

DECISIONS OF THE  
U.S. MARITIME COMMISSION,  
FEDERAL MARITIME BOARD, AND  
MARITIME ADMINISTRATION  
DEPARTMENT OF COMMERCE

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# UNITED STATES DEPARTMENT OF COMMERCE

WASHINGTON, D.C.

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# UNITED STATES MARITIME COMMISSION

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No. 653

THE EAST ASIATIC COMPANY, LIMITED

v.

AKTIEBOLAGET SVENSKA AMERIKA LINIEN (SWEDISH AMERICAN LINE)  
ET AL.<sup>1</sup>

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*Submitted November 20, 1946. Decided January 9, 1947*

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Respondents' refusal to admit complainant to conference membership found to be unjustly discriminatory and unfair as between complainant and respondents, and to subject complainant to undue prejudice and disadvantage. If complainant be not admitted to full and equal membership in the conference, consideration will be given to disapproval of the conference agreement. Failure of the conference to advise the Commission of the record vote upon the denial of complainant's application for membership, with a full statement of the reasons therefor, found to be a violation of the conference agreement, and respondents instructed to comply therewith in the future.

*Charles S. Haight* for complainant.

*Cletus Keating* and *David P. Dawson* for respondents Aktiebolaget Svenska Amerika Linien (Swedish American Line), Aktiebolaget Svenska Amerika Mexiko Linien (Swedish America Mexico Line), Det Forenede Dampskibs-Selskab, Copenhagen (Scandinavian-America Line), Moore-McCormack Lines, Inc. (American Scantic Line), and Rederiaktiebolaget Transatlantic (Transatlantic Steamship Company, Ltd.).

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<sup>1</sup> Aktiebolaget Svenska Amerika Linien (Swedish American Line), Aktiebolaget Amerika Mexiko Linien (Swedish America Mexico Line), Compagnie Maritime Belge (Lloyd Royal) S. A., Cunard White Star Limited, Den Norske Amerikalnne A/S Oslo (Scandinavian-America Line), Ellerman's Wilson Line, Limited (Wilson Line), Gdynia America Shipping Lines, Ltd. (Gdynia America Line), Moore-McCormack Lines, Inc. (American Scantic Line), N. V. Nederlandsch-Amerikaansche Stoomvaart Maatschappij (Holland American Line) "Holland Amerika Lijn," Rederiaktiebolaget Transatlantic (Transatlantic Steamship Company, Ltd.), United States Lines Company (United States Lines), and North Atlantic Baltic Freight Conference.



## REPORT OF THE COMMISSION

## BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by certain of the respondents, and the matter was argued orally. Our conclusions agree with those of the examiner.

Complainant alleged that it has been refused admittance to North Atlantic Baltic Freight Conference (U. S. Maritime Commission Agreement No. 7670), which governs the parties thereto in the transportation of cargo from North Atlantic ports of the United States, either direct or via transshipment, to ports in Danzig Free State, Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway, Poland, Sweden, and continental and Russian ports served via the Baltic. We are asked to order respondents to admit complainant to full and equal membership in the conference, and in the event we lack such jurisdiction, that (1) the conference be adjudged a monopoly and combination in restraint of trade in violation of the anti-trust laws of the United States, and in violation of sections 14, 15, and 16 of the Shipping Act, 1916, and (2) that an order be entered disapproving the conference agreement.

Before discussing the basic merits of the case we shall dispose of two collateral issues raised by respondents. It is contended, first, that an agreement between complainant and respondent Gdynia America Line disqualifies complainant for membership in the conference and for equitable relief from the Commission. On March 19, 1946, complainant wrote Gdynia America Line, at the latter's request, assuring that line that complainant, aside from UNRRA cargo, would not take commercial cargo to or from Polish ports, and that under such circumstances it was complainant's understanding that Gdynia America Line would support complainant's application for membership in the conference. The Gdynia America Line never opposed complainant's admission, either before or after this letter was written. Complainant's witness testified that as early as 1939, when it was decided to resume service between New York and Copenhagen, it was complainant's intention to serve Copenhagen only.

The letter in question, the existence of which was unknown to respondents until produced at the hearing, is characterized by respondents' attorney as a "bribe" and a "fraud," and as a "secret and illegal agreement" which should have been filed with the Commission pursuant to section 15 of the Shipping Act, 1916. Furthermore, it is urged that the conference was entitled to know of the understanding as it would have had an important bearing on complainant's application. Suffice it to say that the conference agreement contains no provision limiting the member lines to any specific port or ports, and

the conference therefore cannot either limit the service of its members to certain ports or insist upon its members serving all ports within the conference range. It follows that even if the conference had known of the letter from complainant to Gdynia America Line there would have been no legal justification, in the absence of other factors, for respondents refusing to admit complainant to the conference.

We are of the opinion that the letter referred to above was merely a confirmation of the original and continuing intention of complainant to serve Copenhagen only, and was not an agreement contemplated by section 15 of the Shipping Act, 1916.

The second contention is that the examiner erred in refusing to direct complainant to produce the contract covering the sale of Baltic-America Line, complainant's subsidiary, to Gdynia America Line about 1930. The purpose of the request to examine the sales agreement was to determine whether there was any provision restricting complainant from thereafter operating in the U. S. North Atlantic/Baltic trade. The sales agreement is immaterial, however, inasmuch as the possible violation thereof was a matter of concern to Gdynia America Line only and not to the conference. As already stated, Gdynia America Line has never opposed complainant's application.

The East Asiatic Company, Limited, was incorporated in Denmark in 1898, and is a commercial organization as well as a common carrier. A subsidiary, Russian-American Line, operated between U. S. North Atlantic ports and Baltic ports from 1907 to 1917, and another subsidiary, Baltic-America Line, resumed such service in 1920 and operated until the line was sold about 1930 to respondent Gdynia America Line, a Polish company, as already stated. In 1939, complainant decided to reenter the trade when conditions warranted. As the result of the war in Europe, complainant did not inaugurate a direct New York/Copenhagen service but decided to have its vessels operating in the U. S. Pacific coast/Baltic trade call at New York in each direction. This was discontinued when Denmark was invaded on April 10, 1940.

The first of complainant's vessels to lift cargo at New York in 1940 was the *Amerika*, which carried about 50 tons when she sailed on February 27. Between 100 and 150 tons were booked for the *Europa* on her scheduled sailing of April 13, 1940, but the sailing was canceled because of the invasion of Denmark. The commencement of the New York/Copenhagen service in 1940 was advertised in the United States in English and Danish newspapers, by press releases, and in bulletins to travel agencies throughout the country. In addition, receptions were held on board the vessels at New York.

Although the advertising was directed to passenger traffic, cargo was solicited by telephone from shippers and forwarding agents.

Respondents maintain that the transportation of the 50 tons of cargo of the *Amerika* in February 1940 cannot constitute a regular service. This, of course, presupposes that the booking of the cargo for the *Europa* should not be considered inasmuch as that vessel never sailed. Although the conference agreement in effect in 1940 (U. S. M. C. Agreement No. 147) provided for the admission of only such carriers as were operating regularly in the trade, Article 7 of the present agreement provides that an applicant is eligible for membership if (1) he is engaged in a regular service, or (2) presents reasonable evidence of intention and ability to engage in a regular service.

Complainant's fleet consists of 16 vessels, and 3 more are building. These, it is stated, are sufficient for all of complainant's various services, and additional vessels will be chartered if justified by increased traffic. An experienced staff is maintained at New York and a pier is leased in Hoboken, N. J. At the close of the calendar year 1945, complainant's assets totalled \$50,000,000. Up to the date of hearing, complainant had made 4 sailings from New York to Copenhagen with combination cargo and passenger vessels, and 8 additional sailings were scheduled for the remainder of the year.

It is contended by respondents, however, that complainant's service is a stop-gap pending the revival of trade in other areas served by it, and that it will cease after shipments of UNRRA cargo to Poland are discontinued. This is denied by complainant, although it is readily admitted that UNRRA cargo is being carried in large quantities. United Maritime Authority (UMA), which controlled Allied shipping during the war period, handled relief cargo to Europe until the return of most of the vessel tonnage to its owners on March 2, 1946. When its first application for membership in the conference was filed on July 3, 1945, complainant had no way of knowing what the situation would be as to UNRRA cargo after UMA ceased to function, and it was not until approximately March 2, 1946, that consideration was given to the possibility of obtaining UNRRA cargo for Gdynia.

The fact that all staterooms on complainant's vessels are outside is an indication to respondents that the vessels were designed for use in tropical waters. Another point made is that the passenger accommodations are in excess of the normal requirement for the New York-Copenhagen run. Considerable stress is laid upon the further fact that complainant did not solicit cargo between the time of its application, in July 1945 until after the middle of June 1946. The reason given by complainant is that it considered it to be improper to solicit

cargo until it was admitted to the conference. Furthermore, after the third application for membership was denied on March 20, 1946, complainant began negotiations with respondent Scandinavian-America Line with a view toward having the latter withdraw its objection to complainant's admission to the conference. Advertising in trade papers and journals was begun when the negotiations were unsuccessful.

Complainant became a member of the Trans-Atlantic Passenger Conference (U. S. M. C. Agreement No. 120) and of the Atlantic Conference (U. S. M. C. Agreement No. 7840) early in 1946, and has agreed to maintain a regular service between U. S. North Atlantic ports and Baltic ports. It should be observed, also, that the principal office of complainant's United States agent, the wholly-owned East Asiatic Co., a California corporation, has been moved from California to New York City.

We are convinced, and so find, that complainant has presented reasonable evidence of its intention and ability to engage in a regular service between U. S. North Atlantic ports and Copenhagen. Our conclusion makes it unnecessary to decide whether complainant was engaged in a regular service in that trade prior to the war.

As there are no contract rates in the trade at the present time, respondents claim that complainant is not prejudiced by not being admitted to the conference, and that it can meet the competition of the conference lines on equal terms. Although it is true that there are no contract rates in the trade at the present time, our records show that there were such rates up to September 7, 1939. Based upon its experience as a shipper as well as a carrier, complainant states that shippers always have contract rates in mind and ordinarily will not patronize non-conference lines because they desire stability in the trade. Complainant believes, therefore, that membership in the conference would increase its business. We find that complainant is being subjected to undue and unreasonable prejudice and disadvantage in violation of section 16 of the Shipping Act, 1946.

One of respondents' objections to complainant's admission to the conference is that the lines already in the trade can handle all the cargo normally moving, and that there is no reason to hope for an increase in traffic in the near future. Complainant takes a more optimistic view and maintains that world conditions will increase the movement of cargo. Respondents' exhibits show that the present movement is in excess of the pre-war volume. We have held, however, that adequacy of existing service is not sufficient reason to justify refusal of admission to a conference as otherwise the existing lines could perpetuate a monopoly by continuing to maintain adequate service.

*Waterman S. S. Corp. v. Arnold Bernstein Line*, 2 U. S. M. C. 238. As complainant's operations between New York and Copenhagen are already established, admission to the conference will not increase the vessel tonnage in the trade.

Article 9 of the conference agreement requires the conference to advise the Commission of the record vote where application for membership is denied, with a full statement of the reasons therefor. This was not done in complainant's case, and the secretary of the conference admitted that it is never done. This is a clear violation of the agreement, and the conference will be expected to conform to the terms of the agreement in the future.

We find: (1) that complainant is entitled to membership in the conference under consideration on equal terms with the respondents; (2) that the agreement is unjustly discriminatory and unfair as between complainant and respondents, and subjects complainant to undue prejudice and disadvantage, in violation of section 16 of the Shipping Act, 1916, and in contravention of section 15 thereof; and (3) that the failure of the conference to advise the Commission of the record vote when complainant's application for membership was denied, with a full statement of the reasons therefor, was a violation of the conference agreement. No violation of section 14 of the Act has been shown.

Respondents will be allowed 30 days within which to admit complainant to full and equal membership in the conference, failing which consideration will be given to the issuance of an order disapproving the agreement.

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

WASHINGTON, D. C., *January 9, 1947.*

3 U. S. M. C.

# UNITED STATES MARITIME COMMISSION

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No. 652

## RATES BETWEEN PLACES IN ALASKA

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*Submitted May 14, 1947. Decided October 14, 1947*

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Respondents, in so far as they furnish ship-to-shore and shore-to-ship services at vessel anchorages in Alaska, are subject to the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended, where they do not perform or participate in the line haul of the ocean carrier.

Matter remanded for further proceedings.

*S. J. Wettrick* for respondent Lomen Commercial Company.

*David E. Scoll* for Alaska Development Board and Territory of Alaska, *Ralph J. Rivers* for Territory of Alaska, *George Rogers* for Price Administrator, *Omar O. Victor* for United States Smelting Refining and Mining Company, and *Ralph L. Shepherd* for Seattle Traffic Association, interveners.

### REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by intervener Alaska Development Board to the examiner's proposed report, and the matter was argued orally. Our conclusions differ from those recommended by the examiner.

We instituted this investigation on our own motion into and concerning the lawfulness of respondents'<sup>1</sup> rates, fares, charges, regulations, and practices relating to or connected with the transportation of property between places within the Territory of Alaska. Lomen Commercial Company, hereinafter referred to as Lomen, was the only respondent to appear at the hearing. Alaska Development Board, Territory of Alaska, Price Administrator, United States Smelting Refining and Mining Company, and Seattle Traffic Association intervened.

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<sup>1</sup> Lomen Commercial Company, Kotzebue Sound Lighterage Company, Northern Commercial Company, Shishmaref Native Lighterage, Kuskokwim Freight Service, Sarah Sumi Freighting Service, Chas. A. Traeger, Kobuk Navigation Company, and Alaska Rivers Navigation Company.

In so far as the particular question here under consideration is concerned, the operations of Lomen will be taken as representative of all the respondents where they perform ship-to-shore and shore-to-ship service and do not perform or participate in the line haul of the ocean carrier.

Lomen is an Alaskan corporation engaged in various activities, among which is the holding out of itself to the public as a carrier between anchorages adjacent to Nome and other places on the Seaward Peninsula, on the one hand, and those towns, on the other hand. The traffic handled is principally cargo transported by Alaska Steamship Company from Seattle, Washington, destined for Nome. At Nome the water is so shallow that the vessels of the ocean carrier anchor from about  $1\frac{1}{2}$  to 3 miles from shore, and at other places the distance is as much as 9 miles. Cargo unloaded at the Nome anchorage is placed in Lomen's barges, which are towed by Lomen's tugs to a revetment at the mouth of the Snake River and adjacent to Lomen's warehouses. Lomen unloads the barges and delivers the cargo to the consignees. Cargo located at Nome or other outports and destined outbound by water is transported by Lomen to the respective anchorages for transshipment to the ocean carrier.

Under its tariffs and bills of lading the common carrier obligations of Alaska Steamship Company begin and cease at the end of ship's tackle at anchorage on southbound and northbound traffic respectively, and its rates do not include any costs beyond that point. Alaska Steamship Company is not a party to the proceeding and no contention is made that it has any obligation to perform the ship-to-shore service.

Upon discharge of the cargo from its vessels the ocean carrier delivers to Lomen the freight bills or copies thereof for the haul from Seattle to anchorage, the charges usually being prepaid. Where they have not been prepaid Lomen collects and remits to the ocean carrier its charges. There is an understanding between the ocean carrier and Lomen that the latter will perform the ship-to-shore service where a shipper does not instruct otherwise, and there is an agreement between them as to the manner in which cargo losses, damages, and shortages are to be borne under certain conditions. Lomen has established a schedule of rates by quoting a certain percentage, with exceptions applicable to specific commodities, of the rates published in the ocean carrier's tariff covering the transportation from Seattle to anchorage. Lomen's rates include not only the transportation between ship and shore but also the terminal handling prior or subsequent to delivery.

The examiner found that the operations under discussion were lightering, and that we had no jurisdiction over them inasmuch as

the legislative history of the Shipping Act, 1916, shows that Congress purposely excluded lighterage from the definition in section 1 of "other person subject to this act," which is as follows: "any person not included in the term 'common carrier by water', carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water."

As originally worded, section 1 of the bill which eventually became the Shipping Act, 1916, included lighterage in the definition of "other person subject to this act." This type of operation was eliminated, however, upon protests of concerns engaged in such business in the port of New York, where lighterage was primarily from railroad piers in Jersey City to warehouses in New York and subsequent lighterage from such warehouses to piers located on both the New York and the New Jersey portions of New York harbor. Congress thus did not intend to give us jurisdiction over those who perform the separate and distinct service of lighterage for or on behalf of common carriers or in connection with common carriers. On the other hand, our jurisdiction is plenary over common carriers irrespective of whether accessorial services ordinarily rendered by an "other person subject to this act" may be performed by the common carrier. It must be determined, therefore, whether Lomen is "a common carrier by water in interstate commerce," which is defined in section 1 of the 1916 act as follows: "a common carrier engaged in the transportation by water of passengers or property on the high seas \* \* \* on regular routes from port to port between one State, Territory, District, or possession of the United States and any other \* \* \* Territory, District, or possession of the United States, or between places in the same Territory \* \* \*".

Neither the fact that Lomen uses facilities called lighters or that its services are limited in their geographical scope is determinative of Lomen's status, which can be appraised only by an examination of what it does. Lomen holds itself out to transport any commodity for the general public on regular routes between ship and shore. It makes its own contracts of charges or rates which are entirely separate from any control by the ocean carrier, and it assumes liability to shippers for loss of or damage to cargo. The fact that Lomen has a joint agreement with the ocean carrier as to the disposition of such claims does not change its relations with the public. Also, merely because Lomen performs the business of furnishing wharfage, dock, warehouse, or other terminal facilities does not preclude it from being a common carrier by water. The Intercoastal Shipping Act, 1933, contemplates the performance of such services by common carriers by water and requires



them, in filing their schedules, to "state separately each terminal or other charge, privilege, or facility granted or allowed \* \* \*".

The evidence is conclusive that there are two services jointly accomplishing the carriage between Seattle and Nome or the other outports. The entire transaction constitutes transportation on a regular route, on the high seas, and between a port in the State of Washington and a port in Alaska. Each of these services is common law carriage. Considering Lomen's service alone, it is regular (*Alaskan Rates*, 2 U. S. M. C. 558, 580) and the routes between ship and shore are on the high seas. *In Re Thames River Line* (1931), 1 U. S. S. B. 217; *American Peanut Corp. v. M. & M. T. Co. et al.* (1925), 1 U. S. S. B. 90. See also *Manila Prize Cases* (1903), 188 U. S. 254.

In defining "a common carrier by water in interstate commerce", Congress made a distinction between transportation between States and other States, Territories, Districts, and possessions, on the one hand, and intraterritorial transportation, on the other hand. As to the former the transportation must be between "ports", whereas in the latter it is between "places". This distinction must be given its full meaning. Congress was aware of the lack of ports and of the different kind of transportation to be encountered in the territories and possessions, and intentionally used a term which would be all-inclusive. It was realized that there would be transshipment at places with destinations at ports or other places.

Lomen performs common carrier operations between two places within the Territory of Alaska, and under the facts disclosed we find that it is a common carrier by water in interstate commerce as that term is defined in section 1 of the Shipping Act, 1916, and therefore subject to our jurisdiction.

An appropriate order will be entered, remanding the case to the trial examiner for a supplemental report consistent with this decision.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION,  
held at its office in Washington, D. C., on the 14th day of October,  
A. D. 1947

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No. 652

RATES BETWEEN PLACES IN ALASKA

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This proceeding having been instituted by the Commission on its own motion and without formal pleading, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a preliminary report containing its conclusions and decision as respects jurisdiction in the matter, which report is hereby referred to and made a part hereof;

*It is ordered*, That this matter be, and it is hereby, remanded to the trial examiner for a supplemental report consistent with the report hereinabove referred to.

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 648

## PACIFIC COAST EUROPEAN CONFERENCE AGREEMENT (AGREEMENTS NOS. 5200 AND 5200-2)

*Submitted September 12, 1947. Decided January 12, 1948*

Agreement No. 5200-2 increasing the admission fee from \$250 to \$5,000 is disapproved.

The retroactive penalty provisions of respondents' contract rate system found to be unlawful. The balance of the system found to be lawful.

The unanimous voting rule in Agreement No. 5200 found to be lawful.

*Chalmers Graham* for respondents.

*Wendell Berge, Wallace Howland, James E. Kilday, William H. Henderson, Henry H. Foster, Jr., Walter P. Combs, and Don H. Banks* for Antitrust Division, United States Department of Justice, *Charles B. Bowling, Richard F. McCarthy, Charles W. Bucy, and Henry A. Cockrum* for United States Department of Agriculture, *Harold H. Young, James C. Nelson, and Paul M. Zeis* for United States Department of Commerce, and *Robert C. Neill* for California Fruit Growers Exchange, interveners.

*R. F. Ahern* for Rosenberg Bros. Co., *George S. Beach* and *Robert J. Marsh* for Cannery League of California, *John C. Duckwall* for Oregon-Washington Horticultural Export Council Rate Committee, *J. R. Harper* for Dried Fruit Association of California, *Harry Helferich* for American Fruit Growers, *Robert K. Hunter* for Board of State Harbor Commissioners of the State of California, *Calhoun E. Jacobsen* for Los Angeles Chamber of Commerce, *Leonard R. Keith* for California Packing Corporation, *James A. Keller*, for Pacific Coast Cement Institute, *H. A. Leatart* for American Potash & Chemical Corporation, *J. A. Montgomery* and *Earl S. Williams* for California Growers and Shippers Protective League, *C. W. Mount* for California Grape Growers and Shippers Association and Di Giorgia Fruit Corporation, *Robert L. McGill* for Mutual Orange Distributors, *M. J.*

*McCarthy* for Pacific Coast Customs & Freight Brokers Association, *Eugene A. Reed* for Oakland Chamber of Commerce, and *Walter A. Rohde* for San Francisco Chamber of Commerce.

*Joseph J. Geary* and *Allan E. Charles* for Pacific Westbound Conference, intervener, *Parker McCollester* for Havana Steamship Conference and other conference interveners, *Roscoe H. Hupper* and *Burton H. White* for Trans-Atlantic Associated Freight Conferences.

*John B. Jago* and *Paul D. Page* for the Commission.

#### REPORT OF THE COMMISSION

##### BY THE COMMISSION :

Exceptions were filed to the examiner's proposed report by the Maritime Commission's Solicitor, Department of Agriculture, Department of Commerce, and the Department of Justice, and the matter was argued orally. Our conclusions differ somewhat from the recommendations of the examiner.

This is an investigation instituted upon our own motion to determine (1) whether a proposed modification (Agreement No. 5200-2) to Article 11 of Pacific Coast European Conference Agreement (Agreement No. 5200) increasing the admission fee of members from \$250 to \$5,000 should be approved; (2) whether Agreement No. 5200 should be cancelled or modified because of the restrictions contained in Article 10 thereof, which limited admission to the conference to those persons, firms, or corporations regularly engaged as common carriers by water in the trade covered by the agreement; and (3) whether the agreement should be cancelled or modified for any other cause which might appear upon the hearing of this proceeding. At the hearing respondents'<sup>1</sup> contract rate system and the rule in Agreement No. 5200 requiring that decisions thereunder be determined by unanimous vote were assailed. After due notice, a further hearing was had on those issues. Since the hearings, respondents filed, and the Commission approved, Agreement No. 5200-4, which modified Article 10 by eliminating the restriction mentioned above so that common carriers regularly engaged *or giving substantial and reliable evidence of intention of operating regularly* in the trade may qualify for membership in the conference. That issue will not be considered further.

<sup>1</sup> Blue Star Line, Limited; The Donaldson Line Limited; The East Asiatic Company, Ltd. (A/S Det Østasiatiske Kompagni); Fred Olson & Co. (Fred Olson Line); Fruit Express Line A/S; Furness, Withy & Co., Ltd. (Furness Line); Isthmian Steamship Company; Knut Knutson O. A. S. (Knutson Line); J. Lauritzen (Lauritzen Line); Martin Mosvold (Mosvold Line); N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij (Holland-America Line); Rederiaktiebolaget Nordstjernen (Johnson Line); Royal Mail Lines, Ltd.; Westfal-Larsen & Company, A/S (Interocean Line); and Compagnie Generale Transatlantique (French Line).

The Antitrust Division of the United States Department of Justice, the United States Department of Agriculture, the United States Department of Commerce, and the California Fruit Growers Exchange intervened.

The conference has been in existence for twenty years. Its current organic Agreement No. 5200 was approved by the Commission on May 26, 1937. The purpose of the conference, as stated in the agreement is "to promote commerce from the Pacific Coast of the United States to Great Britain, Northern Ireland, Irish Free State, Continental, Baltic and Scandinavian ports and to Base ports in the Mediterranean Sea and to transshipment ports in the Mediterranean Sea, Adriatic Sea, Black Sea, West, South, and East Africa, British India and Iraq \* \* \*."

The principal commodities carried by respondents are apples and pears from Washington and Oregon, dried fruit and canned goods from the San Francisco Bay area, and citrus fruit from Southern California. Refrigerated vessels are used to transport apples, pears, and citrus fruit. Some respondents are engaged in other world trades and carry commodities which compete in Europe with commodities transported by them from the Pacific Coast.

#### INCREASE IN ADMISSION FEE

The proposed \$5,000 membership fee is defended on the grounds that a new member should contribute a share of the expenses to which respondents have been put since 1926 in developing and maintaining the conference, and that membership in the conference is worth that much to any responsible common carrier desiring to participate in the trade. The conference has always maintained an office with salaried employees. It has developed a rate structure; prepared, maintained, and filed tariff schedules; collected and classified commodity statistics for use of the members; established and negotiated shipping contracts with shippers on behalf of the members, and acted as a medium of contact between respondents and the public. It also transacts business with the Commission. The principal items of expense are salaries, office rent, other office expenses, and attorney fees. Conference funds are secured through individual member assessments. Five members were assessed an average of \$9,037 for the 5-year period between 1935 and 1939. At the time of hearing the conference had a bank account to about \$6,000. Before the war the average bank balance was about \$10,000. The replacement value of office equipment is less than \$1,000.

Apart from the consideration of past expenses, respondents assert that it would cost a carrier more than \$5,000 to establish a rate structure and publish and maintain a tariff, which is only one of the conference's functions enjoyed by a carrier upon admission. The value of good will is another factor urged. It was testified that with the return of normal trade following the war the conference plans to expand its functions and organization, and that a reserve fund should be available to meet future exigencies. During the war the conference maintained its organization and office but drastically curtailed its activities. There is no suggestion that the proposed admission fee is designed to cover the actual administrative costs of admission since such costs are trivial, amounting to no more than is necessary to publish a supplement to the tariff and notify contract shippers of the new member. In fact the substantial bank balance of the conference and its right to assess members for necessary expenses renders a high admission fee unnecessary.

We are not impressed with the argument that the discrimination resulting from the payment of \$250 by existing members as distinguished from the \$5,000 required of prospective members is not undue and unjust. To remove undue and unjust characteristics, discriminations must be justified by transportation or competitive conditions, or by some other satisfactory reason. Respondents have failed to show that the increase is necessary to continue the existence of the conference or to reimburse themselves for abnormal operating expenses.

It may be that the sum of \$5,000 would not prevent any large, well-established carrier from entering the trade, but we cannot say that it would not be a deterrent to a small carrier. We take official cognizance of the fact that many carriers now successfully established sprang from beginnings which might have been very seriously hampered by the \$5,000 requirement. Such a financial burden would be a detriment to the commerce of the United States which can not be countenanced.

Agreement 5200-2 is disapproved.

#### CONTRACT RATE SYSTEM

For many years the conference tariff schedules have contained two rates, one called "tariff" and the other called "contract," the latter being lower than the former by approximately 15 percent. The contract rate is available to shippers who sign "exclusive patronage" contracts. By the terms of these contracts the shipper agrees to use the vessels of the conference members for all of its shipments from Pacific coast

ports of North America to ports in Europe served by the carriers, in return for which the carriers agree not to raise existing rates within 90 days.<sup>2</sup> The carriers also undertake to furnish service sufficient to meet the shipper's requirements, and if at any time they are not able to do so the shipper is then free to use other carriers. The contract is available to all shippers of commodities covered by contract rates regardless of volume offered, the nature of the commodity, or port of origin. As of the commencement of the hearing canned goods and dried fruit were not covered by contract but the shippers of those commodities had a gentlemen's agreement with the conference accomplishing practically the same result; viz, the shippers undertook to ship only over the carriers maintaining rates and the rates to be charged were agreed upon by the parties. Since the hearing, canned goods and dried fruits have been placed on a contract basis and the shippers thereof have accepted the exclusive patronage contract.

Contract rates are not accorded coal in bulk, lumber, grain, bagged barley, N. O. S., human ashes, corpses, old clothing, old shoes (relief goods), household goods, and personal effects, and no contention is made that the shippers of these commodities enjoy any undue advantage.

Government counsel challenged the legality of the contract rate system on the grounds that it is monopolistic; it results in different rates for identical services; the contract is not a section 15 agreement because it is not between the parties to the agreement, and therefore is not subject to the exemptions from the anti-trust acts; the system is a device to penalize a shipper for not giving his whole business to the carrier and thereby violates section 14<sup>3</sup> of the Shipping Act, 1916; if it is not contrary to section 14 because it is not applied to all commodities, nevertheless it is unjustly discriminatory and unfair as between shippers, creates unreasonable prejudices and disadvantages against some shippers and unreasonable advantages to others, in violation of sections 16 and 17 of the act; and is detrimental to the commerce of the United States in violation of section 15. In other words, these are attacks upon the legality of the system *per se* and are not based upon any evidence which is peculiar to the contract or conference under discussion.

The lawfulness of the contract rate system has been considered by our predecessors and by the courts several times, but *Menacho v. Ward*

<sup>2</sup> This provision was incorporated in the contract subsequent to the commencement of the hearing.

<sup>3</sup> "Third. 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."

(1886), 27 Fed. 529, is the only case, as far as we know, which has held the system to be illegal *per se*. That decision, however, cannot be considered as a controlling precedent in view of the subsequent enactment of the Shipping Act, 1916, and the specific provisions of section 15 thereof, the latter of which removes from the application of the antitrust statutes all agreements approved by us as well as all activities of the parties thereunder.

Every decision, whether by a court or by us or our predecessors, since the passage of the Shipping Act, involving the legality of the contract rate system, has rested upon the facts presented in the specific case. Wherever the system has been condemned the decision has turned on some circumstance which resulted in a discrimination, or in detriment to the commerce of the United States, or in some violation of the Shipping Act, 1916. No administrative finding sustaining the lawfulness of the system has been reversed by the courts.

Although practically all of the points of attack against the lawfulness of the contract rate system were made in *U. S. Navigation Co. v. Cunard S. S. Co., Ltd.*, 284 U. S. 474, the court did not pass upon the merits of the complaint but decided that the matter should have been presented initially to the Shipping Board before resort was had to the courts. It is significant that no further action was taken by complainant in that case.

We cannot ignore the fact in *Swayne & Hoyt v. U. S.*, 300 U. S. 297, the Supreme Court did not hold that the contract rate system was in violation of section 14 of the Shipping Act, 1916, or that the establishment of two different rates for identical services (contract and non-contract) was in itself unduly and unjustly preferential. In giving full consideration to the decision of our predecessor the court decided that the interpretation which had been placed upon the facts by our predecessor was substantially supported, and that the court was not empowered to make a contrary finding.

Contrary to the arguments made to us, Congress was informed before it passed the Shipping Act, 1916, of the existence of the contract rate system as well as of the deferred rebate system. Congress took occasion to prohibit the latter specifically. It is reasonable to suppose that had it intended to prohibit the former it would have said so with equal force.

We can find no authority that the contract rate system is unlawful *per se*. On the contrary, we are constrained to follow precedents and to examine the evidence introduced in this case to determine whether it justifies a disapproval of Agreement No. 5200 or any of its terms upon the grounds that any detriment to the commerce of the United



States, any discrimination or any violation of the Shipping Act, 1916, has resulted or will result.

The testimony of shippers regarding this objection to the contract rate system are both general and specific. Those objections which are general, that there is no penalty against the carriers for their failure to provide sailings, that the noncontract rates are devised solely as threats to shippers if they use outside tonnage were nothing but expressions of witnesses' preferences for some other method of control and were not supported by any evidence that these objectionable features resulted in any loss or damage to the objectors or to anybody else.

The objection that there were discriminations because the dried and canned fruit industries were not required to sign one of the exclusive use contracts but were allowed to substitute therefor a gentlemen's agreement, has been removed by placing contract rates on dried and canned fruits and requiring those industries to sign contracts.

The objection that the contract was not lawful because it did not require the carrier to give the shipper any expressed period of notice of increases in rates, also has been removed by returning to the pre-war provision of requiring 90 days' notice of increases.

As against these objections, the same witnesses were practically unanimous in stating that their industries were interested in, yes; dependent upon transportation which was dependable and stable, and "known rates sufficiently in advance so that future sales would be protected \* \* \* since we sell on a C. I. F. basis we could seriously be disturbed by such fluctuations that might otherwise occur."<sup>4</sup> It was stated that the incident of the chartering of a vessel by a buyer in Europe was very disturbing to the trade because of the resulting tendency towards instability of rates. It appeared that without some form of contract rate instability would unquestionably result. Such testimony from the very shippers who had objected to the contract rate, supporting, as it does, the testimony on behalf of the carriers in the trade and the disruption of the conference, is compelling. This trade is highly competitive, of a seasonal nature that lends itself to inviting outsiders to appear to get the profits and to disappear during the off season. The members of the conference had at no time denied membership to any applicant carrier. The contract rate system is a necessary practice in this trade to secure the continuance of the conference; the frequency, dependability and stability of service; and the uniformity and stability of freight rates.

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<sup>4</sup> Mr. Dwight K. Grady, p. 801.

Objection was made to a so-called penalty clause of any nature, and specifically to the one quoted below:

In view of the impracticability or difficulty of fixing the actual damages which would be suffered by Carriers in the event of a violation of this agreement by the Shipper, the parties agree that if the Shipper shall make any shipments in violation hereof, this agreement at the option of the Carriers shall immediately become null and void as to all future shipments and thereupon the Shipper shall be liable to the transporting Carriers for payment of additional freight on all commodities theretofore shipped with such Carriers since the execution of this agreement, at the tariff (Non-Contract) rate or rates on such commodities set forth in the current tariffs of the transporting Carriers in force at the time of such shipments.

Any damage suffered by the members of the conference in case of violation by shippers would be difficult to assess in actual dollars and cents, and therefore an agreement of damages would appear to be essential for a mutually satisfactory administration of the contract.

The clause quoted above has three objectionable features however. In the first place, it gives the carriers an option as to whether they will assess damages. This of course opens the door to possible discriminations and removes the uniformity of treatment sought to be accomplished by the conference agreement. Secondly, it has the effect of preventing a violating shipper from securing a contract in the future. Thirdly, the retroactive method of establishing the damages and their possible resulting discrimination.

During the hearing it was proposed to amend the clause as follows:

In view of the impracticability or difficulty of fixing the actual damage which would be suffered by carriers in the event of a violation of this Agreement by the Shipper, the parties agree that if a Shipper shall make any shipments in violation hereof, this Agreement shall immediately become null and void as to all future shipments except as hereinafter provided, and thereupon the Shipper shall be liable to the Transporting Carriers for payment of additional freight on all commodities theretofore shipped with such Carriers since the execution of this Agreement—but not to exceed a period of twelve months preceding the date of discovery by the Carriers of said violation—at the Tariff (non-contract) rate or rates on such commodities set forth in the current Tariffs of the Transporting Carriers in force at the time of such shipments. Shipper will not be offered a new contract unless and until payment of such additional freight shall have been made.

The first and second objectionable features are thereby eliminated. The retroactive feature, however, is retained. This feature is open to criticism because of the unequal manner in which it would operate. A shipper in large volume and of great frequency finds himself in such a position that the amount which he would have to pay, if he used an occasional carrier, would be such as to compel him to use the conference carriers permanently, whereas the infrequent shipper or

one who ships in very small volume would not be deterred by reason of the penalty. The purposes of the clause—to reimburse the carriers for losses suffered by violation of the contract and to prevent breaches in the future—have not been attained.

Conferences have long been confronted with the problem of damages with respect to possible breaches of the conference agreement by its members, and in many cases have fixed the damages to be paid, where the breach has involved the cutting of rates at the amount of the freight involved or at a certain number of times thereof. This establishes a definite formula by which the penalty can be calculated and has no retroactive feature. Respondents will be expected to amend the liquidated damages clause of their contract somewhat along the lines indicated herein.

#### UNANIMOUS VOTE RULE

Article 10 of Agreement No. 5200 provides that decisions of the conference are to be arrived at by the unanimous vote of members present at any regular or special meeting, and all members whether present or not shall abide by the decision so taken.

This rule is described by some shippers and by Government counsel as particularly dangerous to the interests of Pacific coast shippers since a single member can "veto" a given proposal and compel all other members to act as it directs on a given rate application. For example, a member engaged in carrying citrus fruit from Brazil, Spain, or Palestine in competition with California citrus fruit could prevent action of the conference if a proposal conflicted with its other world trade interests. Pacific coast borax competes with crude borate concentrates from Argentina, Chile, and Turkey. Another fear is that one member serving only Mediterranean ports could block a proposal affecting Northern Europe. A dry cargo operator could control by one vote a situation in which only refrigerator vessels had an interest. The fact that the vote is secret and that of about twenty members only one or two are American flag lines are other elements urged in opposition to the rule.

Respondents maintain that no such power has even been attempted, that generally all members are informed of the agenda in advance of meetings, and that the rule produces more thorough consideration than a majority rule since every member present must be convinced.

The question here is not whether a unanimous or majority rule might be better or whether it could conceivably be abused but whether the record indicates that the rule has been used by respondents in violation of the act. A mass of statistical data showing movement of citrus

fruit and other commodities in world trade is of record. No instance appears where any Pacific coast trader has suffered a disadvantage in favor of foreign competitors by virtue of any action of respondents. Some elements governing the flow of trade, as explained in exhibits of record, are generally crop conditions, influence of the Spanish civil war, and trouble with deciduous fruit insects in Palestine. Actions of Germany and other governments before the war are likewise explained by witnesses as affecting Pacific coast exporters. Illustrative of the latter condition is the testimony of a witness shipping borax to Europe.

There are conferences which have the unanimous, two-thirds, three-fourths, or majority voting rules. No one of these can be disapproved as an organizational procedure, but the lawfulness of any of them must be based upon evidence as to their working in practice as introduced in a public hearing. Tests of lawfulness are found in actions or courses of conduct, not in organizational procedure.

We find that the rule in Agreement No. 5200 requiring that decisions thereunder be determined by unanimous vote has not been shown to be unlawful.

Commissioner McKeough, not having been present at the argument, did not participate in the disposition of this proceeding.

An appropriate order discontinuing this proceeding will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 12th day of January, A. D. 1948

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No. 648

PACIFIC COAST EUROPEAN CONFERENCE AGREEMENT (AGREEMENTS NOS. 5200 AND 5200-2)

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This case having been instituted by the Commission on its own motion and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

*It is ordered,* That Agreement 5200-2 be, and it is hereby, disapproved; and

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

By the Commission.

[SEAL]

(S) A. J. WILLIAMS,  
*Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 655

## TERMINAL RATE INCREASES—PUGET SOUND PORTS

*Submitted August 6, 1947. Decided January 13, 1948*

Definitions of the terms "service charge," "handling," and "loading or unloading" contained in Seattle Terminals Tariff No. 2-C found to be unjust and unreasonable regulations, in violation of section 17 of the Shipping Act, 1916. Respondents directed to make necessary changes in the definitions.

Respondents expected to supply, within three months, the financial results of their operations over a test period for each service for which they publish rates or charges.

*Ray Dumett* and *Donald E. Leland* for respondents and for intervenor Northland Transportation Company, and *George LaRoche* for respondent The Commission of Public Docks of the City of Portland, Oregon.

*Albert E. Stephan* and *John Ambler* for American-Hawaiian Steamship Company, American Mail Line, Ltd., Grace Line, Inc., Matson Navigation Company, Oceanic Steamship Company, Sudden & Christenson, Inc., and Sudden & Christenson Overseas Corporation, interveners, *Chalmers G. Graham* for other interveners, *David Scoll* for Alaska Development Board and Territory of Alaska, *Omar O. Victor* for United States Smelting Refining and Mining Company, *Ralph L. Shepherd* for Seattle Traffic Association, interveners, and *W. Reginald Jones* for Board of Port Commissioners of Oakland, California.

*Hugh Fullerton* for Cannery League of California, *Irving M. Smith* for Board of Harbor Commissioners of City of Long Beach, California, *Ray L. Chesebro* and *Arthur W. Nordstrom* for City of Los Angeles.

### DECISION OF THE COMMISSION

BY THE COMMISSION:

We initiated this proceeding to determine the lawfulness and propriety of the definitive provisions of Seattle Terminals Tariff No.

2-C, and of service, handling, carloading and unloading charges named in that tariff.<sup>1</sup> Exceptions were filed to the examiner's proposed report and the matter was argued orally. Our conclusions differ somewhat from those recommended by the examiner.

Respondents herein<sup>2</sup> are the parties to Agreement No. 6785, the organic agreement of the Northwest Marine Terminal Association, whose purposes, as stated in the Association's constitution, attached to the agreement, are: "(a) to promote fair and honorable business practices among those engaged in the marine terminal industry; (b) to more adequately service the interests of the public at Northwest ports; i. e., ports in the states of Washington and Oregon; (c) to establish and maintain just and reasonable, and, so far as practicable, uniform terminal rates, charges, classifications, rules, regulations and practices at said Northwest ports in connection with waterborne traffic; and (d) to cooperate with the marine terminal operators of other districts, either individually or through their associations, to the end that the purposes set forth above may be achieved by such other terminal operators." The agreement has been approved under section 15 of the Shipping Act, 1916.

Seattle Terminals Tariff No. 2-C was filed with the Commission pursuant to Agreement No. 6785. It applies at Seattle and certain other ports in the State of Washington. Other tariffs filed with the Commission pursuant to the agreement are Tacoma Terminals Tariff No. 1, applicable at Tacoma, Washington; Terminal Tariff No. 2-A of The Commission of Public Docks of the City of Portland, Oregon, applicable at Portland, Oregon; Port of Astoria Tariff No. 6, applicable at Astoria, Oregon; Port of Longview Terminal Tariff No. 2, applicable at Longview, Washington; and Port of Vancouver Tariff No. 1, applicable at Vancouver, Washington. With one exception, a respondent that is a party to one of the tariffs does not participate in another of them. Most of the respondents are parties to Seattle Terminals Tariff No. 2-C.

<sup>1</sup> Special Supplement No. 11 to the tariff indicates that the tariff contains charges for "transferring," and such charges, also, were included in this proceeding. The issuer of the supplement testifies that he has been unable to find in the tariff a specific charge for transferring. The supplement, therefore, should be canceled.

<sup>2</sup> Alaska Steamship Company, Ames Terminal Company, Arlington Dock Company, Port of Astoria, Baker Dock Company, Port of Bellingham, City Dock Company, Columbia Basin Terminals Company, Drummond Lighterage Company, G & S Handling Company, Port of Grays Harbor, Luckenbach Steamship Company, Newsprint Service Company, Port of Olympia, Pope & Talbot, Inc. (McCormick Steamship Company Division), Port of Port Angeles, Port of Longview, Puget Sound Freight Lines, Rail Water Terminal Company, Salmon Terminals, Incorporated, Port of Seattle, Shaffer Terminals, Port of Tacoma, Tait Tidewater Terminals, Port of Vancouver, Port of Willapa Harbor, The Commission of Public Docks of the City of Portland, Oregon, and Western Stevedore Company.

This investigation was initiated because of the prima facie evidence of discrimination growing out of the Association's establishment of new increased terminal rates applicable to handling charges, carloading and unloading charges, and the establishment of a new charge designated "service charge" covering Alaska traffic only. Subsequently, the charges covering other traffic were raised in a similar manner. It then appeared that the tariff definitions covering the various charges were ambiguous and overlapped in instances; that there were discriminations as between the recipients of the different services; that there were double payments for the same service under different names; and that a decrease of uniformity rather than an increase might result.

We are of the opinion that there should be uniform and clear definitions of various terminal services, and a clear and inclusive list of the specific activities contained in each definition in order to enable terminal operators, the shipping public, carriers, and us to determine whether each service is bearing its fair share of the cost load. Such uniformity should be a goal sought by all owners and operators of terminals in all ports of the United States and its Territories and possessions. This does not mean, however, that there necessarily should be a uniformity of charges. Uniformity of definitions will result in a much healthier condition of the industry and much fewer competitive situations resulting in noncompensatory charges for certain services. While it may be difficult to cover all ports in an attempt to secure immediate and universal uniformity, we should take every opportunity to require terminal operators to publish their charges under headings which are clear, concise, and which in no way overlap.

In deciding the various issues in this case it is necessary at all times to keep in mind that the respondents are terminal operators that form an intermediate link between the carriers and the shippers or consignees, and that in consequence the operators are performing some services for the carriers and other services for the shippers. In view of the fact that there are so many different methods of furnishing terminal facilities to carriers and of furnishing or not furnishing the labor to work those facilities, it is necessary to distinguish those services which are attributable to the transportation obligations of the carrier from those which are not.

It is thus necessary to delineate clearly the obligations of the carrier to the shipper or consignee in performing its transportation. The carrier must furnish a convenient and safe place at which to receive cargo from the shipper and to deliver cargo to the consignee. If this can be done at end of ship's tackle, then it can be so stated and the contracts of carriage may be limited to such service. On the other hand,



if such receipt and delivery is impracticable or impossible, the carrier must assume as part of its carrier obligation the cost of moving the cargo to where it can be delivered to the consignee or from where it can be received from the shipper—referred to generally as the place of rest. The carrier cannot divest itself of this obligation by offering a service which it is not prepared to perform. It can, however, separate its rates into two factors, one covering the actual transportation and the other covering the handling between tackle and place where cargo is received or delivered. *J. G. Boswell Co. v. American-Hawaiian S. S. Co.*, 2 U. S. M. C. 95; *Los Angeles By-Products Co. v. Barber S. S. Lines, Inc.*, 2 U. S. M. C. 106. The carrier's obligations also include the receiving of cargo from shipper and the giving of a receipt therefor, and delivery of cargo to those entitled to it, together with the handling of the necessary papers.

With these legal principles in mind the services contained in respondents' tariffs and the definitions thereof can be considered.

#### DEFINITIVE PROVISIONS OF SEATTLE TERMINALS TARIFF NO. 2-C

*Wharfage.*—This term is defined in the tariff as follows:

Wharfage is the charge that is assessed on all freight passing or conveyed over, onto, or under wharves or between vessels or overside vessels when berthed at wharf or when moored in slip adjacent to wharf. Wharfage is the charge for use of wharf and does not include charges for any other service.

Wharfage, then, is a charge against the cargo for its use of the wharf. There is no evidence that this service includes anything that is included in any of the other services.

It is true that a witness for respondents testified that wharfage "is a rental on a per-ton basis for the cargo on the terminal during the free-time period allowed." This, however, appears to be an inaccurate description of the basis of the charge and one that is not included in the tariff. The wharfage charge is made for the passage of the cargo over the wharf and has no reference whatever to the "free time." It is made whether the cargo avails itself of the free time privilege or remains on the pier long after the free time has expired. Free time does not connote the right to use the pier without any charge whatsoever and has not been so interpreted. It merely means that the cargo once lawfully on the pier may remain on and during the period established at no extra expense, or without the enforcement of any of the rights reserved by the carrier or the terminal operator to remove the cargo to a warehouse at the expense of the cargo, or to charge demurrage beyond the free time period.

The imposition of a wharfage charge against the cargo can be justified only on the principle that the carrier, or the terminal operator on the carrier's behalf, does not actually take possession or deliver up possession of the cargo other than at place of rest on the pier as distinguished from the end of ship's tackle. Between that place and the entrance to or exit from the pier the cargo is using the pier to get into position to utilize the carrier's facilities or has finished the use thereof. The establishment of the charge against the cargo for this use has been widespread throughout the country under various names, viz: "wharfage," "top wharfage," "tollage," "wharf tollage." We cannot ignore that fact. The definition appears to be adequate.

*Service charge.*—This is a charge which was initiated for the first time in the tariff under investigation. The definition in effect at the time of the hearing was as follows:

Service Charge is the charge assessed against vessels, their owners, operators, or agents, for the performance of services incidental to receiving and delivering freight, and includes berthage of vessels while loading or discharging cargo. Service Charge does not include any freight handling, loading nor unloading operations, nor any labor other than that which is essential to performing the service.

Prior to November 30, 1946, the effective date of the above-quoted definition, "berthage of vessels while loading or discharging cargo" was not specifically covered by any charge made by respondents. "Berthage" was then, as it is now, defined in the tariff as "the charge assessed against a vessel for the use of berthing space at wharf or alongside of other vessels berthed at wharf when said vessel is not engaged in loading or discharging cargo and unless otherwise specifically provided, it does not include any other wharf services except mooring privileges." No reason appears why berthage may not properly be charged irrespective of whether a vessel is loading or discharging cargo.

There appears to be no distinction between this so-called berthage and the service which is designated as "dockage" in most other localities. To include "berthage" with the other services "incidental to receiving and delivering of freight" will add still more to the general confusion in the use of terminal definitions. Berthage should be established as a separate item since it is purely a use charge for space occupied by the vessel and has no direct relation to a "service" as such.

The above-quoted definition of "service charge," while stating what the charge does not include, leaves to surmise what services incidental to receiving and delivering freight are covered thereby. Conceding the inadequacy of the definition, Seattle respondents propose to amend it to read as follows:

Service charge is the charge assessed, on the basis of cargo tons handled, against vessels, their owners, agents, or operators, which load or discharge cargo at the terminals, for use of terminal facilities, for berthage while loading or discharging cargo, for administrative expense in serving the carrier, and for performing one or more of the following services:

1. Arrange berth for vessel.
2. Arrange for cargo space on terminal.
3. Check cargo, AT PLACE OF REST ON DOCK, to or from vessel.
4. Receiving cargo from shippers or connecting lines and giving receipts therefor.
5. Delivering cargo to consignees or connecting lines and taking receipts therefor.
6. Prepare dock manifests, loading lists, or tags covering cargo loaded aboard vessels.
7. Prepare over, short, and damage reports.
8. Ordering cars, barges or lighters.
9. Giving information to shippers and consignees regarding cargo, sailings and arrivals of vessels, etc.

NOTE.—Service charge does not include any freight handling, loading, nor unloading operations, nor any labor other than that which is essential to performing one or more of the above specified services.

What has been said above concerning berthage applies also in respect to the proposed amendment. Furthermore, the phrase "for use of terminal facilities" is broad enough to comprehend the use of terminal facilities for which compensation is included in other charges, such as wharfage, and should be eliminated. For a like reason, "administrative expense in serving the carrier" should be deleted. Each service presumably bears its proper share of the administrative expense in the charge established for the service, and, to exact payment for such expense in the service charge would be a duplication of charges.

The principal item in the proposed amendment is checking, which involves the counting and measuring of packages, recording any identifying marks, and making notations as to the apparent condition of the packages. Checking performed for the ship should be covered by the service charges whether or not it is done at place of rest. The words "AT PLACE OF REST ON DOCK, to or from vessel," therefore should be eliminated.

In view of the inadequacy of the definition of "service charge" now in effect and the improper inclusion therein of "berthage of vessels while loading or discharging cargo," and in view of the defects in the presently proposed definition, the definitions are unjust and unreasonable regulations relating to the receiving and delivering of property, in violation of section 17 of the Shipping Act, 1916.

*Handling; handling charge.*—Under the heading "Handling Defined," the tariff states:

Handling charges are the charges assessed for handling freight between place of rest on wharf and ship's slings.

Under the caption "Handling Charge Defined" is the following definition:

Handling charge is the charge assessed for the service of handling freight.

Thus, instead of a definition of "handling" and one of "handling charge," there are two definitions of the latter. Prior to November 30, 1946, the tariff, in addition to defining "handling charge" as "the charge assessed for the service of handling freight," declared:

Handling freight is the service performed in moving or conveying freight between ship's tackle and first place of rest on wharf. It includes ordinary sorting, breaking down, checking and stacking on wharf.

It was testified that ordinary sorting, breaking down, and stacking in connection with the service of handling are so related to such service as properly to be covered by the charge for handling. Nevertheless, when checking was removed as a factor in the handling charges, to be made the mainstay of the service charges, the entire sentence above which states that "It (handling freight) includes ordinary sorting, breaking down, checking and stacking on wharf" was eliminated from the tariff. Since the definitions now in force do not provide that ordinary sorting, breaking down, and stacking on wharf are included in handling, they are unjust and unreasonable regulations relating to the handling of property, in violation of section 17 of the Shipping Act, 1916.

Handling takes place after freight has been received and before it is delivered on behalf of the carrier. It is a service performed for the ship. The definitions in question, however, are ambiguous as to whether the handling charge is applied against the ship or the freight. The definitions, for this reason also, are unjust and unreasonable regulations relating to the handling of property, in violation of section 17.

*Carloading and unloading.*—The tariff, under "Loading or Unloading Defined," declares:

Loading or Unloading charges are the charges assessed on freight loaded into or on cars or unloaded from cars spotted on wharf and include moving between cars and place or rest on wharf.

Beneath the heading "Loading or Unloading Charges Defined" it is stated:

"Loading" or "Unloading" charges are the charges assessed for the services of loading or unloading freight.

The former of these two definitions superseded, effective November 30, 1946, the following:

"Loading" and "Unloading" are the respective services performed in loading freight from wharf premises on or into railroad cars or trucks, and unloading freight from railroad cars or trucks onto wharf premises. The services include ordinary breaking down, sorting, checking and stacking.

As appears from the definition first quoted, loading or unloading charges do not now apply to the loading or unloading of trucks. Such service is performed by the truckmen except on what are said to be "very, very rare" occasions, and it is pointed out that the tariff contains provisions under which the service and necessary equipment can be furnished for charges based on man-hour rates<sup>3</sup> and equipment rental.

The situation is similar to that set forth above in the discussion of handling and handling charges. Accordingly, in not providing that ordinary sorting, breaking down, and stacking are included in carloading and unloading, the definitions under the captions "Loading or Unloading Defined" and "Loading or Unloading Charges Defined" are unjust and unreasonable regulations relating to the receiving and delivering of property, in violation of section 17 of the Shipping Act, 1916.

The definitions above quoted also are ambiguous in that they do not indicate as to whether the charge is against carrier or cargo. The service is obviously performed for the cargo and should be specific on this point.

#### LAWFULNESS OF SERVICE, HANDLING, CARLOADING AND UNLOADING CHARGES

The handling, carloading and unloading charges consist of basic rates of so much per 2,000 pounds or 40 cubic feet to which an emergency charge has been added to cover what was originally expected to be temporary costs caused by the war. With certain exceptions, for each service on traffic other than Alaska the basic rate is 75 cents, and on traffic to or from Alaska it is 80 cents. These basic rates were not changed in the tariff under discussion. Prior to the filing of the present tariff, the emergency charge had been established at 10% of the basic rates in effect on December 20, 1945, and was raised to 30% on June 15, 1946.

The present tariff further increased the emergency charge on traffic other than Alaskan on November 18, 1946, and on Alaskan traffic November 30, 1946, to 50% of the basic rates on handling, and car-

<sup>3</sup> Man-hour rates, which are said to be a stop-gap "until we get something that is stable in production and costs," lack the definiteness of per-ton charges. The record indicates no objection to them, perhaps because of an appreciation of the circumstances which brought about their establishment. When those circumstances no longer exist, the man-hour rates should be canceled.

loading and unloading. It also inaugurated for the first time the service charges of 60 cents, inbound, and 40 cents, outbound, per 2,000 pounds or per 1,000 feet board measure.<sup>4</sup> It is the establishment of these new charges and the increase of the emergency charge to which the evidence was chiefly directed:

Respondents' position is that the emergency charge and service charges are justified by increased costs. They show that between November 3, 1945, and January 2, 1947, the straight-time wages of longshoremen and dockmen, who perform the handling, carloading and unloading, advanced 47 cents per hour and 57 cents per hour, respectively, exclusive of vacation allowance. Additional wage increases subsequently became effective. They also call attention to the slackened pace of labor and to the mounting of overhead expenses.

Port of Seattle, which engages in a comprehensive terminal service, submits financial statements pertaining to two of its terminals from January 1, 1946, to and including November 30, 1946, during 149 days of which there was no operation on account of strikes. The statements relate to respondent's entire wharfinger operations at the respective terminals and include such items as maintenance, general terminal expense, general administrative expense, and revenue from wharfage, among others. Some of the figures are exact; others are estimates. The expense in respect to respondent's East Waterway Terminal was \$267,491.46, and the revenue, \$201,287.73. The loss of \$66,206.73, divided by the 99,176 tons of cargo that came to the terminal, results in an average net loss per ton of 66.8 cents. Respondent's Stacy-Lander Terminal shows expense of \$231,133.57 and revenue of \$180,696.66, a loss of \$50,436.91 on 86,358.18 tons, or an average net loss of 58.4 cents per ton.

Western Stevedore Company, which commenced operations at pier 28, Seattle, in May 1946, shut down from early September 1946 until about December 10 of that year because of labor difficulties. During the four months of May to August, inclusive, the cargo at pier 28 totaled 41,357 tons, and the earnings were as follows: wharfage, \$12,-

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<sup>4</sup> Except in the Pacific coastwise trade, these charges apply where freight is not loaded or discharged by vessels direct to or from open cars and is not loaded or discharged by vessels direct overside to or from water or barge. The service charges, except in the Pacific coastwise trade, are 20 cents, inbound or outbound, where freight is loaded or discharged by vessels direct to or from open cars, and 10 cents, inbound or outbound, where freight is loaded or discharged by vessels direct overside to or from water or barge. On account of railroad competition experienced by vessels in the Pacific coastwise trade, the service charges in that trade are 20 cents, inbound, and 10 cents outbound, carload; and 40 cents, inbound, and 20 cents, outbound, less than carload, where freight is not loaded or discharged by vessels direct to or from open cars and is not loaded or discharged by vessels direct overside to or from water or barge; 10 cents, inbound or outbound, where freight is loaded or discharged by vessels direct to or from open cars, and 5 cents, inbound or outbound, where freight is loaded or discharged by vessels direct overside to or from water or barge.

552.55; carloading \$10,357.12; handling \$17,877.88; berthage, \$1,782.17; and extra labor, \$5,819.56, a total of \$48,389.28.<sup>5</sup> The "job cost," which includes the cost of checking, handling, carloading and unloading, insurance, social security—in fact, all expenses chargeable to the operation of the terminal except general and administrative expenses and depreciation—was \$65,605.53, and general and administrative expenses and depreciation amounted to \$6,207.68. Per ton, therefore, the total expense was \$1.736 as against earnings of \$1.17, which resulted in a net loss of 56.6 cents. What the result was as regards the respective items of handling, carloading or unloading, or the items covered by the service charges is not shown.

G & S Handling Company, handling exclusively traffic to and from Alaska, nearly all of which is conveyed to and from the piers in trucks, does little carloading or unloading and relies for its revenue almost entirely on the handling, wharfage, and service charges. It entered the terminal business at piers 50 and 51, Seattle, on June 1, 1946. Beginning the following September, it was, for some time, affected by strikes. Cost studies presented for June, July, and August 1946, show that the freight amounted to 50,405 tons and that expenses were as follows: gross wages for dockmen, including insurance and taxes, \$57,501.65, \$1,765.52 of which was retroactive pay; checking cost, \$31,345.42; rent, \$15,750, and other operating and dock expenses, \$27,865.72. The total expense for the three-month period was \$132,462.79, and the average cost per ton was, for dockmen, \$1.14, including retroactive pay; for checking, 62 cents; for rent, 31 cents, and for other operating and dock expenses 55.2 cents, a total of \$2.622. The revenue for the same period amounted to \$81,892.64, or \$1.62 per ton, resulting in a loss of \$50,570.15, or an average of \$1 per ton.

Using the same tonnage figure, namely, 50,405, and taking into consideration wage increases between August 1946 and January 2, 1947, it is estimated that, even with the service charges and the emergency charge of 50 percent in effect, the result would be an average loss of 63 cents per ton.

Respondents are not performing under the new tariff any services not performed under the old tariff, although an apparent new service has been added covered by the service charge. As appears hereinbefore, respondents have eliminated checking from the items formerly covered under "handling" and carloading and unloading but they have placed it in the service charge. It does not appear, however, from which of the former charges the other items enumerated under

<sup>5</sup> There is a slight difference between this total and \$48,763.56 appearing on an exhibit of record.

the service charge were taken. Each of the handling and carloading and unloading charges was increased by 20% of the basic rates in spite of the deletion of the checking service from each charge. The wharfage charge was not increased unless the service of ordering cars, barges, or lighters, now item No. 8 in the proposed "Service Charge," was originally covered under wharfage. This item No. 8 is clearly a service performed for the cargo except in those cases when barges or lighters may be ordered to effectuate a transshipment. It was of paramount importance, under all the circumstances, that there be presented to us cost studies showing the expense of performing each service so that any question as to the measure of the charge, with the attendant cost, and as to the existence of duplicate charges for the same service, could be resolved.

Except in the case of G & S Handling Company, no cost studies showing the expense of performing any of the services here involved are presented. It appears that, with perhaps a few exceptions, respondents possess no such information. As cost is the very basis of the contention that the charges in question are justified, the record leaves in doubt the correctness of respondents' position. They will be expected to make such studies and keep such records as will enable them to report within 3 months of the date hereof, with supporting data, the financial results of their operations over a test period for each service for which they publish rates or charges.

Our conclusions as to the need for clarity and accuracy of definitions of services applicable to the Seattle operators applies with equal force to the operators of terminals in the other ports within the scope of the Association. Whether or not there is any justification for differences in the services offered as between the different ports or for differences in the charges for the services does not appear. The operators of the terminals at the other ports will be expected to prepare and submit, within the same time, data of costs similar to that requested of the operators parties to Seattle Terminals Tariff No. 2-C.

We find: (1) that the definition of "service charge" contained in Seattle Terminals Tariff No. 2-C is an unjust and unreasonable regulation relating to the receiving and delivering of property, in violation of section 17 of the Shipping Act, 1916, and should be corrected in line with suggestions heretofore made; (2) that the definitions in Seattle Terminals Tariff No. 2-C under "Handling Defined" and "Handling Charge Defined" are unjust and unreasonable regulations relating to the handling of property in violation of section 17 of the Shipping Act, 1916, and should be corrected in line with suggestions heretofore made; and (3) that the definitions in Seattle Terminals



Tariff No. 2-C under the headings "Loading or Unloading Defined" and "Loading or Unloading Charges Defined" are unjust and unreasonable regulations relating to the receiving and delivering of property, in violation of section 17 of the Shipping Act, 1916, and should be corrected in line with suggestions heretofore made.

No order will be entered at this time.

Commissioner McKeough, not having been present at the argument, did not participate in the disposition of this proceeding.

By the Commission.

[SEAL]

(S) A. J. WILLIAMS,  
*Secretary.*  
3 U. S. M. C.

# UNITED STATES MARITIME COMMISSION

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No. 652

## RATES BETWEEN PLACES IN ALASKA

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*Submitted January 7, 1948. Decided April 15, 1948.*

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Rates, fares, and charges of Lomen Commercial Company are unjust and unreasonable in violation of section 18 of the Shipping Act, 1916.

Lomen Commercial Company does not file with the Commission schedules showing all of its rates, in violation of section 2 of the Intercoastal Shipping Act, 1933, as amended.

Failure of Lomen Commercial Company to observe the free-time provision of its tariff violates section 2 of the Intercoastal Shipping Act, 1933, as amended.

Kotzebue Sound Lighterage Company, charging the rates covered by the special contract with Magids Bros., violates section 18 of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933, as amended; it also violates section 2 of the 1933 Act with respect to the rates charged pursuant to its other special contracts.

Appearances shown in prior report.

## REPORT OF THE COMMISSION

### BY THE COMMISSION:

In the original report herein (3 U. S. M. C. 7) we found that respondents, in so far as they furnish ship-to-shore and shore-to-ship services at vessel anchorages in Alaska, are subject to the Shipping Act, 1916, as amended, and to the Intercoastal Shipping Act, 1933, as amended, where they do not perform or participate in the line haul of the ocean carrier. The matter was remanded to the examiner for a supplemental report on the lawfulness of respondents' rates, fares, charges, regulations, and practices. In his supplemental report the examiner found that the rates, fares, and charges of Lomen Commercial Company are unjust and unreasonable; that Lomen's statement of rates as percentages of rates of Alaska Steamship Company violates section 2 of the Intercoastal Shipping Act, 1933, as amended; that

Lomen's failure to observe the free-time provision of its tariff violated section 2 of the 1933 Act, as amended; and that the rates of Kotzebue Sound Lighterage Company are unjust and unreasonable and also violate section 2 of the 1933 Act, as amended.

Exceptions to the supplemental proposed report were filed by Lomen, but oral argument was not requested. Our conclusions agree with those of the examiner.

*Lomen Commercial Company.*—The season of navigation in the area in which Lomen operates is limited by weather conditions to approximately the five-month period from June to October, inclusive. Preparations for operation begin in March and continue until the arrival of the first ship from Seattle, about June 10. During this period, resuming work that the weather permitted to be started at the close of the preceding season, Lomen repairs its tugs and otherwise gets things ready for the coming season's business. Tugboat captains, mechanics, and other "key men" not locally available are obtained in the States. Eskimos, principally inhabitants of King Island, about 90 miles from Nome, are employed for barge and longshore work. When the season is over, these men are removed from the payroll. The Eskimos from the island are returned there by Lomen at its expense or by the Indian Service. Lomen pays for the transportation of the "key men" back to the States. Most of Lomen's office personnel in Nome then depart for Seattle, where they are employed by Lomen during the winter months.

Normally seven ship arrivals constitute a good season. Depending on the weather, the discharging from ship to barges of cargo for Nome, which is done by the ship's crew, may be accomplished in 1.5 days, or it may require 3 days. As much as 3,000 tons of cargo has been unloaded into barges in a 24-hour period. Due to storms or other causes, there are often intervals of hours and, at times, a day or two during which the unloading of ships is suspended. Some of the storms that rage over the Bering Sea and along the coast of the Seward Peninsula have been so violent that the inhabitants of Nome have considered moving the town to a new location. The worst of these storms, which occurred in 1913, almost completely destroyed the facilities and equipment of a lighterage company then serving Nome. In October 1946, Lomen's machine shop there was so badly damaged by a storm as to be beyond repair.

Lomen's rates for the movement of cargo between ship and shore, including handling between barge and place of rest, are, with certain exceptions, specified percentages of the rates of Alaska Steamship Company for the transportation from Seattle. At the time of hearing,

they were 50 percent at Nome, Golovin, and Teller and 55 percent at Solomon and Bluff. For the carriage of passengers between ship and shore, Lomen receives \$2.50 per person.

In addition to conducting ship-shore operations, Lomen engages in coastwise transportation between various points on the Seaward Peninsula.

Except to the extent hereinafter indicated in reference to passenger, storage, and miscellaneous earnings, the evidence as to Lomen's revenues and expenses in connection with the ship-shore and coastwise services above mentioned is not so presented as to show the amounts thereof applicable to the respective services. Necessarily, therefore, such revenues and expenses will be treated as a whole in this report. They will be spoken of as revenues and expenses of the lighterage department to distinguish them from revenues and expenses of Lomen's sales department, which is separate and apart from the Nome transportation business.

In the following table are shown the gross revenues of the lighterage department for the years from 1940 to 1945, inclusive, and the cargo tonnage from the carriage of which such revenues, with the exceptions indicated in the table, were derived:

TABLE 1

Year	Commercial cargo	Army cargo	Total cargo	Gross revenues
	<i>Tons</i>	<i>Tons</i>	<i>Tons</i>	
1940.....	18,901	4,000	22,901	<sup>1</sup> \$197,723.29
1941.....	29,730	8,232	37,962	<sup>2</sup> 312,213.61
1942.....	41,268	108,919	150,187	<sup>3</sup> 885,565.95
1943.....	17,408	63,122	80,530	<sup>4</sup> 710,006.81
1944.....	20,490	42,409	62,899	<sup>5</sup> 536,930.90
1945.....	15,568	65,430	81,298	<sup>6</sup> 801,952.07

<sup>1</sup> Includes revenue as follows: Passenger, \$1,939.50; storage, \$1,056.77; miscellaneous, \$2,756.73.

<sup>2</sup> Includes revenue as follows: Passenger, \$3,397; storage, \$1,055.72; miscellaneous, \$2,614.16.

<sup>3</sup> Includes revenue as follows: Passenger, \$5,385; storage, \$572.25; miscellaneous, \$4,243.62.

<sup>4</sup> Includes revenue as follows: Passenger, \$7,187.50; storage, \$45.48; miscellaneous, \$8,259.04.

<sup>5</sup> Includes revenue as follows: Passenger, \$2,811.40; storage, \$57; miscellaneous, \$5,320.31.

<sup>6</sup> Includes revenue as follows: Passenger, \$3,802.50; storage, \$247.75; miscellaneous, \$7,827.13.

For 1946, Lomen computes its lighterage department's freight revenue as \$266,470.34. This sum appears in an exhibit submitted by Lomen after the close of the hearing, by agreement, and includes only one-fourth of all of the bulk oil products carried for the reason that such cargo "produces approximately one-fourth the revenue per ton and costs less per ton to handle." The reason does not justify use of the figures employed. In the case of bulk oil products, as in the case of other commodities, consideration should be given to the full revenue received. Including the excluded tonnage at the tariff rate on oil and

petroleum products, the lighterage department's freight revenue for 1946 was \$345,008.74, made up as follows:

TABLE 2

	Commercial cargo	Army cargo	Surplus property	Total
Ship-shore:	Tons	Tons	Tons	Tons
In-bound.....	<sup>1</sup> 12,399	<sup>2</sup> 12,399	0	24,799
Out-bound.....	1,257	1,000	3,774	6,191
Coastwise.....	186	2,167	4,636	6,929
Total.....	13,773	15,656	8,410	37,839
	Revenue \$122,528.21	Revenue \$134,109.36	Revenue \$88,371.17	Revenue \$345,008.74

<sup>1</sup> Includes 2,977 tons of bulk oil products excluded by Lomen.

<sup>2</sup> Includes 7,357 tons of bulk oil products excluded by Lomen.

Adding passenger and miscellaneous earnings of \$5,352.31 to the above total of \$345,008.74 results in lighterage-department gross revenue for 1946 of \$350,361.05.

Lomen excepted to the examiner's increase of the revenue shown on the exhibit by the amount indicated as left out, and claimed that the exhibit only excluded the tonnage but did not exclude the revenue represented by excluded tonnage. No opportunity was given to examine the exhibit at the hearing or to cross-examine the person who compiled it. The sum used by the examiner coincides with other evidence on the average revenue per ton received by Lomen and, therefore, will be used for the purpose of this report.

For the six years from 1940 to 1945, inclusive, Lomen's operating costs in the lighterage department, i. e., those exclusive of general and administrative expenses, were as follows: 1940, \$113,079.41; 1941, \$150,483.24; 1942, \$388,088.51; 1943, \$334,510.35; 1944, \$325,131.87; and 1945, \$395,523.96.<sup>1</sup> According to a preliminary statement, which is subject to change for what are said to be minor year-end adjustments, the operating costs in the lighterage department for 1946 amounted to \$231,510.85.

The contention that the operating costs vary with the volume of tonnage handled and must be calculated on that basis is not borne out by the figures. It is stated that, if the sum of \$231,510.85 represents actual outlays in 1946, Lomen must have selected that year for making large expenditures for nonrecurring items. The record does not show such to be the case. The sum does include an unspecified amount for depreciation on dwellings in Nome which cannot properly be classed as operating properties. As indicated in footnote 1, the amount shown for such depreciation in 1945 is \$1,405.09.

<sup>1</sup> A portion of each of these sums represents depreciation on dwellings improperly included as lighterage-department property. The amount of such depreciation is not shown, except \$1,405.09 for 1945. The highest total depreciation, including that on dwellings, was \$18,216.65 in 1943.

To show the amount of the lighterage department's general and administrative expense for 1946, Lomen distributes between this department and its sales department the total general and administrative expense of \$152,223.36. The largest of the items composing this sum consists of salaries of Lomen's officers. These officers, all stockholders in Lomen, which is "largely a family affair," are the president, three vice presidents, one of whom is also treasurer, and a secretary. With the exception of the secretary, who received less, each of them in 1946 received a salary of \$12,500 and a bonus of \$5,000. Thus, their salaries and bonuses, aggregating \$59,000 and \$23,000, respectively, amounted in all to the total of \$82,000. The distribution made by Lomen of this expense is 15.416 percent, or \$12,641.12, to the sales department and 84.584 percent, or \$69,358.88, to the lighterage department. The result of this distribution is to take for the single item of officers' salaries approximately 20 percent of the lighterage department's gross revenue. The other general and administrative expenses, amounting to \$70,223.36, are distributed between the two departments according to the same percentages. As a consequence, of the total expense of \$152,223.36 for the two departments, \$128,756.61 is borne by the lighterage department.

The expense attributed to the lighterage department for officers' salaries and bonuses and by far the greater part of the total cost of the other items entering into the sum of \$128,756.61 are allocated, by a further distribution, to Lomen's Seattle office. This office was established in 1927. It is in a suite of rooms partly occupied by Lomen Equipment Company, which was formed by some of Lomen's sales-department employees and others in 1945. So far as the lighterage department is concerned, the main function of the Seattle office is the making of purchases, which in 1946 amounted to less than \$17,000. The office does not appear to be necessary to the business of the lighterage department, and, no doubt, the Nome office could absorb the work that it does for that department at a small fraction of the present cost thereof. The sum of \$20,000 will be allowed for officers' salaries and other expense to the Nome office that elimination of the Seattle office might entail. This does not mean that the Seattle office must be eliminated, but, if it is retained, the lighterage department shall not be charged in excess of the amount specified for its expenses.

The general and administrative expenses charged by Lomen to the Nome office in 1946 amounted to \$26,925.43. As in the case of the Seattle office, 84.584 percent of this expense is allocated by Lomen to the lighterage department and 15.416 percent to the sales department. These percentages purport to be the proportions that the lighterage

department's gross revenue and the sales department's gross profit, respectively, bear to the sum of such revenue and profit. Inasmuch as the lighterage department's gross revenue, unlike that of the sales department, does not include an amount for such an item as cost of goods sold, Lomen excluded the cost of goods from the gross revenue of the sales department in arriving at its method of distribution. The Alaska Development Board and the Territory of Alaska contend that the allocation should be based on the gross revenue of each department notwithstanding the sales department's gross revenue includes cost of goods. As stated above, the gross revenue of the lighterage department in 1945 was \$350,361.05. The sales department's gross revenue and gross profit were \$110,679.24 and \$50,018.69, respectively. Deducting from the above-mentioned sum of \$26,925.43 the amount of \$3,219.78 included therein for "dwellings expense," which is not properly chargeable to the lighterage department, leaves an expense of \$23,705.65. According to the method used by Lomen, without the exclusion of any of the oil-products tonnage, however, 87.507 percent of this expense would be allocated to the lighterage department and 12.493 percent to the sales department. If no deduction should be made from the gross revenue of the sales department, 24.006 percent of the expense would be allocated to that department and 75.994 percent to the lighterage department. Under the first method, the lighterage department's expense amounts to \$20,744.10; under the second \$18,014.87. The first method does not appear to be unfair. Accordingly, \$20,744.10 is found to be the amount of the general administrative expense properly chargeable to the lighterage department in addition to the amount allowed above in the discussion of the Seattle office.

As of December 31, 1946, the cost of acquisition by Lomen, plus additions and betterments, less accrued depreciation, of the lighterage department's fixed assets, including land, buildings, and floating and shore equipment, was \$110,007.36.<sup>2</sup> It is contended by Lomen that the replacement cost new of these assets and such cost less depreciation would be \$697,173.54 and \$396,303.54, respectively. These estimates are the result of collaboration between employees of Lomen with little or no previous experience as regards such matters.

The working capital for Lomen's two departments, sales and lighterage, in 1945 amounted to \$298,274.29. For the lighterage department

<sup>2</sup> This sum is composed of the following amounts: \$233,772.27, cost of buildings and floating and shore equipment acquired up to December 31, 1945, plus cost of additions and betterments, less \$21,422.90, cost of dwellings improperly included as property of the lighterage department, less \$129,686.29, depreciation on lighterage-department property, excluding dwellings, plus \$13,323.54, cost of land up to December 31, 1945, plus \$14,020.80, cost of lighterage-department property, excluding dwelling, acquired in 1946.

alone in 1946, Lomen's estimate of the working capital necessary is \$63,514.39. This does not appear to be excessive.

As to a fair return, certain interveners suggest that Lomen should be allowed 7 percent on its capital stock of \$250,000. With weight given to the above estimates of reproduction cost along with the amounts shown for acquisition costs, additions and betterments, depreciation, and working capital, the value for rate making purposes of the lighterage department's property does not exceed \$250,000. Lomen contends that it should be allowed 10 percent as a fair rate of return. It points out that the prevailing rate of interest on loans in Nome is 8 percent and claims that it is entitled to a return of a higher percentage in view of the risks to which its lighterage business is subject. A similar position has been taken in previous cases by Alaska Steamship Company, whose ships operate to and from Nome anchorage. In *Alaskan Rates*, 2 U. S. M. C. 558, we found that the rate of return on the value of the property of Alaska Steamship Company devoted to Alaskan common-carrier service should not exceed 7.5 percent, which later (2 U. S. M. C. 639) was reduced to 6 percent. A rate of return not to exceed 7 percent was allowed in *Rates of Inter-Island Steam Navigation Co., Ltd.*, 2 U. S. M. C. 253. Like the risks considered in the cited cases, those here are generally covered by insurance, which, as an item of operating costs, enters into the rates charged the public for the services performed. Bearing on the question of risk involved in Lomen's operations is the testimony that it "never lost one piece of equipment for the U. S. Army during the war," although it carried for the Army 108,919 tons of cargo in 1942, 63,122 tons in 1943, 42,409 tons in 1944, and 65,430 tons in 1945; also, that it "never lost a life." Moreover, the lighterage department has no competition to jeopardize Lomen's income.

As of December 31, 1945, Lomen's net worth, represented by capital stock of \$250,000 and surplus of \$229,497.71, was \$479,497.71, as against a net worth of \$280,797.73 on December 31, 1939, when its capital stock and surplus were \$250,000 and \$30,797.73,<sup>3</sup> respectively. The risks on which Lomen places emphasis are those to its buildings and equipment in Nome after the season of navigation has closed, particularly hazards from fall and winter storms, against which it has been unable to obtain insurance. Some of these storms, as previously stated, are violent, but Lomen's loss from them over the years of its existence does not appear to have been great. Certainly, no risks are indicated which

<sup>3</sup> This surplus of \$30,797.73 was accumulated over a period of nine years, during which Lomen's average net income after taxes was less than 2 percent of its capital stock. In this period it paid a dividend of \$3,000.



would warrant the rate of return which it seeks. A fair rate should not exceed 7 percent. The sum of \$17,500 is found to be a fair return.

Thus, on the basis of figures for 1946, with a minor exception, the following results appear in respect to the lighterage department:

Revenue.....		\$350,361.05
Expenses:		
Operating.....	<sup>1</sup> \$230,105.76	
Administrative, Seattle office.....	20,000.00	
Administrative other than Seattle office.....	20,744.10	
Total.....		270,849.86
Net income before income taxes.....		79,511.19
Income taxes.....		30,214.25
Net income.....		49,296.94
Fair return.....		17,500.00
Excess of net income over fair return.....		31,796.94

<sup>1</sup> \$231,510.85 less \$1,405.09, 1945 depreciation on dwellings.

To the extent that Lomen's rates, fares, and charges yield net income in excess of the amount found herein to be a fair return, they are, and for the future will be, unjust and unreasonable, in violation of section 18 of the Shipping Act, 1916.

Lomen's method of charging for ship-shore services according to certain percentages of Alaska Steamship Company's rates from Seattle is objectionable. The latter rates are not a part of Lomen's tariff. Section 2 of the Intercoastal Shipping Act, 1933, as amended, requires the filing of schedules "showing all the rates." To comply with this requirement, the rates must, in accordance with the Commission's tariff regulations, be stated in cents or in dollars and cents per cubic foot, per 100 pounds, or other unit or basis. By using the percentage method, Lomen is not "showing all the rates" for its ship-shore service. It is, therefore, violating section 2.

Lomen at times allows a longer period of free time than is permitted by the rule in its tariff that "Storage will be charged on shipments not removed within five days." Thus, it violates the provision of section 2 of the Intercoastal Shipping Act, 1933, as amended, which forbids the extension to any person of any privilege or facility except in accordance with tariffs on file and in effect at the time.

*Kotzebue Sound Lighterage Company.*—A contract dated October 4, 1943, exists between "Boris Magids and Elizabeth M. Cross heretofore doing a lighterage business under the name and style of Kotzebue Sound Lighterage Company at Kotzebue, Keewalik, Deering and along the shore of the Arctic Ocean in the Territory of Alaska, the

parties of the first part, and Archie R. Ferguson of Kotzebue, Alaska, the party of the second part." These parties concurrently executed another agreement whereby the party of the first part sold and conveyed to the party of the second part the tug, lighters, barges, and equipment of the Kotzebue Sound Lighterage Company. Ferguson now operates under the name of this company. The parties of the first part agree that they will not directly or indirectly enter into the lighterage business at any of the points mentioned for the period of five years from the date of execution of the contract, and the party of the second part agrees "to lighter all freight from ship to shore of said parties of the first part individually or as co-partners of the firm under the firm name and style of Magids Brothers, and all freight purchased by the parties of the first part individually or as co-partners under the name and style of Magids Brothers which is purchased by them for others. Such freight to be lightered by the party of the second part at the rate of \$2.00 (two dollars) per ton, measurement or weight as expressed in bills-of-lading of steamship companies. Such lightering of such freight to continue for a period of five years from the date hereof \* \* \*".

At Kotzebue, Deering, and Keewalik, Kotzebue Sound Lighterage Company lightered for Magids Brothers approximately 1,400 tons of freight in 1945 and 1,350 tons in 1946. This respondent's tariff on file with the Commission did not then, nor does it now, contain a rate of \$2.00 per ton, weight or measurement. The lowest weight rate named therein was and is 28 cents per 100 pounds (\$5.60 per ton), and the lowest measurement rate, 15 cents per cubic foot (\$6.00 per ton, i. e., 40 cubic feet). All other rates of this respondent are higher. By transporting cargo at the \$2 rate, respondent violates the provision of section 2 of the Intercoastal Shipping Act, 1933, as amended, which forbids any carrier subject thereto to "charge or demand or collect or receive a greater or less or different compensation for the transportation of passengers or property or for any service in connection therewith than the rates, fares, and/or charges which are specified in its schedules filed with the Commission and duly posted and in effect at the time." Moreover, the \$2 rate is not sufficient to cover the cost to respondent of labor, fuel, and supplies, not to mention other costs, and, as a consequence, an undue burden is cast upon traffic not embraced within the contract in question. The rate, therefore, is unjust and unreasonably low in violation of section 18 of the Shipping Act, 1916.

Kotzebue Sound Lighterage Company also carries freight under other contracts. The rates charged under such contracts, while higher than those accorded the parties to the contract discussed above, nevertheless, like the latter, depart from the tariff on file with the Com-

mission. Therefore, by charging these rates, respondent violates section 2 of the Intercoastal Shipping Act, 1933, as amended.

We find: (1) that, to the extent that Lomen's rates, fares, and charges yield net income in excess of the amount found herein to be a fair return, they are, and for the future will be, unjust and unreasonable, in violation of section 18 of the Shipping Act, 1916; (2) that Lomen does not file with the Commission schedules showing all of its rates, in violation of section 2 of the Intercoastal Shipping Act, 1933, as amended; (3) that Lomen allows a longer period of free time than that permitted by its tariff on file with the Commission, in violation of section 2 of the Intercoastal Shipping Act, 1933, as amended; (4) that the rates charged by Kotzebue Sound Lighterage Company under the contracts discussed herein violate section 18 of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933, as amended; and (5) that no violation of law by any of the other respondents is shown.

An appropriate order will be entered.

3 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION,  
held at its office in Washington, D. C., on the 15th day of April  
A. D. 1948

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No. 652

RATES BETWEEN PLACES IN ALASKA

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This proceeding having been instituted by the Commission on its own motion, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

*It is ordered,* That respondents Lomen Commercial Company and Kotzebue Sound Lighterage Company be, and they are hereby, notified, and required to cease and desist on or before May 15, 1948, and thereafter to abstain from the violations herein found.

By the Commission.

[SEAL]

(S) A. J. WILLIAMS,  
*Secretary.*

# UNITED STATES MARITIME COMMISSION

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No. 661

ALASKAN RATE INVESTIGATION No. 3

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*Submitted February 25, 1948. Decided June 15, 1948*

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The rates, fares, charges, regulations, and practices of respondents Alaska Steamship Company, Alaska Transportation Company, and Northland Transportation Company not shown to be unlawful.

