; *J. C. Albert* for West Virginia Pulp and Paper Company; *J. R. Eldridge*

for Virginia Smelting Company; *A. J. Whitman* for American Agricultural Chemical Company and Bowker Chemical Company; *W. A. Smith* for Vick Chemical Company; and *Alex Zeeve* for himself.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Respondents are common carriers by water engaged in intercoastal transportation between Atlantic and Pacific coast points. Pacific Coast Direct Line, Inc. only operates westbound, and Weyerhaeuser Steamship Company only operates eastbound.

All carriers engaged in the transportation of general cargo in this trade were members of the United States Intercoastal Conference, a voluntary association of carriers organized for the purpose of attaining stability in rates, at the time the conference disbanded on July 31, 1934, except States Steamship Company, a new line in this trade; Shepard Steamship Company; and Calmar Steamship Corporation, not here involved. So-called conference tariffs were published and filed by Agent R. C. Thackara. His tariffs SB–I No. 4, naming westbound class and commodity rates and SB–I No. 5, naming eastbound class and commodity rates, are at present in effect.

Nos. 139, 144, and 148.

These three cases are identical in many material respects and for convenience will be considered together. The record in Docket No. 126, a general investigation of intercoastal transportation heard but not yet decided, is stipulated into the record in each case.

By schedules filed by it to become effective August 1, 1934, Nelson Steamship Company proposed reductions in all its rates, except on iron and steel articles and eastbound lumber. Substantially similar reductions are proposed in the rates of Argonaut Steamship Line, Inc., by schedules filed on its behalf by Agent T. J. Burton to become effective August 31, 1934; in the rates of Pacific Coast Direct Line, Inc. by schedule filed by it to become effective September 9, 1934; and in the rates of Weyerhaeuser Steamship Company by schedules filed on its behalf by Agent L. C. Howard to become effective September 9, 1934. Hereinafter these four respondents will be referred to as Nelson, Argonaut, Pacific Coast Direct, and Weyerhaeuser, respectively. The operation of these schedules was suspended in each instance for a period of four months from the proposed effective date thereof.

Water transportation between Atlantic and Pacific Coast points is characterized by carrier competition increasing in bitterness and

intensity. The conference, intended as a stabilizer of rates, was never able to enroll or keep within its fold all the carriers operating in this trade and otherwise it did not have a happy existence. It was organized on August 5, 1920, and functioned until June, 1922. This period was followed by a severe rate war lasting until the conference was again organized on August 1, 1923. From that date it continued, as stated by a witness, "in a somewhat hit-and-miss fashion" until July 31, 1927. Reorganized on August 1, 1927, it fell apart on February 13, 1931, when a "pretty savage" rate war ensued during which each line made its own "quotations." Organized once more it functioned for only seven months, or from March 1 to September 30, 1932. A new agreement became effective on October 1, 1932, and in modified form the conference continued from time to time until last disbanded on July 31, 1934.

During the period from August 5, 1920, to June 1922, all members of the conference charged uniform rates in both directions regardless of any carrier disability which might have existed. During the next period of the conference, or from August 1, 1923, to July 31, 1927, uniform rates were charged on eastbound traffic. On westbound traffic, excepting iron and steel articles, when the rate was 55 cents per 100 pounds or more, carriers operating vessels not more frequently than once every fourteen days, designated class "B" lines, were permitted to charge 5 percent, maximum 7.5 cents per 100 pounds, less than the other members of the conference, designated class "A" lines. The agreement governing the conference as reorganized on August 1, 1927, provided uniformity in the westbound and eastbound rates except on certain westbound commodities as to which the "A" lines charged 5 cents per 100 pounds more than the "B" lines. The agreement leading to the reorganization of March 1, 1932, provided:

FIFTH: (a) All lines agree to abide by tariffs eastbound and westbound to be immediately published and made effective March 1, 1932, in which tariff carload rates shall be fixed at "B" line contract rates in effect February 1, 1931, or tariff rates where no contract rates existed.

* * * * * * *

SEVENTH: Lines sailing not more frequently than every fourteen days with advertised transit time of twenty-one days from north of Hatteras and twenty days from Hampton Roads shall be considered as "B" lines and shall quote "B" line rates.

* * * * * * *

EIGHTH: Lines sailing not more frequently than an average of 22 day intervals, with the same transit restrictions as provided in Paragraph Seventh, shall be considered as "C" lines and shall be permitted to quote:

5 percent under "B" lines up to and including items rated at 40 cents, exception iron and steel. 7½ percent under "B" lines on items over 40 cents with a limit of 15 cents per 100 lbs., excepting iron and steel; * * *

NINTH: Lines not falling within the description stated in either Paragraph Seventh or Paragraph Eighth shall be considered as "A" lines and on items stated in amended handicap list of which copy is appended hereto and made a part hereof, said lines shall quote rates 50 cents per ton higher than the rates quoted by the "B" lines under Paragraph Seventh hereof, on such items; Quaker Line to quote same rates as "A" lines from Delaware River ports.