The record held open for submission of additional evidence reflecting respondents' operations from October 1, 1947, to June 1, 1948.

*Stanley B. Long, Ira L. Ewers, and Albert E. Stephan* for respondents

*Ralph J. Rivers, Malcolm D. Miller, Ralph L. Shepherd, Herald A. O'Neill, H. O. Berger, Donald Wallace, Germain Bulcke, Nathan Jacobson, Philip Eden, Omar O. Victor, Norman C. Stines, and Felia S. Cohen* for interveners.

*Paul D. Page, Clarence J. Koontz, and Guy M. Carlon* for the Commission.

## REPORT OF THE COMMISSION

### BY THE COMMISSION:

Exceptions were filed to the examiners' proposed report by the Territory of Alaska and Alaska Steamship Company.<sup>1</sup> Our conclusions do not differ from the recommendations of the examiners.

This was an investigation instituted upon our own motion to determine the lawfulness of the rates, fares, charges, regulations, and practices of respondents Alaska Steamship Company, Northland Transportation Company, and Alaska Transportation Company, common carriers by water engaged in transportation between the Puget Sound area of the State of Washington and ports in Alaska.

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<sup>1</sup> Alaska Steam's exception was a technical one merely to correct an error in a table in the report.

The Territory of Alaska, Alaska Development Board, United States Department of the Interior, Alaska Salmon Industry, Inc., Seattle Traffic Association, Tacoma Chamber of Commerce, International Longshoremen's and Warehousemen's Union (C. I. O.), National Union of Marine Cooks and Stewards (C. I. O.), United States Smelting, Refining and Mining Company, Fairbanks Chamber of Commerce, and Alaska Miners Association intervened. The United States Department of the Interior was not represented at the hearing.

The investigation was ordered on June 4, 1947, shortly after respondents had started operations for their own account under an interim agreement between them and the Commission dated May 15, 1947. This agreement was entered into pursuant to the powers given us by Congress in Public Law 12 of the 80th Congress to assist in the establishment of essential privately owned and operated water transportation for the Territory of Alaska. Under the agreement we chartered at a nominal hire of \$1.00 per vessel per annum such additional vessels as respondents required, and we also relieved the respondents of the financial obligation to insure the hull and machinery risks of the vessels thus chartered as well as those owned by them. Respondents were obligated to file tariffs where they did not already have them on file in accordance with the Intercoastal Shipping Act, 1933, as amended.

For transportation purposes the Territory is divided into Southeastern Alaska, running from Ketchikan to Cape Spencer; Southwestern Alaska, running from Cape Spencer to Kodiak Island and the Alaska Peninsula; the Aleutian Islands; Bristol Bay; Kuskokwim River-Goodnews Bay area; and the Nome area. Alaska Steamship Company was authorized to serve all parts of Alaska generally, provided that, if and when Santa Ana Steamship Company resumed service to the Kuskokwim River-Goodnews Bay area Alaska Steamship Company would cease service there. It filed initial tariffs covering transportation to the various localities. At the time of the hearing it operated 13 vessels chartered from the Government at the nominal price referred to above, and operated 4 of its own vessels, 3 of which were combination passenger-cargo vessels. It owned one other combination passenger-cargo vessel which it chartered to Northland Transportation Company at \$1.00 per year.

Northland Transportation Company was authorized to operate in Southeastern Alaska only, except that the combination passenger-cargo vessel chartered to it by Alaska Steamship Company might be used in joint service with the combination vessels of the Alaska Steamship Company wherever the latter were used. It operated five Government-owned vessels in addition to the combination passenger-

cargo vessel. Northland was also authorized to enter into contracts with the Army for the transportation of military cargo to or from any place in Alaska. Initial tariffs covering the trades so authorized were filed.

Alaska Transportation Company operated four Government-owned vessels chartered to it. It served Southeastern Alaska only and had on file tariffs covering this transportation. It also was authorized to carry military cargo to or from any part of Alaska under special contract with the Army.

During World War II the Territory of Alaska was served by respondents acting as agents for the Government, which had requisitioned respondents' vessels. During 1946 the Government suffered losses in the Alaska trade estimated at about \$4,000,000. The tariffs filed under the interim agreement were designed to increase revenues approximately 35 percent. This was not done by a straight percentage increase of the rates on all items, but in a manner designed to affect the internal economy of the Territory of Alaska as little as possible. For example, rates on agricultural implements and building material were increased very little, and, at the request of the Territory, groceries were removed from the general merchandise item and given a lower commodity rate. The rates on general merchandise N. O. S. were increased generally by 39 to 50 percent and on canned fish by 43 to 58 percent. Where respondents served the same localities their tariffs were identical.

We find no occasion to change our previous observations as to the general characteristics of this trade. *Alaskan Rates*, 2 U. S. M. C. 558, 559. It is an unusually hazardous one; involves an exceptional number of ports or small places to be served; is extremely seasonal; and were it not for the salmon industry and the transportation of canned salmon, almost everything would move northbound and very little southbound. As the result of World War II there has been an increase in the number of military installations and in military personnel in Alaska. What effect this will have on the future need for transportation is problematical. The civil population is only approximately 90,000, of which approximately 30,000 are Indians and Eskimos. During the canning season the population is increased by approximately 10,000 workers, who are brought into the Territory by the canning industry. The tariffs indicate that there are in Southeastern and Southwestern Alaska some 13 principal ports of call and 93 outports. All outports are not served on every voyage but do receive service when cargo offers.

*Rates in other trades.*—Attempts to compare the rates in the Alaskan trade with rates to Hawaii and Puerto Rico have no significance by  
3 U. S. M. C.

reason of the lack of similarity in the trades. The latter trades are not as unbalanced; are not as seasonal; are not as dangerous; and do not require lay-up of ships by reason of the closing of navigation during the winter months. Moreover, the population of Hawaii and Puerto Rico is far in excess of that of Alaska and the volume of freight much greater. The number of ports served in Hawaii and Puerto Rico is small compared with the number served in Alaska.

*Traffic pattern.*—Northbound cargo destined to the canneries, such as material necessary for their upkeep and groceries and provisions for personnel, amounts to approximately 50 percent of the total north-bound movement, while the products from the canneries, such as canned salmon, frozen fish, etc., amount to approximately 85 percent of the total south-bound movement. The cannery traffic is particularly seasonal. The movement of supplies such as fiber boxes, cans, cordage, netting, groceries, provisions, and building materials begins in March and tapers off in July and August. There are 10 fishing districts, the opening and closing of which are determined by the run of the fish and are limited in time by the Department of the Interior, and the times vary in the different districts. The fishing period is comparatively short. Canning starts approximately coincident with the fishing and continues through the period. Immediate transportation is required in practically all of the districts because of the lack of adequate warehousing facilities to prevent freezing.

About 20,000 tons of cargo a year go to Bristol Bay, commencing in the middle of May, as compared with approximately 1,500 tons of town freight.<sup>2</sup> The bulk of the cargo is in shipload lots destined directly for the area, and whether consigned to the canneries or to civilians, is lightered ashore and handled over the cannery docks by cannery personnel. The salmon pack begins to move in the latter part of May or early June, amounts to from 40,000 to 50,000 tons a year, and moves almost entirely in shipload lots from Dutch Harbor to Puget Sound without intermediate stops. Because of ice and weather conditions, tugs and barges belonging to the canneries have to be pulled out of the water at the end of the season.

At Kodiak and in the Peninsula area about 30,000 or 40,000 tons of canned salmon south-bound can be counted upon annually, with a north-bound average movement of from 12,000 to 15,000 tons of supplies. There are approximately 2,500 tons of north-bound town freight to the same area. The ports in these areas are open the year around and the season is considerably longer than that at Bristol Bay. The first of the salmon pack is available about the 10th of June. At Cook

<sup>2</sup> Town freight is freight which is not military or cannery cargo, either north- or south-bound.



Inlet there is an annual south-bound movement of approximately 7,000 or 8,000 tons of canned salmon; at Prince William Sound and Copper River, approximately 20,000 tons. Southeastern Alaska, the largest producing area, originates about 60,000 tons of canned salmon annually.

The movement of both north-bound and south-bound cannery cargo requires immediate availability of tonnage. Speed of handling rather than regularity of service is necessary. The civilian population, on the other hand, requires a regular scheduled service in order that the merchants may be assured of ample supplies and not be required to maintain extensive warehouse facilities. Even with the present service the retailer has to be his own warehouseman.

*Passenger traffic.*—There is an increased tendency on the part of the canneries to utilize air rather than water facilities in transporting annually their 10,000 personnel from the United States to Alaska inasmuch as wages begin when personnel is signed on in Puget Sound and are paid during the period of transportation. As soon as expanded air facilities can be provided very few of the cannery passengers will move by water.

While this tendency will have an effect upon the advisability of the continued use of passenger vessels, the evidence applicable only to one peak season of operation is not sufficient to arrive at a definite conclusion that passenger demand will not appear elsewhere to take the place of the loss of the cannery passengers. At the present time the income from the passengers carried cannot be ignored. In the case of Alaska Steamship Company, the revenue received from passengers during the period under consideration was 16 percent of its entire revenue. However, each carrier must scrutinize continually and with great care the operation of its passenger vessels to be sure that it does not result in such loss as will affect seriously the level of its freight rates.

*Operating costs.*—Respondents' costs of operation are high for the following reasons: wages increased approximately 150 percent between 1939 and 1947; the small amount of cargo at the majority of the ports served increases the relative cost per ton for handling; the lack of stevedores and the consequent use of crews increased overtime; the varied character of north-bound cargo does not lend itself to volume movement and thereby increases the costs of handling both prior to loading and in the actual loading and unloading; the lack of proper terminal facilities at many of the larger ports causes delays to ship and crew; subsistence is increased because of the number of meals that must be served not only to the regular crews but also to longshoremen and guards. Alaska Steamship Company's experience with claims for loss and damage to northbound cargo is slightly less than 3 percent of the entire

revenue. These losses are occasioned by improper and insufficient packaging, rough handling, and pilfering. The experiences of the other respondents are similar. Education and the greater use of mechanical handling devices are being resorted to in an attempt to reduce costs from this source.

*Operating results.*—Tables I and II show respondents' operating results through September 30, 1947, under the interim agreement.<sup>3</sup>

TABLE I

	Ships	Voyages	Percent of cargo carried by all carriers			Percent of each carrier's total			
			Can-ernery	Military	Civilian	Can-ernery	Military	Civilian	Total
ASCO.....	17	52	77	6	36	85	3	12	100
NTCO.....	6	24	13	70	35	24	56	20	100
ATCO.....	4	14	10	24	29	34	35	31	100
Total.....	27	90	100	100	100				

NOTE.—This table does not include the joint rail and water traffic carried by Alaska R. R. in connection with Alaska Steamship Co.

TABLE II

	Revenue	Expense	Percent of expense to revenue	Net profit before Federal taxes, insurance, charter hire	Estimated adjusted net profit for insurance and charter hire <sup>1</sup>	Estimated amount available for recapture after insurance <sup>2</sup>
ASCO.....	\$4, 108, 835	\$2, 877, 017	70	\$822, 990	\$631, 987	\$312, 098
NTCO.....	1, 332, 418	982, 071	74	246, 309	159, 853	71, 070
ATCO.....	600, 560	406, 706	68	142, 853	138, 341	77, 952
Total.....	6, 041, 813	4, 265, 794	71	1, 212, 152	930, 181	461, 120

<sup>1</sup> The year 1941 is used as a basis.

<sup>2</sup> Marine and war risk hull insurance and charter hire are computed, respectively, at commercial rates and under the Ship Sales Act of 1946.

Table III shows the estimated profit available under the interim agreement for recapture by the Commission on operations through June 30, 1948, and estimated additional income needed for a 10 percent return if the vessels were purchased by respondents and operated through the same period:

<sup>3</sup> Article 5 (a) of the interim agreement provides: "If at the end of the calendar year 1947, or at the termination of this Agreement, or at such other time or times as the Commission may require or the Operators may elect, the cumulative net voyage profit \* \* \* shall exceed ten percent (10%) per annum on the Operator's capital necessarily employed in the business of the vessels \* \* \* the Commission shall be reimbursed in the manner provided below with respect to additional charter hire (to the extent of such profits in excess of ten percent (10%) (per annum) for the actual amount of any otherwise unrecoverable costs and expenses incurred by it pursuant to Article 3 hereof not including, however, the total loss or constructive total loss value of vessels owned by the Commission."

TABLE III

	Estimated profit available for recapture on operations through June 30, 1948	Estimated additional income needed for 10 percent return, before Federal taxes, if vessels purchased and operated through June 30, 1948
ASCO.....	None.....	\$1, 216, 332
NTCO.....	do.....	463, 929
ATCO.....	do.....	488, 594
Total.....	None.....	2, 168, 855

Respondents' earnings do not appear excessive for the period of operation under consideration, and estimates indicate there will be a large deficit at the conclusion of a full year's operation.

*Discrimination.*—The fact that rates on fishery products southbound and on some fishing supplies northbound are relatively lower than other rates results, according to the Territory, in undue discrimination and preference in favor of such traffic. It is also argued that the fishery traffic does not bear its fair share of the transportation burden. These contentions fail to take into account the transportation factors underlying the lower rates. As already noted, the volume of cannery traffic is greatly in excess of the town freight, being about 85 percent of the total southbound and better than 50 percent northbound. Southbound cannery cargo is shipped in uniform shaped cases and is cheaper to handle, both as to stevedoring and because of the absence of claims for loss, damage, and pilferage. As also noted, much of the handling at the canneries is done by cannery personnel, which relieves the vessel of some expense. An important consideration is that the vessels get full loads and thereby make quicker and more direct voyages without calling at way-ports. On this record we find that no unlawful discrimination has been shown.

*Competition.*—Although the rates on cannery traffic were increased as much percentagewise as those on town traffic, the per-ton rates are less. Even if the transportation factors alone did not justify the amount of the differential, there is considerable evidence of possible serious competition. Before World War II the canneries operated approximately 15 vessels of their own, but these were taken over by War Shipping Administration at the outbreak of the war. All had not been used for the transportation of canned salmon, some being chartered to the regular carriers in the Alaskan trade for general operation. The cannery vessels operated during the canning season only and handled no town freight. A majority of the cannery vessels

were not returned to their owners after the termination of the war, and those that were returned were not in usable condition.

Respondents are desirous of retaining the salmon business, and while the canneries have no vessels at the present time, their representative testified that they would consider securing suitable vessels to handle their products if respondents' rates are increased to the point where it will be advantageous for the canneries to take such steps. It was further testified that the salmon rates are about as high as the industry can stand without again using its own vessels. Even at the present level the rates on salmon from the Ketchikan area are such that some of the canneries use their fishing equipment to haul their product to Prince Rupert, British Columbia, from whence it goes via Canadian National Railway, in bond, to the eastern part of the United States. The rail rates are the same from Prince Rupert and Seattle. It seems fairly evident that any increase in the salmon rates will tend to promote the movement via Prince Rupert and invite resumption of operation of cannery vessels from other areas.

*Allocation of costs to cannery traffic.*—We believe that evidence relating to movement during the peak season only is not sufficient to enable us to judge accurately whether the proper percentage of the costs of operation are allocated to the cannery traffic. Not until we know the results of winter operations in conjunction with the peak summer period can we decide the extent to which the cannery traffic should be charged with capital and general administrative costs.

*Relation of freight rates to cost of living.*—The freight rates applicable in this trade are too often cited as the sole cause for the high cost of living in Alaska. The record does not support any such conclusion. A survey of retail prices as compared with freight rates showed that local competitive conditions operate in Alaska as elsewhere, and have even more effect upon prices than do the freight rates. Of course, the rates do have an effect upon the cost of living, but they do not appear to be the principal cause. Other factors must be considered: lack of local wholesalers and the necessity for carrying larger stocks, thereby increasing handling costs and decreasing rapidity of turn-over; higher wages to merchandising personnel; and higher rents. Manpower and merchandizing and living quarters are scarce.

*Joint Rates.*—This is a subject which we have considered previously and suggested that the joint rates with Alaska Railroad should be cancelled and replaced by proportionals. *Alaskan Rates*, 2 U. S. M. C. 558, 581. As appeared at that time, no regulatory agency has control of the rates of the Railroad and, therefore, the existence of joint rates tends to take those rates out from under any effective regulation. We believe that ample time has been given the carriers by water to

make the changes suggested. The establishment of such proportional rates by water carriers may resolve the present complaints against the joint rates by interveners Fairbanks Chamber of Commerce and United States Smelting, Refining and Mining Company.

*Mining machinery at Nome.*—Intervener United States Smelting objects to the rates of Alaska Steam on mining machinery to Nome. The increase on freight N. O. S. is 44 percent, and although the rate on mining machinery was increased 26 percent, some articles which formerly were included under the description of mining machinery have been removed from such classification and are now subject to the N. O. S. rate, which means that the increase as to those articles is 72 percent. Intervener argues that the Nome N. O. S. rate should have been increased percentagewise the same as from Seattle to Ketchikan. Exhibits show, however, that the increase in the latter area was 45 percent whereas the increase to Nome was only 44 percent. Intervener also believes that the articles taken out of the machinery item, and thus made subject to the N. O. S. rate, should be restored to the machinery item. In view of our conclusions, this question could well be held in abeyance.

*Miscellaneous issues.*—Respondents' revenue and expense figures were not challenged except as to the alleged duplication of overhead through the continued existence of Alaska Steamship Co. and Northland Transportation Co., which are practically of the same ownership. We have been unable to find any indication, however, that a consolidation of these companies would result in such savings as would necessitate a reduction in the present rates. The administrative and general expenses of Northland, less various agency fees for the three and a half months under consideration, was \$60,399.34. This amounts to \$206,493 per year, and while such sum undoubtedly contains items which could not be eliminated by a merger of the two companies, for present purposes it can be treated as though it could all be eliminated. With this amount added to the net joint income of the two companies, the net profit would not be enough to pay marine and war risk insurance costs, to say nothing of charter hire or depreciation of the vessels used. We do not pass upon the question of whether the two companies should be consolidated as that question is not germane to the present proceeding. Not until it has been shown that an unnecessary duplication of overhead results in sufficient increased expenses to affect the rate base will that matter be considered.

Efforts were made to inject into the proceeding various questions such as whether the interim agreement was broken by one of the lines, what vessels should be allocated by the Commission to respondents, and whether the agreement should be revised. These are matters

which pertain to the respective rights of the carriers as against each other rather than to the lawfulness of the rates, fares, charges, regulations, and practices, which is the question before us.

#### CONCLUSIONS

We find that respondents' rates, fares, charges, regulations, and practices have not been shown to be unlawful. The record will be held open, however, for the receipt of additional evidence reflecting respondents' operations from October 1, 1947, to June 1, 1948. In the meantime, it is suggested that respondents, the proper personnel of the Maritime Commission, the Department of the Interior, and the Territory of Alaska get together as soon as possible for the purpose of determining what evidence is needed to show the costs of operation, the revenues, the efficiency of operation, and all other matters relating to the general level of the rates as well as the rates on individual commodities. We are convinced that this is the only way to ensure an adequate record upon which satisfactory findings can be made.

No order will be entered at this time.

By the Commission.

[SEAL]

(S) R. L. McDONALD,  
*Asst. Secretary.*

WASHINGTON, D. C., *June 15, 1948.*

3 U. S. M. C.

# UNITED STATES MARITIME COMMISSION

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Nos. 669 and 670

HIMALA INTERNATIONAL

v.

FERN LINE, FEARNLEY & EGER AND A. F. KLAVENESS & CO. A/S, BARBER  
STEAMSHIP LINES, INC., AS AGENTS, AND ADRIATIC, BLACK SEA &  
LEVANT CONFERENCE

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No. 671

HIMALA INTERNATIONAL

v.

GREEK LINE, GENERAL STEAM NAVIGATION CO., LTD., OF GREECE, AS  
AGENT, AND ADRIATIC, BLACK SEA & LEVANT CONFERENCE

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*Submitted May 7, 1948. Decided June 15, 1948*

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Lanolin misclassified in tariff of Adriatic, Black Sea & Levant Conference. No violation of the Shipping Act, 1916, found. Proceedings discontinued.

*Hymen I. Malatzky* for complainant.

*Roscoe H. Hopper* and *Burton H. White* for respondents.

## REPORT OF THE COMMISSION

BY THE COMMISSION:

These cases were heard together and will be disposed of in one report. Exceptions were filed by the parties to the examiner's recommended decision, but oral argument was not requested. Our conclusions agree with those of the examiner.

Himala International is the name under which Hymen I. Malatzky, an individual, does business as an exporter.<sup>1</sup> Fearnley & Eger and A. F. Klaveness & Company A/S, trading under the name of Fern Line (for which Barber Steamship Lines, Inc., acts as agent), and General Steam Navigation Company, Ltd., of Greece, trading as the Greek Line, are common carriers by water and members of the Adriatic, Black Sea and Levant Conference, hereinafter referred to as the conference. The complaints allege that the rates assessed on commodities shipped by complainant via these lines were and are unduly prejudicial and disadvantageous to complainant and unjustly discriminatory, in violation of sections 16 and 17 of the Shipping Act, 1916. The complaint in No. 671 contains the further allegation that an interpretation placed by the conference on a tariff rule respecting insurance results in violations of sections 14, 15, 16, and 17 of the Shipping Act, 1916. A cease-and-desist order, lawful rates for the future, reparation, and costs are sought.

The commodities involved are cocculus, in bags, which complainant shipped on vessels of the Fern Line and the Greek Line from New York, N. Y., to Piraeus, Greece, and anhydrous lanolin, which complainant shipped on vessels of the Fern Line from New York, N. Y., to Piraeus, Greece, and to Istanbul, Turkey. Neither cocculus nor lanolin is specifically named in respondents' tariff. The rate assessed was the "General Cargo, N. O. S."<sup>2</sup> rate of \$37.50 per 40 cubic feet. Complainant contends that cocculus is dried fruit, for which the tariff specifically provides a rate of \$30 per long ton, and that lanolin is animal grease, the rate for which is \$34.50 per long ton.

The contention that cocculus is dried fruit is founded on the statement contained in the National Formulary (seventh edition) and in the United States Dispensatory (twenty-third edition) that it "is the dried ripe fruit of *Anamirta Cocculus* (Linne) Wight et Arnott (Fam. Menispermaceas)." Cocculus is known also as fish berry, Indian berry and Levant berries. Complainant concedes that cocculus is poisonous and serves chiefly to provide an ingredient for medicines.

When in dispute, a tariff of a common carrier ordinarily is construed as any other document. *Gt. No. Ry. v. Merchants Elev. Co.*, 259 U. S. 285, 291. In *Nix v. Hedden*, 149 U. S. 304, it was held that while, botanically speaking, tomatoes were the fruit of a vine, in the common language of the people they were not fruit but vegetables.

<sup>1</sup> Malatzky conducts a forwarding business under the name of Bergen Shipping Service and engages in another business, which includes the filing of claims against carriers and insurance companies, under the name of Maritime Audit and Adjustment Service.

<sup>2</sup> General cargo not otherwise specified.



Though cocculus is a fruit of the vine in the language of botany, it is not a "fruit" in the ordinary sense, hence it is not covered by the tariff description "Fruits, Dried."

The tariff item "Provisions, Ordinary Stowage," includes the following commodities:

Grease, Animal; Lard and Lard Substitute; Meats; Casing, Animal, wet (NOT dry which take Casings, dry Rate) Oils, Neatsfoot, Oleo; Red Animal; Edible Tallow; Sausages; Skins, Dry Salt Fat Back Edible; Stearic Acid; Stearine; Stock, Neatsfoot, Oleo, Edible Tallow; Vegetable Compound.

The item is not so drawn as to limit the term "Grease, Animal" to the commodities thereafter following. "Grease, Animal" therefore should be treated as a commodity separate and distinct from those which follow, and must be given its due weight as including animal grease not included in the specific commodities. Lanolin is animal grease inasmuch as it is refined wool grease. The tariff item above quoted is the one which should be applied to lanolin.

A reading of the tariff item indicates an apparent misuse of punctuation marks. It would appear that a semicolon should be inserted after the end of the parentheses; also, that the semicolons after the words "Oleo" and "Red Animal" should be changed to commas, otherwise there seems to be an unnecessary repetition of "Edible Tallow." It does not appear whether "Skins" is a separate item; if so, the nature of the "Skins" should be set forth. It is assumed that "Dry" applies to "Salt Fat Back" although it may apply to "Skins."

As we said in *Rubber Development Corporation v. Booth S. S., Ltd.*, 2 U. S. M. C. 746, 748, "carriers' tariffs are submitted to the rule of interpretation applicable to written instruments generally. This rule is that the tariff, having been written by the carrier, is vulnerable against carriers if the tariff's meaning is ambiguous." Every effort should be made by carriers, particularly those that are members of conferences and therefore parties to the same tariff, to so draw their tariffs as to remove all uncertainties; otherwise there is a possibility of preferences and discriminations in violation of sections 16 and 17 of the Shipping Act, 1916.

It must also be remembered that the continued use of ambiguous items in tariffs with the possible diverse interpretations thereof by the conference members has a serious effect upon the stated goal of the conference, uniform rates. The tariff description here under consideration should be clarified.

The record does not show any movement of lanolin other than that shipped by complainant. Nor is there any evidence that the N. O. S.  
3 U. S. M. C.

rate assessed against lanolin and cocculus resulted in undue preference or disadvantage or unjust discrimination.

Complainant claims that the order in Docket No. 128 (*Section 19 Investigation, 1935*, 1 U. S. S. B. B. 470) was violated in that the Commission was not notified by the conference of its decisions that the proper rate had been charged. Such decisions did not come within the scope of the order, however, and were not required to be filed. Moreover, complainant would not have been differently affected if they had been filed.

Respondents' insurance rule is as follows:

Rates shown herein do not include Marine Insurance and no premium for account of shipper may be absorbed by the carrier.

Complainant testified that insurance companies charge shippers a higher rate on cargo shipped on vessels of a certain age. The Greek Line does not inform complainant whether the vessel on which his cargo will be transported is one that will entail the higher premium, and complainant contends that the carrier should compensate him to the extent of the extra cost when the higher rate is charged. The rule forbids this, and no violation of the Act is shown to result from such interpretation by the conference.

On this record, no violation of the Shipping Act, 1916, is shown.

An order discontinuing the proceedings will be entered.

3 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 15th day of June A. D. 1948

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Nos. 669 and 670

HIMALA INTERNATIONAL

v.

FERN LINE, FEARNLEY & EGER AND A. F. KLAVENESS & CO. A/S, BARBER STEAMSHIP LINES, INC., AS AGENTS, AND ADRIATIC, BLACK SEA & LEVANT CONFERENCE

---

No. 671

HIMALA INTERNATIONAL

v.

GREEK LINE, GENERAL STEAM NAVIGATION CO., LTD., OF GREECE, AS AGENT, AND ADRIATIC, BLACK SEA & LEVANT CONFERENCE

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

*It is ordered*, That these proceedings be, and they are hereby, discontinued.

By the Commission.

[SEAL]

(S) R. L. McDONALD,  
*Assistant Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 640

## TERMINAL RATE STRUCTURE—CALIFORNIA PORTS

*Submitted March 31, 1948. Decided August 24, 1948*

Formula approved for segregating terminal costs among wharfinger services at California ports. Publicly owned and operated terminals entitled to a fair return on investment. Decision on other issues deferred until after submission of rates made pursuant to formula.

*Paul D. Page, Jr., John B. Jago, and George F. Galland* for the Commission.

*Irving M. Smith* for City of Long Beach and Board of Harbor Commissioners of the City of Long Beach, *Thomas S. Louittit* and *J. Richard Townsend* for Stockton Port District, *W. Reginald Jones* for the Board of Port Commissioners of the City of Oakland, *Fred N. Howser, Harold B. Haas* and *Robert K. Hunter* for the State of California and Board of State Harbor Commissioners for San Francisco Harbor, *Ray L. Chesebro* and *Arthur W. Nordstrom* for the City of Los Angeles, and the Board of Harbor Commissioners thereof, and *Joseph J. Geary* and *Gilbert C. Wheat* for Parr-Richmond Terminal Corporation, Howard Terminal and Encinal Terminals, respondents.

*Harry C. Burnett, Charles W. Bucy, H. P. Dechart* and *John S. Griffin* for the U. S. Department of Agriculture, *Emuel J. Forman* for Los Angeles Traffic Managers Conference, *James S. Moore, Jr.* for Pacific American Steamship Association, *James A. Kellar* and *A. Dale Cobb* for Pacific Coast Cement Institute, *Harold W. Wright, K. L. Vore* and *C. E. Jacobson* for Los Angeles Chamber of Commerce, *James F. Doetsch, James A. Daly* and *Earle W. Shaw* for Chilean Nitrate Sales Corporation, *Robert C. Neill* for California Fruit Growers Exchange, *Eugene A. Read* for Oakland Chamber of Commerce and *Walter A. Rohde* for San Francisco Chamber of Commerce, interveners.

### REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by certain respondents and interveners to the report proposed by the examiner, and the case was orally argued.

Upon the issues decided, our conclusions agree with those of the examiner.

This inquiry was instituted at the request of respondents, who are four privately operated<sup>1</sup> and six State and municipally owned and operated<sup>2</sup> marine terminals at the major ports in California, participating in U. S. M. C. Agreement No. 7345, which has been approved by the Commission pursuant to section 15 of the Shipping Act, 1916, as amended. One of the stated purposes of the agreement is "to establish and maintain just and reasonable, and, as far as practicable, uniform terminal rates, practices, etc."

The purpose of this proceeding is to analyze respondents' operations, "so that there may be established (1) a proper basis for the segregation of terminal services, and costs thereof, rendered for the account of the vessel from those rendered for the account of the cargo, (2) a proper basis for allocating costs assignable to the vessel as between dockage, service charge and other services rendered to the vessel, (3) a proper basis for allocating costs assignable to the cargo as between wharfage, wharf demurrage and storage, and other services rendered to the cargo, (4) a proper basis for determining carrying charges on waterways, land, structures, and other terminal property devoted to furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water, and (5) any other services and costs necessary to a determination of the above-mentioned bases."

Leave to intervene was granted to a governmental agency and representatives of shipper and steamship interests.<sup>3</sup>

All respondents provide, and some operate, facilities for receiving, holding and delivering cargoes. Some have a simple landlord and tenant arrangement, while others provide a complete wharfinger service. Also, some engage in railroad operation, leasing of land, production of oil, and other nonwharfinger activities. The facilities range from one or two general cargo piers and sheds to several score of facilities. The ratio of investment as between the smallest terminal and the largest is about 1 to 47. The publicly owned terminals pay no taxes while those in private ownership pay as high as 10 percent.

The Commission employed Mr. Howard G. Freas,<sup>4</sup> a rate consultant,

<sup>1</sup> Howard Terminal, Oakland, Encinal Terminals, Alameda, Parr-Richmond Terminal Corp., Richmond and Outer Harbor Dock and Wharf Co., Los Angeles.

<sup>2</sup> Board of State Harbor Commissioners for San Francisco Harbor, a State agency, and the following municipal agencies: Board of Harbor Commissioners of the city of Los Angeles, Board of Port Commissioners of the city of Oakland, Board of Harbor Commissioners of the city of Long Beach, Harbor Commission of the city of San Diego and Stockton Port District.

<sup>3</sup> U. S. Department of Agriculture; Los Angeles Traffic Managers Conference, Pacific American Steamship Association, Pacific Coast Cement Institute, Los Angeles Chamber of Commerce, Chilean Nitrate Sales Corporation, California Fruit Growers Exchange, Oakland Chamber of Commerce and San Francisco Chamber of Commerce.

<sup>4</sup> Rate Expert of California Public Utilities Commission.

to study respondents' operations, make a tentative cost formula, apply it to a normal prewar period, and to testify at hearings called to consider the formula. His formula was patterned after the Edwards-Differding formula<sup>5</sup> which has been considered by the Commission in Docket 555—*Practices, etc., of San Francisco Bay Area Terminals* (1941) 2 U. S. M. C. 588. However, he changed and simplified that formula to the extent he thought present day facts and experience justified. The formula was applied to actual terminal operations for the fiscal year ending June 30, 1940, for the purpose, (a) of checking its accuracy and (b), its utilization in the postwar period in connection with uniform terminal rates.

The study covered the primary function of interchanging cargo i. e., receiving, holding, and delivering cargoes, which activities are classified as wharfinger operations. Activities not closely related thereto are classified as nonwharfinger operations. Witness Freas approached the problem by inspecting each terminal and auditing and analyzing its accounts. Each item of wharfinger expense was considered, and further broken down if necessary. Nonwharfinger items were considered only where necessary properly to distribute joint expenses.

All expenditures were apportioned to vessel and cargo in proportion to the use made of the facilities provided and of the services rendered. The vessel was held responsible to the wharfinger for all usages and services from, but not including, the point of rest on outbound traffic and to, but not including, the point of rest on inbound traffic. All other wharfinger costs were assessed against the cargo. The point of rest is the location at which the inbound cargo is deposited and outbound cargo is picked up by the steamship company.

Since the objective is to determine costs, no consideration was given to value of service and other factors which must be considered in determining the level of the rates.

#### STRUCTURE OF FORMULA

The purpose of the study is to determine cost of performing services from which wharfingers receive their revenue. Expenditures were determined, separated and apportioned among the various tariff services after wholly nonwharfinger expenses were eliminated. Two primary groupings were adopted: (a) carrying charges and (b) operating charges. Carrying charges embrace all expenses resulting from the maintenance of the bare plant whether it is in operation or not. Operating costs, which result from operation of the facilities, are divided further between dock operating costs and general and administrative expenses.

<sup>5</sup> A formula for the Determination of Port and Marine Terminal Costs for Rate Purposes (1936).

These cost groups, which represent the full cost of carrying on the wharfinger business, are distributed initially to vessel and cargo, and in turn to the various tariff services rendered to each. The following table broadly outlines this distribution.

TABLE I

Costs Allocated to:	Vessel	Cargo	Nonwharfinger (eliminated)
I. Carrying charges.....	1. Dockage.....	1. Tolls (wharfage).....	Railroad, oil production, leasing land, etc.
II. Dock operating costs.....	2. Service and other vessel charges.	2. Wharf demurrage....	
III. General and Administrative expenses.	3. Rental of facilities..	3. Car loading.....	
		4. Car unloading.....	
		5. Truck tonnage.....	
		6. Accessorial services..	

*Carrying charges* include return on investment, taxes and rentals on land, structures and facilities, insurance on structures, and depreciation and maintenance. Before these charges are apportioned to tariff services, they are first allocated to the various facilities such as waterways, wharf aprons, cargo areas and special facilities such as oil wharves and lumber storage. (See schedule I of appendix.)

*Dock operating charges* embrace cost of superintendence, clerking, direct dock labor, and such miscellaneous items as watchmen, claims, and cleaning sheds.

*General and administrative costs* include all remaining items such as salaries and expenses of general officers and clerks, accounting, legal, and traffic and solicitation expense.

Detailed distribution of these three groups to vessel costs and cargo costs, thence to particular tariff services, is made on schedule II of appendix.

*Vessel costs* are those incurred in providing dockage facilities, in rendering services to vessel embraced in "service charge",<sup>6</sup> in furnishing facilities rented to vessel under preferential or temporary assignments, in assembling cargo for account of the vessel, and in handling lines or furnishing any other labor for the benefit of the vessel.

*Cargo costs* are those incurred in providing (1) wharfage, the charge for passing cargo over the wharf, or from vessel to vessel at wharf, and holding cargo during free time; (2) wharf demurrage, the charge for storage or holding cargo beyond free time; (3) car loading and car unloading, the charge for transferring cargo between point of rest and

<sup>6</sup> The charge assessed for arranging berth for vessel, arranging terminal space for cargo, checking cargo to or from vessel, receiving outbound cargo from shippers, and giving receipts therefor, delivery of cargo to consignees and taking receipts therefor, preparing manifests, loading lists or tags covering cargo loaded aboard vessel, preparing over, short and damage reports, ordering cars, supplying shippers with vessel information, and lighting terminal. Some definitions also include "use of terminal facilities."

rail cars; (4) trucking facilities; and (5) accessorial services such as weighing, stenciling and recoopering.

*Nonwharfinger costs*, so interwoven with wharfinger expenditures as to make their initial separation impracticable, are eventually deleted.

A further break-down is made to reflect substantial differences in the cost of performing services such as (a) service charge cost on general cargo moving through sheds, and on general and bulk cargo handled direct; (b) wharfage costs on bulk cargo handled direct, on general cargo moving through sheds, and on pipe line cargo; and (c) wharf demurrage cost on cargo in open storage and in shed storage.<sup>7</sup> (See schedules III, IV, and V respectively of appendix.) However, costs were not determined on specific commodities or at individual facilities.

Finally, a schedule provides for summarizing the data developed to show the total annual costs of rendering each service involved and the cost per ton or other suitable unit, as well as total revenue. (See schedule VI of appendix.) By way of illustration, the costs developed by witness Freas for respondent Howard Terminal are inserted in schedules I to VI of the appendix.

The foregoing review briefly indicates the nature and purpose of the formula. Following is a summary of the bases upon which the apportionments were made.

#### BASIS FOR THE ALLOCATIONS

As a general principle expenditures were assigned to the activities in whose furtherance they have been incurred. Contributions of both labor and facilities were measured by the proportionate use made thereof. Proportionate use was determined generally on a time, space, or value basis where possible; otherwise judgment was used. (The schedules in the Appendix contain a column indicating by numbers the various bases used, and a key to such numbers explaining the method of apportionment.) The apportionment is as follows:

A. Costs allocated to the vessel:

(1) Waterways (i. e. water areas used for berthing of vessels and for making those areas accessible.)

(2) Fifty percent of open wharves (exclusive of trackage and other special facilities and their supporting substructures) and of the land on which they are located.

(3) Aprons (exclusive of trackage and other special facilities and their supporting substructures).

<sup>7</sup> Wharf demurrage is separated into a handling cost covering movement into and out of demurrage area, which cost is nonvariable, and a holding cost representing floor space cost which varies with the length of time on demurrage.



(4) One hundred percent of the land supporting aprons without tracks, and fifty percent of the land supporting aprons with tracks.

(5) Aisle space within the shed used by the vessel or its agents in receiving cargo at or delivering it to point of rest, together with a proportionate share of the supporting land.

(6) Services covered by the so-called service charge.

(7) Office and other space used by vessels' clerical forces.

B. Costs allocated to the cargo:

(1) All land not covered by (1), (2), (4), and (5) above.

(2) All trackage and its supporting substructure.

(3) Fifty percent of open wharves (exclusive of trackage and its supporting substructure).

(4) Aisle space within sheds not included in (5) above.

(5) All cargo areas within sheds.

(6) All other trackage, roadways, etc.

(7) Any services rendered for the benefit of the cargo.

For the purpose of dividing costs among the various services, aisle space was computed at 30 percent of the total cargo areas utilized by cargo, whether at rest or in motion, and whether on free time or on demurrage. Aisle space within sheds is apportioned by taking out a proportion corresponding with the average space devoted to demurrage purposes and dividing the remainder among dockage, wharfage, carloading and car unloading, and trucking. Loading docks are treated as aisle space chargeable to car and truck loading and unloading.

Forty percent of the cost of aprons with tracks is deemed to be the average of the cost incurred by reason of the tracks. This amount is chargeable to wharfage and the balance to dockage. The return on the land on which the apron rests is charged to dockage if the structure is without tracks, and is divided between wharfage and dockage on a fifty-fifty basis if the structure is equipped with tracks. Costs are computed for space used by carloaders, by truck operators and by the forces doing the ships' clerking.

Before considering the results of the application of the formula, we shall revert to carrying charges which are a preponderant portion of all costs—about 80 percent. The controversial item of return on investment accounts for 68 percent of carrying charges, or more than one-half of all costs. Depreciation and maintenance represent substantially the remainder of carrying charges. The development of these costs will be discussed in the order mentioned.

#### RETURN

Witness Freas based his determination of an adequate return on "invested capital" upon a consideration of the following: (a) fair value

of the property employed for the convenience of the public, (b) the financial needs of the respondents, (c) the returns secured at the time from other similar enterprises in the general territory involved, and (d) the relative risk to which the capital is subjected. *Bluefield W. W. & Imp. Co., v. W. Va.* (1923), 262 U. S. 679.

*Fair value*, that is, volume of the rate base, as determined by the witness, consists of present market value of land, values assigned to buildings, structures, other facilities and equipment, depreciated, and working capital.

Land areas devoted to nonwharfing use were excluded, as well as submerged and surface areas not put to any beneficial use. The remaining areas were assigned present market value. *The Minnesota Rate Cases* (1913), 230 U. S. 352, 455. In the absence of sales of comparable adjacent land, current value was determined upon consideration of (a) assessments of the properties involved where available, and of adjacent and comparable areas, (b) special conditions giving particular parcels a greater value for special purposes, (c) opinions of experts in the assessors' offices and of the valuation staff of the State Board of Equalization, (d) book values and (e) values applied to three of the private terminals in proceedings before the Railroad Commission of the State of California in 1936.<sup>8</sup> *Decision No. 29171; Case No. 4090 Railroad Commission of The State of California* (1936). The cost of improvements made for the benefit of the appurtenant land and merged therewith, such as seawalls and dredging, is reflected in the value assigned to the land. For instance at San Francisco \$8,000,000 was expended for a seawall which, while not included in original cost, is reflected pro rata in the present value assigned to the land. Fills and grading representing benefits to structures were included in the value assigned to such structures.

The witness testified that original cost of land would be extremely difficult, if not impossible, to find; that it would be so remote as to bear little, if any, relationship to present value; and that it would vary so at different terminals as to furnish no standard for a comparable rate base. However, he was of the opinion that if all costs incident to acquisition of land and costs of improvements made thereto were combined with original cost, the result would not be materially different from present market values.

Notwithstanding the fact that return on land at San Francisco approximates 40 percent of the carrying charges, witness Freas testified that if all land values were excluded from that respondent's rate base, expenses would still exceed revenue. If land were excluded at Los

<sup>8</sup> Land values at San Francisco were based upon an appraisal made by the State in 1929. Those at the Port of Oakland were based on market value assigned to the immediately adjacent land of Howard Terminal by Edwards and Differding, and adopted by the California Commission.

Angeles, revenues would slightly exceed expenses. These results are predicated upon expenses embracing operating costs, depreciation and a 7 percent rate of return.

Buildings, structures, and other facilities and equipment were evaluated in the light of records of original cost, costs or other values presently carried on the books, assessors' records, and valuations made by public appraisers and terminals' engineers. Original costs were developed in some instances, and reproduction costs were available in a number of instances. Structures at Los Angeles, San Francisco, and Oakland were evaluated on the basis of appraisals made in 1925, 1929, and 1939, respectively, brought up to date. Values at Los Angeles were not substantially different from original cost, which is said to be the basis of value generally used at the remaining seven terminals. Witness Freas was of opinion that if all structures were valued at original cost, the result would not be materially different from the basis used. Depreciation was computed and applied on a straight line method.

Working capital, consisting of cash and material and supplies needed to meet current obligations in an economical and efficient manner, was estimated at one-sixth of the year's expenses, less depreciation and return.

*Rate of return* was fixed after considering several factors. The industry is highly competitive. Every major terminal on the Pacific coast is competitive with respondents. New competitors may appear without having to secure certificates of convenience and necessity. Respondents' business may be seriously affected by a shift of tonnage between water and land carriers. The business fluctuates with seasonal peaks and valleys and during periods of prosperity and depression. Major economic changes may jeopardize an entire investment such as the loss, some years ago, of the major portion of coastwise and inland water traffic; and traffic stoppages due to labor disturbances in the general shipping industry.

Offsetting these hazards is the probability that postwar traffic will equal or exceed prewar figures, and the fact that respondents are well established and seem to encounter no great difficulty in obtaining needed capital.

The developed costs for the privately operated terminals are generally less than for those publicly owned; therefore the return was determined for the former and extended to the latter. A return of seven percent for the private operators was determined to be adequate and fair to the terminals, as well as to the carriers and the shipping public. It is noteworthy that on the experience of the fiscal year 1939-40, rates reflecting costs, as determined by the witness, exclusive of any return on capital, would be prohibitive for several of the ter-

minals. In fact, the witness did not suggest that rates at the publicly owned terminals should be fixed at a level which would return seven percent. He merely determined costs upon a comparable basis. On the other hand, he emphasized that private terminals could not compete with publicly owned terminals which operate at bare cost.

The question was raised upon briefs as to the right of the publicly operated terminals to include a reasonable allowance for return on investment in their charges. The only possible restriction cited in this connection is section 3084 of the California Harbor and Navigation Code which limits the authority of the Board of State Harbor Commissioners (San Francisco) to the collection of moneys which shall not "in the main" exceed that necessary for the performance of its duties, powers, etc. The Attorney General of California, on brief, does not interpret this section as a limitation to bare cost of operation in view of section 3080 of the Code which authorizes the Board to collect revenues sufficient to perform its duties, among which are promotion of the harbor, construction of new facilities and purchase of additional land.

#### DEPRECIATION, MAINTENANCE, RENTALS, AND GIFT PROPERTY

*Depreciation* included in the carrying charges is the amount actually chargeable to operating expenses to reflect a loss in service value of the facilities used. The straight-line reserve method, which is generally used by the terminals, was employed. The property depreciated consists mainly of wharves, transit sheds and equipment. Depreciation was calculated on the actual original cost of the property in use where available; when not ascertainable, other costs said to approximate original costs were used. The depreciation structures used by the terminals were adopted with few exceptions, after a study was made of the service lives of the various properties. Both substructures and superstructures were depreciated on a 100-percent basis. However, where other property such as equipment had a salvage value, such value was deducted before figuring depreciation.

*Maintenance* includes the amount actually spent for that purpose regardless of any reserve. However, since there is no necessary fixed relation between actual wear and tear and the amounts expended during a given year, average expenditures covering a period of not less than five years were used.

*Rentals.*—In a few cases where the terminals lease considerable of the property they operate, and pay rentals which reflect conditions other than those ordinarily encountered in such transactions, the rented property was evaluated and included in the rate base as though owned by them. Therefore, the rentals paid were disregarded as an operating cost, inasmuch as the rate base and resulting return thereon was increased.

*Gift property.*—This term as used by the witness means property acquired without money cost, or at a price well below recognized commercial value. By far the greater portion encountered consists of land, of services reflected by the witness in current land values, or of improvements so merged with the land as to be inseparable from it. A substantial portion of the areas involved is reclaimed submerged lands. The greater portion of land used at San Francisco was granted, or transferred in some other manner, to the State of California by the Federal Government, which obtained title by the treaty of Gaudaloupe Hidalgo. The municipally owned terminals acquired their land mainly through grants from the State. Other so-called gift property consists of structures erected by the Public Works Administration to create employment during a depression. This property is included, not in original cost, but in reproduction cost.<sup>9</sup>

Thus, regardless of the source of the property, it is reflected in the rate base developed by the witness—land through inclusion of its present market value, and structures through consideration of reproduction cost in the same manner as allowances for intangibles. Inasmuch as there are no great amounts of depreciable gift property involved, it was depreciated in the same manner as other property.

## APPLICATION OF FORMULA

The formula applied to the actual experience of the terminals during the fiscal year ending June 30, 1940, develops costs that substantially exceed the revenue as disclosed by the following table. It should be noted here that only 20 percent of these costs are actual operating expenditures; that 80 percent represents carrying charges, 68 percent of which is return on investment at 7 percent. That is, more than one-half of the costs represent return. (See table IV infra.)

TABLE II

Terminal	Annual revenue	Annual cost	Operating ratio
			<i>Percent</i>
Howard.....	\$313, 200	\$403, 166	128. 7
Encinal.....	544, 889	599, 107	109. 9
Parr-Richmond.....	227, 197	276, 153	121. 6
Outer-Harbor.....		231, 885	-----
Oakland.....	408, 200	1, 138, 023	228. 4
Stockton.....	213, 976	328, 515	153. 5
San Francisco.....	1, 346, 091	4, 897, 170	363. 8
Los Angeles.....	1, 863, 829	2, 348, 704	126. 0
Long Beach.....	149, 457	553, 888	370. 6
San Diego.....	40, 295	159, 126	394. 9
Total (except Outer-Harbor).....	5, 197, 134	10, 703, 852	205. 9

<sup>9</sup> The Federal Coordinator of Transportation reports PWA grants in aid of construction of wharf facilities up to 1937 as follows: San Francisco, \$788,743; Oakland, \$254,084; Stockton, \$430,709; Los Angeles \$508,907; total \$1,982,443. (*Public Aids to Transportation*, vol. III, Appendix A.) The extent of WPA contributions is not disclosed.

Not only the operations as a whole are shown by table II to be unprofitable, but the costs are not equally distributed. The uneven distribution of the burden of carrying on the services as between the tariff services, and the variation of unit costs at the different terminals, appear from the following table:

TABLE III

	Dockage		Service charges per ton	Assignment charges per square feet	Wharfage (tolls) per ton	Wharf demurrage per ton	Car-loading per ton	Car-unloading per ton
	per hour occupancy	Cost per 100 feet <sup>1</sup>						
Howard.....	\$3.38	\$2,154.67	\$0.31	.....	\$0.28	\$0.37	\$0.83	\$0.71
Encinal.....	4.35	2,437.19	.28	.....	.28	.66	.58	.54
Parr-Richmond.....	4.87	1,942.42	.13	.....	.34	.21	.51	.40
Outer-Harbor.....	.....	1,442.49	.....	.....	.37	.....	.....	.....
Oakland.....	5.81	1,733.58	.37	\$1.39	.60	.84	.97	1.00
Stockton.....	3.20	1,056.71	.31	.65	.39	.66	1.50	.82
San Francisco.....	2.49	2,285.25	.....	.54	.48	.87	.....	.....
Los Angeles.....	3.63	2,000.92	.....	.63	.09	.06	.....	.....
Long Beach.....	5.61	2,336.80	.....	1.03	.56	.23	.....	.....
San Diego.....	6.60	1,174.57	.....	.....	.50	.....	.....	.....
Percent total cost is of total revenue <sup>2</sup> .....	.....	527.9	77.5	25.0	205.2	180.3	255.0	213.4

<sup>1</sup> Working areas.

<sup>2</sup> Other percentages are: 235.3% other (vessel) charges; 356.7% truck tonnage; and 92.7% accessorial services.

Generally speaking, losses are shown on every service except service charge and assignment charges. Since the service charge covers approximately 75 percent of the dockage expense, and the assignment charges cover some dockage, the excess revenue on the two services should be applied against the deficiency in dockage revenue. Even with this adjustment, the losses on the two services are shown to be substantial.

The preponderant nature of carrying charges, especially those of the nonoperating public terminals, is revealed by the following table:

TABLE IV

	Carrying charges	Dock operating costs	General and administrative expenses
	Percent	Percent	Percent
All respondents.....	80.41	11.06	8.53
Private terminals.....	38.39	39.47	22.04
Publicly operated terminals.....	48.36	33.44	18.20
Nonoperating public terminals.....	92.41	2.68	4.91

The composition of the carrying charges is 68 percent return, 18 percent depreciation, 12.5 percent maintenance and 1.5 percent miscellaneous; and they are apportioned roughly one-third to the vessel and two-thirds to the cargo. The return on the rate bases of all respondents, at seven percent, amounts to slightly more than \$6,000,000. If the return were reduced to six percent or increased

to eight percent, the variation in either direction would be about 8 percent of the total costs.

Comparison of the results of the Freas formula with those of the Edwards-Differding formula (1936) shows that as to dockage the former develops 11.07 cents per ton for all respondents and the latter 10 cents for Howard and Encinal. In the case of service charges, the former develops direct costs amounting to 48 percent of the cost whereas the latter develops 44 percent. As to wharfage the former develops 28 cents at Howard and Encinal and the latter 21 cents. The Freas formula develops carloading rates substantially higher than the Edwards-Differding formula—the former range from 51.47 cents to \$1.51, the latter 45 to 47 cents. These differences are explained by changes in the costs and efficiency of labor, volume of cargo handled, and the fact that witness Freas included an additional charge representing cost of the portion of the structure or facility devoted to carloading use.

The main conclusions reached by witness Freas are: (1) the operations of respondents during the period in question, as a whole, were highly unremunerative; (2) the reason for their continued operation is the multiple nature of the businesses—real estate, oil etc.—and the fact that they have not set aside their normal depreciation, and in some instances have deferred necessary maintenance; and (3) that there is not an even distribution of the burden as between the various services. He makes the following suggestions in the interest of simpler and more accurate cost finding in the future: (a) separate accounts should be maintained for each revenue producing activity; (b) there should be more uniformity in the method of accounting and charging for depreciation; (c) more complete statistical data should be kept pertaining to operations generally, and particularly as to accessorial services; and (d) all nonvariable charges, such as wharfage and dockage should be charged against the vessel. The latter suggestion, if followed, would eliminate difficult problems of apportionment and, according to the witness, would simplify the rate problem for the shipper who eventually bears the costs, either separately or in the ocean freight rate.

A shipper witness introduced financial statements of the harbor commissioners of San Francisco and Los Angeles indicating favorable operating results since 1940.<sup>10</sup> However, the value of these data is impaired by the fact that the statements cover a multitude of non-wharfing operations, and it is impossible to segregate the revenues and expenses covering strictly wharfing activities.

<sup>10</sup> The net income after all deductions at San Francisco from all operations for the period 1940-46 ranged from \$215,357 in 1940 to \$2,275,435 in 1943. At Los Angeles net profits after bond interest for the period 1940-45 ranged from \$463,124 to \$2,625,224, the operating surplus as of June 30, 1945 being \$5,682,035.

## CONCLUSIONS

The trial examiner recommended that we: (1) approve the formula as a proper method of segregating terminal costs and carrying charges, and of apportioning such costs and charges to the various wharfinger services; (2) find that respondents operating publicly owned terminals are entitled to a fair return on investment;<sup>11</sup> (3) find that depreciation on so-called "gift property", consisting of buildings, structures, etc., should be charged to operating expenses, but the value of such property should not be included in original cost or cost of reproduction;<sup>12</sup> (4) find that the rate making value of respondents' property used and useful in their wharfinger operations should consist of the actual legitimate cost thereof, properly depreciated, plus working capital;<sup>13</sup> (5) find that in the ascertainment of rate making value resort should be made to data in the following order: first, original cost records if available; second, book values; third, valuations by recognized engineers and appraisers; and fourth, cost of reproduction less depreciation and present market value of lands, only where no other data are available; (6) find that uniformity in the rate structure should be achieved by basing the rate level upon the operations of the lowest-cost operators, such level to be increased,<sup>14</sup> if necessary, to a point where all other respondents may earn their legitimate cost of operation, including depreciation and bond interest, plus a reasonable surplus to meet emergencies and other public needs, subject to competition and the ability of the traffic to pay; (7) give consideration to instituting a nation-wide rule making proceeding under section 4 of the Administrative Procedure Act and the Shipping Act, 1916, to afford interested persons an opportunity to express their views as to whether we should promulgate a rule requiring the assignment to the vessel of all cost incurred in providing dockage, wharfage, ship's services, and free time storage.

<sup>11</sup> Citing *Logansport v. P. S. C.* (Ind. 1931), 177 N. E. 249, which approved the statement that "the matter of earning a return or not earning a return is one of policy to be decided by the municipal authorities. In any case there should be some surplus to take care of emergencies over and above the operating expenses."

<sup>12</sup> Relying upon the practice of the Interstate Commerce Commission in deducting public contributions toward construction from original cost and reproduction cost, in railroad valuation cases, to avoid a "double burden" on the public. *Indianapolis Union Railway Co.* (1934) I. C. C. 46 Val. Rep. 711. But see *Alabama Power Co. v. Ickes* (1938), 302 U. S. 464, holding that the taxpayer's interest in a PWA grant is *de minimis*; also *Board of Utility Comm. v. New York Telephone Co.* (1926), 271 U. S. 23, holding that protection against confiscation does not depend on the source of the money used to purchase the property.

<sup>13</sup> Following *Federal Power Commission v. Hope Natural Gas Company* (1944), 320 U. S. 591, wherein the Supreme Court approved a rate base consisting of "actual legitimate cost." In holding that the "end result" is the ultimate test of whether rates are just and reasonable, the Court said: "Rates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed certainly cannot be condemned as invalid even though they might produce only a meager return on the so-called 'fair value' rate base."

<sup>14</sup> Citing *Federal Power Commission v. Natural Gas Co.* (1942) 315 U. S. 575, stating that there are zones of reasonableness and the courts will not set aside a maximum reasonable rate.



The respondents, upon exceptions and oral argument, took vigorous exception generally to recommended findings (3) to (6) inclusive. Their main apprehension appears to be that strict adherence to the "actual legitimate cost" theory would exclude from the rate-making values of the public terminals reclaimed submerged lands for which no money consideration was paid at time of acquisition. They point out also that it would not be possible to arrive at comparable rate bases for the various terminals in the event that actual legitimate costs are not ascertainable in all instances.

The shipper interests contend generally that values of reclaimed lands and improvements thereon should be excluded from the rate base. Their position is that the land was donated by Federal and State governments and the improvements were paid for through sale of bonds which were redeemed through earnings set aside for such purpose, and local taxation. These interests also oppose uniformity of rates among respondents on the ground that it would nullify the natural advantages of certain port areas, and deprive patrons of the benefits of low-cost operation and efficient management of certain terminals.

Respondents request that we approve the Freas formula *in toto*, including specific approval of (1) a rate of return of 7 percent upon the present fair value of their properties, consisting of land, improvements, buildings, structures, etc., used and devoted to wharfing purposes; and (2) the inclusion of so-called donated or gift properties, both land and improvements, at their present fair value, in the money base upon which the rate of return is applied.

Apart from the fact that there is no substantial evidence in this record to support a rate of return of 7 percent, any rate of return approved here would not necessarily be proper for application in a future rate revision. The rate of return, the method to be used to determine the value of land, and the treatment of so-called gift property—both land and structures—are the most controversial questions in this proceeding. This is so, because return on investment, as computed by witness Freas, accounts for more than one-half of all costs. Carrying charges of respondents average 80 percent of all costs, and at one terminal at least, return on land accounts for 40 percent of carrying charges.

It would be premature therefore for us to fix the rate of return or to establish the method of valuation in advance of an examination of rates made upon the basis sought by respondents. These rates would have to be evaluated in the light of their effect upon the financial structures of respondents and their impact upon the traffic affected. It is realized that some basis must be used in computing carrying charges and respondents are not foreclosed from using any basis

which they are prepared to justify as producing reasonable rates called for by their agreement.

Under all the circumstances, we accept recommended findings (1) and (2) and adopt them as our own. Decision on the issues raised by findings (3) to (6) inclusive will be deferred.

Little interest was shown in recommendation (7), and no action will be taken in that direction at this time.

The record will be held open.

3 U.S.M.C.

## APPENDIX

Formulae for the determination of wharfinger costs applied to the 1939-40 operations of Howard Terminal

SCHEDULE I.—Carrying charges (plant only) separated as between waterways, aprons, cargo areas, et cetera

Line No.	Item (a)	Total charges (b)	Bases (c)	Waterways (d)	Aprons (e)	Cargo areas (f)		Special facilities (g)		Rail and truck areas and facilities (h)	Other wharf-inger (i)	Non-wharf-inger (j)
						Sheds (f)	Open (g)	Oil wharves (h)	Lumber storage (i)			
1	Return—land	33,779.20	1	5,946.75	1,114.72	12,659.33				13,233.79	581.50	243.11
2	Return—structures and facilities	33,428.38	1	XXX	3,989.58	20,605.39				6,467.02	2,366.39	
3	Taxes—land	4,912.68	1	459.34	100.32	2,441.31				1,794.31	117.40	
4	Taxes—structures and facilities	6,175.00	1	XXX	277.33	5,011.17				530.20	356.30	
5	Rentals—land	720.00	2								720.00	
6	Rentals—structures and facilities		3	XXX								
7	Insurance (structures only)	2,297.56	3	XXX	278.11	1,480.23				366.57	172.65	
8	Depreciation—wharves and substructures	7,965.15	3	XXX	2,384.49	2,004.38				2,676.28		
9	Depreciation—other structures	10,591.83	3	XXX	XXX	10,591.83				XXX		
10	Depreciation—rail and motor facilities	1,890.21	3	XXX	XXX	1,890.21				XXX	1,890.21	
11	Depreciation—maintenance equipment	1,082.92	3	XXX	XXX	1,082.92				1,082.92		
12	Depreciation—fire equipment	59.48	4	XXX	1.67	42.41				15.40		
13	Maintenance—wharves and substructures	310.36	6	XXX	8.07	46.42				12.52	5.04	
14	Maintenance—other structures	2,598.12	3	XXX	104.75	88.05				117.56		
15	Maintenance—fire equipment		3	XXX	XXX	2,598.12				XXX		
16	Maintenance—transit sheds		3	XXX	XXX	XXX				XXX		
17	Maintenance—rail and motor facilities	858.46	3	XXX	4.46	113.31				XXX	858.46	
18	Maintenance—maintenance equipment	158.92	4	XXX	XXX	158.92				XXX	158.92	
19	Maintenance—fire equipment		4	XXX	XXX	XXX				XXX	XXX	
20	Maintenance—waterways	2,584.88	6	2,584.88	XXX	XXX				XXX		
21	Total carrying charges (1 to 20, inclusive)	108,585.20		8,990.97	8,263.49	57,681.95				27,196.19	6,208.49	243.11

\* Excepting where an initial separation is impracticable show wharfinger charges only. \* Exclusive of items covered by columns (h), (i), and (j).

Key to bases numbers (Column (c))

1. Apportion according to value.
2. Allocate directly; if separate data not available, apportion according to area.
3. Allocate directly; if separate data not available, apportion according to value.
4. Allocate according to use.
5. Allocate according to value of property protected.
6. Allocate directly.



SCHEDULE II.—Expenses separated as between dockage, wharfage (tolls), service-charges, wharf demurrage, et cetera—Continued

Line No.	Item (a)	Total expenses (b)	Bases (c)	Vessel		Cargo					Non-wharfinger (l)	
				Dockage (d)	Service and other charges (e)	Wharfage (tolls) (f)	Wharf demurrage (g)	Car loading (h)	Car unloading (i)	Truck tonnage (j)		Accessories and services (k)
<i>Miscellaneous expenses</i>												
24	Cleaning sheds and docks.....	4, 877.70	5	229.68	1, 940.78	1, 238.19	448.12	142.20	363.46	68.76	240.90	5.61
25	Watchmen.....	9, 063.94	10	558.34	3, 156.96	3, 010.59	896.00	258.77	618.16	166.78	393.84	14.50
26	Gas, water and electricity.....	3, 454.72	5	189.63	1, 433.36	914.46	330.96	105.02	268.43	50.78	177.92	4.16
27	Claims.....	2, 173.79	5	XXX	1, 621.65	652.14	XXX	75.44	224.86	XXX	XXX	XXX
28	Car demurrage.....	300.30	11	XXX	XXX	XXX	XXX	994.69	1, 393.47	1.34	205.94	XXX
29	Insurance, cargo.....	6, 680.80	5	4.01	1, 669.88	2, 270.21	211.06	935.16	2, 841.27	XXX	XXX	XXX
30	Other.....							935.16	2, 841.27	XXX	XXX	XXX
<i>Dock equipment</i>												
31	Carloading (sup., maint., depr., and ret.).....	3, 794.43	5	XXX	XXX	XXX	XXX	2, 745.15	454.14	XXX	293.78	
32	Weighing (sup., maint., depr., and ret.).....	2, 745.15	5	XXX	242.25	242.25	235.23	148.90	454.14	XXX	XXX	
33	High piling (sup., maint., depr., and ret.).....	1, 080.52	5	XXX	573.57	317.78	317.78	201.19	613.56	XXX	XXX	
34	Tractors and trailers (sup., maint., depr., and ret.).....	1, 999.88	5	XXX	961.86	7, 433.45	19, 524.26	8, 662.43	24, 607.31	287.66	14, 261.15	24.27
35	Miscellaneous (sup., maint., depr., and ret.).....											
36	Total dock operation (lines 11-35, incl.).....	191, 508.68										
37	III. GENERAL AND ADMINISTRATIVE.....	103, 535.64	12	7, 941.18	40, 741.27	25, 355.88	10, 457.10	3, 416.68	8, 966.19	1, 408.08	5, 125.02	124.24
38	Grand total—expenses (lines 10, 36, 37).....	403, 629.52		30, 165.51	158, 485.32	98, 952.79	40, 685.59	14, 024.69	35, 746.79	6, 365.10	19, 740.38	463.35

Key to bases numbers (column (c))

1. Separate nonwharfinger on basis of use; balance to dockage.

2. Proportion on basis of use.

3. Charge pipe line if owned by terminal to tolls, divide remainder equally between tolls and dockage.

4. Separate nonwharfinger on basis of use, allocate balance to tolls.

5. Direct.

6. If wharfinger operates own terminal on basis of lines 10 and 12 to 25, inclusive. If not, 50% to dockage and 50% to toll and wharf demurrage.

7. To column (e).

8. To column (g).

9. To column (k).

10. On basis of lines 2 to 9, inclusive if terminal not operated by wharfinger; otherwise, 50% divided in this manner; balance on basis of lines 12 to 23, inclusive.

11. To car loading and unloading unless occasioned by lack of space, in which case charge to wharfage.

12. On basis of lines 10 to 25 and 31 to 35, inclusive.

SCHEDULE III.—Separation of "service and other charges" between A. Service charges on: (1) General cargo other than direct, (2) general cargo handled direct, and (3) bulk cargo handled direct. B. Wharf rental or other vessel charges

Line No.	Item (a)	Expenses from Schedule II column (e) (b)	Other than service charges (c)	Service charges (d)	Bases (e)	General cargo not direct (f)	General cargo direct (g)	Bulk cargo direct (h)
1	I. CARRYING CHARGES (from schedule II, line 10).....	\$1,997.56	\$316.41	\$1,681.15	1	\$1,507.49	\$54.13	\$119.53
2	Superintendence (line 11).....	3,505.34	565.76	2,939.58	1	2,635.92	94.65	209.01
3	Checking—account vessel (line 12).....	60,554.31	xxx	60,554.31	2	54,289.05	1,049.85	4,305.41
4	Clerical other than checking (line 15).....	25,037.48	xxx	25,037.48	2	22,451.11	806.21	1,780.16
5	Assembling cargo—account vessel (line 16).....	9,191.99	9,191.99	xxx	---	xxx	xxx	xxx
6	Handling lines (line 20).....	6,918.92	6,918.92	xxx	---	xxx	xxx	xxx
7	Clearing sheds and docks (line 24).....	1,940.78	307.42	1,633.36	3	1,464.63	52.59	116.14
8	Watchman (line 25).....	3,156.96	500.06	2,656.90	4	2,656.90	---	---
9	Gas, water and electricity (line 26).....	1,433.36	227.04	1,206.32	3	1,081.71	38.84	85.77
10	Claims (line 27).....	1,521.65	---	1,521.65	3	1,364.46	49.00	108.19
11	Cargo insurance (line 29).....	---	---	---	3	---	---	---
12	Other (line 30).....	1,669.88	269.62	1,400.36	3	1,255.70	45.09	96.57
13	High piling equipment (line 33).....	---	---	xxx	---	xxx	xxx	xxx
14	Tractors and trailers (line 34).....	242.25	242.25	xxx	---	xxx	xxx	xxx
15	Miscellaneous (line 35).....	573.57	573.57	xxx	---	xxx	xxx	xxx
16	Total dock operation (line 36).....	115,796.53	18,796.53	96,949.96	---	87,209.48	3,036.23	6,704.25
17	General and administrative (line 37).....	40,741.27	6,612.31	34,128.96	5	30,699.00	1,068.24	2,361.72
18	Grand total expense (lines 10, 36, 37).....	158,485.32	25,725.25	132,760.07	---	119,416.97	4,158.50	9,185.50
19	Tons loaded and discharged.....	xxx	xxx	425,685	---	306,412	21,980	97,293
20	Average cost per ton.....	xxx	xxx	\$0.3119	---	\$0.3987	\$0.1892	\$0.0944

Key to bases numbers (column (e))

1. Divide amount in column (b) between columns (c) and (f), (g), and (h) on basis of the totals of lines 3, 4, 5, and 6.
2. Apportion among columns (f), (g), and (h) according to tonnage giving general cargo a weight of 1, general cargo direct a weight of 1/2 and bulk cargo direct a weight of 1/4.
3. Direct or estimate on best basis available.
4. To column (f).
5. Divide amount in column (b) among columns (c) and (f), (g), and (h) on basis of the totals of lines 1 and 16.

SCHEDULE IV.—Separation of costs assignable to shipper in the form of wharfage (tolls) as between (1) general cargo, (2) bulk tonnage handled direct to or from rail car, and (3) tonnage loaded and/or discharged by pipe line

Line No.	Item (a)	Expenses from schedule II column (f) (b)	Bases (c)	General cargo (d)	Bulk cargo direct (e)	Pipe line cargo (f)
<b>I. CARRYING CHARGES (from schedule II)</b>						
1	Cargo areas—sheds (line 3).....	\$37,223.55	1	\$37,223.55	xxx	xxx
2	Cargo areas—open (line 4).....	-----	1	-----	xxx	xxx
3	Special facilities—oil (line 5).....	-----	2	xxx	xxx	-----
4	Special facilities—lumber (line 6).....	-----	3	-----	xxx	xxx
5	Rail and truck areas and facilities (line 7).....	27,196.19	4	21,963.64	\$5,232.55	xxx
6	Other (line 8).....	1,743.72	5	1,154.16	102.00	\$487.56
7	Total carrying charges.....	66,163.46	-----	60,341.35	5,334.55	487.56
<b>II. DOCK OPERATION</b>						
8	Superintendence (line 11).....	-----	6	-----	-----	-----
9	Cleaning sheds and docks (line 24).....	1,238.19	6	1,129.23	99.80	9.16
10	Watchmen (line 25).....	3,010.59	6	2,745.66	242.65	22.28
11	Gas, water, and electricity (line 26).....	914.46	6	833.98	73.71	6.77
12	Claims (line 27).....	-----	7	-----	-----	-----
13	Car demurrage (line 28).....	-----	7	-----	-----	xxx
14	Miscellaneous dock equipment (line 35).....	-----	7	-----	-----	-----
15	Miscellaneous expense (line 30).....	2,270.21	7	2,270.21	-----	-----
16	Total dock operation (line 36).....	7,433.45	-----	6,979.08	416.16	38.21
17	<b>III. GENERAL AND ADMINISTRATIVE (line 37).....</b>	<b>25,355.88</b>	<b>6</b>	<b>23,124.57</b>	<b>2,043.68</b>	<b>187.63</b>
18	Grand total—expense (lines 10, 36, 37).....	98,952.79	-----	90,445.00	7,794.39	713.40
<i>Statistical items</i>						
19	Number of tons loaded and discharged.....	350,222	-----	265,911	63,326	20,985
20	Average cost per ton.....	.2825	-----	.3401	.1231	.0340

## Key to bases numbers (column (c))

1. To column (d).
2. To column (f).
3. Divide between columns (d) and (e) in relation of quantity not handled to or from car direct to that so handled.
4. Divide between (d) and (e) on basis of tonnage handled.
5. On basis of use.
6. On basis of line 7.
7. Direct.

SCHEDULE V.—Break-down of wharf demurrage cost into (1) handling costs per ton (i. e., receiving and delivery expense), (2) holding costs (i. e., the floor space costs and overhead which vary with the period of storage)

Line No.	Item (a)	Expenses from schedule II column (g) (b)	Bases (c)	Handling costs (d)	Holding costs (e)
I. CARRYING CHARGES (from schedule II)					
1	Cargo areas—sheds (line 3) .....	9, 555. 97	1	xxx	9, 555. 97
2	Cargo areas—open (line 4) .....		1	xxx	
3	Other facilities (lines 6 and 8) .....	1, 148. 26	1	xxx	1, 148. 26
4	Total carrying charges (line 10) .....	10, 704. 23	1	xxx	10, 704. 23
II. DOCK OPERATIONS					
5	Superintendence (line 11) .....	455. 98	2	455. 98	xxx
6	Checking (to/from demurrage) (line 13) .....	4, 316. 01	2	4, 316. 01	xxx
7	Handling and high piling (line 19) .....	8, 925. 83	2	8, 925. 83	xxx
8	Cleaning sheds (line 24) .....	448. 12	2	448. 12	xxx
9	Watchmen (line 25) .....	886. 00	3	443. 00	443. 00
10	Gas, water and electricity (line 26) .....	330. 96	3	165. 48	165. 48
11	Claims (line 27) .....	652. 14	3	326. 07	326. 07
12	Insurance—cargo (line 29) .....		3		
12a	Miscellaneous dock expense (line 30) .....	211. 06	3	105. 53	105. 53
13	High piling equipment (line 33) .....	2, 745. 15	2	2, 745. 15	xxx
14	Tractors and trailers (line 34) .....	235. 23	2	235. 23	xxx
14a	Miscellaneous dock equipment (line 35) .....	317. 78	2	317. 78	
15	Total dock operations (line 36) .....	19, 524. 26		18, 484. 18	1, 040. 08
16	III. GENERAL AND ADMINISTRATIVE (line 37) .....	10, 457. 10	3	5, 228. 55	5, 228. 55
17	Grand total expense (lines 10, 36, 37) .....	40, 685. 59		23, 712. 73	16, 972. 86
18	Total tons received on wharf demurrage .....	108, 511		xxx	xxx
19	Total tons months of wharf demurrage .....	81, 864		xxx	xxx
20	Total number of square feet involved .....	47, 460		xxx	xxx
21	Handling cost per ton .....	xxx		2185	xxx
22	Holding cost per square foot .....	xxx		xxx	3576
23	Adjusted holding cost per square foot .....	xxx		xxx	5960

Key to bases numbers (column (c) schedule V)

1. To column (e).
2. To column (d).
3. Divide between columns (d) and (e) on 50-50 basis.

3 U.S.M.C.



SCHEDULE VI.—*Summary of total and unit costs for services performed and comparison with the corresponding revenues*

Tariff services	Costs from	Annual cost		Annual revenue, total
		Total	Per ton <sup>1</sup>	
<b>CHARGES TO VESSEL</b>				
I. Dockage.....	Schedule II—column (d) L. 38.....	30,165.51	xxx	8,398.10
(a) Cost per hour-occupancy.....	.....	xxx	3,3898	xxx
(b) Cost per 100 feet wkg. areas.....	.....	xxx	2,154.67	xxx
II. Service charges:				
(a) All cargo.....	Schedule III—column (d) L. 18.....	132,760.07	.3119	157,199.75
(b) General through shed.....	Schedule III—column (f) L. 18.....	119,415.97	.3897	xxx
(c) General—direct.....	Schedule III—column (g) L. 18.....	4,158.60	.1892	xxx
(d) Bulk direct.....	Schedule III—column (h) L. 18.....	9,185.50	.0944	xxx
III. Assignment charges.....	Schedule III—column (c) <sup>2</sup> L. 18.....		xxx	xxx
(a) Cost per square foot.....	.....	xxx	xxx	xxx
IV. Other.....	Schedule III—column (c) L. 18.....	25,725.25	xxx	9,953.63
Total vessel.....	.....	188,650.83	xxx	175,551.48
<b>CHARGES TO CARGO</b>				
V. Wharfage (tolls).				
(a) All cargo.....	Schedule IV—column (b) L. 18.....	98,952.79	.2825	61,261.62
(b) General cargo.....	Schedule IV—column (d) L. 18.....	90,445.00	.3401	xxx
(c) Bulk cargo.....	Schedule IV—column (e) L. 18.....	7,794.39	.1231	xxx
(d) Pipe line.....	Schedule IV—column (f) L. 18.....	713.40	.0340	xxx
VI. Wharf demurrage:				
(a) Total costs.....	Schedule V—column (b) L. 17.....	40,685.59	.3749	34,541.39
(b) Handling cost per ton.....	Schedule V—column (d) L. 21.....	xxx	.2185	xxx
(c) Holding cost per square foot.....	Schedule V—column (e) L. 22.....	xxx	.3576	xxx
(d) Adjusted cost per square foot.....	Schedule V—column (e) L. 23.....	xxx	.5960	xxx
VII. Car loading.....	Schedule II—column (h) L. 38.....	14,024.69	.8389	8,930.05
VIII. Car unloading.....	Schedule II—column (i) L. 38.....	35,746.79	.7172	24,772.21
IX. Truck tonnage.....	Schedule II—column (j) L. 38.....	5,365.10		
X. Accessorial services.....	Schedule II—column (k) L. 38.....	19,740.38	xxx	8,143.07
Total cargo.....	.....	214,515.34	xxx	137,648.34
Grand total.....	.....	403,166.17	xxx	313,109.82

<sup>1</sup> Except as otherwise indicated.

<sup>2</sup> For terminals not operated by wharfinger.

# UNITED STATES MARITIME COMMISSION

No. 668

P. A. DANA, INC.

v.

MOORE-McCORMACK LINES, INC., ET AL.

**Decided**

Submitted July 6, 1948. ~~Decided~~ August 24, 1948

Charges collected on shipments of quartz crystal from Rio de Janeiro, Brazil, to the port of New York found applicable. No violation of Shipping Act, 1916, shown. Complaint dismissed.

*Henry Alpern* for complainant.

*Harold B. Finn* for respondents.

## REPORT OF THE COMMISSION

### BY THE COMMISSION:

No exceptions were filed to the recommended decision of the examiner. Our conclusions agree with those of the examiner.

Complainant, a corporation, by complaint seasonably filed alleged that it has been subjected by respondents<sup>1</sup> to the payment of charges for the transportation of quartz crystal from Rio de Janeiro to New York which were unduly and unreasonably prejudicial and disadvantageous, unjustly discriminatory, unjust and unreasonable, and an unwarranted tax on the movement of merchandise. Lawful rates for the future and reparation<sup>2</sup> were sought. At the hearing, the allegations of undue and unreasonable prejudice and disadvantage, unjust discrimination, and unjustness and unreasonableness were abandoned. Respondents, asserting that there is no prohibition in the Shipping Act, 1916, against an unwarranted tax on the movement of merchandise in foreign commerce, contend that the complaint should be dismissed for want of jurisdiction.

<sup>1</sup> Moore-McCormack Lines, Inc.; J. Ludwig Mowinckels Rederi and Westfal-Larsen & Co., jointly operating as Southern Cross Line; Lloyd Brasileiro; International Freighting Corp., Inc.; Shepard Steamship Co.

<sup>2</sup> Computed by complainant to be \$10,804.55 on shipments made up to date of hearing.

Respondents are members of the Brazil-United States/Canada Freight Conference and parties to the agreement of that conference approved by the Commission under section 15 of the Shipping Act, 1916. One of the provisions of the conference agreement is that rates and charges shall be collected by the members strictly in accordance with their tariff, which has been filed with the Commission. There is raised in this case a question as to whether the charges collected by respondents accorded with their tariff, and both sides presented evidence on the question. We may determine the applicable charges under our authority in respect to the agreement. See *Remis v. Moore-McCormack Lines, Inc.*, 2 U. S. M. C. 687, and *Rubber Development Corp. v. Booth S. S. Co., Ltd.*, 2 U. S. M. C. 746.

At the time of the transportation here involved respondents' Tariff No. 9 was in force, and the following item covered transportation of quartz crystal from Rio de Janeiro, Brazil, to the port of New York:

Commodity	Basis	Rate in U. S. A. dollars
Crystal rock.....	W/M <sup>1</sup> .....	\$30.00 plus 2% ad valorem on full value to be declared on B/L

<sup>1</sup> Weight or measurement, i. e., per 1,000 kilos or 40 cubic feet, whichever brings the greater revenue to the vessel.

Contemporaneously, the tariff provided for the application of a surcharge expressed in a percentage of the rates and charges contained in the tariff, including the above item; the amount of the surcharge was changed from time to time. Respondents applied and collected from the complainant the rate as shown by the above item, together with the applicable surcharge thereon. Complainant paid the charges under protest.

At the time of the transportation here involved there was contained in respondents' tariff rule 7 (b) as follows:

7. Ad valorem cargo \* \* \*:

(b) The liability of the Carriers as to the value of shipments at the rates herein provided shall be determined in accordance with the clauses of the Carrier's regular bill of lading form. Unless otherwise specifically provided in individual rate items, if the Shipper desires to be covered for a valuation in excess of that allowed by the Carrier's regular bill of lading form, the Shipper must so stipulate in Carrier's bill of lading covering such shipments and such additional liability only will be assumed by the Carrier at the request of the Shipper and upon payment of an additional charge of two percent (2%) of the total declared valuation in addition to the stipulated rate on the commodities shipped as specified herein.

The valuation allowed by respondents' regular bill-of-lading form and referred to in 7 (b) was \$500 per package or customary freight unit.

Complainant contends that, since it did not seek to have respondents assume a liability on the basis of a higher valuation than \$500 per

package, the collection of the ad valorem mentioned in the rate item was inconsistent with rule 7 (b).

Respondents contend that the rate item sets up a charge consisting of two parts—the \$30 per ton plus the 2% ad valorem—and must be read as an individual rate item contemplated in 7 (b) by the words “unless otherwise specifically provided in individual rate items.” This rate item is definite as including both constituent parts, contains no alternative and does not give the shipper any option. However, rule 7 (b) is not intended to give the respondents the right to charge a second 2% to give higher protection to packages of crystal rock worth more than \$500. It is believed that the rule should be clarified in this respect.

We find no violation of the Shipping Act, 1916.

An order dismissing the complaint will be issued.

3 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 24th day of August A. D. 1948.

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No. 668

P. A. DANA, INC.

*v.*

MOORE-McCORMACK LINES, INC., ET AL.

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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 Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

*It is ordered;* That this complaint be, and it is hereby, dismissed.  
By the Commission.

[SEAL]

(S) A. J. WILLIAMS,  
*Secretary.*

3 U. S. M. C.

# UNITED STATES MARITIME COMMISSION

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No. 660

## MATSON NAVIGATION COMPANY—RATE STRUCTURE

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*Submitted July 12, 1948. Decided August 24, 1948*

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The rates, charges, regulations, and practices of Matson Navigation Company and other respondents in connection with transportation between United States mainland ports and Hawaii, not shown to be unlawful.

*Herman Phleger* for Matson Navigation Company, *David Dawson* for United States Lines Co., *G. F. Murphy* for Lykes Bros. Steamship Co., Inc., *Frank J. Haley* for Waterman Steamship Corp., and *James J. McCabe* for Isthmian Steamship Co., respondents.

*John G. Breslin* for California & Hawaiian Sugar Refining Corp., *William F. Krause* for Fibreboard Products, Inc., *R. R. Gudgel* and *C. H. Webling* for Honolulu Consumers Council, and *Germain Bulcke* for International Longshoremen's and Warehousemen's Union, interveners.

*Paul D. Page, Jr.*, *Clarence J. Koontz*, and *Guy M. Carlon* for Commission.

### DECISION OF THE COMMISSION

#### BY THE COMMISSION:

No exceptions were filed to the examiner's recommended decision. Our conclusions agree with those of the examiner.

We instituted this investigation on June 4, 1947, to determine whether the rates, charges, regulations, and practices of Matson Navigation Company and other respondents<sup>1</sup> in the Hawaiian trade are unduly prejudicial or unreasonable in violation of sections 16 and 18, respectively, of the Shipping Act, 1916.

California & Hawaiian Sugar Refining Corp., Fibreboard Products, Inc., International Longshoremen's and Warehousemen's Union, and Honolulu Consumers Council intervened. The Consumers Council was the only intervener which offered testimony.

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<sup>1</sup> The Oceanic Steamship Co., Isthmian Steamship Co., and American President Lines, Ltd., were also made respondents on June 4, 1947. By order of September 16, 1947, Lykes Bros. Steamship Co., Inc., United States Lines Co., and Waterman Steamship Corp. were named as additional respondents.

Matson is the principal water carrier in the Hawaiian trade. It operates a Pacific-Hawaii combination passenger-and-cargo service, a Pacific-Hawaii freighter service, and an Atlantic-Gulf-Hawaii freighter service. The latter is a joint service with Isthmian. The other respondents operate principally to the Far East, serving Hawaii only incidentally. Uniform rates are observed by all respondents under a conference agreement approved by the Commission pursuant to section 15 of the Shipping Act, 1916. Matson is the rate making line, and this inquiry deals primarily with its rate structure.

Hawaii's economy is tied in closely with that of continental United States. It exchanges principally sugar and pineapples for foodstuffs, manufactured goods, fuel, and lumber. Shipments from Hawaii in 1947 exceeded \$200,000,000 in value. In 1939 Hawaii's population had increased 59 percent and its agricultural production 100 percent over 1920. By 1946 the change over 1920 represented an increase in population of about 100 percent, whereas agricultural production had increased only 55 percent. This could account for its present unfavorable trade balance which, until the recent war, was favorable.

Matson began pioneering the trade in 1882, and since World War I has developed the tourist trade, built hotels, established a lumber service from the Northwest, an Atlantic service through the Canal, refrigerator service, and bulk sugar and molasses transportation.