The last of the agreements governing the conference which, as stated, came to an end on July 31, 1934, provided:

7. There shall be two classes of lines westbound, viz: "A" and "B." Lines sailing not more frequently than an average of ten days with advertised transit time of twenty-one days from last loading port north of Hatteras (twenty days from Hampton Roads) shall be "B" lines and shall quote "B" line rates westbound. All other lines shall quote "A" rates westbound. * * *

There shall be but one class of lines eastbound, and all lines eastbound shall quote parity of rates on all commodities including lumber and lumber products.

8. *Westbound*, the "A" lines shall charge two and one-half cents (2½¢) per 100 pounds on both carload and less carload lots over the rates charged by the "B" lines on those items covered by Handicap List which list is included in United States Intercoastal Conference Westbound Tariff No. 1 duly filed with the United States Shipping Board June 1, 1933. Said list may be amended from time to time by unanimous vote.

Neither Nelson, Argonaut nor Pacific Coast Direct owns any vessels. Those operated or available for operation by Nelson or Argonaut are chartered from affiliated companies. Nelson has 14 and Argonaut has 8 such vessels. Weyerhaeuser owns 4 vessels, which it operates eastbound. These are the vessels which Pacific Coast Direct operates in the opposite direction. Respondents were "B" line members of the conference at the time it disbanded on July 31, 1934. Weyerhaeuser and Pacific Coast Direct were treated as one member. Although with 14 vessels Nelson could have maintained sailings from the Atlantic coast of one every week and thus qualified as an "A" line, it chose to operate only 4 vessels at a frequency of about 30 days. This resulted in a great financial benefit to it under a revenue pool provided by the conference agreement.

Since the organization of the conference on August 5, 1920, carriers members thereof have named uniform rates on eastbound traffic. On such traffic Calmar Steamship Corporation, hereinafter referred to as Calmar, maintains rates substantially similar to those at present in effect via the lines of former members of the conference, except for a port equalization rule resulting in lower rates on certain traffic. The rates of Shepard Steamship Company, hereinafter referred to as Shepard, are generally lower by 3 percent. The suspended schedules involve reductions of 3 percent in the eastbound rates on all commodities excepting lumber, not including piling, posts, and spars, but in view of the fact that the rate controversies

between carriers in this trade have been principally, if not entirely, on westbound traffic, it is not necessary to discuss the eastbound situation, except to say that because of a port-equalization rule contained in the eastbound suspended schedules, the proposed eastbound rates would be lower than those maintained by Shepard to the extent such rule would operate.

When differences existed in the westbound conference rates they were predicated on frequency of sailings and time in transit. During the last period of the conference such differences existed only on certain heavy-loading, low-grade commodities included in the so-called handicap list. Such differences still exist. This list is said to represent approximately 15 percent of the tariff items. On such commodities the former "A" lines charged and still charge 2.5 cents per 100 pounds on carload and less-than-carload lots more than the "B" lines.

The level of the westbound rates of Calmar is somewhat lower than that of the former "B" members of the conference. Some of its rates are known as contract rates, or rates as to which there exists a contract with the shipper. However an understanding had been reached under which Calmar would increase its noncontract rates to the level of the "B" rates and the conference members, if they so desired, could reduce their rates to meet the Calmer contract rates. This understanding was being carried out at the time the conference disbanded.

Generally Shepard maintains and has maintained the lowest westbound rates in this trade. It was the only class "C" line when the conference was reorganized on March 1, 1932. The following is taken from the testimony of a member of the committee appointed to reorganize the conference at that time.

> We reserved our discussion with the Shepard Line to the last. I think we had composed all our internal differences, and had a conference agreement and wanted to get a 100 percent conference, and I was appointed chairman of that committee, and we had several discussions with Mr. Shepard and his associates. I mention that because it will give you the origin of this "C" line classification.
>
> The committee associated with me were absolutely opposed to any further negotiation with Mr. Shepard, when he asked for a discount under the "B" rates, but I felt it was better to have Mr. Shepard tied into the conference on a fixed differential than to have him name his own differential, the lesser of two evils. He might have taken a 30 or 35 percent discount, and if we could get him in on a 5 or 10 percent discount at that time, it was considered expedient. Mr. Shepard really dictated his own classification and his own terms. It was either that or he would go out on his own.
>
> That became the yardstick for the "C" classification. * * * It was all a matter of business trading. I do not say that any of us had any more virtue than the other. It is not as though we had a regular, logical basis for classifying these lines.

The conference as reorganized at that time only lasted seven months. Its collapse was precipitated by the fact that on March 23, 1932, or only three weeks after its organization, led by Nelson practically all the "B" lines reduced their sailings and thus qualified as "C" lines under the terms of the agreement.

The agreement governing the conference as reorganized on October 1, 1932, in essence provided for a pool to consist of 3 percent of the ocean "freights" eastbound and westbound of the carriers, with some exceptions, which as a matter of convenience and in preference to a general increase in the freight rates, was collected as a surcharge over the freight rates prevailing from time to time. Effective March 21, 1934, the members of the conference increased the freight rates by 3 percent and eliminated the surcharge rule.