Its fleet of 33 ships, aggregating 275,000 tons, was requisitioned by the Government during World War II and operated by Matson as agent. Private operation was resumed in June 1946. At the time of hearing in January 1948 Matson had completely replaced its freight fleet by the purchase of 15 C-3 type ships, nine of which already were in service and six were undergoing reconversion. Reconversion of the passenger liner *Lurline* was practically complete at an expenditure of around \$13,000,000 of Matson's own funds.

In all, Matson's commitments for floating and other equipment are around \$52,000,000 of which \$43,000,000 have been expended.<sup>2</sup> This program has reduced its marketable securities from \$12,000,000 in February 1947 to around \$500,000 in November 1947; and has increased its current working liabilities \$3,000,000 during the same period. Also it has necessitated bank loans of \$6,000,000 and arrangements for another loan in the same amount. Moreover, Matson is guarantor of bank loans of Oceanic, its subsidiary, amounting to \$4,000,000.

The entire new fleet is to be in operation by July 1, 1948, on the following schedule: freighters are to sail weekly from Los Angeles

<sup>2</sup> This includes \$18,682,338 estimated cost of restoring the *Lurline* (including \$5,000,000 paid by the Commission); and an average of around \$1,500,000 each for the Hilo bulk sugar plant, Royal Hawaiian Hotel, and Matson office building.

and San Francisco; fortnightly from Northwest ports; fortnightly from Atlantic and Gulf ports (3 vessels) in conjunction with Isthmian; and every 20 days in the lumber service. The *Lurline*, replacing the *Matsonia*, was scheduled to start in April 1948 on a 12-day turn-around between Honolulu and Los Angeles and San Francisco alternately.

Originally, Matson filed increased rates to become effective March 1, 1947, which were designed to raise revenues approximately 22 percent. These rates, with certain exceptions, were suspended in Docket 656, without prejudice to the establishment of rates designed to produce an over-all increase of 20 percent. The latter rates, together with those excepted, were filed to become effective either on March 1 or March 10, 1947, and are the subject of this inquiry.

Matson justifies the rate increases on the rapid and continuous rise in operating costs. Its comparisons with increased rates in other trades are not persuasive, as no evidence of the transportation factors existing in those other trades to show that they are comparable with the Hawaiian trade was introduced. Vessel and cargo expenses on actual tonnage carried in the Pacific-Hawaiian service have increased (1947 over 1941) by the following percentages: insurance, 123.85 percent; repairs, 19.96 percent; sea expense, 89.93 percent; cargo handling, 102.27 percent; port charges, 30.82 percent—grand total, 93.36 percent on a weighted basis. Expenses in 1947 divided approximately 61 percent to cargo and 39 percent to vessel.

Since 1940 Matson has increased, including the present increases, rates between Hawaii and Pacific coast ports on general merchandise 70 percent; canned pineapple, 76 percent; lumber, 66 percent; bagged raw sugar, 77 percent; feed, flour, etc., 62 percent; fertilizer, 59 percent; and common building cement, 86 percent. Little or no increases had been made at the time of the hearing in rates on refrigerator cargo, and rates on molasses, fuel oil, and asphalt liquid, in bulk,<sup>3</sup> the latter three of which are influenced by tanker competition.

In opposition to the rate increases, the Consumers Council alleges in substance (1) that the increases have an inflationary effect upon the cost of living in the Islands, (2) that rate increases would not be required under more efficient management and operation, and (3) that Matson is in a strong financial position and could well forego the increases.

On certain selected items of food and clothing, the increased transportation cost resulting from the last rate increases ranges from \$0.001 on a pound of potatoes to \$0.014 on a pair of men's shoes. Nails would be increased \$0.001 per pound and refrigerators, \$1.91 each. The Consumers Council estimated from exhibits of record that the increased

<sup>3</sup> Official notice is taken of increases made on April 1, 1948, on molasses, fuel oil, and asphalt liquid, in bulk, ranging from 23 to 50 percent.



landed cost of principal commodities imported from the mainland in 1947 was \$2,639,000. Its witness testified that the cost of living in the Islands is approximately 25 percent higher than on the mainland. The present freight rates average 3.81 percent of retail prices on 17 food items in Honolulu as of September 15, 1947, which prices on the average are lower than in New York, but higher than in San Francisco and Seattle. For instance, the 17 items cost approximately \$0.05 per unit more on the average in Honolulu than in San Francisco. The freight rates on these items from Pacific coast ports to Honolulu average about \$0.024 per unit.

The Consumers Council points out that the prices of food and other commodities in Honolulu average 20 percent higher than in mainland cities. It admits, however, that in addition to freight rates, high labor costs and wholesale and retail mark-ups are factors which create this cost differential. The transportation factor cannot be too controlling if, as shown by the record, freight rates average less than 4 percent of retail prices. Moreover, the record shows that transportation costs account for only one-half of the difference between unit costs of food in Honolulu and in San Francisco. These statistics may or may not be representative, but in any event, it would not be just to deny reasonable rate increases to a common carrier for the simple reason that merchants use such increases as an excuse to inflate their prices.

The intimations of inefficient management are based on the slow turn-around of vessels and Matson's acquisition and reconversion of vessels during a period of peak prices. The record shows that vessel operation was slowed down on account of port congestion, which in turn was due to a backlog of shipments resulting from strike and other conditions. The new and faster fleet should provide much quicker turn-arounds than were possible during 1947. At any rate, there is no evidence of inefficient operation—it is all to the contrary. The wisdom of the management in acquiring its fleet when it did, and adapting it to the trade through reconversion, is a question which must be resolved in the light of future operating results.

Even though Matson's financial position was such as to enable it to stand substantial losses, the law does not compel it to operate under such conditions. Matson's financial standing is of no evidentiary value in determining the lawful level of the rates.

The following table shows earnings (or losses) from vessel operations for the calendar year 1947,<sup>4</sup> based on actual operations; also, assuming that the present rates had been in effect the full year, and that expenses had been incurred for the full year on the basis prevailing on December 31, 1947.

<sup>4</sup>December operations are estimated.

	Freight service combined (1)	Passenger service <i>Matsonia</i> (2)	Total (3)
(A) 1947 vessel operations:			
Net profit (or loss).....	<sup>1</sup> (\$61,562)	\$156,672	\$95,110
Depreciated investment plus working capital.....	\$20,312,900	\$1,526,998	\$21,839,898
Return (percent).....	None	10.27	0.44
(B) 1947 vessel operations with the increased rates and the expenses prevailing Dec. 31, 1947, applied to full year of 1947:			
Net profit.....	<sup>2</sup> \$129,239	\$93,738	\$222,977
Depreciated investment plus working capital.....	\$20,416,900	\$1,561,998	\$21,978,898
Return (percent).....	0.63	6.00	1.01

<sup>1</sup> Pacific service lost \$130,505, and Atlantic-Gulf service earned \$68,853.

<sup>2</sup> Pacific service would have earned \$82,614, and Atlantic-Gulf service would have earned \$46,625.

Earnings before taxes reflected in the above table are higher than shown by Matson by \$257,893 on freight service and \$39,144 on passenger service due to the exclusion of inactive vessel expenses and depreciation on vessels not employed in the Hawaiian service during 1947; also charter hire revenue on passenger vessels not applicable to the period used.<sup>5</sup>

Matson discontinued payment of quarterly dividends on June 15, 1947, which had been paid regularly since 1906. Since 1937 dividends have ranged from a high of \$1.50 per share to 60 cents in 1947. Its stock declined progressively during 1947 for a loss of around 8½ points. Matson capital stock, without par value, has a book value of \$20.18 per share.

Matson estimates that earnings under present freight rates during the calendar year 1948, with its new fleet in operation the entire year, would yield less than 3 percent on capital employed in its freighter service. Estimated earnings after taxes, but before return on capital, are \$702,865 on the west coast freighter service and \$119,926 on the east coast freighter service. Capital employed in these services would be \$32,186,436 and \$5,420,637, respectively. While the *Matsonia* earned 10.27 percent in 1947 on its depreciated investment of around \$1,500,000, it is anticipated that a year's operation of the *Lurline* will yield earnings of \$340,314 after taxes, on capital employed of \$17,110,855, or a return of approximately 2 percent.<sup>6</sup> Of the 1948 revenue dollar it is estimated that 2.66 percent will be available for return on investment, 45 percent for cargo handling and 35 percent for vessel expense, the largest items of which are wages and fuel. In estimating expenses no account is taken of increased expenses which might result from the arbitration just completed on

<sup>5</sup> The items excluded were charter hire on the *Lurline* and the *Matsonia*, depreciation on *Lurline*, *Hawaiian Refiner*, and *Hawaiian Wholesaler*, and inactive vessel expense during reconversion of freight vessels.

<sup>6</sup> Matson's passenger carryings in 1947 were only one-half of its carryings in 1940, the reduction being attributed to subsidized competition of Pan American Airways and United Air Lines.

wages of firemen, cooks and stewards, engineers, and radio operators. Moreover, negotiations will be conducted during 1948 on possible wage increases for the longshore, clerking, and seafaring personnel.

Isthmian's operations in the Hawaiian-Atlantic-Gulf service in 1947 under the present rates resulted in an estimated net loss of \$13,687. American President Lines incurred a net direct vessel operating loss of \$10,876. Oceanic lost \$44,457. The other respondents made only incidental calls at Hawaiian ports.

#### CONCLUSIONS

Upon the record Matson's 1947 common carrier freighter operations in the Hawaiian service were conducted at a loss. Little better than an even break would have resulted had the increased rates of March 1947 been in effect, and the expenses prevailing on December 31st been incurred during the entire year of 1947. Moreover, if Matson's estimates of prospective traffic and expenses prove reliable, 1948 operations will yield only a modest rate of return on investment.

While the evidence here reveals operating losses, it provides no reliable basis upon which to predicate a reasonable and stable rate structure for the future. This is true because 1947 operations were conducted partly with old ships and under unusual traffic and shipping conditions. A more appropriate test period would include operation under the new, faster, and presumably more economical fleet.

This record supports certain conclusions which merit consideration in the fixing of, or judging, the rate structure in the Hawaiian trade, which is under review here for the first time:

First, the transition from the old to the new operation is a stage of new development necessitating extra costs, capital, and otherwise, chargeable to development. Development costs do not necessarily increase immediately and *pro-tanto*, the value of the service to the shipper. They are a business risk, assumed for the future, and should be spread out over the future.

Second, Matson has enjoyed a long and successful operation in the trade, thereby accumulating large reserves which have been converted into a modern fleet. The purpose of this, undoubtedly, was to place the company in a position of greater earning power. Other things being equal, Matson should progressively achieve such position. It is questionable, therefore, whether during this period of transition and development the highest permissible return on investment is warranted.

Third, this is a revenue case and no consideration is given to individual rates or to the question as to whether all commodities bear

their equitable share of the burden with due consideration given to the ability to pay.

We find that the rates, charges, regulations, and practices in issue have not been shown to be unlawful.

The proceeding will be discontinued.

3 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 24th day of August A. D. 1948

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No. 660

MATSON NAVIGATION COMPANY—RATE STRUCTURE

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This case having been instituted by the Commission on its own motion, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

*It is ordered,* That this proceeding be, and it is hereby, discontinued. By the Commission.

[SEAL]

(S) A. J. WILLIAMS,  
*Secretary.*

3 U. S. M. C.

# UNITED STATES MARITIME COMMISSION

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No. 659

## FREE TIME AND DEMURRAGE CHARGES AT NEW YORK

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*Submitted July 7, 1948. Decided October 19, 1948*

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Regulations and practices concerning free time and demurrage on import property at the port of New York found unjust and unreasonable in certain respects and not unjust or unreasonable in others.

*Gustave Springer* for Commerce and Industry Association of New York, Inc., American Spice Trade Association, Association of American Woodpulp Importers, American Watch Assemblers' Association Inc., Burlap and Jute Association, Cotton Importers Association, Inc., Hard Fibers Association, Lace and Embroidery Association, Linen Trade Association, Inc., National Council of American Importers, Inc., National Association of Importers of Hides and Skins, Oriental Rug Importers Association, Rubber Trade Association of New York, Shippers Conference of Greater New York, Tapioca Institute of America, and Tea Association of the United States.

*C. A. Pascarella* for Association of Food Distributors, Inc.

*De Witt C. Reed* for Association of American Importers of Green Olives.

*George E. Shapro* for the Hills Brothers Company.

*William M. Fenn* and *David S. Smith* for Green Coffee Association of New York City, Inc., and Cocoa Merchants Association of America, Inc.

*Thomas J. Semler* for United States Rubber Company.

*Charles E. Egan* for Spanish Olive Packers.

*William M. Knox* for Buckley Dunton Pulp Co., Inc.

*Daniel J. Pitot* for Price & Pierce, Ltd.

*W. E. Aebischer* for Great Atlantic & Pacific Tea Company.

*Herbert M. Simon* for American Bleached Shellac Manufacturers Association.

*C. W. Mawer, Jr.* for Mawer-Gulden-Annis, Inc.  
*Shirley Rief* for New York Association of Dealers in Paper Mills' Supplies, Inc.

*H. E. Simpson* for Brookhattan Trucking Co., Inc.

*Joseph M. Adelizzi* for Motor Carrier Association of New York.

*Wilbur La Roe, Jr., Frederick E. Brown, Arthur L. Winn, Jr.,* and *Samuel H. Moerman* for Port of New York Authority.

*A. C. Welsh* for Brooklyn Chamber of Commerce.

*Charles H. Toll, Jr.* for Port of Boston Authority.

*Samuel H. Williams* for Chamber of Commerce of Philadelphia.

*Charles McD. Gillan* for Baltimore Association of Commerce.

*Roscoe H. Hupper* and *Burton H. White* for Trans-Atlantic Associated Freight Conferences.

*Parker McCollester* and *John R. Mahoney* for carriers named in footnote 7.

*Herman Goldman, Elkan Turk, Leo E. Wolf,* and *Elkan Turk, Jr.* for carriers named in footnote 8.

*William Radner* and *Odell Kominers* for carriers named in footnote 9.

*Harold B. Finn* for carriers named in footnote 10.

*David H. Sackett* for Calcutta-U. S. A. Conference.

*Paul D. Page, Jr.* and *George F. Galland* for the Commission.

#### REPORT OF THE COMMISSION

##### BY THE COMMISSION :

Exceptions were filed to the recommended decision of the examiner and oral argument was heard. Our conclusions agree in part with, and differ in part from, those of the examiner.

This is a rule-making proceeding instituted by the Commission on its own motion pursuant to sections 17 and 22 of the Shipping Act, 1916, and section 4 (a) of the Administrative Procedure Act. The notice of hearing<sup>1</sup> stated in part that "The Commission desires to receive evidence of conditions in the port relevant to [free time and demurrage at New York] for use in determining what action, if any, is required to assure the establishment, observance, and enforcement of just and reasonable regulations and practices," and directed that public hearings be held at which interested persons might express their views.

Section 22 of the Shipping Act, 1916, authorizes the Commission to investigate "any violation of this Act." Section 17 of the Shipping

<sup>1</sup> Published in the Federal Register on June 7, 1947, 12 F. R. 3754.

Act, 1916, requires, in its pertinent part,<sup>2</sup> that every common carrier by water in foreign commerce and every other person subject to this Act "shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property," and that: "Whenever the board [i. e., the Commission] finds that any such regulation or practice is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable regulation or practice."<sup>3</sup> Section 4 (a) of the Administrative Procedure Act provides for notice of rule-making proceedings.

The question for consideration is whether, as to property transported to the port of New York by "common carriers by water in foreign commerce," as defined in section 1 of the Shipping Act, 1916,<sup>4</sup> the carriers' regulations and practices are unjust or unreasonable with respect to (a) adequacy of the free time,<sup>5</sup> (b) the time of commencement of free time and the giving of notice of readiness of goods for removal from pier, (c) the inclusion in free time of periods during which consignees, due to circumstances beyond their control, are unable to remove cargo from pier, or (d) the charging of the full amount of demurrage<sup>6</sup> where consignees, due to circumstances beyond their control, are unable to remove cargo from the pier.

Numerous carriers contend that the matter of sufficient free time is not one within the purview of the second paragraph of section 17. Thus, on behalf of the Trans-Atlantic Associated Freight Conferences it is asserted that "the question is one of reasonableness and this must involve the reasonableness of the charge, whether it be in terms of amount or in terms of time pursuant to which the amount is determined" and that "Congress has granted to the Commission no authority

<sup>2</sup> As agreed at a prehearing conference, the only part of section 17 involved in this proceeding is the second paragraph of that section.

<sup>3</sup> Counsel for several carriers attacked our jurisdiction on the ground that the notice of hearing failed to charge a violation of the Shipping Act, 1916. Their argument misses the point of the proceeding, which has for its purpose the prescription of reasonable regulations and practices for the future. Our finding that certain regulations and practices presently in effect are unjust and unreasonable (and to that extent violative of the Act) is a conclusion based on the record *after* consideration of the evidence. We cannot concede that we lack jurisdiction because of our failure to assume and charge a violation *before* considering the evidence.

<sup>4</sup> Section 1 of the Shipping Act, 1916, defines the term "common carrier by water in foreign commerce" to mean a common carrier, except ferryboats running on regular routes, engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade: *Provided*, That a cargo boat commonly called an ocean tramp shall not be deemed such "common carrier by water in foreign commerce."

<sup>5</sup> The free time in question is a period which is covered by the rates for the ocean transportation and which is allowed for the removal of the property from pier after its discharge from vessel.

<sup>6</sup> The demurrage in question is a charge on cargo on pier after free time has expired.



to regulate foreign rates and charges." Also, other carriers<sup>7</sup> reason: "Since the Commission is thus without authority to require a reduction in a rate for water transportation from a foreign country to the United States or to prescribe a maximum reasonable rate for such service, it must follow that it is likewise without jurisdiction to require a carrier to extend its free time and thus, in effect, determine that the transportation rate is unreasonable because a greater free time is not afforded." In the brief of the Inward Far East Lines<sup>8</sup> it is argued as follows:

If the Commission should attempt to rule that the period of free time must be enlarged, then the Commission would be ruling that during a certain number of days the carriers are prohibited from making a charge for the use of their facilities. In other words, the Commission would be fixing zero dollars as the charge which the carriers must make during such extended period for the use of its facilities and the services rendered in connection therewith. Such an order would constitute rate making, pure and simple.

The Commission has obviously no more power to order a carrier in foreign commerce to charge zero dollars for the use of its property and the rendition of its services than it has to order the carrier to charge \$1.00 or \$2.00 or any other sum, for the use of its property and for such services.

The Shipping Act of 1916 and the subsequent statutes which have vested authority in the Commission may be searched in vain for any trace or suggestion of authority to fix rates.

Other carriers,<sup>9</sup> stating that the second paragraph of section 17 cannot be held to authorize fixing the charge for the service rendered, contend that "Likewise, there is no authority therein to fix the service to be rendered for the charge." Still others<sup>10</sup> assert that section 17 does not

<sup>7</sup> Alcoa Steamship Company, Bermuda & West Indies Steamship Company, Ltd., Compania Colombiana De Navegacion Maritima (Coldemar Line), Compania Sud Americana De Vapores (Chilean Line), Compania Trasatlantica (Garcia & Diaz, as Agents), Compagnie Generale Transatlantique (French Line), Grace Line, Inc. (Grace Line), Flota Mercante Grancolombiana, S. A. (Grancolombiana Inc., Agents), J. Lauritzen (West Coast Line, Inc., as Agents), New York & Cuba Mail Steamship Co., North Atlantic & Gulf Steamship Company, Inc., Panama Railroad Company (Panama Line), Royal Netherlands Steamship Co., Standard Fruit & Steamship Co., United Fruit Company, and West Coast Line, Inc.

<sup>8</sup> American President Lines, Ltd.; Bank Line, Ltd. (Bank Line); Dampskibsselskabet Af 1912 Aktieselskab and Aktieselskabet Dampskibsselskabet Svendborg (Moiler Steamship Company, Inc.); The De La Rama Steamship Co., Inc., and Swedish East Asiatic Co. Ltd. (De La Rama Lines); Ellerman & Bucknall Steamship Co. Ltd. (American & Manchurian Line); Fearnley & Eger and A. F. Klaveness & Co. A/S (Fern Line); Isthmian Steamship Company; Lancashire Shipping Company, Ltd. (Dodwell-Castle Line); N. V. Stoomvaart-Maatschappij "Nederland"; N. V. Nederlandsche Amerikaansche Stoomvaart Maatschappij "Holland-America Lijn"; N. V. Rotterdamsche Lloyd; The Ocean Steam Ship Company, Ltd., The China Mutual Steam Navigation Co. Ltd., and Nederlandsche Stoomvaart Maatschappij "Oceaan" (Blue Funnel Line); Prince Line, Ltd. (Prince Line); Silver Line, Ltd.; Skibsaktieselskapet Igadi A/S Besco and Aktieselskapet Ivaran Rederi (Ivaran Lines—Far East Service); T. & J. Brocklebank, Ltd.; United States Lines Company (American Pioneer Line); Waterman Steamship Corporation; Wilhelmsens Dampskibsselskabskab, A/S Don Norska—Og Australielinie, A/S Tonsberg, A/S Tankfart I, A/S Tankfart IV, A/S Tankfart V, and A/S Tankfart VI (Barber Steamship Lines, Inc., Agent).

<sup>9</sup> The New York and Porto Rico Steamship Company and Bull Insular Line, Inc.

<sup>10</sup> The Booth Steamship Company, Ltd.; Rederiaktiebolaget Disa, Rederiaktiebolaget Poseidon, and Angfartysaktiebolaget Tirfing (Brodin Line); Flota Mercante del Estado;

authorize the Commission "to prescribe either minimum free-time allowances or maximum demurrage charges for the port of New York."

As previously noted, section 17 provides that, whenever the Commission finds that certain regulations or practices are unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable regulation or practice. This constitutes an "unlimited grant to the Commission of the power to stop effectively all unjust and unreasonable practices in receiving, handling, storing or delivering property." *California v. United States*, 320 U. S. 577, 584. The court in that case affirmed the judgment in *State of California v. United States*, 46 F. Supp. 474, 479 (which in turn upheld an order of this Commission in Docket No. 555, *Practices of San Francisco Bay Area Terminals*, 2 U. S. M. C. 588), wherein it was held that "The allowance of free time is a 'regulation or practice' within the contemplation of § 17." True, as some of the carriers point out, that case concerned an order of the Commission which set a *maximum* free time whereas here involved is the question of whether the free time allowed is long enough. The distinction, however, is of no consequence so far as the instant jurisdictional question is concerned. Minimum free time, and demurrage practices as well, come within the broad scope of that language.

We are not here seeking to exercise rate-making power. The question before us is whether certain regulations and practices are just and reasonable—not how much the services of the carriers are worth. We held in Docket No. 555, *Practices of San Francisco Bay Area Terminals*, 2 U. S. M. C. 588, *affd.*, *California v. U. S.*, 320 U. S. 577, that carriers are bound to impose compensatory demurrage charges after the expiration of reasonable free time. If the currently effective tariff rates of demurrage are not compensatory, new rates should be published which are compensatory. We make no finding in this case as to whether existing rates are compensatory or not.

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International Freighting Corp., Inc.; A/S Liso, A/S Besco, and Aktieselskapet Ivarans Rederi (Ivaran Lines); Lamport & Holt Line, Ltd.; Linea Sud-Americana, Inc., Lloyd Brasileiro (Patrimonia Nacional); Moore-McCormack Lines, Inc.; Northern Pan-America Line A/S; Prince Line, Ltd.; Rederiaktiebolaget Svenska Lloyd, Stockholms Rederiaktiebolag Svea, and Rederiaktiebolaget Frederika (Norton Line—Joint Service); Sprague Steamship Agency, Inc.; Svenska Brazil La Plata Linjen; Wilh. Wilhelmsen, and Cia Argentina de Navegacion Dodero, S. A., all parties to United States Maritime Commission Agreement No. 7525; American Export Lines, Inc.; The Bank Line Limited; Ellerman & Bucknall Steamship Co., Ltd.; Isthmian Steamship Company; Thos. & Jno. Brocklebank, Ltd.; Seindia Steam Navigation Co., Ltd.; States Marine Corporation, and States Marine Corporation of Delaware, all parties to United States Maritime Commission Agreement No. 7555; The Union-Castle Mail Steamship Company, Ltd.; The Clan Line Steamers, Ltd.; British and South American Steam Navigation Company, Ltd.; Prince Line, Ltd.; and American South African Line Inc., all parties to United States Maritime Commission Agreement No. 7575, to which, as well as Agreement No. 7555, Ellerman & Bucknall Steamship Company, Ltd., also, is a party.

Motions to dismiss the proceeding for want of jurisdiction are denied.

Prior to 1937, cargo imported from foreign countries was allowed to remain on piers at the port of New York for indefinite periods. On November 16 of that year, the Commission, in Docket No. 221, *Storage of Import Property*, 1 U. S. M. C. 676, entered an order requiring respondents in that proceeding "to cease and desist, on or before January 21, 1938, from allowing more than ten (10) days' free time (exclusive of Sundays and legal holidays) on import property at the port of New York." While set as a maximum, this period, between the effective date of the order and 1941, was the free time that carriers actually allowed. In 1941, as stated in the notice instituting the instant proceeding, the Commission, for the purpose of minimizing congestion of the port in the interest of national defense, requested that the free time be reduced, and, in accordance with such request, a period of five days was generally put into effect. On property imported from South America or the Caribbean area, a period of six days was fixed as the free time. These periods are still in force. When they were established, Sunday and legal holidays were excluded therefrom, but they included Saturday. Since then, Saturday has been eliminated. It is these periods of five and six days, exclusive of Saturday, Sunday, and legal holidays, that are here in question. They commence at 8:00 A. M. of the day following completion of vessel's discharge of cargo, unless that day is a Saturday, Sunday, or legal holiday, and, if it is such, they begin at 8:00 A. M. of the first day after such completion that is not a Saturday, Sunday, or legal holiday. Under provisions of tariffs filed with the Commission, the commencement of free time may be deferred if shipments are not available to consignees upon application therefor. Cargo remaining on piers after the free time has expired is charged demurrage as follows: 2½ cents per 100 pounds or 1 cent per cubic foot (in some cases, 3½ cents per bag of 60 kilos) for the first five calendar days or fraction thereof, minimum 50 cents; 5 cents per 100 pounds or 2 cents per cubic foot (in some cases, 7 cents per bag of 60 kilos) for the second five calendar days or fraction thereof, minimum \$1; 10 cents per 100 pounds or 4 cents per cubic foot (in some cases, 14 cents per bag of 60 kilos) for each succeeding five (in some cases, 10) calendar days or fraction thereof, minimum \$2 for each period.<sup>11</sup>

<sup>11</sup> Demurrage is computed on the basis on which the cargo is freighted, except that, in some trades, if the cargo is freighted on a basis other than weight or measurement, the charges are computed on a weight or measurement basis, whichever yields the greater revenue.

Importers seek a minimum free time of ten days.<sup>12</sup> The Port of New York Authority proposes that the present free time be enlarged to seven days, exclusive of Saturday, Sunday, and legal holidays, on general cargo, and to the maximum ten-day period on coffee and cocoa beans.<sup>13</sup> The carriers' position is that the free-time periods now in effect are just and reasonable.

Before the unloading of cargo from ship to pier may be begun, permission to make the discharge must be secured from the collector of customs. Such permission is obtained after the ship's captain makes entry of the vessel, which he is required to do within 48 hours after the ship's arrival at quarantine. Likewise under customs laws and regulations, an importer is allowed 48 hours after such arrival to make entry of his goods.<sup>14</sup> Excluded from this period, which may be extended, are the day of arrival of the vessel at quarantine, Saturdays, Sundays, and legal holidays. If entry of the goods is not made within the time allowed therefor, which seldom occurs, customs, at the expense of the importer, sends them to a "general order" warehouse, which is a private warehouse designated by the collector of customs.

When entry of merchandise is made before 2 o'clock in the afternoon, the permit copy of the entry, bearing orders of the collector, is sent to the customs inspector on the pier, usually by means of government messenger,<sup>15</sup> on the same day. This informs the inspector as to whether the importer may remove the goods from the pier. If there are no further customs requirements to be met, except the singling out of packages for the appraiser's stores, and if the collector does not order the goods to be held for another government agency, such as the Food and Drug Administration of the Federal Security Agency or the Bureau of Entomology and Plant Quarantine of the United States Department of Agriculture, the importer, as far as customs is concerned, may remove them, with the exception of the packages designated to be sent to the appraiser's stores, as soon as they are discharged from the ship.

Goods are weighed by customs if ascertainment of their weight is necessary to find their value for the purpose of assessing duty. In such

<sup>12</sup> It is asked that Saturday, as well as Sunday and legal holidays, be excluded, but, if this request should be granted, the minimum would exceed the period ordered in *Storage of Import Property*, *supra*, to be observed as a maximum and agreed at the prehearing conference to be generally satisfactory as such.

<sup>13</sup> The suggested discrimination in favor of coffee and cocoa beans would violate our decision in Docket No. 482, *Storage Charges Under Agreements 6205 and 6215*, 2 U. S. M. C. 48, *affd.*, *Booth S. S. Co. v. U. S.*, 29 F. Supp. 221.

<sup>14</sup> It appears that entry may be made in respect to perishable merchandise in advance of the report of the vessel at quarantine.

<sup>15</sup> The importer may employ his own messenger.

cases, the carriers must place the merchandise on the piers so that it is not above shoulder height. Where the packages are uniform, approximately ten percent of the consignment is weighed. An effort is made to weigh the merchandise before the importers come for it, but in the last few years this could not generally be done because of the congestion on piers. Several days may intervene between the time of unloading of cargo from ship to pier and the time when pier conditions are such that it can be weighed. As stated by a customs witness, "we receive the greatest cooperation from the steamship people, but in many cases it is just a case where they have just no place to put it. They have no space to put these goods after they are weighed. So, we must wait until we get that space before we can even start on it." Where, due to such a condition, the weighing cannot be undertaken before the importer comes for his merchandise, customs resorts to "weighing to delivery," i. e., weighing as trucks arrive and are in a position to load. In cases where importers make the necessary arrangements with bonded warehouses, customs will weigh shipments there, but it is very seldom that space for weighing can be obtained at a warehouse.

At times, the necessity of weighing precludes the removal of cargo from piers within the free time. It does not result from this, however, that the free-time periods are unlawful. The weighing is not done for any reason that concerns the carriers but is an operation connected with a transaction between the importer and customs. It requires space in addition to that needed for the delivery of cargo. The delays which it entails are not attributable to the carriers and to make no allowance in the computation of free time for the time consumed on account of it is not unjust or unreasonable.

Samples to be sent to the appraiser's stores are taken, pursuant to order of the collector, by the inspector on the pier or by a sampler. They are conveyed to the appraiser's stores by government truck. It does not appear that the drawing of a sample causes the rest of the consignment to remain on pier after the expiration of free time. The evidence indicates that the government truck does not come to the piers for samples as promptly as it should and that some difficulty is experienced in finding particular packages that have been designated for the appraiser's stores. These matters, like weighing, are not factors that carriers are required to consider in fixing the duration of free time. Consequently, that samples remain on the piers after the expiration of free time because of them is not an indication that the free time allowed is unjust or unreasonable.

Imports may require sampling by the Food and Drug Administration. Whether cargoes contain commodities of such character is determined by inspection of the ships' manifests and of consular invoices. Several times a day an employee of the Food and Drug Administration examines the consular invoices in the invoice room of the appraiser's stores, to which they are routed from the customhouse as soon as customs entry of the invoiced shipments is made if there is not also to be a sampling made by the appraiser. If the appraiser decides to examine a portion of a shipment, the invoice in such case does not reach the appraiser's stores and so become available to the Food and Drug Administration until the sample for the appraiser's examination arrives there. This makes for delay. On 100 entries taken at random for a period in September 1947, the average time in customs of the invoices, i. e., the average time, including Saturdays and Sundays, between entry of shipments and availability of invoices to the Food and Drug Administration in the invoice room of the appraiser's stores, was 2.1 days. The time varied from a minimum less than a day, where the Food and Drug Administration received the invoice on the same day as the date of entry, to a maximum of ten days, which occurred once. The time consumed by the Food and Drug Administration from the time when it received the invoices from customs ranged from one day to eleven days, and averaged 4.6 days. Because of the type of examination which particular samples may require, the Food and Drug Administration may need up to three weeks to make its tests. Whether due to customs procedure or to the requirements of the Food and Drug Administration, or to both, the fact is that sampling by this agency is not always completed before free time commences or even before it expires. However, as testified by a witness from the Food and Drug Administration, the agency does not require goods to be left on the piers pending sampling by it. They are covered by a bond, may be removed as soon as the customs permit is issued, and inspected later. It is pointed out that, if an importer should ship goods to an inland point and they should thereafter be condemned, they would have to be transported back to New York. However, the carriers can hardly be required to accommodate cargo on their piers free of charge because it may fail to conform to the standard applicable to it. Moreover, while the Food and Drug Administration strongly recommends against the removal of goods beyond the port area, it will undertake to sample anywhere within that area. In fact, it is estimated that approximately one-fourth of the agency's samples are collected from shipments that have been removed from the piers and stored on importers' premises or in warehouses. Im-

porters refer to the scarcity of available warehouse space and to the expense involved in warehousing merchandise awaiting sampling, such as the cost of its transfer from pier and the charge made for labor at the warehouse, in addition to the storage charge. Such circumstances, however, have no effect on their ability to remove cargo from piers. They may cause them to decide that it is prudent to delay such removal, but it cannot be said that, on account of them, the free time allowed is unjust or unreasonable.

A person making entry of commodities subject to plant-quarantine regulations is required to give notice of the arrival of such plant material to the Secretary of Agriculture, and, before entry thereof is accepted by customs, there must be on file at the customhouse a permit issued by the Secretary of Agriculture to the Secretary of the Treasury allowing the material to come into the United States. No part of the free time need be used by the importer in securing the issuance of the permit. Immediately upon discharge or partial discharge of the plant material, examination thereof is made on the pier by an inspector of the Division of Foreign Plant Quarantines of the Bureau of Entomology and Plant Quarantine of the Department of Agriculture, and, before it has passed such inspection, it may not be removed from the pier. The inspection is made at or, as is usually true, before the time of weighing by customs. It is almost always completed within 24 hours after the shipment has been landed. Delays may be encountered if labor (which is required to be furnished by the importer) such as that employed in the opening of packages, is not provided as needed. If the inspector finds that the goods are entitled to entry, which is generally the case, they are released by customs. Certain commodities, such as raw cotton, are allowed to enter the country on condition that they will be treated, and, as soon as the importer designates the plant where his imports thereof are to undergo the treatment, they are released to that plant, and it is the duty of customs to see to it that they are delivered there and not released to the importer. If the importer is not prompt in designating the plant, removal of the goods from the pier is delayed. There is no indication that the requirements respecting plant quarantine cause goods to remain on piers after the expiration of free time.

Some commodities, before their removal from the piers, undergo certain processes for purposes unconnected with requirements of government agencies. Spanish olives, for example, are inspected and rebrined, and, where necessary, the barrels and casks containing them are repaired, by or on behalf of the importer. In order that the rebrining may be done, the barrels and casks must be placed on bilge with bungs up, and they must not be stacked one above the other. If they

are so stacked, time is consumed in waiting for the carrier to break down the tiers and place the olives in the required position. One of the carriers has "headed up" cargo two or three tiers high, but its witness testifies that that was done three years ago. Since then, there was portion of a shipment that was "headed up" upon its discharge from vessel, but it was placed on bilge immediately after the unloading of the ship's cargo had been completed.

Waiting for customs and the Food and Drug Administration to accomplish their tasks which, in one case they did not do until eleven days after completion of the ship's discharge, appears to be the principal reason for the delay in effecting removal of olives from piers. In view of what has been said above as regards these agencies, such cause is not sufficient ground to require a modification of free-time practices. The opinion is expressed that "the carrier is held responsible for the condition of the goods, and if those goods go to a warehouse and they are in bad condition, by neglecting to fix them or rebrine them, then he is responsible and he pays a claim." Without passing on the correctness of this opinion, since it is not for the Commission to determine, it is noted that the purpose of the rebrining, which is done for the account of the importer, is "to prevent spoilage in transportation by truck or by lighter and railroad to the plants of the importers." It may be stated, moreover, that, if the view expressed is correct, it may warrant the carriers' considering whether the free-time periods should not voluntarily be lengthened, but it would not justify a requirement by the Commission that more free time be allowed.

Coffee and coca beans, besides being sampled by the Food and Drug Administration, are subjected to sampling by the importers. Coffee roasters have plants in various parts of the country, and, as testified by a witness for the coffee trade, a roaster "has got to be extremely careful that the particular lot that he is sending to his plant for his roasting requirements is in line with the formula or the procedure of the plant, and for that reason, they must definitely inspect, grade, and cup the various lots of the coffee." With the utmost speed, two days are required to complete the test. Meanwhile, the balance of the cargo from which the samples are drawn remains on the piers. In the case of cocoa, the procedure is simpler. It involves inspecting and grading, but not roasting, which is the major time-consuming element in the testing of coffee, or cupping, as tasting is called. As regards either commodity, the sampling is not an operation required in connection with delivery by the carriers. Therefore, it can provide no valid ground to contend that the free time allowed is unjust or unreasonable.



The principal reasons for seeking more free time for coffee and cocoa beans are that 80 percent of such traffic imported through the port of New York is removed from piers by the use of lighters; that the lighters are not always available as needed to accommodate the large volume of these commodities discharged from vessels, and that, when they are secured, it is difficult to find space for them at the piers.

Lighters, like railroad cars or trucks, are furnished, not by the water carriers that allow the free time, but by railroad or other companies, which send them to the piers pursuant to orders of the importers. If they are not available when the time for delivery of cargo arrives, such unavailability can have no effect as indicating that the free time allowed is unlawful. Persons importing merchandise may reasonably be assumed to have, or to be able promptly to obtain, the equipment needed to receive it. It is not necessary, in fixing free time, to allow for delays that may be encountered in the procurement of equipment. Consequently, so far as the availability of lighters is concerned, there is no warrant for holding that the free time which the carriers allow is unjust or unreasonable.

Delay experienced in securing space at piers for lighters is discussed below.

Wood pulp, which is sold on a dry basis, normally is tested on piers by the importer in respect to its moisture content before it is shipped to mills in the interior. For some time, the importers have been able to have the testing waived, but the resumption thereof at a future date is expected. No more warrant exists for its consideration than for that of commercial sampling of coffee or cocoa beans in the fixing of free time. Nor is it the principal reason for seeking additional free time for wood pulp. The chief concern expressed in regard to this commodity is that large quantities thereof, such as 1,000 to 1,500 tons, destined to the same consumer mill cannot be moved from the piers within the free time because, to quote from the testimony of an importer's witness, "the railroads are unwilling to put more cars into that particular mill than they are able to unload in a given period," this due to the fact that "the cars back up along the line, and the railroad people are in trouble." This indicates that the difficulty is that the interior mill to which the importer consigns the wood pulp does not have the facilities to receive it as fast as it could be shipped, not that the free time allowed for the removal thereof from piers is unjust or unreasonable.

The foregoing discussion disposes of the questions presented by the record relative to delays which result from Government procedures and trade practices which tend to impede the removal of cargo from

piers. As to these matters, we accept the examiner's recommendations and hold that the carriers, in determining the duration of free time, are not obliged to take account of delays in the removal of cargo which arise from the causes hereinabove discussed.

We next consider whether free time of five or six days, as provided by the tariffs presently in force, is reasonably adequate to enable the carriers to effect delivery before the inception of demurrage. It should be noted that free time is granted by the carriers not as a gratuity, but solely as an incident to their obligation to make delivery. *The Eddy*, 5 Wall. 481, 495; *The Titania*, 131 F. 229, 230. This is an obligation which the carrier is bound to discharge as a part of its transportation service, and consignees must be afforded fair opportunity to accept delivery of cargo without incurring liability for penalties. Free time must be long enough to facilitate this result—but need not be longer. As stated in Docket No. 221, *Storage of Import Property*, 1 U. S. M. C. 676, 682:

As a proper part of their transportation service respondents should allow only such free time as may be reasonably required for the removal of import property from their premises, based on transportation necessity and not on commercial convenience.

The best index to the adequacy of free time is evidence relative to the frequency and amount of demurrage assessments. If demurrage were assessed with great frequency, or in large amounts, it would suggest that free time is inadequate for delivery. If, on the other hand, demurrage is the exception rather than the rule, and the amounts of demurrage are small, we must infer that cargo is normally deliverable and delivered within free time, and that free time is adequate.

Olive importers claim that "our members have paid out thousands of dollars in demurrage charges for not being able to move their olives from the piers within the free-time period when they have not been responsible for the delays at all." No evidence was offered, however, to support this general assertion. An importer of rubber and spices, while stating that "about 25% of our imports are subject to demurrage," declined to substantiate the assertion by producing his company's records. A traffic manager for a large food importer was unable or unwilling to furnish any information as to demurrage paid by his company or his industry except that his company had once paid \$12.41 on 20,000 cases of pineapple and on another occasion \$2.91 on 250 bags of coffee. The same witness said "*We never worry about the penalty charge.*" Asked whether he made every effort to take delivery within free time, he answered, "Yes, we make every effort. We pay terrific—well, very high transportation charges."

Only one importer ventured to estimate his demurrage cost over a period of time. He said that his company paid \$1,800 demurrage in 1946 on food imports involving \$400,000 of ocean freight—the ratio of demurrage to freight being less than half of one percent. This percentage, small as it is, may be higher than the average because the company against which the demurrage was assessed imports figs and dates in quantities so large as to retard inspection by the Food and Drug Administration.

Importers contended during oral argument that statistics as to amounts of demurrage collected should have been furnished by the carriers. The carriers, however, are not seeking relief from their own regulations. That relief is sought by the importers, and it was incumbent upon them to prove the facts on which their case depended. We cannot assume, in the absence of proof, that demurrage penalties are sustained with excessive frequency or in unwarranted amounts. The record being without support for a finding that demurrage is unduly burdensome cannot and does not require or authorize a conclusion that existing free time is inadequate, since demurrage, is, in at least a general way, a measure of the inadequacy of free time.

We have not overlooked the hardships to importers which result from traffic conditions at the piers. The piers themselves are heavily congested with cargo, import and export. Many are old, and inadequate to accommodate readily the cargoes of large modern ships, or to afford easy access and adequate maneuvering space for trucks. These conditions slow down the delivery of import cargo, with the result that trucks which call for it are delayed in long queues at the pier entrances. A particular truck may wait for many hours and then may be turned away without a load, in which event it must return at a later hour or on another day. Trucking is inefficient and expensive in these circumstances, which account for the testimony above quoted of the witness who said that although he tried to take delivery within free time, the effort involved “terrific” transportation (i. e., trucking) charges.

The congestion of trucks has its counterpart with respect to lighters, which carry the greater share of the traffic. Lighters may be and often are blocked out by ships alongside the piers, and are long delayed in finding a place at the apron. We may infer that such delays do not improve the economy of lighterage.

The importers claim that congestion and delay would be reduced or eliminated if free time were extended to ten days. This contention is negated by testimony that importers' trucks would still present themselves at the pier at the earliest possible moment and would “park on the doorstep” until loaded. If all importers did the same (and all

profess eagerness to obtain their goods promptly), congestion would not be reduced.

But even if an extended free-time period should have the effect which importers claim for it, it does not follow that we should or may order the extension unless extension is necessary to assure delivery of cargo without unwarranted penalties. As previously indicated, free time is not a gratuity to consignees. It is allowed solely to permit fulfillment of the carrier's obligation to deliver the goods. It need not exceed "a reasonable time allowed for their removal." *The Titanica*, 131 F. 229, 230. A "reasonable time" must be determined with due regard for the rights of all parties, including carriers as well as importers, and especially for the public interest, which requires that congestion of ports be minimized in the interest of efficient water transportation.

The record amply demonstrates that the port of New York is congested, some witnesses having described the congestion as worse than in 1941 when we informally requested that free time be reduced below ten days. Witnesses for the steamship lines testified convincingly that free time cannot be increased without aggravating the congestion<sup>16</sup> and the record contains no reliable evidence to the contrary.

We do not minimize the inconvenience to importers of meeting five-day or six-day deadlines on expiration of free time. The significant fact, however, is that they are meeting them with considerable success, and that import traffic is now moving across the piers more rapidly than it did under the ten-day rule. There was testimony that "a greater percentage of each vessel's cargo is delivered within six days under present conditions than was delivered within six days when the free time was ten days." It thus appears that the shorter free time allowance is promoting the efficiency of the port and that we could not require a general enlargement of free time without risking disorganization of pier operations. Conceding that the removal of property

<sup>16</sup> A witness appearing for a group of lines which allow six days of free time testified:

"It not only seems evident to us, but it is positively evident, based on continual study, that we are making, that were we to extend free time beyond the present six-day period, it would certainly have the effect of increasing the congested condition which exists in New York at the present time, and would, within a short time, make it impossible—and I would like to stress the word 'impossible'—for many of our lines, if not all of them, to not only deliver their cargo in good order, but even find it for delivery on the pier.

"Now, to explain a little bit what I mean by that, I should say that a number of our lines operate their services with considerable frequency. Some of them have vessels coming in here at the rate of three and four per week. We are very certain that unless the cargo from one ship is completely delivered by the time the next ship arrives, the next ship is going to cause congestion by reason of the combination of cargo remaining on the pier from the vessel plus the discharge of the second vessel, and as successive vessels arrive, that condition is going to become materially worsened, and within a very short time not over 30 days, the conditions on those piers will be impossible."

within five or six days imposes substantial burdens on importers, we are nevertheless compelled to find that the law and the evidence do not justify the transfer of those burdens to the carriers in the form of extended free time.

We do find that under the conditions currently prevailing in the port of New York, five days is the shortest time that affords to consignees a reasonable opportunity to take delivery of imports. A tariff providing for less than five days of free time would, under existing circumstances, be unjust and unreasonable. No tariff specifically provides for less than five days of free time at New York, but several tariffs are so phrased that they fail to assure consignees of any free time whatever. An example is tariff No. 4 under Agreement No. 7115, which provides in relevant part:

1. A maximum free time period not to exceed six days exclusive of Saturdays, Sundays, and legal holidays shall be observed. Any cargo not removed from the piers within this free-time period, shall be placed in public storage at the risk and expense of the cargo.

2. The carriers do not waive but they reserve all provisions of their bills of lading including those whereby removal may be required within a shorter period than six days.

\* \* \* \* \*

4. Free time expires at 5:00 P. M. on the sixth day after its commencement, including the day it starts but not including Saturdays, Sundays, and legal holidays.

These provisions do not guarantee six days of free time as a minimum; they merely authorize six days as a maximum. By reservation of the provisions of bills of lading "including those whereby removal may be required within a shorter period than six days," they deprive consignees of the right to insist upon any allowance of free time except at a carrier's election. This follows from the fact that bills of lading almost universally provide for transportation only to the end of ship's tackle. A provision for ship's tackle delivery is obviously one "whereby removal may be required within a shorter period than six days."

In the port of New York, delivery can seldom, if ever, be made at the end of the ship's tackle. In these circumstances, a provision in the bill of lading purporting to require the receipt of cargo at ship's tackle, is inconsistent with the common-law requirement of "due and reasonable notice to the consignee, so as to afford him a fair opportunity to remove the goods." (*The Eddy*, 5 Wall, 481, 495.) Moreover, regardless of the actual ability or inability of carriers to deliver at ship's tackle, it is the established custom of the port to make delivery to the dock; and such custom supersedes all contrary provisions of bills of lading (*The Titania*, 131 Fed. 229, 232).

We hold that a tariff which fails to assure to consignees a minimum of five days of free time, and which authorizes "public storage at the risk and expense of the cargo" prior to the expiration of five days' free time (exclusive of Saturdays, Sundays, and legal holidays) is an unjust and unreasonable regulation under the conditions which now prevail at the port of New York.

The examiner recommended that "the tariffs should be revised so as to show the full free time allowed, including that prior to 8:00 A. M. of the day following complete discharge of the vessel." This recommendation refers to the carrier's practice of allowing some cargo to be removed by consignees while the vessel is discharging and before tariff free time officially begins. While this practice involves a possibility of discrimination between consignees, there is no evidence of actual discrimination, and we consider the general practice to be proper because it speeds delivery: one group of carriers delivers about 28 percent of in-bound cargoes during the period of discharge. While approving the practice, as such, we do not feel justified in requiring here that free time be defined in the tariffs to include any part of the period of discharge, since such definition might imply a right in consignees to enter the pier and demand their cargoes as soon as landed. To confer that right would be impracticable because the carriers, in order to operate efficiently, must retain the power to exclude the public, except as admittance may conveniently be granted, until a vessel's entire cargo has been landed, sorted, and laid out in accessible position.

We cannot agree with the examiner's recommendation that free time be extended to take account of the waiting time of trucks and lighters. The suggested rule would, in our opinion, result in less efficient operation, to the detriment of all concerned. Under the examiner's proposal, a consignee who applied unsuccessfully for his cargo would be told by the carrier when to apply again and the interval between his first and second applications would be added to the free time. This system would enable the carrier or its pier personnel to prefer favored shippers by granting them "appointments" to receive their cargo at their own convenience. It would invite bribery of delivery clerks. It could promote disputes between truck drivers if those returning at appointed times were served ahead of others awaiting their turn in line. It would frequently present problems of identifying the cargo to which the time extension applied: if a 10-ton truck should call for part of a 1,500-ton shipment, would the extension apply to 10 tons or to 1,500? If to 10 tons, to which 10?

We do not share the examiner's view that a notice of availability of cargo should be required in order to start the running of free time.

The requirement would merely postpone the removal of cargo by as long a time as the notice took to reach the consignee, and would serve no discernible need. Consignees are universally apprised of the arrival of vessels and routinely inform themselves by telephone, messenger, or reference to shipping publications, as to the availability of their cargoes and the commencement and expiration of free time. Insistence upon a notice of availability would subject the carriers to extra work and expense that would be largely futile, and which appears quite unjustifiable.

As noted above, the demurrage rates in force at New York are on a geometrically progressive scale, beginning at 2½ cents per hundred pounds for the first five days after expiration of free time, increasing to five cents for the second five-day period and to ten cents for each five-day period thereafter. While there is testimony purporting to show that these rates, even at the top of the scale, are non-compensatory to the carriers, it is undisputed that the demurrage rate structure is penal in purpose, intended to clear the piers.

Special problems develop in consequence of the penal demurrage scale, when port-wide conditions arise which prevent the removal of cargo until free time has expired and demurrage has accrued. General disability to remove cargo may result from various causes, of which the most frequent cause in recent years has been labor strife. During the latter part of 1946, the port of New York was crippled by strikes of seafaring personnel and truck drivers. Large quantities of cargo were immobilized on piers pending settlement of the disputes, and demurrage at penalty rates was assessed against many consignees.

In considering the effect of strikes on the rights of the parties, a distinction must be drawn between strikes which involve employees of carriers and those which involve others. Strikes by employees of carriers present no regulatory problem on the present record, since the carriers recognize that when delivery is prevented by strikes of their own employees, free time must be extended. One witness testified that "any condition or any delay brought about by the inability of our lines to tender for delivery due to the seamen strikes or to the picketing of the pier by servants of the vessel by reason of that strike, we were responsible for, and we were obliged to extend free time for a comparable period." This principle is expressly recognized in some of the tariffs.

The tariff under Agreement No. 6015 provides:

\* \* \* The foregoing provisions in respect to the commencement of free time is based upon the assumption that individual shipments or portions thereof are available for delivery to consignees upon application therefor.

Tariff No. 4 under Agreement No. 7115 provides:

Should any individual shipment or portion thereof, upon application therefor, be unavailable for delivery to the consignee at any time during the free time period, the expiration of the free time period on the unavailable cargo shall be extended for a period equal to that during which said cargo was not available for delivery.

We believe that such provisions as these afford adequate protection to consignees against the assessment of demurrage where, due to strikes of carrier personnel, or other impediments, cargo cannot be tendered for delivery.

A different situation exists in a case such as a truck drivers' strike, which is no responsibility of the carrier, but which effectively prevents consignees from removing their shipments. During the 1946 trucking strike, many piers were blockaded by the physical or moral force of picket lines established by drivers or their sympathizers, and demurrage was assessed on many shipments which, although available for delivery, consignees could not remove. In such cases, neither carriers nor consignees are at fault. Both are helpless bystanders. Consignees claim that, being free from fault, they should not be obliged to pay demurrage, and carriers, equally faultless, insist that we should not require them to waive it.

It is clear to us that where carriers and consignees are jointly affected by conditions beyond their control, neither should be subjected to an avoidable penalty, and neither should be permitted to profit from the other's disability.

Demurrage charges have a dual composition, consisting of an element of compensation for the storage of property, and an element of penalty to induce its removal. *Chrysler Corp. v. N. Y. Central R. Co.*, 234 I. C. C. 755, 759. When property lies at rest on a pier after free time has expired, and consignees, through reasons beyond their control, are unable to remove it, the penal element of demurrage charges assessed against such property has no effect in accelerating clearance of the pier. To the extent that such charges are penal—i. e., in excess of a compensatory level—they are a useless, and consequently unjust burden upon consignees, and a source of unearned revenue to carriers. The levying of such penal charges, therefore, constitutes an unjust and unreasonable practice in connection with the storing and delivering of property, and should be forbidden.<sup>17</sup> The carrier is entitled, however,

<sup>17</sup> An individual consignee is not relieved of his normal liability for demurrage, when his disability to remove his shipments results merely from a strike of his own personnel. (Compare *National Cooperage and Woodware Co. v. Alton and S. R.*, 241 I. C. C. 183). The cases which call for a departure from penal scales of demurrage are those in which community-wide disturbances (of which trucking strikes are a good example) render it impossible for consignees as a class to take possession of their cargoes.



to fair compensation for sheltering and protecting a consignee's property during the period of involuntary bailment after expiration of free time.

The Interstate Commerce Commission has consistently held, in relation to car demurrage, that where a locality is paralyzed by a strike against transport facilities, cars detained at or en route to that locality, in consequence of strike conditions, are not subject to demurrage at rates in excess of compensatory levels. *Balfour, Guthrie & Co., Ltd. v. Chicago, M., St. P. & P. R. Co.*, 235 I. C. C. 437; *Chronicle Publishing Co. v. Great Northern Ry.*, 243 I. C. C. 279. *Croce v. N. Y. Central R. R. Co.* (I. C. C., No. 29688, decided August 5, 1948). Compare *Chrysler Corp. v. N. Y. Central Ry. Co.*, 234 I. C. C. 755.

In the *Balfour, Guthrie* case, *supra*, the Commission said (235 I. C. C. at 440):

It is clear, however, that with respect to the cars held on the docks the collection of charges substantially in excess of the cost of furnishing the cars was futile as a deterrent against excessive detention and could not have accomplished the release of the cars if the charges had been several times the amount collected. Likewise, such charges could not have accomplished the prompt release of the cars held in the outer yards. The cars were held because of the intervention of a force entirely beyond the control of both shipper and carrier. None of these cars could have been moved as originally consigned without the possibility of precipitating violence and danger of bloodshed. The longshoremen's strike was, in effect, a strike against transportation facilities over which the shippers had no control. It differed in that respect from the ordinary industrial strikes. While such a condition should not relieve the shipper from the liability of reimbursing the carrier for the expense it suffered by reason of the detention of its equipment, there is no sound reason why defendants should be permitted to collect charges, designed to force the release of such equipment, that are substantially in excess of the cost of furnishing the cars. Defendants should not be permitted to make sizable profits at the expense of the shipper who, in the circumstances, was powerless to release the cars.

This proceeding is not a rate case, and affords no sound basis upon which we may determine whether the first-period penalty rate of 2½ cents per hundred pounds is or is not a compensatory rate. We make no suggestion that the rate of 2½ cents per hundred pounds for five days, or any other rate, is sufficient to reimburse a carrier for its expenses in storing cargo, or to yield a profit. We hold, however, that demurrage charges *at penal levels* are not justifiable by reference to a carrier's need for revenue. As stated in *Croce v. N. Y. Central R. R. Co.* (*supra*, I. C. C. No. 29688, decided August 5, 1948), a case involving demurrage on railroad equipment:

\* \* \* the consequences of strikes and car shortages should not be visited at random upon individual shippers in the form of demurrage charges far in excess of those generally regarded as reasonable when the shipper is able to

establish that unloading of the cars is impossible. Deficiencies in railroad revenues resulting from causes of this character are matters calling for consideration in general revenue proceedings.

For present purposes we must, and do, assume that the minimum demurrage charge, imposed with respect to the first five-day period after expiration of free time,<sup>18</sup> represents a compensatory charge for that period (See Docket No. 555, *Practices of San Francisco Bay Area Terminals*, 2 U. S. M. C. 588; aff'd *California v. U. S.*, 320 U. S. 577). In the absence of proof, or of a basis for valid inference, that the cost of harboring demurrage cargo doubles in the second period and quadruples in the third, we find that the charges for the second and third periods are penal to the extent of the excess of those charges over charges for the first period.

We, therefore, hold that in cases where consignees are prevented from removing their cargoes by port-wide trucking strikes, weather, or other port-wide factors not subject to consignee's control, carriers should be limited, for the duration of the strike or other condition, to the first-period demurrage charges. If those charges are not compensatory, the carriers should amend their tariffs by the publication of such new demurrage rates as meet their needs and the requirements of law.

The carriers are, of course, precluded from assessing any demurrage whatever when, because of strikes of their own personnel, or for any other reason, they are unable, or refuse, to tender cargo for delivery.

We find as follows:

1. Free time of five days (exclusive of Saturdays, Sundays, and legal holidays), computed from the start of business on the first day after complete discharge of the vessel, is adequate free time on import property at New York under present conditions.

2. Free time on import property at New York shall not be less than five days, except as the Commission may hereafter direct.

3. Where a carrier is for any reason unable, or refuses, to tender cargo for delivery, free time must be extended for a period equal to the duration of the carrier's disability or refusal.

4. Where a consignee is prevented from removing his cargo by factors beyond his control (such as, but not limited to, trucking strikes or weather conditions) which affect an entire port area or a substan-

<sup>18</sup> Counsel have directed our attention to the fact that when the Interstate Commerce Commission orders partial abatement of demurrage on equipment detained by strike conditions, it permits collection of reasonable compensation over the entire period of detention resulting from the strike, *without allowance of free time*. See *Oroce v. N. Y. Central R. R. Co.*, *supra*. We do not deem it necessary to borrow that rule for application to the present case, since carriers' rates for transportation are presumably fixed at levels which take account of free time.

tial portion thereof, carriers shall (after expiration of free time) assess demurrage against imports at the rate applicable to the first demurrage period, for such time as the inability to remove the cargo may continue. Every departure from the regular demurrage charges shall be reported to the Commission.

5. The Commission makes no finding approving or disapproving demurrage rates presently effective as to import property at the port of New York.

3 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION,  
held at its office in Washington, D. C., on the 19th day of October  
A. D. 1948

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No. 659

FREE TIME AND DEMURRAGE CHARGES AT NEW YORK

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By order dated May 29, 1947, and published in the Federal Register on June 7, 1947, the Commission ordered that public hearings be held with respect to free time and demurrage charges on import property at the port of New York.

Hearings were held accordingly and the Commission on the date hereof made and filed a report incorporating its findings, which report is incorporated herein by reference. The findings of the Commission, as therein set forth, are as follows:

1. Free time of five days (exclusive of Saturdays, Sundays, and legal holidays), computed from the start of business on the first day after complete discharge of the vessel, is adequate free time on import property at New York under present conditions.

2. Free time on import property at New York shall not be less than five days, except as the Commission may hereafter direct.

3. Where a carrier is for any reason unable, or refuses, to tender cargo for delivery, free time must be extended for a period equal to the duration of the carrier's disability or refusal.

4. Where a consignee is prevented from removing his cargo by factors beyond his control (such as, but not limited to, trucking strikes or weather conditions) which affect an entire port area or a substantial portion thereof, carriers shall (after expiration of free time) assess demurrage against imports at the rate applicable to the first demurrage period, for such time as the inability to remove the cargo may continue. Every departure from the regular demurrage charges shall be reported to the Commission.

II

5. The Commission makes no finding approving or disapproving demurrage rates presently effective as to import property at the port of New York.

It is hereby

*Ordered*, That the foregoing findings be and hereby are adopted as rules of the Commission; and it is further

*Ordered*, That such rules shall be binding upon all common carriers by water in foreign commerce with respect to regulations and practices affecting free time and demurrage on import property at the port of New York; and it is further

*Ordered*, that on or before the effective date of this order, all tariffs of such carriers relative to free time and demurrage on import property at the port of New York be conformed to the findings and rules herein set forth; and it is further

*Ordered*, That this order become effective December 15, 1948.

It is further ordered that this order be published in the Federal Register.

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

SUPPLEMENTAL ORDER No. 1

At a Session of the UNITED STATES MARITIME COMMISSION,  
held at its office in Washington, D. C., on the 14th day of April A. D.  
1949

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No. 659

FREE TIME AND DEMURRAGE CHARGES AT NEW YORK

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The Commission having published in the Federal Register of March 4, 1949, a notice of proposed amendment to finding No. 2 of its report and order of October 19, 1948, in this proceeding, as follows:

Free time on import property at New York shall not be less than five days, except on property of such a special nature as to require earlier removal because of local ordinances or other governmental regulations, or because piers are not equipped to care for such property for such period, or except as the Commission may hereafter direct.

and the thirty-day period provided in said publication for the submission to the Commission of written views and suggestions on said amendment having expired, and none having been received objecting to the amendment or which would require any change in the wording of the amendment; it is

*Ordered*, That the amendment as above written be, and it is hereby, made to finding No. 2 of the Commission's report and order of October 19, 1948, in this proceeding; and it is further

*Ordered*, That the said amendment shall be binding upon all common carriers by water in foreign commerce with respect to regulations and practices affecting free time and demurrage on import property at the port of New York; and it is further

*Ordered*, That the said amendment be published in the Federal Register, to become effective thirty days thereafter; and it is further

*Ordered*, That any or all of the exceptions authorized by the amendment herein used by any common carrier by water in foreign commerce shall be published in the tariffs of such carrier on or before the effective date of said amendment or prior to the date of a later initiation of such use.

By the Commission.

[SEAL]

(S) A. J. WILLIAMS,  
Secretary.

# UNITED STATES MARITIME COMMISSION

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No. 658

## BILLS OF LADING—INCORPORATION OF FREIGHT CHARGES

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*Submitted November 8, 1948. Decided May 5, 1949*

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The Commission does not have jurisdiction to order carriers in the export trade to incorporate their freight and other charges in their bills of lading.

*Roscoe H. Hupper, Burton H. White, and John C. McHose* for Trans-Atlantic Associated Freight Conferences; *Herman Goldman, Elkan Turk, Leo E. Wolf, and Elkan Turk, Jr.*, for Far East Conference and American West African Freight Conference; *James S. Hemingway and John R. Mahoney* for Associated Latin-American Freight Conferences; *Harold B. Finn* for India, Ceylon and Burma Outward Freight Conference, U. S. A./South Africa Conference, and River Plate and Brazil Conferences; *William Radner and Odell Kominers* for United States Atlantic and Gulf-Puerto Rico Conference and United States Atlantic and Gulf-Santo Domingo Conference; *Wilbur La Roe, Jr., Frederick E. Brown, Arthur L. Winn, Jr., and Samuel H. Moerman* for Port of New York Authority; *Graham & Morse and L. K. Vermille* for Pacific Coast River Plate Conference, C. A. P. C. A. Freight Conference, Pacific Coast and Caribbean Sea Ports Conference, Pacific Coast Mexican Freight Conference, Pacific Coast Panama Canal Conference, Pacific West Coast of South America Conference, and Pacific Coast European Conference; *J. F. Turf* for National Industrial Traffic League; *Manuel J. Avila* for Foreign Trade Association of Southern California; *Robert E. Williams, Edwin A. McDonald, Jr., and T. R. Stetson* for Pacific Coast Borax Company; *Hymen I. Malatzky* for Maritime Audit & Adjustment Service and Bergen Shipping Service; *C. A. Buck* for Export Managers Club of Los Angeles; *W. E. Maley* for Los Angeles Traffic Managers Conference; *W. C. Paul* for Union Oil Company of California; *C. E. Jacobson* for Los Angeles Chamber of Commerce; *James A. Keller*

for Pacific Coast Cement Institute; and *H. A. Leatart* for American Potash & Chemical Company.

*Paul D. Page, Jr.*, and *George F. Galland* for the Commission.

### REPORT OF THE COMMISSION

#### BY THE COMMISSION :

On December 5, 1946, there was published in the Federal Register a notice inviting all parties interested therein to file with the Secretary of the Commission, within 30 days of the publication of the notice, written material relevant to the issues presented by the following proposed rule :

Every common carrier by water engaged in the transportation of property from points in continental United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands to foreign points, shall incorporate in the original and all copies of bills of lading or other shipping documents the rates and charges for or in connection with such transportation, except for cargo loaded and carried in bulk without mark or count, irrespective of whether such bills of lading or other shipping documents are prepared by the carrier or by any other person for the signature of the carrier.

On May 2, 1947, it was announced that carriers, shippers, forwarders, and others had submitted their views on the proposed rule in written communications, and that after consideration thereof no action thereon would be taken except after public hearings held pursuant to sections 17 and 22 of the Shipping Act, 1916, and section 4 (a) of the Administrative Procedure Act. Notice of such hearing was published in the Federal Register on May 7, 1947, and hearings were duly held at New York, N. Y., Los Angeles, Calif., and Chicago, Ill., at which shippers, carriers, traffic associations, and the Port of New York Authority participated.

The examiner recommended that the Commission should find that it had no jurisdiction to order carriers in the export trade to incorporate their freight and other charges in their bills of lading, and that even if such jurisdiction did exist, the proposed rule was neither necessary nor desirable. The only exceptions to the recommendations conceded that the proposed rule was neither desirable nor necessary at the present time, but urged that we should find that we have jurisdiction in the matter. Oral argument was not requested. Our conclusions, to the extent of our findings, agree with those of the examiner.

The proceeding is premised upon the second paragraph of section 17 of the Shipping Act, 1916, which provides that whenever we find any regulation or practice "relating to or connected with the receiving, handling, storing, or delivering of property" to be unjust or unreasonable, we "may determine, prescribe, and order enforced a just and



reasonable regulation or practice." It must be conceded that the proposed rule does not relate to, nor is it connected with, "handling, storing, or delivering of property." It therefore must be related to or connected with the "receiving" of property to come within the purview of section 17, and therefore within our jurisdiction. There is no indication in the act itself as to what Congress intended by the word "receiving," nor is there anything in the testimony before the congressional committees or in the debates on the floor of the Congress to assist us. Our conclusions must of necessity be founded upon the general intent of Congress.

It is significant that in the Shipping Act, 1916, a distinction is made between domestic and foreign transportation. Our jurisdiction over domestic commerce is much broader in scope and more definitely defined than over foreign commerce. Section 18 of the act, relating to domestic commerce, requires carriers engaged therein to "establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto and to the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, \* \* \* and all other matters relating to or connected with the receiving, handling, transporting, storing, or delivering of property."

We are given specific authority under such section to determine, prescribe, and order enforced just and reasonable regulations or practices in connection with, not only the receiving, handling, storing, or delivering of property but also the transportation thereof, as well as the rates, fares, charges, and the form and substance of tickets, receipts, and bills of lading applicable thereto. This section is so carefully worded as to show a distinction between the processes of transportation and those applicable to the activities which precede and follow the actual transportation. On the other hand, section 17, second paragraph, is confined to the receiving, handling, storing, or delivering of property, to the exclusion of transportation and rates, fares, and charges in connection therewith.

Among other legislation relating to transportation and the issuance of bills of lading for the protection of the shipping public are the Harter Act (46 U. S. C. sec. 190), the Carriage of Goods by Sea Act, 1936 (46 U. S. C. sec. 1300), and the Federal Bills of Lading Act, 1916 (49 U. S. C. sec. 81). In none of them is it made mandatory for the carrier to place on the bills of lading the freight and other charges connected with transportation. The Harter Act, which is now limited to domestic commerce insofar as transportation is concerned, requires the placing on the bill of lading marks necessary for identification,  
3 U. S. M. C.

number of packages and quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of the merchandise. Under the Carriage of Goods by Sea Act, which pertains to transportation in the foreign trade, a carrier is not required to issue a bill of lading except *on demand of the shipper*, and even in such case there need be shown only the leading marks of the goods, either the number of packages or pieces, or the quantity or weight, and the apparent order and condition of the goods. While that Act did not specifically preclude a regulatory agency from requiring the incorporation of freight charges on the bill of lading if the agency had authority to do so, the grant of such authority must be clear and explicit.

A bill of lading is both a receipt and a contract, and under certain circumstances it is also documentary evidence of title to the goods. *The Delaware*, 81 U. S. 579; *Amerlux Steel Corporation v. Johnson Line* (9 CCA), 33 F. (2d) 70; *Aktieselskabet Bruusgaard v. Standard Oil Co.* (2 CCA), 283 Fed. 106; *The Esrom* (2 CCA), 272 Fed. 266. In *Bills of Lading*, 52 I. C. C. 671, which was an investigation by the Interstate Commerce Commission "into the practices of carriers with respect to the form and substance, and the issuance, transfer, and surrender of bills of lading \* \* \*," it was stated as follows:

Contracts between shippers and carrier, however, are almost invariably evidenced by the more or less formal bill of lading, written or printed, which serves three distinct functions: First, a receipt for the goods; second, a contract for their carriage; and, third, documentary evidence of title to the goods. As a receipt for the goods, it recites the place and date of shipment; describes the goods, their quantity, weight, dimensions, identification marks, condition, etc., and sometimes their quality and value. As a contract, the bill names the contracting parties, specifies the rate or charge for transportation, and sets forth the agreement and stipulations with respect to the limitations of the carrier's common-law liability in the case of loss or injury to the goods and other obligations assumed by the parties or to matters agreed upon between them. That part of the bill which constitutes a receipt may be treated as distinct from the part incorporating the contractual terms. (P. 681.)

From the above authorities it is clear that freight charges, when placed on the bill of lading, are not a part of the receipt for the goods but a part of the contract of transportation. This conclusion is strengthened by the decision in *Alaska S. S. Co. v. United States*, 259 Fed. 713, which was an appeal from the decision of the Interstate Commerce Commission in *Bills of Lading, supra*. In that case, the majority of the court held that the Interstate Commerce Commission had no power to draw carriers' bills of lading, in spite of the fact that the Interstate Commerce Act contained a provision giving the Commission authority similar to that conferred upon us by section 18 of the Shipping Act, 1916. The dissenting opinion forcefully laid

stress on such authority. Had there been no provision giving the Commission authority over bills of lading in foreign commerce, as is true under section 17 of the Shipping Act, 1916, it is reasonable to assume that the decision would have been unanimous. The following observations in the majority opinion in that case are pertinent:

Congress has unquestionably the power to declare what terms common carriers, subject to the Interstate Commerce Act \* \* \* may or may not insert in their bills of lading, and it has done so from time to time. For the purpose of this case we shall assume that Congress can delegate this legislative power to the Interstate Commerce Commission, but we shall expect to find such delegation in clear and unmistakable language. Examination of the statutes does not convince us that Congress had any intention to confer upon the Commission the right to prescribe the terms of the carriers' bills of lading.

\* \* \* \* \*

Section 15 \* \* \* prescribes the powers of the Commission in the premises, and not one word about contracts or the substance of bills of lading is used. *The reference is only to rates classifications, regulations, or practices, in connection with the receiving, handling, transporting, storing and delivery of property.*

\* \* \* \* \*

That the Commission has power under section 12 of the Act \* \* \* to investigate as to the fairness of the carriers' bills of lading we have no doubt, *but we discover nowhere any authority conferred upon it to draw the carriers' bills of lading either in whole or in part.* If they are in any respect unjust or unreasonable or unlawful, the courts are open to the parties injured; if they contain any limitation of liability for loss or damage which Congress has declared to be void, the courts will say so. (Italics supplied.) (Pp. 714, 715.)

In the light of the foregoing we are of the opinion that we are without jurisdiction to promulgate the proposed rule.

An order will be entered discontinuing the proceeding.

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ORDER

At a Session of the UNITED STATES MARITIME COMMISSION,  
held at its office in Washington, D. C., on the 5th day of May A. D.  
1949

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No. 658

BILLS OF LADING—INCORPORATION OF FREIGHT CHARGES

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This case having been instituted by the Commission on its own motion, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

*It is ordered,* That this proceeding be, and it is hereby, discontinued.  
By the Commission.

[SEAL]

(Sgd.) R. L. McDONALD,  
*Assistant Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 639

## STATUS OF CARLOADERS AND UNLOADERS

*Submitted September 23, 1948. Decided January 28, 1949*

Present rate structure and any basis of rates lower than direct labor costs found noncompensatory, burdensome upon other services, and detrimental to commerce.

Proposed increase found not justified and case held open to enable respondents to present evidence of costs over substantial period.

### Additional appearances:

*William F. Krause* for Fibreboard Products, Inc., *T. R. Stetson* and *Robert Williams* for Pacific Coast Borax Company, *S. A. Moore* for Permanente Cement Company, and *Earl J. Shaw* for Chilean Nitrate Sales Corporation, interveners.

*John P. Ventre* for Howard Terminal, *H. C. Cantelow* for Marine Terminal Association of Central California, *S. Phillips* for San Francisco Steel Company, *E. R. Chapman* for Golden State Company, Ltd., *Adam Hunter* for American Smelting & Refining Co., *A. D. Carleton* and *H. L. Gunnison* for Standard Oil Company of California, *C. R. Nickerson* for San Francisco Bay Carloading Conference, *Lincoln Fairley* for International Longshoremen's and Warehousemen's Union, *C. E. Jacobson* for Los Angeles Chamber of Commerce, *W. H. Adams* for Shell Oil Company, *E. L. Hiatt* for Union Oil Company, and *Richard F. McCarthy* for United States Department of Agriculture.

*Paul D. Page, Jr.*, Solicitor, for the Commission.

## REPORT OF THE COMMISSION ON FURTHER HEARING

### BY THE COMMISSION:

Exceptions were filed to the examiner's recommended decision, but oral argument was not requested. Our conclusions differ from those recommended by the examiner.

In the original report herein, 2 U. S. M. C. 761, we found, among other things, that car service work performed at San Francisco was subject to our jurisdiction and that an interim adjustment of rates 33 $\frac{1}{3}$  percent over rates established in 1941 was justified. Approval of San Francisco Bay Carloading Conference Agreement (M. C. Agreement No. 7544) and sanction of the rate level to be established thereunder were conditioned upon an undertaking by respondents to refund to shippers any charges found to be unfair or unreasonable as a result of a subsequent cost study to be conducted by the Commission. In the report on further hearing herein, 2 U. S. M. C. 791, decided November 7, 1946, before the cost study was completed, we found justified additional increases approximating 34 percent, except as to rates on cement and petroleum products, as an emergency surcharge to cover additional out-of-pocket costs resulting from wage increases established on June 15, 1946, pursuant to recommendations by a presidential fact-finding board. A hearing on our cost study was held February 17, 1947. However, during the period embraced by the study strike conditions prevailed, causing backlogs of freight and interruption of service on the waterfront. All parties agreed that a study under such conditions was inadequate. Accordingly, respondents employed an analyst of admitted qualifications to continue the study over a normal operating period.

Upon completion of that study, respondents prepared a new tariff reflecting general increases and some reductions in rates, and filed an application before the Public Utilities Commission of the State of California for permission to establish such rates and charges as reasonable maxima. A hearing on that application and on the cost studies and proposed rates was held jointly by this Commission and the State Commission on November 12, 1947.

The greatest element of cost of car service work is wages for labor and supervision. The labor consist of gangs of men secured through the union hiring halls. They are not employees of respondents and, as a rule, none of the gang works more than one day at a time for any respondent. This means that respondents have no control over the selection of men performing the car work. Wage increases have been so rapid that it has been impossible to keep the studies current. Wages and hours are fixed by contract between the Waterfront Employers Association and the union. Although the contract provides a working day of 6 hours, the men actually work 8. The Association is an agency of steamship lines, stevedoring companies, and carloaders which makes up the pay rolls, pays labor, and disburses funds received from the individual operators. For this function, the Association collects an agency fee of 62 $\frac{1}{2}$  cents per \$100 of pay roll from the oper-

ators, including respondents. All laborers who have worked 1,344 hours during the last 12 months of their employment and have previously worked 24 months in the industry are qualified for 80 vacation hours at the basic rate of straight-time pay. Vacation pay is also disbursed by the Association and at the time of hearing respondents were paying into the vacation pay fund 11 cents per man hour to cover the disbursement.

Much of the freight arrives at the piers in mixed carload lots. Supervision per car is not uniform. It may cost more to service a carload of a given commodity one day than on another, depending upon the conditions on the piers, such as the varying distance between the car and place of rest on the dock. Certain commodities such as cement, coal or broken glass in bags, green hides, etc., are designated as penalty cargo in the wage contract and respondents are obliged to pay 10 cents per hour over the basic wage scale to labor for handling such freight. There is no uniformity in the method or the application of the payment of the additional 10 cents per hour to gang bosses. It should be remembered that certain respondents are engaged in other work on the piers, such as stevedoring, strapping, and weighing.

For the purpose of this report, the term "car service" means the loading or unloading of railroad cars on steamship piers. Such freight is, of course, in transit between points in the United States and foreign countries or between the States and Territories of the United States involving transportation by rail and water carriers, the piers being interchange points between the two forms of transportation. The term "indirect" car service means unloading of freight from the car to a place of rest on the pier or loading freight from the place of rest on the pier into a car. The term "direct" car service means the loading or unloading of an open top car under ship's tackle. The term "continuous" car service means the unloading from a car spotted on the low line of the pier to ship's tackle or the loading of a car on the low line from the ship's tackle. In the latter operation, the freight moves across the pier between ship's tackle and the interior of the car without being deposited at a place of rest.

Our study embraced the period between July 15 and September 30, 1946, and the month of December 1946. The time allotted for the study was about 3½ months, which was not sufficient to permit personal inspection of respondents' books and records. Because of this, there was prescribed a form of report reflecting the data to be supplied by respondents as the basis of the study. The reports identified the piers where the service was performed, description of the commodity, type of package, and weight of shipments. They also showed man-hours for straight time, rate of pay, the amount paid, the man-hours

in overtime, the rate of overtime, the amount of overtime paid, type of equipment used, crane hours, and lift truck hours. Only direct out-of-pocket costs, including social security, unemployment, and compensation insurance, were sought. No allowance for overhead and profit was made. In view of the abnormal labor conditions existing on the waterfront during the period of the study and the subsequent wage increases, a detailed analysis of the exhibits and testimony relating to this study is not warranted. It is sufficient to say that there was revealed the fact that in the aggregate the direct out-of-pocket costs exceeded the revenues received under existing tariff rates.

Respondents' study covers the 6-month period between January 1, and June 30, 1947, during which time a total of 273,732 tons of freight were serviced, 142,194 man-hours, exclusive of supervisory time, were utilized, and no strikes occurred. Respondents' analyst prepared a form of report similar to that previously prescribed by us as a means of gathering statistical information used as the foundation for the study. He verified by personal examination of respondents' records the statistical information used. The facts used in determining direct labor cost are sufficiently supported by the evidence. Direct labor cost includes the current wage based on an 8-hour day plus Federal and State insurance and taxes applicable to wage dollars; cost of supervision; vacation pay; and the pay roll carrying cost consisting of agency fees paid to the association. The costs of Federal and State taxes and insurance and vacation pay are arrived at on the basis of averages which the arguments of interveners have failed to prove are unjustified. The total man-hour cost is computed to be \$322,407.80, which, when divided by the total man-hours utilized, amounts to \$2.27 per man-hour. The cost of servicing any commodity is ascertained by multiplying the cost per man-hour by the number of man-hours used. The direct labor cost of handling every ton of freight serviced during the 6-month period is shown by commodities and compared with the tariff revenue. Without making any allowance for overhead and profit or for wage increases experienced since the study was completed, the number of commodities upon which the cost exceeded the revenue are too numerous to tabulate herein. The record is clear that on the whole respondents' structure produces less than enough revenue to meet their direct labor costs.

Respondents' cost study shows that the cost of loading a car averages 42 percent greater than unloading one and in all cases where they have experienced only unloading of a given commodity the rate is multiplied by 142 percent to arrive at the rate for loading. Conversely, where only loading has been performed, the rate is divided by 142 percent to determine the unloading rate. Respondents propose



to cancel specific rates named in the current tariff, San Francisco Bay Carloading Conference Car Serving Tariff M. C. No. 1, applicable to commodities which have not moved since July 1, 1946. Under the proposed new tariff, rates applicable to indirect car service will apply to continuous car service. Rates for direct car service are based on studies of work done after July 1, 1947, since before that time it was not possible to segregate car work from stevedoring. On that date an agreement with the union changing the gang from 18 to 11 men became effective.

The proposed new tariff is referred to as a "permissive tariff," and names maximum rates with the right to establish lower rates if necessary to meet the competition of operators on the east side of San Francisco Bay. The maximum rates are arrived at by multiplying the direct labor costs by 142.86 percent, which is designed to reflect overhead costs as developed by the so-called Edwards-Differding study recognized as sound by the Commission in *Practices, etc., of San Francisco Bay Area Terminals*, 2 U. S. M. C. 588, 605. It was testified that time did not permit the development of respondents' actual overhead costs and that the Edwards-Differding formula produces a lower overhead cost factor than the formula of Howard G. Freas, which was considered by us in Docket No. 640, *Terminal Rate Structure-California Ports*, decided August 24, 1948.

The overhead costs developed by the Edwards-Differding formula were based upon a study of the experience of privately owned wharfingers prior to 1936; those developed by the Freas formula upon a study of the experience of both privately owned and publicly owned wharfingers during the fiscal year July 1, 1939, to June 30, 1940. None of the respondents herein, most of whom are contracting stevedores and independent carloaders and unloaders, were included in those studies of wharfingers who were engaged in many other terminal services and had substantial investments in terminal property. There is no proof that the overhead burden of the public wharfingers is comparable to that of respondents in 1947, with relatively smaller organizations and investments in property. Furthermore, there is no showing that the volume of tonnage and relative costs of direct labor to overhead are comparable. A variation in the volume of work performed has an automatic effect upon the percentage which the overhead costs bear to direct labor costs. Respondents' overhead should be based on a study of their experience during the period covered by the study of direct labor costs.

In the first hearing in this proceeding in November 1945 the Chairman of respondents' Tariff and Rate Committee testified that the Committee had developed an average overhead cost of 14 cents per ton,

which, when compared with the direct labor cost of loading 36,171 tons of canned goods, amounted to 17.79 percent thereof. If it be related to the direct labor cost of \$691,584 covering the loading and unloading of 769,309 tons of all commodities in the year 1944, as shown by Exhibit No. 29, the overhead would amount to \$107,703 or 15.57 percent. We cannot reconcile the claim for an overhead of 42.86 percent of the direct labor cost, based as it is on a formula which has factors inapplicable to the present situation; with the former claim of an overhead of 17.79 percent based on respondents' actual costs of loading canned goods at that time or with the 15.57 percent described above. Although it would appear that either the 17.79 percent or the 15.57 percent are more nearly correct, the evidence as to the actual overhead is not sufficient to enable us to make any definite decision. Respondents have failed to justify their proposed "permissive tariff."

We find that the rate structure in existence at the time of the hearing was noncompensatory as a whole, and those rates which produce revenue less than the direct cost of service as revealed by cost studies of record are detrimental to commerce within the meaning of section 15 of the Shipping Act, 1916.

On December 20, 1948, we approved an interim increase of 16.5 percent of the rates in effect on that date in order to enable respondents to meet increases in wages paid to labor subsequent to the present hearing, including the increases granted just prior to said date. Information submitted in support of the increase indicated that the increased rates were sufficient to reimburse respondents for their direct labor cost and provide a margin of approximately 4 percent of such cost for overhead.

The record will be held open to allow respondents to present full and complete evidence concerning direct labor costs of handling the respective commodities, and the costs of overhead based upon their experience from January 1, 1947, to the latest available date prior to the hearing hereafter to be set.

No order will be entered at this time.

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

WASHINGTON, D. C., *January 28, 1949.*

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# UNITED STATES MARITIME COMMISSION

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No. 673

SEATRAN LINES, INC.

v.

GULF AND SOUTH ATLANTIC HAVANA STEAMSHIP CONFERENCE, ET AL.

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*Submitted February 23, 1949. Decided June 9, 1949*

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Respondents' equalization rules and regulations not shown to be unjustly discriminatory or unfair as between carriers or detrimental to the commerce of the United States in contravention of section 15 of the Shipping Act, 1916, as amended. Complaint dismissed.

*Arthur L. Winn, Jr.*, for complainant.

*William Radner* and *Odell Kominers* for respondents.

*C. B. Waterman* and *R. J. Mittelbronn* for Waterman Steamship Corporation, *Robert E. Quirk* for The Port Commission of the City of Beaumont, Galveston Chamber of Commerce, Houston Port and Traffic Bureau, Orange Wharf and Dock Commission, and The Board of Commissioners of the Lake Charles Harbor and Terminal District, *Louis A. Schwartz* for New Orleans Traffic and Transportation Bureau, and *C. D. Arnold* for The Southwest Louisiana Traffic Bureau, interveners.

## REPORT OF THE COMMISSION

### BY THE COMMISSION.

Exceptions were filed by complainant to the examiner's report, and the matter was argued orally. Our conclusions do not differ from those of the examiner.

Complainant, a common carrier by water engaged in the transportation of property from New Orleans (Belle Chasse), La., to Havana (Hacendados), Cuba, alleges that respondents'<sup>1</sup> equalization rules

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<sup>1</sup> Gulf and South Atlantic Havana Steamship Conference (Agreement No. 4188, as amended), Empresa Naviera de Cuba, S. A., Lykes Bros. Steamship Co., Inc., Standard Fruit and Steamship Company, United Fruit Company, and West India Fruit & Steamship Co., Inc.

and regulations provided by their Port Equalization Circular No. 170, effective October 6, 1947,<sup>2</sup> are unjustly discriminatory and unfair as between carriers and detrimental to the commerce of the United States in violation of section 15 of the Shipping Act, 1916, as amended. Cancellation of the circular and lawful rates and practices are sought. The Port Commission of the City of Beaumont, Galveston Chamber of Commerce, Houston Port and Traffic Bureau, Orange Wharf and Dock Commission, and The Board of Commissioners of the Lake Charles Harbor and Terminal District intervened, offered evidence, and filed a brief in support of respondents. The New Orleans Traffic and Transportation Bureau and The Southwest Louisiana Traffic Bureau intervened but took no positive position with respect to the merits of the complaint.

A clear description of the nature of complainant's operation is found in *Beaumont Port Commission v. Seatrains Lines, Inc.*, 2 U. S. M. C. 500, 502:

Seatrains's service differs materially from that offered by the break-bulk lines. It is conceded by all parties to be of a superior nature. When using Seatrains, a shipper can load the car at his plant and further handling is eliminated until it is delivered at the consignee's place of business. Cargo handled by break-bulk lines must be transported to the dock, handled, loaded into the ship, unloaded at destination, again loaded into a car or truck, and finally delivered at the consignee's place of business. Seatrains's terminal consists of a railroad spur and a patented loading crane which fastens to the loaded car, picks it up and deposits it on one of the tracked decks in the vessel. The loaded car is strapped to the deck and at the point of discharge is raised, run onto a railroad track and moved intact to the final point of destination. This difference in handling effects a saving to the shipper in packing goods and reduces loss and damage claims, and losses of business resulting from service delays.

Respondent Gulf and South Atlantic Havana Steamship Conference, hereinafter called the conference, was organized under Agreement No. 4188, approved by the Commission April 24, 1935, "to promote commerce from the United States Gulf and South Atlantic ports south of Virginia to Havana, Cuba, for the common good of shippers and carriers \* \* \*." The other respondents are the present common carrier members of the conference. Their individual services to Havana are: from New Orleans, Standard Fruit and Steamship Company and United Fruit Company; from Houston, Galveston, Beaumont and Orange, Texas, and Lake Charles, La., Lykes Bros. Steamship Co.; from West Palm Beach, Florida, West India Fruit & Steamship Co.; and from Pensacola, Florida, and Savannah, Ga., Empresa Naviera de Cuba, S. A. Complainant was originally a member of the conference but voluntarily resigned effective May 11, 1947. The rec-

<sup>2</sup> Appendix A.

ord indicates that the resignation did not involve the issues in controversy herein. At the time of hearing and for about a year prior thereto, Seatrain was serving only the outports of Cuba via Havana due to certain controversies with the government of Cuba involving labor problems. Seatrain operates to Cuba only from its special pier facilities located at Edgewater, New Jersey, and at Belle Chasse outside of New Orleans. It uses its special pier facilities located at Texas City, Texas, only for its vessels in the coastwise trade.

Complainant does not object to port equalization as such, admits that it participated in the practice for many years as a member of the conference, and now equalizes under its own rule. Its complaint is directed to the specific provisions of the circular which became effective about six months after it resigned from the conference. As of the date of hearing, Seatrain enjoyed the benefit of conference contracts with shippers and, so far as conditions in Havana permitted, followed conference rates, rules, and regulations. Respondents' circular is attacked on two main grounds, the first being the prohibition of equalization on traffic originating in Texas and Louisiana under item 2 (c), and the second being that as to all other points of origin within the purview of the circular respondents may equalize by unlimited reductions in their port-to-port rates.

Rice is the heaviest moving commodity from Texas and Louisiana to Havana. In 1947 it constituted 77 percent of all traffic handled over the facilities of Lake Charles. All rice mills in Texas are within the 12 cents per 100 pounds rail rate to the nearest port and, with the exception of flour, the same is true in Louisiana. Flour is the next most important commodity. With respect to Texas and Louisiana traffic, the position of Seatrain is that if it were a member of the conference it should not be prohibited by the circular from securing cargo, regardless of point of origin, and moving it through New Orleans by means of port equalization. As complainant is not a member it is not bound by the circular, and through its equalization rule has been able to secure some carloads of rice originating at Houston mills and other points in Louisiana and Texas. There is nothing in the circular which would prevent Seatrain as a member of the conference from utilizing its facilities in Texas City in the Cuban trade. The lawfulness of Seatrain's equalization rule is at issue in Docket No. 675, *The Port Commission of the City of Beaumont, et al. v. Seatrain Lines, Inc.*, which is now pending. Complainant admits that it is not damaged by the circular but asserts that shippers at Houston, for example, should be able to use Seatrain at New Orleans in case service is immediately available there and not at Houston. It states that that kind of com-

petition would stimulate better service at the Texas and Louisiana ports which are now being served by Lykes alone. Neither Lykes nor any other carrier has an exclusive franchise to serve directly any area covered by the conference.

The history of the conference, the equalization practices of the past, and old controversies between all carriers, indicate a need for a rule on equalization to prevent destructive rate wars. See *Beaumont Port Commission v. Seatrrein Lines, Inc.*, 2 U. S. M. C. 500, 2 U. S. M. C. 699, and *Lykes Bros. S. S. Co., Inc. v. Fla. East Coast Car Ferry Co.*, 2 U. S. M. C. 722.

There is a possibility that should the rice and flour traffic be diverted from Texas and Louisiana ports to New Orleans the existing service at those ports would be discontinued or seriously curtailed. Rice and flour, from a geographical standpoint, are naturally contiguous to those ports. Large local and federal expenditures have been made for the development of their harbors and facilities. The rail rates, a portion of which would be absorbed by Seatrrein in event the ports were subject to equalization, have been prescribed by the Interstate Commerce Commission, and equalization would disrupt such rates for all practical purposes. No shipper participated in the hearing, nor were there any complaints as to the adequacy of the service provided at the Louisiana and Texas ports.

The other provisions of the circular do not contain any limitations as to the extent of the amount of the equalization which may be absorbed. On the other hand, there are limitations as to the areas from which equalization may be practiced, which automatically limit, to a certain extent, the amount of absorption. Failure to place a limit on the amount of absorption and making it a matter of business judgment does not necessarily render the rule unlawful. There is no indication that the amount absorbed has been such as to place an undue burden on other traffic not subject to absorptions, or that the respective carrier members have interpreted and applied the rule in a different manner with respect to different shippers. In fact, the rule itself requires all absorptions to be reported to, checked and published by, the conference, which is a deterrent to any single member giving any discriminatory treatment to any shipper or port.

We find that on this record it has not been shown that respondents' equalization rules and regulations are unjustly discriminatory or unfair as between carriers or ports or detrimental to the commerce of the United States in contravention of section 15 of the Shipping Act, 1916, as amended.

An order dismissing the complaint will be entered.

## APPENDIX A

## PORT EQUALIZATION CIRCULAR NO. 170

*(Cancels Circular 100 and Supplements thereto)*

Rules governing Port Equalization referred to in Item 30-1 of Gulf and South Atlantic Havana Steamship Conference Freight Tariff No. G-6, supplements thereto or reissues thereof.

## Item 1. General Practice

(a) Except as otherwise provided for in these rules, on shipments from interior points in the United States or Canada, the member lines reserve the right to modify the rates published in Conference tariffs from the individual ports in Havana in order to equalize the through gates and/or freight charges from such interior points applicable via any port or gateway when and if such equalization shall have been presented to the Conference office for the purpose of checking the correctness of the figures. All such equalized rates shall be circularized immediately by the Conference office to the member lines.

## Item 2. Exceptions to General Practice

(a) Unless otherwise agreed the member lines *shall not* equalize via their ports the through rates via New York and Boston to Havana, except on shipments originating in the States of Illinois, Indiana, Iowa, Michigan, Minnesota, North Carolina, Ohio, South Carolina, Virginia, West Virginia, Wisconsin; also except on shipments originating at points in Kentucky and Missouri in Central Freight Association territory, as listed in Agent B. T. Jones' Freight Tariff No. 3-H, I. C. C. 3784, supplements thereto or reissues thereof; also, except on shipments of Fresh Fruits originating in the States of California, Oregon and Washington.

(b) The Member Lines *shall not* equalize via Gulf and South Atlantic ports the rates applying from any other Gulf and South Atlantic ports on shipments originating locally at such other ports, except as may be specifically provided in the Conference Tariff. Traffic will not be considered as local port traffic which would be subject to a railroad rate of twelve cents (\$0.12) per one hundred (100) pounds or more (if moved by railroad) from point of shipment to steamer's ship-side at the port, exclusive of transfer, switching, handling and/or other terminal charges.

(c) Member lines operating service from the Texas ports and Lake Charles will not equalize via Texas ports or Lake Charles through rates from points in Louisiana and Texas via ports East of Lake Charles. Similarly, member lines operating service from ports East of Lake Charles will not equalize via ports East of Lake Charles through rates from points in Louisiana and Texas via ports West of New Orleans.

(d) Member lines operating service from Texas ports and Lake Charles, Louisiana, will not equalize through rates from interior points in Texas or Louisiana via the Texas ports or Lake Charles.

(e) On Bulk liquid in tank cars originating at points in Louisiana and Texas, the Member lines operating service from Ports East of Lake Charles may equalize rates to New Orleans.

## Item 3. Construction

(a) All equalization rates checked and confirmed by the Conference shall be listed as port equalization rates from the Gulf and South Atlantic ports covered by the Conference, in a Conference cumulative tariff, and no equalization quota-

tions shall be made by any member line prior to specific check by the Conference office of the measure of the rates, in accordance with rules herein contained. Such rates shall be constructed in accordance with the provisions of the following paragraphs in this Item.

(b) When necessary to equalize another port on shipments from interior points, rates from port of exportation shall be ascertained by deducting from the Conference rate, the actual inland differential existing via a like service between the port to which the lower inland rate applies and the port from which the said port equalization rate is to be established.

3 U. S. M. C.



ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 9th day of June A. D. 1949

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No. 673

SEATRAN LINES, INC.

v.

GULF AND SOUTH ATLANTIC HAVANA STEAMSHIP CONFERENCE, ET AL.

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This case being at issue upon complaint and answer on file, and having been heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

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

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# UNITED STATES MARITIME COMMISSION

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No. 672

FIBREBOARD PRODUCTS, INC.

v.

W. R. GRACE & COMPANY

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*Submitted March 1, 1949. Decided June 21, 1949*

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Rates for loading woodpulp found to be unduly and unreasonably prejudicial and unduly discriminatory in violation of sections 16 and 17 of the Shipping Act, 1916, and unreasonable in contravention of the provisions of Agreement No. 7544. Reparation awarded.

*Harold A. Lincoln* and *William F. Krause* for complainant.

*Joseph J. Geary* for respondent.

*C. R. Nickerson* for San Francisco Bay Carloading Conference.

## REPORT OF THE COMMISSION

### BY THE COMMISSION

Exceptions were filed to the examiner's recommended decision but oral argument was not requested. Our conclusions agree with those of the examiner.

By complaint filed March 9, 1948, complainant alleges that respondent's rates for loading woodpulp in bales into rail cars at San Francisco, California, were in violation of sections 15, 16, and 17 of the Shipping Act, 1916; also that the rates failed to accord with those approved by us in Docket No. 639, *Status of Carloaders and Unloaders*, 2 U. S. M. C. 761. Reparation is sought in the amount of \$352.20, with interest.

Between August 12, 1946, and April 16, 1947, complainant received at San Francisco three shipments of woodpulp transported from Sweden via *M/S Panama*. Respondent was the San Francisco agent for the vessel and also carried on the business of stevedoring and loading and unloading of cars on the pier utilized by the vessel. It was a member of the San Francisco Bay Carloading Conference, functioning under an agreement entered into for the purpose of establish-

ing uniform and reasonable charges by its members and approved by us (U. S. M. C. No. 7544) on June 10, 1946, in Docket No. 639, *supra*, pursuant to section 15 of the Shipping Act, 1916.

The rates involved were published in Conference Car Servicing Tariff No. 1, M. C. No. 1, effective June 11, 1946, but inasmuch as the tariff contained no specific rate for carloading of woodpulp, the rate applicable to the loading of Merchandise, N. O. S., was charged. The rate assessed on the consignment handled August 12, 1946, was \$1.06 per ton. Effective December 5, 1946, the rate was increased to \$1.46 per ton, which was the rate assessed on the consignments handled December 27, 1946, and April 14, 15, and 16, 1947.

Complainant contends that it should have been charged 71 cents per ton for the first consignment and 95 cents per ton for the others, based upon our decision in Docket No. 639, *supra*. When the conference agreement was submitted for approval it was accompanied by a proposed tariff of charges designed to increase by approximately 47 percent the charges in current Tariff No. 4 (C. R. C. 4), on file with the California Railroad Commission and participated in by most of the parties to the agreement. Respondent was not a party to the tariff although, for competitive reasons, it had followed the practice of making the same charges. Tariff No. 4 contained a rate of 53 cents per ton for the carloading of woodpulp.

During the course of the hearing in Docket No. 639, *supra*, it appeared questionable whether the increase of 47 percent was justified on the evidence. Accordingly, the conference proposed an alternative tariff (M. C.-1) reflecting an interim increase of 33½ percent rather than 47 percent. It was stated that the alternative tariff would be the one which had been drawn up by War Shipping Administration and filed with the Interstate Commerce Commission (WSA 1-A, I. C. C. No. 1), effective December 1, 1945, and that the latter tariff was an exact copy of the commodity items contained in Tariff No. 4, with charges increased by 33½ percent. On the strength of the representations the interveners for the most part withdrew their objections to the alternative tariff. The proponents, including respondent, agreed to refund any charges found by us to be unfair or unreasonable after a formal determination as to the proper level of the rates.

Had the War Shipping Administration tariff been an exact copy of Tariff No. 4 it is unlikely that a complaint would have been made because, as stated previously, the latter contained an item for loading woodpulp. The War Shipping Administration tariff contained no such item, however, and therefore Tariff M. C.-1 contained none. As a consequence, the Merchandise, N. O. S. rate was applicable. The 53-cent rate on woodpulp in Tariff No. 4, increased by 33½ per-

cent, would have become 71 cents per ton, and increasing it again by 34 percent pursuant to our permission of November 7, 1946 (2 U. S. M. C. 791), would have resulted in a charge of 95 cents per ton.

After complainant made the payments under consideration it applied to the conference for a correction or reinstatement of the rate for loading woodpulp. Effective August 28, 1947, Tariff M. C.-1 was revised to include an item for carloading of woodpulp at 95 cents per ton, with the explanation that it represented reinstatement of the item.

Respondent contends that it is bound by Tariff M. C.-1 as that is the only tariff to which it was a party, and also that a charge lower than that applicable to Merchandise, N. O. S., would be unremunerative and non-compensatory. Respondent is estopped to deny that the 33 $\frac{1}{3}$  percent increase was non-compensatory. The representations made in connection with the tariff, coupled with the fact that, as a result of the request by complainant, the rate was reinstated and the actions taken in accordance with those representations, precludes any consideration that the costs of loading woodpulp were other than represented.

We cannot ignore the circumstances and the representations by which the parties to Agreement No. 7544 secured our permission to establish an interim increase of 33 $\frac{1}{3}$  percent, and later an additional increase of 34 percent. That respondent was not a named party to Tariff No. 4 does not change the fact that the representations were made on its behalf as well as on behalf of the other members of the conference. When it came to respondent's attention that the representations were inaccurate as to woodpulp, respondent was under a duty to call the mistake to the attention of the conference and to request a proper amendment. Failure to do this resulted in an increase of 100 percent on woodpulp but only 33 $\frac{1}{3}$  percent on all other commodities. For the purposes of the present discussion, it must be assumed that the increase of 33 $\frac{1}{3}$  percent was reasonable at the time made.

We find that the respective rates assessed for loading woodpulp were unjustly discriminatory, and subjected woodpulp to undue and unreasonable prejudice, in violation of sections 17 and 16, respectively, of the Shipping Act, 1916; that such rates were unreasonable and therefore contrary to the express provisions of Agreement No. 7544; and that complainant is entitled to reparation in the amount of \$352.20, with interest, which represents the difference between the respective charges paid and those which would have accrued at the rates represented to us to be reasonable.

An appropriate order will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 21st day of June, A. D., 1949.

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No. 672

FIBREBOARD PRODUCTS, INC.

*v.*

W. R. GRACE & COMPANY

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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 Commission, on the date hereof, having made and entered of record a report containing its conclusions, decision, and findings thereon, which report is hereby referred to and made a part hereof;

*It is ordered*, That respondent, W. R. Grace & Company, be, and it is hereby, authorized and directed to pay to complainant, Fibreboard Products, Inc., of San Francisco, California, on or before 30 days after the date hereof, the sum of \$352.20, with interest as reparation on account of unlawful charges collected for the loading of the shipments involved herein.

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# UNITED STATES MARITIME COMMISSION

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No. 638

EDMUND WATERMAN & GUSTAVE WATERMAN DOING BUSINESS AS  
E. WATERMAN & CO. AND LEO W. COX DOING BUSINESS AS L. W.  
COX & CO.

v.

STOCKHOLMS REDERIAKTIEBOLAG SVEA ET AL.<sup>1</sup>

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*Submitted July 17, 1946. Decided July 26, 1949*

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Respondent Stockholms Rederiaktiebolag Svea, in refusing to afford complainants an equal opportunity with their competitor to secure space on its vessel, violated sections 14 FOURTH and 16 of the Shipping Act, 1916. Upon this record complainants are entitled to reparation.

*Frank J. McConnell and James D. Brown* for complainants.

*Cletus Keating, L. de Grove Potter, and David P. Dawson* for respondents.

## REPORT OF THE COMMISSION

### BY THE COMMISSION :

Exceptions were filed by respondent Svea to the examiner's proposed report, and the matter was argued orally. Our conclusions agree with those recommended by the examiner.

Complainants, who are importers and exporters of fruit at New York, N. Y., filed their complaint on July 11, 1945, alleging that in November 1944 respondents, operating the MV FREJA from New York to the East coast of South America, booked the entire refrigerated space of that vessel with complainants' competitor in Brazil notwithstanding that complainants had made prior application for space and been refused, resulting in unjust discrimination. Reparation is sought.

Respondent Norton Lilly was the booking agent for the vessel and respondent Thor Eckert was the general agent of respondent Svea,

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<sup>1</sup> Skeffington S. Norton, Joseph F. Lilly, and John B. O'Reilly, co-partners doing business under the firm name and style of Norton, Lilly & Company, and Thor Eckert & Co., Inc.

Swedish owner of the vessel, during the period under discussion. On the present record, it appears that Thor Eckert and Company did not commit the act of discrimination complained of. On that ground alone, proceedings may be dismissed against this respondent.

The status of Norton Lilly, the second agent, involves the question of whether his mere description as such is determinative of his status as the person not subject to the provisions of the Shipping Act, 1916, except those provisions where agents are expressly named. (See sections 20 and 21 of the statute.) The Commission has in the past, under particular statements of fact, held persons describing themselves as agents to be carriers or other persons subject to the Act. (See, for example, *In the Matter of Agreements 6210, etc.*, 2 U. S. M. C. 166 (1939); *Agreement No. 7620*, 2 U. S. M. C. 749 (1945); *Remis v. Moore-McCormack Lines, Inc., etc.*, 2 U. S. M. C. 687 (1943).

It is obvious, therefore, that the mere designation of a person as agent would not conclusively determine his status as a carrier or other person subject to the Act if on the record it appeared that in his actual course of business he assumed the responsibilities and performed the duties either of the carrier or of the person subject to the Act.

On the record in this case, this question is not either easily capable of resolution nor is it essential that it be resolved. The matter was not considered at any length in the hearings before the examiner and the conclusion dismissing the two agents is not excepted to by any of the parties. Failure of the complainants to take exception would indicate at least that they were satisfied with their remedy against the principal.

Accordingly, the complaint will be dismissed against Norton Lilly as well as against Thor Eckert.

Between 1939 and 1941, and prior to the transactions here involved, fresh fruit was carried three times on the **FREJA** between New York and South America, and on each occasion the fruit was damaged because of insufficient refrigeration. Damages were paid in settlement subsequent to the institution of court action in each case. No fresh fruit was thereafter accepted until the booking presently to be described. In the opinion of the superintendent of refrigeration for United Fruit Company, who carefully examined the refrigerated space and machinery of the **FREJA** approximately one year after the present controversy arose, and testified extensively with respect thereto, the vessel is not fit to carry fresh fruit between New York and the East coast of South America. This witness was not cross-examined. Although it can be inferred from the evidence that the fruit of complainants' competitor outturned in good condition in Brazil,

the record as a whole is convincing that the FREJA was not suitable to carry fresh fruit in the trade under consideration.

On September 14, 1944, Inge & Co., Inc., brokers in New York, received a cable from complainants' competitor, Twedberg, Kleppe & Cia., Ltda., Rio de Janeiro, Brazil, requesting them to do their utmost to charter the total refrigerated space of the FREJA. Mr. Schecter, of Inge, asked Mr. McCracken, head of Norton, Lilly's South American department, if he would accept fruit under a guarantee holding the vessel owner harmless for damage to or loss of the fruit. The reply was in the negative. Norton, Lilly finally was authorized by the owner to accept a guarantee, but suggested that the owner arrange the guarantee direct with Twedberg, leaving the actual booking to Norton, Lilly's judgment. On November 2, 1944, Norton, Lilly was advised by the owner that a guarantee had been arranged. Norton, Lilly considered this as an authorization and not as an instruction, and it was testified that the booking was made because the vessel was "far from being booked full" and competitive vessels had been placed on the berth about that time.

The Twedberg booking was made on November 3, 1944. Upon learning from their agents in Brazil that the FREJA was going to carry their competitor's fruit, complainants immediately contacted McCracken and complained that they were being shut out in spite of their earlier applications for space. Complainants were informed that the guarantee arrangements had been made direct between the owner in Sweden and Twedberg in Brazil and that Norton, Lilly could do nothing for them. Complainants cabled the owner, who replied that it had no knowledge of complainants' prior applications, and that before booking the Twedberg cargo it had advised its New York agents that the cargo would be accepted under the guarantee arrangements provided the agents had no special objection.

On September 16, 1944, which was prior to the Twedberg booking, complainant Waterman sent a letter to Norton, Lilly, requesting to be put on their list to receive sailing schedules, and asking them "to make a note on your records to the effect that we will be interested in contracting for any refrigerator space that you may have available" to Brazil, Uruguay, Argentina, Colombia, Venezuela, and Peru. McCracken explained that this letter, together with hundreds of similar applications for space generally, were placed in a folder and no attention paid to them because, as he said, vessels were not available at that time on account of war conditions. The practice was to tear up these applications within a few weeks after their receipt. In the case of the Waterman letter, it is a "fair assumption", according to



McCracken, that the letter was found and preserved when protest was made by complainants to the Twedberg booking. A similar letter was sent by Waterman to Thor Eckert on September 16.

The testimony is contradictory as to whether there were other applications by or on behalf of Waterman prior to the Twedberg booking. Waterman testified that he had several conversations with McCracken between September 16 and November 3, and he further testified that in his conversations with McCracken subsequent to the Twedberg booking McCracken gave him the definite impression that he knew that Waterman wanted space. All of this is denied by McCracken. In Paragraph TENTH of the answer, however, it is stated that "respondent, Norton Lilly & Co., admits that on or prior to September 16, 1944, it advised E. Waterman & Co., that it was not interested in carrying refrigerated fruit on the **FREJA**, as the **FREJA** was unfit and unseaworthy for that purpose". Although Waterman's letters of September 16 to Norton, Lilly and to Thor Eckert cannot be considered as firm offers for space, we are convinced and so find that Waterman orally applied to Norton, Lilly for space prior to the Twedberg booking. It is unnecessary, therefore, to decide whether Inge & Co., on behalf of Waterman, also applied to Norton, Lilly for space during the period under consideration.

A different situation exists as to complainant Cox, who admits that his company did not apply direct to Norton, Lilly for space prior to the Twedberg booking, but testified that such an application was made on his behalf by Schechter. Cox has been a regular client of Inge & Co. for 15 years, and Schechter had been in touch with Cox about space as far back as July of 1944. At various times during that year Norton, Lilly had told Schechter that the **FREJA** would not carry fruit. According to McCracken, the names of no shippers were mentioned at that time. On the other hand, Schechter testified that the name of the exporter is always mentioned to the carrier when space is sought and that Cox's name was specifically mentioned to McCracken in September or October. The examiner found that Schechter had endeavored to secure space for Cox. We accept this finding as we think the examiner was in a better position than we are to appraise the witnesses and to evaluate their testimony.

Approximately three weeks after the Twedberg cargo was booked, Norton, Lilly, on behalf of the vessel, and Inge & Co., on behalf of Twedberg, executed five non-negotiable receipts for the carriage of the latter's fruit. No bills of lading were issued. Section 6 of the Carriage of Goods by Sea Act provides as follows:

Notwithstanding the provisions of the preceding section, a carrier, master or agent of the carrier, and a shipper shall, in regard to any particular goods be at

liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness (so far as the stipulation regarding seaworthiness is not contrary to public policy), or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried by sea: *Provided*, That in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a nonnegotiable document and shall be marked as such.

The purpose of section 6 is to permit the transportation of goods whose nature is such that a common carrier would be unwilling to handle them under his strict common law or statutory liability. Section 8 of the Carriage of Goods by Sea Act states that the provisions of that Act shall not affect the rights and obligations of carriers under the provisions of the Shipping Act, 1916. Section 9 provides that nothing in the Act shall be construed as permitting a common carrier to discriminate between competing shippers "in any other way prohibited by the Shipping Act, 1916, as amended". Section 14 **FOURTH** of the Shipping Act, 1916, makes it unlawful for a carrier to unfairly treat or unjustly discriminate against a shipper as to cargo space, and section 16 makes it unlawful for a carrier to unjustly discriminate against a person in any respect whatsoever.

Respondent maintains that a carrier can be both a common carrier and a private carrier, and that it was acting as a private carrier as to the Twedberg fruit. Therefore, it is urged, there can be no finding against respondent of unjust discrimination inasmuch as the Shipping Act, 1916, relates to common carriers only. This position is based upon the contention that the **FREJA** was unsuitable to carry fresh fruit and that there was no holding out to carry such cargo. The gravamen of the complaint, however, is not that a carrier cannot be a common and a contract carrier with respect to the same voyage of the same vessel, but that an admitted common carrier, who refuses to take refrigerated cargo for anyone, thereafter cannot accept such cargo from one shipper to the exclusion of other shippers who have applied for space.

It is argued that even if respondent be considered a common carrier, there are two reasons why complainants were not unjustly discriminated against. In the first place, complainants never offered, prior to the Twedberg booking, to ship on the same basis as Twedberg. Suffice it to say that complainants had no opportunity to make such offer since they did not know of the negotiations between respondent and Twedberg. Secondly, a decision had to be made on the Twedberg booking by November 3, 1944, in order to obtain fruit from the Pacific coast and the Pacific northwest in time for loading on the

vessel, and that this would have given no time to investigate the possibility of other shippers, of whom respondent had no knowledge. We have already found, however, that respondent did know that complainants wanted space on the FREJA. The fruit they would have shipped would have come from the same areas as the Twedberg fruit, a fact which must have been known by Norton, Lilly in view of its extensive shipping connections over a period of years.

Complainants were entitled to rely upon Norton, Lilly's repeated statements that the FREJA would not carry fruit. When respondent thereafter decided to carry fruit complainants should have been given the opportunity to avail themselves of the same terms that were offered to Twedberg. The special contract between respondent and Twedberg affected the legal relations of those parties only and did not alter respondent's obligations to shippers in general under the Shipping Act, 1916. Upon this record we find that respondent's failure to accord complainants the opportunity to ship on the same terms as Twedberg resulted in violation of section 14 FOURTH and section 16 of the Shipping Act, 1916.

We find (1) that respondent Svea booked the entire refrigerated space of the FREJA with Twedberg; (2) that prior and subsequent to such booking complainants applied for and were refused refrigerated space on the FREJA by respondent Svea; (3) that respondent Svea, at the time complained of, was a common carrier subject to the Shipping Act, 1916, with respect to the refrigerated space on the FREJA; (4) that respondent Svea, in refusing or neglecting to afford complainants equal opportunity with Twedberg to secure space on the FREJA, violated sections 14 FOURTH and 16 of the Shipping Act, 1916; and (5) that on this record complainants were injured by their inability to secure space on the FREJA. As complainants have failed to establish the extent of their injury, however, the matter will be assigned for further hearing with respect to the measure of such injury unless the parties, within 30 days of the date of this report, prepare, certify, and file with the Commission a reparation statement in accordance with section 201.222 and Appendix II (4) of the Commission's Rules of Procedure.

No order will be entered at this time.

By the Commission.

[SEAL]

(Sgd.) R. L. McDONALD,  
*Assistant Secretary.*

WASHINGTON, D. C.

# UNITED STATES MARITIME COMMISSION

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• No. 651

## CARLOADING AT SOUTHERN CALIFORNIA PORTS (Agreement No. 7576)

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*Submitted February 2, 1949. Decided October 18, 1949*

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Present rate structure and any basis of rates lower than costs of service found noncompensatory, burdensome upon other services, and detrimental to commerce.

Proposed increased rate structure not justified and case held open to enable respondents to present evidence of costs over substantial period.

### Additional appearances:

*B. F. Bolling* for Pioneer Division, Flintkote Company, *Lester A. Bey* for Los Angeles Traffic Managers Conference and William Volker & Company, *Emuel J. Forman* for Los Angeles Traffic Managers Conference, *F. F. Morgan* for Furniture Manufacturers Association, Inc., of Los Angeles, *F. F. Miller* for Los Angeles Grain Exchange, and *T. R. Stetson*, *Edwin A. McDonald* and *Robert E. Williams* for Pacific Coast Borax Company, interveners.

*Harry L. Helferich* for American Fruit Growers, *W. G. O'Barr* and *K. L. Vore* for Los Angeles Chamber of Commerce, *A. F. Schumacher* for Pacific Coast Division of the Owens Illinois Glass Company, *Robert J. Jones* for General Food Corporation, *Jess J. Bradley* for Western Wax Paper Company, *M. C. Ryan* for Harbor Commission, Port of San Diego, *William S. Lawrence* for International Longshoremen and Warehousemen's Union, *P. R. Arturo* for Swift & Company, *Homer E. Rathbun* for Union Oil Company of California, and *Robert Harding* for Weyerhaeuser Steamship Company.

*Paul D. Page, Jr.*, Solicitor, for the Commission.

## REPORT OF THE COMMISSION ON FURTHER HEARING

## BY THE COMMISSION :

Exceptions were filed to the examiner's recommended decision upon further hearing, but oral argument was not requested. Our conclusions differ somewhat from those recommended by the examiner.

In the original report herein (2 U. S. M. C. 784) June 26, 1946, we found, among other things, that car service work performed at Southern California ports was subject to our jurisdiction, and that an interim adjustment of rates of 33 $\frac{1}{3}$  percent over rates established in 1941 was justified.

Approval of Master Contracting Stevedores Association of Southern California Conference Agreement (M. C. Agreement No. 7576), and sanction of the interim rate level to be established thereunder, was conditioned upon an undertaking by respondents to refund to shippers any charges subsequently found to be unfair or unreasonable after a cost study to be conducted by the Commission. In our report on further hearing (2 U. S. M. C. 791) November 7, 1946, before the cost study was completed, we found justified additional increases approximating 34 percent, except as to the rate on cement, as an emergency surcharge to cover additional out-of-pocket costs resulting from wage increases established on June 15, 1946, pursuant to recommendations by a presidential fact-finding board.

On December 20, 1948, we approved an interim increase of 16.5 percent of the rates in effect on that date, except as to those applicable to commodities handled in continuous movement between rail car and ship's tackle, in order to enable respondents to meet increases in wages paid to labor subsequent to the present hearing, including the increases granted just prior to said date.

Hearings were held on the cost studies on February 24, 1947, on July 28, 1947, and May 24, 1948. The period covered by the first two hearings was so interrupted by strikes, work stoppages, and other unusual conditions that the evidence adduced was not sufficient to justify a finding as to the adequacy of the rate levels proposed. The third hearing was held jointly with the Public Utilities Commission of the State of California, *Application No. 28248*, filed by respondents in the present proceeding pursuant to the provisions of the Public Utilities Act of the State of California, for permission to establish rates and charges as reasonable maxima in respondents' intra-state service.

Car service work consists of labor and supervision and the wages paid therefor. Labor composed of gangs is secured through union hiring halls, and work only short periods for any one respondent. Respondents have no control over the selection of the men. Wage

increases were so rapid during the various periods here involved that it was impossible to keep the studies current, and the Commission's analyst did not have time to audit respondents' books. Wages and hours are fixed by contract between Master Contracting Stevedore Association and the union. Although the contract calls for a working day of six hours, the men actually worked eight, receiving time and a half for the two extra hours. All laborers who have worked 1344 hours during the last twelve months of their employment, and have worked previously 24 months in the industry, are qualified for 80 vacation hours at the basic rate of straight time pay. At the time of the last hearing respondents were paying into the vacation pay fund 11 cents per man hour to cover disbursements.

The term "car service" means the loading or unloading of railroad cars on steamship piers. Such freight is in transit between points in the United States and foreign countries or between the states and territories of the United States involving transportation by rail and water carriers, the piers being transshipment points between the two forms of transportation. There are three ways of accomplishing the entire transshipment: "indirect" car service, which is the use of a place of rest on the pier at which the commodity is piled and generally assorted pending further movement as an intermediate stop in its movement between the vessel and the rail car; "direct" service, which is the loading or unloading of a flatcar immediately under ship's tackle; and "continuous" car service, which is transportation of the commodity directly between the car and the ship's tackle without any stop at the point of rest.

The working conditions and union contracts are very similar to those obtaining in the San Francisco area except that in Southern California the piers are not of the same type; the character and volume of individual commodities handled vary; and continuous service, as described above, is practiced in Southern California on a larger scale than at San Francisco.

For the purpose of the original study embracing the period between June 1, and December 31, 1946, our analyst prescribed a method of procedure and established a form of report to be furnished by the respondents. The individual respondents submitted their reports to a representative of all of them who consolidated the data for our use. Only indirect car servicing was covered. Substantially all tonnage moving in indirect service over the period covered was reported. Respondents' figures were accepted as correct since, as stated above, time did not permit our analyst personally to review their books and records. The cost per ton of each commodity reported, as well as the per man hour labor costs, was computed by the analyst

through application of the current wage scales, payroll carrying charges, and vacation pay accruals. No allowance for overhead and profit was made. The study revealed that as to most of the commodities covered the direct labor costs exceeded tariff revenues.

Again the extended cost study covering the period from June 1, 1946, to July 1, 1947, of direct operating costs for individual commodities, showed that the direct costs exceeded the revenues as follows:

Tons loaded.....	78,397.72
Direct cost.....	\$135,494.48
Revenue derived.....	\$89,979.08
Tons unloaded.....	115,947.21
Direct cost.....	\$146,092.49
Revenue derived.....	\$110,207.11

At the hearing on May 24, 1948, a new tariff was proposed which established rates based upon the operating costs plus 42.86 percent thereof to cover overhead. This figure was adopted on the theory that since it had been developed in the so-called Edwards-Differding study and used in *Practices, Etc., of San Francisco Bay Area Terminals*, 2 U. S. M. C. 588, 605, it was applicable in the present instance. At the hearing on May 24, 1948, there was also presented a study of direct operating costs of commodities serviced during the fifteen month period between January 1, 1947, and March 31, 1948, and this showed 70 different commodities were unloaded by respondents, the cost of service on 34 exceeding the tariff rates. The carloading operation involved 78 different commodities, 52 of which cost more to handle than the revenue received. However, it appeared that in the case of some of the other commodities the revenues exceeded the costs, and there was insufficient evidence to evaluate the relative net results of the gains and losses.

No evidence was offered as to cost of loading or unloading commodities in continuous movement, the excuse being that it consisted of a combination of segments made up of the work of the car service men and the stevedores, and that it was impossible to place a dividing line between them. This did not mean that there were two classes of men engaged, but merely that two contracts were involved in connection with the payment of respondents for the work performed. The service of carloading and unloading is performed for the shipper or consignee. The handling of cargo between the point of rest on the dock and into the ship's hold is performed by the stevedores under a contract with the vessel. Respondents performed both services but made no attempt to break down the costs, even though the tariff made the same charge for either the indirect or the continuous movement. In other words, respondents were advertising the continuous move-

ment as a service for the shipper or consignee in the same manner that they were advertising the indirect movement.

Respondents testified that the continuous movement was more expensive than the indirect. However, the evidence as to increased costs was not directed at the carloading service alone but was equally applicable to stevedoring work for the vessel. This situation indicates a confusion in the minds of the carloaders as to their obligations to their customers—the shippers, namely, to keep their accounts so that the shippers can be assured that they are not paying for service rendered to others. The carloaders have an equal obligation to us to keep their records in such a way that we can administer the Shipping Act, 1916.

Intervenors raised the question as to whether they should be charged by the carrier for handling when the commodity was not moved between place of rest on the pier and ship's tackle, as is the case in the continuous movement. Since this is a matter between the carriers and shippers and the carriers are not parties to this proceeding, no order can be issued against them under the circumstances.

Inasmuch as they are advertising two services, one to place of rest on dock and the other to ship's tackle, and undertaking to perform them for a charge assessed against the shipper, respondents should not attempt to collect from the vessel or others a part of the cost of the service. It may be that the increased cost for continuous movement will result in a higher rate therefor, but respondents must justify the same. Failure to charge a remunerative rate for the respective services rendered will result in discriminations.

Failure to include the costs of the continuous movement, the revenue of which was variously estimated at from 8 to 12 percent of the total, particularly where the evidence is that the cost of that movement is greater than that of the indirect movement, precludes us from making a decision on the present record as to the reasonableness of the rates even without overhead.

As we pointed out in Docket No. 639, decided January 28, 1949, the Edwards-Differding formula has no application to the situation presently obtaining in this car service work. There is no proof that respondents' overhead burden in 1947 and 1948 is comparable to that of the public wharfingers in 1936. In fact, respondents' relative smaller organizations, smaller investment in property, and different volume of tonnage, would have a radical effect upon the relationship of overhead to the direct operating costs. The only factual evidence offered here on the relationship of overhead to direct labor costs covered the calendar year 1946 and showed an overhead cost of 6.03 percent of the



direct operating costs, which is far removed from the proposed 42.86 percent. Respondents have failed to justify the proposed tariff.

We find that the rate structure in existence at the times of the hearings was noncompensatory, and that those rates which produce revenue less than the direct cost of service, as revealed by cost studies of record, are detrimental to commerce under section 15 of the Shipping Act, 1916. The record will be held open to allow respondents to present full and complete evidence concerning direct labor costs of handling the respective commodities in indirect, continuous, and direct services, and the actual costs of overhead based upon their experience from January 1, 1947, to the latest available date prior to the hearing hereafter to be set.

No order will be entered at this time.

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

WASHINGTON, D. C., *October 18, 1949.*

3 U. S. M. C.

# UNITED STATES MARITIME COMMISSION

No. 630

SIGFRIED OLSEN D. B. A. SIGFRIED OLSEN SHIPPING COMPANY

v.

WAR SHIPPING ADMINISTRATION AND GRACE LINE, INC.

*Submitted August 6, 1947. Decided January 28, 1949. Reaffirmed October 13, 1949. Corrected editorially, November 15, 1949*

The United States Maritime Commission does not have jurisdiction over claims against the United States under the regulatory provisions of the shipping acts.

In its administrative capacity, the Commission finds that respondents' demurrage rule and charges are not unreasonable or otherwise unlawful.

*Fred. W. Llewellyn and Joseph B. McKeon* for complainant.

*William Radner, Arthur M. Becker, Joseph J. Geary, and W. R. Wallace, Jr.*, for respondents.

*Chalmers G. Graham and Clarence G. Morse* for North Pacific Coast-Europe Passenger Conference, Pacific Coast/Panama Canal Freight Conference, and Canal, Central America Northbound Conference, and *Parker McCollester* for Atlantic and Gulf/Panama Canal Zone, Colon and Panama City Conference, interveners.

## DECISION OF THE COMMISSION

### BY THE COMMISSION :

Exceptions were filed by complainant and interveners to the examiner's report, and the matter was argued orally. Our conclusions differ from those of the examiner. Commissioner McKeough dissents.

The complaint alleges that respondents' tariff provisions relating to demurrage and rates applicable to the discharge of lumber, cement, and explosives from Pacific coast ports of the United States to Balboa, Canal Zone, between May 29 and October 11, 1942, were unduly and unreasonably preferential, prejudicial, and disadvantageous in violation of section 16 of the Shipping Act, 1916; unjustly discriminatory and prejudicial in violation of section 17; and unjust and unreason-

able in violation of section 18 of the Act. It is further alleged that the demurrage provisions are in contravention of section 15 of the Act in that they are unjustly discriminatory and unfair, and detrimental to the commerce of the United States. Waiver of unpaid demurrage charges in the amount of \$4,287.68 and the cancellation of bonds totalling \$4,000, held by respondent Grace Line, Inc. (hereinafter referred to as "Grace"), to secure the payment of the charges, are sought. Another bond of \$1,973.99 also is in the possession of Grace, payment of which is dependent upon our decision herein.

North Pacific Coast-Europe Passenger Conference, Pacific Coast/Panama Canal Freight Conference, Canal, Central America North-bound Conference, Atlantic and Gulf/Panama Canal Zone, Colon and Panama City Conference intervened.

Prior to the attack on Pearl Harbor in December 1941 and the creation of respondent War Shipping Administration (hereinafter referred to as "W. S. A.") by Executive Order 9054 in February 1942, there had been such an urgent military need for lumber at the Canal Zone that we arranged with intercoastal carriers (those engaged as common carriers in transportation between the Atlantic and Pacific coasts of the United States via the Panama Canal) to carry large quantities of lumber monthly to the Canal Zone. To persuade these carriers to carry this lumber and to take the risks of delay arising from the congestion known to exist at the Canal Zone, it was agreed that the rates should be the same as those applicable from Pacific coast ports to Atlantic coast ports, plus the Canal Zone landing charges, and should include a demurrage rate equivalent to \$5.00, as set forth usually in time charters. The lumber was not confined to full loads, however.

Subsequent to Pearl Harbor and to the creation of W. S. A., the need for construction materials and explosives at the Canal Zone continued urgent. The inadequacy of facilities and the congestion in the Zone, particularly at Balboa, continued to exist and ships were delayed as a consequence. All United States flag ships were either requisitioned or chartered by the Government, and the lumber contracts with the intercoastal carriers were transferred to Grace under the direction of the W. S. A. representative at San Francisco, California. He also had control of the contracts for the transportation of cement and explosives.

The demurrage provisions and rates complained of were published in Pacific Coast/Panama Canal Freight Conference tariff No. 1-A, effective January 20, 1942. The question arises as to whether we have jurisdiction as the proceeding appears to be in reality a suit against the United States. Complainant contends that this is not such a suit

but rather an administrative proceeding to secure the waiver of the uncollected demurrage charges and the surrender of the bonds held to secure the payment thereof, and therefore analagous in principle to a suit to enjoin a Federal officer or agency from taking unlawful action injurious to the party seeking relief. It is argued that all we are requested to do is to pass upon the validity of the conference tariff, to which Grace is a party, and to order Grace to cancel the bonds in its possession.

Some of the vessels involved herein were owned by the United States, others were chartered to the United States; all were operated for the account of the United States by their respective general agents appointed as such under a General Agent form of Service Agreement between them and W. S. A. Grace was designated a berth agent by W. S. A., and in such capacity it made arrangements to pick up cargo, expedited its delivery to the ship, issued freight contracts and bills of lading in the form prescribed by the United States, prepared manifests and other cargo documents, collected all moneys due the United States, deposited, remitted, and disbursed them in accordance with such regulations as the United States prescribed, and accounted to the agent or general agent for all moneys collected or disbursed by the appointed subagents at foreign ports, agents' fees, port charges, and cargo expenses in foreign ports, and agents' cargo clearances.

General agents were required by the terms of the contract with W. S. A., among other things, to maintain the vessels in such trade or service as the United States might direct, subject to its orders as to voyages, cargoes, priorities of cargo, charters, rates of freight, and charges, and as to all other matters connected with the use of the vessels; in the absence of such orders, the general agent was to follow reasonable commercial practices.

The transportation performed in this case was performed by the United States through W. S. A., which exercised the right and power to allot the vessels to the different agents; to require the agents to operate the vessels on particular routes and to particular ports; and to limit commodities which could be carried. It also established the rates at which the transportation could be performed. As already noted, Grace was only a berth agent and did not occupy any different position with respect to its relation to W. S. A. than an employee thereof under special contract. The fact that the demurrage charge in question was incorporated in a tariff filed with us by the Pacific Coast/Panama Canal Freight Conference, of which Grace was a member but of which the United States was not, is not conclusive that the rates were not those prescribed by the United States. The use of the

conference machinery and facilities to prepare and publish the rule was a handy means of making it public.

Supporting its argument that this suit is not one against the United States, complainant cites *Land v. Dollar*, 330 U. S. 731, 738, wherein the Supreme Court pointed out that the yardstick to be applied in such a case is whether "the essential nature and effect of the proceeding may be such as to make plain that the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration." See also *Ex Parte New York*, 256 U. S. 490, 500, 502. In our opinion, complainant here seeks a judgment that would not only expend itself on the public treasury, but more important, would seriously interfere with public administration in that it would subject the activities of the United States as a common carrier in war to delays and to the judgment of others than those entrusted by Congress as agents to effectuate definite purposes.

Unless Congress has given its consent for the United States to be subject to the general obligations and duties imposed upon common carriers by the regulatory provisions of the Shipping Act, 1916, we have no jurisdiction to grant the relief here requested. Under the generally accepted interpretation of statutes, a law is not applicable to the United States unless it so provides, either directly or by attendant circumstances which can be read in no other way, and any reference to the applicability of the law to the United States is limited to its terms and is not to be broadened into one of general applicability.

Section 9 of the Act, which is the only one which may be material on this point, provides in part that "every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein." The question now presented is whether the five vessels here involved, which were owned by or chartered to the United States were in turn chartered or leased by the United States, and thus came within the terms of section 9.

The maintenance of the vessels by the general agent and operation by the berth agent was not pursuant to any purchase, charter, or lease; those persons were nothing more than their names imply, agents of the United States, the actual operator. The arrangements made with complainant by Grace, acting as agent under the orders of the United States, were a bill of lading and contract of affreightment.

The latter contained the demurrage clause under attack, similar to the provision in the tariff, and by its terms appeared to be an agreement superior to the bill of lading, which was made a part thereof. Complainant did not have the sole use of the vessel, other shippers having made similar contracts of affreightment. On three of the ships general cargo of between 200 and 300 tons was transported under the ship's regular bill of lading.

In *The Lake Monroe*, 250 U. S. 246, the Supreme Court said that the charter referred to in section 9 of the Act was intended to include a contract for the temporary use of vessels or their services not amounting to a demise, and that the term "charter" was employed in a sense as broad as the definition embodied in the Act of July 18, 1918 (40 Stat. 913), namely, "any agreement, contract, lease, or commitment by which the possession or services of a vessel are secured for a period of time, or for one or more voyages, whether or not a demise of the vessel."

The fundamental distinction between *The Lake Monroe* case and the instant proceeding is that in the former the vessel was space chartered to one shipper for the voyage, which was considered sufficient to bring it within section 9 of the Act, whereas in the present case the vessels were not used by one shipper only but by several; also, bills of lading and not charters were here used. We do not believe that the words "purchased, chartered, or leased", as used in section 9, are broad enough to cover the operations now under discussion. We conclude, therefore, that this Commission does not have jurisdiction under the regulatory provisions of the shipping acts to afford the relief here sought inasmuch as W. S. A. was an instrumentality of the United States acting in its sovereign capacity and Grace was a mere agent of the United States.

Although our quasi-judicial authority does not extend to claims against the United States, nevertheless, as an administrative agency, we are not precluded from passing upon the propriety of the acts of W. S. A., our predecessor. Since it was the desire of Congress that United States-owned vessels receive no preference or favor over privately-owned vessels,<sup>1</sup> we will review the evidence to determine whether any hardship, damage, injury, or discrimination resulted from the establishment of the demurrage charge, and which could have been condemned and corrected had the vessels been owned and operated by private interests.

<sup>1</sup> Section 9, Shipping Act, 1916; Section 19 (4), Merchant Marine Act, 1920.

<sup>3</sup> U. S. M. C.

Item 35, original page No. 17-A of the tariff under consideration named the demurrage provisions applicable to lumber as follows:

Lumber shall be taken from the end of ship's tackle at discharging port at the rate of not less than five hundred thousand (500,000) feet net board measure (N. B. M.) per twenty-four (24) hour day, failing which shipper shall pay demurrage for any and all delay to ship at the rate of \$5.00 U. S. Currency per ship's deadweight ton (summer draft) per month, prorated into days and hours as the port time may reflect, Sundays and holidays not excepted. Time to commence from the time ship arrives in port, provided the ship arrives at 5:00 p. m. or prior thereto (whether in berth or not), and if the ship arrives in port after 5:00 p. m., time to commence at 7:00 a. m. of the day following the date of the arrival of the ship; provided, however, if the ship arrives after 5:00 p. m. and commences discharging before midnight of the same day, time will commence from the time discharging of the lumber from the ship actually begins.

Demurrage is payable on the basis of a twenty-four (24) hour day or prorate thereof down to one hour. Where there is lumber from more than one shipper on one vessel, demurrage, if any, will be prorated between them on a percentage basis that each shipment bears to the total lumber for discharge at Panama Canal destination.

All shipments are also subject to the booking contract for handling lumber from loading ports in use by the individual carriers of this conference.

Effective May 15, 1942, the demurrage rate was changed from \$5.00 per ship's deadweight ton to the W. S. A. charter scale with no indication of what the charter scale was.

The demurrage charge was established originally to assure the inter-coastal carriers that they would be recompensed for losses due to delays at Balboa, whether occasioned by shippers, consignees, or Government operation of the Canal. It was a sliding scale increase based upon the extent of the delay. Our San Francisco representative, who took part in the preliminary negotiations, reported his belief that the charge had resulted in a somewhat speedier turnaround of vessels. The same reason for the establishment of the change also existed when the contracts for carrying lumber were transferred from the intercoastal carriers to the vessels requisitioned by the United States and operated by and for W. S. A.

The fact that similar charges were not established on lumber from the Atlantic coast to the Canal Zone is not evidence of unlawful discrimination, for there was no testimony that delays similar to those at Balboa occurred at Cristobal or elsewhere in the Canal Zone, or that complainant was injured as the result of competition encountered on shipments from the Atlantic coast. The contention that demurrage was not established against general cargo and that a discrimination resulted therefrom is not supported by the evidence; there was no showing of any competitive situation as between classes of cargo or

that a comparatively infinitesimal amount of general cargo was the occasion of any appreciable amount of delay.

The existence of delays at Balboa and the consequent tieup of ships was admitted. There was no evidence that the measure of the demurrage in any way exceeded the costs occasioned by the delay to the ships. The fact that the charges were also established for the purpose of urging consignees to secure the speedy discharge of ships, and that the shipper or consignee had little if any control over the discharge, does not render the demurrage unreasonable or otherwise unlawful, for it is well settled that whenever an administrative order or rule is legally justified it is not rendered illegal by some other motive in the mind of the officer issuing it. *Isbrandtsen-Moller Co. v. United States*, 300 U. S. 139, 145.

No evidence was offered showing any violation of Section 15 of the Shipping Act, 1916.

We conclude that respondents' demurrage rule and charges are not unreasonable or otherwise unlawful. In view of this, it is unnecessary to make any findings as to whether section 18 of the Shipping Act, 1916, is applicable to commerce from the continental United States to the Canal Zone.

An order dismissing the proceeding will be entered, and appropriate instructions will be issued to proceed with the collection of the moneys due.

MCKEOUGH, *Commissioner*, dissenting:

This case is before us on exceptions to the proposed report of our trial examiner. I agree in substance with his recommendations for the award of relief to complainant, but base my decision on grounds narrower than, and different from those on which he relied.

Complainant is a shipper. In 1942 he shipped lumber, cement, and explosives from ports on the Pacific Coast of the United States to Balboa, Canal Zone, via five vessels owned by or bareboat chartered to the United States (War Shipping Administration) and operated for the United States by Grace Line, Inc., as agent. Under tariff provisions applicable to the shipments in question, demurrage of \$4,287.68 was assessed against complainant for failure to discharge his cargoes at Balboa within the tariff-prescribed time after arrival of the respective vessels at the port. The sum has not been paid. Claiming that the disputed tariff provisions are in conflict with sections 16, 17 and 18 of the Shipping Act, 1916, complainant requests an order against Grace Line and War Shipping Administration cancelling such provisions and the demurrage charges based thereon.



War Shipping Administration filed an answer claiming sovereign immunity to suit, as an instrumentality of the United States. Grace Line filed an answer, claiming that since War Shipping Administration was immune, its immunity extended to Grace Line as its agent.

War Shipping Administration ceased to exist September 1, 1946, by virtue of Public Law 492, 79th Cong. (60 Stat. 501), which transferred all of such Administration's functions, powers and duties to this Commission. In consequence of the merger thus effected, an order entered against War Shipping Administration would be an order entered against ourselves, and would present, in addition to the question whether the United States is "suable" in a proceeding of this type, the further question whether we have the power to order ourselves to do what the law requires. While it cannot be held with assurance, in view of *United States v. Interstate Commerce Commission*, 69 S. Ct. 1014, that we lack such power, I propose the road of common sense and justice rather than that of dubious technicalities, by treating the complaint not as a request that the Commission, in its regulatory capacity, find the Commission, in its administrative capacity as successor to War Shipping Administration, "guilty as charged", but rather as a petition seeking rectification of an alleged governmental error. I shall so treat it as it concerns the Government, after first disposing of the claim against Grace Line, Inc.

Grace Line, Inc., at all times material to this case, was a berth sub-agent of the United States under a contract with War Shipping Administration and as such subagent acted for the Administration with respect to the vessels here involved in booking cargo, issuing bills of lading, loading and discharging; and issuing and collecting bills for freight and demurrage. Its status as agent was known to complainant, whose complaint alleges such agency with respect to the ships in question. Irrespective of Grace Line's status as a respondent in a *regulatory* proceeding, however, Grace, as an agent of the Commission, is, of course, subject to the directions of the Commission as its principal, requiring settlement of the pending controversy as the Commission may deem proper. Our direction to Grace Line, Inc. should be in conformity with our disposition, hereinafter urged, of complainant's claim against the Commission as successor to War Shipping Administration.

The transportation service from which this controversy stems was furnished by War Shipping Administration as a common carrier. Before the Administration entered the trade between Pacific Coast ports and the Canal Zone, member lines of the Pacific Coast Panama Canal Freight Conference had served the same trade under a con-

ference tariff (No. 1-A) filed with the Commission. This tariff, as from time to time amended, was continued in force by War Shipping Administration and applied to complainant's shipments. The demurrage charges to which complainant objects were assessed under the following provision with respect to lumber, and corresponding provisions with respect to cement and explosives.<sup>2</sup>

Lumber shall be taken from the end of ship's tackle at discharging port at the rate of not less than five hundred thousand feet net board measure (N. B. M.) per twenty-four (24) hour day, failing which shipper shall pay demurrage for any and all delay to ship at the rate of \$5.00 U. S. Currency per ship's dead weight ton (summer draft) per month, prorated into days and hours as the port time may reflect, Sundays and holidays not excepted. Time to commence from the time ship arrives in port, provided the ship arrives at 5:00 P. M. or prior thereto (whether in berth or not), and if the ship arrives in port after 5:00 P. M., time to commence at 7:00 A. M., of the day following the date of the arrival of the ship; provided, however, if the ship arrives after 5:00 P. M. and commences discharging before midnight of the same day, time will commence from the time discharging of the lumber from the ship actually begins.

Demurrage is payable on the basis of a twenty-four hour day or prorate thereof down to one hour. Where there is lumber from more than one shipper on one vessel, demurrage, if any, will be prorated between them on a percentage basis that each shipment bears to the total lumber for discharge at Panama Canal destinations.

Complainant was required, precedent to the booking of his cargo, to sign space-booking agreements obligating him to pay such demurrage as might accrue under applicable tariff provisions. He executed these agreements under protest, and furnished security for payment of demurrage charges. Complainant, in turn, required his consignees to reimburse him for demurrage on their shipments. The fact that other shippers may have paid similar demurrage charges without protest or complaint does not, of course, in any way affect complainant's rights were the Commission to determine, as I believe it should, that complainant be granted relief.

The parties have stipulated that neither complainant nor respondents were responsible for the delays in unloading which resulted in the accrual of demurrage liability. The ships discharged at piers of the Panama Railroad Co. which exclusively controlled the assignment of dock facilities and cargo handling.

The demurrage provisions originated before the period of government operation. The Emergency Shipping Division of this Commission sought in 1941 to induce the intercoastal lines to carry lumber

<sup>2</sup> Similar provisions applied to asphalt and clay pipe, not here involved. All other cargo was demurrage-free. The required rate of discharge varied from commodity to commodity, and the applicable rate of demurrage fluctuated from time to time.

3 U. S. M. C.

(and later, other items) from the Pacific Coast of the United States to the Canal Zone. Ports in the Zone were then congested and the carriers feared that they would sustain losses due to delays resulting from such congestion. Our Emergency Shipping Division suggested that a minimum discharge rate be stipulated "with demurrage rates equivalent \$5 time charter". After intercoastal service was suspended due to the Government's ship-requisitioning program, service from the Pacific Coast to the Canal Zone was provided by War Shipping Administration through the Grace Line under the tariff here involved, amended to include the above-quoted demurrage rule.

Because the rule applied to some but not all commodities moving in the trade (general cargo was exempt), and for other reasons, complainant attacks it on the ground, among others, that it was unjustly discriminatory under sections 16 and 17 of the Shipping Act. While I am strongly inclined to so find, there is no need to pass upon these contentions because I am of opinion that the demurrage rules were invalid under other provisions of the same statute.

Section 17 requires, as to common carriers by water in foreign commerce, that every such carrier "shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property". A somewhat similar, but more extensive requirement appears in section 18 which applies to common carriers by water in interstate commerce, and requires such carriers to establish, observe and enforce "just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto \* \* \* and all other matters relating to or connected with the receiving, handling, transporting, storing, or delivering of property". The underlined words in section 18 are not found in section 17, but for the purposes of this case the two sections are otherwise identical.

Complainant contends that the demurrage rules are unreasonable under section 18, and that section 18 applies because the respondents were common carriers by water in interstate commerce as defined in section 1 of the Act because the transportation was between a port in the United States and a port in one of its possessions. The contention is sound only if the Canal Zone is a possession of the United States within the meaning of the Shipping Act. This was a sharply contested issue in the case (it attracted several interveners having no other interest in the proceedings) and presents a question of public importance—a question more easily asked than answered in view of the conflicting authorities on the point. My own answer will not be given in this case since the issue is immaterial to the result I reach.

As noted, sections 17 and 18 have in common a requirement that common carriers by water in both foreign and interstate commerce establish, observe and enforce "just and reasonable regulations and practices" relating to various matters, including the "delivering" of property. Therefore, whether the shipments here involved moved in foreign commerce or interstate commerce (they necessarily involved one or the other), they were subject, with respect to regulations and practices affecting delivery, either to section 17 or section 18—we need not decide which—and with like effect under either section. We must decide, then, whether the demurrage provisions of which complaint is made, constitute regulations relating to delivery, and, if so, whether they are unjust or unreasonable. I believe we should hold that they do constitute regulations relating to delivery and that they are unjust and unreasonable.

They constitute regulations relating to delivery because they apply to the disposition of cargo after movement from port of origin to port of destination has been completed and no function of common carriage remains but to make the cargo available to consignees by landing it on a wharf. The act of thus making cargo available is the act of delivery in the parlance of ocean commerce, and is an obligation incident to the function of common carriage. *The Eddy*, 72 U. S. 481. Under the tariff before us, liability for demurrage and the amount of demurrage are directly related to the time required to put cargo ashore, as distinguished from all other factors affecting the duration of the voyage. It follows that the demurrage rules must be treated as delivery regulations, rather than as terms of the tariff rate schedule.

Turning now to the question of reasonableness, and taking due account of the purpose and effect of the rule, I find the rule unjust and unreasonable, and therefore invalid, for the reasons which follow.

The rule originated in a demand by private carriers in intercoastal trade that they be compensated for delays encountered or anticipated at the Canal Zone in connection with the carriage, first of lumber and then of certain additional commodities. By the time complainant's shipments moved, private carriers had ceased to serve the trade and the Government had taken it over, applying the conference tariff above described, to which was added the demurrage rule theretofore employed by the privately owned intercoastal vessels. The evidence indicates that those carriers were primarily interested in demurrage *as revenue*, to compensate them for anticipated slow-down of intercoastal schedules; but that the Government was primarily interested in demurrage *as a penalty*, on the theory that it would accelerate the discharge process at Balboa. War Shipping Administration did not

claim that demurrage was needed to make the rates compensatory.<sup>3</sup> The question whether the charges were proper as elements of compensation may therefore be laid aside—but with no implication that I approve the rendition of common carrier service on a non-compensatory basis. The question of compensation is not here in issue. Since the charges in question were defended as justifiable penalties, I shall necessarily treat them as such and test them by the standards applicable to demurrage in its penal sense. In *Free Time and Demurrage Charges at New York*, 3 U. S. M. C. 89, in discussing this question relative to property left on piers beyond free time, this Commission said (3 U. S. M. C. 89, 107) :

\* \* \* When property lies at rest on a pier after free time has expired, and consignees, through reasons beyond their control, are unable to remove it, the penal element of demurrage charges assessed against such property has no effect in accelerating clearance of the pier. To the extent that such charges are penal—i. e., in excess of a compensatory level—they are a useless, and consequently unjust burden upon consignees, and a source of unearned revenue to carriers. The levying of such penal charges, therefore, constitutes an unjust and unreasonable practice in connection with the storing and delivering of property, and should be forbidden.

If, in this case, complainant and his consignees were powerless to do what the demurrage penalty sought to make them do, such penalty was unjust and unreasonable under this rule.

As noted, the requirement for discharge of selected commodities at specified rates, with demurrage chargeable for excess discharging time, was intended to relieve congestion at Balboa by speeding the turnaround of ships. I fail to see how it could do this (even though a witness testified that he thought it did), since the discharge of a common carrier vessel is the obligation of the carrier, and neither shipper nor consignee has in the ordinary case, or had in this case, any responsibility for unloading any such ship, or any right or opportunity to supervise, control, expedite, or delay the unloading process.<sup>4</sup> A penalty devised to compel the doing of what can not be done, is not sustainable.

Even if I should accept the contention that demurrage did tend to hasten the discharge process, I should not approve the tariff provision before us here, because under its terms, a shipper or consignee who fully met the prescribed rate of discharge might nevertheless be subject to penalty simply because *other* shippers or consignees had failed to do so. For example, complainant's lumber might have been landed

<sup>3</sup> The demurrage provisions were cancelled early in 1943.

<sup>4</sup> Demurrage liability of cargo in common carriage is to be distinguished from liability under a time charter. In the latter case, risks of delay in loading and discharging are commonly assumed by the charterer.

in due season, but a share of demurrage on lumber would have been prorated to complainant notwithstanding, had any lumber aboard been landed too late. The justness or reasonableness of this result is not apparent.

The feature just discussed goes hand in hand with the failure of the rule to apply to all commodities. Only five classes of commodities are covered, all others, including general cargo, being exempt. The record shows that some delays in unloading "penalty" cargo resulted from the prior unloading of demurrage-free cargo. Ships were shifted in several instances to piers equipped to handle heavy lifts of cargo not subject to demurrage while other cargo on which demurrage was accruing was compelled to await its turn at the convenience of the ship or the port authorities. A rule that works in this fashion penalizes the innocent for the benefit of the guilty and its unjustness and unreasonableness should be apparent at a glance. Demurrage-free cargo, it is true, was a small proportion of the total, but it may have been responsible for much of the delay in discharging other cargo. We held in *Practices of San Francisco Bay Area Terminals*, 2 U. S. M. C. 588, aff'd *California v. U. S.*, 320 U. S. 577, that demurrage must be equitably apportioned, and I so hold here. It was not so apportioned by this rule.

Another unreasonable feature of the tariff provision before us is the fact that by its terms demurrage was charged under certain conditions from the time the ship arrived in port, i. e., not only before discharge of cargo was completed and the cargo had been made available to the consignee, but even before unloading had begun. In *Free Time and Demurrage Charges at New York*, *supra*, the Commission concluded that "free time is granted by the carriers not as a gratuity, but solely as an incident to their obligation to make delivery. \* \* \* This is an obligation which the carrier is bound to discharge as a part of its transportation service, and consignees must be afforded fair opportunity to accept delivery of cargo without incurring liability for penalties. Free time must be long enough to facilitate this result—but need not be longer." While war conditions in Panama may have justified a reduction in free time, I do not see how demurrage can reasonably be charged until and unless the cargo had at least been made available to the consignee. Surely, even with the utmost diligence a consignee cannot possibly take delivery of cargo before it is discharged. Thus, to compute demurrage, as called for in the tariff provision before us, beginning "from the time ship arrives in port", appears arbitrary and capricious and, therefore, unreasonable.

The respondents argue that even if the charge was improper, complainant should not be relieved from it because if he pays it, he will collect it (and in some cases has already collected it) from his consignees and therefore will either sustain no loss or damage if the charges are not waived, or be unjustly enriched if they are. Whether this argument would have merit if we were awarding reparation as such, need not be decided because no reparation is involved, but I deem it inapplicable in disposing of the complaint as a claim against the Commission. The fact is that complainant was required to accept, and accepted under protest, an obligation for demurrage which I find to have been improper. He now seeks relief from that obligation and I think that relief should be granted. The Commission is in no position to analyze the contract relationships between complainant and his consignees, and need not assume that if the charges are waived, complainant will not, voluntarily or under compulsion, make restitution to consignees who have advanced the charges to him. We can not undertake to supervise his conduct in this respect, particularly in view of the possibility that consignees who have advanced such charges to complainant may themselves have recouped them from their own vendees or others. Under the letter and spirit of the Shipping Act, the charges here involved should be canceled, and Grace Line, Inc. as agent, should be directed to take all measures necessary to secure release of the bond or bonds securing payment of such charges by complainant.

3 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., this 15th day of November, A. D., 1949

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No. 630

SIGFRIED OLSEN D. B. A. SIGFRIED OLSEN SHIPPING COMPANY

*v.*

WAR SHIPPING ADMINISTRATION AND GRACE LINE, INC.

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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 Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision that we do not have jurisdiction under the regulatory provisions of the Shipping Acts, which report is hereby referred to and made a part hereof;

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

By the Commission.

[SEAL]

(Sgd.) R. L. McDonald,  
*Assistant Secretary.*



# UNITED STATES MARITIME COMMISSION

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No. 621

## PORT OF NEW YORK FREIGHT FORWARDER INVESTIGATION

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*Submitted October 20, 1948. Decided November 17, 1949*

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Persons carrying on the business of forwarding as forwarders in connection with a common carrier by water, defined.

Certain practices of forwarders in the making of charges, billing for the same, and issuing a receipt for goods which purports to be a bill of lading found to be unreasonable and unfair.

Need found for registration with the Commission of forwarders.

*Charles S. Haight and MacDonalld Deming* for Joint Committee of Foreign Freight Forwarders Associations: New York Foreign Freight Forwarders and Brokers Association, Steamship Freight Brokers Association, New York Customs Brokers Association; and National Association of Foreign Freight Forwarders.

*Phil Mancini* for Acme Fast Freight, *Henry Lauterbach* for American Despatch Agency, *Arthur C. Grannis* for Austin Baldwin & Co., Inc., *Hymen I. Malatzky* for Bergen Shipping Service, *R. A. Craft* for A. V. Berner & Co., Inc., *John Block* for John Block and Company, Inc., *Albert E. Bowen* for Albert E. Bowen, *J. C. Byrnes, Jr.*, for Byrnes and Lowery, *Roy F. Martin* for Caragol-Clarke Co., *Samuel C. Carter* for Carter Shipping Service, *W. F. Mittelsdorf* for L. A. Consmiller, Inc., *Kurt Freund* for Continam Shipping Company, *L. G. Blauvelt* for Copex Company, Inc., *H. D. Weiser* for Draeger Shipping Company, Inc., *Harry G. Drew* for Drew Shipping Company, *Gino Alaimo* for Excell Shipping Co., *C. S. Levitt* for Export Trade & Shipper, *Gordon Rose* for Foreign Freight Contractors Inc., *Paul F. Maguire* for Gallagher and Asher Company and Franklin Forwarding Company, *R. A. Gertzen* for Gertzen, Kerer Co., Inc., *Arthur A. Atha* for Gonrand Shipping Company, *Bart D. O'Brien* for C. S. Grant and Company Inc., *H. L. Greene* for H. L. Greene, *E. R. Starr* for F. Murray Hill and Company, Inc., *Murray Weinstock* for Independent Forwarding and Carloading Company, *M. L. Golieb* for International Expeditors, Inc., *Robert E. Quirk*, *John K. Cunningham* and *John A.*

*Limerick* for Judson-Sheldon Division, National Carloading Corporation, *A. C. Priemer* for Knickerbocker Carriers Inc., *Martin L. Shayne* for Leading Forwarders Inc., *R. G. Ballingeri* for Luigi Serra, Inc., *Murray Weinstock* for Majestic Shipping and Forwarding Co., *Charles R. Zeller* for the Masiller Company, *T. W. Moody* for H. E. Moody and Company, *L. W. Moritz* for L. W. Moritz Company, *Thomas J. McGrath* for T. J. McGrath and Company, *Prop. E. Kubaneck* for New York Forwarding Company, *M. Person* for Person and Weidhorn, *E. C. Peterson* and *Paul M. Klein* for E. C. Peterson, *M. Hertele* for Phoenix Shipping Company, *A. D. Thomas* for Porto Rican Express Company, *Charles Israel* for Reliance Shipping Service, *Frank J. Nardo* for Richard Shipping Corporation, *Al G. Pritchard* for Schmidt Pritchard & Company Inc., *R. G. Ballingeri* for Serra Luigi, *J. R. Willever* for Tranship Company Inc., *F. M. Melius* for Universal Transcontinental Corporation and Universal Carloading and Distributing Company, *Edwin S. Weber* for Webbal Service, *R. C. Wehling* for R. C. Wehling and Company, *John J. Galgano* for Werckle & Galgano, *Harvey H. Watkins* for Young and Glenn Inc.

*Wilbur LaRoe, Jr.*, *Leander I. Shelley*, *Frederick E. Brown*, *Arthur L. Winn, Jr.*, *Samuel H. Moerman*, *L. W. Byrne*, and *W. L. Thornton, Jr.*, for Port of New York Authority, *H. W. Browne* and *J. W. Nobel* for National Export Traffic League, interveners.

*A. C. Welsh* for Brooklyn Chamber of Commerce.

*W. C. Rossman* for Steamship Freight Brokers Association.

*David R. Bookstaver* and *William W. Kapell* for the Office of Price Administration.

*Allan Briggs*, *Maurice A. Krisel*, and *Frank J. Gillis* for the Commission.

#### REPORT OF THE COMMISSION

*CODDAIRE, Commissioner:*

Exceptions were filed to the report proposed by the examiners, and the matter was argued orally. Our conclusions, in the main, agree with those of the examiners. Commissioner McKeough's concurrence in part is attached hereto.

This investigation was instituted by the Commission pursuant to its order of August 21, 1942, which alleges that respondent Foreign Freight Contractors, Inc., in connection with the receiving, handling, storing, or delivering of cargo and freight in foreign commerce, issues contracts under the guise of bills of lading, although not a carrier; purports to establish freight rates; and engages in other acts and practices with respect to contracts it makes with shippers, and the

method of assessing and collecting its charges, in violation of section 17 of the Shipping Act, 1916, as amended. The order states that the public interest requires a general inquiry to determine the extent of the existence of such practices among all other forwarders in the port of New York, subject to the Act, and the lawfulness of such practices under section 17 thereof, with the view toward making such order or taking such other action as may be warranted by the record. The order, as amended, names as respondents some 320 forwarders located at the port of New York, and recites that they carry on the business of forwarding in foreign commerce and that each of them is an "other person subject to this Act" within the meaning of that phrase as used in sections 1 and 17 of the Act.<sup>1</sup>

Prior to hearing a questionnaire regarding their general practices and activities was sent to respondents. The verified answers to the questionnaire were incorporated in the record at the initial hearing in New York. Thereafter, the hearing was adjourned to enable the Commission, through an order issued pursuant to section 21 of the Act, to obtain additional information concerning actual forwarding transactions. Before the time expired within which this information was to be furnished, certain respondents instituted court proceedings to enjoin the order of investigation and the section 21 order. In *American Union Transport v. United States*, 55 F. Supp. 682, the court enjoined the section 21 order, holding that the Commission had no jurisdiction over respondents. This ruling was reversed by the Supreme Court of the United States in *United States v. American Union Transport*, 327 U. S. 437. Hearings were subsequently resumed in New York and Chicago, Illinois.

A forwarder in foreign commerce in many instances furnishes a necessary link in preparing shipments for export. These services are diverse in character and may vary as to almost every shipment.<sup>2</sup>

<sup>1</sup> Section 1 reads: "The term 'other person subject to this act' means any person not included in the term 'common carrier by water,' carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water."

Section 17 provides in relevant part: "Every such carrier and every other person subject to this act shall establish, observe, and enforce just and reasonable regulations and practices, relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice."

<sup>2</sup> More specifically, forwarders perform on occasion the following services: Examine instructions and documents received from shippers; order cargo to port; prepare export declaration; book cargo space; prepare and process delivery order, and dock receipt; prepare instructions to truckman or lighterman, and arrange for or furnish such facilities; prepare and process ocean bill of lading; prepare consular documents, and arrange for their certification, in the language of the country to which the goods are shipped; arrange for or furnish warehouse storage when necessary; arrange for insurance when so instructed; clear shipment in accordance with United States Government regulations; pre-

Some exporters and shippers maintain their own exporting departments and perform all steps necessary to secure transportation by water and delivery of the goods in the foreign country. These are not forwarders because it is only when such activities are for and on behalf of the shipper or consignee in return for a consideration, money or otherwise, that they constitute forwarding subject to our jurisdiction. Common carriers by water in some instances offer forwarder service, but they have not shown any desire for such business and charge rates which are generally below those of regular forwarders but which have not been shown to be non-compensatory. Their charges are published in tariff form, some as minimum charges and others as specific itemized rates.

Forwarders may, and in a great many instances do, engage in businesses other than forwarding, such as commission merchants, resident buyers for foreign purchasers, manufacturers' agents, and traders. They may or may not have a financial interest in the shipment. This diversity of activity creates uncertainty as to the actual legal status of the forwarder, the legal relationship between the forwarder and shipper, and between the forwarder and the carrier. This uncertainty undoubtedly has given rise to many of the practices against which complaints were made.

The broad scope of the order of investigation, together with the implications of the decision in *United States v. American Union Transport, supra*, induced at the hearings not only the expression of much shipper dissatisfaction, but a presentation of the problems of the forwarding industry as well. Witnesses included individual shippers, representatives of the National Export Traffic League, the Port of New York Authority, National Industrial Traffic League, and members of the Joint Committee of Foreign Freight Forwarders Associations.<sup>3</sup>

*Complaints.* Specific complaints were made against the absence of clearness and uniformity in classification of service; lack of specification of charges for services; padding of bills; lack of professional

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pare advice notices of shipments, sending copies to bank, shipper or consignee, as required; send completed documents to shipper, bank or consignee as directed; and advance necessary funds in connection with the foregoing.

Also, they provide supervision in the coordination of services rendered to shipment from origin to vessel, render special service on unusual shipments or when difficulties in transit arise, and give expert advice to exporters as regards letters of credit, licenses, inspection, etc.

<sup>3</sup> The Port Authority stated its interest as follows: (1) to suggest regulations which would control unjust or unreasonable practices or unreasonably discriminatory charges, (2) to urge that any regulations be uniform at all ports, and (3) to urge that any regulations be not unduly burdensome to our foreign commerce.

The Joint Committee represents New York Foreign Freight Forwarders and Brokers Association, Steamship Freight Brokers Association, New York Customs Brokers Association, and National Association of Foreign Freight Forwarders.

responsibility; and instances of dishonesty in overcharging on ocean freight. Much of this is attributed by the Port of New York Authority to the "fog" which surrounds the industry, some of whose members "carry their office in their hats", and lack experience and responsibility necessary to the efficient performance of forwarding functions.

The most persistent complaints result from "lump sum" billing for such accessorial services as trucking, insurance, and warehousing. Although shippers conceded that forwarders should charge for these services, they stated that this manner of billing leads to the suspicion of padding. For instance, where there is a single charge for "Marine \* \* \* W. R. Insurance \* \* \* and Services", there is no specification of what constitutes "service", which is typed on the printed invoice, or the cost thereof; nor is it possible to discover the charge for insurance. Another item for "Storage-Demurrage-Lighterage" does not indicate the amount of the charges for the respective subjects. Individual shippers do not know whether they pay for the use of the whole truck or share the charges with other shippers whose goods are carted at the same time.

Instances were given by shippers of what they considered flagrant padding of the forwarder's bill for service; the misrepresentation that insurance had been placed; the collection and use of shipper funds 60 to 90 days before they are remitted; the wide discrepancy in the charges assessed by forwarders at different ports; the differences in the charges of the same forwarder for the same description of service at New York; and the issuance by the forwarder of a receipt which purports to be a bill of lading. The existence of irregularities was admitted by some of the forwarders.

In some cases shipments of various exporters are consolidated by the forwarder and sent forward in his name on one bill of lading to his correspondent or agent abroad. The forwarder's charge is generally 50 percent of the saving to the individual shipper over the minimum charge on his shipment. There was criticism against one forwarder in this connection that although the ocean freight was properly apportioned, the full charge for consular invoice was made on each shipment. The forwarder contends, however, that the rate was agreed upon by the consignee.

If the forwarder is not in the trucking business he may have a contract with a trucking firm to do all his work or may hire a truck for the specific transaction. The forwarder prepares the delivery orders, locates the freight and traces it for delivery when necessary, and advances charges for account of the shipper. Special services are given to perishables and other unusual shipments. Services are billed in various ways; some forwarders add a percentage to the actual

charges, usually 10 percent, or a flat fee of 25 cents or more; others bill actual charges and are compensated by a commission from the trucking company; and still others, who have their own trucking facilities, charge on a contract basis.

In arranging insurance the forwarder must ascertain the age and flag of the vessel, consider the place of stowage of the goods, determine proper coverage and kind of insurance, and in some instances prosecute and settle claims for the account of the shipper. Forwarders having an open policy receive no commission from the insurance company but add approximately 25 cents on each \$100 of insurance or 10 percent to the premium for preparing insurance certificate, advancing the premium, and handling claims. Other forwarders bill actual charges and are compensated by brokerage from the insurance company.

Warehousing is necessary when goods arrive at port too soon or too late for a sailing, or where the shipper has failed to send documents on time, or where shipments are to be consolidated. Forwarders who arrange for this service may add a fee to the storage cost or bill actual cost and receive a commission from the warehouse company. Some forwarders are financially interested in warehouses and perform the service on a contract basis.

Some of the practices objected to arose through the willingness of foreign commission merchants, who may control the routing, to have the charges padded so that their commission based upon a percentage of the cost could be increased. Shippers who made these complaints can prevent repetition of the padding by selling C. I. F. or C. & F.

#### CONCLUSIONS

The opinion of the Supreme Court in *U. S. v. American Union Transport, supra*, leaves no doubt as to our power to prescribe reasonable regulations designed to remedy any unreasonable practices shown of record herein. In reviewing the regulatory scheme and policy of the Shipping Act, 1916, the court pointed out that forwarders are in a position to enter into agreements with carriers which may be contrary to the policy of section 15 of the Act, and to commit or induce discriminations forbidden by section 16. They are intimately connected with the receiving, handling, storing, and delivering of property, the practices as to which must be just and reasonable under section 17; and they have access to confidential shipping information, the disclosure of which is forbidden by section 20. See also *California v. United States*, 320 U. S. 577.

We are of the opinion that any person carrying on the business of dispatching shipments by ocean going vessels in foreign commerce and domestic commerce with or between our territories and possessions, and of handling the formalities incident thereto, is a forwarder within the provisions of the Shipping Act, 1916.

This definition includes manufacturers, exporters, export traders, manufacturers' agents, resident buyers, and commission merchants if they do not ship in their own name and if they charge a fee for forwarding services. Merely because one offering a forwarding service is engaged in other businesses does not remove him from our jurisdiction. Such definition does not include the foregoing persons, however, if they ship in their own name even though a forwarding fee is charged directly or is concealed in the price of the goods. Admittedly, in the latter instance they might be competitive with regular forwarders, but that is not the test. The statute applies to persons "carrying on the business" of forwarding. Persons who merely perform forwarding on their own behalf can not be regarded as carrying on a forwarding business. Moreover, a shipper who performs his own forwarding, though he passes the cost on to the buyer, needs no protection. The record demonstrates, however, that shippers who do not forward their own shipments but rely through choice or necessity upon professional forwarders, do need a measure of protection. This is true particularly in reference to shippers located far from ports through which their cargoes are shipped.

While it is evident that many of the irregularities complained of have been practiced by a comparative few, it is also evident that temptations arising from keen competition, coupled with the lack of any regulation of the industry, have caused many forwarders to engage in practices which are unjust and unreasonable and detrimental to commerce.

The most common abuses arise from the forwarders' methods of billing—the failure to specify clearly and state separately all service charges, and to segregate them from actual out-of-pocket costs for accessory services. We are not convinced by the argument that segregation of charges would upset the foreign consignee, and thus prove injurious to our foreign trade. It would seem that the more logical reason why some forwarders do not segregate their charges is that since the business is highly competitive, the present method of billing affords more leeway in bidding. Certain service charges can be made to appear nominal while the profit is concealed in such items as trucking, insurance, and warehousing. This practice is unjust and unreasonable. Itemization of charges and exact disclosure of outlays for

which reimbursement is sought, should be made either prior to the shipment, or thereafter in an appropriately detailed invoice.

During the course of the hearing and in briefs the suggestion was made that forwarders act as independent contractors. The only significance that can be attached to this claim is that once the charges are agreed upon, any ground for complaint as to the reasonableness thereof, either from the shipper or forwarder, is removed. In *U. S. v. American Union Transport, supra*, the court said (p. 443): "By engaging in these many activities of the forwarding business, independent forwarders—and particularly the appellees<sup>4</sup>—act as *agents of the shipper*." (Emphasis supplied.) But for regulatory purposes, it is immaterial whether the forwarder acts as agent or independent contractor. What he does determines his status and the resultant obligations under regulatory statutes. *United States v. California*, 297 U. S. 175. Whether a forwarder is an agent or an independent contractor, he is in either case precluded by the equality provision of section 16 of the Shipping Act from unduly or unreasonably preferring, or discriminating against, any person for whom he performs forwarding service. *Contract Rates—Port of Redwood City*, 2 U. S. M. C. 727. It is realized of course that the services of forwarders are specialized and varied. However, the record indicates a possibility of discriminatory treatment resulting from the great variety of methods upon which charges are based.

The evidence shows instances of a forwarder who, at the same place but under a different name, transacts business as a shipper, simultaneously collecting brokerage under another name as a forwarder of his own shipments. Brokerage paid to a shipper on his own shipments constitutes a rebate in violation of section 16 of the Shipping Act—and this is true notwithstanding that the shipper may also be a forwarder and may purport to receive the brokerage money in his forwarder capacity. Similarly, a forwarder who has any beneficial interest in a shipment and accepts brokerage thereon, is equally guilty of accepting a rebate in violation of section 16.

One effective way of controlling abuses disclosed by the present record would be through legislation providing a system of licensing similar to that applied to custom brokers. In the absence of such legislation, it is essential that we require all forwarders to register with the Commission, since a program of regulation undertaken without means of identifying the members of the industry would be largely ineffective. The Port Authority, representatives of forwarders and shippers, and Commission counsel concede the necessity for registra-

<sup>4</sup> The appellees were those respondents who contested the Commission's jurisdiction.



tion with us of all forwarders. A requirement for registration will be a step in the right direction and will give us an opportunity to decide further as to the need for licensing legislation.