It has been the practice of Shepard to name rates 5 percent, when the rate was 40 cents per 100 pounds or less, and 7.5 percent when the rate was more, lower than the lowest rate at the time in existence on westbound traffic regardless of whether such rate was a conference rate or not. Prior to the Intercoastal Shipping Act, 1933, carriers filed only their maximum rates, which were decidedly higher than those charged the shippers. Although the record does not disclose the specific basis adopted by the members of the conference or Shepard for the westbound rates filed by them under that act, an analysis of such tariffs, filed to become effective on June 1, 1933, shows some of the rates of Shepard to be the same or higher than those filed by the members of the conference and that when the difference in the rates existed in favor of Shepard it generally was greater than the percentages indicated. This difference was further widened by the fact that Shepard made no general increases in its rates at the time to correspond with those effective on March 21, 1934, in the conference rates.

Five "A" and nine "B" lines, including Weyerhaeuser, composed the conference at the time it ceased to exist on July 31, 1934. At present they generally maintain the rates and rate relationship then in effect. The table below contrasts the proposed westbound rates on selected commodities with the rates now in effect over the "A" and "B" lines, Calmar and Shepard. Rates are stated in cents per 100 pounds.

Commodity	Minimum weight	"A" Lines	"B" Lines	Calmar	Shepard	Proposed	Percentage proposed rates lower than Shepard
	Pounds						
Pork and beans, soups, spaghetti, or tomato juice	36,000	40	40	40	38	33	13.15
Woolens n. o. s. in the original piece in cases	12,000	180.5	180.5	180.5	162	139	14.19
Linen, silk, or rayon thread	24,000	134	134	134	120	111	7.50
Alum, potash, or ammonia	24,000	67	67	67	60	31	48.33
Dry goods, viz, toweling, cotton, or rayon	10,000	77.5	77.5	75	69.5	65	6.47
Aluminum blooms, billets, ingots, pigs, or slabs	30,000	62	62	62	55.5	41.5	25.22
Portland cement	50,000	38.5	36	36	33.5	31	7.46
Aluminum chutes, tubing, or pipe fittings	24,000	103	103	103	92.5	65	29.72
Cement, viz, binder or floor	24,000	77.5	77.5	77.5	69.5	55.5	20.14
Fire brick, boxed or crated	40,000	43.5	41	41	38	33.5	11.84
Baking powder	24,000	56.5	56.5	56.5	51	46.5	8.82
Butchers' benches	24,000	82.5	82.5	82.5	74	65	12.16
Barium	24,000	77.5	77.5	77.5	69.5	55.5	20.14
Hose or belting	24,000	92.5	92.5	92.5	83.5	74	11.37
Barytes, in bulk	2,000,000	26	26	26	24	22	8.33
Zinc dust	36,000	43.5	41	41	38	33.5	11.84
Wooden toothpicks	15,000	103	103	103	92.5	78.5	15.13
Copper cable	24,000	41	41	41	46.5	38	18.27
Twine, binder	24,000	41	41	41	38	28.5	25.00
Cigarettes	24,000	87.5	87.5	87.5	79	74	6.32
Pneumatic rubber tires	20,000	67	67	65	60	46.5	22.50
Solid rubber tires	20,000	67	67	67	46.5	46.5	-------
Tapioca	40,000	87.5	87.5	65	78.5	60	23.56
Maple sugar	24,000	56.5	56.5	56.5	51	46.5	8.82
Rubber goods, viz, rubber gloves	20,000	154.5	154.5	154.5	139	115.5	16.90
Index cards or guides	24,000	67	67	67	61	55.5	9.01
Lithopone	24,000	36	36	36	33.5	33.5	-------
Motorcycles	12,000	180.5	180.5	180.5	162	139	14.19
Coin-operating machines	30,000	190.5	190.5	190.5	171	162	5.26
Ground peanut shells	24,000	59	56.5	56.5	51	38	25.49
Insecticides or fungicides	10,000	82.5	82.5	82.5	69.5	69.5	-------
Green salted hides	24,000	92.5	92.5	92.5	83.5	55.5	33.53
Anchors, iron, weight not exceeding 700 pounds	24,000	67	67	67	60	51	15.00
Chlorine or carbonic acid gas	24,000	82.5	82.5	82.5	74	65	12.16
Foundry facings, dry	24,000	56.5	56.5	45	41.5	38	8.43
Flax, hemp, istle, jute, or vegetable fiber	24,000	103	103	103	92.5	65	29.72

An exhibit introduced on behalf of Nelson contrasts the tonnage and number of sailings of various lines in the trade, not including Calmar, during the period from March 1 to September 30, 1932. It was stated that its westbound tariffs under suspension were constructed "on the same structure that the Shepard Line had built their tariff on, when they decided not to go along with the conference on June 1, 1933, and is to all intents and purposes, theoretically, anyhow, on the same basis as the tariff which we enjoyed when we were in the conference in the period March 1 to September 30, when we had a differential freight rate." This is also true of the westbound suspended schedules of Argonaut and Pacific Coast Direct. The exhibit shows that the average loading of Argonaut was 4,231 tons and of Nelson 4,022 tons, by far the highest for the 13 lines there indicated. This showing corroborates the statement of the then class "A" lines that the lower competitive rates of the "C" lines attracted too much traffic to such lines. This contributed to the

collapse of the conference, which had been reorganized but seven months before. It is clear that any showing made under such circumstances and for such short period is not persuasive of the lawfulness of the proposed tariffs. In passing it should be stated that from time to time since June 1, 1933, Shepard has filed rates with a view to maintaining a spread approximating 5 percent when the rate is 40 cents per 100 pounds or less, and 7.5 percent when the rate is more, under the lowest competitive rate. Should the proposed westbound rates become effective in many instances they would be lower than those at present in effect via Shepard.