We find:

(1) that there is need for the registration of all forwarders;  
(2) that it is an unreasonable practice in violation of section 17 of the Shipping Act, 1916, for a forwarder, in submitting invoices for services or reimbursement of advances in connection with the forwarding of any shipment for export:

(a) to fail to disclose accurately and separately all amounts advanced or contracted for or on behalf of the shipper or consignee; or

(b) to fail to itemize all service charges, unless such forwarder and shipper or consignee shall have agreed in advance as to the charges and method of billing and reference to said agreement is made in the statement presented;

(3) that the issuance of a receipt for cargo by a forwarder, which purports to be a bill of lading, is an unreasonable practice in violation of section 17 of the Shipping Act, 1916.

Proposed registration of all forwarders in the United States, including respondents, and rules and regulations relating to their practices and relations with shippers and consignees, will be published in the Federal Register, and interested persons will be invited to submit written views thereon.

#### UNITED STATES MARITIME COMMISSION

WASHINGTON

IN THE MATTER OF FORWARDERS ENGAGED IN THE EXPORT TRADE OF THE  
UNITED STATES

#### NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that, in accordance with the provisions of section 17 of the Shipping Act, 1916, section 204 of the Merchant Marine Act, 1936, and section 4 of the Administrative Procedure Act, the United States Maritime Commission has under consideration proposed rules and regulations relating to persons engaged in the business of forwarding property by ocean going vessels in the foreign commerce of the United States or in domestic commerce with or between the territories or possessions of the United States.

The purpose of the proposed rules is to effectuate the registration of forwarders and to eliminate certain unjust and unreasonable practices in the forwarding industry.

All persons interested in the proposed rules and regulations hereinbelow set out may file with the Secretary of the Commission, Commerce Building, Washington 25, D. C., within sixty (60) days of the publication of this notice in the Federal Register, written views and suggestions thereon. The proposed rules are as follows:

3 U. S. M. C.

### *I. Definition of a Forwarder:*

1.1 For the purpose of these rules and regulations, a forwarder is any person engaged in the business of dispatching shipments on behalf of other persons, by ocean going vessels in foreign commerce or in domestic commerce with or between the territories or possessions of the United States, and of handling the formalities incident thereto.

### *II. Registration with the Commission:*

2.1 All persons who engage in the business of forwarding shall register with the Commission, such registration to be in addition to any registration under the Commission's General Order No. 70.

2.2 All persons who are engaged in the business of forwarding on the effective date of these regulations shall register with the Commission thirty days after such date.

2.3 All persons who are not engaged in the business of forwarding on the effective date of these regulations but who engage therein after such date shall register with the Commission before engaging in said business.

2.4 For good cause shown, the Commission, upon request of the registrant, may extend the time for registration.

2.5 Each registrant shall furnish to the Commission a statement, on a form to be supplied by the Commission, giving full information with respect to (a) the registrant's name and the address of its principal and branch offices, (b) form of organization and place of incorporation if a corporation, (c) names and citizenship of officers and principal stockholders, proprietors, or partners, as the case may be, (d) the extent of the holdings of each stockholder, (e) statement as to whether forwarding business is a subsidiary of any other business and, if so, the name and description thereof, (f) names and addresses of agents, affiliates, and subsidiaries, and (g) statement of businesses other than that of forwarding in which engaged, either directly or through affiliates.

2.6 Each forwarder who has filed the required information will receive from the Commission a registration number which thereafter shall be set forth on his letterheads, invoices, advertising, and all other documents relating to his forwarding business. Use of the registration number in any way other than to indicate the mere fact of registration with the Commission is prohibited.

### *III. Regulations:*

3.1 All forwarders shall use invoices or other forms of billing which state separately and specifically, as to each shipment:

- (a) the amount of ocean freight assessed by the carrier;
- (b) the amount of consular fees paid to consular authorities;
- (c) the amount of insurance premiums actually disbursed for insurance bought in the name of the shipper or consignee;
- (d) the amount charged for each accessorial service performed in connection with the shipment;
- (e) other charges.

3.2 In the case of consolidated shipments, the invoice or other form of billing concerning each shipment shall state the minimum ocean freight and consular fees that would have been payable on each shipment if shipped separately, and the amounts actually charged for these items by the forwarder, on the shipment in question.

3.3 All special contracts between forwarders and shippers or consignees shall be reduced to writing, signed by the parties, and a copy maintained in the files of the forwarder for submission to the Commission upon request.

3.4 To the extent that special contracts are entered into by forwarders with individual shippers or consignees, similar contracts shall be open to all shippers and consignees similarly situated, and they shall be advised as to the terms under which the contracts are available.

3.5 In the case of special contracts where the parties have agreed in advance as to the charges for services in connection with the forwarding of a shipment, the invoice or other form of billing shall refer to the agreement and the charges need not be itemized.

3.6 Forwarder's receipts for cargo shall be clearly identified as such and shall not be in a form purporting to be a bill of lading.

3.7 No forwarder, after the date on which he is required to register, shall demand or accept brokerage from steamship companies unless and until such forwarder has applied for a registration number from the United States Maritime Commission pursuant to these regulations.

#### IV. *Effective Date and Applicability of Regulations:*

4.1 These proposed regulations shall be published in the Federal Register and shall become effective sixty (60) days after such publication.

MCKEOUGH, *Commissioner*, concurring in part:

I concur in the majority's definition of forwarders, except for the blanket exclusion of common carriers.

The majority states that its definition of forwarders includes:

manufacturers, exporters, export traders, manufacturer's agents, resident buyers, and commission merchants if they do not ship in their own name and if they charge a fee for forwarding services.

Earlier in the body of the majority decision, the following finding, although not so labeled, appears:

Common carriers by water in some instances offer forwarder service, but they have not shown any desire for such business and charge rates which are generally below those of regular forwarders but which have not been shown to be non-compensatory. Charges are published in tariff form, some as minimum charges and others as specific itemized rates.

The question of carriers' "desire for such business" can hardly affect their legal status as long as they do "offer forwarder service". Nor can the fact that carriers charge rates for forwarding service "which are generally below those of regular forwarders" justify special treatment of common carriers, when offering forwarding service; to the contrary, the practice of certain steamship companies to perform forwarding services for the public at "cut-rates" may well be one of the reasons why "regular forwarders" find themselves pressed, as we have found, to hide service charges in lump sum billing or in the "padding" of bills for accessorial services.

I can see no grounds for exemption from regulation as forwarders in the fact that common carriers may not offer *all* the services customarily offered by forwarders, or that they offer forwarding services only as an unimportant "sideline". The same, after all, can be said of many of the businesses which the majority has decided to include in its definition.

Neither publication of some common carriers' forwarding charges in their tariffs, nor the definition of "other person subject to this Act" in Section 1 of the Shipping Act, 1916 ("any person not included in the term 'common carrier by water' carrying on the business of forwarding \* \* \* in connection with a common carrier by water") justify exempting common carriers "carrying on the business of forwarding" from such standards as we determine should be established for, and followed by those "carrying on the business of forwarding".

Such exemption is as alien to the broad regulatory policy of the 1916 Act and the intent of its framers, as if we were to exempt common carriers who also furnish wharfage, dock, or other terminal facilities from standards applied by us to independent or affiliated persons furnishing the same facilities. Congress, as is clear from the legislative history of the Act, wanted to make sure that certain of the provisions of the Act apply not only to actual transportation, but to certain accessorial services as well. As these are frequently furnished by persons other than common carriers, Congress provided for a separate category of "other person subject to this Act". Now for us, however, to apply the provisions of the Act to "other persons", yet not to the common carriers themselves *when they perform the same functions*, would not only bring about a most incongruous result, but, in addition, would mean charging the Congress with setting up a "double standard" without any apparent justification or purpose whatsoever. I refuse to so charge the Congress.

Accordingly, finding it necessary to regulate the business of forwarding in connection with a common carrier by water for hire, we should regulate everybody carrying on this business, lest we lay ourselves open to the accusation of playing favorites.

I am unable to concur in the majority's finding

- (3) that the issuance of a receipt for cargo by a forwarder, which purports to be a bill of lading, is an unreasonable practice in violation of section 17 of the Shipping Act, 1916.

This finding is unsupported, in the body of the majority's decision, by any argumentation, explanation, or discussion, and, therefore, appears arbitrary and capricious. The finding is believed to be based upon a single case, not referred to or discussed in the majority's de-

cision. There is no indication that that particular complaint and the damage complained of would have been avoided had the document in question been identified as a cargo receipt rather than a bill of lading. Moreover, due to absence of definitions, indefiniteness in language, and lack of supporting discussion, the finding leaves it open to conjecture whether we condemn, as an unreasonable practice, the issuance of a real bill of lading by a forwarder, or the issuance of a cargo receipt which purports to be, and actually is, a bill of lading, or only the issuance of a receipt for cargo which purports to be, *but actually is not*, a bill of lading.

I concur with another finding made in the body of the majority's decision, but omitted, in my opinion erroneously, from its formal findings. Although Docket 621 is primarily an investigation into the practices of forwarders in their relations with shippers and consignees, and although it may be held, therefore that matters involving the relations between forwarders and common carriers by water are extraneous to the issues, nevertheless, we found, and the majority reports, evidence of a forwarder who collected brokerage from a common carrier on shipments in which the forwarder had a financial interest as shipper. The majority concludes that

Brokerage paid to a shipper on his own shipments constitutes a rebate in violation of section 16 of the Shipping Act \* \* \*. Similarly, a forwarder who has any beneficial interest in a shipment and accepts brokerage thereon, is equally guilty of accepting a rebate in violation of section 16.

I agree, but having determined that a certain practice constitutes a rebate in violation of Section 16, I believe that we should have included such determination among our formal findings as well as a prohibition of that practice among the proposed rules and regulations; or, if we find that we may not do so because the proceeding was one solely under Section 17 of the Act, the discussion of this matter falling under Section 16 should have been omitted from our report entirely.

I am not at this time concurring in the proposed rules and regulations as we are inviting interested persons to submit to us their views on these proposed rules and regulations, which in no case will become effective except after 60 days from their publication in the Federal Register. Questions relating to the effectiveness of some of the proposed rules and regulations and to the practicability of others can be better resolved when the comments of interested persons will have been received.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 17th day of November, A. D., 1949

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No. 621

PORT OF NEW YORK FREIGHT FORWARDER INVESTIGATION

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This proceeding having been instituted by the Commission on its own motion, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof, and provision having been made therein for the registration of all forwarders including respondents and for the consideration of rules and regulations relating to their practices and relations with shippers and consignees;

*It is ordered,* That this proceeding be dismissed.

By the Commission.

[SEAL]

(Sgd.) R. L. McDONALD,  
*Assistant Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 657

## AGREEMENTS AND PRACTICES PERTAINING TO BROKERAGE, AND RELATED MATTERS

*Submitted October 27, 1948. Decided November 17, 1949*

Provisions prohibiting the payment of brokerage found to be detrimental to the commerce of the United States under section 15 of the Shipping Act, 1916.

*Joseph J. Geary, Allan E. Charles, Chalmers G. Graham, Leonard G. James, F. L. Tetreault, Cletus Keating, David Dawson, William Radner, Odell Kominers, William D. McGraw, Parker McCollester, John R. Mahoney, Donald E. Leland, and Albert E. Stephan for respondents.*

*Charles S. Haight and McDonald Deming for Joint Committee of Foreign Freight Forwarders Association, New York Foreign Freight Forwarders and Brokers Association, Steamship Freight Brokers Association, National Association of Foreign Freight Forwarders, and the individual members of those associations, J. Richard Townsend for Pacific Coast Customs and Freight Brokers Association and 21 Pacific coast ocean freight forwarders, Robert E. Quirk for Judson Sheldon Corporation, Universal Trans-Continental Corporation, International Expeditors, Inc., and D. C. Andrews & Company, John R. Cunningham for Judson Sheldon Corporation and National Car-loading Corporation, Wilbur E. Dow, Jr., Anthony N. Zock, and John S. Stillman for Association of Ship Brokers and Agents, M. L. Golieb for International Expeditors, Inc., Robert E. Williams and T. R. Stetson for Pacific Coast Borax Company, Howard A. Leatart for American Potash and Chemical Corporation, Charles Diamond for Dyson Shipping Co., Inc., and F. N. Melius, Jr., for Universal Trans-Continental Corporation, interveners.*

*Paul D. Page, Jr., Solicitor, and George F. Galland for the Commission.*

## REPORT OF COMMISSION

CODDAIRE, *Commissioner*:

In *Agreement No. 7790*, 2 U. S. M. C. 775, we found, among other things, that a provision in the proposed agreement prohibiting payment of brokerage by members of the conference was inconsistent with the Bland Forwarding Act (56 Stat. 171), and that the agreement would not be approved unless the prohibition was eliminated. Respondents therein disputed our finding and continued to function under their then existing Agreement No. 57 and the rules adopted thereunder, which contained a similar prohibition. Other conferences operating with similar prohibitions likewise challenged our finding. On the other hand, freight forwarders and others called upon us to issue rules requiring the payment of brokerage.

We instituted the present proceeding upon our own motion pursuant to sections 15, 16, 17, 18, 21, 22, and 23 of the Shipping Act, 1916, hereinafter called the Act, and section 4 of the Administrative Procedure Act, for the purpose of inquiring into and of taking appropriate action concerning the payment or non-payment of brokerage by carriers, and conference agreements, regulations, arrangements, and practices relative thereto. The scope of the order of investigation is as follows:

ORDERED that the Commission institute public hearings with respect to the payment and non-payment of brokerage by carriers subject to its jurisdiction, and that at such hearings, evidence be received as to whether conference agreements and regulations adopted thereunder, prohibiting the payment of brokerage, are contrary to law or unjustly discriminatory or unfair as between carriers, shippers, importers, exporters, or ports, or detrimental to the commerce of the United States; and it is further

ORDERED that respondents show cause before the Commission why conference agreements (including regulations, understandings and other arrangements) to which respondents or any of them are parties, which prohibit the payment of brokerage, should not be disapproved.

Public hearings were held at San Francisco, California, and New York, New York.

The examiners found that provisions prohibiting the payment of brokerage were detrimental to the commerce of the United States under section 15 and an unreasonable practice under section 18 of the Act. Exceptions were filed to the examiners' report and the matter was argued orally. Our conclusions do not differ materially from those recommended by the examiners. Commissioner McKeough's concurrence in part is attached hereto.

Respondents are steamship conferences and their common carrier members, the conferences being shown in Appendix A, attached hereto and made a part hereof. They prohibit the payment of brokerage



in whole or in part through their conference agreements, rules, and regulations, or tariff provisions. Numerous organizations of forwarders, individual members thereof, and shippers intervened.

The order as originally issued included as respondents certain steamship conferences engaged exclusively in the domestic trade. Upon motion made at the oral argument upon exceptions, and pursuant to agreement and stipulation by and between the parties, the proceeding was limited solely to conferences of common carriers by water in foreign commerce, thereby eliminating without prejudice, those respondents engaged exclusively in the domestic trade.

The Act does not define brokerage and is silent as to any requirement regarding payment of brokerage. In *Agreement No. 7790, supra*, however, we said that "brokerage is compensation for securing cargo for the ship." It is compensation paid by common carriers by water to brokers, including forwarders, and is generally measured in amounts equal to fixed percentages of gross revenues collected by the carriers from shippers who have employed the brokers or forwarders. The Act also fails to describe persons carrying on the business of forwarding. As used in this report, the term "forwarder" means any person employed by shippers or consignees to dispatch shipments by ocean steamships and to take care of formalities incident thereto.

The practice of paying brokerage in world trade dates back more than 100 years, but there is no general uniformity among carriers in observing the practice. Most conferences serving the Pacific coast have limited or prohibited their members from paying brokerage, while most conferences serving the Atlantic and Gulf coasts allow their members to pay brokerage up to a maximum of  $1\frac{1}{4}$  percent of the freight revenue. Some carriers, including certain of the respondents, have membership in both types of conferences. Some non-conference carriers pay brokerage of  $2\frac{1}{2}$  percent or more.

The members of Pacific Westbound Conference, operating between the Pacific coast of the United States and the Far East, are prohibited by Rule 16 of the conference from paying brokerage on "local cargo". The term "local cargo" is defined on the title page of Pacific Westbound Conference Local Freight Tariff No. 1-U as follows:

The local tariff applies on traffic originating in the States of Montana, Wyoming, Utah, Arizona, and States west thereof, and some points in Canada west of the Saskatchewan, Manitoba boundary line, and all other traffic originating east thereof on which overland rates may not be applicable.

The same rule provides that brokerage shall not be paid in excess of  $1\frac{1}{4}$  percent on traffic originating in overland territory (points east of the above described geographical territory) and moving on through export bills of lading. Brokerage is permitted on overland traffic

because of the competition from carriers operating from the Atlantic and Gulf ports to common destinations; most of the latter carriers belong to the Far East Conference, which authorizes brokerage of  $1\frac{1}{4}$  percent.

Prior to the formation of the Pacific Westbound Conference, the trans-Pacific trade was organized into two separate conferences, and there was no prohibition against the payment of brokerage. Some of the carriers paid brokerage at varying rates and others paid none. Because of the abuses which resulted, an official of the United States Shipping Board, the Commission's predecessor, advised the conference to adopt a prohibition against the payment of brokerage on local cargo. Such a prohibition was incorporated in Agreement No. 57, which was approved June 26, 1923.

Pacific/Straits Conference and Pacific/Netherlands East Indies Conference embrace geographical territories contiguous to that of Pacific Westbound Conference and observe the same brokerage practices with respect to local and overland cargoes, although prior to December 31 and April 9, 1936, respectively, there were no prohibitions against paying brokerage except on petroleum and petroleum products.

All other Pacific coast respondents appear to have prohibited the payment of brokerage since their formation, except Pacific Coast-Australasian Traffic Bureau, which, between July 9, 1935, and February 17, 1947, allowed brokerage of  $1\frac{1}{4}$  percent on overland cargo.

All Atlantic and Gulf coast respondents serving Caribbean Sea, Mexican, and Central American areas prohibit the payment of brokerage on all cargo whereas carriers operating from the same Atlantic and Gulf ports to all other destinations generally allow the payment of brokerage.

Pacific Coast European Conference and its members are not respondents but appeared and offered evidence. The agreement of that conference contains no prohibition against brokerage, which the members pay on all traffic, with certain exceptions of no relevance herein. Brokerage is limited to  $1\frac{1}{4}$  percent and applies on cargo originating locally as well as in the interior, and has been paid since before the opening of the Panama Canal. Payment is permitted only to forwarders who are on record with the conference and who have filed authorizations from their clientele.

Forwarding activities have developed American commerce. The maintenance by forwarders of offices in foreign countries has resulted in direct contact between United States shippers and foreign purchasers, thus securing new business and increasing the volume of trade. The studies which many forwarders make of statistical data, trends

of trade, market conditions, and the dissemination thereof to foreign purchasers and to United States shippers also tend to develop trade. Consolidation of small shipments, with the saving of overhead costs of shippers, enables them to reach foreign markets which would otherwise be precluded because of high minimum charges by carriers. Consolidation can also save consular fees and thus improve the exporters' competitive position with foreign exporters to the common market. Moreover, forwarders make a valuable contribution to our foreign trade through their function of relieving the large number of small or occasional exporters from many details and formalities connected with export shipments. Simplification of export trading promotes and develops foreign trade.

The lack of complaints by shippers, public officials, or others interested in water transportation, against the prohibition of the payment of brokerage is not significant on the question of the effect of the practice upon the commerce of the United States. The forwarding industry is an integral part of the commerce of the United States, is employed by a great number of export shippers, and is therefore an indispensable link between those shippers and carriers. Forwarders often receive payments from both the shipper and the carrier where payment by the latter is not forbidden by agreement among carriers. The forwarder receives the shipment, performs whatever is necessary to prepare it for transportation, secures space, prepares documents, and does such other things as are required, all on behalf of the shipper. The forwarder develops business and directs particular shipments to the carrier, all to the advantage of the carrier. Forwarders generally patronize those lines which pay brokerage so long as the interest of the shipper is not jeopardized.

The contention that forwarders perform services only for shippers and that there is no consideration for the payment of brokerage by the carriers, is not convincing. The very fact that carriers fear that the removal of the ban against the payment of brokerage will result in all carriers being compelled to pay it because of the competition which will ensue is persuasive of the fact that forwarders do have the power to and do direct, in many cases, cargo to the carrier which pays them. Testimony that the volume of cargo movement has increased in spite of no brokerage payments is not conclusive that the payment of brokerage might not have produced a greater volume. The forwarder can, and does at times, increase the movement of cargo when otherwise it might be slack, and the receipt of brokerage is an incentive to create new business as well as to seek to divert cargo from one carrier to another. Furthermore, carriers derive benefit from the

activities of forwarders in directing traffic to them even when the carriers maintain their own soliciting staffs.

While it might be possible for carriers to provide necessary services for shippers, and in some instances they do so, it is not any part of the carrier's transportation function. The services performed by forwarders relieve carriers who otherwise might have to perform them in order to retain their customers, but this fact does not mean that those services are performed at the request of and for the carriers. A forwarder who simplifies export procedure by combination of several documents into one relieves carriers of their duty of providing those documents, but here again the service is primarily for the shippers, and the carrier's benefit is incidental.

Brokerage is the major portion of most forwarders' income, and even on the Pacific coast it amounts to 70 or 80 percent of the total revenue although it is paid only by the Pacific Coast European Conference. On the Atlantic coast brokerage ranges from 15 to 90 percent of the forwarders' total earnings. There are approximately 64 forwarders on the Pacific coast, where the volume of business is small compared with that handled by Atlantic coast forwarders. At New York alone it is estimated that there are over 400 forwarders, employing upward of 10,000 persons. One forwarder at New York handles from 7,500 to 11,000 sets of bills of lading per month. About 70 percent of the total volume of the Atlantic coast business originates west of the Allegheny Mountains, while on the Pacific coast most of the tonnage originates at seaboard. The numerical majority of exporters employing forwarders are shippers of package freight in comparatively small quantities.

The contention that a ban on the payment of brokerage results in discriminations in violation of sections 15 and 17 of the Act is not supported by the evidence. The payment of brokerage by the carrier is not a payment to a shipper nor does the shipper in any way benefit from the payment. The Act contains no mention of forwarders or brokers as a group to be protected from undue or unjust discriminations. *American Union Transport, Inc. v. Italian Line*, 2 U. S. M. C. 553. Forwarders, when earning and collecting brokerage are doing so in return for services to the carrier, a position analogous to employees of the carrier. Furthermore, the mere fact that a carrier may pay brokerage to a forwarder in connection with the transportation of a commodity from the Atlantic coast to the Far East and not pay either another or the same forwarder brokerage in connection with the transportation of a like commodity from the Pacific coast to the same destination is not unlawful discrimination under the Act.

A reappraisal of our decision in *Agreement No. 7790, supra*, that provisions forbidding the payment of brokerage are inconsistent with the Bland Forwarding Act, is warranted in view of the more complete record developed in the present proceeding. The pertinent provisions of that Act are as follows (56 Stat. 171) :

(a) The Commission is hereby authorized and directed, through such administrative measures, agreements with other Federal departments and agencies, contacts with individuals or private business concerns, or other arrangements, as it may deem to be necessary or appropriate in the public interest, to coordinate the functions and facilities of public and private agencies engaged in the forwarding and similar servicing of water-borne export and import foreign commerce of the United States, for the efficient prosecution of the war, the maintenance and development of present and postwar foreign trade, and the preservation of forwarding facilities and services for the postwar restoration of foreign commerce. As used herein the term "water-borne export and import foreign commerce of the United States" shall be deemed to include export shipments from the Government of the United States to the governments of nations whose defense is deemed by the President to be vital to the defense of the United States under the authority of the Act of March 11, 1941 (Public Law 11, Seventy-seventh Congress).

The Bland Act is a recognition by Congress of the value of the forwarding industry and of its desire to preserve it as an instrument of commerce. The statute does not frown upon or even mention existing agreements and practices for the payment of brokerage; nor does it lay down any rule to be observed by carriers acting individually or pursuant to agreements among them. Things done by carriers, therefore, can hardly be construed as within the purview of that Act. Accordingly, we modify the grounds of disapproval of the agreement in *Agreement No. 7790, supra*.

Motions were made to dismiss this proceeding for lack of jurisdiction over the subject matter, based upon two contentions: First, that if brokerage is not compensation for services rendered by forwarders under circumstances creating an obligation to pay, the Commission may not require payment nor condemn an agreement prohibiting brokerage since it cannot require payment of gratuities by carriers; and second, if what the forwarders do constitutes services to the carrier on a remunerative basis, the Commission has not been granted any authority over the compensation paid by carriers to their agents or employees. As we have already found hereinbefore that forwarders do perform services for carriers, it cannot be said that brokerage is gratuitous. The second contention is irrelevant in that we are not undertaking to pass upon the reasonableness of any payment nor are we undertaking to establish any definite level of payment. The agreements under investigation are all subject to our review to determine

whether the provisions thereof result in detriment to the commerce of the United States, in any discriminations enumerated in section 15, or in any violations of the Act. The motions for dismissal are denied.

We find that concerted prohibition against the payment of brokerage results in detriment to the commerce of the United States in that it has had and will have a serious effect upon the forwarding industry. We are not impressed with the argument that removal of the ban against the payment of brokerage necessarily will result in increases in rates. Respondents should remove all such prohibitions whether contained in their basic conference agreements, the rules and regulations of their tariffs, or both.

Nothing herein is to be construed as a directive that individual carriers must pay brokerage nor as any limitation as to the amount of brokerage that may be paid by such individual carriers, provided the payments do not result in violations of applicable statutes. A carrier should be free within limits to pay brokerage or not as its individual managerial discretion dictates. Nor is anything herein to be construed as a prohibition against carriers, acting under a conference agreement, from establishing all reasonable rules or regulations which will prevent the payment of brokerage under circumstances which would violate the Act, or as a prohibition against such carriers from placing limitations upon the amounts which they may pay. On the other hand, as we have found that a prohibition against any payment of brokerage results in detriment to the commerce of the United States, we believe that any limitation below  $1\frac{1}{4}$  percent of the freight involved, which is the amount generally paid by carriers in the various trades over a period of years, would circumvent our finding and result in the detriment condemned. *State of California, et al. v. United States*, 320 U. S. 577.

Other contentions of respondents and arguments advanced by interveners have been considered but have not been specifically mentioned as they do not affect our conclusions.

No order will be entered at the present time, thus giving respondents an opportunity to take necessary steps to accomplish the removal of the prohibitions condemned.

## APPENDIX A

### RESPONDENTS

Atlantic and Gulf/Hawaii Conference.

United States Atlantic and Gulf-Puerto Rico Conference.

The Pacific Coast-Puerto Rican Conference.

Southeastern Alaska Freight Conference.

Pacific Coast Australasian Tariff Bureau.

Pacific Westbound Conference.

Atlantic and Gulf/West Coast or Central America and Mexico Conference.

3 U. S. M. C.

Atlantic and Gulf/Panama Canal Zone, Colon and Panama City Conference.  
Gulf and South Atlantic Havana Steamship Conference.  
Havana Steamship Conference.  
Pacific Coast/Caribbean Sea Ports Conference.  
U. S. Atlantic and Gulf Ports-Jamaica (D. W. I.) Steamship Conference.  
Pacific/West Coast of South America Conference.  
United States Atlantic and Gulf/Haiti Conference.  
Pacific/Straits Conference.  
Pacific/Netherlands East Indies Conference.  
United States Atlantic and Gulf-Santo Domingo Conference.  
Capca Freight Conference.  
Pacific Lumber Carriers Association.  
Pacific Coast River Plate Brazil Conference.  
Pacific Coast/Panama Canal Freight Conference.  
Pacific Coast/Mexico Freight Conference.  
Santiago de Cuba Conference.

McKEOUGH, *Commissioner*, concurring in part:

I join in the finding of the majority that conference provisions prohibiting the payment of brokerage are detrimental to the commerce of the United States under Section 15 of the Shipping Act, 1916; in my opinion, however, the majority did not go far enough when it limited its condemnation to brokerage prohibition by conferences and concluded that an individual carrier "should be free within limits to pay brokerage or not as its individual managerial discretion dictates", without giving any indication of what the "limits" should be.

Detriment to our commerce, basic to the majority's condemnation of conference rules prohibiting brokerage payments, is seen in the fact that forwarders are a valuable asset to our foreign trade, both as trade simplifiers and as trade promoters, and the further fact that brokerage normally is a major portion of their livelihood. It is quite clear from the report of the majority that it concluded that the welfare of forwarders is essential to our foreign trade and that the failure to receive brokerage payments is detrimental to the welfare of forwarders and, therefore, detrimental to our foreign trade. Yet the majority shrank from drawing the only logical conclusion from its own, in my view, correct interpretation of the evidence: i. e., that if *non-payment of brokerage* is detrimental, *non-payment of brokerage* should be condemned. Instead, the majority outlawed brokerage *prohibition by conferences* only, while expressly authorizing non-payment of brokerage, with its detrimental effect on our foreign trade, by individual carrier action.

Pacific Coast forwarders testified that income from brokerage amounts to 70 or 80 percent of their total revenue and that if the Pacific Coast European Conference, which permits brokerage payments, were to prohibit brokerage like other West Coast conferences,

they could not remain in business. The condition which according to this testimony has so far kept West Coast forwarders in the business with the resulting benefit to our commerce, of course, is not the absence of a brokerage-payment prohibition on the part of a major West Coast conference, but the payment of brokerage by its members, which the Commission's majority says these members are perfectly free to stop paying. While there are over 400 forwarders in New York alone, even with brokerage payments by one important West Coast conference there are apparently only 64 forwarders, or maybe a few more, on the entire Pacific Coast where non-payment of brokerage is prevalent. Fewer forwarders mean less competition and less service to actual and potential exporters. Thus many a manufacturer may decide, to the detriment of our foreign trade, that export shipments are too cumbersome and complicated.

Our condemnation of conference prohibition of brokerage payments may lead to the actual payment of brokerage and if so, well and good. There is, of course, no assurance whatever of such a result nor can the hope for, or even expectation of, such a result justify the failure on our part as a regulatory agency to deal with the real issue: non-payment of brokerage.

It is possible that this unexplained failure of the majority to "carry through" may be due to the feeling that here is another case of what is unlawful if done in concert is lawful for the individual. If this legal differentiation was a factor, it has not been spelled out and can only be surmised. I shall explain further on why I do not concur in the validity of such differentiation in our case.

It is possible, of course, that the majority applied the narrowest possible interpretation to the order of the investigation which required respondents to show cause why *conference agreements* prohibiting the payment of brokerage should not be disapproved. However, the opening language of the same order of investigation read as follows:

ORDERED that the Commission institute public hearings with respect to the payment and non-payment of brokerage by carriers subject to its jurisdiction \* \* \*

Thus, while we ordered an investigation into the substance, the majority has been satisfied in its findings to deal with the shadow.

The majority's report lacking an explanation of the contrast between its realistic economic reasoning and its something less than realistic regulatory finding, I can think of one other possible reason for the over-cautious approach, namely, the motion made by respondents that the proceeding be dismissed for lack of jurisdiction based upon the contention that the Commission may not require payment of



gratuities by carriers and the further contention that, if what the forwarders do constitutes services to the carrier, the Commission has no authority over the compensation paid by carriers to their agents or employees. These contentions the majority properly dismisses on the grounds, first, that brokerage is not gratuitous since forwarders perform services for carriers, and, second, that we are not undertaking to pass upon the reasonableness of any payment nor are we establishing any definite level of payment. If these counter arguments are valid, as I believe they are, they would answer as effectively any attack upon condemnation by us of non-payment of brokerage by individual carriers as by conference agreement.

Agreements such as that of the Pacific Westbound Conference, which do not prohibit brokerage payments outright, but ban it on some cargoes, while permitting it on others, are not only detrimental to the commerce of the United States under Section 15 of the Shipping Act, 1916, but are also unjustly discriminatory or unfair under the same section. The majority finds no such discrimination either under Section 15 or Section 17 because, so it says, brokerage is not a payment to a *shipper* and further because the Act "contains no mention of forwarders or brokers as a group to be protected from undue or unjust discrimination". This strange doctrine of vindication, if not invitation, of discrimination against forwarders or brokers is possible only through the unexplained and unjustified inclusion of the words "as a group" and oversight of Section 16 First of the Act which makes it unlawful for any common carrier by water "directly or indirectly \* \* \* to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever".<sup>1</sup> These prohibitions are at least synonymous with, but possibly exceed in breadth the "unjust discrimination" forbidden in Section 15. As the protection of Section 16 extends to *any particular person in any respect whatsoever*, there can be no question that it also extends to forwarders, individually or "as a group". It would be wholly inconceivable, of course, that anybody protected by the Act against prejudicial treatment by individual carriers, should not equally be protected against such treatment by conference agreement; Section 15 fulfills this vital requirement by providing for disapproval of conference agreements found "to be in violation of this Act." Thus, the repugnant implication of anybody being "free

<sup>1</sup> The pertinent part of Section 16 reads as follows :

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

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

game" and unprotected against prejudicial treatment by conferences fortunately is a mistaken one.

The majority, however, not only refused to extend the protection of Section 15 to forwarders although the evidence shows that the same carrier pays brokerage to forwarders on the Atlantic Coast and denies brokerage to forwarders on the Pacific Coast for shipments of the same commodities, but, in addition, it has failed to examine into the possibility of discrimination even against two of the groups listed by name in Section 15, i. e., *exporters* and *ports*.

The conference rule adopted by some of the respondent West Coast conferences permits and prohibits brokerage payment depending solely on point of origin of shipment within the U. S. A.

The unfairness of this rule to some exporters and some ports is very real. The majority found correctly that forwarders affect the routing of export shipments. Only an imprudent forwarder would route export shipments, the routing of which he controls, for shipment via West Coast ports where he will receive no brokerage, if he can route them via Atlantic or Gulf Coast ports where he will be paid brokerage. While what this conference rule designates as "local cargo" probably can only rarely be diverted by a forwarder for shipment through other than West Coast ports, due to excessive inland transportation cost to such other ports, forwarders not only affect the routing of export shipments upon the source of which they have no influence, but, as the majority correctly finds, through their foreign contacts get new business *which they are able to place with exporters of their choosing*. The differential brokerage rule puts a premium on forwarders directing such business to exporters or manufacturers either in "overland" territory or in Atlantic or Gulf Coast territory, in either of which cases they will obtain brokerage, rather than in "local" West Coast territory, where brokerage will be sacrificed through shipment via West Coast ports. This differentiation being the main feature of an arbitrary conference rule which we found is based only on the presence or lack of competition and not on any differential in cost or other factual basis, the rule appears "per se" unjustly discriminatory and unfair not only as between ports, i. e., to the prejudice of West Coast ports, but, in addition, unjustly discriminatory and unfair as between exporters, i. e., to the prejudice of exporters and manufacturers in "local" West Coast territory.

As the majority condemns conference prohibition of brokerage payments which includes, of course, partial prohibitions, I am addressing myself in the above primarily to the insufficiency of its reasoning. However, the majority, as I pointed out, decided to leave payment or non-payment of brokerage to the individual carrier, without in

any way outlawing brokerage payment practices, on the part of individual carriers, similar to those of the Pacific Westbound Conference. Obviously, my objections against the differential brokerage rule of *conferences* equally apply to differential brokerage practices of *individual carriers* which the majority seems to sanction, but which, for reasons herein stated, should be declared in violation of Section 16 First as undue and unreasonable prejudice or disadvantage to particular persons, localities, and descriptions of traffic.

That brokerage is not paid exporters but forwarders does not make such discriminatory treatment any less unlawful as Section 16 First forbids subjecting persons or localities to any undue disadvantage either "directly or indirectly". "Undue" disadvantage or prejudice is disadvantage or prejudice which is *not due*, i. e., not earned, deserved, or justified by factual differences. We found that the differential brokerage payment rule is based solely on competition. Where there is no direct competition, no brokerage is paid. There could be no clearer case of "undue" prejudice. We found it actually in effect by conference rule. If applied by an individual carrier, its unduly prejudicial character would be equally self-evident. Therefore, it should be outlawed by us in both forms. The majority, however, not only made short shrift of interveners' complaint of discrimination, by the mistaken device of denying forwarders and brokers the protection of Sections 15 and 17, but did not even touch upon the analogous question of undue prejudice or disadvantage under Section 16, although the present proceeding was instituted pursuant to Sections 15, 16, 17, 18, 21, 22, and 23 of the Shipping Act.

The majority's examination into Section 17 was likewise incomplete. It found no discrimination under that section, but failed to review non-payment of brokerage in the light of the requirement of Section 17 that every common carrier by water in foreign commerce "shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property". Whether regulations or practices dealing with payment—or non-payment—or brokerage are regulations or practices relating to or connected with the receiving or handling of property by carriers, is a question not easily answered; without any discussion of this aspect of brokerage, however, I feel that the majority report is incomplete.

While not dissenting from the sole formal finding of the majority, I regret that our brokerage investigation has led to a decision so incomplete and in part inconsistent with the conclusions contained in the body of the majority's report.

# UNITED STATES MARITIME COMMISSION

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No. 674

KEN ROYCE, INC. AND HYMAN-MICHAELS COMPANY

v.

PACIFIC TRANSPORT LINES, INC.

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*Submitted June 29, 1949. Decided November 29, 1949*

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Charging of tariff unit weight rates instead of tariff charter per diem rates on surplus road building equipment from Okinawa and Guam to Los Angeles and San Francisco, California, not in violation of Sections 16, 17, or 18 of the Shipping Act, 1916. Complaint dismissed.

*Eli Freed, William F. Cleary and Emmett Gebauer* for complainants.  
*James L. Adams* for respondent.

## REPORT OF THE COMMISSION

CARSON, *Commissioner*:

Exceptions were filed by complainants to the examiner's recommended report and the matter was argued orally. Our conclusions agree with those of the examiner.

By complaint filed April 16, 1948, it is alleged that the rates assessed by respondent on surplus road building equipment from Okinawa and Guam to Los Angeles and San Francisco, California, between September 24 and October 24, 1947, were in violation of sections 14, 16, 17, and 18 of the Shipping Act, 1916, and of section 9 of the Carriage of Goods by Sea Act, 1936. Reparation is requested in the amount of \$96,469.08. Complainants did not argue the applicability of the Carriage of Goods by Sea Act in their brief, and filed no exception to the examiner's finding therein; hence we shall not discuss the Act further.

At the times herein involved, Tariff No. 18 of Trans-Pacific Freight Conference of Japan, of which respondent is a member, covering the transportation of property from Okinawa to Pacific coast ports of the United States, contained a rate on "Surplus Road Building Equip-

ment" of \$650.00 per unit weight from 10,000 to 12,000 pounds, plus \$25.00 for each additional 2,000 pounds or fraction thereof, loading and discharging costs to be for shipper's account, with the proviso that 15 units must be loaded per weather working day or demurrage as provided to be charged. The tariff also contained the following item:

If shippers desire to charter vessels for the transportation of this surplus equipment from Okinawa to the Pacific coast ports of the United States and Canada the per diem rates will be as follows:

C-3 and AP-3 type Victories-----	\$2, 250. 00 per day
C-2 and AP-2 type Victories-----	2, 220. 00 per day
Libertys-----	1, 950. 00 per day

Respondent and three other carriers participated in Freight Tariff No. 2 of Pacific Mail Steamship Co., covering traffic between Guam and Pacific coast ports of the United States. This tariff contained unit weight rates identical with those in Tariff No. 18, but there were no comparable per diem rates.

A freight broker first solicited complainant Royce for charter of the S. S. *John Barton Payne*, owned by Waterman Steamship Corp., at a rate of \$105,000. Royce was not interested and suggested complainant Hyman-Michaels. The latter, however, was concerned only with unit rates or costs for the transportation of from 52 to 92 tractors from Okinawa to U. S. Pacific coast ports. Waterman not being interested, respondent was then approached for unit rates. Respondent offered to put the S. S. *New Zealand Victory* into Okinawa from Yokohama between September 16 and 18 to lift the cargo, and quoted the conference unit rates. Hyman-Michaels accepted the offer and later called the broker with respect to the loading of 60 tractors on the *New Zealand Victory* at Guam, and on September 19 arrangements were made at the rates contained in Tariff No. 2. On the same day respondent was notified by the vessel's captain that the shipper at Okinawa was considering loading additional road-building equipment and other tractors, and three days later word was received from him that the additional equipment had been booked for Royce at the unit rates. Later that day, Royce, through the broker, asked respondent if it could get the per diem rates, it being stated for the first time that Royce was interested in the Hyman-Michaels shipments, and that all shipments could be lumped together and take the whole vessel. The request was denied.

Respondent issued seven onboard bills of lading, two dated at Okinawa on September 23, four at Okinawa on September 24, and one at Guam on September 29. The Guam bill and one of the Okinawa bills show the shipper as General Commodities Corporation by

W. T. Davis, and the consignee as Hyman-Michaels Company. The other five show the shipper as W. T. Davis and the consignee as Wells Fargo Bank and Union Trust Company, notify Ken Royce, Inc. W. T. Davis was the person with whom the complainants were negotiating for the purchase of the units from the owner. The five bills were made out in the manner described as Royce had not completed its negotiations for the purchase of the units until after they were booked for carriage. Respondent issued one other onboard bill to F. T. Montague, dated at Okinawa on September 23, covering a shipment of two trunks and one suitcase of personal effects from Okinawa to San Francisco. Hyman-Michaels paid \$104,599.58 as full freight on October 10, and Royce paid \$61,610.50 as full freight on October 16, both under protest—Royce at the time of payment and Hyman-Michaels a few days later.

Complainants claim that respondent never informed them of the per diem rates, else they would have availed themselves of such rates and not attempted to take the Guam cargo on the particular vessel. The basis of the complaint is stated by complainants' attorney as follows:

The quotation of the unit weight rates without mention of the optional per diem rates \* \* \* was an *incomplete*, and is therefore *inaccurate* quotation. It was, to put it bluntly, a *misrepresentation of the applicable rates of this tariff*. By this we do not mean any bad faith on the part of Mr. McManus.

We can find no evidence of misrepresentation or of an improper withholding of necessary information by respondent. At first, respondent only had information that one shipper desired transportation for a comparatively small number of units from Okinawa, and later for an additional number of units from Guam. Thereafter a second shipper entered the picture and secured space. It was not until all this had happened that respondent learned that both shippers claimed a joint interest in all shipments and that a request was made for the per diem rates. Respondent apparently made no misrepresentation and had no information which called for a quotation of the per diem rates. In fact, the amount to be shipped was not such as to indicate a chartering arrangement.

We can only conclude that complainants originally would not have accepted the per diem rates if they had known of them, since they were then bartering for the purchase of the units and had no information as to the number they could secure. The situation was in a state of rapid change, as shown by the fact that the negotiations shifted from Saipan to Okinawa, and later included Guam. It was not until complainants found they could secure additional units that they became interested in the charter plan. If they had had knowledge at

the start, or even a well-founded hope, that they would secure so many units, they could have determined by simple arithmetic, within hours of their refusal of the S. S. *John Barton Payne*, that that charter would have been cheaper than the cost of the total units at the unit rates.

Under the circumstances, respondent was justified in refusing the request for the per diem rates. By that time the rights of the parties had become so fixed that the change requested should not have been made. The first Okinawa shipment was loading and the Guam shipment had been agreed to. To accede to the request, the parties would have had to cancel the Guam shipment, since the per diem rates applied only to a direct Okinawa-California run and did not authorize the charterer to use the vessel elsewhere. There is no testimony of any offer from complainants to do so.

The per diem rates cannot be made to apply to the Guam cargo because they were not published and filed as required by the Intercoastal Shipping Act, 1933, as amended, and were less than the rate on file with us. It is well settled that a carrier cannot charge other than its established rate. Even misquotations or misrepresentations as to the correct rate by the carrier's agent, upon which the shipper acts, do not establish a contractual basis between the shipper and the carrier. To permit this would allow the enjoyment by some shippers of rates not open to all. *Pacific Lumber & Shipping Co. v. Pacific-Atlantic S. S. Co.*, 1 U. S. M. C. 624; *Sands v. Calmar S. S. Corp.*, 165 Misc. Rep. 757, 296 N. Y. S. 590; *Texas & Pacific Ry. v. Mugg*, 202 U. S. 242.

Section 16 of the Shipping Act, 1916, which forbids a shipper to accept and a carrier to grant, by any device whatever, transportation at less than the regularly established rates, would be violated by now substituting the per diem rates for the unit rates.

No contention is made that the unit rates contained in the two tariffs are unreasonable or otherwise unlawful, and no violation of section 18 of the Act appears.

Complainants offered no evidence of any damage suffered by reason of being either unduly discriminated against or unfairly prejudiced to the advantage of another shipper. We therefore find no violation of sections 16 or 17 of the 1916 Act.

We are not passing upon the lawfulness of the per diem rates as violative of section 14 of the 1916 Act as being based upon volume and available to large shippers only, in view of the lack of evidence of the existence of other shippers in the trade.

An order dismissing the complaint will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., this 29th day of November, 1949

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No. 674

KEN ROYCE, INC. AND HYMAN-MICHAELS COMPANY

v.

PACIFIC TRANSPORT LINES, INC.

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This case being at issue upon complaint and answer on file, and having been duly heard, argued and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decisions thereon, which report is hereby referred to and made a part hereof;

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

By the Commission.

[SEAL]

(Sgd.) A. J. Williams,  
*Secretary.*



# UNITED STATES MARITIME COMMISSION

No. 680

HIMALA INTERNATIONAL

v.

GENERAL STEAM NAVIGATION CO. LTD. OF GREECE (GREEK LINE) ET AL.

*Submitted December 19, 1949. Decided December 20, 1949*

Rate on lanolin or cocculus not shown to be in violation of North Atlantic Mediterranean Freight Conference Agreement or of section 16 or 17 of Shipping Act, 1916. Complaint dismissed.

*Hymen I. Malatzky* for complainant.

*Roscoe H. Hupper and Burton H. White* for Greek Line.

## REPORT OF THE COMMISSION

### BY THE COMMISSION:

Exceptions were filed by complainant to the decision recommended by the examiner, and the case was orally argued. Our conclusions agree with those of the examiner.

Complainant, Hymen I. Malatzky, an individual doing business as an exporter under the name of Himala International, alleges that respondents<sup>1</sup> conspired to deprive him of prospective benefits which he and others similarly situated might derive from our decision in Docket Nos. 669, 670, and 671 (3 U. S. M. C. 53) by establishing rates on lanolin and cocculus in violation of sections 16 and 17 of the Shipping Act, 1916, as amended, and sentence 1, clause 1, of Agreement 7980.<sup>2</sup>

<sup>1</sup> The complaint alleges that respondents are members of the North Atlantic Mediterranean Freight Conference, and a copy of the complaint was served on each of such members. The only member that entered an appearance was the Greek Line, the sole respondent named.

<sup>2</sup> Agreement 7980 is the North Atlantic Mediterranean Freight Conference Agreement, which was approved by the Commission on February 17, 1948. Superseding the Adriatic, Black Sea and Levant Conference Agreement and others, it covers the trade "from North Atlantic ports of the United States, in the Hampton Roads/Portland, Me., range, either direct or via transshipment, to all ports (except Spanish Mediterranean ports) served on the Mediterranean Sea from Gibraltar to Port Said including Adriatic and Black Sea Ports and from Casablanca to Port Said inclusive." The sentence thereof alleged to be violated is as follows: "This agreement covers the establishment and maintenance of just and reasonable rates, charges and practices, for or in connection with the transportation of all

He asks withdrawal of our approval of the agreement, lawful rates for the future, reparation, and costs.

In the above-mentioned cases, the tariff contained no rate specifically applicable to cocculus or lanolin. On each of these commodities, there was assessed the "General Cargo, N. O. S." rate of \$37.50 per 40 cubic feet. Complainant alleged that the rate assessed was unduly prejudicial and disadvantageous to him and unjustly discriminatory, in violation of sections 16 and 17 of the Shipping Act, 1916. He contended that the rate of \$30 per long ton provided in the tariff on "Fruits, Dried" should have been applied on the cocculus and that the animal-grease rate of \$34.50 per long ton should have been accorded the lanolin. We found that cocculus was not covered by the tariff description "Fruits, Dried", and, while we upheld complainant's contention that lanolin was within the tariff item applicable to animal grease, we further found that no undue prejudice or disadvantage or unjust discrimination was shown.

While the cases referred to were pending, the North Atlantic Mediterranean Freight Conference established a rate of the level of that provided for general cargo, N. O. S., specifically applicable to cocculus and lanolin. Complainant says that this was done "to catch his shipments by surprise thus subjecting him to serious loss should he, in reliance upon the status quo pending the Commission's decision, make other shipments of cocculus and lanolin". He also states that another purpose thereof was to retaliate against him because he had filed a complaint. It is difficult to see any basis for these assertions since the specific rate provided in the tariff during the pendency of the proceeding was the same as the rate charged prior thereto. As stated, we found that there was no showing that the rate assessed was unlawful.

Complainant claims that a comparison which he makes of stowage factors and prices of lanolin with those of comparable animal products or by-products on which the conference rate is \$34.50 per long ton indicates no reason why lanolin should be subjected to the rate of \$37.50. Respondent Greek Line points out that nothing is shown as to the volume of movement of the commodities with which lanolin is compared, loss and damage claims on the respective commodities, competitive conditions between the products, or injury to complainant's business. Except for the few shipments concerned in the pre-

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cargo in vessels owned, controlled, chartered or operated by the members in the trade covered by this agreement." Sections 16 and 17 of the Shipping Act, 1916, in their pertinent parts, make it unlawful to subject any particular person to any undue or unreasonable prejudice or disadvantage and prohibit rates which are unjustly discriminatory between shippers.

vious cases cited above, there is, in fact, no indication of any movement of lanolin. This is likewise true as regards cocculus. It was testified by complainant that "The only territories which would have been operating insofar as these products are concerned are Greece and Egypt and Turkey", and, as the Greek Line states, he went to some length to establish that there is no movement of lanolin or cocculus to any of these countries for reasons wholly unrelated to any issue in this proceeding.

The record is not persuasive that lanolin or cocculus is entitled to a rate lower than that applicable on general cargo, N. O. S., and there is no showing of undue prejudice or disadvantage or unjust discrimination.

An incidental question is raised by complainant's contention that the term "lanolin" is a trade name and, therefore, inappropriate as a commodity designation in a tariff. *Jaffe v. Evans & Sons*, 70 App. Div. 186, which complainant cites, does not support the contention that lanolin is a trade name. It was there held that the word "lanolin" was generic or descriptive of the article.

We find that no violation of section 16 or 17 of the Shipping Act, 1916, or of sentence 1, clause 1, of Agreement 7980 is shown. An order dismissing the complaint will be entered.

3 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 20th day of December A. D. 1949

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No. 680

HIMALA INTERNATIONAL

v.

GENERAL STEAM NAVIGATION CO. LTD. OF GREECE (GREEK LINE) ET AL.

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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 Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

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

By the Commission.

[SEAL]

(Sgd.) A. J. Williams,  
*Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 689

IN THE MATTER OF CERTAIN CARRIERS ENGAGED IN TRANSPORTATION  
BETWEEN PACIFIC COAST PORTS OF THE UNITED STATES AND HAWAII

*Submitted April 17, 1950. Decided May 11, 1950*

Certain respondents found subject to Intercoastal Shipping Act, 1933, in respect to transportation of property between the continental United States and Hawaii and to have violated section 2 of that act by engaging in such transportation without having filed tariffs with the Commission.

*Stephen W. Matthieu* for Mokupapa, Inc., *William Farnum White* for Robert S. Mills and Henry Sause, Jr., *Robert H. Fouke* and *Robert A. Wertsch* for Ocean Prince, Inc., Independent Iron Works, Inc., Oregon Pine III, Inc., and Industrial Developments, *Jonah Jones, Jr.*, for Ernest Judd, *Charles Hazeltine* and *C. T. Truax* for Mission Terminal Company, and *Charles A. Reali* for General Steamship Corporation, Ltd., respondents.

*T. R. Stetson* for Pacific Coast Borax Company, *Lincoln Fairley* for International Longshoremen's & Warehousemen's Union, CIO, and *Harold B. Cady* for Honolulu Chamber of Commerce, interveners.

*Paul D. Page, Jr.*, and *John Mason* for the Commission.

## REPORT OF THE COMMISSION

CARSON, Commissioner:

This is a proceeding instituted by the Commission sua sponte for the purpose of determining whether an order should be entered requiring respondents<sup>1</sup> to cease and desist from engaging in the carriage of property between the continental United States and Hawaii as com-

<sup>1</sup> Mokupapa, Inc., Bellows & Company, Henry Sause, Jr., Robert S. Mills, Mission Terminal Company, Ernest Judd, Independent Iron Works, Inc., Ocean Prince, Inc., Oregon Pine III, Inc., Industrial Developments, South Seas Shipping Company, General Steamship Corporation, Ltd.

mon carriers by water in interstate commerce, unless and until they and each of them have filed schedules of rates with the Commission as required by law.

Pursuant to order of the Commission, hearing was held during which each respondent and intervener was afforded opportunity to appear by counsel and offer testimony. Subsequent to the conclusion of said hearing and prior to Examiner Horan's recommended decision, briefs were filed by counsel for respondents Robert S. Mills, Henry Sause, Jr., Independent Iron Works, Inc., Industrial Developments, Oregon Pine III, Inc., Ocean Prince, Inc.; and by counsel for the Commission.

The Examiner's recommended decision was, on the 28th day of March 1950, duly served upon respondents and, since no exceptions thereto have been filed herein and the time for filing thereof having expired, this matter is now before the Commission for decision.

The Examiner recommends that pending motions to dismiss with respect to Bellows & Company; Henry Sause, Jr.; Mission Terminal Company; Ernest Judd; Oregon Pine III, Inc.; General Steamship Corporation, Ltd.; Industrial Developments; and Independent Iron Works, Inc., be granted. Counsel for Commission also recommends dismissal of all of the foregoing save Independent Iron Works, Inc., but interposes no objection to dismissal with respect to that respondent. Since it appears that it is not established by the record that the respondents next above named are or were engaged as common carriers in interstate commerce as defined in Section 1 of the Shipping Act of 1916, it follows that said motions to dismiss should be granted.

That which follows hereinafter deals with respondents Mokuapapa, Inc., Robert S. Mills, Ocean Prince, Inc., and South Sea Shipping Company.

Respondent Mokuapapa, Inc., is an Oregon corporation organized in 1948. About December 1 of that year, it acquired the vessel *Mokuapapa*, a converted LSM of approximately 1,000 gross tons. All of its stock, except qualifying shares, is held by the Collins Concrete and Steel Pipe Company, an Oregon corporation engaged in the manufacture of concrete pipe and steel products.

Shortly after acquiring the *Mokuapapa*, respondent began to operate it between the continental United States and Hawaii. At first, it carried only cargo of Collins Concrete and Steel Pipe Company. Thus, on the sailing of the *Mokuapapa* from Portland, Oregon, for Hawaii about December 10, 1948, the vessel's cargo consisted entirely of 325,000 feet of lumber and 40,000 Christmas trees belonging to this company. Likewise, on the return voyage to Portland in January 1949, the only cargo carried by the *Mokuapapa* was "surplus" machinery

belonging to this company. After the completion of these two voyages, which are said to have been very unprofitable, the *Mokupapa* was tied up at Portland, where it remained for a period of about five months.

On May 1, 1949, a strike of Hawaiian longshoremen was called. This was followed by a suspension of services of carriers then operating between west-coast ports and Hawaii, and, as a result thereof, shippers began to seek other means of transportation. A shipper having merchandise to be transported from Tacoma, Washington, to Hawaii solicited respondent to provide cargo space. The latter acceded to this request and, after the conclusion of an arrangement with the longshoremen's union, moved the *Mokupapa* to Tacoma for loading. The *Mokupapa* sailed from Tacoma about the middle of June 1949, carrying to Honolulu and Hilo, Hawaii, approximately 850 tons of flour and feed. For such transportation, including stevedoring and the Federal transportation tax, respondent, in accordance with its agreement with the shipper, received the sum of \$25,000.

In Hawaii, whence the *Mokupapa* was to go to San Francisco, California, to load for another trip to Honolulu, it took on cargo of 10 shippers. Their shipments, which moved under bills of lading dated in the latter part of June 1949, aggregated approximately 680 tons and consisted of a variety of commodities for 12 different consignees. For the transportation from Honolulu to San Francisco, respondent charged \$13.60 per ton, except in the case of one shipment, on which the rate was slightly higher.

The *Mokupapa* made the return trip from San Francisco to Honolulu in July 1949, transporting groceries and produce under an agreement which Mokupapa, Inc., had entered into with respondent Bellows & Company. By the terms of this agreement, the former undertook to load, transport, and unload the cargo, and the latter agreed to pay it \$27,000 upon the completion of loading, and an additional \$3,000 upon evidence of discharge of all cargo at port of unloading. Bellows & Company arranged for receipt of the freight at pier in the States and for delivery thereof in Hawaii.

The *Mokupapa* came back to the States, carrying no cargo because of engine trouble, and, at Portland, under another agreement with Bellows & Company, after repairs had been made, again took on cargo to be transported to Honolulu. This agreement was practically a renewal of the first, except that, upon refusal of Mokupapa, Inc., to call this time at San Francisco, Portland was designated as the port of loading. The vessel sailed under the second agreement in August 1949.

Returning from Honolulu to Portland in September 1949, the *Mokupapa* carried 225 tons of wire rope and 500 tons of automobile parts. The cargo, part of which belonged to Mokupapa, Inc., consisted principally of shipments of 3 or 4 other companies. For the transportation, respondent charged \$15 per ton.

None of the cargo transported by Mokupapa, Inc., was solicited. No transportation rates were published by it, nor did it advertise in order to obtain cargo. Due to conditions resulting from the strike previously mentioned, freight was easily obtainable at the time without solicitation or advertising. Respondent accepted shipments to the extent that space permitted and, according to the testimony of its president, was ready and willing to carry for anybody.

On July 25, 1949, respondent Robert S. Mills chartered the barge *Sause Bros. No. 12* and the tug *Klihyam* from their owner, Sause Bros. Ocean Towing Co., Inc., for one trip from San Francisco to Honolulu. By the terms of the charter party, it was agreed that the barge would be turned over to Mills at Pier 29, San Francisco and, that on completion of loading at that port, the owner would tow the barge with the tug *Klihyam* from San Francisco to Honolulu. The owner warranted that the tug was fully manned and would be standing by. Mills agreed to pay the owner the sum of \$11,225 within 24 hours of the arrival of the tow at Pier 29 and, in addition, to deliver to the latter, simultaneously with the execution of the agreement, an unconditional assignment of \$11,225 on funds to be held in escrow by one of two banks for the account of Mills, which sum Mills represented would be paid to the owner when the bank had received proper advice of arrival of the barge at dock in Honolulu. The 3 percent Federal transportation tax, wharfage, dockage, demurrage, stevedore and other costs incurred in the handling of the cargo also were agreed to be paid by Mills, as was the sum of \$350 per day if the barge should not be loaded and unloaded and returned to the owner within the free time specified in the charter party, provided the delay should not be occasioned for the owner's convenience, repairs to the tug or barge or other matters properly the owner's concern. The owner assumed no responsibility for any claim or liability arising from any cause or source. The agreement provided that the owner should under no circumstances be liable for loss, damage or delay to Mills' cargo, or any part thereof, occasioned by act of God, or other specified cause, or any cause whatsoever.

Pier 29, San Francisco, where it was stipulated the barge would be turned over to Mills, is a State-owned terminal operated by respondent Mission Terminal Company. Mills had made arrangements with this respondent whereby the latter would receive shipments at the pier on



his behalf. The shipments of more than a score of shippers were received pursuant to such arrangements. The shipments, which were thereafter loaded on the barge for movement to Honolulu, freight charges prepaid, consisted of a wide variety of commodities and ranged in weight from about two hundred pounds to over 100 tons. Mills' bills of lading covering the shipments provided, in lieu of the printed terms and conditions in the common-carrier form which he used, that they would be "subject to terms of charter contract." They also contained the notation "freight prepaid as per contract."

Shortly prior to the voyage just referred to, Mills had likewise made a sailing in the west coast-Hawaii trade with vessels chartered by him from Pacific Tow Boat and Salvage Company, a name under which respondent Ernest Judd does business. As Pacific Freight Forwarders, by agreement dated July 14, 1949, which was similar to the charter party of July 25, 1949, described above, he chartered from this company the barge *Hemlock* and the tug *Kanak* for one trip from Long Beach, California, to Honolulu. On this voyage, the cargo lifted comprised the shipments of 10 or more shippers, on which Mills charged so much a weight or measurement ton. The shipments included package freight of various descriptions. Bills of lading were issued in the name of Pacific Freight Forwarders and, on the back thereof, in lieu of the printed terms and conditions of the common-carrier form employed, the words "subject to terms of freight forwarding contract signed July 11, 1949, at Honolulu" were inserted.

Respondent Ocean Prince, Inc., is a corporation of the State of California. It was formed by the same persons, has the same directors, has, in some instances, the same officers, and is located at the same address in Oakland, California, as respondent Independent Iron Works, Inc., from which in 1947 it purchased the tug *Ocean Prince*, and respondent Oregon Pine III, Inc., which owns the barges *Oregon Pine III*, and *Oregon Cove*, and *Oregon Trader*. Among the purposes for which it was formed, as shown by its articles of incorporation, were the carrying of freight and passengers, maintaining tariffs of rates and charges, and carrying on shipping and navigation generally. It does not advertise a transportation service, and its name is not listed in the telephone directory. Shippers obtain cargo space by communicating with a Mr. Wessel. In this way, one shipper secured space for the transportation of 610 tons of petroleum products at \$18 per ton from Oakland to Honolulu on the barge *Oregon Pine III*, in tow of the tug *Ocean Prince*, while respondent Ocean Prince, Inc., had the barge under charter. On the same voyage, in space procured by 3 other shippers in like manner, respondent Ocean Prince, Inc., carried 600 tons of newsprint at \$19 per ton for 2 of them and

a quantity of general merchandise for the other. Still another shipper informed by Wessel of the availability of cargo space, shipped on this voyage, at the rate of \$18 per ton, approximately 304 tons of petroleum products.

Subsequent to the voyage of the *Oregon Pine III*, a shipper, having been requested by its distributor in Honolulu to obtain cargo space on a barge, learned that such a vessel represented by Wessel was loading at Oakland. By telephoning Wessel, it secured space for the transportation of approximately 750 tons of canned and bottled beer and other commodities at \$20 per ton from Oakland to Honolulu on the *Oregon Cove* and *Oregon Trader* in tandem tow of the *Ocean Prince*. The transportation was performed by respondent Ocean Prince, Inc., to which the two barges were then under charter from Oregon Pine III, Inc. On the same voyage, in space secured through Wessel in like manner, a brokerage concern shipped for various manufacturers from Oakland to Honolulu 10 tons of asphalt, 2 tons of salt, and 200 bags of rice. The record indicates that at least two other shippers obtained space on this voyage.

Documents of record purporting to be copies of contracts of affreightment between the respective shippers and Ocean Prince, Inc., covering some of the shipments referred to above, contain the declarations of the latter that "This contract of affreightment is for the private carriage of goods" and that this respondent "is not engaged in a common carrier operation \* \* \*." They also contain certain provisions to be operative in case carriage of the cargo "is not, or is by law determined not to be, private carriage."

Respondent South Seas Shipping Company is the owner of the motor vessel *Pomare*, which it has employed in the transportation of cargo for hire in the west coast-Hawaiian trade on at least three occasions. In July 1949, it undertook the carriage from San Francisco to Honolulu of various commodities shipped by 5 different shippers to numerous consignees. During the following month, it transported on this vessel, on a voyage from Honolulu and Kahului to San Francisco, scrap brass, phonograph records, pickled vegetables, and other commodities for 7 different shippers and consignees. Likewise, returning to Honolulu from Oakland and San Francisco in September 1949, the *Pomare* carried shipments made by 9 different shippers to well over a score of consignees.

None of the respondents has filed with the Commission a schedule of rates covering transportation between continental United States and Hawaii:

The Intercoastal Shipping Act, 1933, as amended (sections 2 and 5), prohibits any person from engaging in transportation as a common

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carrier by water in interstate commerce unless and until his schedules of rates have been filed with the Commission. Omitting words not material, the statutory definition of the term "common carrier by water in interstate commerce," is as follows:

a common carrier engaged in the transportation by water of \* \* \* property on the high seas \* \* \* on regular routes from port to port between \* \* \* State \* \* \* of the United States and any \* \* \* Territory \* \* \* of the United States \* \* \* . Section 1, Shipping Act, 1916.<sup>2</sup>

Counsel for the Commission concede that respondents other than Mokupapa, Inc., Mills, Ocean Prince, Inc., and South Seas Shipping Company are not shown to have engaged in transportation between the continental United States and Hawaii as common carriers by water in interstate commerce within this definition, but they maintain that these four respondents are shown to have done so and that "an Order should be entered against each and every of the said carriers to cease and desist said transportation without the filing of their rates therefor, as prescribed by the Intercoastal Shipping Act, 1933, as amended." It is the position of Mokupapa, Inc., Mills, and Ocean Prince, Inc., that they have not operated as common carriers or engaged in transportation on regular routes. South Seas Shipping Company entered no appearance. Inasmuch as the grounds on which Mills' position rests include those relied upon by Ocean Prince, Inc., and Mokupapa, Inc., consideration can be accorded the contentions of all three by considering his.

On the common-carrier issue Mills claims that there is no evidence that he held himself out as a common carrier, pointing out that the record does not show that he ever published a sailing schedule, solicited any cargo, or advertised that he would take the cargo of anyone or everyone to Hawaii. Such acts are not essential to a common-carrier status. See *Transportation by Mendez & Co., Inc., between Continental United States and Puerto Rico*, 2 U. S. M. C. 717, 720; *Transportation by Southeastern Terminal & S. S. Co.*, 2 U. S. M. C. 795, 796; *James v. Public Service Commission*, 177 A. 343, 346. Nor is a holding out as a common carrier negatived, as Mills contends it is, by the fact that the printed terms and conditions of the common-carrier form of bill of lading which he used were crossed out and the shipments covered by separate contracts. Common carriers are such by virtue of their occupation, not by virtue of the responsibilities under which they

<sup>2</sup> B. Section 5 of the Intercoastal Shipping Act, 1933, as amended, the provisions of that act, including the filing requirements of section 2 thereof, are made to apply to "every common carrier by water in interstate commerce, as defined in section 1 of the Shipping Act, 1916."

rest. *Railroad Company v. Lockwood*, 84 U. S. 357, 376; *Liverpool and Great Western Steamship Company v. Phenix Insurance Company*, 129 U. S. 397, 440; *Gornish v. Pennsylvania Public Utility Commission*, 4 A. 2d 569, 572; *James v. Public Service Commission*, *supra*, page 546.

A further contention of Mills concerns his employment of chartered vessels. Chartered vessels were used in the performance of the transportation involved in *Rates of General Atlantic S. S. Corp.*, 2 U. S. M. C. 681, and *Transportation by Mendez & Co., Inc., between Continental United States and Puerto Rico*, *supra*, and it was held by the Commission that the charterers were common carriers. Mills notes, however, that a charter may be a demise or bareboat charter, by the terms of which the charterer assumes exclusive possession, command, and navigation of the vessel during the voyage, or an affreightment contract under which, as in the case of the vessels chartered to him, such possession, command, and navigation are retained by the general owners. He urges that "Only when a person assumes possession, command and control of a vessel by chartering such under a 'demise' or 'bareboat' charter is it possible for him then to hold himself out as a common carrier." In view of *Pendleton v. Benner Line*, 246 U. S. 353, this position is without merit. See also *Agreements 6210, 6210-A, Etc.*, 2 U. S. M. C. 166, holding Consolidated Olympic Line to be a common carrier, and *Strittmatter Common Carrier Application*, 250 I. C. C. 639.

The term "common carrier" has been defined variously, the definitions not being necessarily inharmonious. *Walton v. A. B. C. Fireproof Warehouse Co.*, 151 S. W. 2d 494, 497. The usual definition of the term is "one who undertakes for hire to transport goods for such as choose to employ him." *Smitherman & McDonald v. Mansfield Hardwood Lumber Co.*, 6 F. (2d) 29, 31. See also *Propeller Niagara v. Cordes et al.*, 62 U. S. 7, 22, and *James v. Public Service Commission*, *supra*, page 345. One transporting goods from place to place for hire, for such as see fit to employ him, whether usually or occasionally, whether as a principal or an incidental occupation, is a common carrier. *Walton v. A. B. C. Fireproof Warehouse Co.*, *supra*.

On the basis of the facts recited above, it is found that Mills, Mokupapa, Inc.,<sup>3</sup> Ocean Prince, Inc., and South Seas Shipping Company come within the above definitions. Accordingly, it is concluded that these four respondents are common carriers.

<sup>3</sup> Except as to the Collins and Bellows shipments and the shipment from Tacoma on the June, 1949, sailing of the *Mokupapa*. See *Transportation by Mendez & Co., Inc., between Continental United States and Puerto Rico*, *supra*, page 720.

3 U. S. M. C.

On the question of regular routes, Mills points to the fact that the sailings made by him were one-way trips. He contends that regular route transportation contemplates both an outward and an inward voyage. That a carrier operating in only one direction may be engaged in transportation on regular routes is clear from the decision of the Commission in *Transportation by Mendez & Company, Inc., between Continental United States and Puerto Rico, supra*. There a carrier was held to be subject to the filing requirement here involved on the facts concerning a voyage from Miami to San Juan.

It is also claimed that Mills did not engage in transportation on regular routes according to the tests found by the Interstate Commerce Commission to be criteria of regular-route operations in *Transportation Activities of Brady Transfer and Storage Co.*, 47 M. C. C. 23, and *Garrett Freightlines, Inc. v. Northern Transportation Co.*, 47 M. C. C. 707, or according to *Crescent Express Lines, Inc., v. U. S.*, 320 U. S. 401. Those cases involved transportation by motor vehicle and arose under Part II of the Interstate Commerce Act. Contrary to a contention advanced by Mills, nothing said in *U. S. Nav. Co. v. Cunard S. S. Co.*, 284 U. S. 474, or *S. L. Shepard & Co. v. Agwilines, Inc.*, 39 F. Supp. 528, renders them governing in the instant proceeding. Where water transportation and the same definition as is here in question were involved (*Southern Transportation Company Contract Carrier Application*, 250 I. C. C. 453, 455), the Interstate Commerce Commission adopted the view of this Commission expressed in *Alaskan Rates*, 2 U. S. M. C. 558, 580, that "The primary purpose for the insertion in the statute of the phrase 'on regular routes from port to port' was to exclude from regulation traffic transported by tramp vessels."

Mills further contends that the vessels which he employed "show almost all, if not all, of the characteristics of an 'ocean tramp' as traditionally known." In this connection, he quotes the following from a report made to the Commission under date of August 5, 1949, by its Tramp Shipping Committee: "In traditional terms, a tramp vessel is one that operates on irregular or unscheduled sailings from one port of loading to one port of discharge, lifting one dry cargo commodity usually of low value without mark or count and from one shipper to one consignee. The tramp does not usually hold itself out as a common carrier and is free to travel anywhere on any terms, not infrequently being chartered out on time terms. There are no conferences of tramp operators, affecting the foreign commerce of the United States, since tramps are excluded from the benefits of Section 15 of the Shipping Act, 1916. Characteristically, the tramp is a low standard vessel of slow speed serving trades in which time is not a critical factor." It is asserted by Mills that "Although the barges

and tugs in question lifted cargo belonging to more than one shipper which was subject to mark and count, every other characteristic as set forth in the above definition of an ocean tramp meets the facts in the case at bar." The fact that the vessels carried a variety of commodities for numerous shippers radically differentiates them from those coming within the definition. Also, it should be noted that, notwithstanding Mills' use of vessels of slow speed, nothing in the record suggests that the continental west coast-Hawaiian trade is one in which time is not ordinarily a critical factor. Moreover, the "gypsy-like existence" of the tramp, from which it was said in *Rates of General Atlantic S. S. Corp., supra*, it had earned its name and which is doubtless what is referred to by the committee's statement that it is "free to travel anywhere on any terms," is absent in the case of the vessels in question as employed by Mills. Definite ports of origin and destination were fixed by the charter parties.

Mills also points out that, during consideration of the question of whether to insert the phrase "on regular routes" in the definition of "common carrier by water in interstate commerce," Congress had before it a brief submitted by the Chairman of the House Merchant Marine Committee on the subject of the legal status of tramp vessels, in which it was said: "It may be stated as an almost general proposition that such vessels seldom or never can be considered as common carriers. Tramp vessels are almost universally chartered by a single shipper, even though in some instances that shipper may be a charter broker who has accumulated the shipments of a number of small shippers. It has become well established by a long line of decisions in the Federal courts that when a charter party gives the charterer the full capacity of a ship the owner is not a common carrier but a bailee to transport as a private carrier for hire." Mills underlines the second sentence of the quotation, desiring, no doubt, to call particular attention to the part thereof reading to the effect that the charterer of a vessel may be a charter broker who has accumulated the shipments of a number of small shippers. The statements quoted concern the question of whether, when the full capacity of a ship is chartered, the owner of the vessel is a common carrier. They throw no light on the question here as to the character of the transportation engaged in by Mills.

Finally, Mills claims that the legislative history of the Shipping Act, 1916, shows that Congress did not intend to regulate small operators such as he, but only scheduled liner service of the larger steamship lines operating regularly between two ports. This contention is untenable. See *Agreements 6210, 6210-A, Etc., supra, In Re M. S. Vincer, Inc.*, 2 U. S. M. C. 666, *Transportation by Mendez & Co.*, 3 U. S. M. C.

*Inc., between Continental United States and Puerto Rico, supra, In Re Pan-American S. S. Co., Inc., and Transport S. S. Corp., 2 U. S. M. C., 693, In Re Baltimore-New York Steamship Company, 1 U. S. S. B. 222, In Re Bayside Steamship Company, 1 U. S. S. B. 224, In Re North Pacific Steamship Line, 1 U. S. S. B. 227, and In Re Coast S. S. Co., 1 U. S. S. B. 230.*

The phrase "on regular routes" was intended to exclude from the coverage of the term "common carrier by water in interstate commerce" only tramp operations. It appears that Congress had some doubt as to whether the tramp was a private carrier, and, as counsel for the Commission maintain, the phrase was inserted in the definition of such term in order to make sure that such operations were exempt. This conclusion is supported by the above-cited cases decided by the Commission. It also finds support in the remarks made on the floor of the House by the manager of the bill which became the Shipping Act, 1916; when the measure, after it had been passed by that body and amended by the Senate, was placed before the former for concurrence in the amendments, one of which was the insertion in the definition of the phrase in question. After stating that the amendment was "wholly unnecessary", he added: "I take it, however, that it was the intention to remove every possible doubt that cargo vessels that come under the legal definition of bailees for hire, and commonly known as tramps, shall be exempt from the provisions of the Act."

The above described transportation engaged in by the common-carrier respondents was, within the meaning of the statute, transportation on a regular route.

We conclude and find that respondents Mokupapa, Inc., Robert S. Mills, Ocean Prince, Inc., and South Seas Shipping Company, during the times mentioned, engaged in the transportation of property between the continental United States and Hawaii as common carriers by water in interstate commerce as defined in section 1 of the Shipping Act, 1916; that none of said respondents so engaged in such transportation filed with the Commission a schedule of rates as required by law and in failing so to do, each violated section 2 of the Intercoastal Shipping Act, 1933.

This matter is dismissed as to the other respondents.

An appropriate order will be entered herein.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION,  
held at its office in Washington, D. C., on the 11th day of May A. D.  
1950

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No. 689

IN THE MATTER OF CERTAIN CARRIERS ENGAGED IN TRANSPORTATION  
BETWEEN PACIFIC COAST PORTS OF THE UNITED STATES AND HAWAII

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This proceeding having been instituted by the Commission on its own motion and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

*It is ordered,* That respondents Mokupapa, Inc., Robert S. Mills, Ocean Prince, Inc., and South Seas Shipping Company be, and they are hereby, notified and required to cease and desist and hereafter abstain from engaging in the transportation of property between the continental United States and Hawaii in the manner herein found to bring them within the provisions of section 2 of the Intercoastal Shipping Act, 1933, without the filing of schedules therefor in accordance with that section.

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*



# UNITED STATES MARITIME COMMISSION

No. 690

## IN THE MATTER OF THE PRACTICES OF MEMBERS OF CONFERENCES TO ABSORB CERTAIN INSURANCE PRE- MIUMS CHARGEABLE TO SHIPPERS BY INSURANCE COMPANIES

*Submitted April 17, 1950. Decided May 18, 1950*

Provisions of respondents' conference agreements authorizing absorption of excess cargo insurance premiums not shown to be unlawful, or to require or justify disapproval under section 15 of the Shipping Act, 1916.

Pending amendment relative to absorption of excess cargo insurance premiums submitted by respondent Leeward and Windward Islands & Guianas Conference, Agreement No. 7540-3, should be approved.

Provisions of respondents' tariffs, relative to absorption of excess cargo insurance premiums should in all instances be consistent with the provisions of the applicable conference agreements.

Provisions of respondents' tariffs, relative to absorption of excess cargo insurance premiums should in all instances specify whether or not such premiums will be absorbed together with any limitations applicable to the absorption. No order will be issued pending receipt of information that respondents have complied with the findings herein.

*Parker McCollester, John R. Mahoney, and A. J. Pasch* for respondent members of Havana Steamship Conference, United States and Gulf/Haiti Conference, United States Atlantic and Gulf/Santo Domingo Conference, United States Atlantic and Gulf Netherlands West Indies & Venezuela Conference, Gulf and South Atlantic Havana Steamship Conference, and Leeward and Windward Islands and Guianas Conference.

*Harold B. Finn, Elmer C. Maddy, and John M. Phillips* for respondent members of U. S. A./South Africa Conference, and South Africa/U. S. A. Conference.

*Harold B. Finn, Elmer C. Maddy, and George F. Foley* for respondent members of River Plate and Brazil Conferences, Brazil/United States Canada Freight Conference, Mid-Brazil/United States-Canada Freight Conference, North Brazil/United States-Canada

Freight Conference, River Plate/United States-Canada Freight Conference, East Coast South America Reefer Conference, and River Plate and Brazil/United States Reefer Conference.

*Walter Carroll* and *H. A. Carlys* for respondent members of Gulf/French Atlantic Hamburg Range Freight Conference, Gulf/United Kingdom Conference, Gulf/South and East African Conference, and Gulf Scandinavian and Baltic Sea Ports Conference.

*Thomas H. Adams* and *E. J. Middleton* for respondent South Atlantic Steamship Conference; and its members.

*A. C. Cocke* for respondent Lykes Bros. Steamship Company, Inc.

*John L. Ingoldsby, Jr.* and *Fred B. Otell* for intervener Las Americas Shipping Line, Inc.

*John L. Ingoldsby, Jr.* and *E. C. Ash* for interveners Mobile Chamber of Commerce, Alabama State Docks and Terminals, City of Mobile, and County of Mobile, Alabama.

*John L. Ingoldsby, Jr.* and *Doss H. Berry* for interveners Baton Rouge Port Authority, and Baton Rouge Traffic Bureau Inc.

*Hymen I. Malatzky* for intervener Himala International.

*Hoyt S. Haddock* for intervener C. I. O. Maritime Committee.

*George F. Galland* for U. S. Maritime Commission.

## REPORT OF THE COMMISSION

CARSON, *Commissioner*:

This inquiry and investigation was instituted upon our own motion, by order dated August 11, 1949, into the practices of the respondents in absorbing out of freight rates paid by shippers the additional cargo insurance charged shippers by insurance companies because shipment on a particular vessel was considered to involve an extra risk by reason of the age, ownership, or unusual characteristics of the vessel or the fact that cargo was stowed on deck rather than below deck. The purpose of the inquiry and investigation was to determine whether such absorptions of insurance were unlawful under the provisions of the Shipping Act, 1916, as amended, and whether the practice encouraged the use of substandard and inferior vessels and was thus detrimental to the commerce of the United States and whether it resulted in unjust discriminations between carriers or between shippers or was otherwise unlawful under the provisions of the Shipping Act, 1916, as amended.

Respondents are steamship conferences and their members, listed in Appendix A, and are subject to the provisions of section 15 of the Shipping Act, 1916. The absorption out of the freight rates of the additional insurance premiums outlined above is accomplished either by

provisions in the conference agreements or in the conference freight tariffs. Respondents, by our order, were required to show cause why an order should not be entered disapproving the practice, whether previously specifically authorized, proposed to be authorized, or established and practiced by said members of conferences pursuant to general provisions contained in the agreements.

The United States Atlantic and Gulf Santo Domingo Conference (Agreement No. 6080), after the proceeding was instituted, submitted for our approval, an amendment to its conference agreement eliminating any reference to insurance absorption. Several other conferences<sup>1</sup> amended their tariffs by eliminating the rules authorizing the absorption of insurance premiums.

This matter came to our attention when we were asked to approve Agreement No. 7540-3, which was a proposal to amend the Leeward and Windward Islands and Guianas Conference Agreement No. 7540 by adding the following provision thereto :

Member lines may, when necessary, equalize actual insurance differentials on cargo caused by flag, over-age or undersize disability, and when large or bulky pieces, ordinarily susceptible to under deck stowage, are stowed on deck for the convenience of the carrier.

We requested argument as to the propriety of the foregoing provision, and after the argument, voted to disapprove the amendment. On reconsideration of this action, we withdrew our disapproval and ordered this proceeding.

The above quoted provision, while varying in some respects from similar provisions in other conferences or in tariffs of other conferences, is as comprehensive as any of its counterparts, and raises every substantial question involved in this inquiry. Appendix B, attached hereto, contains a list of the provisions in respondent conference agreements and tariffs in the order the respondents are listed in Appendix A.

Himala International, a shipper, Las Americas Shipping Line, Inc., a carrier and member of the Gulf and South Atlantic Havana Steamship Conference, on behalf of itself, the Mobile Chamber of Commerce, Alabama State Docks and Terminals, City of Mobile, County of Mobile, Baton Rouge Port Authority and Baton Rouge Traffic Bureau, Inc., all intervened in support of the absorption practice. The C. I. O. Maritime Committee intervened in opposition to the practice. All filed briefs with the exception of the C. I. O. Maritime Committee.

<sup>1</sup> North Atlantic Continental Freight Conference (Agreement No. 4490). North Atlantic French Atlantic Freight Conference (Agreement No. 7770). North Atlantic Baltic Freight Conference (Agreement No. 7670). Pacific Coast River Plate Brazil Conference (Agreement No. 6400).

Hearings were held in New York, New York, and New Orleans, Louisiana. Exceptions were filed to the report filed by the examiner. His findings are adopted herein.

Marine insurance underwriters impose excess cargo insurance premiums based upon the various types of disability under which the vessel may be placed. These excess cargo insurance premiums are applied for the purpose of giving the insurance underwriters adequate revenue to protect the risk involved.

Before World War II, the underwriters employed a rating system based upon the loss record of individual lines. The entire fleet of an operator having a favorable record was rated by the insurers, regardless of nationality, which meant that cargo carried on that operator's ships was insured at a basic rate, whereas cargoes shipped on nonrated vessels paid an extra premium. The rate formulas were based on accurate records, line by line, of major losses, such as fire, stranding, collision, and damage to cargo due to handling. Some ships, such as the Shipping Board's Hog Island vessels, carried a special disability, but in general, rates depended on the experience of the owner or operator.

The present rating system is one general basic classification applicable to all vessels, except Greek vessels over 15 years old, all vessels over 25 years old, and vessels of 1,000 gross tons or under. Cargoes carried in vessels included in these exceptions are charged an extra premium. Up to June 1, 1949, the penalty applied to all Greek ships; but since that date, the disability attaches only to those older than 15 years. The rate of penalty for a Greek ship is 15 cents per \$100 of insured value, about  $\frac{15}{100}$  of 1 percent. Formerly the penalty was approximately 2 percent. This new method of establishing the penalties facilitates the handling of business, and is a less complicated basis of determining what constitutes an approved vessel for the purpose of securing a minimum premium rate. It is preferred by the insured although the underwriters prefer the prewar system.

All vessels regardless of flag, age, and tonnage must maintain a classification in some society, such as the American Bureau of Shipping or Lloyd's of London Register of Shipping as high as A-1 or 100-A-1. Cargo insurance premium rating does not purport to be a determination that a ship has fallen below its classification. It is a private determination of the underwriters that a premium is justified on the basis of underwriting experience. American marine insurance rates are not subject to public regulation but are cooperatively suggested by a committee of the American Marine Insurance Clearing House, which sets forth the penalty rates for the guidance

of reinsurers, and as a practical matter, these rates are largely followed. While there is no uniformity with respect to penalties as between the American and foreign insurance market, the committee guides the entire American insurance market in seeking to keep it on a competitive level with the foreign market.