Shippers of commodities requiring expedited service have preferred the "A" lines. Such commodities generally are high grade and are not included in the handicap list. It is said by respondents that the proposed reductions are intended to increase the volume of their business and the quality thereof. It is clear they will not create new tonnage but are merely calculated to divert to these carriers the tonnage available for transportation by all lines, and whether or not they will attract business to respondents depends, among other things, upon the competitive action by other carriers. Other carriers expressed the opinion that the suspended schedules are the commencement of drastic competitive reductions in the rates which will be followed by others, sooner or later extending the "vicious circle" throughout the trade. These carriers feel their present rates cannot stand such drastic reductions. However, they state similar steps will have to be taken by them if the suspended schedules are allowed to become effective. This will not be unlike competitive action taken by them in the past. It is due to such measures that this trade has never been on a solid foundation.

The contention was also advanced on behalf of Nelson that the suspended schedules fairly reflect the level of rates at which a carrier operating at a frequency of 30 days could successfully attract traffic. However the conference rates seem to have been made without any consideration of cost of service or any transportation or traffic condition or any particular system of rate making other than carrier competition. Frequency of sailings, like time in transit, pooling of revenues, port allocation and port equalization were mere features of a compromise adopted in an attempt to solve an acute competitive situation, without controlling force after the conference disbanded. For instance during the last period of the conference Nelson preferred to operate only 4 of the 14 vessels it had available for operation. By doing so it retained its status as a "B" line and participated to a greater extent in the distribution of revenues from the pool, which had been set up as an aid to the "B" lines. There

is nothing in the law or elsewhere that would prevent it at present from operating these 14 vessels and thereby maintain more frequent sailings. With this number of vessels it could immediately increase sailings to one every week. It admits that if it "went on to a weekly basis that we would not be playing the game if we quoted a differential rate." During the last period of the conference Argonaut maintained a frequency approximating one sailing every 28 or 30 days. With 8 vessels which it now has available for operation this frequency could be increased. Its witness admitted its suspended rates should be higher if its frequency of sailings is increased.

The principal witness for Nelson thinks the proposed rates are compensatory, but such opinion testimony without any supporting data is of little value.

The position, contentions, present and proposed rates, and objective of the proposed rates of Argonaut, Weyerhaeuser, and Pacific Coast Direct are practically identical with those of Nelson. These respondents introduced no substantial evidence in support of their suspended schedules, and what has been said as to the rates proposed by Nelson applies with equal force to the rates proposed by these other respondents. It was stated on behalf of Argonaut that the rates proposed by it would be compensatory if they attract the volume of business they are calculated to attract. But, as has been stated hereinbefore, the amount of business to be attracted by the proposed rates depends, among other things, upon the competitive action by other carriers. Argonaut has 8 vessels available for operation, and on its behalf it was further stated that if Nelson were to operate its fleet of 14 vessels, the rates proposed by Nelson would result in an unfair situation, for the frequency of their services would not be comparable. At present Shepard and Pacific Coast Direct each has four vessels available for operation. Other carriers in this trade have more vessels at their disposal. These cases indirectly present the question of rate differences, if any, to be observed by the various lines in this trade, taking into consideration frequency of sailings and other factors, a question directly involved in No. 126.

Some shippers appeared in support of the suspended schedules. They stated the present rates on their commodities are high and stressed the need for lower rates to meet competition. Such testimony refers to specific commodities. While adjustments in present rates might in some instances be merited, we are here concerned with a larger problem. The lawfulness of individual rates should be the subject of complaints under the Shipping Act, 1916.

Respondents are agreeable to increasing their proposed rates to the level of the rates of Shepard. These cases are another chapter in the prolonged rate struggle between intercoastal carriers.

Section 1 of the Merchant Marine Act, 1920 states—

> That it is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is hereby declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, insofar as may not be inconsistent with the express provisions of this Act, the United States Shipping Board shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be obtained.

This policy is confirmed and reaffirmed by the Merchant Marine Act, 1928. Shippers need rate stability in order to conduct their business on sound principles. Destructive competition between carriers may afford a temporary benefit to some of the shippers particularly interested, but this does not compensate for its far-reaching and serious adverse effect upon the maintenance of an efficient merchant marine with which this Department is charged by law. The acts which this Department administers frown upon destructive carrier competition, and the greater the danger in this respect the greater is the need for unswerving fidelity to the policy and primary purpose declared by law.

The interest of the public demands that these carriers shall receive revenues which will enable them to keep their fleets in good repair and maintain efficient service. Much of the equipment used in this trade, including that used by respondents, was constructed many years ago and is now nearly obsolete. Financial showings of these respondents and other carriers in the trade are not what they should be. It appears from data submitted by these respondents that for the calendar year 1933 Nelson showed an operating profit of $262,-864.55, but of this amount $233,575.65 was obtained from the conference pool. For the same period Argonaut showed an operating loss of $272,111.33, and Pacific Coast Direct Line of $2,082.13. Weyerhaeuser showed a profit of $17,655.08 before taxes or setting aside any amount for depreciation.

Section 18 of the Shipping Act imposes upon respondents the obligation of establishing and observing just and reasonable rates and tariffs. Although the acts which this department administers do not define just and reasonable rates and tariffs, it is well established that a rate may be so low as to be unreasonable and thus unlawful. It is clear that the tariffs under suspension propose a rate level that would defeat the intent of Congress to maintain a suitable merchant marine and provide for the proper growth of our domestic com-

merce in this trade. This department should exercise all the powers at its command to prevent rate wars of the character here evidenced, and the bad effects upon our commerce, and upon carriers and shippers alike, that inhere in such wars. Upon the record the department finds that the proposed tariffs do not meet the requirements imposed by the statutes and are unlawful.

The Intercoastal Shipping Act, 1933, requires that schedules shall show all the rates and charges for or in connection with transportation and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such rates or charges or the value of the service rendered to the consignor or consignee. The purpose of the law is the publication of rates, charges, rules, and regulations in such manner as to enable the consignor or consignee to see for himself the exact price of transportation. No changes therein may be made except by the publication, filing and posting of new schedules plainly showing the changes proposed to be made. The law directs the department by regulations to prescribe the form and manner in which schedules shall be published, filed, and posted and to reject any schedule filed with it which is not in consonance with law and such regulations. Regulations have been issued pursuant to this mandate.

The suspended tariffs fail to meet the requirements of law and such regulations in material respects. For instance they do not specify the schedule or schedules now in effect which they cancel or the changes therein which in essence they effect as required by law and the regulations. The schedule of Argonaut naming westbound rates on its title page shows it to be filed by "T. J. Burton, Traffic Manager." Each other page of the schedule shows it to be filed by "T. J. Burton, Agent." The regulations provide for filing of schedules by the carrier itself or by a duly authorized agent and specifically prescribe the manner in which this should be done. This schedule fails to meet such requirements. The schedule of Weyerhaeuser was filed by L. C. Howard, Agent. In such instances the regulations require the filing of the original power of attorney with the department. Similar powers had been given by this respondent to Agent R. C. Thackara. In view of the explanation that the powers given Agent Howard were not intended to conflict with those given Agent Thackara, the power of attorney given Agent Howard was accepted for filing with the understanding it would be used only in the publication of rates between points not included in the power of attorney given Agent Thackara. The suspended schedule contains rates between points named in the schedule filed by Agent Thackara on behalf of this respondent. The rates filed by Agent Thackara are now in effect. The regulations further require that

where a schedule applies from a point or points on the route of one carrier to a point or points on the route of another carrier, each carrier participating in the through transportation, other than the carrier by which the schedule is filed, shall file a concurrence with the department and that such concurrence shall by number be shown immediately following the name of each such carrier in the body of the schedule. The schedules filed by Argonaut, Weyerhaeuser, and Pacific Coast Direct name joint through rates with carriers shown therein, but they do not show the concurrence or the concurrence number of any other such carriers. Such other carriers have not filed the required concurrences with this department.

Rule 3 (f) of Nelson's westbound schedule provides:

The term "port equalization" as used in this tariff means the difference between the cost of transportation from the point of origin of the cargo to the port at which it is loaded into Nelson Steamship Company's vessel and the cost of transportation on the same cargo from the same point of origin to the port taking the lowest rail rate at which such cargo could be loaded for Intercoastal shipment into an Intercoastal vessel.

Except as otherwise provided for in this tariff, port equalization will be allowed as follows:

1. On all shipments on which the rail rate from point of origin to port at which shipment is loaded into Nelson Steamship Company's vessels equals or exceeds Nine Cents (9¢) per 100 pounds, but such equalization shall not exceed the actual difference between the rail rate from point of origin to port at which shipment is loaded into the vessel and the rail rate from point of origin to the port taking the lowest rail rate at which such cargo could be loaded for Intercoastal shipment into an Intercoastal vessel, subject to equalization as hereinafter provided in this rule.

2. On all shipments that move by private, public or Government-owned dray, truck, lighter or barge to the port at which same is loaded into Nelson Steamship Company's vessel, the port equalization allowed will be based on the actual difference in the rail rate from point of origin to the port at which shipment is loaded into Nelson Steamship Company's vessel and the rail rate from point of origin to the port taking the lowest rail rate at which such cargo could be loaded for Intercoastal shipment into an Intercoastal vessel, subject to equalization as hereinafter provided in this rule.

3. When shipment moves under its own power to the port at which same is loaded into Nelson Steamship Company's vessel, port equalization will be allowed on the same basis as provided for in Section No. 2 of this rule.

4. Except where otherwise provided in this tariff, port equalization shall be allowed as follows:

When rate as provided for in this tariff is not in excess of Fifty (50¢) Cents per 100 pounds, the maximum allowance shall be Three (3¢) Cents per 100 pounds.

When rate as provided for in this tariff is in excess of Fifty (50¢) Cents per 100 pounds, but is not in excess of One Dollar ($1.00) per 100 pounds, the maximum allowance shall be Five (5¢) Cents per 100 pounds, but in no case shall the net rate to Nelson Steamship Company's vessel be less than Forty-Seven (47¢) Cents per 100 pounds, exclusive of all other allowances or absorptions provided for in this tariff.