Of the vessels in regular trades, 90 to 95 percent are free of penalty insurance due to over-age or undersize. Even before June 1, 1949, when the penalty applied to all Greek vessels, the bulk of cargo insurance was placed at standard rates and it was only on an occasional vessel that the underwriters applied excess or premium rates based on the vessel's age or tonnage.

Underwriters familiar with the absorption practice expressed the view that it did not tend to increase the use of disability ships or decrease the use of American flag ships, or in fact have any effect thereon one way or the other.

When a vessel is chartered the person securing the use of the vessel generally knows whether it is one that carries an insurance penalty on the cargo. A ship against which a penalty is imposed finds it more difficult to secure employment and generally must accept a lower charter rate unless tonnage is scarce. At the present time, it is difficult to find a market for handicapped vessels.

Charter rates under normal conditions are generally higher for vessels of United States registry than for other vessels because of the higher costs of operation of the former. Therefore no greater hiring of United States registered vessels could be expected even if the right to absorb the extra cargo insurance premiums is denied handicapped vessels.

At the present time there are very few cargo insurance disability vessels. Lists of such vessels are furnished by underwriters to brokers together with a formula with which to compute the penalty on a certain vessel. While shippers are reluctant to pay penalties and prefer to ship by vessels having no penalties, they are not necessarily deterred by them if the urgency of the movement demands their use. If a shipper has not previously shipped on a disability vessel, he is told what the penalty is and is furnished with an invoice which shows the penalty separately. It is his duty to protect his own interest in connection with securing an absorption of the amount of the penalty in the freight rate.

At the present time absorption of excess cargo insurance premiums based on flag disability is not a major concern to conference carriers. Under current rules of the underwriters disability attaches to no nationality except Greek and then only on vessels 15 years or over.

The only Greek vessels operating in any of respondents' conference trades were seven ex-United States Libertys employed in the trade governed by the Leeward and Windward Islands and Guianas Conference, as outlined below, which after June 1, 1949, were not subject to penalty.

Alcoa is a United States citizen-owned company having 16 owned vessels under United States registry and between 35 and 40 foreign-flag vessels under charter. Their fleet is maintained primarily for the transportation of commodities, mainly bauxite, used in the production of aluminum, in order to supply their manufacturing facilities. They use their ships, however, to supply service to the shipping public as demands develop both northbound and southbound, but largely southbound. The seven Greek-owned Libertys involved were chartered to supplement their fleet to meet the demands of shippers for cargo space. The names of the Greek-owned vessels,<sup>2</sup> their type, the charter rate paid, and their delivered and redelivered dates are:

Vessel	Type	Rate <sup>1</sup>	Period	Delivered	Redelivered
Mariam.....	Liberty.....	\$3.00	8/9 months.....	Oct. 12, 1948	July 25, 1949.
Mario C.....	do.....	3.00	4/6 months.....	Nov. 23, 1948	May 23, 1949.
		3.10	5/6 months.....	May 23, 1949	Oct. 23, 1949.
Aristogiton.....	do.....	3.10	6/7 months.....	Apr. 18, 1949	Oct. 20, 1949. <sup>2</sup>
Aristocratis.....	do.....	3.10	6/7 months.....	Apr. 13, 1949	Oct. 22, 1949. <sup>2</sup>
Resolute.....	do.....	3.00	5/6 months.....	June 8, 1949	Nov. 2, 1949. <sup>2</sup>
Evanthia.....	do.....	3.00	18/20 months.....	Oct. 27, 1948	Apr. 1950. <sup>2</sup>
Anna L. Condyliis.....	do.....	3.00	21/25 months.....	Sept. 11, 1948	June 1950. <sup>2</sup>

<sup>1</sup> Rate is the amount per deadweight ton per month.

<sup>2</sup> Estimated.

When these ships were chartered the market was tight, and Alcoa was in it for any suitable vessels available that could be put on berth to carry cargo. While charter rates and availability of vessels are important factors in determining what vessels to charter, the rates paid for these were standard for foreign-flag tonnage, reflecting no discount for flag disability. Alcoa, in common with other operators, prefers to charter basically rated vessels and to avoid the use of disability-rated ships when it can, but when these were chartered no other tonnage was available except higher-cost American vessels. The charter rate on the latter vessels was between \$4 and \$4.50 as against \$3 and \$3.10 paid, or between \$10,000 and \$15,000 a month more per vessel, as compared with an estimated total annual insurance-absorption cost of \$7,000 to \$8,000. The demand for space was sufficient to permit operation of the Greek ships during the period of their disability without insurance absorption, but the company's

<sup>2</sup> Three Greek-registered and four registered Honduran.

inability to absorb evoked complaints from shippers and is thought by Alcoa to have resulted in loss of some cargo to its competitors.

The seven Greek ships, despite their cargo insurance disability, were rated A-1 or 100-A-1 by the American Bureau of Shipping or Lloyds Register. One of these vessels was redelivered to her owners June 25, 1949, on expiration of charter and not replaced because not needed, four more were due to go off hire by the end of 1949, and the remaining two by the middle of 1950. At the time of the hearing, October 20, 1949, it was Alcoa's plan for all seven of them to go off hire at the expiration of charters and to reduce their fleet because of the condition of the freight market. These were the only vessels in Alcoa's fleet to which insurance penalties applied, and as to these, being Libertys under 15 years old, the penalties did not apply after June 1, 1949.

Respondents find that nonconference vessels, particularly tramps, are competitive with them and that whenever vessels of the outside carriers are subject to the disability premium that fact is reflected in their lower rates and now shown as an absorption. If the conference members are forbidden to make any absorptions in connection with vessels which they may be forced to employ, they will be seriously handicapped from a competitive point of view and probably forced out of the conference in order to meet the competition. This situation developed very acutely between the two World Wars, and in order to prevent such resignations and consequent possible rate wars the conferences adopted the absorption practice. During that period many of the users of penalty tonnage were United States carriers using United States flag vessels which became overage.

Such vessels as those owned and operated by Las Americas Shipping Line, Inc., intervener, are subject to the cargo insurance penalty although they are rated A-1 in the American Bureau of Shipping. They operate from Baton Rouge, New Orleans, and Mobile to Havana, Cuba, and are the only conference vessels serving these ports at the present time. One vessel is subjected to an insurance penalty because it is under the 1,000-ton limit and one because it is a converted LST. This company has been operating since 1946 during which time it has had a perfect no-loss record. As a result the minimum excess penalty is applied which in the case of the undersized vessel is 5 cents per \$100 insured value of the goods, and in the case of the LST is 10 cents per \$100 insured value instead of 15 cents which would otherwise be applied. This company has recently joined the Gulf and South Atlantic Havana Steamship Conference (Agreement No. 4188), a respondent herein, but if not permitted to absorb this insurance

penalty, would be unable to compete on an equal basis with other members of the conference whose vessels are not subject to this insurance penalty. The president of this company testified that this would force them out of the conference. This would mean no conference service out of the ports of Mobile and Baton Rouge and no service at all for these ports in this trade if the line was unable to continue its operation on a nonconference basis.

No shipper, port, or carrier or other interest offered any evidence protesting against this absorption practice. On the contrary, ports and carriers appeared in favor of it and the one shipper who intervened pointed out the disability under which he would be placed if the power to follow the practice were removed. Whenever a shipper is compelled to use ships subject to the penalty because of urgency arising out of the terms of the letter of credit or because of some other reason, he is placed under a handicap as against his competitors who can use the nonpenalty ship, if the absorption of the penalty is forbidden.

Prior to the war, the underwriters charged an additional premium on cotton and cotton linters, which are always stowed below deck, if the vessel stopped at more than two ports on the Gulf before going abroad; and a further penalty was applied on the two commodities during the winter season if any cargo of any description was loaded on deck. In other seasons a deck load of about 250 tons was allowed before the latter penalty was applied. Although the lines did everything possible to get the underwriters to waive the penalties, they were unsuccessful and therefore the carriers were compelled to provide for the absorption of those penalties.

Cargo which is ordinarily stowed under deck is at times stowed on deck for the carrier's convenience. This practice has been followed for years in order to utilize as fully as possible the cargo space of the vessel and to permit prompt shipment of cargo which might otherwise be shut out. Shippers prefer to have their goods stowed under deck, but in times of stress or lack of space, they would rather have them carried on deck to secure immediate transportation. However, the carriers admit that, in view of the fact that the carrier is carrying the cargo on deck in order to secure more revenue, the shipper should not be compelled to pay the excess insurance cost as compared with the shipper whose cargo is carried below deck.

It is also developed that in some of the trades, vessels subject to an insurance penalty because of age belong to the Government whose flag they fly. Refusal to put those vessels upon a parity with United States flag vessels or others in the conference might lead not only to



resignations from the conference but to governmental retaliations of various sorts.

The use of the word "may" instead of "shall" in the conference agreement in connection with the absorption of the insurance penalty premiums was not intended to permit the carriers to give different shippers different treatment in similar situations. It was designed to allow the carriers to consider the facts in each case and make the absorption only when it is warranted. Insurance underwriters decide which shippers shall have to pay the penalty premium and the method and amount of the payment, depending upon the form of insurance coverage and policy the shipper has purchased. Since these differ, the rights of the shippers to the absorption differ. Some shippers are self insurers; some have a large volume of insurance coverage; others a very small volume, and apparently at times the former receives more favorable treatment as to penalties than the latter. No complaint was received as to any different treatment any carrier had accorded shippers in the same situation.

The record discloses several instances in which tariffs do not conform strictly to conference agreements. For example, Agreement No. 140-1 of the Gulf/French Atlantic Hamburg Range Freight Conference<sup>3</sup> provides for absorption of "penalties for deviation and deckload assessed by underwriters on cotton and cotton linters," whereas the tariff thereunder authorized absorption on cotton and cotton linters of "actual differences of insurance account of class of vessel or deviation \* \* \*." "Class of vessel" is covered by the tariff but not the agreement; and "deckload" is covered by the agreement but not the tariff. Such discrepancies should be eliminated in all instances.

We find

That the practice of respondents of absorbing out of their freight revenues the excess cargo insurance premiums charged by underwriters for the insurance of cargoes transported in vessels which have been placed on the underwriters penalty list because of age, nationality or other reason or because cargoes have been stowed on deck for the vessel's convenience, has not been shown to result in any unfair or unjust discrimination against ports, carriers or shippers, nor to operate to the detriment of the commerce of the United States nor to be in violation of any of the provisions of the Shipping Act, 1916, as amended.

That the use of optional provisions in the agreement of the respondents covering the adoption of absorption practices constitutes an authorization that the conference may adopt such practices when con-

<sup>3</sup> All such variances appear in Appendix B.

ditions and circumstances so warrant; such provisions do not permit member lines individually to exercise any option with respect to the use of such practice nor do they permit the conferences to place such practices into effect indiscriminately; such provisions are not violative of the Shipping Act, 1916, as amended.

That if a conference adopts the practice of absorbing excess cargo insurance premiums, the procedure for making such absorptions must be specifically set forth in its tariffs, including the character of proof to be required of the shipper before absorption will be made; respondents shall eliminate from their tariffs all language indicative of an option in the absorption of such excess premiums.

That the amendment relative to absorption of excess cargo insurance premiums submitted by respondent Leeward and Windward Islands and Guianas Conference, Agreement No. 7540-3, is approved.

That the respondents shall modify their tariff provisions relative to absorption of excess cargo insurance premiums so that in all instances such tariff provisions will be consistent with the provision of the applicable conference agreements.

That this proceeding will be held open and no order issued pending receipt of the necessary amendments.

**McKEOUGH, Commissioner, concurring:**

There are two issues in this proceeding. First, whether the practice of absorption of penalty cargo insurance is lawful, and, second, *if* it is lawful, whether conference provisions leaving it to the discretion of member lines whether or not to absorb are lawful. With respect to the second question, I join with the majority.

With respect to the first issue, the majority's finding that the practice of insurance absorption is not in violation of any section of the Shipping Act of 1916, including the provision against unjust discrimination as between carriers, appears to be based in large measure on the view that the absorption practice does "not tend to increase the use of disability ships or decrease the use of American flagships, or, in fact, have any effect thereon one way or another." At the same time, however, it is said that a "ship against which a penalty is imposed finds it more difficult to secure employment and generally must accept a lower charter rate unless tonnage is scarce. At the present time it is difficult to find a market for handicapped vessels." I find these two statements difficult to reconcile, particularly in view of the further statement that Alcoa's "inability to absorb evoked complaints from shippers and is thought by Alcoa to have resulted in loss of some cargo to its competitors."

It seems reasonable to conclude from the above that if a cargo insurance penalty may not be absorbed by the carrier and therefore makes it more difficult for a vessel to secure employment, and for the operator of such vessel to secure cargoes, then conversely the ability to absorb must promote the operator's ability to employ a disability ship successfully and *thereby tend to increase the use of disability ships*.

However, a basic issue not dealt with in the majority decision must be examined in this situation.

The carrier who "absorbs" insurance penalties imposed by underwriters on shippers using the carrier's vessel subject to such penalties, i. e., who permits the shipper to deduct the insurance penalty from the freight bill, does not grant a similar freight refund to shippers using other vessels of the same carrier not suffering from such penalty. There is no doubt a feature of discrimination in this aspect alone. Yet we cannot say that it is an *unjustly* discriminatory practice and, therefore, outlawed under Section 15 of the 1916 Act. Insurance absorption in the final analysis is a *freight rate reduction* to compensate for a disability *inherent in a particular vessel*, a reduction granted only if, as, and when such disability is present in the vessel, and measured by the exact extent of that disability. We cannot find *unjustly* discriminatory a freight rate allowance compensating for an inherent disability of a particular vessel, whether that disability is an insurance penalty to which that vessel is subjected, or, to name another example, lesser speed resulting in delayed delivery. Such speed differential has in the past in several instances led to differential tariffs, and while uniformity of transportation charges on a given route is a desirable factor of trade stabilization, differential rates, based on different quality of service rendered, cannot ordinarily be considered *unjustly* discriminatory.

In arriving at these conclusions, I express no opinion as to the propriety of another type of rate reduction which insurance absorption no doubt constitutes, i. e., a practice such as port equalization under which carriers refund to more distant shippers major portions of Government-regulated inland freight charges so as to offset the advantage of geographical proximity of certain ports to their natural tributary area, with the result that a carrier collects *different* net ocean freight from different shippers for *identical* transportation services on the *same* ships although the disability is *not inherent in the vessel*. In the present case, on the other hand, the *identical* net ocean freight charges are levied on all shippers receiving the *identical* transportation service on the *same* ships.

## APPENDIX A

## RESPONDENTS

*Leeward and Windward Islands and Guianas Conference (Agreement No. 7540-3)**Members:*

Alcoa Steamship Company, Inc.  
 Royal Netherlands Steamship Company

*Gulf/French Atlantic Hamburg Range Freight Conference (Agreement No. 140-1)**Members:*

Armement Deppe, S. A.  
 Compagnie Generale Transatlantique (French Line)  
 Lykes Bros. Steamship Co., Inc.  
 N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn"  
 (Ropner Line)—Joint Service of  
     Sir R. Ropner & Company Limited  
     The Pool Shipping Company Limited,  
     The Ropner Shipping Company Limited  
 States Marine Corporation/States Marine Corporation of Delaware (Joint Service)  
 Waterman Steamship Corporation  
 Wilhelmsens Dampskibsaktieselskab  
 A/S Den Norske Afrika—og Australielinie  
 A/S Tonsberg  
 A/S Tankfart I  
 A/S Tankfart IV  
 A/S Tankfart V  
 A/S Tankfart VI  
 A/B Svenska Amerika Linien (Swedish American Line)

} Joint Service

*Gulf/United Kingdom Conference (Agreement No. 161)**Members:*

Thos. & Jas. Harrison (Harrison Line)  
 Larrinaga Steamship Co., Ltd. (Larrinaga Line)  
 Lykes Bros. Steamship Co., Inc.  
 N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn"  
 (Ropner Line)—Joint Service of  
     Sir R. Ropner & Company Limited  
     The Pool Shipping Company Limited  
     The Ropner Shipping Company Limited  
 States Marine Corporation/States Marine Corporation of Delaware (Joint Service)  
 Waterman Steamship Corporation

*Havana Steamship Conference (Agreement No. 4189)***Members:**

Compania Trasatlantica  
 Empresa Naviera de Cuba, S. A.  
 Lines de Vapores Garcia, S. A.  
 New York and Cuba Mail Steamship Co.  
 North Atlantic & Gulf Steamship Co.  
 United Fruit Company

*United States Atlantic and Gulf/Haiti Conference (Agreement No. 5590)***Members:**

Alcoa Steamship Company, Inc.  
 Compagnie Generale Transatlantique (French Line)  
 Lykes Bros. Steamship Co., Inc.  
 Royal Netherlands Steamship Company  
 Standard Fruit and Steamship Company

*United States Atlantic and Gulf Santo Domingo Conference (Agreement No. 6080)***Members:**

Bull Insular Line, Inc.  
 Lykes Bros. Steamship Co., Inc.

*U. S. Atlantic & Gulf-Netherlands West Indies & Venezuela Conference  
 (Agreement No. 6190)***Members:**

Alcoa Steamship Company, Inc.  
 (Barber-Carribean Line)—Joint Service of  
 Rederiet Vindeggen A/S  
 Rederiet Besseggen A/S  
 Skipsaksjeselskapet Bssi  
 Skipsaksjeselskapet Estero  
 Dampskibsaksjeselskapet Esito  
 Bj. Ruud-Pedersen  
 Grace Line, Inc.  
 Lykes Bros. Steamship Co., Inc.  
 Royal Netherlands Steamship Company

*River Plate and Brazil Conferences (Agreement No. 59)***Members:**

The Booth Steamship Company, Limited  
 (Brodin Line)—Joint Service of  
 Rederiaktiebolaget Disa  
 Rederiaktiebolaget Poseldon  
 Angfartygsaktiebolaget Tirfing  
 Cia. Argentina de Navegacion Dodero, S. A.  
 Dampskibsselskabet Torm (Torm Line)  
 Flota Mercante del Estado  
 Furness (Canada) Ltd.  
 (Holland Interamerica Line)—Joint Service of  
 N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-  
 Amerika Lijn"  
 Van Nievelt, Goudriaan & Co's Stoomvaart Maatschappij N. V.

*River Plate and Brazil Conferences (Agreement No. 59)—Continued***Members—Continued**

- International Freighting Corporation, Inc.  
 (Ivaran Lines)—Joint Service of  
   A/S Ivarans Rederi  
   A/S Lise  
   A/S Besco
- Lamport & Holt Line, Ltd.  
 Linea Sud Americana, Inc. (Cardiaz Lines)  
 Lloyd Brasileiro (Patrimonio Nacional)  
 Mississippi Shipping Company, Inc. (Delta Line)  
 Moore-McCormack Lines, Inc. (American Republics Line)  
 The Northern Pan America Line A/S  
 (Norton Line)—Joint Service of  
   Rederiaktiebolaget Svenska Lloyd  
   Stockholms Rederiaktiebolaget Svea  
   Rederiaktiebolaget Fredrika
- Prince Line, Limited  
 Shepard Steamship Company  
 (Southern Cross Line)—Joint Service of  
   A/S J. Ludwig Mowinckels Rederi  
   Westfal-Larsen & Co., A/S
- Sprague Steamship Company  
 (Wilh. Wilhelmsen interests)—Joint Service of  
   Wilhelmsens Dampskibsaktieselskab  
   A/S Den Norske Afrika—og Australielinie  
   A/S Tonsberg  
   A/S Tankfart I  
   A/S Tankfart IV  
   A/S Tankfart V  
   A/S Tankfart VI

*Brazil-United States/Canada Freight Conference (Agreement No. 5450)***Members :**

- The Booth Steamship Company, Ltd.  
 (Brodin Line)—Joint Service of  
   Anfartygsaktiebolaget Tirfing  
   Rederiaktiebolaget Disa  
   Rederiaktiebolaget Poseidon
- Cia. Argentina de Navegacion Dodero, S. A.  
 Dampskibsselskabet Torm (Torm Line)  
 Flota Mercante del Estado  
 Furness (Canada) Ltd.  
 (Holland Interamerica Line)—Joint Service of  
   N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-  
   Amerika Lijn"  
   Van Nievelt, Goudriaan & Co's Stoomvaart Maatschappij N. V.

*Brazil-United States/Canada Freight Conference (Agreement No. 5450)—Con.***Members—Continued**

International Freighting Corporation, Inc.

(Ivaran Lines)—Joint Service of

A/S Besco

A/S Lise

Aktieselskapet Ivarans Rederi

Lamport &amp; Holt Line, Ltd.

Linea Sud Americana, Inc. (Gardiaz Lines)

Lloyd Brasileiro (Patrimonio Nacional)

Mississippi Shipping Company, Inc. (Delta Line)

Moore-McCormack Lines, Inc. (American Republics Line)

The Northern Pan-America Line A/S

(Norton Line)—Joint Service of

Rederiaktiebolaget Svenska Lloyd

Stockholms Rederiaktiebolag Svea

Rederiaktiebolaget Fredrika

Prince Line, Limited

Shepard Steamship Company

(Southern Cross Line)—Joint Service of

A/S J. Ludwig Mowinckels Rederi

Westfal-Larsen &amp; Co., A/S

Sprague Steamship Company

(Wilh. Wilhelmsen interests)—Joint Service of

Wilhelmsens Dampskibsaktieselskab

A/S Den Norske Afrika—og Australielinie

A/S Tonsberg

A/S Tankfart I

A/S Tankfart IV

A/S Tankfart V

A/S Tankfart VI

*Mid-Brazil/United States-Canada Freight Conference (Agreement No. 7630)***Members:**

Aktiebolaget Svenska Brazil La Plata Linjen

The Booth Steamship Company, Ltd.

(Brodin Line)—Joint Service of

Rederiaktiebolaget Disa

Rederiaktiebolaget Poseidon

Angfartygsaktiebolaget Tirfing

Cia. Argentina de Navegacion Dodero S. A.

Dampskibsselskabet Torm (Torm Line)

Flota Mercante del Estado

Furness (Canada) Ltd.

(Holland Interamerica Line)—Joint Service of

N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn"

Van Nievelt, Goudriaan &amp; Co's Stoomvaart Maatschappij N. V.

3 U. S. M. C.

*Mid-Brazil/United States-Canada Freight Conference (Agreement No. 7630)—*  
Continued

*Members—Continued*

International Freighting Corporation, Inc.  
(Ivarán Lines)—Joint Service of  
A/S Ivarans Rederi  
A/S Lise  
A/S Besco  
Lamport & Holt Line, Ltd.  
Lloyd Brasileiro (Patrimonio Nacional)  
Mississippi Shipping Company, Inc.  
Moore-McCormack Lines, Inc.  
The Northern Pan American Line A/S  
(Norton Line)—Joint Service of  
Rederiaktiebolaget Svenska Lloyd  
Stockholms Rederiaktiebolag Svea  
Rederiaktiebolaget Fredrika  
Prince Line, Ltd.  
Shepard Steamship Company  
(Southern Cross Line)—Joint Service of  
A/S J. Ludwig Mowinckels Rederi and Westfal-Larsen & Co. A/S  
Sprague Steamship Company

*North Brazil/United States-Canada Freight Conference (Agreement No. 7640)*

*Members:*

The Booth Steamship Company, Ltd.  
Cia. Argentina de Navegación Doderó, S. A.  
Dampskibsselskabet Torm (Torm Line)  
International Freighting Corporation, Inc.  
Lamport & Holt Line, Ltd.  
Lloyd Brasileiro (Patrimonio Nacional)  
Mississippi Shipping Company, Inc.  
Moore-McCormack Lines, Inc.  
The Northern Pan America Line A/S

*River Plate/United States-Canada Freight Conference (Agreement No. 6900)*

*Members:*

The Booth Steamship Company, Ltd.  
(Brodin Line)—Joint Service of  
Rederiaktiebolaget Disa  
Rederiaktiebolaget Poseidon  
Angfartygsaktiebolaget Tifring  
Cia. Argentina de Navegación Doderó, S. A.  
Dampskibsselskabet Torm (Torm Line)  
Flota Mercante del Estado  
Furness (Canada) Ltd.  
(Holland Interamerica Line)—Joint Service of  
N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij  
“Holland-Amerika Lijn”  
Van Nievelt, Goudriaan & Co.'s Stoomvaart-Maatschappij N. V.



*River Plate/United States-Canada Freight Conference (Agreement No. 6900)*

Continued

**Members—Continued**

International Freighting Corporation, Inc.

(Ivaran Lines)—Joint Service of

A/S Ivarans Rederi

A/S Lise

A/S Besco

Lamport &amp; Holt Line, Ltd.

Linea Sud Americana, Inc. (Gardiaz Lines)

Mississippi Shipping Company, Inc. (Delta Line)

Moore-McCormack Lines, Inc. (American Republics Line)

The Northern Pan-America Line A/S

(Norton Line)—Joint Service of

Rederiaktiebolaget Svenska Lloyd

Stockholms Rederiaktiebolag Svea

Rederiaktiebolaget Fredrika

Prince Line, Ltd.

Shepard Steamship Company

(Southern Cross Line)—Joint Service of

A/S J. Ludwig Mowinckels Rederi

Westfal-Larsen &amp; Co., A/S

Sprague Steamship Company

(Wilb. Wilhelmsen interests)—Joint Service of

Wilhelmsens Dampskibsaktieselskab

A/S Den Norske Afrika—og Australielinie

A/S Tonsberg

A/S Tankfart I

A/S Tankfart IV

A/S Tankfart V

A/S Tankfart VI

*East Coast South American Reefer Conference (Agreement No. 6800)***Members:**

The Booth Steamship Company, Ltd.

(Brodin Line)—Joint Service of

Rederiaktiebolaget Disa

Rederiaktiebolaget Poseidon

Angfartygsaktiebolaget Tirfing

Cia. Argentina de Navegacion Dodero, S. A.

Dampskibsselskabet Torm (Torm Line)

Flota Mercante del Estado

International Freighting Corporation, Inc.

(Ivaran Lines)—Joint Service of

A/S Ivarans Rederi

A/S Lise

A/S Besco

Lamport &amp; Holt Line, Ltd.

Lloyd Brasileiro (Patrimonio Nacional)

Mississippi Shipping Company, Inc. (Delta Line)

Moore-McCormack Lines, Inc. (American Republics Line)

*East Coast South American Reefer Conference (Agreement No. 6800)*—Continued*Members*—Continued

- The Northern Pan-America Line A/S  
(Nortoh Line)—Joint Service of  
Rederiaktiebolaget Svenska Lloyd  
Stockholms Rederiaktiebolag Svea  
Rederiaktiebolaget Fredrika  
(Southern Cross Line)—Joint Service of  
A/S J. Ludwig Mowinckels Rederi  
Westfal-Larsen & Co., A/S  
Sprague Steamship Company  
(Wilh. Wilhelmsen interests)—Joint Service of  
Wilhelmsens Dampskibsaktieselskab  
A/S Den Norske Afrika—og Australielinie  
A/S Tonsberg  
A/S Tankfart I  
A/S Tankfart IV  
A/S Tankfart V  
A/S Tankfart VI

*River Plate and Brazil/United States Reefer Conference (Agreement No. 7200)**Members:*

- (Brodin Line)—Joint Service of  
Rederiaktiebolaget Disa  
Rederiaktiebolaget Poseidon  
Angfartygsaktiebolaget Tirfing  
Cia. Argentina de Navegacion Dodero, S. A.  
Dampskibsselskabet Torm (Torm Line)  
Flota Mercante del Estado  
International Freighting Corporation, Inc.  
Lamport & Holt Line, Ltd.  
Lloyd Brasileiro (Patrimonio Nacional)  
Mississippi Shipping Company, Inc. (Delta Line)  
Moore-McCormack Lines, Inc. (American Republics Lines)  
The Northern Pan-American Line A/S  
(Norton Line)—Joint Service of  
Rederiaktiebolaget Svenska Lloyd  
Stockholms Rederiaktiebolag Svea  
Rederiaktiebolaget Fredrika  
(Southern Cross Line)—Joint Service of  
A/S J. Ludwig Mowinckels Rederi  
Westfal-Larsen & Co., A/S  
Sprague Steamship Company  
(Wilh. Wilhelmsen interests)—Joint Service of  
Wilhelmsens Dampskibsaktieselskab  
A/S Den Norske Afrika—og Australielinie  
A/S Tonsberg  
A/S Tankfart I  
A/S Tankfart IV  
A/S Tankfart V  
A/S Tankfart VI

*Gulf/South and East African Conference (Agreement No. 7780)**Members:*

(Java Pacific Line)—Joint Service of  
 N. V. Stoomvaart Maatschappij "Nederland"  
 N. V. Rotterdamsche Lloyd  
 Lykes Bros. Steamship Co., Inc.  
 Silver Line, Limited

*U. S. A./South Africa Conference (Agreement No. 3578)**Members:*

British and South America Steam Navigation Co., Ltd.  
 The Clan Line Steamers, Ltd.  
 Ellerman & Bucknall Steamship Company, Ltd.  
 Farrell Lines Incorporated  
 Prince Line, Limited  
 The Union-Castle Mail Steamship Company, Ltd.

*South Atlantic Steamship Conference (Agreement No. 4620)**Members:*

South Atlantic Steamship Line	} Joint Service
South Atlantic Steamship Line, Inc.	
Strachan Shipping Company	
Waterman Steamship Corporation	
Wilhelmsens Dampskibsaktieselskab	
A/S Den Norske Afrika—og Australielinie	
A/S Tonsberg	
A/S Tankfart I	
A/S Tankfart IV	
A/S Tankfart V	
A/S Tankfart VI	
Aktiebolaget Svenska Amerika Linien (Swedish American Line)	

*North Atlantic Continental Freight Conference (Agreement No. 4490)**Members:*

A/S J. Ludwig Mowinckels Rederi (Cosmopolitan Line)  
 Black Diamond Steamship Corporation  
 Compagnie Generale Transatlantique  
 Compagnie Maritime Belge, S. A. Compagnie Maritime Congolaise, S. C.  
 R. L. (Joint Service)  
 Cunard White Star Limited  
 Ellerman's Wilson Line, Ltd. (Wilson Line)  
 (A. P. Moller—Maersk Line)—Joint Service of  
 Dampskibsselskabet af 1912 A/S  
 A/S Dampskibsselskabet Svendborg  
 N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn"  
 South Atlantic Steamship Line, Inc.  
 United States Lines Company (United States Lines)  
 Waterman Steamship Corporation

*North Atlantic French Atlantic Freight Conference (Agreement No. 7770)***Members:**

A/S J. Ludwig Mowinckels Rederi (Cosmopolitan Line)  
 Compagnie Generale Transatlantique (French Line)  
 Cunard White Star Limited  
 (A. P. Moller—Maersk Line)—Joint Service of  
 Dampskibsselskabet af 1912 A/S  
 A/S Dampskibsselskabet Svendborg  
 South Atlantic Steamship Line, Inc.  
 United States Lines Company (United States Lines)  
 Waterman Steamship Corporation

*Gulf Scandinavian and Baltic Sea Ports Conference (Agreement No. 5400)***Members:**

Det Forenede Dampskibs-Selskab A/S (Scandinavian American Line)	} Joint Service
Lykes Bros. Steamship Co., Inc.	
Wilhelmsens Dampskibsaktieselskab	
A/S Den Norske Afrika—og Australielinie	
A/S Tonsberg	
A/S Tankfart I	
A/S Tankfart IV	
A/S Tankfart V	
A/S Tankfart VI	
Aktiebolaget Svenska Amerika Linien (Swedish American Line)	

*North Atlantic Baltic Freight Conference (Agreement No. 7670)***Members:**

Black Diamond Steamship Corporation  
 Compagnie Maritime Belge S. A. and Compagnie Maritime Congolaise  
 S. C. R. L.  
 Cunard White Star Limited  
 Den Norske Ameriklinje A/S Oslo (Norwegian America Line)  
 Det Forenede Dampskibs-Selskab, Copenhagen (Scandinavian American Line)  
 The East Asiatic Company, Ltd.  
 Ellerman's Wilson Line, Limited (Wilson Line)  
 Gdynia America Shipping Lines, Ltd. (Gdynia America Line)  
 Merivienti Cy (Finnlines)  
 Moore-McCormack Lines, Inc. (American Scantic Line)  
 N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn" (Holland-America Line)  
 Suomen Hoerylaiva Osakeyhtio-Finska Augfartygs Aktiebolaget (Finland Steamship Company)  
 Swedish American Line (A/B Svenska Amerika Linien)—Transatlantic Steamship Co. Ltd. (Rederiaktiebolaget Transatlantic (Joint Service))  
 Thorden Lines A/B  
 United States Lines Company (United States Lines)

*North Atlantic Baltic Freight Conference (Agreement No. 7670)—Continued*

*Members—Continued*

Waterman Steamship Corporation  
 (Wilh. Wilhelmsen interests)—Joint Service of  
 Wilhelmsens Dampskibsaktieselskab  
 A/S Den Norske Afrika—og Australielinie  
 A/S Tonsberg  
 A/S Tankfart I  
 A/S Tankfart IV  
 A/S Tankfart V  
 A/S Tankfart VI

*South Africa/U. S. A. Conference (Agreement No. 3579)*

*Members:*

British and South America Steam Navigation Co., Ltd.  
 The Clan Line Steamers, Ltd.  
 Ellerman & Bucknall Steamship Company, Ltd.  
 Farrell Lines Incorporated  
 Prince Line, Limited  
 The Union Castle Mail Steamship Company, Ltd.

*Gulf and South Atlantic Havana Steamship Conference (Agreement No. 4188)*

*Members:*

Empresa Naviera de Cuba, S. A.  
 Lykes Bros. Steamship Co., Inc.  
 Standard Fruit & Steamship Company  
 United Fruit Company  
 West India Fruit & Steamship Co., Inc.

*Pacific Coast River Plate Brazil Conference (Agreement No. 6400)*

*Members:*

Cia Argentina de Navegacion Dodero, S. A.  
 (Java Pacific Line)—Joint Service of  
 N. V. Stoomvaart Maatschappij "Nederland"  
 Koninklijke Rotterdamsche Lloyd, N. V.  
 Moore-McCormack Lines, Inc. (Pacific Republics Line)  
 Pacific Argentine Brazil Line, Inc.  
 Silver Line, Limited  
 Westfal-Larsen & Company, A/S (Westfal-Larsen Company Lines)

APPENDIX B

PROVISIONS IN CONFERENCE AGREEMENTS, AND TARIFFS THEREUNDER, OF RESPONDENTS WITH RESPECT TO ABSORPTION OF EXCESS CARGO INSURANCE PREMIUMS (IN THE ORDER RESPONDENTS ARE LISTED IN APPENDIX A)

*Leeward and Windward Islands and Guianas Conference (Agreement No. 7540-3)*

*Agreement:* "Member lines may, when necessary, equalize actual insurance differentials on cargo caused by flag, over-age or under-size disability, and when large or bulky pieces, ordinarily susceptible to under deck stowage, are stowed on deck for the convenience of the carrier".

3 U. S. M. C.

*Leeward and Windward Islands and Guianas Conference (Agreement No. 7540-3)*—Continued

*Tariff (Southbound)*: "Rates named herein do not include marine insurance, or other service, apart from transportation, but upon application the carrier may effect insurance for account of shippers at prevailing rates".

*Tariff (Northbound)*: "Rates and charges named herein do not include insurance of any kind".

*Virgin Island Tariff (Southbound)*: "Rates named herein do not include marine insurance, but upon application the carrier may effect insurance for account of shippers at prevailing rates".

*Virgin Island Tariff (Northbound)*: "No insurance whatever is included in the rates named herein".

*Gulf/French Atlantic Hamburg Range Freight Conference (Agreement No. 140-1)*

*Agreement*: "The parties hereto agree that penalties for deviation and deckload assessed by underwriters on Cotton and Cotton Linters may be refunded to shippers in all cases, provided claim from shipper is supported by receipt from insurance company, or other satisfactory evidence".

*Tariff*: "Rates shown herein do not include Marine Insurance and no premiums for account of shipper may be absorbed by the carrier. The only exception to this rule is on Cotton and Cotton Linters which rates are based on Class A Vessel rating and actual differences of insurance account of class of vessel or deviation may be absorbed upon presentation of receipted insurance bills".

*Gulf/United Kingdom Conference (Agreement No. 161)*

*Agreement*: "It is further understood additional insurance premiums assessed by underwriters on cargo account overage and/or under-tonnage vessels may be refunded to payees upon presentation of receipted insurance bills, which have been approved for payment by the General Secretary of the Conference".

"The parties hereto agree that penalties for deviation and deckload assessed by underwriters on Cotton and Cotton Linters may be refunded to shippers in all cases, provided claim from shipper is supported by receipt from insurance company, or other satisfactory evidence".

*Tariff*: "Rates shown herein do not include Marine Insurance and no premiums for account of shipper may be absorbed by the carrier".

*Havana Steamship Conference (Agreement No. 4189)*

*Agreement*: "On cargo stowed on deck for the convenience of a member line, the difference between on-deck and under-deck insurance on the cargo on that particular vessel may be absorbed. All such absorptions shall be reported to the Conference".

*Tariff*: "Rates published herein do not include Marine or other Insurance".

*United States Atlantic and Gulf/Haiti Conference (Agreement No. 5590)*

*Agreement*: "The steamer lines will not equalize marine insurance. However, in the case of large or bulky pieces or packages, lines will be permitted to cover with extra insurance where stowage on deck is entirely for convenience of the steamship company".

*Tariff*: "No insurance or other service apart from transportation is included in the rates named herein".

*United States Atlantic and Gulf-Santo Domingo Conference (Agreement No. 6080)*

*Agreement*: "Member lines shall absorb for the purpose of equalizing actual insurance differentials when insurance differentials obtain resulting from diversion, overage or under-sized vessels, or the operation of chartered vessels, or vessels not regularly engaged in the trade and therefore being subject to a higher insurance premium".

*Tariff (Homeward)*: "No insurance whatever is included in the rates named herein".

*Tariff (Outward)*: "No insurance whatever is included in the rates named herein. Shippers desiring to cover their shipments with insurance may so notify the Carrier or Carrier's agent, in writing prior to the sailing of the steamer. Insurance shall then be effected at rates prevailing under the Carrier's open policy and premium for same will be charged on bill of lading, but whether charged or not will be collectible from the shippers".

*United States Atlantic & Gulf-Netherlands West Indies and Venezuela Conference (Agreement No. 6190)*

*Agreement*: "Member lines may when necessary, make absorption for the purpose of equalizing actual insurance differentials, especially when resulting from diversion or overage or under-size vessels, or when large or bulky pieces or packages, for the convenience of the carrier, are stowed on deck".

*Tariff (Homeward)*: "Rates and charges shown herein do not include insurance".

*Tariff (Outward)*:

"(a) Rates published in this tariff do not include Marine Insurance.

(b) Shippers desiring marine insurance must so notify the carrier in writing when bills of lading are presented for signature, but in any case not later than the day before sailing. Insurance will then be effected at prevailing rates under a policy taken out by the carrier and cost of same shall be collectible from the shipper".

*River Plate and Brazil Conference (Agreement No. 59)*

*Agreement*: Provides that there shall be no absorption of any charges "except as unanimously voted and provided in the tariffs".

*Tariff*: "Members are permitted to absorb actual difference in cargo insurance premiums between rates applying on their vessels and the lowest rates applying to competitive cargo vessels of any conference member. Such absorptions to be made only by refund of the actual difference in the cargo insurance premium. All instances of such payment shall be reported in writing to the Conference Chairman with copy of supporting bill".

*Brazil-United States/Canada Freight Conference (Agreement No. 5450)*

*Agreement*: Provides that there shall be no absorption of any charges, "except as may be otherwise unanimously agreed".

*Tariff*: Contains authority to absorb insurance differential, the same as stated after *Tariff* under *River Plate and Brazil Conference (Agreement No. 59)* above.

*Mid Brazil/United States—Canada Freight Conference (Agreement No. 7639)*

*Agreement:* Provides that there shall be no absorption, "except as may be otherwise agreed and shown in conference tariff."

*Tariff:* Contains authority to absorb insurance differential, the same as stated after *Tariff* under *River Plate and Brazil Conference (Agreement No. 59)* above.

*North Brazil/United States—Canada Freight Conference (Agreement No. 7640)*

*Agreement:* Provides that there shall be no absorption, "except as may be otherwise agreed and shown in conference tariff."

*Tariff:* Contains authority to absorb insurance differential, the same as stated after *Tariff* under *River Plate and Brazil Conference (Agreement No. 59)* above.

*River Plate/United States—Canada Freight Conference (Agreement No. 6900)*

*Agreement:* Provides that there shall be no absorption, "except as may be otherwise unanimously agreed and shown in conference tariff."

*Tariff:* Contains authority to absorb insurance differential, the same as stated after *Tariff* under *River Plate and Brazil Conference (Agreement No. 59)* above.

*East Coast South America Reefer Conference (Agreement No. 6800)*

*Agreement:* Provides that there shall be no absorption, "except as may be otherwise agreed and shown in conference tariffs."

*Tariff:* "Lines may equalize insurance premiums with premiums applying on the best rated competitive line."

*River Plate and Brazil/United States Reefer Conference (Agreement No. 7200)*

*Agreement:* Provides that there shall be no absorption, "except as may be otherwise agreed and shown in conference tariffs".

*Tariff:* "Lines may equalize insurance premiums with premiums applying on the best rated competitive line".

*Gulf/South and East African Conference (Agreement No. 7780)*

*Agreement:* Provides that there shall be no absorption, except as authorized by the parties to the agreement "and recorded in the tariff or tariffs of the conference."

*Tariff:* "Absorption of insurance differentials is prohibited, except in the following instances:

1. When, for the convenience of the ship, under deck cargo may be stowed on deck, the ship may absorb the difference between on deck and under deck insurance premiums.

2. If, by reason of vessel being over twenty years old, additional insurance premiums are charged by underwriters the ship may absorb the amount of such additional premiums. All instances or such absorption shall be reported in writing to the Conference Office".



*U. S. A./South Africa Conference (Agreement No. 3578)*

**Agreement:** Provides that there shall be no absorption unless "adopted and prescribed by the conference".

**Tariff:** Contains authority to absorb insurance differentials, the same as stated after *Tariff* under Gulf/South and East African Conference (Agreement No. 7780) above.

*South Atlantic Steamship Conference (Agreement No. 4620)*

**Agreement:** Provides that there shall be no absorption, "except as provided in the tariffs".

**Tariffs:** *French Atlantic No. 2, and Continental No. 2, provide* "Rates shown herein do not include marine insurance. No premium for account of shipper may be absorbed by the carrier except actual differential premiums between on-deck and under-deck stowage, also penalties assessed by underwriters on cargo for over-age and/or under-tonnage vessels, and additionally, on cotton and cotton linters for extra ports of call, deviation, and deckloads. No insurance claims may be paid unless filed within one year of sailing of vessel transporting the cargo, and supported by receipt from insurance company or other satisfactory evidence. No refunds for on-deck, over-age or under-tonnage penalties may be paid until approved by the conference".

*South Atlantic/Baltic Tariff No. 2, also under this Agreement No. 4620, contains same provisions as French Atlantic and Continental, next above, except the difference between on-deck and under-deck stowage is not included.*

*North Atlantic Continental Freight Conference (Agreement No. 4490)*

**Agreement:** Contains no provision concerning "absorption".

**Tariff:** The only insurance absorption is on "Cotton and Cotton Linters which rates are based on Class A. Vessel rating and actual differences of insurance account of class of vessel or deviation may be absorbed upon presentation of receipted insurance bills".

Changed August 22, 1949, to provide: "Rates shown herein do not include Marine Insurance and no premiums for account of shipper may be absorbed by the carrier".

*North Atlantic French Atlantic Freight Conference (Agreement No. 7770)*

**Agreement:** Contains no provision concerning "absorption".

**Tariff:** Contains authority to absorb, same as stated after *Tariff* under *North Atlantic Continental Freight Conference (Agreement No. 4490)* above, including change August 22, 1949, discontinuing absorption.

*Gulf/Scandinavian and Baltic Sea Ports Conference (Agreement No. 5400)*

**Agreement:** Contains no provision concerning "absorption".

**Tariff:** The only absorption authorized, "is on Cotton and Cotton Linters which rates are based on Class A vessel rating and actual differences of insurance account of class of vessel or deviation may be absorbed upon presentation of receipted insurance bills"

*North Atlantic Baltic Freight Conference (Agreement No. 7670)*

*Agreement:* Contains no provision concerning "absorption".

*Tariff:* Contains authority to absorb insurance differentials, the same as stated after *Tariff* under *Gulf/Scandinavian and Baltic Sea Ports Conference (Agreement No. 5400)* above; but changed August 31, 1949, discontinuing absorption.

*South Africa/U. S. A. Conference (Agreement No. 3579)*

*Agreement:* Contains no provision concerning "absorption".

*Tariff:*

"1. When, for the convenience of the ship, under deck cargo may be stowed on deck, the ship may absorb the differences between on-deck and under-deck insurance premiums.

2. If, by reason of vessel being over twenty years old, additional insurance premiums are charged by underwriters, the ship may absorb the amount of such additional premiums. All instances of such absorption shall be reported in writing to the Conference office.

3. In respect of shipments of Gold Bullion, if, by reason of vessel not having Bullion Room approved by the Bank's underwriters, the Bank is called upon to pay a higher rate of insurance, the ship may absorb the additional insurance premium charged by the underwriters up to an amount of 2½¢ per \$100 Ad Valorem. Bills for payment of all such additional insurance premiums shall be approved by the Conference Secretary before payment".

*Gulf and South Atlantic Havana Steamship Conference (Agreement No. 4188)*

*Agreement:* Contains no provision concerning "absorption".

*Tariff:*

"(a) Rates published herein do not include Marine or other insurance.

(b) On cargo stowed on deck for the convenience of a member line, the difference between on-deck and under-deck insurance on the cargo on that particular vessel may be absorbed. All such absorptions shall be reported to the Conference."

*Pacific Coast River Plate Brazil Conference (Agreement No. 6400)*

*Agreement:* Provides that there shall be no absorption of any charges.

*Tariff:* "Rates do not include Marine Insurance and/or charges (if any) for shipping documents, consul fees, etc."

# FEDERAL MARITIME BOARD

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No. 693

IN THE MATTER OF AGREEMENT NO. 6870 AND THE  
PRACTICES OF THE PARTIES THERETO WITH RE-  
SPECT TO RATES GRANTED OIL COMPANIES

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*Submitted June 21, 1950. Decided October 30, 1950*

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Agreements Nos. 6870 and 6190, in so far as they authorize special rates to oil companies on supplies and equipment for use in Curacao, Aruba, Bonaire, Netherlands West Indies, and Venezuela, have not been shown to be in violation of sections 14, 16, and 17 of the Shipping Act, 1916, or in contravention of section 15 thereof, and should not be disapproved. The proceeding ordered discontinued.

*Parker McCollester and John R. Mahoney* for respondents.  
*Hymen I. Malatzky* for Himala International, intervener.  
*George F. Galland* for the Board.

## REPORT OF THE BOARD

This is an investigation on its own motion by the United States Maritime Commission, our predecessor, to determine whether Agreement No. 6870 and paragraph 6 (c) of Agreement No. 6190, in so far as they authorize special rates under special conditions to oil companies on supplies and equipment for their own use in Curacao, Aruba, Bonaire, Netherlands West Indies, and Venezuela, should be disapproved. Hymen I. Malatzky, under the name of Himala International, intervened against the agreements. The examiner found that the agreements had not been shown to be in violation of sections 14, 16, and 17 of the Shipping Act, 1916, or in contravention of section 15 thereof, and should not be disapproved. Exceptions to the examiner's recommended decision were filed by Himala International but oral argument was not requested.

The exceptions are in the nature of general conclusions that the contracts between the carriers and the oil companies, which are described

fully in the examiner's recommended decision, result in a violation of sections 14, 16, and 17 of the Act and run counter to the provisions of section 15 thereof. In essence, these conclusions are nothing more than a disagreement with the examiner's evaluation of the evidence. It is also alleged that the shippers named in the contracts are not the oil companies themselves and are not the ones who use the supplies and equipment subject to the contracts, and that therefore the contracts are misleading and should not be sanctioned. This entirely disregards the fact that the shippers, as affiliates of the oil companies, are charged with the purchase and shipment of all supplies and equipment used by the oil companies. For the purpose of this proceeding we are justified in considering the shippers and the oil companies one and the same.

Upon the whole record we find (1) that the exceptions are without merit, (2) that the facts are as set forth in the examiner's recommended decision, which we adopt and make a part hereof,\* and (3) that agreement No. 6870 and paragraph 6 (c) of Agreement No. 6190 should not be disapproved.

An order discontinuing this proceeding will be entered.

\*See Appendix.

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., this 30th day of October A. D. 1950.

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No. 693

IN THE MATTER OF AGREEMENT NO. 6870 AND THE PRACTICES OF THE PARTIES THERETO WITH RESPECT TO RATES GRANTED OIL COMPANIES

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This proceeding having been instituted on the motion of the United States Maritime Commission, the Board's predecessor, 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, on the date hereof, having made and entered of record a report containing the conclusions and decision thereon, adopting the recommended decision of the examiner, which report and decision are hereby referred to and made parts hereof;

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

By the Board.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

## APPENDIX

### FEDERAL MARITIME BOARD

No. 693

#### IN THE MATTER OF AGREEMENT NO. 6870 AND THE PRACTICES OF THE PARTIES THERETO WITH RESPECT TO RATES GRANTED OIL COMPANIES

Agreements Nos. 6870 and 6190, in so far as they authorize special rates to oil companies on supplies and equipment for use in Curacao, Aruba, Bonaire, Netherlands West Indies, and Venezuela, have not been shown to be in violation of sections 14, 16, and 17 of the Shipping Act, 1916, or in contravention of section 15 thereof, and should not be disapproved. The proceeding should be discontinued.

*Parker McCollester* and *John R. Mahoney* for respondents.

*Hyman I. Malatzky* for Himala International, intervener.

*George F. Galland* for the Board.

#### RECOMMENDED DECISION OF C. W. ROBINSON, EXAMINER

This is an investigation by the Board<sup>1</sup> to determine whether Agreement No. 6870 and paragraph 6 (c) of Agreement No. 6190 should be disapproved. Himala International intervened against the agreements.

Agreement No. 6190, approved August 11, 1938, pursuant to section 15 of the Shipping Act, 1916, hereinafter referred to as the Act, covers the transportation of cargo between U. S. Atlantic and Gulf ports and ports in Curacao, Aruba, Bonaire, Netherlands West Indies, and Venezuela.<sup>2</sup> Paragraph 6 (c) of the agreement provides as follows:

"Nothing herein contained shall prevent any of the parties hereto from making contracts for carrying cargo of oil companies to points of delivery in the island of Curacao, Aruba and Bonaire, Netherlands West Indies and Venezuela, provided that such cargo is intended for the sole use of the oil

<sup>1</sup> The investigation was initiated by the United States Maritime Commission on its own motion on August 23, 1949, but in accordance with section 104 of Reorganization Plan No. 21 of 1950, submitted by the President to the Congress on March 13, 1950, effective May 24, 1950, the regulatory functions of the Commission were transferred to the Federal Maritime Board.

<sup>2</sup> The parties to this agreement are respondents Alcoa Steamship Company, Inc., Grace Line, Inc., Lykes Bros. Steamship Co., Inc., Royal Netherlands Steamship Co. (Koninklijke Nederlandsche Stoomboot Maatschappij N. V.), Rederiet Vindegggen A/S, Rederiet Besseggen A/S, Skipsaksjeselskapet Essi, Skipsaksjeselskapet Estero, Dampskibssaksjeselskapet Esito, and Bj Ruud-Pedersen.

companies in the equipment and operation of their plants and not for resale purposes."

Under Agreement No. 6870, approved May 4, 1939, respondents Alcoa, Grace, Lykes, and Royal Netherlands, hereinafter referred to as respondents, undertake that the cargo encompassed by paragraph 6 (c) above, shall be carried "at rates and charges and upon terms and conditions and in accordance with rules and regulations unanimously agreed upon; and that same shall be duly filed with the U. S. Maritime Commission \* \* \*."

As of the time of the hearing respondents had two contracts with E. D. Sheffe,<sup>3</sup> both dated June 11, 1948, and one with Asiatic Petroleum Corp.,<sup>4</sup> dated June 16, 1948. Each provides "that the materials to be shipped under this Agreement are not for resale, except to the Shipper's own employees but are for the sole and exclusive use of the shipper in connection with the exploration, exploitation, refining, transportation and maintenance of their producing and refining operations of Petroleum products" in Venezuela and/or the Netherlands West Indies.<sup>5</sup> The contracts also provide that the shippers shall furnish, without cost to respondents, safe and suitable berths or anchorage, and that the vessels shall remain continuously in berth until discharge is completed. Rates for the various articles, set forth in schedules attached to the contracts, are generally lower than the regular tariff rates therefor, and are based on competition and lower cost of operation.

To aid in the development of their oil resources, Venezuela and the Netherlands West Indies waive import duties on oil equipment and supplies. The contract traffic here involved approximates 300,000 tons a year, or roughly 25 percent of respondents' total business to the area, and is discharged at the properties of the oil companies usually some distance from respondents' regular ports of discharge. The industrial materials move in such large volume as to make them subject to tramp competition. Indeed, one major oil company switched to chartered tonnage several years ago. It was testified that much of the material used by the oil companies is now available in Europe as well as in the United States, a situation aided by the recent devaluation of foreign currencies, and that as a small difference in the total delivered cost can result in the loss of business to European suppliers, it is most important to American suppliers and respondents alike that the materials be delivered as cheaply as possible. Local merchants at destination are not prejudiced by the contracts as the materials shipped thereunder are not for resale. Furthermore, materials of the kind under consideration are not bought by the companies in the countries where used because of their high prices, which include heavy import duties. As a protective measure, the oil companies must certify that shipments moving at the contract rate come within the terms of the contract. Occasional commercial shipments are carried at regular tariff rates and are discharged at the public terminals utilized by respondents. There is no indication that the contracts are carried out in other than the strictest manner.

It was testified that the laws of Venezuela require oil companies to provide commissaries for their employees in remote areas, and to sell at prices fixed by

<sup>3</sup> Sheffe represents a group of Venezuelan and Netherlands West Indies companies, subsidiaries of Standard Oil Co.

<sup>4</sup> Asiatic is a subsidiary of Batavian Petroleum Co., a member of the Royal Dutch Shell group.

<sup>5</sup> The materials consist principally of pipe, cement, and iron and steel articles, and commissary supplies for employees.

the Government. Sometimes the companies are compelled to sell for less than the cost of laying the goods down in Venezuela. The employees profit by the low prices and the arrangement is not unfair to local business as usually there are no available stores in such outlying places.

Although there are no figures of record, it was testified that the cost of delivering materials at the companies' private terminals is less than at regular public terminals used by respondents. The companies furnish free facilities, which can be used uninterruptedly until discharge is completed, advantages not enjoyed at the public terminals; there are no stevedoring charges at the private terminals; the employees of the companies handle the cargo more efficiently and expeditiously than the stevedores at the public terminals; commercial cargo must be cleared through the customs, with all its ramifications and delays; at the public terminals respondents sometimes are called upon to make good for losses over which they have no control, a situation which does not exist at the private terminals; and matters relating to customs duties are handled by the companies themselves where the cargo is discharged at their terminals. Conditions at the public terminals in the Netherlands West Indies are better than in Venezuela but costs are equally high. From the foregoing comparison it seems safe to assume that it is cheaper to deliver oil-company supplies at company terminals than at public terminals.

Respondents are willing to make contracts with other shippers similarly circumstanced even though they may not be oil companies. It is significant that no complaints had been received against the contracts until Himala International intervened herein. Himala, an exporter of chemicals and related products, admittedly has not shipped anything to Venezuela for several years. Its objections to the contracts are that the chemicals used by the oil companies would be competitive with those shipped by Himala, and that in the future it might export foodstuffs to Venezuela which could be bought locally by the oil-company employees if the commissaries were discontinued.

#### CONCLUSIONS

Section 15 of the Act authorizes the Board to disapprove any agreement, "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."<sup>6</sup> It is clear beyond cavil on this record that the present agreements are not unjustly discriminatory or unfair as between carriers, importers, or ports, or between exporters and their foreign competitors. There remains for determination, therefore, whether the agreements are unjustly discriminatory or unfair as between shippers or exporters, or operate to the detriment of the commerce of the United States, or are in violation of the Act.

The record is devoid of any substantial evidence that the contracts result in unjust discrimination or unfairness as between shippers or exporters. As already noted, no other shipper has asked for a similar contract and been refused, and the uncontradicted testimony is that shippers similarly circumstanced, irrespective of whether they are oil companies, would be accorded the same rights and privileges as the oil companies. The position of intervener Himala, the only

<sup>6</sup> It must be kept in mind that the present discussion is limited to the special contracts involved and does not relate to the over-all lawfulness of the agreements.



complainant against the contracts, being based on indeterminate future trading, is much too nebulous to justify disapproval of the agreements. Furthermore, from the evidence it does not appear likely that Himala would get any more business if the contracts were cancelled and the oil companies utilized tramp vessels or bought their supplies from European sources.

To be a detriment to the commerce of the United States there must be at least a plausible possibility that the action complained of will affect commerce adversely. There is no such manifestation in the present proceeding. On the contrary, the contracts enable American exporters to compete in foreign markets, an end most desirable whenever possible. Furthermore, respondents have managed to retain a large bloc of traffic which easily could be carried by tramp vessels or by lines operating between Europe and South America. The loss of such traffic conceivably could upset the conference schedule of regular and dependable service. In the final analysis, the present contracts further the interests of American commerce rather than result in a detriment thereto.

Section 14 (4) of the Act forbids any common carrier by water from making any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered. In a broad sense the present contracts are based on volume, for 25 percent of respondents' entire southbound traffic in the trade certainly is a substantial figure. However that may be, the contracts are not unfair or unjustly discriminatory in view of the circumstances. Rather are they premised on a very practical approach to a difficult problem involving the welfare of a segment of the American shipping public and of the conference lines themselves. The commodities subject to the contracts are such as to remove them from the realm of ordinary commercial competition, and no shipper or consignee has been shown to be hurt by the contracts.

Section 16 (1) of the Act makes it unlawful for any common carrier by water "to make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." Since this section and section 14 (4) basically are the same in so far as this proceeding is concerned, further discussion with respect to section 16 (1) is not necessary.

The only other part of the Act having a possible bearing on the subject is section 17, which prohibits any common carrier by water in foreign commerce from demanding, charging, or collecting "any rate, fare, or charge which is unjustly discriminatory between shippers or ports \* \* \*." It has been found that the contracts do not violate any other provision of the Act, and the evidence is not persuasive that the rates themselves are out of line for the service performed, in the light of all the circumstances.

The view of the Board's predecessors on sections 14, 16, and 17 of the Act are clearly set forth in the cases of *Phila. Ocean Traffic Bureau v. Export S. S. Corp.*, 1 U. S. S. B. 538, *Atl. Refining Co. v. Ellerman & Bucknall S. S. Co. et al.*, 1 U. S. S. B. B. 242 and 531, and *The Paraffine Co.'s Inc. v. Amer.-Hawaiian S. S. Co. et al.*, 1 U. S. M. C. 628. In the first case cited, at page 541, the Secretary of Commerce said:

"It is well settled that the existence of unjust discrimination and undue prejudice and preference is a question of fact which must be clearly demonstrated by substantial proof. As a general rule there must be a definite showing that the difference in rates complained of is undue and unjust in

that it actually operates to the real disadvantage of the complainant. In order to do this it is essential to reveal the specific effect of the rates on the flow of traffic concerned and on the marketing of the commodities involved, and to disclose an existing and effective competitive relation between the prejudiced and preferred shipper, localities, or commodities."

In the *Atl. Refining Co.* case, at page 250, the United States Shipping Board said:

"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 (*United States v. Illinois Central R. R.*, 263 U.S. 515): 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."

Upon this record the Board should find that Agreement No. 6870 and paragraph 6 (c) of Agreement No. 6190, in so far as they authorize special rates to oil companies under the circumstances hereinbefore described, are not violative of any of the provisions of the Act or in contravention of section 15 thereof, and should not be disapproved. The proceeding should be discontinued.

3 F. M. B.

# UNITED STATES MARITIME COMMISSION

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No. 678

## INCREASED RATES—SHIP'S ANCHORAGE TO SHORE—NOME, ALASKA

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Respondent's rates as a whole for the transportation of commodities from and to points in Alaska not shown to be unlawful.

Suspended schedules not justified.

*Malcolm D. Miller* for complainant.

*S. J. Wettrick* for respondent.

### RECOMMENDED DECISION OF F. J. HORAN, EXAMINER

On May 5, 1948, respondent, Lomen Commercial Company, filed with the Commission its tariff naming rates for the transportation of commodities between ship's anchorage and shore at Nome, Golovin, Teller, Solomon, and other places in Alaska and from Golovin and Teller anchorages to points beyond Golovin and Teller. Upon protest of the Territory of Alaska, hereinafter called complainant, the rates named in the tariff on cigars, cigarettes, tobacco, snuff, and groceries were suspended by the Commission until October 5, 1948. The other rates contained therein became effective on June 5, 1948. Following the action of the Commission, respondent indefinitely extended the period of suspension, at the same time amending the tariff to show the lower rates that would apply on the commodities mentioned in lieu of the rates suspended. This proceeding concerns the lawfulness of all rates in the tariff.

There has been no formal hearing in this proceeding. Data relating to the question of whether the tariff results in net income in excess of a fair return have been submitted informally, and complainant and respondent have agreed that the matter should be disposed of on the basis of such data. It has been decided to follow this procedure. As in *Rates between Places in Alaska*, 3 U. S. M. C. 33, revenues and expenses in connection with the transportation involved will be spoken of as those of respondent's lighterage department to distinguish them from the revenues and expenses of respondent's sales department.

In the case cited, it was determined that the value for rate-making purposes of the lighterage department's property did not exceed \$250,000, and 7 percent of such fair value, or \$17,500, was found to be a fair return. No change in such fair return is warranted by the record in the instant proceeding.

As pointed out in *Rates between Places in Alaska, supra*, the season of navigation in the area in which respondent operates is limited by weather conditions to approximately the 5-month period from June to October, inclusive. In 1948, the cargo carried by respondent totaled 29,577 tons, and for such transportation it received \$222,860.60. Sundry lighterage-department revenue of \$10,650.25 increased this sum to \$233,510.85.

Respondent computes its lighterage-department expenses for 1948 as follows: operating, \$177,782.98; administrative, Seattle office, \$20,000; administrative other than Seattle office, \$28,974.43; total, \$226,757.41. On the basis of this computation, the lighterage department's net income before income taxes would be \$6,753.44, and after income taxes, \$5,300.15, or \$12,199.85 less than a fair return.

The sum of \$28,974.43 appearing as the lighterage department's administrative expenses for other than the Seattle office is 89.456 percent of the total of other-than-Seattle-office administrative expenses, which amounted to \$32,389.59, leaving 10.544 percent thereof, or \$3,415.16, to be borne by the sales department. Such percentages are the proportions that the gross revenue of the lighterage department and the gross revenue of the sales department, respectively, bear to the combined gross revenue of the two departments except that deducted from the sales department's gross revenue are the cost of goods sold and certain agency expenses. In *Rates between Places in Alaska, supra*, only the cost of goods sold was allowed as a deduction. However, in the instant proceeding, the lighterage department's net income would not exceed a fair return even if no deduction were made. In such case, 73.949 percent, or \$23,951.78, would be allocated to that department. Its net income before income taxes would be \$11,776.09, and after income taxes, \$9,167.58, or \$8,332.42 less than a fair return.

The deficiency of net income does not warrant the conclusion that each and every rate in force under the tariff in question is below a reasonable maximum. To quote from *Interstate Commerce Commission v. Union Pacific Railroad Company*, 222 U. S. 541, 549: "Where the rates as a whole are under consideration, there is a possibility of deciding, with more or less certainty, whether the total earnings afford a reasonable return. But whether the carrier earned dividends or not sheds little light on the question as to whether the rate on a particular article is reasonable."

There being no evidence from which it can be determined whether respondent's rates in effect on cigars, cigarettes, tobacco, snuff, and groceries are lower than maximum reasonable rates, it cannot be said that, if increased as proposed in the suspended items, they would be just and reasonable.

The Commission should find that the effective rates in question, as a whole, are not shown to be unlawful. It should find further that the suspended rates have not been justified.

Correspondence of record indicates dissatisfaction on the part of United States Smelting Refining and Mining Company with respondent's rates on bulk oil. A determination as to the lawfulness of such rates may be had by filing a complaint as provided in section 22 of the Shipping Act, 1916, as amended.

An appropriate order should be entered.

3 F. M. B.

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., on the 2d day of November 1950

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No. 678

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INCREASED RATES—SHIP'S ANCHORAGE TO SHORE—NOME, ALASKA

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*It appearing*, that by order dated June 4, 1948, the United States Maritime Commission ordered a hearing into the lawfulness of the rates, charges, regulations and practices in tariff schedules of respondent Lomen Commercial Company enumerated and described in said order and suspended the operation of certain items therein enumerated until October 5, 1948;

*It further appearing*, That investigation of the matters involved has been made by a hearing examiner, who has issued a report recommending a finding that the schedule of rates as a whole had not been shown to be unlawful but that the increases suspended were not shown to have been justified; and that the parties filed no exceptions to said report;

*It further appearing*, That intervener, the Territory of Alaska, has agreed that this proceeding may be discontinued without prejudice, and the respondent has agreed that the case may be dismissed on the basis of the findings recommended by the examiner;

*It is ordered*, That the findings recommended by the examiner be adopted as those of the Board, and that this proceeding be discontinued and dismissed.

By the Board.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# FEDERAL MARITIME BOARD

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No. 681

HYMEN I. MALATZKY, DOING BUSINESS AS HIMALA INTERNATIONAL  
*v.*  
AMERICAN EXPORT LINES, INC., ET AL.

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*Submitted October 18, 1950. Decided December 1, 1950*

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Exclusive patronage contract dual rate system of North Atlantic Mediterranean Freight Conference is not in violation of the Shipping Act, 1916, or in contravention of section 15 thereof.

A provision of a conference contract with the shipper, giving the carrier an option to declare the contract terminated if the shipper violates the contract by shipping via a nonconference vessel, is unjustly discriminatory and should be eliminated from the contract.

Complaint dismissed.

*Hymen I. Malatzky* for complainant.

*George E. Walsh* for Pacific Coast Borax Company.

*Roscoe H. Hupper* and *Burton H. White* for American Export Lines, Inc.

## REPORT OF THE BOARD

### BY THE BOARD:

By complaint filed June 18, 1948, complainant alleges that 7 days previously he had shipped 75 drums of DDT on respondent's vessel *Exford*, consigned to Athens, Greece, and on which was paid freight at the rate of \$45 per ton, under protest, whereas he should have been charged only \$37.50 per ton, which was the rate charged to shippers signing contracts giving their exclusive patronage to the carrier. It is contended that the dual rate system is void. The relief asked includes an order declaring the conference, to which respondent is a party, to be a conspiracy, an order withdrawing the Board's approval of the conference agreement, and an order requiring the discontinuance of the dual rate system. The complaint also seeks reparation in the sum

of \$41.89, the difference between the noncontract rate charged and the contract rate which complainant claims should have been charged on the 5 tons or more of cargo carried.

The examiner recommended that the complaint be dismissed. We agree in general with the examiner's recommendations. The matter was argued on exceptions before the Board on the same day with No. 684, *Isbrandtsen v. North Atlantic Continental Freight Conference, et al.* (decided December 1, 1950), involving many of the same questions, and in which proceeding the present complainant was an intervener.

On February 17, 1948, our predecessor, the United States Maritime Commission, approved the conference agreement of North Atlantic Mediterranean Freight Conference, of which respondent is a member, the agreement providing for the dual rate system discussed at length in the *Isbrandtsen* case, *supra*. The attack on the dual rate system in the instant case is substantially the same as in the *Isbrandtsen* case, *supra*, and for the reasons set forth in the opinion in that case, we find that the system here under consideration is not in violation of the Shipping Act, 1916.

Complainant here admitted that he had signed a conference contract prior to the shipment in question, as assistant manager of Bernard Ring, a merchant exporter, and later, on September 13, 1948, after the shipment, signed a contract on behalf of himself trading as Himala International. In his testimony he somewhat modified his original position and stated that he did not then attack the dual rate system as unlawful *per se*, but objected to the fact that the ocean rates in effect prior to the effective date of the dual rate system were made the contract rates, and a higher rate established for noncontract shippers. He stated that if the conference had continued its prior rates for noncontract shippers and established lower rates for contract shippers, then he "could not have had any objection." His position apparently amounts to a contention that the measure of the rates is too high. Nothing in the evidence, however, supports this contention.

An objection not advanced in the *Isbrandtsen* case, *supra*, is that the contract provision requires tender of American shipments to conference lines regardless of whether the cargo is to be transported on a through vessel or is subject to transshipment. It is claimed that the conference is thereby attempting to control shipments to ports not actually served. We do not see that this objection has validity since both types of carriers must be deemed to serve the ultimate destination, whether directly or through an on-carrier.



The only objection which complainant makes to the form of the contract, and which appears to us to have merit, is that which is directed to the carrier's option to terminate the contract and collect damages in case of the shipper's violation. As indicated in our opinion in the *Isbrandtsen* case, *supra*, we think the contract should be modified to eliminate this feature.

The testimony shows that complainant has been reimbursed by his Greek customers for the full amount of the freight charges with respect to which he complains. This fact alone, however, would not be considered by the Board as a basis for refusing reparation if complainant were otherwise entitled to it, since complainant would be under obligation to hold the amount of any recovery for the benefit of the party justly entitled thereto. We find that complainant is not entitled to reparation. He paid the noncontract published rate, and because he had not signed the conference contract he was not entitled to the contract rate. Moreover, granting the lower contract rate to complainant without obtaining his signature to the contract, would have amounted to an unreasonable discrimination in his favor by the carrier, and would have been unlawful.

#### FINDINGS

We find as follows:

(1) The option provision contained in the contract of North Atlantic Mediterranean Freight Conference, permitting termination of the contract and the collection of damages by the conference at the option of the carrier, is unreasonable and should be eliminated.

(2) In other respects the approval heretofore given to the conference agreement by our predecessor, the United States Maritime Commission, on February 17, 1948, is continued.

(3) Reparation is denied.

An order will be entered dismissing the complaint.

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., on the 1st day of December, A. D. 1950

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No. 681

HYMEN I. MALATZKY, DOING BUSINESS AS HIMALA INTERNATIONAL  
*v.*  
AMERICAN EXPORT LINES, INC., ET AL.

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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, on the date hereof, having made and entered of record a report containing its conclusions, decision, and findings thereon, which report is hereby referred to and made a part hereof;

*It is ordered*, That the complaint herein be, and it is hereby, dismissed.

By the Board.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# FEDERAL MARITIME BOARD

No. 684

ISBRANDTSEN COMPANY, INC.

v.

NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE ET AL.<sup>1</sup>

*Submitted October 18, 1950. Decided December 1, 1950*

The proposed exclusive patronage contract dual rate system of North Atlantic Continental Freight Conference and of Continental North Atlantic Westbound Freight Conference are not in violation of the Shipping Act, 1916, or in contravention of section 15 thereof.

A provision of a conference contract with the shipper, giving the carrier an option to declare the contract terminated if the shipper violates the contract by shipping via a non-conference vessel, is unjustly discriminatory and should be eliminated from the contract.

Complaint dismissed.

*John J. O'Connor and William L. McGovern* for complainant.

*Roscoe H. Hupper and Burton H. White* for respondents.

*Joseph E. McDowell* for United States Department of Justice, *Henry A. Cockerum* for United States Department of Agriculture, *Hymen I. Malatzky* for Himala International, and *E. A. McDonald, Jr.*, and *T. R. Stetson* for Pacific Coast Borax Co., interveners.

*Paul D. Page, Jr.*, Solicitor, and *George F. Galland* for the Board.

## REPORT OF THE BOARD

By the Board:

The complainant, hereinafter called "Isbrandtsen", originally brought suit in the District Court of the United States for the Southern

<sup>1</sup> Continental North Atlantic Westbound Freight Conference, A/S J. Ludwig Mowinckels Rederi, Black Diamond Steamship Corporation, Compagnie Generale Transatlantique, Compagnie Maritime Belge, Cunard White Star, Ltd., Ellerman's Wilson Line, Ltd., Dampskibsselskabet af 1912 A/S, A/S Dampskibsselskabet Svendborg, United States Lines Company, N. V. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij, Waterman Steamship Corporation, and South Atlantic Steamship Line, Inc.

District of New York, seeking to restrain the respondents, who constitute, respectively, the eastbound and westbound North Atlantic conferences, from putting into effect the so-called exclusive patronage contract, hereinafter referred to as the "contract", providing for contract and non-contract rates, hereinafter referred to as the "dual rate system", and seeking to set aside so much of certain orders of the United States Maritime Commission, our predecessor, as purported to authorize the dual rate system. The Commission's orders had been issued from time to time after investigation, but without adversary proceedings, approving the agreements of the two conferences and various amendments thereto, all pursuant to section 15 of the Shipping Act, 1916, hereinafter referred to as the "Act".

The original eastbound conference Agreement No. 4490 provided that the dual rate system might be negotiated with shippers. The original westbound conference Agreement No. 7000 failed to make mention of such system, but by amendment set forth in Agreement No. 7920-1, approved by the Commission, the system was authorized.

It appearing to the District Court that the conference carriers were about to put the dual rate system into effect and thereby require shippers to contract to employ conference carriers exclusively in order to secure tariff rates lower by 20 percent than those applicable if they failed so to contract, a temporary injunction was issued by the court on January 7, 1949, in order to preserve the *status quo*, on condition that Isbrandtsen should, within 20 days from the entry of the order, prosecute before the Maritime Commission a complaint challenging the validity of the dual rate system.

Thereafter, the present proceeding was instituted by Isbrandtsen, praying that so much of the conference agreements above mentioned as purported to authorize the system be revoked, and that the two conferences cease and desist from putting the system into effect. The Department of Justice, the Department of Agriculture, and certain individuals intervened, and counsel for the Board participated in the proceeding.

Isbrandtsen and the Department of Justice have made it clear to this Board and to the Maritime Commission, which will hereinafter collectively be referred to as the "Board", that they do not challenge the validity of the conference agreements generally, but only the dual rate system. Specifically, Isbrandtsen claims (1) that the system is illegal, because in violation of section 14 (3) of the Act, hereinafter quoted, and (2) that the Board may not, under section 15 of the Act, legally approve a conference agreement which includes the dual rate system, because that feature is in violation of section

14 (3), and because such approval would be tantamount to delegating to the conference the right to exclude Isbrandtsen from engaging in commerce. The last of the foregoing objections is based on the ground that the Congress has not delegated to the Board and the Board may not redelegate any such power to any conference, and that the threatened exclusion by the conference would deprive Isbrandtsen of its property without due process of law.

When the case came on before the examiner, Isbrandtsen filed copies of the proceedings in the District Court, the conference agreements, the contracts and rates, and thereupon rested, arguing that the dual rate system on its face showed a *prima facie* case of discrimination which was illegal *per se*. The record before us giving the history and actual operation of the system was developed from witnesses produced by respondents. All parties at interest were afforded opportunity to be heard, and after full adversary proceedings, the examiner recommended that the system should be found not to violate section 14 (3) of the Act, and that the contracts as presented should, with minor changes, be approved. With the examiner's recommendations, we generally agree.

Isbrandtsen, an American corporation organized in 1941, succeeded an earlier corporation, organized in 1921, and both have had a history of ocean shipping operation independent from conference ties. Isbrandtsen insists that it should have the right of unobstructed access to American shippers. Its vessels run in competition with conference liners. It claims that the offering of lower rates to shippers who agree to deal exclusively with the conference lines necessarily puts it at a disadvantage, and that the system restrains trade, encourages monopoly, and directly violates section 14 (3) of the Act. Isbrandtsen apparently is not interested in joining any conference. It is important to note that membership in the conferences in question is and has been open to it, and that the Board's predecessors, in passing on conference agreements, have from time to time insisted that any responsible common carrier be accepted to conference membership on reasonable terms. *Pacific Coast European Conference*, 3 U. S. M. C. 11, at p. 14 (1948). So Isbrandtsen's alleged handicap as an independent, competing for cargo in the face of the conference contract system, is a handicap voluntarily assumed and not the result of exclusion.

Before discussing the contracts, some consideration should be given to the conferences. It may be agreed that the conference system tends to monopoly. This system, as above stated, is not here under attack and at this late date could not very well be, for Congress, as is well known, has chosen to approve a policy of regulated monopoly

rather than cutthroat competition. Section 15 of the Act recognized carrier agreements

fixing or regulating transportation rates \* \* \*; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; \* \* \* or \* \* \* providing for an exclusive, preferential, or cooperative working arrangement.

which under ordinary circumstances might be in restraint of trade, and authorized administrative approval thereof when they met statutory standards. The standards set forth in the same section authorize disapproval when the conference agreements are found to be

unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, \* \* \* or to operate to the detriment of the commerce of the United States, or to be in violation of this act.

The reasons which led to the adoption of this Congressional policy are set forth in full in the Alexander Committee Report, H. R. Doc. 805, 63d Cong., 2d Sess., which was issued prior to the Shipping Act, 1916, and on which the latter was largely patterned. The Committee recognized that conditions of ocean transportation were such as to permit recurrent rate wars, which disorganized service, impaired its quality, permitted discrimination against small shippers, discouraged "forward trading" by merchants, and ultimately resulted in monopoly through the process of extermination or absorption of the weaker units by the stronger (Report 295-303; 416), and stated, p. 416,

It is the view of the Committee that open competition can not be assured for any length of time by ordering existing agreements terminated, and further observed, p. 298,

the conference system largely results in placing rates outside the influence of competition.

Coming now to the provisions of the contracts, there is little difference between the eastbound and the westbound form. The eastbound contract provides that the shipper ("Merchant") shall ship by the conference lines "all shipments of the commodities mentioned (or provided) below"; that "failure so to tender any such shipments to the carriers, or shipment of them by vessels other than those of the carriers shall be a violation of this contract"; that the carriers agree to transport the shipments on their vessels; that if the carriers fail to name space within three days after the shipper applies therefor, the shipper shall be free to secure space elsewhere without prejudice to the contract, but the shipper must first give the conference an opportunity to arrange space; that the carriers agree to furnish "space in such vessels as they may respectively load"; that if the shipper shall

make shipment in violation of the contract the carriers "shall have the option at any time to declare this agreement terminated, and the Merchant shall be liable to the carriers for liquidated damages equal to twice the amount of freight that would have been payable under this contract in respect of the shipments constituting the violation"; that "other commodities as may be shipped by the Merchant from time to time, which shall be deemed covered by this agreement", shall be at the lowest rates then in effect for the particular commodity; that rates are subject to reasonable increase from time to time, and that the notice thereof shall be deemed accepted by the shipper unless, within 20 days after his receipt of the notice, he gives the carriers written notice of non-acceptance, in which case the carriers shall have the option at any time within 20 days after receipt of the shipper's notice to cancel the agreement on giving the shipper at least 60 days; written notice; that the carriers shall have the option to reduce their rates, the shippers in such case to receive the benefit thereof; and that the agreement shall continue in effect throughout consecutive subsequent years subject to the right of either the shipper or the carriers to terminate it as of December 31 in any year by giving the other party 90 days written notice of termination.

The testimony showed that by practical operation the contract shipper was guaranteed against a change of rate for at least 80 days.

Our function in this proceeding is to re-examine the dual rate system to determine whether it violates any express statutory provisions, or if not, whether it contains any elements which violate statutory standards so as to require administrative disapproval.

The gist of Isbrandtsen's argument is that the system violates statutory provisions in that it sets up dual rates for the same service and thereby necessarily creates *discrimination* between those shippers who sign and those who refuse. Isbrandtsen claims that it makes no difference that such discrimination may not be *unreasonable* or *unjust*, contrary to the requirements of sections 15, 16, and 17 of the Act. It points out that the language of section 14 (3) of the Act, unlike that of the other sections referred to, outlaws not only *unreasonable* discrimination but *all* discrimination. Relying on dicta of the Supreme Court in *Swayne Hoyt, Ltd. v. U. S.* 300 U. S. 297, complainant concludes that a *prima facie* case of discrimination has been made out, which may not be excused on any showing of reasonableness.

Section 14 (3) of the Act reads as follows,

That no common carrier by water shall, directly or indirectly, \* \* \*

Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discrimi-  
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nating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

It is to be noted that the modifying words "unjust" or "unreasonable" do not appear before the word "discriminating" in this section, as they do in the other sections referred to, although the word "unfair" follows immediately after. Nevertheless, we cannot agree that this section has the effect which Isbrandtsen claims. For this there are several reasons: first, such an interpretation would be contrary to the interpretations which our predecessors have uniformly given since the adoption of the Act in 1916; secondly, such an interpretation would make impossible any harmonious administration of the Act as a whole; thirdly, such construction would extend the application of section 14 (3) to carriers' activities generally, whereas we think application is limited to such retaliation as is there described.

Referring first to the prior decisions of our predecessors, it must be pointed out that the attack made against the dual rate system in this case is substantially the same as was made in *Pacific Coast European Conference Agreement, supra*, in which the Department of Justice and the Department of Agriculture participated. What the Maritime Commission said in that case is so appropriate here as to require extensive quotation (p. 16):

Every decision, whether by a court or by us or our predecessors, since the passage of the Shipping Act, involving the legality of the contract rate system, has rested upon the facts presented in the specific case. Wherever the system has been condemned the decision has turned on some circumstance which resulted in a discrimination, or in detriment to the commerce of the United States, or in some violation of the Shipping Act, 1916. No administrative finding sustaining the lawfulness of the system has been reversed by the courts.

Although practically all of the points of attack against the lawfulness of the contract rate system were made in *U. S. Navigation Co. v. Cunard S. S. Co., Ltd.*, 284 U. S. 474, the court did not pass upon the merits of the complaint but decided that the matter should have been presented initially to the Shipping Board before resort was had to the courts. It is significant that no further action was taken by complainant in that case.

We cannot ignore the fact in *Swayne & Hoyt v. U. S.*, 300 U. S. 297, the Supreme Court did not hold that the contract rate system was in violation of section 14 of the Shipping Act, 1916, or that the establishment of two different rates for identical services (contract and non-contract) was in itself unduly and unjustly preferential. In giving full consideration to the decision of our predecessor the court decided that the interpretation which had been placed upon the facts by our predecessor was substantially supported, and that the court was not empowered to make a contrary finding.

Contrary to the arguments made to us, Congress was informed before it passed the Shipping Act, 1916, of the existence of the contract rate system as well as of the deferred rebate system. Congress took occasion to prohibit the latter specifically. It is reasonable to suppose that had it intended to prohibit the former it would have said so with equal force.



We can find no authority that the contract rate system is unlawful *per se*. \* \* \*

In 1933 the dual rate system was under attack in the case of *Rawleigh v. Stoomvaart et al*, 1 U. S. S. B. 285, on the ground that it violated section 14 (3) as well as other sections of the Act. The Shipping Board pointed out that the dual rate practice had then been in effect for many years and had received the approbative attention of the Congressional Committee which drafted the 1916 Act. The Board expressly found that the system did not violate section 14 (3). The practice of our predecessors has been to examine the details of each dual rate system which has been presented, and determine whether there was violation of any express prohibition of the Act, or whether any features were unreasonable or unjustly discriminatory. In a number of the reported decisions of our predecessors, dual rate systems have been disapproved on the latter ground. So in *Eden Mining Co. v. Bluefields Fruit & S. S. Co.*, 1 U. S. S. B. 41 (1922), a dual rate structure put into effect by a single carrier permitting shippers no choice of service, was disapproved. Again, in *Intercoastal Investigations, 1935*, 1 U. S. S. B. B. 400, and in 1936, *Gulf Intercoastal Contract Rates*, 1 U. S. S. B. B. 524, the Secretary of Commerce determined that the application of the dual rate system in the *intercoastal* trade was unreasonable because of the statutory rate protection there given to intercoastal carriers under the Intercoastal Shipping Act, 1933. The latter of these two cases was, of course, the one reviewed by the Supreme Court under the name of *Swayne & Hoyt, Ltd. v. United States, supra*, wherein the disapproval of the dual rate system was based on the Secretary's finding of unreasonableness, and not on the ground of violation of section 14 (3). The court, in a note appended to its opinion (p. 307), discussed the particular interpretation of section 14 (3) urged by Isbrandtsen in this case, but did not adopt it.

Based on the interpretation above outlined, our predecessors since 1931 approved no fewer than 32 conference agreements which provide either specifically or inferentially for the dual rate system—and of these agreements, 24 are now in effect and the respective conferences are making active use of the dual rate system.

It may be noted in passing that complainant's predecessor corporation, Isbrandtsen-Moller, adopted for itself an exclusive patronage dual rate system from 1937 to 1939 and filed 176 dual rates with the Maritime Commission, thus apparently at that time agreeing with the Commission's interpretation of the law.