When rate as provided for in this tariff is in excess of One Dollar ($1.00) per 100 pounds, the maximum allowance shall be Ten (10¢) Cents per 100 pounds, but in no case shall the net rate to Nelson Steamship Company's vessel be less than Ninety-Five (95¢) Cents per 100 pounds, exclusive of all other allowances or absorptions provided for in this tariff.

A substantially similar rule is contained in the westbound schedules of Argonaut and Pacific Coast Direct. It will be noted that in order to determine the applicable rate under this rule it is necessary to determine the port taking the lowest rail rate from the inland point of origin of the shipment, which may be one served by one of these respondents or not, and the amount of such rail rate. The rail tariffs are not filed with this department. To hold that a shipper must look beyond the tariffs of the carrier offering him a service to ascertain the rate would be to put the shipper under an onerous obligation not imposed upon him by law. The inclusion of any provision in a tariff which makes the amount of the charge dependent upon the measure of a rate published in tariffs of some other carrier, and more so when such tariffs are not filed with this department, cannot too strongly be condemned. At present Nelson, Argonaut, and Weyerhaeuser have no port equalization rule on eastbound traffic. What has been said of their westbound rule applies with equal force to the port equalization rule contained in their eastbound suspended schedules. The westbound tariffs of respondents at present in effect contain port equalization provisions in essence similar to those in the proposed schedules, but this fact affords no justification, particularly when the lawfulness of such provisions is now pending determination in another proceeding.

The suspended schedules contain other rules which seem to have been taken from tariffs now in effect but which nevertheless are so defective as to be contrary to law. A few illustrations should suffice. The following rule is contained in the terminal section of the eastbound schedule of Weyerhaeuser:

Where goods, shipped from any of the ports named on page No. 4 of this tariff at which vessels of Weyerhaeuser Steamship Company do not call to load cargo, are transported by water from such port to the nearest port at which Weyerhaeuser Steamship Company vessels load and are there loaded on a Weyerhaeuser Steamship Company vessel, Weyerhaeuser Steamship Company will absorb the actual cost for such water transportation and any extra cost of clerking, handling and service charges, and any extra wharfage and municipal and state tolls.

The following rule is taken from the terminal section of the westbound schedule of Pacific Coast Direct:

Cargo carried on Pacific Coast Direct Line, Inc. vessel for discharge at * * * may be transshipped by Pacific Coast Direct Line, Inc. at any of the transfer points stated below for such ports, and Pacific Coast Direct

Line, Inc. will absorb the extra cost brought about by the transshipment over the cost of the cargo if direct discharge had been made.

Page 98 of the Westbound schedule of Argonaut contains the following provision:

"Where goods, shipped from any of the ports named on page No. 3 of this tariff at which vessels of Argonaut Steamship Line, Inc. do not call to load cargo, are transported by water from such port to the nearest port at which Argonaut Steamship Line, Inc. vessels load and are there loaded on an Argonaut Steamship Line, Inc. vessel, Argonaut Steamship Line, Inc. will absorb the actual cost of such water transportation and any extra cost of clerking, handling and service charges, and any extra wharfage and municipal and state tolls.

The westbound schedule of Nelson provides that at Baltimore, Md., and Philadelphia, Pa.—

When railroads do not unload or absorb cost of unloading shipments, from railroad equipment, or pay the cost of unloading, Nelson Steamship Company will absorb the cost of such car unloading, when the cargo is loaded into Nelson Steamship Company's vessel.

Such rules and others contained in the suspended schedules, not necessary to detail, which do not disclose the cost of the service or the specific amount to be absorbed, clearly open the gate to rebates, undue preferences and prejudices prohibited by law.

A motion was made on behalf of Nelson that the suspension order be vacated on the ground that it deprives shippers of rates and services which are not in violation of any provision of law which the department is empowered to correct. A motion to vacate the suspension order was also made on behalf of Argonaut based on the ground that "the rates and rules contained in the suspended tariff are lawful in that the same have been permitted to the competitors of this respondent, that the denial of the right of respondent to quote such rates and rules is unduly discriminatory and is beyond the powers of the Bureau and in violation of the Shipping Act of 1916 and acts amendatory thereto." The powers of this department to suspend the operation of any schedule filed with it stating a new individual or joint rate, charge, classification, regulation, or practice affecting any rate or charge, and to enter, either upon complaint or upon its own initiative without complaint, upon a hearing concerning the lawfulness of such rate, charge, classification, regulation, or practice is made clear by section 3 of the Intercoastal Shipping Act, 1933, and the motions are hereby denied. The rates and rules referred to in the motion made on behalf of Argonaut as having "been permitted to the competitors of this respondent" apparently are those in effect via Shepard. Complaints attacking the lawfulness of such rates and rules have been heard recently and the matter is now pending determination.

The department finds that the proposed schedules have not been justified. An order will be entered requiring their cancellation in each case and discontinuing each proceeding.

No. 140

Pacific-Atlantic Steamship Co., like respondents in the preceding cases, was a class "B" member of the United States Intercoastal Conference at the time the conference ceased to exist. It is a party to Agent R. C. Thackara's tariffs SB–I Nos. 4 and 5. States Steamship Company is a common carrier by water engaged in the transpacific trade.

By schedules filed by Agent J. F. Schumacher to become effective June 23, 1934, States Steamship Company proposed to establish for the first time rates for intercoastal transportation between Atlantic and Pacific coast points. Such proposed schedules were patterned after the rates of Calmar now in effect which, as hereinbefore shown, are substantially on a parity with the conference "B" rates, excepting approximately 50 items as to which there exists a contract between Calmar and the shipper, and on which Calmar's rates are lower. Respondent voluntarily postponed the effective date of its schedules until August 1, 1934. By supplements effective on that date, Pacific-Atlantic Steamship Co. was added as a party to such tariffs. The operation of the schedules and supplements was suspended until December 1, 1934.

A hearing was had commencing August 8, 1934. By petition dated August 22, 1934, as amended, respondents requested special permission to cancel and withdraw the suspended tariffs and supplements and to concur in, and otherwise adopt, as "B" lines, the rates, rules and regulations published by Agent Thackara pending disposition of No. 126. Special permission was granted as requested. The suspended schedules and supplements were canceled, and an order was entered September 15, 1934 vacating the suspension order and discontinuing the proceeding. Each respondent is now shown as party to Agent Thackara's tariffs. In view of the foregoing no further action is necessary.

No. 141

By schedules filed to become effective August 2, 1934, Shepard proposed increases and reductions in its westbound intercoastal rates on numerous commodities. The operation of the schedules was suspended until December 2, 1934. Rates will be stated in cents per 100 pounds.

Reference has been made in this report to the level of the rates at present maintained by this respondent, the history thereof and its policy of filing rates from time to time with a view of maintaining a spread approximating 5 percent when the rate is 40 cents per 100 pounds or less, and 7.5 percent when the rate is more, under the lowest competitive rate. It should be remembered an analysis of the tariffs filed by respondent on June 1, 1933, shows some of its rates to be the same or higher than those contemporaneously filed by then members of the conference and that when the difference in the rates existed in favor of respondent it generally was greater than as indicated. It should also be remembered that for purposes of the revenue pool, beginning October 1, 1932, the conference carriers imposed a surcharge of 3 percent over their rates, which on March 21, 1934, became a part of the rate itself. As in the opinion of respondent the surcharge should not be considered part of the rate, the rates filed by it from time to time since June 1, 1933, have disregarded 3 percent of the conference rate, with the result that when the lowest competitive rate is that of a former "B" line member of the conference the difference in the rate is accordingly greater than the percentages hereinbefore referred to.

The suspended schedules were filed in furtherance of Shepard's policy. However this is not without exception. At present on milk of magnesia respondent maintains rates of 51 cents, minimum weight 10,000 pounds, and 46.5 cents, minimum 24,000 pounds. The lowest competitive rates are 65 cents, minimum 10,000 pounds, and 55 cents, minimum 30,000 pounds, maintained by Calmar. The suspended schedules proposed rates of 60 cents, minimum 10,000 pounds, an increase of 9 cents in the rate; and 51 cents, minimum 30,000 pounds, an increase of 4.5 cents in the rate and of 6,000 pounds in the minimum weight. It will be noted such increases adjust to the spread respondent claims should exist between its own and the lowest competitive rate. But the proposed schedules do not stop there. In addition in item 1068 they name a rate on this commodity of 43 cents, minimum 60,000 pounds, and in item 1069A a rate of 40 cents. minimum 100,000 pounds, straight or mixed with face cream or other commodities there specified. No competitor of respondent has straight or mixed carload rates on milk of magnesia based on such weight minima. The lower rates at the higher weight minima are intended to accommodate a particular shipper of that commodity. Rule 14 in respondent's tariff SB–I No. 1 now in effect reads as follows:

(a) Where reference to this Rule is made in individual rate items of this Rate List, the C. L. minimum weight shall be that which is named in said Rate Items.

(b) The C. L. minimum weight on commodities not subject to Rule 14(a) hereof, shall be as shown in the individual rate items of this Rate List unless there is a lower C. L. minimum weight provided for the commodity or commodities in Western classification SB-I No. 1, supplements thereto or reissues thereof, which C. L. minimum weight will then govern.

Western Classification names a carload minimum weight of 30,000 pounds on "Drugs or Medicines, N. O. I. B. N." Milk of magnesia is covered thereby and as neither the item naming the proposed 43-cent rate nor the item naming the proposed 40-cent rate refers to this rule, the minimum weight contained in Western Classification would govern. Thus the suspended schedules would have the effect of naming three conflicting rates, 51, 43, and 40 cents, on a minimum weight of 30,000 pounds. Under a familiar rule of construction the lowest of such rates would be legally applicable. Such legally applicable rate would be in excess of 27 percent under the lowest competitive rate. Tariff conflicts of the character here described should be avoided.

A shipper of face cream testified he does not ship any of the other commodities mentioned in the rate items under discussion. As face cream moves in small quantities he urged items 1068 and 1069A would give an undue advantage to the few shippers who could avail themselves of the mixed-carload provision. But the interpretation placed on these items would make the minimum weights of 60,000 pounds and 100,000 pounds purely ornamental.