Secondly, complainant's interpretation of section 14 (3) of the Act would make any harmonious construction or administration of

the Act most difficult. If an agreement between carriers submitted to the Board for approval under section 15 were found to contain no unjust or unreasonable discrimination, it would pass muster so far as that section and sections 16 and 17 are concerned. The Board cannot believe that a different standard was set up for testing such agreements by section 14 (3), which might require an opposite finding. It is to be noted that section 15 of the Act expressly requires the filing by carriers of all agreements including and "giving or receiving special rates". We consider that the lower of the two rates shown in the dual rate tariffs filed in this case to be a "special rate" of this description. Possibly, and in order to harmonize with other language in the same section and with other sections, the naked word "discrimination" in section 14 (3) should be held to mean "unjust" or "unreasonable" discrimination. *United States v. Wells-Fargo Express Co.*, 161 Fed. 606, affirmed 212 U. S. 522; *U. S. Navigation Co. v. Cunard S. S. Co., Ltd.*, 284 U. S. 474.

Finally, we feel that the language of section 14 (3) of the Act is not to be considered as a standard for judging all carrier agreements, but establishes a prohibition against an undesirable practice, i. e., "retaliation". To retaliate is defined in Webster's New International Dictionary, 1945 Unabridged Edition, as "to return like for like" or "evil for evil". Retaliation perhaps connotes the idea of vengeance. Such conduct among carriers in their relations with shippers is in our judgment the evil which section 14 (3) was designed to prohibit. We cannot view the adoption of the dual rate system or the charging of a higher rate to a shipper who voluntarily declines to give his exclusive patronage as a "retaliation". The higher rate cannot be said to be charged as a retaliation for "patronizing any other carrier". It is charged because the shipper does not sign the contract, regardless of whether or not he patronizes any other carrier. A non-signing shipper who does not patronize a non-conference carrier is treated as harshly as a non-signing shipper who ships partially or exclusively with such a carrier.

The history of the various subsections of section 14 appears to support the above analysis. Section 14 (1) made unlawful payment of deferred rebates, a practice which prevailed prior to the 1916 Act, and up to that time had not been held unlawful by the courts. *United States v. Prince Line*, 220 Fed. 230 (1915), reversed as moot, 242 U. S. 537. Section 14 (2) made unlawful the use of fighting ships, a practice which even before the 1916 Act was frowned on by the courts in the same case. Section 14 (4) made unlawful all contracts and rates which unfairly and unjustly discriminated between large and small

shippers. Finally, and in addition to the foregoing practices which were considered and condemned in the Alexander Committee Report (Report, *supra*, p. 421), section 14 (3) made unlawful "retaliation" as there defined. A real case of retaliation had been before the courts [*Menacho v. Ward*, 27 Fed. 529 (1886)] and was a leading precedent prior to 1916, and in it real carrier retaliation had been condemned. There, two steamship lines engaged in the New York-Cuba trade had increased their rates to plaintiffs because plaintiffs had previously made shipments via tramp carriers in the trade. This was retaliation for the shipper's previous action. The case involved no contract between the shippers and the carriers, a circumstance which was deemed important to the decision, as appears from the following extract, p. 533.

The defendants, to maintain the affirmative, assert that their charges are fair because they do not have the whole of the complainants' carrying business. But it can never be material to consider whether the carrier is permitted to enjoy a monopoly of the transportation for a particular individual, or class of individuals, in ascertaining what is reasonable compensation for the services actually rendered to him or them. *Such a consideration might be influential in inducing parties to contract in advance*; but it has no legitimate bearing upon the value of services rendered *without a special contract*, or which are rendered because the law requires them to be rendered for a fair remuneration." (Emphasis supplied.)

We believe that section 14 (3) was a codification of the common law illegality of retaliation as appearing in the *Menacho* decision. We believe that the distinction between what we regard as real retaliation as condemned in the *Menacho* case, on the one hand, and the dual rate system now under consideration, on the other hand, was recognized in the case of *Lough v. Outerbridge*, 143 N. Y. 271 (1894), also decided under the common law well before the 1916 Act. The New York case last cited found nothing unlawful in the dual rate system, expressly pointing out that the *Menacho* case applied to an entirely different situation, the court explaining, p. 280 :

The authorities cited seem to me to remove all doubt as to the right of a carrier, by special agreement, to give reduced rates to customers who stipulate to give them all their business, and to refuse these rates to others who are not able or willing to so stipulate, providing, always, that the charge exacted from such parties for the service is not excessive or unreasonable.

See also *Mogul S. S. Co. v. McGregor* (1892), App. Cas. 25, at p. 36.

Isbrandtsen's further argument against our construction of section 14 (3) is that where two interpretations are possible, that one which renders the Act unconstitutional in operation should be avoided. Isbrandtsen claims that a construction which approves the dual rate system is equivalent to granting to the conference the power to exclude Isbrandtsen and other independents from the trade, that such power

to exclude is equivalent to a power to grant certificates of convenience and necessity such as Congress sometimes gives to regulatory bodies, but has not given to this Board with respect to foreign trade. Isbrandtsen argues that since this Board may not grant or withhold such certificates, it may not (by our construction of the Act) delegate any such power to a conference without violating several sections of the Federal Constitution and the 5th Amendment.

We think this argument is far-fetched. In the first place, there is no evidence that the dual rate system has in the past, or will in the future, effectively cause the exclusion of an independent carrier from any trade route on which he wishes to operate. This is particularly apparent from the fact that there is a standing invitation to all independents to join the conferences and to operate on the same footing with conference members. The construction which the Board adopts for section 14 (3) places no restrictions on Isbrandtsen's rights to enter any trade and gives no conference or conference members any right to do so.

Having thus considered the contentions of the parties as to the proper construction of section 14 (3) of the Act, we must determine whether the dual rate system as presented in this case qualifies for approval under section 15. That system in many cases is a necessary part of the conference system. The evidence in this case shows that eastbound conference members had, in 1948, 518 sailings as against 38 by complainant. Complainant and its predecessor over a period of 17 years, except during World War II, have maintained at least two sailings a month on the route. Under the conference agreement, uniform rates are offered to all shippers who sign the conference contracts, and a uniform but higher rate is offered to all who do not. There is evidence that the conference system guarantees uniform rates, prevents cutthroat competition, and encourages frequent and regular scheduled sailings; also, that shippers are willing to pay rates to sustain stability and frequency of service, which means more to them over a period of time than being able occasionally to avail themselves of somewhat lower rates offered by non-conference carriers. There is also evidence that even though rates of conference members are identical, there is competition among the members in the matter of the service offered. As stated above, the conference system is not under attack, yet it is important to state that there is evidence in the case, if that be needed, to support a finding that the conference agreements, as distinguished from the dual rate system contemplated by them, meet the requirements of section 15 of the Act and deserve the approval which they have heretofore received from our predecessors.

If the conference members are to provide the service which the shippers value, the service must be matched by a regular availability of cargo from those shippers. The conferences realize that to sustain these mutual benefits, something more than voluntary shipper cooperation must be agreed to. The dual rate system is the device which has been developed for that purpose. Shippers have testified in this case that they deem the stability of rates and regularity of service which a conference can offer are worth a price measured in terms of freight rates. By obtaining exclusive contracts from shippers the carriers are better able to estimate the approximate volume of traffic that is to be expected, tonnage their routes, and arrange their sailings accordingly. As previously indicated, the contracts under consideration guarantee to the shipper that his rate will not be changed for approximately 80 days, and the evidence shows that longer commitments are sometimes granted. In any event, small shippers are put on the same plane with large shippers and both are thus encouraged to engage in "forward trading", so necessary for foreign commerce.

There is a complaint by one of the interveners that the contracts under discussion are unenforceable at law because lacking legal consideration. We believe a technical consideration sufficient to support the contract is found in the agreement of the carrier not to change rates for a specified time in exchange for the agreement of the shipper to ship exclusively by the conference carriers. However, the question of technical consideration and legal enforceability does not seem to us all-important in this case for it is clear from the evidence that the contracts once made are in fact observed without resort to court action, and our problem is to determine whether the agreements by the conference carriers to put the dual rate system into effect (regardless of enforceability) is to be approved under section 15. We find in general that the dual rate system disclosed by the evidence in this case is not contrary to the standards set up in the Act.

On the other hand, one feature of the contract which we think objectionable has to do with the option given to the carrier if the shipper makes shipments in violation of the agreement. The contract provides that in such a case

the Carrier shall have the option to declare this agreement terminated and the Merchant shall be liable to the Carrier for liquidated damages equal to twice the amount of freight that would have been payable under the contract in respect of the shipment constituting the violation.

Our predecessors have pointed out that an option of this sort makes it possible for the carrier to discriminate between shippers, *Pacific Coast European Conference, supra*. We think this objection is valid.

3 F. M. B.

Any approval which we give to the use of the dual rate system in this case is conditioned upon the modification of the contract form by the carriers so as to eliminate the option feature and substitute therefor the specific treatment which will be accorded shippers in all cases of violation.

The contract provides for liquidated damages in case of violation equal to twice the amount of freight that would have been payable under the contract in respect to the shipment constituting the violation. Our predecessors have considered the reasonableness of liquidated-damage provisions for violation of contracts of this sort. We agree that this type of contract is one in which a liquidated-damage provision may be incorporated, because the harm caused by breach is extremely difficult if not impossible of accurate estimation. Of course, the agreed measure of damages must bear a reasonable relation to the breach so as to class it as real damages and not as a penalty. In this case the contract provides for liquidated damages in twice the amount of the freight involved. Perhaps this is on the high side, but since by a violation some member of the conference whose ship has sailed, has lost the freight involved, and the conference as a whole has been weakened by the violation, we think the provision is not unreasonable and may be retained. In *Pacific Coast European Conference, supra*, our predecessors approved a liquidated-damage feature for breach of exclusive patronage, limited to an amount equal to the freight involved in the shipment or a certain number of times thereof. Court approval of a somewhat similar liquidated-damage clause was given in the case of *North German Lloyd v. Elting*, 96 Fed.2d 48.

The fact that the conference collects the damages instead of an individual carrier, does not militate against reasonableness, since there will be damage to an individual though unascertained member of the conference as well as to the conference as a whole. The collection of damages by the conference appears to be a practicable measure to make the contracts effective for the benefit of the conference members. The result is in substance a pooling of damages, analogous to the pooling of earnings or profits which the Act, section 15, expressly authorizes.

An objection is made to the clause of the contract which requires that all the shipper's cargo originating out of North Atlantic ports be tendered to the carriers for transportation on their vessels at seven American and several Canadian named ports. It is claimed that this clause may discriminate against a shipper who has cargo located at an intermediate unnamed port, or perhaps discriminate as between

the named and the unnamed ports. The named ports include the seven major American ports between Norfolk, Virginia, and Portland, Maine, and it would seem that the shipper is thus given a broad selection of ports from which to choose. The carrier cannot be required to serve ports beyond his choosing and we cannot, therefore, say that the designation of the named ports creates any unreasonable discrimination as claimed.

We think the special treatment accorded to the Department of Agriculture on Government-owned or -controlled cargo, in granting to it the lower contract rate without requiring the Government to sign a contract, is a reasonable exception in the public interest and is not a discriminatory practice.

Exceptions not discussed in this report nor reflected in our findings have been given consideration and found not justified.

#### FINDINGS

We find as follows:

1. The findings contained in the report of the examiner are a substantial compliance with the orders of reference of the Commission of December 19, 1949 and January 13, 1950.
2. The provision contained in the eastbound contract permitting termination of the contract and the collection of damages by the conference at the conference's option, is unreasonable and should be eliminated.
3. The use of the dual rate system by the two conferences and their members is not unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, and does not operate to the detriment of the commerce of the United States, and is not in violation of the Shipping Act, 1916, provided that the form of contract used shall be modified so as to be in keeping with finding (2) above.

An order will be entered dismissing the complaint.

**3 F. M. B.**

ORDER

At a session of the Federal Maritime Board, held at its office in  
Washington, D. C., on the 1st day of December A. D. 1950

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No. 684

ISBRANDTSEN COMPANY, INC.

v.

NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE ET AL.

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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, on the date hereof, having made and entered of record a report containing its conclusions, decision, and findings thereon, which report is hereby referred to and made a part hereof;

*It is ordered,* That the complaint herein be, and it is hereby, dismissed.

By the Board.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary*



# FEDERAL MARITIME BOARD

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No. 638

EDMUND WATERMAN & GUSTAVE WATERMAN, DOING BUSINESS AS  
E. WATERMAN & CO., AND LEO W. COX, DOING BUSINESS AS L. W. COX  
& Co.

v.

STOCKHOLMS REDERIAKTIEBOLAG SVEA ET AL.<sup>1</sup>

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*Submitted October 16, 1950. Decided December 8, 1950*

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On further hearing on damages, complainants failed to prove damages. Reparation denied.

*Frank J. McConnell, James D. Brown, and Paul M. Jones* for complainants.

*Cletus Keating, L. de Grove Potter, and David Dawson* for respondents.

## REPORT OF THE BOARD

### BY THE BOARD:

On July 26, 1949, the Maritime Commission, predecessors to this Board, found (3 U. S. M. C. 131) that respondent, in refusing complainants an equal opportunity with Twedberg, Kleppe and Cia Ltda. of Rio de Janeiro, Brazil, hereinafter referred to as Kleppe, to secure space to ship fresh fruit in the MS *Freja* in November 1944, from New York to Rio de Janeiro, Brazil, violated section 14 (Fourth) and section 16 of the Shipping Act, 1916 (hereinafter called the Act), and that complainants were entitled to reparation. A further hearing was ordered to determine the amount of damage, if any, suffered by complainants as a result of the violation. The examiner's recommendation allowed a substantial award to each complainant.

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<sup>1</sup> Skeffington S. Norton, Joseph F. Lilly, and John B. O'Reilly, co-partners, doing business under the firm name and style of Norton, Lilly & Company and Thor Eckert & Co., Inc., against which respondents the complaint was heretofore dismissed by the Commission.

The respondent filed exceptions to the examiner's recommendation, and the issues were argued orally before this Board. Our conclusions differ from those recommended by the examiner. We find no sufficient proof of any damages suffered by complainants which are the proximate result of any violations of the Act.

It has long been established by the courts and Government agencies having jurisdiction in such matters that (a) damages must be the proximate result of violations of the statute in question; (b) there is no presumption of damage; and (c) the violation in and of itself without proof of pecuniary loss resulting from the unlawful act does not afford a basis for reparation.<sup>2</sup>

In the instant case, we are asked to award damages on the basis of a record which we find lacks the necessary proof. Claimants predicate their claim for damages on the alleged loss of profits resulting from respondent's violation of the Act in refusing to afford them an equal opportunity to ship fresh fruit to Brazil on the MS *Freja* in November 1944, along with the shipment being carried for Kleppe, their competitor in Brazil. They base their alleged pecuniary loss on hypothetical shipments of 4,000 and 5,000 boxes of Canadian apples, which, they assert, they could have obtained in time for the sailing of the vessel and would have sold in Brazil at the same profit of \$4.00 per box, which, they were advised by their agents in Brazil, their competitor must have earned on his apples. It is not disputed that the Kleppe shipment, consisting of apples, pears, and grapes, was not made on a bill of lading basis, but by a special agreement under section 6 of the Carriage of Goods by Sea Act, whereby the vessel owner was absolved from all liability including negligence. Nor is it disputed that the vessel owner had refused to carry fresh fruit for some three years prior to this voyage because of the vessel's faulty refrigeration machinery and the poor outturn of fruit in previous attempts, for which extensive damage claims had been paid. Although claimants testified that they would have shipped on this same save-harmless basis as their competitor Kleppe did, they acknowledged that they would not have shipped in the *Freja* if their competitor had not done so. Indeed, they insist their motivation was to remain competitive with Kleppe in the Brazilian market. We deem this particularly important in connection with our consideration of the question as to what complainants' shipments might have included if in fact they had been made.

Despite claimants' testimony during the hearing on damages (some five years after the fact) that they would have shipped apples only,

<sup>2</sup> *Pennsylvania R. R. Co. v. Intl. Coal Co.*, 230 U. S. 184, 203, 206.

3 F. M. B.

the proof in the record is substantial that given the opportunity, they would also have shipped pears and grapes, as well as apples. Considering the uncertain length of time of a voyage during the war period and the save-harmless basis of shipment, it is not clear whether any loss of profits on such mixed shipment resulted from the carrier's act of refusing space. The proof amounts to little more than their showing of a possibility which is highly speculative, uncertain, conjectural, and lacks a reasonable basis of certainty. It is incumbent on complainants to meet the burden of proof and we find they have not done so.

The record shows that the Kleppe shipment in the MS *Freja* consisted of 7,463 boxes of fresh apples, 7,560 boxes of fresh pears, and 937 lugs of grapes. To remain truly competitive with Kleppe, it is reasonable to conclude that claimants would have shipped the same three types of fruit. Claimants' testimony that because of the poor record of the vessel they would have shipped apples only, if permitted to do so by the carrier, is not persuasive when one considers the facts that complainants were aware of the record of the *Freja* at the time they were insisting that carrier accept reasonable amounts of apples, pears, and grapes for shipment. Nor can we overlook, in considering the question of what claimants might have shipped, their admission that they knew all of Kleppe's grapes were a total loss. The continuous and consistent demands by complainants after they learned of the November 3, 1944, Kleppe booking are not without value in casting light upon what they would have shipped had space on the MS *Freja* been made available to them. In their cablegram protest of November 9, 1944, to the Swedish owner of the vessel relative to the reefer space on the MS *Freja*, claimants stated, in so far as is here pertinent: "The undersigned American firms who have shipped apples, pears and grapes to Brazil for many years protest \* \* \*. We request you authorize your agents Norton Lilly to accept reasonable quantities of apples, pears and grapes from our firms for shipment on the *Freja* \* \* \*." Cox's letter of November 8, 1944, to Norton Lilly, in requesting space on the MS *Freja*, stated: "distribution as to apples, pears and grapes to be given to you, upon acceptance of our booking." Waterman's letter of November 9, 1944, to Norton Lilly specifically requested "space for 2,000 boxes of apples, 1,000 boxes of pears, and 1,000 boxes of grapes." These were their demands at the time closest to the event and truly reflect their shipping intentions as to types of fruit. Cox's testimony during cross examination impels the conclusion that it would have been a mixed shipment of fruit, if made in November 1944. As to Waterman, not only his sworn complaint alleged apples and pears, but on cross examination he admitted: "I

have no doubt at that time that we would have been glad to have shipped pears and grapes." Questions of intent can best be determined from complainants' acts and declarations explanatory thereof, and not from what they subsequently testified to in relation to their real intent. Their testimony must be weighed and considered with all other evidence in the case in passing upon the question of actual intent.

The record is barren of evidence pertaining to damages on pears and grapes that complainants presumably would have shipped on the *Freja* had reefer space been made available to them. Questions of their availability in time for shipment on said vessel, cost, outturn, and selling price are left unanswered. Here again the burden of proof has not been met. As to the apple portion of claimants' respective hypothetical shipments, we are inclined to the view that the matter was susceptible of satisfactory proof, considering that claimants made it known to respondent's agent at the time of the violation that they would pursue such remedies as they could. For reasons best known to themselves, the complainants did not avail themselves of the right to take depositions of material witnesses not present at the hearings, which our Rules of Procedure authorize.

On the question of availability of apples for shipment on the *Freja*, complainant Waterman offered in evidence over respondent's objections a letter dated October 19, 1949, from the B. C. Tree Fruits, Ltd., of Canada, stating that in 1944 they could have supplied additional carloads "that year." Cox similarly offered in evidence, over respondent's objection, a letter from said company dated August 29, 1949, in which is quoted their telegram of October 9, 1944, offering apples for "immediate acceptance." This can hardly be considered satisfactory proof of availability of apples at the time in question, inasmuch as the record shows the *harvest* year extended beyond the *Freja's* sailing date; that it took approximately two weeks to get these Canadian apples shipside; and that the producer was engaged at the time in making deliveries of the same type of apples for the shipment on another vessel, the *MS Trondanger*, which apparently was the vessel contemplated in the telegram to Cox, that being the only scheduled vessel for Brazil at the time. The burden of proof being on the complainants, the producer's deposition would have properly reflected the true factual situation, giving respondent at the same time an opportunity to exercise its rights by way of cross-interrogatories.

The same criticism applies to complainants' attempt to prove selling price and prospective purchasers. On this phase of the matter, no evidence of any nature was adduced from prospective buyers. There were admitted in evidence, over respondent's objection, letters to

claimants from their agents in Brazil dated long after the occurrence and as late as 1949. The statements contained therein were not made in the ordinary course of business, are mere self-serving statements, and are of no probative value to establish the demand and market value of the fruit in Rio. While we are not bound by strict rules of evidence, which would of course exclude the letters, we think that facts stated in the letters of an agent to his principal written for use in this proceeding are an inadequate substitute for facts which should properly have been developed by deposition or direct testimony. As was aptly stated by the court in the case of *United States v. Barker*, 24 Fed. Cas. 1004, 1005, "The letter of the agent of the United States cannot be given in evidence against a third person. His deposition might have been taken." A letter allegedly written as of the time of the occurrence deserves special comment. This letter addressed to Waterman from his agent Engelke is dated October 7, 1944. Since this date preceded by about a month the *Freja* booking by Kleppe on November 3, 1944, which the letter discussed, it was apparent something did not jibe. Cross-examination of Waterman disclosed that the letter was actually written in 1949 at his request and forwarded under a covering letter dated October 7, 1949, which, among other things, states: "If the letter is not the way you want it written, or the dates should be different ones, I would thank you to let me know, and very gladly I will furnish you a new letter, *worded exactly as you want it.*" [Italics added.] This development speaks for itself. The attempted explanation that the predated letter was merely intended to be a statement is not convincing, particularly in view of Waterman's failure to produce the copy of his request to Engelke, after respondent's request to produce. In any event, there is no satisfactory proof on this aspect of the matter, and we find complainants have not sustained their burden in this regard. Nor does the record contain any evidence as to the actual outturn or condition of the apples on the *Freja* upon arrival in Brazil, which fact is unquestionably important in connection with any claim for reparation, where the vessel, upon which the physical transportation of the apples would have taken place at the *shipper's* risk except for the act of the carrier, was recognized as possessing inadequate refrigerator machinery and being generally unfit for the transportation of fresh fruit. Because of the unfit condition of this particular vessel, we cannot reach any reasonable inferences such as might be the case if the vessel had well-conditioned, normal, refrigerated compartments.

In view of the foregoing, it becomes unnecessary to determine (a) what share of the *Freja* reefer space each claimant was entitled to, (b) whether the two shippers that joined complainants in the protest of

the Kleppe booking or other shippers would also have shipped had the carrier advertised the *Freja* space on Kleppe terms, or (c) what effect competition would have had on the market price of apples, pears, and grapes in Brazil had Waterman and Cox also shipped on the *Freja*.

In consideration of this case we are dealing with private rights and wrongs.<sup>3</sup> To award damages alleged to have been incurred by reason of unjust discrimination, there must be that degree of certainty and satisfactory conviction in the mind and judgment of the Board as would be deemed necessary under the well-established principles of law in such cases as a basis for a judgment in court. Complainants have been accorded ample opportunity to present facts supporting an award of reparation and presumably have presented all of the evidence possessed by them. Their case must stand or fall on the facts now of record. Our conclusion, reached after careful consideration of all the evidence of record with respect to damages alleged to have been sustained, is that the record is completely lacking in details from which a finding might be made whether reparation is due. The evidence is far too vague, general in character, and indefinite to warrant the conclusion that complainants have suffered actual pecuniary loss attributable directly to respondent's discriminatory act. In short, the requisite proof of damage is wanting. This failure to establish the fact of damage attributable to the wrong is fatal to claimants' case for reparation. Upon this phase of the case, we therefore find and conclude that no basis for an award of reparation for damages has been shown. The prayer for reparation accordingly is denied, and an order to such effect will be entered.

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<sup>3</sup> *King Stone Co. v. Chicago I. & L. Ry. Co.*, 171 I. C. C. 47, 52.

3 F. M. B.

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., on the 8th day of December A. D. 1950

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No. 638

EDMUND WATERMAN & GUSTAVE WATERMAN, DOING BUSINESS AS E. WATERMAN & Co., AND LEO W. COX, DOING BUSINESS AS L. W. COX & Co.

v.

STOCKHOLMS REDERIAKTIEBOLAG SVEA ET AL.

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This case being at issue upon the question of complainants' damages, and having been duly heard and submitted by the parties, and full investigation of the matters and things having been had, and the Board, on the date hereof, having made and entered of record a report containing its conclusions, decision, and findings thereon, which report is hereby referred to and made a part hereof;

*It is ordered*, That reparation herein be, and it is hereby, denied; and

*It is further ordered*, That the complaint be, and it is hereby, dismissed.

By the Board.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# FEDERAL MARITIME BOARD

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No. 630

SIGFRIED OLSEN, D. B. A. SIGFRIED OLSEN SHIPPING COMPANY

v.

WAR SHIPPING ADMINISTRATION AND GRACE LINE INC.

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*Submitted October 25, 1950. Decided December 8, 1950*

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War Shipping Administration, in the common-carrier operation of merchant vessels through its agent, was a "common carrier by water" within section 1 of the Shipping Act, 1916.

Tariff demurrage provisions applicable on lumber from California to Balboa, Canal Zone, between January 20, 1942, and January 1, 1943, were unjust and unreasonable regulations and practices in violation of section 17 of the Shipping Act, 1916, but not otherwise in violation of that section or in violation of section 16 of the Act.

Demurrage charges assessed but not collected by the agent of War Shipping Administration will be waived and the security therefor released by direction of the Maritime Administrator, who is also Chairman of the Board.

*William Catron Rigby, Fred W. Llewellyn, and Joseph B. McKeon* for complainant.

*William Radner, Arthur M. Becker, Joseph J. Geary, and W. R. Wallace, Jr.*, for respondents.

*Chalmers G. Graham and Clarence G. Morse* for North Pacific Coast-Europe Passenger Conference, Pacific Coast/Panama Canal Freight Conference, and Canal, Central America Northbound Conference, and *Parker McCollester* for Atlantic and Gulf/Panama Canal Zone, Colon and Panama City Conference, interveners.

*Paul D. Page, Jr.*, Solicitor, and *George F. Galland* for the Board.

## REPORT OF THE BOARD ON REHEARING

### BY THE BOARD:

Complainant brings this proceeding to obtain waiver of certain demurrage charges made against it by Grace Line Inc., acting as berth



agent of War Shipping Administration (hereinafter referred to as "WSA"), incurred pursuant to a demurrage tariff on lumber and other commodities, and to cancel a bond to secure the same. If collected, the amount would benefit the Federal Maritime Administration, which, as will later appear from this report, has succeeded to the rights of WSA. Complainant alleges that the demurrage provisions were unduly and unreasonably prejudicial, unjustly discriminatory and prejudicial, and unjust and unreasonable, and violated respectively sections 16, 17, and 18 of the Shipping Act, 1916 (hereinafter referred to as the "Act"), and, likewise, were unjustly discriminatory and detrimental to the commerce of the United States in violation of section 15 of the Act.

The demurrage rates established January 20, 1942, and abrogated January 1, 1943, applied to lumber, cement, and explosives carried from California ports to Balboa, Canal Zone, also to asphalt and clay pipe not involved in this case, but not to other commodities carried. The Examiner found the rates unreasonable and recommended granting the relief. We agree with the result.

Some of the vessels involved were owned by the United States; others were chartered to the United States, and all were operated for Government account by their respective general agents appointed by WSA. Grace, as berth agent for all, made arrangements for the carriage of the shipments, and issued the freight contracts and bills of lading, which included the demurrage provisions in question. These provisions were set forth in the tariff filed by Pacific Coast/Panama Canal Freight Conference, of which Grace was a member, but of which the United States was not. WSA authorized Grace to charge the conference rates, including demurrage.

Prior to the attack on Pearl Harbor in December 1941, there had been urgent military need for lumber at the Canal Zone, and our predecessor, the United States Maritime Commission, arranged with intercoastal common carriers to carry large quantities of lumber to that point. The intercoastal trade historically does not include cargo to and from the Canal Zone. Carriers feared that congestion at the Canal Zone would delay their vessels and were willing to undertake the carriage of lumber only on terms which included a demurrage rate of \$5 per ship's deadweight ton per month on a demurrage form usually applicable to voyage charters. Subsequent to Pearl Harbor and the creation of WSA by Executive Order dated February 7, 1942, all United States flag ships were either requisitioned or chartered to the Government, and all cargo commitments of the intercoastal, as well as other carriers to the Canal Zone, were transferred to Grace, acting as berth agent for WSA.

Respondent WSA challenges the jurisdiction of the Board to grant relief, on the ground that this proceeding is in reality a suit against the United States to which it has not consented. Phrased differently, respondent's position is substantially equivalent to saying that if WSA should disregard the requirements of the Act in operating Government merchant vessels, there would be no relief available to injured parties. We are not aware that WSA has ever claimed to operate outside the Act, and we think it clear that while operating merchant vessels as common carriers it is not authorized to do so. WSA comes within the literal definition of a "common carrier by water" as set forth in section 1 of the Act. Section 9 of the Act expressly makes merchant vessels owned by the United States subject to the Act when chartered or leased for operation by others. *The Lake Monroe*, 250 U. S. 246; *Eastern Transportation Company v. United States*, 272 U. S. 689. The same rule has been held to apply when Government-owned vessels are operated by the Government as merchant vessels and not leased or chartered to others. *The Jeannette Skinner*, 258 Fed. 768. See also *California v. United States*, 320 U. S. 577, at p. 585, as to jurisdiction over public bodies. Here WSA was, through Grace, charging rates for demurrage established by the conference. Non-governmental members of the conference were subject to the Act, and WSA, by voluntarily adopting the conference rates and practices through its agent Grace, may be said to have put itself under the same control. In any event, any relief that may be granted in this case will not require the entry of any decree against the Government or any agency thereof, nor the payment of funds now in Government hands, since the demurrage charges here involved were never actually collected or paid to the Government.

The demurrage charges complained of were assessed under the following provisions with respect to lumber, and corresponding provisions with respect to cement and explosives.

Lumber shall be taken from the end of ship's tackle at discharging port at rate of not less than five hundred thousand feet net board measure (N. B. M.) per twenty-four (24) hour day, failing which shipper shall pay demurrage for any and all delay to ship at the rate of \$5.00 U. S. Currency per ship's dead weight ton (summer draft) per month, prorated into days and hours as the port time may reflect, Sundays and holidays not excepted. Time to commence from the time ship arrives in port, provided the ship arrives at 5:00 P. M. or prior thereto (whether in berth or not), and if the ship arrives in port after 5 P. M., time to commence at 7:00 A. M., of the day following the date of the arrival of the ship; provided, however, if the ship arrives after 5:00 P. M. and commences discharging before midnight of the same day, time will commence from the time discharging of the lumber from the ship actually begins.

Demurrage is payable on the basis of a twenty-four hour day or prorated thereof down to one hour. Where there is lumber from more than one shipper on one

vessel, demurrage, if any, will be prorated between them on a percentage basis that each shipment bears to the total lumber for discharge at Panama Canal destinations.

Complainant was required precedent to booking of cargo to sign space-booking agreements obligating him to pay such demurrage as might accrue under applicable tariff provisions. He executed these agreements under protest. Complainant, in turn, required his consignees to deposit with him such amounts as he might be required to pay for demurrage, testifying that such amounts would be held by him pending the determination of this case.

The parties have stipulated that neither complainant nor respondents were responsible for the delays in unloading which resulted in the accrual of demurrage liability. The ships discharged at piers of the Panama Railroad Company, which exclusively controlled the assignment of dock facilities and cargo handling. Demurrage was charged to lumber shipments for delay experienced because vessels were unable to secure berthing space. The S. S. *Joseph Hooker*, for example, arrived in Balboa, outer anchorage, at 10:34 A. M., August 7, 1942. There being no dock available, the vessel remained at moorings until 12:50 P. M., the next day. However, demurrage time began to run at 5:00 P. M., on August 7, while the vessel was in stream and unable to discharge. Furthermore, substantial delays, resulting in demurrage charges against lumber, occurred because of time lost in shifting vessels from one dock to another to discharge heavy-lift cargo, which itself was not subject to demurrage. The rule made no exception for delays resulting from breakdown of ship's machinery, opening and closing of hatches, waiting for dock labor controlled by the railroad company, or for heavy rains preventing ship's working, or other causes over which the shipper had no control.

The record further shows that all docks were operated by Panama Railroad Company, and only its employees were permitted to stevedore vessel's cargo, except under special conditions. Complainant showed that in this case neither the shipper nor the consignee was permitted to employ stevedores nor to make any arrangements for the handling of cargo during the idle hours prescribed by Panama Railroad Company. It appeared that demurrage was being charged against the lumber on the basis of a 24-hour day, whereas under the regulations of the Panama Railroad Company, stevedoring operations were limited to 16 hours a day. Complainant made various efforts to speed up discharge and relieve congestion at Balboa. In 1941 he suggested that Canal authorities decentralize operations and permit unloading of cargo into barges while the vessel was in the stream. Complainant constructed two barges for that purpose, but was not allowed

to use them, and there is no evidence that the Canal cargo handling regulations were in any way relaxed in 1942 at the time of the discharge of the shipments here considered.

Referring, first, to the complaint that the demurrage charges created undue and unreasonable prejudice and unjust discrimination in violation of sections 16 and 17 of the Act, we do not find such violations established. The fact that similar charges were not made against lumber from Atlantic Coast ports to the Canal Zone is not evidence of unlawful discrimination, for there was no testimony that delays similar to those at Balboa occurred at Cristobal on the Atlantic side or elsewhere in the Canal Zone, or that complainant was injured as a result of competition encountered on shipments from the Atlantic Coast. The contention that demurrage was not charged against general cargo and that a discrimination resulted therefrom is not supported by the evidence; there is no showing of any competitive situation as between the classes of cargo.

Referring next to the complaint that the demurrage charges were unjust and unreasonable regulations and practices with respect to the delivery of property in violation of section 17 of the Act, we agree that such a violation has been shown. It appears that these demurrage provisions are regulations relating to delivery, since they apply to the disposition of cargo after movement from port of origin to port of destination has been completed. Complainant's duty was to take the lumber from the end of ship's tackle, yet demurrage was charged against him even before discharging operations had commenced, while the ship was in stream, or while idle because of port regulations, or while unloading cargo of other shippers who might or might not be subject to demurrage charges. They were assessed for delays which the shippers and receivers did not cause, and had neither the power nor the duty to prevent. Whether treated as compensation for delay of the vessel, or as a penalty, it appears to us that the charges as they affected complainant and his shipments were unreasonable. Perhaps the explanation of the unusual condition may be found in the anomalous situation created by the effort to apply the demurrage provisions which were appropriate for a voyage charter to shipments by common carrier of general cargo where the receiver has no duty to find the berth or arrange for the unloading.

A further complaint is made that the demurrage charges constituted an unjust and unreasonable rate or tariff provision in violation of section 18 of the Act. We find it unnecessary to pass on this issue in view of our finding that a violation of section 17 existed. We do not feel that the negative finding in the case of *Dobler & Mudge v. Panama R. R. S. S. Line*, 1 U. S. S. B. 130 so requires. We are not

aware that any Court has held the Canal Zone to be a possession of the United States within the meaning of the definition of "common carrier by water in interstate commerce" in section 1 of the Act. A holding by us that the Canal Zone is a possession of the United States would run counter to holdings of the Attorney General and the Courts in a number of closely analogous situations, 27 Op. Atty. Gen. 594; 29 Op. Atty. Gen. 194; *Luckenbach Steamship Co. v. United States*, 280 U. S. 173; *David Kaufman & Sons Co. v. Smith*, 216 U. S. 610. Furthermore, such a holding would create administrative confusion in view of the long continued practice of the predecessors of this Board in treating commerce between the United States and the Canal Zone as foreign commerce, which has resulted, among other things, in permitting American-flag vessels in that trade to qualify for operating-differential subsidies under the Merchant Marine Act, 1936, sec. 601, 46 U. S. C. A. 1171.

We are not at this time claiming general jurisdiction to inquire into or pass on regulations and practices in foreign ports relating to or connected with the receiving, handling, storing, or delivering of property. In this case we have before us a demurrage regulation imposed upon the shipper as a condition to shipment at an American port. Furthermore, it was part of a tariff made effective under a conference agreement, which conference agreement our predecessors passed upon and approved pursuant to section 15 of the Act. There are, therefore, peculiar characteristics of the demurrage regulations now under consideration which are the basis of jurisdiction in this case.

The testimony shows that complainant has collected from his consignees and holds the full amount of the demurrage which he seeks to have remitted. This fact, however, is not deemed to be a ground for refusing relief where, as here, complainant is otherwise entitled to it, since complainant will be under obligation to reimburse others when his liability is terminated.

WSA ceased to exist September 1, 1946, by virtue of Public Law 492, 79th Congress (60 Stat. 501), which transferred all its functions, powers, and duties to the United States Maritime Commission. By Reorganization Plan No. 21 of 1950, these functions were again transferred to the Secretary of Commerce and by him delegated to the Maritime Administrator, so that Grace Line Inc., formerly the agent of WSA in this matter, is now subject to the direction of the Administrator with respect to this agency matter. Under the circumstances, the relief requested can best be granted through administrative action.

## FINDINGS

We find as follows:

1. The demurrage regulations established by Pacific Coast/Panama Canal Freight Conference, effective January 20, 1942, and now abrogated, constituted an unjust and unreasonable regulation relating to the delivery of property in violation of section 17 of the Shipping Act, 1916.

2. The demurrage charges made against complainant by Grace Line Inc., as agent for WSA, pursuant to such regulations, not having been paid, should now be waived and remitted and the security therefor released.

The Chairman of this Board, as Maritime Administrator, will give appropriate administrative direction to Grace Line Inc., to carry out the foregoing findings, and, upon receipt of advice that Grace Line Inc., has taken the necessary action, an order will be entered discontinuing the proceeding.

3 F. M. B.

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its Office in Washington, D. C., on the 11th day of January, A. D. 1951.

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No. 630

SIGFRIED OLSEN, D. B. A. SIGFRIED OLSEN SHIPPING COMPANY

*v.*

WAR SHIPPING ADMINISTRATION AND GRACE LINE INC.

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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 United States Maritime Commission, the Board's predecessor, having entered an order on November 15, 1949, dismissing the complaint, and the Board having entered an order on April 6, 1950, reopening the proceeding for reargument and reconsideration, and the matter having been duly reargued, and the Board, on December 8, 1950, having made and entered of record a report on rehearing stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof, and the demurrage charges against complainant having been waived and the bonds deposited as security therefor having been released in accordance with said report:

*It is ordered*, That the order entered herein on November 15, 1949, be, and it is hereby, vacated and set aside; and

*It is further ordered*, That the proceeding be, and it is hereby, discontinued.

By the Board.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# FEDERAL MARITIME BOARD

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No. 651

## CARLOADING AT SOUTHERN CALIFORNIA PORTS

(Agreement No. 7576)

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*Submitted October 11, 1950. Decided October 31, 1950*

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Respondents' lower rates in favor of "continuous" service as against "indirect" service will violate section 16 (First) of the Shipping Act, 1916, and should promptly be discontinued. No culpability found.

Respondents' rate structure non-compensatory.

Respondents' cost studies are sufficient to determine compensatory rates.

### Additional appearances:

*Leonard G. James* for Pacific Coast European Conference, et al.,  
Interveners,

*Martin A. Myer, Jr.*, for American Potash & Chemical Corporation,  
Interveners, and

*Omar L. Crook* for Pacific Coast Borax Company.

### REPORT OF THE BOARD ON FURTHER HEARING

The proceedings in this case originated in an investigation ordered by the United States Maritime Commission to determine whether a rate-fixing agreement establishing increased rates for "car service", filed by the respondents who are members of the Master Contracting Stevedores' Association of Southern California, should be approved under section 15 of the Shipping Act, 1916. There have been three prior hearings reported, 2 U. S. M. C. 784, 2 U. S. M. C. 788, and 3 U. S. M. C. 137. A similar proceeding involving the Port of San Francisco, Docket No. 639, *Status of Carloaders and Unloaders* is reported, 2 U. S. M. C. 761 and 3 U. S. M. C. 116. We agree in substance with the examiner's findings.

By the Commission's first report in this case, 2 U. S. M. C. 784, it found that all the respondents were either common carriers



by water or other persons subject to the Shipping Act, 1916. It found the prior rates not compensatory, and a burden upon other services performed by respondents, and, therefore, detrimental to commerce within the meaning of section 15. It approved the agreement and new rates provisionally, pending analysis of actual costs by the Commission. Before the analysis was completed, the respondents were required to grant heavy wage increases and, therefore, requested authority to put into effect emergency surcharges of 34% of the rates approved by the first order, and this surcharge was found justified and approved in the Commission's second report, 2 U. S. M. C. 788, decided November 7, 1946.

Thereafter cost hearings were held by the Commission, some of them jointly with the Public Utilities Commission of the State of California (Application No. 28248), but again before these were completed, respondents applied for permission for a further flat increase of 16½ percent based upon further increased labor costs. No hearing was held on that application, but the Commission by letter dated January 27, 1949, and consistently with its action taken with respect to the San Francisco carloaders on December 20, 1948, Docket No. 639, 3 U. S. M. C. 116, notified the respondents that permission for the increase was granted, but "that permission does not apply to the continuous movement of commodities between rail cars and ship's tackle". Respondents thereupon increased all rates 16½ percent effective February 7, 1949, except those applicable to commodities handled in "continuous movement".

As has been pointed out in the prior reports, the term "car service" means the loading or unloading of railroad cars on steamship piers. There are three ways of accomplishing the car service for unloading: "indirect" car service, which involves the use of a place of rest on the pier at which the commodity is deposited pending further movement, which may be indefinitely deferred; "direct" service, which is the unloading of open top cars immediately under ship's tackle; and "continuous" car service, which involves the substantially continuous movement of the commodity directly from the car to the ship's tackle. "Direct" service is not involved in this case.

Between the second and third reports of the Commission, evidence was offered covering costs (without overhead or profit) on tonnage handled in "indirect car service" and showed that the rate structure for this type of service prior to the 16½ percent increase did not even pay for the costs involved. No evidence was then offered as to the cost of loading or unloading in "continuous" movement, the Commission stating "the excuse being that it consisted of a combination of segments made up of the work of the car service men and the stevedores,

and that it was impossible to place a dividing line between them.”<sup>1</sup> The bare statements by respondents that the cost of “continuous” movement was greater than the “indirect” was not considered a sufficient basis for a finding that the rate structure for “continuous” movement was also noncompensatory.

The Commission in its third report, dated October 18, 1949, 3 U. S. M. C. 137, accordingly found the rates for “indirect” car service as they existed prior to February 7, 1949 to be noncompensatory and detrimental to commerce, but since relief as to these had been given by the 16½ percent increase, no order was entered at that time, and the record was held open to permit the production of full and complete evidence of costs and overhead on all types of work.

The regulatory functions of the Commission were by section 104 of Reorganization Plan No. 21 of 1950, transferred to this Board and the case is now before use to consider the whole record, including especially the testimony taken since the Commission’s third report.

The main controversy in the case now lies between the respondent carloaders on the one hand, and certain shippers who have intervened on the other. The carloaders desire to eliminate any differential in rate between “continuous” and “indirect” car service. They point out that there never was a different rate until the Commission’s order of January 25, 1949, and urge that the testimony now before the Board shows that the costs of “continuous” car service are greater than for “indirect”. The intervening shippers urge that the respondents’ testimony is not an adequate cost study, and also urge that the differential of 16½ percent in favor of “continuous” be perpetuated. They agree, as well they must, that the result accomplished in transferring cargo from freight car to ship’s tackle, whether by the “indirect” or “continuous” method is the same, but claim that different rates are justified because of different manners of operation and different costs. This they say makes the differential reasonable and not unjustly discriminatory so as to be objectionable under section 15 of the Act.

It is perhaps necessary to scrutinize the details of “continuous” movement to understand its operation in practice. The examiner described it as follows:

The labor gang in the continuous movement consists of a minimum of six men used in connection with the ship stevedoring gang as provided by the rules and regulations of the Longshore Agreement, copy of which is an exhibit of record. Usually a gang of eight are employed to service two cars simultaneously. Respondents’ witnesses illustrate various methods used in unloading cars in continuous movement. A small, low-built, four-wheel, single-deck truck is utilized

<sup>1</sup> 3 U. S. M. C. 140.

3 F. M. B.

to unload all cargo except where unusual size or shape is involved. If commodities in burlap bags, such as flour and sugar, are being unloaded, the first step is to push the four-wheeler into the car and place a sling on its deck. Four men, two in each end of the car, then proceed to load the four-wheeler. Upon completion of the load, the ends of the sling are gathered together and the four-wheeler with the cargo in the sling is pushed out of the car by man power to a point on the wharf just outside the car door where it remains until two other four-wheelers are similarly loaded and coupled together in a train of three loaded four-wheelers. A jitney hauls the train across the wharf to shipside where the ship's tackle is hooked to the slings and the cargo hoisted aboard. While the cargo is being hoisted from the four-wheelers one by one, another train is being prepared. After the train is unloaded at shipside the jitney hauls the empty four-wheelers back to the car and picks up the next loaded train. This process is repeated continuously until the railroad car is unloaded. \* \* \*

The examiner also pointed out that as the record stands, it is now clear that the men performing car service in "continuous" as well as "indirect" service, operate between the car and wharf, and that in both types of service there is a subsequent movement to the ship's tackle.

It thus appears that whether cargo is moved by the "indirect" or "continuous" method, the result is the same. The cargo is removed from the rail car. In fact, part of a single shipment may be handled one way and part another, in which event the two parts would now qualify for different rates. The evidence shows that it is the terminal operator and not the carloader or shipper who decides which method shall be used. The determination involves many factors which are not necessary to explore. It is sufficient to observe that circumstances such as wharf congestion, vessel schedules, nature of cargo, volume of cargo arriving by motor truck to be stowed with similar freight arriving by rail, overseas destinations, and time of arrival of cargo at the wharf are all considered. Conditions on the piers change daily, and it is usually impossible for a terminal operator to arrange long in advance for any particular kind of car service.

The fact that two types of service of identical benefit to shippers for which two different rates are charged can be operated side by side opens the door not only to confusion but to the possibility of carriers "arranging" for preferred shippers the servicing of their cargo in the manner calling for the lower rate. Instances of errors and confusion appear in the record, although no instances of any such "arranging." However, the latter possibility in a highly competitive field cannot be overlooked.

If the shippers had the choice between "indirect" and "continuous" car service there might be more basis for saying that a different rate could be charged, if "continuous" service were the less costly of the two, but the contrary is indicated in the record. Be that as it may

since the shipper must accept whatever type of service is given to him, we find it impossible to justify continuance of a difference in rate even if based on a different cost. We cannot imagine that a railroad using both steam and Diesel engines could justify a different passenger tariff between the same points based on different operating costs if the convenience of the railroad rather than the taste of the passenger should control the selection.

We find from the evidence that the charging of lower rates for "continuous" service than for "indirect" service will (a) give an undue and unreasonable preference and advantage to traffic handled by continuous service, and to shippers and consignees of such traffic; and (b) subject traffic handled by "indirect" service, and the shippers and consignees thereof, to undue and unreasonable prejudice and disadvantage—all in violation of section 16 of the Act; and that continuance of such practice should promptly cease. No culpability attaches, however, to the charging of such lower rates in the past, since the dual rate scale resulted from observance of the Maritime Commission's order.

Referring now to the evidence as to the cost of the various services, respondents, with a few special and unimportant exceptions, supplied figures covering costs of "indirect" operations from January 1, 1947, to March 31, 1948, and from December 6, 1948, to December 6, 1949. Strikes interrupted work during part of the intervening period. As to such costs the technique already approved in prior reports of the Commission was used and appears to us entirely sound. Respondents' accountants also reported the costs of "continuous" movement based on spot checks covering 5,408 tons of the main commodities in the trade except for cement, which were handled over a two-week period of 1950. Since no cement was handled in "continuous movement during that period, a special spot check of 760 tons of cement in "continuous" movement in September 1949 was reported.

The manner of obtaining evidence as to the cost of "continuous" service by spot checking appears to us fair and appropriate in view of the difficulties peculiar to the special problems affecting that operation, and the evidence presented supports the examiner's finding that the cost of "continuous" movement exceeded the cost of "indirect." Similarly we find that the evidence supports the examiner's finding that the ratio of overhead expense to cost at Southern California ports was 17.8%, and that the entire rate structure is still, even after allowing the most recent 16½ percent increase, on a non-compensatory level.

Having made the above findings, it is perhaps unnecessary for the Board to go further. Agreement No. 7576 of respondents, originally filed with the Commission, provides that fair and reasonable

rates will be established and maintained. The studies made in this case are sufficient for the respondent to determine and establish a rate structure which will comply both with section 15 of the Act so as to be compensatory and therefore not, as hitherto, detrimental to the commerce of the United States, and at the same time meet the requirements of the agreement so as to be fair and reasonable. It therefore now becomes the duty of the respondents to file a new tariff eliminating all differentials between "indirect" and "continuous" car service, and meeting the above requirements. When filed, the tariff will be subject to the same treatment as is accorded to other tariffs filed with the Board by carriers and others pursuant to section 15 of the Act.

Although the Board has the power to fix minimum charges so as to reflect actual costs of car service rendered and so as to prevent undue burdens on other services performed by the same contractors, it has determined not to do so in this case. On the contrary it has in this case required the respondents themselves to establish rates that will meet the statutory requirements. See *California v. United States*, 320 U. S. 577.

While the Board must approve *agreements* between common carriers and between "other persons subject to the Act" under section 15, there is no reason why rates established under such agreements may not become effective when filed without the prior approval of the Board. *Green Coffee Association of New Orleans v. Seas Shipping Co.*, 2 U. S. M. C. 352. One further point of importance should be noted before concluding this report. The evidence in this case shows that certain shippers using California and other west coast ports receive separate billings for carloading or unloading service at ocean terminals. These and other miscellaneous terminal charges also billed separately are the so-called "nuisance" charges about which there is considerable complaint on the part of shippers and west coast business and civic associations. In contrast, at certain east coast and gulf ports where the over-all service to shippers or receivers in the final analysis is identical to that provided on the west coast (and very often to or from the same overseas ports), no separate billing is made for car service. An all-inclusive rate is used to the end that the car service charges are included either in the line haul of the land carrier to or from the ocean terminal or the water haul of the ocean carrier. This lack of uniformity as to the practices of the various coasts creates confusion and dissatisfaction and seems to be of sufficient importance to require comment. The Board ventures to suggest that the whole problem may be reviewed by the interested parties and some satisfactory solution voluntarily adopted which will elimi-

nate practices which on further investigation might appear to be unfair as between ports in different sections of the United States.

### FINDINGS

We find:

1. That the charging of lower rates for "continuous" service than for "indirect" service will give undue and unreasonable preferences and will create undue and unreasonable prejudices and disadvantages—all in violation of section 16 of the Act, and should be promptly discontinued.

2. No culpability attaches, however, to the charging of such lower rates in the past, since the dual rate scale resulted from observance of the Commission's order.

3. That respondents' rate structure as a whole is still noncompensatory.

4. That respondents' studies are sufficient to determine compensatory rates.

5. That, in accordance with Agreement No. 7576, respondents shall file a new tariff of compensatory rates based upon their cost studies and all other material facts.

These proceedings will be held open pending compliance with the above findings and the accompanying order.

3 F. M. B.

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., on the 31st day of October A. D., 1950

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No. 651

CARLOADING AT SOUTHERN CALIFORNIA PORTS

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This case having been instituted on its own motion by the United States Maritime Commission, our predecessor, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Federal Maritime Board, on the date hereof, having made and entered of record a report stating its conclusions and decisions thereon, which report is hereby referred to and made a part hereof;

*It is ordered*, That on or before November 20, 1950, respondents shall file with the Board tariff provisions eliminating differentials between rates for "continuous" service and rates for "indirect" service; and

*It is further ordered*, That on or before January 1, 1951, respondents shall file with the Board a new tariff of compensatory rates in accordance with cost studies made in these proceedings, and all other material facts; and

*It is further ordered*, That these proceedings be held open pending respondents' compliance with this order.

By the Board.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., on the 11th day of January, A. D. 1951

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No. 651

CARLOADING AT SOUTHERN CALIFORNIA PORTS

(Agreement No. 7576)

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This proceeding having been held open by the United States Maritime Commission, the Board's predecessor, in accordance with its report entered herein on October 18, 1949, "to allow respondents to present full and complete evidence concerning direct labor costs of handling the respective commodities in indirect, continuous, and direct services, and the actual costs of overhead based upon their experience from January 1, 1947, to the latest available date prior to the hearing hereafter to be set", and full investigation of the matters and things involved having been had, and the Board, on October 31, 1950, having made and entered of record on further hearing a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof, and respondents having complied with the order attached to the report of October 31, 1950:

*It is ordered*, That this proceeding be, and it is hereby, discontinued.  
By the Board.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*



# FEDERAL MARITIME BOARD

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No. 639

## STATUS OF CARLOADERS AND UNLOADERS

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*Submitted April 26, 1950. Decided December 1, 1950*

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Rate structure found noncompensatory as a whole.

Direct labor and overhead cost studies approved and found sufficient to determine compensatory rates.

Proceeding held open pending receipt of new tariff of charges in compliance with Board's findings.

Additional appearances:

*William L. Anderson* for United States Department of Agriculture, intervener.

*Chalmers Graham* for Capca Freight Conference, Pacific Coast Australasian Tariff Bureau, Pacific Coast/Caribbean Sea Ports Conference, Pacific Coast European Conference, Pacific Coast/Panama Canal Freight Conference, Pacific Coast River Plate Brazil Conference, Pacific/West Coast of South America Conference, Balfour Guthrie & Co., Limited, Agents, Cosmopolitan Shipping Company, Inc., Agents, Furness, Withy & Co., Ltd., Agents, General Steamship Corporation, Ltd., Agent, Interocean Steamship Corporation, Agents, H. S. Lear, Agent, Moore-McCormack Lines, Inc., Agents, and Fred Olsen Line Agency, Ltd., Agents, interveners.

*J. J. Usher* for the Port of Seattle, intervener.

*Charles A. Bland* for Board of Harbor Commissioners of Long Beach, California.

### REPORT OF THE BOARD ON FURTHER HEARING

This investigation was initiated by the Maritime Commission to determine whether a rate-fixing agreement arrived at by respondents was one which came within the purview of Section 15 of the Shipping Act, 1916, and therefore should be considered for approval and whether a tariff of respondents establishing rates for loading and unloading

railroad cars, hereinafter called "car-service", was subject to our jurisdiction and complied with the provisions of the Shipping Act, 1916, and with the terms of the agreement.

The first decision in the case, handed down May 31, 1946, by the Maritime Commission, found that the San Francisco Bay Carloading Conference was an agreement between stevedoring companies, terminal operators, and other contractors all performing car service for water-borne traffic at San Francisco Bay piers, and was subject to Section 15 of the Shipping Act, 1916, as the parties to the agreement were "other persons" subject to the Act. An interim adjustment of rates 33 $\frac{1}{3}$  percent over those established in 1941 was also found to be justified. 2 U. S. M. C. 761.

There have been two other interim decisions of the Maritime Commission. In the first, 2 U. S. M. C. 791, November 7, 1946, an additional emergency surcharge of 34 percent was found justified, except on cement and petroleum products, and the case was held open for further evidence of costs. In the second, 3 U. S. M. C. 116, January 28, 1949, a proposed tariff was prepared and evidence to support rate increases was introduced at the hearing. It was found that the rate structure in existence at the time of the hearing was noncompensatory as a whole and that rates which produce revenue less than the cost of service as revealed by cost studies are detrimental to the commerce of the United States within the meaning of Section 15 of the Shipping Act, 1916. With respect to the proposed tariff of rates, however, which was based upon the labor costs, increased by 42.86 percent thereof to cover overhead, the finding was made that this overhead percentage was not based upon actual study of car service costs of the members of the conference but rather upon a set formula which had been set up and used for an entirely different service and under different circumstances. The record was held open to enable respondents to present full and complete evidence concerning labor costs and the costs of overhead based upon their own experience from January 1, 1947 to the latest available date prior to hearing thereafter to be set. In the meantime rates per 2 U. S. M. C. 791, November 7, 1946, remained in effect.

That hearing was held September 15, 1949, and resulted in the introduction of voluminous and detailed cost data and testimony by respondents and shippers. The examiner has made a recommended decision, to which exceptions have been filed, but no oral argument has been requested. We agree with the examiner's findings.

The straight time wages of car service men, lift truck drivers, car service foremen, walking and assistant walking bosses have all been materially increased since November 1947. To off-set, in part measure,

this increased cost, the productive efficiency of the car loading and unloading operations has increased 15 and 10 percent, respectively, measured by tons handled per man-hour. These results were based upon a study of the experience of respondents during the calendar years 1947, 1948, and first six months of 1949 in "indirect" car service. As has been pointed out in prior reports, the term "car service" means the loading and unloading of railroad cars on steamship piers. There are three ways of accomplishing the car service which for car unloading can be described as follows: "indirect" car service, which involves the use of a place of rest on the pier at which the commodity is deposited pending further movement, which may be indefinitely deferred; "direct" car service, which is the unloading of open top cars immediately under ship's tackle; and "continuous" car service, which involves the substantially continuous movement of the commodity directly from the car to the ship's tackle. The men performing "indirect" as well as "continuous" car service for unloading, work between the car and wharf, and in both types of service there is a subsequent movement to the ship's tackle. In respect to the "direct" car service, there was no complaint developed from any shipper as to the charge, nor was there any challenge from any shipper or receiver at the lack of cost data. The car service of commodities in the San Francisco port area in "continuous" movement is at the present time practically non-existent. In any event, whether the cargo is moved by the "indirect" or "continuous" method, the result is the same. The cargo is removed from the rail car.

The method described and approved by the Maritime Commission in its report of January 28, 1948, *supra*, for finding costs was followed, adjusting the factors to the 1949 experience, viz, multiplying the man-hours necessary for the car service of each commodity studied by the calculated cost per man-hour. The cost per man-hour included the wage cost, plus the cost for vacation allowance, social security taxes, insurance (compensation, public liability, and property damage), and payroll service fees to the Pacific Maritime Association. The labor costs as thus arrived at were reduced 15 and 10 percent for loading and unloading, respectively, to represent the increased labor productivity.

Respondents introduced an overhead cost study based upon their actual experiences. The same qualified public accountant who made the study in Docket 651, Carloading at Southern California Ports, decided October 31, 1950, made this study. In this case he made an analysis of 15 companies' overhead costs for the years 1947 and 1948. Overhead figures were not available for the first six months of 1949.

These companies were selected because they performed 90 percent of the car service work during the period. They were divided into three groups: first, those whose principal work is car service; second, those whose principal work is stevedoring; and third, those who are common carriers or common carrier affiliates, i. e., W. R. Grace and Company, Matson Terminals, and Pope and Talbot. The two latter were members of the conference during the period of study although they withdrew later.

The formula adopted for allocating the overhead applicable to car service was the same in principle for all three groups. Overhead expenses clearly caused by car service were charged to those services. All other overhead, not clearly chargeable to other services, was charged to car service in the same ratio which the car service costs (or man hours) bore to the total. While this procedure presented a much more difficult problem of segregation of the different services and allocation of the costs in the case of the common carrier group than it did for either of the other two, the results arrived at show no improper application of accounting principle. The overhead of 34 percent, constituting a weighted average of the three groups, is justified by the analysis.

We find:

That the general level of the tariff charges in Car Servicing Tariff No. 1 (MC-No. 1) is noncompensatory;

That respondents' cost studies are sufficient to enable respondents to determine compensatory rates;

That, in accordance with Agreement No. 7544, respondents shall file on or before December 22, 1950, a new tariff of compensatory rates adjusted as between commodities as based upon their past and present cost studies and all other material facts. The effective date of the tariff should be at least thirty days after filing.

These proceedings will be held open pending compliance with the above findings.

No order will be issued at this time.

3 F. M. B.

**ORDER**

At a Session of the **FEDERAL MARITIME BOARD**, held at its office in Washington, D. C., on the 25th day of January, A. D. 1951.

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No. 639

**STATUS OF CARLOADERS AND UNLOADERS**

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This proceeding having been held open by the United States Maritime Commission, the Board's predecessor, in accordance with its report entered herein on January 28, 1949, "to allow respondents to present full and complete evidence concerning direct labor costs of handling the respective commodities, and the costs of overhead based upon their experience from January 1, 1947, to the latest available date prior to the hearing hereafter to be set", and full investigation of the matters and things involved having been had, and the Board, on December 1, 1950, having made and entered of record on further hearing a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof, and respondents having complied with the findings in the report of December 1, 1950;

*It is ordered*, That this proceeding be, and it is hereby, discontinued.  
By the Board.

[SEAL]

(Sgd.) R. L. McDonald,  
*Assistant Secretary.*

# UNITED STATES MARITIME COMMISSION

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No. S-2

BALTIMORE MAIL STEAMSHIP COMPANY—APPLICATION TO TRANSFER  
CERTAIN VESSELS OWNED BY IT TO INTERCOASTAL TRADE

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*Submitted June 3, 1938. Decided June 7, 1938*

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Application of Baltimore Mail Steamship Company for permission to enter inter-coastal trade approved.

*Cletus Keating* for applicant.

*Roscoe H. Hupper, William P. Palmer, J. R. Bell, Hon. William G. McAdoo, Arthur L. Winn, Jr., W. L. Thornton, Jr., H. J. Wagner, and G. H. Pouder* for interveners.

## REPORT OF THE COMMISSION

BY THE COMMISSION:

By application, as supplemented, filed May 17, 1938, Baltimore Mail Steamship Company, hereinafter referred to as the "applicant," requests permission under section 805 (a) of the Merchant Marine Act, 1936, to transfer to domestic intercoastal service five combination passenger and cargo vessels owned by it; namely, *City of Baltimore*, *City of Norfolk*, *City of Hamburg*, *City of Havre*, and *City of Newport News*. A public hearing was held pursuant to notice and briefs were filed.

The above-named vessels were formerly operated by that company in foreign commerce between Baltimore, Md., and Newport News and Norfolk, Va., on the one hand, and continental European ports, on the other. Applicant states that, after a contemplated reorganization now in progress, all of its stock will be owned by the International Mercantile Marine Company and/or The Atlantic Transport Company of West Virginia, the Baltimore Trust Company, and the Canton Company.

In 1915 The Atlantic Transport Company of West Virginia inaugurated a service between the Atlantic and Pacific coasts by way of the Panama Canal. The Atlantic Transport Company of West Virginia is a subsidiary of the International Mercantile Marine Company and

owns outright the American Line Steamship Corporation, which has had a service under the name of "Panama Pacific Line" for sometime with the vessels *California*, *Pennsylvania*, and *Virginia*, since the latter were constructed.

The Baltimore Mail Steamship Company, a Maryland corporation, at the present time is owned 46.59% common stock and 25% preferred stock by The Atlantic Transport Company of West Virginia. According to the record, the Baltimore Mail Steamship Company will be reorganized after which all of the stock of the Baltimore Mail Steamship Company will be owned by the International Mercantile Marine Company and/or Atlantic Transport Company of West Virginia and two affiliated companies. It is stated in briefs filed on behalf of applicant that "upon completion of reorganization, The Atlantic Transport Company of West Virginia will own a substantial majority of all of the outstanding stock of the Baltimore Mail Steamship Company."

The International Mercantile Marine Company controls The Atlantic Transport Company of West Virginia and also the United States Lines Company, a common carrier by water in foreign commerce and the holder of an operating-differential subsidy contract under title VI of the Merchant Marine Act, 1936. Section 805 (a) thereof provides, in part, that—

It shall be unlawful to award or pay any subsidy to any contractor under authority of title VI of this Act, or to charter any vessel to any person under title VII of this Act, if said contractor or charterer, or any holding company, subsidiary, affiliate, or associate of such contractor or charterer, or any officer, director, agent, or executive thereof, directly or indirectly, shall own, operate, or charter any vessel or vessels engaged in the domestic intercoastal or coastwise service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters, or operates any vessel or vessels in the domestic intercoastal or coastwise service, without the written permission of the Commission. Every person, firm, or corporation having any interest in such application shall be permitted to intervene and the Commission shall give a hearing to the applicant and the intervenors. The Commission shall not grant any such application if the Commission finds it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service or that it would be prejudicial to the objects and policy of this Act \* \* \*

Carriers actively operating in intercoastal service intervened in opposition to the application. Their contentions, briefly summarized, are—that the trade is now overtonnaged; that there is no present need for the vessels of the Baltimore Mail Line; that the transfer of those vessels to the intercoastal trade may disrupt the existing rate basis, especially if service is to cover ports that were not previously served by the Panama Pacific Line; that new construction by existing carriers will be discouraged by the proposed transfer; and that approval of the application in

3 U. S. M. C.

substance will amount to the extension of government aid to the applicant upon terms not available to them. For these reasons they conclude the proposed operation will result in unfair competition to them and prejudice to the object and policy of the Act which we administer. They also contend that the applicant has failed to show the proposed service to be in the public interest.

The vessels involved herein were originally sold in 1921 by the United States Shipping Board and in 1931 were reconstructed by the applicant through the aid of a construction loan made available pursuant to section 11 of the Merchant Marine Act, 1928, aggregating \$6,520,706.26, of which \$5,933,106.23 is still due. As a part of the application, applicant requests that provision be made for the payment of that indebtedness by equal annual instalments during the balance of the present term of existing mortgage. Each vessel has accommodations for 82 passengers, a speed of 16.5 knots, with a cargo capacity of about 500,000 cubic feet, of which 26,610 cubic feet is now equipped with circulating air refrigeration. It is contemplated that refrigerated space on each vessel will be increased to approximately 80,000 cubic feet.

The service is proposed to operate in lieu of the service hertofore operated between New York, N. Y., and ports in the State of California by the American Line Steamship Corporation and/or The Atlantic Transport Company of West Virginia with the steamships *California*, *Pennsylvania*, and *Virginia*. Those vessels, and also the combination passenger and cargo vessels of the Grace Line, Inc., which operated continuously in intercoastal service for many years, were recently withdrawn from this route. Except for the westbound service of Dollar Steamship Lines Inc., Ltd., with infrequent sailings from New York during recent months as a part of its Round-the-World service, there is no adequate passenger service between Atlantic and Pacific coast ports of the United States at the present time. Some cargo vessels are equipped with limited passenger space, but they are not classed as passenger vessels. Interveners supporting the application urge the necessity of such a service by more modern vessels than are now in operation, and of a type and kind suitable for use as naval and military auxiliaries in time of war or national emergency. This need is further evidenced by the substantial number of passengers shown to have been transported during 1937 by the Panama Pacific and the Grace Lines. While applicant's vessels can accommodate but a portion of the passenger traffic previously transported via the Panama Canal, to the extent of their capacity they will serve an existing need.

It is also shown that there is little, if any, adequate space on cargo vessels now in operation for certain classes of refrigerated cargo. Vessels of the Panama Pacific Line were equipped with a total of ap-



proximately 300,000 cubic feet of circulating air refrigeration. A representative of the California Fruit Growers Exchange testified that during the period 1933 to 1937, inclusive, shipments of citrus fruits eastbound exceeded 450,000 boxes per season, and that the association filled to capacity all the refrigerated space on the vessels of that line available to it.

Vessels of Grace Line, Inc., now withdrawn from service, were also equipped with substantial quantities of circulating air refrigeration. The witnesses for the Association testified that it is ready, willing, and able to supply cargo to fill all the refrigerated space on the five vessels. In addition to citrus fruits, shipments moving eastbound which require refrigeration include frozen fish, frozen poultry, eggs, fresh vegetables, and fresh fruits. Westbound commodities requiring refrigeration include confectionery, cranberries, cheese, frozen fish, and oysters. It is clear that a need exists for refrigerated service in intercoastal trade, which is evidenced in part by the large number of letters and telegrams from shippers and others that were submitted by the applicant. It was shown that substantial quantities of citrus fruits move all-rail to competitive points in eastern territory, but all-rail rates are substantially higher than the rates via the all-water route to eastern points.

From the foregoing it is clear that to the extent of the refrigerated and passenger service which applicant's proposed operation will afford, its service will not be competitive with that of existing operators.

Intervenors American-Hawaiian Steamship Company and Luckenbach Steamship company, Inc., oppose the granting of the application on the ground that the trade is now overtonnaged and that cargo transported by applicant will decrease the carryings of vessels now in operation. They direct attention to present sailings with only part cargoes and state that all lines now operate at a loss. These intervenors operate vessels whose speed is 11.5 knots or more with sailing frequencies in excess of their present competitors. With such advantages they are able to attract high grade cargo. Testimony in the record indicates that while there has been some recession in the quantity of higher grade cargo due to present economic conditions, the decline has not been so marked as that with respect to low grade cargo, which has fallen off materially.

However, in considering the problems presented by this application temporary declines in traffic due to existing business conditions should not control. Consideration must be given to the long-term prospects of the trade and to the age of the existing tonnage operated therein. The last factor is of particular significance in view of the fact that no substantial volume of new construction for this trade seems likely at the present time. Therefore, the transfer of the applicant's vessels,

which were completely rebuilt in 1931, may be the only means of insuring adequate long-term service for high grade cargo. Moreover, in this connection it must also be recognized that, while some of the cargo for the proposed operation may be diverted from the objecting water carriers, a substantial amount probably will represent cargo carried by fast intercoastal vessels viz: *Virginia*, *California*, and *Pennsylvania*, controlled by The Atlantic Transport Corp., of West Virginia, or refrigerated cargo and passenger business for which the objectors' vessels cannot provide. The objectors recognize that they have no right to a monopoly in the trade. Under the ruling herein, the right to compete is not denied to them.

There is no merit in the contention that the proposed operation would result in unfair competition because of the proposed readjustment of the indebtedness covering the applicant's vessels. Such readjustment of the indebtedness as may be hereafter agreed upon would tend to insure orderly liquidation of such indebtedness and would not constitute a grant or disguised subsidy. Similar adjustments have been made in the past with operators engaged in the intercoastal trade, as well as the foreign trade. If found by the Commission to be fair and reasonable, these adjustments in themselves do not introduce any element of unfair competition. In this connection, it also should be noted that the interest rate on the mortgages covering the applicant's vessels would automatically be increased to 5¼ percent, in accordance with the terms of the mortgages.

American-Hawaiian Steamship Company directs attention to impending dangers to the rate structure now observed by it and other carriers. In any event the rate structure is now constantly subject to jeopardy by our lack of authority to prevent intercoastal operation by other persons, and this alone does not justify a denial of the application.

We find that on this record there will be no unfair competition within the purview of the 1936 Act to existing carriers or prejudice to the objects and policy of the Merchant Marine Act, 1936, from the operation of applicant's vessels in the intercoastal trade, and the application will be approved.

In view of this conclusion it is unnecessary to determine whether there has been a continuation of operations. An appropriate order will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 7th day of June A. D. 1938.

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No. S-2

BALTIMORE MAIL STEAMSHIP COMPANY—APPLICATION TO TRANSFER  
CERTAIN VESSELS OWNED BY IT TO INTERCOASTAL TRADE

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A hearing having been held in this proceeding, pursuant to the provisions of section 805 (a) of the Merchant Marine Act, 1936, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision therein, which report is hereby referred to and made a part hereof;

*It is ordered,* That the application of the Baltimore Mail Steamship Company be, and it is hereby, approved.

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, JR.

*Secretary.*

# UNITED STATES MARITIME COMMISSION

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No. S-1

AMERICAN SOUTH AFRICAN LINE, INC., SEAS SHIPPING COMPANY, INC.—  
APPLICATIONS FOR OPERATING-DIFFERENTIAL SUBSIDY IN THE OPER-  
ATION OF VESSELS TO SOUTH AND EAST AFRICA

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*Submitted June 17, 1938. Decided August 5, 1938*

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*Cletus Keating, Roger Siddal, and Luke D. Stapleton* for American South African Line, Inc.

*Roscoe H. Hupper and Frank V. Barnes* for Seas Shipping Company, Inc.

*Arthur L. Winn, Jr., and L. W. Byrne* for Port of New York Authority, *Samuel H. Williams* for Philadelphia Chamber of Commerce, *Charles B. Roeder* for Philadelphia Bourse, and *John J. Egan* for Philadelphia Maritime Exchange, interveners.

## REPORT OF THE COMMISSION

### BY THE COMMISSION:

The case arises upon applications filed by American South African Line, Inc., and Seas Shipping Company, Inc. (Robin Line), for operating-differential subsidies under Title VI of the Merchant Marine Act, 1936, both applicants seeking subsidies for operations to be performed on one and the same route. Pursuant to the provisions of section 605(c) of the Merchant Marine Act, 1936 (which, with amendments, is hereinafter for convenience sometimes referred to as "the Act"), we held hearings on the applications at Washington, D. C., April 14 and 15, 1938, and at New York, N. Y., April 19, 1938. A proposed report was issued, exceptions were filed thereto, and oral argument was held.

In 1919, the United States Shipping Board began experimenting with American-flag services in the trade from North Atlantic ports to South Africa. In 1922, the American South African Line was established as regular service by the U. S. Shipping Board under Government ownership with private operators. In 1924, the Shipping Board negotiated

3 U. S. M. C.

a conference agreement with the foreign lines in the trade for maintenance of rates, and an agreement covering spacing and rotation of sailings. The existing conference agreement is based on this agreement made in 1924.<sup>1</sup> Presently, of 48 conference sailings, 12 are apportioned to American South African. In 1925, in keeping with its policy of divesting itself of Government operation, the U. S. Shipping Board advertised the American South African Line for sale. As a result of this advertisement, the American South African Line, Inc. acquired the line from the Government, paying \$18.10 per ton for the ships involved, and the purchaser commenced the operation of the line in 1926, which operation, it is stated, has resulted in a profit after depreciation and all other charges of \$1,006,244.58 for the period from 1926 to March 31, 1938, or an average profit of \$82,142.41 a year.

In 1928, the Merchant Marine Act of 1928 was passed. Under its provisions and in due time, the American South African Line, Inc., was awarded a ten-year mail contract, dated October 1, 1928, and ending October 1, 1938, under which contract this line received mail pay, which was admitted to be in part an operation subsidy, amounting to a trifle less than \$300,000 a year. As one of the requirements of the Government under this contract, the American South African Line, Inc., built and put into service a new combination passenger and freight vessel, the *City of New York*, stated to cost \$1,917,673.88. This construction cost was in part financed by a loan from the United States Shipping Board, the predecessor of the present U. S. Maritime Commission. On this loan there is a balance owing of \$810,000 which is current as to principal and interest maturities. It was stated, without contradiction, in the record that the American South African Line, Inc., was prepared, and offered, to build another vessel under the same plan, but that the Government authorities preferred, under the then existing circumstances, to defer the building of the second vessel.

In 1932, the American South African Line experienced the effects of the world-wide depression in shipping, as in industry generally, but continued to operate, and, on April 18, 1935, initiated a non-subsidized monthly service from New Orleans and other Gulf ports to South Africa

<sup>1</sup> U.S.A./South Africa Conference.

J. B. O'Reilly, Secretary, 26 Beaver Street, New York, New York.

Covers freight traffic from U.S. Atlantic ports—Portland/Key West Range—to West, South-west, South and East African ports from Lobito to Mombasa, both inclusive, and to the islands of St. Helena, Ascension, Madagascar, Reunion, and Mauritius.

Am, American South African Line, Inc.

Br, The Clan Line Steamers, Ltd.

Ge, Deutsche Dampfschiffahrts Gessellschaft "Hansa" (Hansen Line)

Br, Ellerman & Bucknall Steamship Co., Ltd.

Br, Houston Line (London Ltd.)

Br, The Union Castle Mail Steamship Company, Ltd.

1 American, 5 British, 1 German.

with the sailing of the S. S. *Atlantic*, and on April 1, 1935, extended its subsidized service to East Africa with the sailing of the *Chincha*.

On June 22, 1935, the Seas Shipping Company, Inc. (Robin Line), the present second applicant for an operating-differential government subsidy on this route, initiated a new service from New York and other Atlantic coast ports to South and East Africa with the sailing of the *Robin Adair*. It is stated that the effect of this new service was to "blanket" the service of the American South African Line.

The twelve annual sailings of the Robin Line have been maintained without any governmental aid. As in the case of American South African, the Robin Line has maintained its sailings with four vessels. The latter were purchased from a private shipbuilder in 1920 and 1921 without governmental aid of loans. Approximately the same tonnage is carried by each operator.

Prior to its entry in the trade, Robin Line applied for admission as a member of the conference, with privilege of participation in rate making along with other members, and of maintaining twelve sailings per annum, the same number as was maintained by the American South African Line. This application was denied. Subsequently, the lawfulness of that denial was the subject of a formal proceeding before the United States Shipping Bureau of the Department of Commerce. In a decision entered August 1, 1936, the action of the conference was upheld. *Seas Shipping Company v. American South African Line, Inc., et al.*, 1 U. S. S. B. B. 568. Circumstances relating to the rate war which existed during the period June to September 1935, caused in part by Robin Line's entry in the trade, are set forth in the above-mentioned report.

On July 1, 1937, the rate war was ended and rates were restored to the basis existing prior to the rate war. The evidence adduced and before the Commission now is to the effect that the Robin Line did not restore its rates to the conference level. By way of explanation, the Robin Line says, in its brief, that while it made contracts for rates during the rate war and was not in position to raise its rates immediately to the conference level, it now offers to meet the conference rates *if it receives an operating-differential subsidy*.

On February 22, 1937, the American South African Line applied for an operating-differential subsidy pursuant to the Commission's General Order No. 5, and as provided by section 402 (a) of the Merchant Marine Act, 1936.<sup>2</sup> A second application, pursuant to General Order No. 13, was filed on October 25, 1937.<sup>3</sup>

<sup>2</sup> This application neither contained a request for nor made any mention of an exclusive operating subsidy.

<sup>3</sup> Although this application contained no request for an exclusive operating subsidy, on page 3 U. S. M. C.

On June 17, 1937, a settlement agreement was reached between the Commission and the American South African Line of the ocean mail contract held by that Line, which was thereupon terminated, and a temporary operating-differential subsidy was granted.<sup>4</sup> This temporary subsidy contract recites that it is in substitution for the former mail contract, which, had it not been terminated by law and the settlement agreement, would have expired by its own terms on October 1, 1938. The temporary subsidy contract has been extended and is still in effect. It contemplates a long-term subsidy to be granted upon the company satisfying the Commission as to an adequate ship replacement plan. Neither the former mail contract nor the present temporary subsidy contract provides that the subsidy granted should be an exclusive subsidy to the American South African Line. The company also requests an operating-differential subsidy for its Gulf to Africa line but claims that if operating subsidies are awarded to both applicants, American South African will, because of insufficient homeward cargo, abandon its Gulf service.

The American South African Line proposes that it will enter into a 12-year subsidy contract on standard form with the following special provisions:

(1) It will agree to contract for two combination passenger and cargo vessels having a 16½ knot or superior speed at estimated cost of \$3,600,000 each, within one year and will agree to build a third vessel as soon as finances permit.

(2) \$500,000 additional cash will be obtained within 30 days for stock. Balance of construction cost (about \$400,000) will be received from sales of surplus vessels to be obtained by merger with the Argonaut Line, which it now controls.

(3) No subsidy will be paid until full compliance with both (1) and (2) above, and in the event of default, subsidy contract may be cancelled retroactively from inception and *all* subsidy money forfeited (except on S. S. *City of New York*) unless default is caused by failure to secure reasonable bids.

(4) Subsidy contract must contain exclusive franchise clause.

(5) It will agree to continue experimentation with Gulf service for about two and a half years under operating subsidy contract, with provision for from seven to twelve sailings per annum.

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18, under sec. 27(a), a replacement program to consist of three vessels was offered, "provided a satisfactory construction and operating differential subsidy contract is arranged and no other American-flag line is given a subsidy in the South and East African trade."

<sup>4</sup> The record of negotiations relating to the settlement of the ocean mail contract and the award of the temporary operating differential subsidy agreement is silent on the subject of any exclusive subsidy in the trade.

On November 30, 1937, the Robin Line also filed an application for an operating-differential subsidy on its service from North Atlantic ports to South and East Africa. This application did not ask for an exclusive subsidy. Its schedule provides for 12 monthly sailings per year. This line claims the right to such a subsidy under the provisions of the Merchant Marine Act, 1936, in order that it may be placed on a parity with its foreign competitors to meet the known disadvantage of operating under the American flag.

The Robin Line proposes that it will enter into a 12-year contract on standard form with the following special provisions:

(1) Robin will enter into firm contracts satisfactory to the Commission for the construction of three cargo vessels within one year from the date of the contract. The vessels will have a minimum of 15½ knots speed or such higher speed as the Commission may find to be necessary to maintain a monthly sailing schedule. Cost of these vessels is estimated at \$2,000,000 each.

(2) Within 30 days from the date of the contract \$500,000 in cash will be invested in the Robin Line, the investment to be evidenced by the issuance of preferred stock in an equivalent amount. In addition, guarantees satisfactory to the Commission will be furnished to insure the investment of an additional \$250,000 in cash within six to nine months if the company will not have created a capital reserve fund of \$750,000 by that time.

(3) No subsidy will be paid over to Robin until full compliance with conditions (1) and (2) above. In the event of non-compliance, the subsidy contract may be terminated from its inception and *all* subsidy monies forfeited, unless non-compliance is caused by the failure to secure reasonable bids.

(4) Robin's corporate structure will be simplified to Commission's satisfaction and about \$100,000 of inter-company debt will be eliminated by cancellation or conversion.

(5) Robin will agree not to cut rates or blanket sailings of South African, and may agree to pool homeward cargo.

Except for the *City of New York*, which is owned by the American South African Line, all the vessels owned by each of the applicants are at least 17 years old. The mean speed of these vessels is from 10 to 10½ knots, with the exception of the *City of New York*, which has a speed of 13½ knots. While both applicants readily admit the imperativeness of an immediate replacement program, because of the age of the present tonnage now in operation, they are likewise in unanimity that this will not be possible without the aid of substantial construction and operating subsidies.



As has been stated, American South African proposes to build, contingent, however, upon its receiving an *exclusive* subsidy, two vessels immediately and a third in the near future. The proposed new vessels are to be combination cargo and passenger vessels with a capacity for 100 passengers, with more cargo space than its vessels now in operation, with refrigerated space, and with twin screw Diesel motor propulsion capable of maintaining an average of  $16\frac{1}{2}$  knots per hour. The line contends that the proposed three new ships will be ample to maintain the twelve annual sailings now furnished by four ships. No program is advanced for the replacement of the vessels of the Argonaut Line now in use in the Gulf service, and it seems unlikely that any such program can be consummated even with the maximum governmental assistance authorized by the Act.

The Robin Line, on the other hand, has not progressed as far with actual plans as has American South African. It now agrees to build three new cargo vessels with a speed of  $16\frac{1}{2}$  knots unless a slower speed is approved by the Commission. It is not the intent of the Robin Line to install passenger accommodations.

Based upon current American shipbuilding costs, American South African estimates that the construction of each of its new vessels, which will require an expenditure of some \$3,650,000 per vessel, of which \$700,000 will represent the cost of the installation of passenger accommodations and \$100,000 for refrigeration equipment. The Robin Line estimates the cost of their new vessels at \$2,000,000 per unit, assuming a  $15\frac{1}{2}$  knot speed.

Endeavoring to reconcile the differences between the two lines, the Commission has heretofore suggested a consolidation or merger of their interests but after many conferences it appears that neither a consolidation nor a merger is possible of consummation at this time.

At the present hearings some 18 shippers testified that they used both lines, as well as most of the foreign lines, and that in the interest of service they desired to see both lines continue in operation. Competition on this route is very keen. There is ample outward cargo to support 24 monthly sailings per year from North Atlantic ports by the two American-flag lines, and if either of the American-flag services (now carrying together about  $33\frac{1}{3}$  per cent of the outward cargo) is discontinued, undoubtedly a large proportion of the tonnage carried by the line that withdraws will go to the foreign-flag lines. Both services are found to be competent and efficient by the shippers who testified.

The homeward cargo presents a different problem. Most of the foreign lines do not make the return voyage, but continue on around the world or in other directions, so these two American-flag services get most of the inward cargo. However, this is largely bulk cargo, pays

much lower rates than the outward cargo, and requires larger volume to pay the expenses of transportation. It consists principally of raw materials, such as skins, sisals, barks, and roots, coffee, and ore. A very small amount of the inward cargo goes to the Gulf so the ships in the Gulf service of the American South African Line make the return voyage to North Atlantic and Canadian ports, making 24 inward voyages for that line against 12 for the Robin Line. There is a conflict in the evidence offered as to the number of return sailings which the inbound cargo would support. South African thinks the cargo will support only 19 paying sailings per year; Robin thinks there is enough for 24 sailings. Taking into consideration the upward trend of the movement, the evidence appears to support the Robin Line opinion and the Commission is of the opinion that this business is likely to increase. Both lines agree and the evidence adduced clearly indicates that there is not enough homeward cargo for 36 paying voyages.