The department finds that the proposed schedules, except only items 1068 and 1069A, have been justified. An order in conformity with these conclusions will be entered.

As has been stated, the question of rate differences, if any, to be observed by the various carriers engaged in intercoastal transportation between the Atlantic and Pacific coast points is now pending in No. 126, and in disposing of the cases embraced by this report the department does not decide any question pending in that proceeding.

No. 146

Respondents were class "A" members of the United States Intercoastal Conference at the time of its dissolution on July 31, 1934. Rule 9 of Agent Thackara's tariff SB-I No. 4, filed on behalf of all members of the conference, was adopted to reflect in part the compromise agreement leading to the reorganization of the conference on October 1, 1932. It reads:

Port equalization will be permitted on carloads only by all lines on westbound tariff Items bearing the designation "P. E." in connection with the number thereof. No Port Equalization will be permitted on L. C. L. shipments.

Port Equalization is not to be applied however, unless the rate from point 1 U. S. S. B. B.

of origin into the port of exit equals or exceeds nine cents (9¢) per 100 pounds and is not to exceed the actual difference in like kinds of transportation from the point of origin to the port of exit subject to a maximum equalization of three cents (3¢) per 100 pounds.

EXCEPTIONS.—In respect of Chester, Pennsylvania, it is permitted to equalize carload rail traffic at Philadelphia, Pennsylvania, as an exception to the nine-cent (9¢) limit rule and exceeding the three-cent (3¢) maximum aforesaid.

Dollar Steamship Lines, Inc., Ltd.—Up to 250 net tons of iron or steel, handicap or nonhandicap items, per steamer from New York on "A" rate basis.

(*Panama Pacific Line*) *American Lines Steamship Corporation.*—Up to 250 net tons of iron or steel, handicap or nonhandicap items, per steamer from New York on "A" rate basis.

(*Grace Line*) *Panama Mail Steamship Company.*—Up to 250 net tons iron or steel out of handicap list per steamer from Philadelphia on "A" rate basis.

Specific equalization privileges on the quantities of iron and steel per steamer mentioned above are noncumulative, but the measure of port equalization allowed in these specific privileges on iron and steel mentioned above may be the actual difference between the rail rates from point of origin to port of exit, subject to a maximum of six cents (6¢) per 100 pounds.

Port Equalization is not permitted of any difference in the charges assessed or claimed, for delivery of freight by private, public, or Government-owned dray, truck, or similar conveyance; nor is port equalization permitted to any extent of charges assessed or claimed for transportation of vehicles or parts thereof, moving under their own power or through the medium of some other form of transportation on the public highways.

Port Equalization is not permitted in connection with traffic originating locally at another port from which service is maintained by any other Conference line.

Port Equalization shall not be used to offset any disabilities existing between carriers in the same port, and no equalization shall be made in respect of transfer, cartage, lighterage, wharfage, or unloading charges in the same port.

This was the rule which respondents in Nos. 139, 144, and 148, excepting Weyerhaeuser which is not engaged in westbound operations, sought to amend. By schedule filed by Agent Thackara to become effective September 5, 1934, the operation of which has been suspended until January 5, 1935, it is proposed to add exceptions to this rule so that on shipments moving over the line of either respondent—

Port equalization will apply * * * on all carload ratings or "any quantity" ratings in Sections 1, 2, and 6, hereof when shipments originate at interior points moving by rail to New York to the extent of the actual difference in carload rail rates from such point of origin to New York versus Atlantic port served by intercoastal carriers to which lowest rail carload rating applies, subject, however, to a maximum of 3 cents per 100 pounds, on all traffic except Iron and Steel as prescribed hereunder, and subject to maximum of 6 cents per 100 pounds, on carload shipments of Iron and Steel.

The maximum equalization of 6 cents will apply on all carload ratings herein under the general heading "Iron and Steel and articles of Iron and Steel namely."

Sections 1, 2, and 6 of Agent Thackara's tariff name class, general commodity, and special commodity rates, respectively. It is also the intention of the proposed exceptions that the maximum equalization of 6 cents would apply on other carload ratings specified therein but which are not necessary to detail.

The rule and exceptions as at present in effect are defective in several essential respects. Their lawfulness is now being considered in No. 126. It should suffice here to state that from such rule or exceptions, or proposed exceptions, or from the remainder of the tariff, it is impossible to ascertain the legally applicable rates. This department would not be warranted in permitting to become effective exceptions to the rule the purpose of which is to multiply such defect, which has been condemned hereinbefore.

The department finds that the proposed schedule has not been justified. An order will be entered requiring its cancellation and discontinuing this proceeding.

No. 151

By schedule filed to become effective October 11, 1934, respondent, a class "A" member of the United States Intercoastal Conference at the time the conference disbanded on July 31, 1934, proposed in essence to reduce its eastbound carload rates on oranges, lemons and grapefruit of 75 cents to 52.5 cents per box when packed in standard number one orange boxes, and from 80 cents to 57.5 cents per box when packed in standard number one lemon boxes. The operation of the schedule was suspended until February 11, 1935.

At the hearing respondent introduced no evidence in support of the proposed rates and expressed its desire to withdraw and cancel the suspended schedule.

The department finds that the proposed schedule has not been justified. An order will be entered requiring its cancellation and discontinuing this proceeding.