There is disagreement between the two lines as to the carrying of passengers, but the *City of New York*, with a passenger capacity of 56, has had her passenger space usually filled. South African contends that passenger travel is growing and that it will be remunerative to equip new ships which it proposes to build to carry 100 passengers each. The faster speed of the new ships will cut down the voyage time, offering better competition to the route from New York via London. The class of passengers carried is not likely to be affected by the increased air travel.

In its brief and by exceptions to the proposed report, American South African has contended that the Commission is without legal authority to grant subsidies to both applicants for their several operations on the same trade route. The contention is based on a general denial that dual or multiple subsidies are authorized by the Merchant Marine Act, 1936, for a route served by an existing subsidized operator without a finding by the Commission that the existing service of such operator is inadequate within the meaning of that word as used in section 605 (c) of the Act. Plenary power to grant dual and multiple subsidies is expressly conferred upon the Commission by this very section 605(c), subject only to the limitations therein stated. The language of the section is too clear in this regard to require further elaboration. (See extensive analysis of legislative history attached hereto.) Exercise of the power must rest, of course, in the sound discretion of the Commission upon findings of warrantable facts.

American South African contends, however, that the situation "where there is an existing subsidized line and an additional subsidy is sought for another line" is legally different from the situation "where there is no subsidized line and a subsidy is sought for one of two or more lines

in the trade." The argument implies that an operating subsidy contract, as a matter of law, confers upon the holder a privileged status to the exclusion of all other citizens. To this argument we cannot subscribe. The Act neither by definition nor implication invests a subsidy contract with the legal effect of an exclusive franchise although under section 605(c) services created after the passage of the law cannot be subsidized so long as the existing service or services are found to be adequate. Nor does the presently effective temporary contract by its terms confer any such property right upon American South African. A fact that such contract might have been entered into "in substitution" of a terminated mail contract, all claims in connection with which have been settled,<sup>5</sup> would be immaterial. Therefore, the temporary subsidy agreement which American South African now holds, neither by operation of law nor by its terms constitutes an *exclusive right* to a subsidy on the route.

Although not stressed in the briefs, the contention was advanced in oral argument by American South African that a decision in this case is controlled by the first clause in section 605(c), which reads as follows:

No contract shall be made under this title with respect to a vessel to be operated on a service, route, or line served by citizens of the United States which would be in addition to the existing service, or services, unless the Commission shall determine after proper hearing of all parties that the service already provided by vessels of United States registry in such service, route, or line is inadequate, and that in the accomplishment of the purposes and policy of this Act additional vessels should be operated thereon \* \* \*

This argument is grounded in an assumption that the service for which the Robin Line seeks Federal aid is one "which would be in addition to the *existing* service, or services" already provided by vessels of United States registry. Such assumption is contrary to fact.

It is unnecessary in this case to determine whether the term "existing" speaks as of the effective date of the Act or as of some subsequent date when a subsidy application might be filed or considered. The service for which the Robin Line seeks an operating subsidy has been one continuously existing from a date prior to the passage of the Merchant Marine Act, 1936. The contention that the word "existing" is to be further impliedly restricted to an existing "subsidized" service or services is without merit.

It is the second clause of section 605(c) with which we are principally concerned and as to which the question of adequacy of service has particular application. It reads as follows:

<sup>5</sup> It is interesting to note in this connection that neither American South African nor any other holder of an ocean mail contract terminated by the Merchant Marine Act, 1936, asserted any claim based upon the contention that the termination of the contract by the United States constituted the extinguishment of any right of exclusive franchise.

and no contract shall be made with respect to a vessel operated or to be operated in a service, route, or line served by two or more citizens of the United States with vessels of United States registry, if the Commission shall determine the effect of such a contract would be to give undue advantage or be unduly prejudicial, as between citizens of the United States, in the operation of vessels in competitive services, routes, or lines, unless following public hearing, due notice of which shall be given to each line serving the route, the Commission shall find that it is necessary to enter into such contract in order to provide adequate service by vessels of United States registry. The Commission, in determining for the purposes of this section whether services are competitive, shall take into consideration the type, size, and speed of the vessels employed, whether passenger or cargo, or combination passenger and cargo, vessels, the ports or ranges between which they run, the character of cargo carried, and such other facts as it may deem proper.

American South African contends that its service on the route must be found to be inadequate and unsatisfactory before additional subsidized operations may be permitted in the trade. In support of such contention this applicant lays down the test as being whether it is doing its "fair share" in the trade. It says, "The only question here is: Has the American South African Line, Inc., been an earnest, competent and energetic operator \* \* \* or has the time come when this operator has become laggard, and the Government's support should be shifted to another?"

An analysis of the testimony given by shippers and witnesses for the applicants discloses a steady increase of business with South and East Africa. Both the Robin Line and American South African report capacity outbound sailings. American South African has had sufficient faith in trade developments to establish a new unsubsidized service from the Gulf. The applicants have estimated that they now carry between them approximately 33 $\frac{1}{3}$ % of the outward cargo offerings. Whereas American South African, before the entrance of the Robin Line into the trade, had 12 of 48 conference sailings and carried sufficient cargo to realize a reasonable return on its investment,<sup>6</sup> the fact that the Robin Line now also maintains 12 sailings in addition to the conference sailings reveals beyond doubt the growth of the South and East African export trade. To state the matter another way, in the past few years cargo offerings have increased to the extent of 12 additional sailings. This may be accounted for by the rapid increase in population and the advancement of the standard of living conditions in South and East Africa.

A different situation prevails with respect to the inward cargo from

<sup>6</sup> "Our operations have been successful from the start. For the extended period of twelve years and three months we have had an over all profit of \$1,006,244.58 or an average profit per annum of \$82,142.41." (Testimony of James A. Farrell, Jr., President of the American South African Line, Inc.—Hearings before the Maritime Commission, April 14, 1938, page 145.)

South and East Africa to North Atlantic ports. Not nearly as much cargo, nor cargo paying as high a freight rate as that outward from the United States, is offered for the return voyage. However, the foreign lines do not return directly to the North Atlantic. Their service may be described as "one way" since it is their custom to continue on to Far Eastern and European ports. Hence, virtually all the inward cargo is carried in American vessels. There was disagreement between the two applicants as to the present and prospective amount of homeward cargo. The American South African Line contends that in the light of its experience of 12 years duration, the homeward offerings do not justify in excess of 19 annual sailings. On the other hand, the Robin Line is confident that inward cargo is sufficient to support 24 sailings. American South African did not offer any evidence to show that cargo offerings from New York were now insufficient nor would in the future be insufficient, to support 24 sailings from New York. It confined itself in attempting to show that the offerings of inward cargo will not be sufficient to maintain more than 19 sailings. The Robin Line bases its estimate on the fact that the complete round trip will be a compensatory undertaking. American South African, on the other hand, apparently endeavored to justify a necessity for a profit on each the outward and the homeward voyage. Often services do not show commensurate returns for each portion of the round voyage, and it is not improper to consider the round voyage in its entirety as a standard for the needs of the service. From all the evidence, it is believed that the profit on 24 outward voyages will be sufficient for both applicants to realize a profit, even after the homeward leg of the voyage is taken into consideration.

American South African, however, further contends that before a subsidy should be granted to the Robin Line there should be supporting evidence to show that there will be sufficient inward cargo offerings to support 36 sailings. This untenable contention takes into consideration the homeward voyages of their Gulf service. In the matter of these applications, the North Atlantic service and the Gulf service need not be treated as inseparable. Moreover, the Gulf service is admittedly experimental in nature and it seems extremely doubtful whether the service can ever be made to pay. Thus, 24 homeward sailings and not 36 may be the test.

If opportunity for Federal financial aid were denied to the Robin Line, within but a few years when its vessels (which are now 18 and 19 years old) will have reached the end of their economic life, the cargo carried by them would probably be transported either in ships chartered by them (possibly under a foreign flag), or would find its way to foreign-flag vessels. Neither applicant proposes, *nor has either applicant the financial resources*, to build sufficient vessels to maintain 24 outward

sailings, which, without any consideration of future trade development, present cargo offerings now demand. The Robin Line did not necessarily take its present business away from the conference lines. Its carryings may have been and, to a large extent, probably were, developed through its own initiative. It has absorbed the increased amount of exports. This increase in business was accomplished in the face of bitter competition. The Robin Line has now firmly established itself in the trade. Failure to make it possible for it to continue its services would be, in effect, to turn this newly developed American commerce over to foreign lines. The Commission should be loath to take action which would result in this trade, now firmly entrenched with an American company, being taken away from the American merchant marine. Thus, an exclusive subsidy to American South African as requested by that line would result in direct benefit to foreign-flag operators to the detriment of the interests of the American merchant marine.

Pursuant to the provisions of section 211(a) of the Merchant Marine Act, 1936, the Commission has heretofore determined that the route from North Atlantic ports to ports in South and East Africa is an essential trade route of foreign commerce of the United States. Such determination is hereby reaffirmed. *Service of the American South African Line, Inc., on this route is not adequate within the purview of section 605(c) of the Merchant Marine Act, 1936*, and that line alone cannot provide adequate service on the route by vessels of United States registry. Neither of the applicants here is able alone to provide adequate service by such vessels on this trade route.

We find and determine from the records and evidence in this proceeding that each applicant is eligible and should receive an operating-differential subsidy, upon compliance with the terms and conditions of the Act and the requirements of the Commission.

In reaching this determination, we are not unmindful of the difficulties and problems presented by the existence of two subsidized services in the same trade route. For this reason we have concluded that the contracts to be awarded to the applicants should be for an experimental, short-term duration, during which period the applicants, in cooperation with the Commission, should exert every effort to eliminate or solve those difficulties and problems. Specifically, we believe that efforts to effect a merger or consolidation of these companies should be continued; that, failing such a solution, satisfactory arrangements should be worked out covering *sailing dates, rates, and pooling of homebound cargo*, so as to eliminate, as far as possible, competition between the two American companies, and to enable both American companies to cooperate in competing against the foreign lines now carrying the bulk of the commerce in this trade; that, before either operator receives a

long-term subsidy, it should actually complete plans and specifications for replacements, secure bids thereon, and prove its willingness to proceed in accordance therewith; and that, during the experimental dual subsidy period hereinafter provided for, each of the applicants should have the right to apply to reopen this proceeding for the purpose of introducing additional evidence, either in support of or in opposition to, the continuation of an operating subsidy to the other company. The period of the short term contracts will also provide an opportunity to reach a final determination regarding the continuation of the Gulf-South African route.

In order to carry the foregoing principles into effect, we have determined as follows:

(1) The application of the American South African Line, Inc., should be, and hereby is, denied to the extent that it requests an exclusive subsidy.

(2) Subject to the foregoing, and subject further to compliance with all the applicable provisions of Title VI of the Merchant Marine Act of 1936, as amended, and the requirements of the Commission thereunder, the applications of the Seas Shipping Company, Inc., and the American South African Line, Inc., for operating-differential agreements will be granted on the following terms and conditions:

(a) The agreements shall be for a period of six months, with provision for automatic extension for 12 years, at the option of the Commission, upon compliance with all the conditions of said agreements.

(b) During said six-month period both companies will be required to exert every reasonable effort to work out or effect a satisfactory consolidation, merger, or other agreement for joint operation over this trade route.

(c) The subsidy agreements will require proper spacing of sailings, maintenance of uniform freight rates, and pooling of homeward cargoes by both operators, all on a basis satisfactory to the Commission.

(d) The agreement with the Seas Shipping Company, Inc., will require that company to complete, within the period of contract, all necessary plans and specifications for the construction of three cargo vessels of a type and speed satisfactory to the Commission; to advertise for firm bids for the construction of said vessels; to make binding arrangements satisfactory to the Commission for the investment of at least \$500,000 in cash in that company, subject to the extension of the agreement for 12 years, the investment to be evidenced by preferred stock or other security satisfactory to the Commission; to make arrangements satisfactory to the Commission for securing satisfactory guarantees to insure the investment of an additional \$250,000 in cash, if, as, and when required to complete the construction program; to simplify its corporate structure in a manner satisfactory to the Commission; and to cancel at least \$100,000 of inter-company debt.

(e) The contract with the American South African Line, Inc., shall cover both the Gulf and Atlantic coast routes, and shall provide that during the period of the contract the company will complete all necessary plans and specifications for two combination passenger and cargo vessels of a type and speed satisfactory to the Commission; to advertise for and obtain firm bids for the construction of said two vessels; to make arrangements satisfactory to the Commission for the investment of at least \$500,000 additional cash in the company, such investment to

be made automatically upon the extension of the agreement for 12 years for the North Atlantic route. This agreement shall be accepted by the Commission as compliance with the condition of the second article of the temporary subsidy agreement now in effect.

(f) Both agreements shall provide that no subsidy monies shall be paid thereunder, except upon full compliance with the above-mentioned provisions of the contracts, and that, in the event of a default in any of the above provisions, the contracts shall be rescinded and all subsidy monies accruing thereunder (except for an amount equal to sums actually expended in the development of the plans and specifications above referred to) shall be forfeited, except that in the case of the American South African Line, Inc., the subsidy shall be paid on the *City of New York*, unless the default is found by the Commission to be willful.

(g) Both agreements shall provide that, at the option of the Commission, the same may be extended for 12 years, upon terms and conditions satisfactory to the Commission with respect to each operator, provided, in each case, that the operator enters into firm contracts for the purchase and construction of the vessels above referred to.

The Commission reserves the right, upon application of either party or upon its own motion, to reopen this proceeding at any time during the said six-month period, to receive evidence covering any pertinent matter regarding the desirability or necessity of subsidizing both services on a permanent basis, and to make such other or final disposition as the Commission may deem just and proper. The degree of compliance by each applicant with the foregoing conditions will be considered in such event. If a final determination adverse to the continuation of dual subsidies beyond the six-months period is reached, both the Commission and the operator whose subsidy is to be terminated shall be under no further obligation to comply with these terms of the temporary agreement which relate to new construction, but such operator shall not be deprived by reason of such determination of any subsidy accruing under the temporary contract. An order of the Commission is accordingly entered herewith.

3 U. S. M. C.



## APPENDIX

## LEGISLATIVE HISTORY OF SECTION 605(c)

If there were any doubt as to the legislative intent expressed in the language of section 605(c) it would be removed by an examination of the legislative history of the section.

The Merchant Marine Bill, H. R. 8555, introduced by Congressman Bland, which passed the House in 1935, did not contain the clarifying language of section 605(c), "which would be in addition to the existing service, or services." S. 3500, the Copeland Bill, which was introduced in the Senate February 27, 1936, was identical with the companion bill H. R. 8555 in respect to the corresponding subsection of the latter bill under discussion with the exception that the language, "which would be in addition to the existing service," was added. The Guffy Bill, S. 4110, introduced February 27, 1936, enunciated a single subsidy policy. S. 4110, however, was never reported out of committee. This restriction was deleted when the Guffy-Copeland compromise was drafted. The compromise was in the form of an amendment to H. R. 8555; it was introduced in the Senate May 18, 1936, and ultimately became the Merchant Marine Act, 1936. As a substitute for the single subsidy policy of the Guffy bill, the compromise included section 536(a) of S. 3500, which is identical with section 605(c) of the 1936 Act as presently worded, except for the addition of the words "or services" and the changing of the word "Authority" to "Commission." Section 536(a) of S. 3500 had its origin in H. R. 7521, 74th Congress, a bill which preceded H. R. 8555. Committee Print No. 2 of that bill provided:

"Sec. 506(b). No such contract shall be made with respect to a vessel to be operated on a service, route, or line, served by citizens of the United States, unless the authority shall determine that the service already provided upon such route or line is inadequate and that in the public interest additional vessels should be operated thereon."

At the time the Senate Commerce Committee had S. 2582 under consideration (the companion bill of H. R. 7521), which had been introduced by Senator Copeland, Mr. Ira Campbell, representing the American Steamship Owners Association, appeared before the Senate Committee and submitted a redraft of the bill which substituted section 508 in place of former section 506 (b). Section 508 was of the following tenor:

"Sec. 508. No contract shall be made with respect to a vessel to be operated on a service, route or line, served by citizens of the United States, unless the Authority shall determine, after proper hearing of all parties concerned, that the service already provided upon such route or line is inadequate, and that in the accomplishment of the purpose of this Act additional vessels should be operated thereon."

In explanation of the redrafted section, the following is taken from the Hearings (Hearings on S. 2582, 74th Cong., 1st Sess., page 512):

"The CHAIRMAN. That provides for a certificate of necessity, so to speak, does it not?"

"Mr. CAMPBELL. If the service is inadequate, then the new contract should be made. If additional vessels should be operated to accomplish the purposes of

this whole act, the permission should be given. It does not make much difference whether you state it in this form or in some other form, so long as you adhere to the principle."

On the same day, May 7, 1935, Mr. Frank B. Barns, representing Mr. Arthur R. Lewis, founder of the Robin Line, also appeared before the Senate Committee. In his statement he said that he was of the impression that the future of the Robin Line would be conjectural if the bill, as written, were adopted. He called attention to the fact that Mr. Lewis' company was inaugurating a service from New York to South and East Africa. Mr. Barns, in his interesting colloquy with Senator Copeland, forcefully appealed to the Committee for Commission authority in the matter of the granting of dual subsidies. The following discussion appears in the Hearings (Hearings on S. 2582, 74th Cong., 1st Sess., pages 546, 7, 8):

"The CHAIRMAN. Your question is whether or not you would profit by the bill?"

"Mr. BARNs. The question is whether the Marine Authority would be obliged to consider our application for aid in operating assistance."

"The CHAIRMAN. I do not think there would be any distinction. Any citizen of the United States has a right to apply both for a construction Loan and for a subsidy." \* \* \*

"The CHAIRMAN. I think the complete answer to your question is this: If you are to establish a new line and new service to a port already served by an American line, you would in effect have to have a certificate of convenience and necessity. You know what I mean. If you were establishing a service not now served by American ships, there would not be any question about your right to a differential, and you would not, as a matter of fact, under the bill as written, with the approval of the Authority, establish a tentative line."

"Mr. BARNs. I think it helps one having vessels of the type which I have mentioned, feeling that with this act he can go to the Authority and get not only assistance for any reconditioning that may be necessary, but can get the benefit of the operating help which will put him on a parity with the foreign vessels that are operating to those same ports. That is what I felt especially concerned about—being able to get the operating subsidies so that we may operate to those ports in competition with the foreign ships."

"The CHAIRMAN. Of course, you would have to run the gauntlet of the Authority. They would pass upon the wisdom or the unwisdom of establishing a new service to ports already served by American vessels. But if you succeeded in convincing them, then it would be entirely acceptable."

"Mr. BARNs. That is the only thing that is questionable—whether or not the bill as drawn now places one in a position of having to obtain a certificate of necessity, so to speak. As long as there are foreign companies operating vessels—"

"The CHAIRMAN. Are you speaking for foreign companies?"

"Mr. BARNs. I say, there are foreign companies that are operating between New York and Africa today in competition with American companies that are operating. There will still be, with our going into the field, these foreign companies operating; and as long as there is a foreigner able to do business there, it seems to me assistance should be given to any American citizen who is willing to go in."

that service is adequately covered. That would be for the Authority to determine."

"Mr. BARNES. Well, it would be pretty narrow construction to say that it was adequately covered by an American shipowner as long as there is a foreigner carrying goods there to any extent."

Mr. McAuliffe, President of the Isthmian Steamship Lines, filed a brief with the Senate Committee also urging Commission authority to grant dual subsidies, the brief reading as follows (Hearings on S. 2582, 74th Cong., 1st Sess., page 564):

"I have only one question to place before your committee, and that is whether the financial aid provided by this legislation is to be used to place American vessels upon a competitive basis with foreign vessels or whether it is to be used to enable one favored American operator in each trade route to obtain all the aid and force his American competitors out of business. The former will build up the American Merchant Marine while the latter would promote a monopoly in the hands of a few at the expense of the Government, and would eventually destroy our merchant marine through inefficiency and decay.

"The bill very properly makes the aid available to every citizen of the United States, and, on the face of it, that would seem to answer the question. Yet there seems to be an impression or understanding with many that, in the administration of the act, preference would be given to one operator in each route or service, and that no American competitor would share in the aid until the preferred operator had received all the aid he desired, and refused the contract for any additional vessel or vessels which the Authority might determine should be operated in that route or service. Thus, only in the event that the preferred operator refused aid, could another American operator obtain aid. Of course, the understanding is that the preferred operators would be those who are now enjoying mail contracts. This impression or understanding may be right or wrong; but, to avoid any possibility of the act being so administered, and to relieve the Authority of the importunities which would certainly be addressed to it for such administration, we urge that the wishes of Congress on this question be expressed clearly in the act."

This brief was accompanied by a proposed amendment, the effect of which would be that where two or more applicants requested financial aid in a particular service, no financial aid should be granted to one applicant which would grant an advantage or preference in favor of one over the other, and that if there were two competing lines and they had justified their existence over a number of years, they should be equitably treated in the apportionment of governmental assistance. Mr. McAuliffe also appeared before the Merchant Marine and Fisheries Committee and filed the same amendment.

On March 9, 1936, Mr. Barnes again appeared before the Senate Committee and urged that the clarifying words "or services" be inserted in the first sentence of subsection 605 (c) following the words "which would be in addition to the existing service." Hearings on S. 3500, 74th Cong., 2d Sess., pages 183, 4, 5. However, H. R. 8555 with the Senate amendments, when presented to the Senate, did not contain the suggested wording. When the bill (H. R. 8555) was under consideration an amendment offered by Senator O'Mahoney incorporated this language into the bill and it ultimately became part of the 1936 Act. The following is taken from the Congressional Record of July 19, 1936 (80 Cong. Record, page 10076):

"Mr. O'Mahoney: Mr. President, I desire to offer an additional amendment, if I may have the attention of the senior Senator from New York. On page 52, line

6, I move to insert, after the word "service," the words, "or services." That is merely a clarifying amendment, designed to eliminate the possibility that the use of the word "service" in the singular might operate to prevent carrying out the remainder of the section. Will the Senator from New York accept that amendment?"

"Mr. Copeland: I have no objection to the amendment."

"Mr. President pro tempore: The question is on agreeing to the amendment offered by the Senator from Wyoming, (Mr. O'Mahoney) to the amendment in the nature of a substitute."

The amendment to the amendment was agreed to.

Mr. Barns, in his testimony of March 9, 1936, also stated that the Robin Line was encountering difficulty in establishing its services because of the competitive situation with the conference operating in the South and East African trade. This gave rise to another amendment also offered by Senator O'Mahoney, which was adopted, and subsequently became section 810 of the Act.

3 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION,  
held in its office in Washington, D. C., on the 5th day of August A. D.  
1938.

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No. S-1

AMERICAN SOUTH AFRICAN LINE, INC., SEAS SHIPPING COMPANY, INC.—  
APPLICATIONS FOR OPERATING-DIFFERENTIAL SUBSIDY IN THE OPER-  
ATION OF VESSELS TO SOUTH AND EAST AFRICA

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A hearing having been held and full investigation of the matters and things involved having been had; the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part thereof;

*It is ordered,* That the application of the American South African Line, Inc., to the extent that it requests that it be granted an exclusive subsidy on the trade route from Atlantic coast ports to South and East Africa be, and the same hereby is, denied.

*It is further ordered,* That, subject to compliance with all of the applicable provisions of Title VI of the Merchant Marine Act, 1936, as amended, and subject to all of the terms and conditions as contained in the aforesaid report, the applications of the American South African Line, Inc., and the Seas Shipping Co., Inc., for operating-differential subsidy agreements be, and the same are, hereby granted.

By the Commission.

[SEAL]

(Sgd.) RUTH GREENE,  
Assistant Secretary.

# UNITED STATES MARITIME COMMISSION

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No. S-3

(1) APPLICATION OF THE BALTIMORE MAIL STEAMSHIP COMPANY FOR AMENDMENT OF THE ORDER OF JUNE 7, 1938, RELATING TO TRANSFER OF CERTAIN VESSELS OWNED BY IT TO INTERCOASTAL TRADE; (2) APPLICATION OF MATSON NAVIGATION COMPANY FOR WRITTEN PERMISSION TO CHARTER A VESSEL OWNED BY IT FOR OPERATION BY THE BALTIMORE MAIL STEAMSHIP COMPANY IN INTERCOASTAL TRADE; AND (3) APPLICATION OF UNITED STATES LINES COMPANY AND BALTIMORE MAIL STEAMSHIP COMPANY FOR PERMISSION TO CHARTER THE S. S. WASHINGTON FOR OPERATION BY THE BALTIMORE MAIL STEAMSHIP COMPANY FOR A SINGLE VOYAGE IN INTERCOASTAL TRADE

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*Submitted December 8, 1938. Decided December 9, 1938*

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*Cletus Keating* for Baltimore Mail Steamship Company and United States Steamship Company, applicants.

*F. A. Bailey* for Matson Navigation Company, applicant.

*Roscoe H. Hupper, Donald S. Morrison, and William P. Palmer* for interveners.

## REPORT OF THE COMMISSION

BY THE COMMISSION:

The Baltimore Mail Steamship Company applied by letter dated October 19, 1938, for an order amending the order of the Commission of June 7, 1938, by which its application under section 803(a), Merchant Marine Act, 1936, for permission to transfer its fleet of five vessels to domestic intercoastal service was approved. In this application now before us the company requests that the amendment provide that it "may operate on its present intercoastal route its five named vessels and such owned or chartered substitute and/or additional vessels of similar carrying capacity as may be necessary from time to time in order to maintain a service of one sailing each week without interruption."

The original order of June 7, 1938, which followed a public hearing

on the application for transfer of the vessels, as required by section 805(a) of the Merchant Marine Act, 1936, was not sufficiently broad to permit the addition of a sixth vessel to the fleet as desired at this time in order to provide a sailing each week instead of having one in every six weeks without a sailing. The suggested amendment would provide for any substitutions or additions to the fleet that may be necessary to maintain the weekly schedule.

The Matson Navigation Company applied under date of November 22, 1938, for permission to charter its steamship *Mawi* to the Baltimore Mail Steamship Company for operation with the five vessels now in use on the Panama Pacific Line, in order to provide the proposed weekly schedule. This vessel appears to be of a type, size, and speed suitable to fill out the service, having a speed of 16 knots, sufficient staterooms to accommodate 250 passengers, deadweight tonnage of 10,340 tons and refrigerated space of approximately 14,000 cubic feet. This application was filed under section 805(a) of the Merchant Marine Act, 1936, on account of the fact that the Oceanic Steamship Company, a wholly-owned subsidiary of the Matson Navigation Company, is receiving an operating-differential subsidy from the Government.

The Baltimore Mail Steamship Company filed an application dated November 22, 1938, for permission to charter from the United States Lines Company the S. S. *Washington* for one round trip commencing February 11, 1939, from New York to the Pacific coast on its inter-coastal route. This application was filed under section 805(a) of the Merchant Marine Act, 1936, by reason of the affiliation of the applicant with an operator receiving a subsidy under the same Act.

The United States Lines Company applied under the same date, as owner of the steamship *Washington*, for permission to charter that vessel to the Baltimore Mail Steamship Company for the above-mentioned proposed voyage. This application was also filed pursuant to section 805(a) of the Act by reason of the fact that the applicant is receiving aid from the Government under that Act.

A public hearing on all of these applications was held on December 1, 1938, pursuant to the order of the Commission and after notice to the applicants and all other operators engaged in the trade. The Luckenbach Steamship Company and the American-Hawaiian Steamship Company intervened in protest to the applications. At this hearing testimony by a witness for the Baltimore Mail Steamship Company regarding the application for amendment of the previous order was to the effect that satisfactory service cannot be rendered by the five vessels now operated, with one week in every six without a sailing, and that in order to provide for a regular sailing each week, the operator should have authority to make additions to the fleet and to substitute

vessels when necessary. This authorization would cover the immediate need of the operator for an additional vessel on its route and would permit replacements when drydocking vessels of the regular fleet and in case of the disabling of a vessel.

This witness also testified that cargo offered could not be carried by the five vessels on several occasions since this service started and that considerable business handled by the former Panama Pacific steamers, which upon their withdrawal was driven to the railroads, had not come back because of the irregularity of the service, with no sailing each sixth week.

With reference to the applications for permission for one voyage by the S. S. *Washington* in the intercoastal trade in February of next year, it was brought out in the testimony that, if the plan is approved, this vessel will be chartered to the Baltimore Mail Steamship Company for the proposed voyage. The regular vessel on the route replaced by the *Washington* will take its place on the transatlantic route at the same time for one voyage, without subsidy, under a charter to the United States Lines Company.

The primary purpose of the voyage of the S. S. *Washington* to California and return was stated to be that of advertising for its owner. The vessel will arrive on the West coast about the time of the opening of the San Francisco Fair, is expected to carry some cargo and a large number of visitors to the Fair and will be open for public inspection with the view of advertising the transatlantic service of the United States Lines Company, for which that company has offices on the Pacific coast for the solicitation of business. It is expected that the cargo carried on this voyage will be only half the amount which the regular steamer would carry, on account of the smaller cargo capacity of the *Washington*.

It was also brought out in the testimony that, while engaged on this round voyage, the *Washington* would, of course, be withdrawn from participation in the operating-differential subsidy received by it when operating on the subsidized transatlantic route of the United States Lines Company.

The principal objection by interveners at the hearing on the application for amendment of the previous order of the Commission, other than repetitions of the objections made at the previous hearing, was that the amendment was too broad and that a proper interpretation of section 805(a) would make it necessary to have a public hearing whenever the Baltimore Mail Steamship Company might desire to make additions or substitutions of vessels for operation on its intercoastal route, also that at such hearing the Company would be required to show that the



specific vessel or vessels proposed to be used would offer no unfair competition to other operators, and that the granting of the application would not be contrary to the policies and objects of the 1936 Act.

In granting the original application of the Baltimore Mail Steamship Company, it was concluded by the Commission that there would be "no unfair competition within the purview of the 1936 Act to existing carriers or prejudice to the objects and policy of the Merchant Marine Act, 1936, from the operation of the applicant's vessels in the intercoastal trade." No additional testimony was introduced at the hearing on December 1st on the question of unfairness of the competition to be offered by the operation of six vessels with a weekly schedule, and there was no serious objection made to the employment of the S. S. *Mawi* in the regular service of the line or to the use of the S. S. *Washington* for the proposed single voyage.

In view of our previous finding and the lack of any evidence indicating that the changes proposed to be made in the service at this time will result in unfair competition, the principal question for decision appears to be as to whether or not the proposed amendment of the original order is too broad. The original order was so restricted that the operator had no authority to use any but the five vessels transferred to the service, and under that order it would at this time be unable to make any substitution in an emergency in order to maintain the service of the five vessels, which would undoubtedly seriously affect the business of the line if one or more vessels should have to be laid up for any reason. The operator has shown that the addition of one vessel at this time is not only desirable but necessary to meet the requirements of shippers. The proposed amendment is broader than the original order, but it is also restricted to the extent that the Baltimore Mail Steamship Company will not be authorized to have more than one sailing per week or to use any vessel which does not have carrying capacity similar to the five vessels now in the fleet. The competitors will know that no greater or different competition can be offered and they will still have the protection of section 805(a) in its requirement of a hearing on any proposal to use a vessel owned by a subsidized operator or an affiliate of such operator.

We are of the opinion and have concluded that the rights of competitors will not be adversely affected and there will be no violation of either the policy or spirit of the Act in amending the order as requested.

The actual terms of the proposed charters contemplated in the aforesaid applications were not introduced at the hearing. By reason of the pecuniary interest which the United States has in the successful oper-

ation of two of the applicants, the permission herein granted will be subject to our right of approval of all contracts, charters included, which may be entered into to effectuate the permitted results.

An order will be entered granting the applications to the extent and upon the conditions stated in said order.

3 U. S. M. C.

## ORDER

At a session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 9th day of December A. D. 1938.

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### No. S-3

- (1) APPLICATION OF THE BALTIMORE MAIL STEAMSHIP COMPANY FOR AMENDMENT OF THE ORDER OF JUNE 7, 1938, RELATING TO TRANSFER OF CERTAIN VESSELS OWNED BY IT TO INTERCOASTAL TRADE; (2) APPLICATION OF MATSON NAVIGATION COMPANY FOR WRITTEN PERMISSION TO CHARTER A VESSEL OWNED BY IT FOR OPERATION BY THE BALTIMORE MAIL STEAMSHIP COMPANY IN INTERCOASTAL TRADE; AND (3) APPLICATION OF UNITED STATES LINES COMPANY AND THE BALTIMORE MAIL STEAMSHIP COMPANY FOR PERMISSION TO CHARTER THE S. S. WASHINGTON FOR OPERATION BY THE BALTIMORE MAIL STEAMSHIP COMPANY ON A SINGLE VOYAGE IN INTERCOASTAL TRADE
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A hearing having been held in this proceeding, pursuant to the provisions of section 805(a) of the Merchant Marine Act, 1936, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision therein, which report is hereby referred to and made a part hereof;

1. *It is ordered*, That the order of June 7, 1938, authorizing the transfer of the five vessels owned by the Baltimore Mail Steamship Company to domestic intercoastal service be, and it is hereby, amended to read as follows:

The Baltimore Mail Steamship Company may operate on its domestic intercoastal service the five vessels *City of Baltimore*, *City of Norfolk*, *City of Hamburg*, *City of Havre*, and *City of Newport News*, and such owned or chartered substitute and/or additional vessels of carrying capacity similar to that of the above-named vessels as may be necessary from time to time in order to maintain a service of not more than one sailing each week without interruption.

All agreements entered into by the Baltimore Mail Steamship Company with respect to securing such additional or substituted vessels shall be subject to approval of the Commission, and nothing contained in this order shall be construed as a permission to any other person subject to the provisions of section 805(a) of the Merchant Marine Act,

1936, as amended, to charter or otherwise use one or more of its vessels on the Baltimore Mail service without specific permission therefor.

2. *It is further ordered*, That permission be, and it is hereby, given to the Matson Navigation Company to charter its S. S. *Mawi* to the Baltimore Mail Steamship Company for operation on its intercoastal route pursuant to the provisions of paragraph (1) hereof.

3. *It is further ordered*, That permission be, and it is hereby, given to the United States Lines Company to charter the S. S. *Washington* to the Baltimore Mail Steamship Company, and to the latter company to use said vessel for one round voyage commencing on or about February 11, 1939, from New York to the Pacific coast and return in the intercoastal service upon the following conditions:

a. The charter party shall be approved by the Commission.

b. Proper adjustment shall be made in the capital employed by the United States Lines Company as defined in its operating subsidy agreement by reason of the withdrawal of the S. S. *Washington* from the subsidized service for the proposed voyage.

c. The profits of the United States Lines Company, if any, from the voyage of the S. S. *Washington* in the intercoastal trade and the voyage of the Baltimore Mail vessel proposed to be operated on the transatlantic route in place of the S. S. *Washington* shall be included in the "net earnings" of the United States Lines Company as defined in its operating-differential subsidy contract.

4. *It is further ordered*, That permission be, and it is hereby, given to the Baltimore Mail Steamship Company to charter one of the vessels now owned by it to the United States Lines Company, and to the latter company to use said vessel for one voyage on its transatlantic route, replacing the S. S. *Washington* for said voyage, subject to the approval of the charter party by the Commission.

By the Commission.

[SEAL]

(Sgd.) RUTH GREENE,  
Assistant Secretary.

# UNITED STATES MARITIME COMMISSION

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No. S-4

BLOOMFIELD STEAMSHIP COMPANY AND LYKES BROS. STEAMSHIP CO.,  
INC.—APPLICATIONS FOR FINANCIAL AID IN THE OPERATION OF VES-  
SELS ON TRADE ROUTE No. 15B (UNITED STATES GULF TO SOUTH AND  
EAST AFRICAN PORTS)

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*Ben C. Connally* for Bloomfield Steamship Company.

*William Radner* for Lykes Bros. Steamship Co., Inc.

*Frank V. Barnes* and *Burton H. White* for Seas Shipping Company,  
Inc., and *Donald D. Geary* for American South African Line, Inc., in-  
terveners.

## REPORT OF THE COMMISSION

### BY THE COMMISSION:

This proceeding involves applications filed by Bloomfield Steamship Company and Lykes Bros. Steamship Co., Inc., for financial aid under Title VI of the Merchant Marine Act, 1936, as amended, in the operation of vessels in a service between "U. S. Gulf ports (Key West—Mexican Border)—South and East Africa (Cape Frio—Cape Guardafui) and Madagascar," designed as Trade Route 15B in "Report of the United States Maritime Commission on Essential Foreign Trade Routes and Services Recommended for United States Flag Operation," dated May 22, 1946.

After due notice to the public and all interested parties, a public hearing was held at Washington, D. C., on July 24, 1946, before Examiners F. M. Darr and C. H. McDaniel. Leave to intervene at the hearing was granted to American South African Line, Inc., and Seas Shipping Company, Inc., holders of operating-differential subsidy agreements with the Commission covering the operation of services on Trade Route 15A (U. S. Atlantic-South and East Africa.). Briefs were filed by the applicants and interveners.

3 U. S. M. C.

## THE APPLICANTS AND THEIR PROPOSALS

Bloomfield Steamship Company, hereinafter referred to as Bloomfield, is a newly-formed corporation, organized and existing under the laws of the State of Texas. The company has not commenced operations and does not own any vessels, but has made application to the Commission for the purchase of three C-2 type vessels under the Merchant Ship Sales Act of 1946, for operation on Trade Route 15B. The company will have a paid-in capital of \$1,500,000.00. Each of the officers and directors of the company is a citizen of the United States and the controlling interest in the company is owned by citizens of the United States.

Bloomfield proposes twelve monthly sailings per year on Trade Route 15B with three C-2 type vessels. Bloomfield states that it is willing to purchase and operate an additional vessel on the route if the Commission determines that operation of such a vessel is necessary.

Lykes Bros. Steamship Co., Inc., hereinafter referred to as Lykes, is a corporation organized and existing under the laws of the State of Louisiana. Lykes has been engaged in shipping operations for a number of years and is the holder of an operating-differential subsidy agreement with the Commission covering the operation of five services. As of the date of this application, Lykes owned 33 new vessels and several old vessels, and has made application to the Commission for the purchase of a number of vessels under the Merchant Ship Sales Act of 1946, including three C-2 type vessels for operation on Trade Route 15B. The net worth of Lykes as of December 31, 1945 was approximately \$54,000,000.00. Each of the officers and directors of Lykes is a citizen of the United States and the controlling interest in the company is owned by citizens of the United States.

Lykes also proposed 12 monthly sailings per year on Trade Route 15B with three C-2 type vessels. Lykes also states that it is willing to purchase and operate an additional vessel on the service if the Commission determines that the operation of such a vessel is necessary.

The proposals of both applicants are in conformity with the recommendations set forth in "Report of the United States Maritime Commission on Essential Foreign Trade Routes and Services Recommended for United States Flag Operation" for Trade Route 15B, with the exception of the proposal to operate three vessels instead of four as recommended in the Report.

HISTORY OF GULF-SOUTH AND EAST AFRICAN ROUTE AND  
LYKES' OPERATION THEREON

Prior to 1935 there was no regular American-flag service between Gulf ports of the United States and South and East Africa, practically all of the Gulf cargo being carried by the Bank Line (British) and Silver-Java-Pacific Line under British and Dutch flags. The American South African Line commenced a non-subsidized service in 1935, sailing from the Gulf and returning to the North Atlantic with cargo and thence to the Gulf in ballast, but abandoned the service in 1938 and thereafter concentrated on its service between Atlantic ports and South and East African ports. During the period between 1937 and 1940, the percentage of export tonnage carried by American-flag dry-cargo vessels from the Gulf to South and East African ports averaged approximately 13 per cent.

On October 16, 1940, in an effort to utilize certain of its vessels which had been barred from European ports by the Neutrality Act of 1939, Lykes requested permission from the Commission under its operating-differential subsidy agreement to "operate, from time to time, certain of our non-subsidy vessels between U. S. Gulf Ports and South and East African Ports with authority to load such vessels homeward from South and East Africa to U. S. North Atlantic and Gulf Ports with manganese and chrome ore, or such other bulk cargoes as may be available." American South African Line, Inc., and Seas Shipping Company, Inc., subsidized operators in the service between U. S. Atlantic ports and South and East African ports, agreed that there would be no conflict of interest arising out of the proposed operation, and on December 27, 1940, the Commission approved the operation of vessels withdrawn from Lykes' subsidy agreement in a new service from U. S. Gulf ports to South and East Africa, returning via U. S. North Atlantic ports with manganese and chrome ores, subject to the condition that (a) on ninety days written notice the Commission might rescind its approval of the homeward operation of the vessels via United States North Atlantic ports;<sup>1</sup> (b) no subsidy would be paid with respect to any part of such operation; and (c) the terms and conditions embodied in the action of the Commission on March 14, 1940, approving the withdrawal of twelve vessels from the operating-differential subsidy agreement would be applicable to the subject operation.<sup>2</sup>

<sup>1</sup> Permission to return homeward by U. S. North Atlantic ports was rescinded by the Commission on May 9, 1946.

<sup>2</sup> The action of March 14, 1940, provided, in part, that vessels withdrawn from the subsidy agreement should not be employed in operations which were competitive with any regular existing American-flag service without the express written approval of the Commission, and that if required by the Commission any or all of such withdrawn vessels would be reinstated under the subsidy agreement immediately following termination of the employment in which then engaged.

Lykes stated to the trade in a circular letter dated December 30, 1940, that "feeling there is need for an American-flag service from U. S. Gulf ports to South and East Africa, we take pleasure in announcing that commencing with the sailing of the S. S. *Effingham* on January 18, 1941, from Mobile we have inaugurated a regular monthly service to Capetown, Port Elizabeth, East London, Durban, Lourenco Marques and Beira," and "we earnestly solicit your support which we assure you will be greatly appreciated." The first sailing was made in January 1941, as scheduled.

Lykes obtained approval from the Commission for the operation of individual vessels in the service during 1941, and on October 22 of such year requested that the service be declared essential under section 211 of the Merchant Marine Act, 1936, as amended, stating that "the inauguration of this service filled a much needed requirement from the Gulf district, and has increased steadily in both volume and importance." Lykes added in its letter that it was "carrying outward commodities most useful from a defense standpoint being in close touch with the British authorities, and homeward, we are naturally moving such commodities as directed by the Maritime Commission," and was "utilizing both old and new vessels in this service." Under date of November 5, 1941, the Secretary of the Commission wrote Lykes that "at its meeting of November 4, 1941 the Commission determined the route from United States Gulf ports to ports on the South and East Coasts of Africa (Mossomedes, Angola, to and including ports in Italian Somaliland, except such ports or territories from which American ships may be excluded by the Neutrality Act) is and has been since July 1, 1941, an essential foreign trade route within the meaning of the Merchant Marine Act, 1936, as amended, but subject to modification on the basis of reexamination upon cessation of the emergency."

Prior to the requisition of its vessels by the Government early in 1942, Lykes made 35 sailings with vessels withdrawn from its subsidized services in the service for its own account—30 of which were made during 1941. Lykes operated in the service after the requisition of its vessels as Berth Agent for the War Shipping Administration, and in this capacity made a total of 45 sailings up until the time that requisition was terminated in March of this year. During the period between March 1946 and the date of the hearing, Lykes made four sailings for its own account. Lykes has made two sailings since the hearing.

In 1943, when another operator filed an application with the Commission for financial aid in the operation of vessels in this service, Lykes issued a circular letter dated August 11, 1943, to shippers and forwarding agents in which it stated that "The object of this letter is to ac-



quaint you of the aforementioned developments and to reiterate it is our intention to continue the regular American-flag service which we pioneer between the Gulf and South and East Africa with suitable newly constructed vessels just as soon as hostilities have ceased, and conditions permit," and requested that endorsement of the application be declined. Due to war conditions, no action was taken by the Commission on the application referred to, and on June 17, 1944, Lykes filed an application with the Commission for financial aid in the operation of the service. No action was taken by the Commission on Lykes' application for the same reason.

#### CONTENTIONS OF APPLICANTS

Lykes contends that (a) it is and has been operating an "existing" and adequate service within the meaning of section 605(c) of the Merchant Marine Act, 1936, as amended, and that the award of an operating-differential subsidy contract to any other applicant is prohibited by the provisions of such section;<sup>3</sup> (b) its qualifications are superior to those of Bloomfield, and that as between competing applicants for a trade route an operating-differential subsidy should be awarded to the one possessing in greatest measure the qualifications required by section 601(a) of the Act;<sup>4</sup> and (c) it is entitled to preference as a Gulf operator under the provisions of section 809 of the Act.<sup>5</sup>

Bloomfield contends that (a) the permission given to Lykes to enter the service in 1941 was temporary in character and an act of expediency in view of the turbulent world situation, and that Lykes could not, therefore, acquire the status of an "existing" operator; (b) the Commission is authorized to enter into a contract with any citizen of the United States who meets the requirements set forth in section 601(a)

<sup>3</sup> Section 605(c) of the Merchant Marine Act, 1936, as amended, provides, in part, as follows: "No contract shall be made under this title with respect to a vessel to be operated on a service, route, or line served by citizens of the United States which would be in addition to the existing service, or services, unless the Commission shall determine after proper hearing of all parties that the service already provided by vessels of United States registry in such service, route, or line is inadequate, and that in the accomplishment of the purposes and policy of this Act additional vessels should be operated thereon; \*\*\*"

<sup>4</sup> Section 601(a) of the Merchant Marine Act, 1936, as amended, provides, in part, as follows: "The Commission is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States. No such application shall be approved by the Commission unless it determines that \*\*\* the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to conduct the proposed operations of the vessel or vessels as to meet competitive conditions and promote foreign commerce \*\*\*."

<sup>5</sup> Section 809 of the Merchant Marine Act, 1936, as amended, provides, in part, as follows:

"\* \* \* In awarding contracts under this Act, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic

of the Act and is under no requirement to favor the larger of two competing applicants; and (c) although Lykes may have had the support of shippers from the Gulf region for the reason that it was the only line engaged in the trade during the emergency period, Lykes does not have the "financial support" of the domestic communities primarily interested to any greater extent than it has.

We do not find that Lykes' right to operate the service was dependent upon permission obtained from the Commission. The privilege of returning by North Atlantic ports was the only phase of the service for which permission was required to be obtained from the Commission, and such privilege is not requested in the present application. Furthermore, the permission to operate vessels on the service which had been withdrawn from Lykes' subsidized services related to the right to operate certain vessels rather than the right to operate the service covered by this application. We must, therefore, determine whether Lykes' operation of the service has been such as to constitute an "existing service" within the meaning of section 605(c) of the Act.

Section 605(c) of the Act does not define an "existing service" and the legislative history of the section is silent as to what was intended by Congress. Examination of the construction of analogous statutes by the courts and administrative agencies would, therefore, appear to be proper.

Dismissing a complaint seeking to enjoin and set aside an order of the Interstate Commerce Commission granting an applicant a certificate of public convenience and necessity as a common carrier by motor vehicle under the so-called "grandfather clause" provisions of section 206(a) of the Motor Carrier Act of 1935<sup>6</sup> in *Chicago, etc., Ry. Co. v. United States*,<sup>7</sup> the Court said "The Commission has, in effect, ruled in similar proceedings that proof of actual operations as a common carrier to and from termini and some intermediate points on a regular route, coupled with evidence of a holding out of service and a willingness to serve all points on the route whenever shipments are offered, will justify a finding of bona fide operation to and between all points on the route."<sup>8</sup>

Discussing the question of "bona fide" operation in *Slagle Contract Carrier Application*,<sup>9</sup> the Interstate Commerce Commission said "Were

<sup>6</sup> Section 206(a) of the Motor Carrier Act of 1935, 49 Stat. 543, 551, provides that the Interstate Commerce Commission shall issue a certificate of public convenience and necessity without requiring further proof that public convenience and necessity will be served by an operator if the carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes within the territory for which application is made and has so operated since that time except as to interruptions of service over which the applicant or its predecessor in interest has no control.

<sup>7</sup> D. C. Minn., 50 F. Supp. 249 (1943).

<sup>8</sup> Page 253.

<sup>9</sup> 2 M.C.C. 127 (1937).

the operations openly conducted, without element of pretense, disguise, or concealment, and in such a manner as to indicate a real intent to conduct and maintain a transportation business? Operations so conducted are the 'bona fide' operations contemplated by the Act. Moreover, where applicant has established the fact of actual operations, not only conducted on the 'grandfather' date but continuously maintained thereafter, we think we may fairly assume that they were 'bona fide' unless the contrary is shown."<sup>10</sup>

We believe that the principles enunciated in the foregoing decisions are pertinent in determining whether Lykes' operation of the service in question has been such as to constitute an "existing service" within the meaning of section 605(c) of the Merchant Marine Act, 1936, as amended.

The facts are without dispute that prior to the requisition of the vessels by the Government early in 1942, Lykes made 35 sailings in the service for its own account. It is also undisputed that Lykes has made four sailings for its own account between the termination of Government requisition and the hearing in the proceeding. The record herein shows that Lykes carried approximately 295,000 tons of cargo on the voyages which it made for its own account, and there is no evidence that it ever refused cargo for which it had space. The record also shows that in addition to requesting financial aid for the operation of the service in 1944, Lykes stated to the trade on at least two occasions that the service which it was operating was of a permanent nature and that it intended to place newly constructed vessels in the service as soon as conditions permitted.

We find upon the record that Lykes' operation of the service covered by its application has been such as to constitute an existing service within the meaning of section 605(c) of the Act.

Under the provisions of section 605(c), we are precluded from granting financial aid to Bloomfield under the provisions of Title VI of the Act unless we determine that the service already provided by Lykes as an existing service is inadequate. We are unable to make such a determination. There is no evidence that the service which Lykes has been furnishing is inadequate. On the contrary, Bloomfield admits that the service furnished by Lykes is adequate. Furthermore, Lykes has been making, and proposes to continue to make, sailings in the number and at the frequency recommended by the "Report of the United States Maritime Commission on Essential Foreign Trade Routes and Services Recommended for United States Flag Operation."

In view of our determination that Lykes is conducting an existing and adequate service within the meaning of section 605(c), we deem it un-

necessary to consider the contentions of the applicants with respect to sections 601(a) and 809 of the Act.

#### NEED FOR FINANCIAL AID

We are authorized and directed by the provisions of section 601(a) of the Act to consider the application of any citizen of the United States for financial aid in the operation of vessels which are to be used in an essential service in the foreign commerce of the United States. We have stated as a matter of policy that we prefer that private United States-flag operation be conducted in the foreign trade without Government aid, but we will enter into contracts for the payment of operating-differential subsidies, in accordance with the provisions of the law, *whenever this is found necessary to maintain adequate United States-flag service on essential foreign trade routes.*<sup>11</sup> The subject applications must necessarily be examined in the light of such policy.

The only foreign-flag operator on Trade Route No. 15B at the present time is the Silver-Java Pacific Line (British-Netherlands), which re-entered the trade in the early part of this year. The record shows that Lykes carried 42,908 tons of cargo with five monthly sailings outbound between February and June 1946, and that the Silver-Java Pacific Line carried 43,193 tons of cargo with eight sailings during the first six months of 1946. The record also shows that during the period between April and June 1946, American-flag participation in export tonnage on this route showed a decided improvement over the tonnage carried for 1938—such vessels carrying 10 per cent more cargo than they carried during the entire year 1938. It appears from the record that all inbound cargo is carried by American-flag vessels, with the foreign-flag operator continuing round-the-world to U. S. Pacific ports for return to the Gulf.

In addition, Lykes states that it is prepared to continue to operate the service without a subsidy in the event that we conclude not to grant financial aid to any applicant at this time. Since the commencement of this proceeding, we have authorized the sale of three C-2 type vessels to Lykes under the Merchant Ship Sales Act of 1946, which vessels are available for operation on this service notwithstanding any provisions of Lykes' existing subsidy agreement. Such vessels will be equal, if not superior, to those employed by Lykes' foreign-flag competitor. Giving weight to the fact that Lykes is not a newcomer to the trade, having been in it for almost six years, we believe that it will be able to continue to provide adequate service without financial aid. The fact that Lykes'

<sup>11</sup> Report of the United States Maritime Commission on Essential Foreign Trade Routes and Services Recommended for United States Flag Operations.

interests are in the Gulf, and that it is established in this service, make it difficult for us to believe that it will abandon the service if operating conditions become difficult.

We have also authorized the sale of three C-2 type vessels to Bloomfield under the Merchant Ship Sales Act of 1946, which are available for unrestricted operation, including Trade Route No. 15B.

Under the circumstances, we conclude that financial aid under Title VI of the Act is not necessary at the present time to promote the foreign commerce of the United States on Trade Route No. 15B, and that both applications therefor should be denied.

#### CONTENTIONS OF INTERVENERS

The interveners contend jointly or severally that the applications should be denied or, in the alternative, that (1) Atlantic ports should be excluded from the service and (2) competition clauses similar to those contained in the subsidy agreements of the interveners should be inserted in any subsidy agreement covering the service. American South African Line, Inc., also contends that the Commission should obtain and exercise special supervision over sailings, rates, charges, classifications, tariffs, regulations, and practices of any unsubsidized operation in the service by an operator subsidized in other trades.

In view of our decision to deny both applications for financial aid, it is unnecessary to consider the contentions of the interveners except for the one referred to as being made by American South African Line, Inc., alone.

The contention is based on the argument that a subsidized operator on another route serving Trade Route No. 15B on an unsubsidized basis would be in direct competition with the interveners as subsidized operators on Trade Route 15A, and that there would be just as much reason for the Commission's taking a special power of supervision over such operation on Trade Route No. 15B as there would be if such operator were operating on a subsidized basis on Trade Route No. 15A.

We are unable to agree with the contention. We do not believe that an operator serving Trade Route No. 15B competes to any greater extent with an operator serving the same foreign ports from the Atlantic coast than an operator serving the East coast of South America from the Gulf competes with an operator serving the East coast of South America from the Atlantic.

We find and determine on the basis of the foregoing findings and all facts of record:

(1) That Lykes Bros. Steamship Co., Inc., is an existing operator

mission dated May 22, 1946, on "Essential Foreign Trade Routes and Services Recommended for United States Flag Operation", within the meaning of section 605(c) of the 1936 Act; and

(2) That financial aid under Title VI of the Act is not necessary at this time to promote the foreign commerce of the United States on Trade Route No. 15B; and

(3) That the applications of Bloomfield Steamship Company and Lykes Bros. Steamship Co., Inc., for financial aid under Title VI of the Act in the operation of vessels on Trade Route No. 15B be denied.

An appropriate order will be entered.

3 U. S. M. C.

## ORDER

At a Session of the UNITED STATES MARITIME COMMISSION,  
held at its office in Washington, D. C., on the 8th day of November  
A. D. 1946.

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No. S-4

BLOOMFIELD STEAMSHIP COMPANY AND LYKES BROS. STEAMSHIP CO.,  
INC.—APPLICATIONS FOR FINANCIAL AID IN THE OPERATION OF VES-  
SELS ON TRADE ROUTE NO. 15 B (UNITED STATES GULF TO SOUTH AND  
EAST AFRICAN PORTS)

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A public hearing having been held, and a full investigation of the  
matters and things involved having been made, upon consideration of  
the record; the Commission having made and entered of record a report  
containing its findings, conclusions, and decision, which is attached  
hereto and made a part hereof;

*It is ordered,* That the applications of Bloomfield Steamship Com-  
pany and Lykes Bros. Steamship Co., Inc., for financial aid under Title  
VI of the Merchant Marine Act, 1936, as amended, in the operation of  
vessels on Trade Route 15B be, and hereby are, denied.

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# UNITED STATES MARITIME COMMISSION

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No. S-5

OCEANIC STEAMSHIP COMPANY—APPLICATION FOR FINANCIAL AID IN THE OPERATION OF VESSELS ON FREIGHT SERVICES A AND B, TRADE ROUTE No. 27 (U. S. PACIFIC PORTS—AUSTRALIA, NEW ZEALAND, NEW GUINEA, AND SOUTH SEA ISLANDS)

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## REPORT OF THE COMMISSION

BY THE COMMISSION:

This proceeding involves an application filed by The Oceanic Steamship Company for financial aid under Title VI of the Merchant Marine Act, 1936, as amended, in the operation of vessels in freighter services between "U. S. Pacific Ports—Australia, New Zealand, New Guinea and South Sea Islands", designated as Freight Services 2(a) and 2(b), Trade Route No. 27, in "Report of the United States Maritime Commission on Essential Foreign Trade Routes and Services Recommended for United States Flag Operation," dated May 22, 1946.

After due notice to the public and all interested parties, a public hearing was held on this and other applications to provide transpacific services at Washington, D. C., on August 12, 13, 14, and 15, 1946, before examiners appointed by the Commission. This report deals only with the application of The Oceanic Steamship Company and the intervention of Isthmian Steamship Company, insofar as applicable to this particular application.

### THE APPLICANT AND ITS PROPOSALS

The Oceanic Steamship Company, hereinafter referred to as Oceanic, holds an operating-differential subsidy agreement with the Commission dated December 27, 1937, covering the operation of an express passenger and freight service between U. S. Pacific coast ports in California and ports in Australia, including the privilege of calling at Honolulu, Pago Pago (Samoa), Suva (Fiji), and ports in New Zealand. Applications filed by this company on April 30, June 10, and July 29, 1946, requested among other things (a) extension of the subsidy agreement,

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(b) resumption and modification of passenger service, and (c) modification of the subsidy agreement in order to provide for the operation of supplemental freighter services in the same general area served pre-war by the passenger vessels. The application under consideration at the hearing was confined to the establishment of the freight services.

Oceanic proposes to operate two freight services which conform to those set forth for Trade Route No. 27 in the Commission's Report on Essential Foreign Trade Routes, issued May 22, 1948, and may be briefly described as (a) from U. S. Pacific coast ports to Australian ports, with the privilege of calling at British Columbia and Pacific island ports along the route, and (b) from U. S. Pacific coast ports to New Zealand and Australian ports, with the privilege of calling at British Columbia and Pacific island ports lying along the route. While the two services appear to be similar, there is considerable difference. The first is designed for a service direct to Australia; the second, proceeding to New Zealand, then Australia, is primarily intended to carry American exports to New Zealand, then filling out any excess space with cargo for Australia. There is very little return cargo from New Zealand so vessels on that run would complete loading homeward in Australia.

The routes are described in the application as follows:

(a) From U. S. Pacific coast ports (with privilege of calling at British Columbia ports) to Australian ports of Sydney and/or Melbourne and/or Brisbane, with privilege of calling at Hawaiian Islands, Samoa, Fiji, and/or other Pacific islands lying along the same general route; and with the further privilege of extensions to other Australian ports as sufficient inducements offer.

(b) From U. S. Pacific coast ports (with privilege of calling at British Columbia ports) to Australian ports of Sydney and/or Melbourne and/or Brisbane, with privilege of calling at New Zealand ports, and/or Hawaiian Islands, Samoa, Fiji, or other Pacific islands lying along the same general route; and with the further privilege of extending services to other Australian ports as sufficient inducements offer.

Oceanic proposes eventually to operate 13 round voyages per year on *each* service but requests the privilege of operating one sailing per month over either of the two services or over the two services combined in such manner as will best accommodate cargo offerings. Because of uncertainties following the termination of the war and the reestablishment of trade relations, Oceanic believes that frequencies of sailings, at least in the initial stages, should be permitted on a basis which will provide for their increase or decrease as may be determined by traffic and economic conditions, subject to approval by the Commission. In order to maintain a minimum of a monthly sailing to Australia, with every other ship making the call at New Zealand, Oceanic has applied for the purchase of four C2-S-AJ1 type vessels. As cargo offerings warrant, it is stated that further ships will be added. If it is found

feasible to operate the full 26 sailings over the combined routes, eight vessels will probably be required.

It was developed at the hearing that The Oceanic Steamship Company (a wholly-owned subsidiary of Matson Navigation Company) and its predecessors, the Oceanic and Oriental Navigation Company, have been the only American-flag operator that has operated in this trade during the past 50 years. Oceanic and Oriental Navigation Company, which was equally owned by American-Hawaiian Steamship Company and Matson Navigation Company, operated in this service from 1928 to 1937 under an ocean mail contract, with Matson having charge of the Australian and New Zealand services as Managing Agent. When the mail contracts were terminated, Oceanic and Oriental did not request an operating-differential subsidy and the company was liquidated in 1938 partly because of poor cargo offerings, particularly homeward from Australasia. From 1938 until World War II there was no American-flag service of a strictly freight character, but during the war and until a few months ago, Matson operated a freighter service over the route as Berth Agent of the War Shipping Administration. In June 1946 the applicant began the operation of freight vessels chartered from the Government in this service, and since that time four sailings have been made from California ports to Australasia.

#### PRESENT AND EXPECTED FOREIGN COMPETITION

The record disclosed foreign competition on Route 27 as follows:

(1) Transatlantic Steamship Co. Ltd., a Swedish-flag service with approximately monthly sailings from British Columbia and Pacific ports to Australasia, using vessels of 14/17 knots speed and 9000 tons lifting capacity.

(2) Union Steamship Co., a British-flag service with sailings approximately every six weeks from British Columbia and Pacific coast ports to South Sea Islands and Australasian ports with five older vessels of approximately 11½ knots speed.

(3) Pacific Island Transport Lines, a Norwegian-flag service with one sailing scheduled at the time of the hearing. It is expected to maintain sailings at approximately three months' intervals serving Pacific coast ports and South Sea Island ports with one cargo vessel of approximately 11 knots speed.

(4) Canadian-Australian Line, a British-flag service not now operating but expected to enter Pacific coast—Australasian service with an express passenger and freight vessel or vessels.

(5) W. R. Carpenter Over-Seas Shipping Ltd., a British-flag service, expected to incorporate service late in 1946 with sailings every two or three months from British Columbia ports to Australasia via Fiji, with three ten-knot freight vessels of substantial capacity.

There is, in addition, indirect competitive foreign-flag service:

(1) American-Australian Steamship Line, a British-flag service maintaining a-p-3 U. S. M. C.

proximately monthly sailings from Atlantic ports to Australasian ports with vessels of 15/16 knots speed and 8/9000 tons lifting capacity.

(2) Port Line Ltd., a British-flag service maintaining approximately monthly sailings from Atlantic ports to Australasian ports with vessels of 16 knots speed and 8/9000 tons lifting capacity.

(3) Bank Line, a British-flag service maintaining approximately monthly sailings from United States Gulf ports to Australasian ports with large modern vessels of approximately 14 knots speed.

#### CONFERENCE PARTICIPATION

Oceanic is a member of Pacific Coast-Australasian Tariff Bureau and Australasian-New Zealand and South Sea Islands-Pacific Coast Conference. Tariffs of both conferences are on file with the Commission.

#### OPPOSITION

Isthmian objected to permitting subsidized vessels to serve the Hawaiian Islands on the ground that this is a domestic transportation served for many years by Isthmian and Matson Navigation Co. without subsidy. Oceanic is a subsidiary of Matson, and section 605(a), Merchant Marine Act, 1936, as amended, provides for reduction of subsidy for that part of the voyage between ports of the United States and any of its possessions, which provision would seem to meet the objection voiced by Isthmian.

#### NEED FOR FINANCIAL AID

If the proposed freight service is to be reestablished on a long-range permanent basis, government aid will be necessary. Foreign flag competition is extensive and the cost of operating under a foreign flag is considerably less than under the American flag. The records generally support the applicant's testimony as to this.

If, over a ten-year period, the profits to the owner exceed 10% of capital necessarily employed in the business, computed annually, 50% of such profits accrue and are payable to the Commission at the end of the recapture period, provided that such payment shall not exceed the total subsidy payments during the recapture period. The balance of the excess profits are deposited in statutory reserve funds for use in the advancement of the operator's replacement program and for transfer to general funds when and if needed in the operation of the subsidized service.

If, during any temporary period, there are abnormally high profits that help to produce more than a reasonable return to the operator for

any recapture period, the recapture and trust fund provisions protect the Government's interest and at the same time guarantee the use of the operator's resources, after dividends mentioned, in the development and maintenance of the subsidized service on a permanent basis.

#### AWARD OF SUBSIDY CONTRACT

We have found and determined:

(1) That Freight Services 2(a) and 2(b) within Trade Route 27, as described in the Report of the Commission dated May 22, 1946, on "Essential Foreign Trade Routes and Services Recommended for United States Flag Operation", are essential within the meaning of section 211 of the Merchant Marine Act of 1936, as amended.

(2) That, while Oceanic is the established American-flag operator with respect to Service 1 (passenger and freight service) of Trade Route 27, there now is no established American-flag operator in Service 2 (freight service) of Trade Route 27, under the provisions of section 605(c) of the 1936 Act.

(3) That The Oceanic Steamship Company possesses the ability and experience, financial resources, and other qualifications necessary to conduct the proposed operation so as to meet competitive conditions and promote foreign commerce.

(4) That the granting of the aid applied for by The Oceanic Steamship Company under Title VI of the Act is necessary to place the proposed operation on a parity with foreign competitors and will carry out the purposes and policy of the 1936 Act.

(5) That the application of The Oceanic Steamship Company for financial aid in the operation of vessels on Freight Services (a) and (b), Trade Route 27, be approved, subject to compliance with the applicable provisions of Title VI of the Act and such terms and conditions as may be imposed by the Commission, with a schedule of not less than 10 nor more than 26 sailings per year.

An appropriate order will be entered.

3 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION,  
held at its office in Washington, D. C., on the 30th day of December  
A. D. 1946.

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No. S-5

OCEANIC STEAMSHIP COMPANY—APPLICATION FOR FINANCIAL AID IN THE  
OPERATION OF VESSELS ON FREIGHT SERVICES A AND B, TRADE ROUTE  
NO. 27 (U. S. PACIFIC PORTS—AUSTRALIA, NEW ZEALAND, NEW  
GUINEA, AND SOUTH SEA ISLANDS)

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A public hearing having been held, and a full investigation of the  
matters and things involved having been made, upon consideration of  
the record, the Commission having made and entered of record a report  
containing its findings, conclusion, and decision, which is attached hereto  
and made a part hereof;

*It is ordered,* (1) That the application of The Oceanic Steamship  
Company for financial aid under Title VI of the Merchant Marine Act,  
1936, as amended, in the operation of vessels in Freight Services (a) and  
(b), Trade Route 27, be approved, and that, subject to compliance with  
the applicable provisions of Title VI of the Act and with such terms  
and conditions as may be imposed by the Commission, a contract be  
entered into with such Company for the payment of an operating-  
differential subsidy for the operation of vessels in such route.

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# UNITED STATES MARITIME COMMISSION

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No. S-6

AMERICAN SOUTH AFRICAN LINE, INC., MISSISSIPPI SHIPPING COMPANY, INC., AND SEAS SHIPPING COMPANY, INC.—APPLICATIONS FOR FINANCIAL AID IN THE OPERATION OF VESSELS ON TRADE ROUTE No. 14 (UNITED STATES ATLANTIC AND GULF PORTS AND WEST COAST OF AFRICA)

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## REPORT OF THE COMMISSION

### BY THE COMMISSION:

This proceeding involves applications filed by the above-mentioned companies for financial aid under Title VI of the Merchant Marine Act of 1936, as amended, in the operation of vessels in a service between "U. S. Atlantic and Gulf ports (Maine-Texas, inclusive), West Coast of Africa (from Southern Border of French Morocco to Cape Frio) and Madeira, Canary, Cape Verde and other Islands adjacent to the West African Coast," designated as Trade Route No. 14 in "Report of the United States Maritime Commission on Essential Foreign Trade Routes and Services Recommended for United States Flag Operation," dated May 22, 1946. After due notice to the public and all interested parties, a public hearing was held on the applications at Washington, D. C., on September 4, 1946, before examiners appointed by the Commission. Following the hearing, briefs were filed by all applicants.

### HISTORY OF THE ROUTE

Service from United States ports to West Africa, approximating Trade Route No. 14, as now constituted, was established by the United States Shipping Board in 1921—A. H. Bull & Company as Managing Agent for the Government, operated the route designated as American West African Line, and service was provided from the Atlantic and Gulf ports until 1928. In 1928, this service and the vessels operating therein were sold to the American West African Line, a wholly-owned subsidiary of the Barber Company, Inc., and Mail Contract FOM 17, operating from Atlantic ports to West Africa, was executed on August

30, 1928, with this company. Mail Contract FOM 47, operating from New Orleans to West Africa was executed on March 3, 1930. These contracts were cancelled in accordance with the Merchant Marine Act of 1936, and settlement with the operator was effected in June 1937. No subsidy has been paid on the route since that time.

During 1938-1940, inclusive, American West African, using seven American-flag vessels, handled the following tonnage:

Year	Atlantic		Gulf		Totals	
	Inbound	Outbound	Inbound	Outbound	Inbound	Outbound
1938. ....	64,883	42,660	.....	30,484	64,883	73,144
1939. ....	72,072	46,335	25,470	26,498	97,542	72,833
1940. ....	129,358	76,222	12,400	15,712	141,758	91,934
Total. ....	266,313	165,217	37,870	72,694	304,183	237,911

During 1941, American West African operated five American-flag vessels and certain foreign-flag vessels, with carryings reported as follows:

Year	Atlantic		Gulf		Total	
	Inbound	Outbound	Inbound	Outbound	Inbound	Outbound
1941. ....	<sup>1</sup> 200,117	<sup>1</sup> 149,335	6,598	.....	207,715	149,335
Totals 1938-41.	466,430	314,552	44,468	72,694	510,898	387,246

<sup>1</sup> Of this total of 200,117 tons inbound, 174,592 tons were carried by American-flag vessels. Of this total of 149,335 tons outbound, 142,178 tons were carried in American-flag vessels.

Two sailings were made by American West African Line from U. S. Atlantic ports to West Africa and return in 1942.

#### THE APPLICANTS AND THEIR PROPOSALS

##### *American South African Line, Inc.*

The American South African Line, Inc. (hereinafter referred to as "American South African"), is a corporation organized under the laws of the State of New York. Its stock is held principally by residents of New York and adjacent communities. It has operated generally in the route now known as Trade Route 15-A—U. S. Atlantic ports—Key West, inclusive, to South and East Africa (Cape Frio—Cape Guardafui and Madagascar) since 1926. This service was established by the United States Shipping Board in 1922, and was operated from 1922-1925 by the Mallory Transport Lines as Managing Operators. American South African purchased five vessels and the service from the United States Shipping Board in January 1926. A mail contract covering a period of 10 years was awarded on this route to American South African in October 1928. This contract was terminated in June 1937, 3 U. S. M. C.

and a temporary operating-differential subsidy agreement was executed under provisions of the Merchant Marine Act of 1936, which continued in effect until August 31, 1938. In August 1938, following a public hearing, the Commission determined that it was in order to execute two operating-differential subsidy agreements applicable to this route, services to be provided by both American South African and the Seas Shipping Company, Inc. (another applicant in this case). However, American South African did not apply for an operating-differential subsidy agreement until early in 1940. Such an agreement was executed on April 23, 1940. This service is presently operated with five owned and eight chartered vessels.

American South African requests a subsidy agreement for operating a service between U. S. Atlantic-Gulf and West African ports, which will provide for a minimum of 18 annual sailings without any maximum being established. Actually it proposes to start the service on the basis of 22 annual sailings. It will call at 16 West African ports regularly. It does not propose a scheduled service to the Gulf, stating that its survey does not indicate that such a service is justified. It proposes to call at the Gulf only when a sufficient quantity of paying cargo can be obtained. The service would be provided by five C2 vessels, the purchase of which has been applied for under the Merchant Ship Sales Act of 1946.

In addition to the 16 ports which American South African proposes to call at regularly, it proposes to establish two feeder services; one based on Monrovia and one based on Lagos. The company's survey indicates that there are 23 ports in the Monrovia-Lagos territory which require service, but due to the physical characteristics, it has been found very unsatisfactory and uneconomical to try to serve them with large vessels. The Monrovia-based feeder service will have two parts, a shuttle service between Marshall and Monrovia, using two LCT type vessels, and a service to the north as far as Freetown and to the south as far as Cape Palmos, with FS-type vessels. This feeder service would add seven ports to the ports regularly served by ocean-going vessels. The Lagos-based feeder service will be operated with three FS-type vessels. It will serve regularly four surf ports of importance to the west of Lagos, and 12 shallow draft ports to the east in the Niger Delta, which will add 16 important ports to the list of ports having regularly-scheduled liner service. Service will thus be supplied to a total of 39 ports. It is American South African's present plan to place vessels operating in feeder service under the Liberian flag.

American South African also proposes to separate its liner service into a northern and southern service, with vessels sailing from Atlantic ports alternately in the two services. The northern service will call



regularly at the Azores and Canary Islands, thence to Dakar, continuing along the coast to Douala, returning to Dakar, thence direct to U. S. Atlantic ports. The southern service will proceed from U. S. Atlantic ports to Monrovia, thence along the coast to Lobito, returning via the same route to U. S. Atlantic ports.

American South African states that if the trade route is divided and a direct service is operated between the U. S. Gulf and West Africa, its application should be understood to be for service from Atlantic ports only. The division of the route, if approved, will not reduce the number of sailings proposed by the applicant.

*Seas Shipping Company, Inc.*

The Seas Shipping Company, Inc. (hereinafter referred to as "Seas"), is a corporation organized under the laws of the State of New York. Its stock is held principally by residents of New York. It has been in business for 26 years, and since June 1935 has operated a service from U. S. Atlantic ports to South and East Africa, approximately the present Trade Route 15-A, U. S. Atlantic ports-Key West, inclusive, to South and East Africa (Cape Frio-Cape Guardafui and Madagascar). In August 1938 an agreement was entered into with the Commission providing for payment of operating-differential subsidy on this route. It is presently operating four owned and 10 chartered vessels in this service.

Seas states definitely that, in its opinion, Trade Route No. 14 should be separated into two services; that is, U. S. Atlantic/West Africa service and U. S. Gulf/West Africa service. It is, however, an applicant for the combined service or for each individual service if separated, as suggested. Seas proposes to institute service on Trade Route No. 14, as presently constituted, with 18 sailings per year, of which six sailings would proceed from New York to Gulf ports to discharge and load cargo and return to New York to complete outward loading.

On the direct service from Atlantic ports a turn-around of 96 days is contemplated. This is based on proposed calls at 11 principal ports and other smaller ports as cargo offers. Application for purchase of five C2 vessels under the provisions of the Merchant Ship Sales Act of 1946, has been filed by Seas to cover this service in the event a subsidy contract is awarded. Seas proposes, if the trade route is separated, to operate 18 sailings per year from U. S. Atlantic ports direct to the West coast of Africa, and six sailings per year from U. S. Gulf ports to ports on the West coast of Africa. If proposals for operating the two services are approved, it will apply for the purchase of three additional C2-type vessels to serve the U. S. Gulf ports-West Africa route, using the five  
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C2 vessels already applied for in the Atlantic service. Seas stated that it is an Atlantic operator and that while it will operate a combined service as presently constituted, or either of the services, if separated, it is primarily interested in the Atlantic operation.

*Mississippi Shipping Company, Inc.*

The Mississippi Shipping Company, Inc. (hereinafter referred to as "Mississippi"), is a corporation organized under the laws of the State of Louisiana. Its stock is held principally by residents of the Gulf territory. This company was formed in 1919 for the purpose of operating vessels under an agency agreement for the United States Shipping Board in trade between U. S. Gulf ports and the East coast of South America. In 1929 it purchased 12 ships and the service, which was known at that time as "Gulf Brazil River Plate Line." The service was operated from the date of purchase until 1937 under an ocean mail contract, and has been operated since that time under an operating-differential subsidy agreement. It is presently operating eight owned and three chartered vessels in this service.

Mississippi proposed to inaugurate a schedule of 26 round voyages per year from Gulf ports via Atlantic ports, thence to the West coast of Africa, returning to Atlantic ports, thence to Gulf ports. Contingent application for the purchase of six C1-type vessels for operation in this service has been filed under the Merchant Ship Sales Act of 1946.

Mississippi strongly urges that this route be divided into a U. S. Atlantic/West African service and a U. S. Gulf/West African service. If such a division is made, it is an applicant for the U. S. Gulf/West African service *only*. It proposes to make 12 voyages annually in the service and requests permission, if the route is divided and it is the successful applicant, to call at St. Thomas for fuel and at Para and Pernambuco, Brazil, for the purpose of discharging cargo from U. S. Gulf ports. It proposes to return direct from West Africa to the Gulf. Mississippi states that considerable traffic can be developed between U. S. Gulf ports and northern Brazilian ports. It further points out that this territory is not adequately served at present. It believes that a round voyage will require about 88 days. The applicant proposes to provide this service with three C1A vessels.

#### Foreign Competition

Prior to World War II, service between U. S. Atlantic and Gulf ports and West Africa was provided by the American West African Line (then operating U. S.-flag vessels) and Elder Dempster Line, Ltd. (a  
3 U. S. M. C.

British-flag operator). Direct service between U. S. Atlantic ports and West Africa is presently provided on a monthly basis by the Elder Dempster Co. (a British-flag company). Semi-monthly service is being operated by the Barber-West African Line. This is a combination of three Norwegian companies, together with the Barber Steamship Company of New York. The agreement under which they are operating provides that Barber will furnish one vessel and the associate companies a minimum of five vessels. Barber has, so far, contributed one vessel of U. S. registry (an old World War I type) and the Norwegian companies have contributed five modern fast vessels. The agreement provides for service between U. S. Atlantic and Gulf ports, ports on the West coast of Africa and adjacent islands.

No United States or foreign-flag liner services are presently operating between the U. S. Gulf and West Africa. However, there is an inbound tramp movement to the Gulf from West Africa. During the second quarter of 1946 this movement amounted to 18,100 tons.

Lloyd Brasileiro is presently operating liner service from U. S. Gulf ports to North Brazilian ports. During July, August, and September 1946, this line made four sailings, carrying a total of 5,000 tons of cargo for North Brazilian ports.

The only direct foreign liner competition from U. S. Gulf ports to West Africa, therefore, is on that portion of the proposed route which will operate to northern Brazilian ports. However, to the extent that traffic could move by a Gulf service, the foreign flag competition from the Atlantic ports is considered as indirect competition with Gulf port services.

#### SEPARATION OF ATLANTIC AND GULF SERVICES

While applying for the trade route as presently established, each applicant was of the opinion that better results would be obtained if the route were divided into two services. It was the consensus that the trade route should be separated into (a) a service from the U. S. Atlantic ports to the West coast of Africa, and (b) a service from the U. S. Gulf ports to the West coast of Africa.

With foreign competitors operating regular services direct from North Atlantic ports, an American-flag operator combining the two operations would be obliged to call at the North Atlantic to discharge, then proceed to the Gulf to discharge and load, after which it would have to return to North Atlantic ports for final loading, thereby weakening its competitive position with foreign-flag vessels. It is estimated that the inclusion of Gulf ports in a combined service will add a minimum of 17 days to the voyage time. This would materially increase the operating expense of the individual voyage, while at the same time it

would give only an inferior service to the Gulf. Testimony at the hearing indicated that substantial cargo will move between U. S. Gulf ports and West Africa provided satisfactory service is offered. A combination U. S. Atlantic and Gulf service would not provide such a service.

After considering all of the facts adduced at the hearing, we find that the factors favoring separate operations from the Gulf and Atlantic outweigh those factors favorable to a combined operation of the two services.

#### Ability of Route to Support More Than One American-Flag Operator

Evidence was introduced at the hearing to show that exports from the United States to West Africa for the year 1945 totaled 229,753 tons and imports to the United States for the same period totaled 685,285 tons. The bulk of the import cargo is of the type that would not ordinarily move in liner service. It is obvious that the route will not support all applicants, and if the route is divided as proposed, the U. S. Gulf-West Africa service, with the aid of cargo for Northern Brazilian ports, will support only one applicant. The cargo moving between U. S. Atlantic ports and West African ports should support one of the applicants, but it is not believed it would support two of the applicants.

#### Need for Financial Aid

The Commission, in accordance with section 211 of the 1936 Act, as amended, has determined that service by U. S.-flag vessels on this route is essential.

American South African states that it might be possible for an American-flag line to establish itself in the U. S.-West African trade at the present time without subsidy and continue so long as present conditions prevail. It stated that it would be willing to operate this service without a subsidy in the beginning, but would not give any assurance of a long-term operation without subsidy.

It further contended that the competition would be keen, the task difficult, and that an American-flag operator should be granted aid provided for in the 1936 Act for the development and maintenance of this essential foreign service on a long-range basis.

Seas states that it is definitely of the opinion that an operating subsidy will be necessary and offers no assurance of operating either or both of the services without a subsidy.

Mississippi states that an operating subsidy will be necessary in any event and particularly if the service is divided.

The purpose of an operating subsidy is to equalize certain operating expense items of the American-flag operator with the corresponding expense items of its foreign competitor or competitors, and the necessity therefor is not determined on a profit basis. Irrespective of disparity in operating costs between American- and foreign-flag vessels, it should be understood, however, that the Commission would not pay a subsidy to an American-flag operator for operating an essential foreign service that could and would be adequately maintained on a long-range basis by an American-flag operator without subsidy.

An American-flag operator in the average foreign service will experience good and bad years and no matter what the outlook might be at a particular time the results over a long period probably will prove to be far less or substantially greater than anticipated. Therefore, in order to avoid the possibility of excess profits accruing to the shipowner by reason of Government aid extended, the recapture clause was inserted in the Act, which provides for the accrual to the Government of 50 percent of the profits, if any, in excess of 10 percent on capital necessarily employed in the business, computed annually, and averaged over each 10-year period, provided the refund to the Government shall not exceed the total subsidy payments during the 10-year recapture period.

All earnings in excess of 10 percent of capital necessarily employed are required to be deposited annually in the reserve funds. The 50 percent of such excess earnings which are subject to recapture, under normal conditions, remains in the special reserve fund until the end of the recapture period, at which time it becomes due and payable to the Government. The other 50 percent in excess of 10 percent of capital necessarily employed becomes available, subject to Commission approval, for ship mortgage payments, the purchase of new vessels, and for transfer to the operator's general fund when and if needed in the operation of its subsidized services.

No American-flag operator is now operating on Trade Route No. 14. If the Government is to extend aid to any American-flag operator in establishing and maintaining a service to West African ports on a long-range basis, now is the opportune time to do so, in view of the advantages accruing to the Government and to the operator in the development of this service through the operation of the recapture and trust fund provisions of the 1936 Act. Therefore, in furtherance of the long-range program enunciated in the Merchant Marine Act of 1936, as amended, we find that operating-differential subsidy contracts should be awarded to American-flag operators in the development and operation of Trade Route No. 14 on a permanent basis.

## Award of Subsidy Contracts

We find that all of the applicants possess the ability, experience, financial resources, and other qualifications necessary to conduct the proposed operation. We have also found that each of the services as divided will not support more than one U. S.-flag operator and that financial aid will be required for the long-range operation. We are, therefore, confronted with the problem of selecting one operator for each of the services.

American South African contends that where there are several applicants for a single subsidy, the applicant who proposes a plan of operation developed and designed to meet the special needs of the services which it seeks to enter should prevail over applicants who propose only what the Commission has suggested for the services. The applicant cites in support of its contention the fact that it has made an exhaustive study of the U. S.-West African trade and that the other applicants have given little, if any, attention to the West African end of the route. Although we do not agree that applicant is entitled to preference as such, the scope of the proposed plan for operation of the service should be considered in selecting an operator where there are several applicants.

Seas states that the domestic community primarily interested in the route is New York, and that since it is a New York corporation it enjoys the support of New York and the general North Atlantic area and is entitled to preference under the provisions of section 809 of the Act. It does not appear that Seas has the support of New York and the North Atlantic area to any greater extent than American South African, which is also a New York corporation.

Seas also contends that it is entitled to preference over the other applicants under the provisions of section 601 (a) (3) of the Act because of its record of performance as a shipping company under the Merchant Marine Act, 1936, as amended. Although Seas has a creditable record in its operation under the 1936 Act, we do not believe its performance has been superior to that of the other applicants.

Mississippi contends that it is the only one of the three applicants that seriously proposes an adequate service between U. S. Gulf ports and the West coast of Africa. It points to American South African's statement that it has no intention of operating vessels to or from Gulf ports unless offered substantial shipments which justify special calls, and to Seas' statement to the effect that it is a North Atlantic operator and that it made application for both services primarily for the purpose of meeting the Commission's Trade Route Committee's requirements. We have concluded that if the route is divided into separate services

from the Atlantic and Gulf to West Africa, sailings in excess of those proposed by American South Africa and Seas will be required in the proper development of the service.

We have concluded that the type of operation, with feeder service for the West African ports, proposed by American South African is superior to that proposed by other applicants and should produce a greater volume of traffic; that this applicant should receive financial aid in the operation of the U. S. Atlantic-West Africa service.

Mississippi is the only applicant who prefers to confine its operation to a service from U. S. Gulf ports only. It has the support, financial and otherwise, of the domestic communities primarily interested, which gives it preference under the 1936 Act. We have concluded that this applicant should receive financial aid in the operation of the U. S. Gulf-West Africa service.

We find and determine on the basis of the foregoing findings and all facts of record:

1. That, Trade Route No. 14 should be divided into two services:

*Service No. 1.*—Between U. S. Atlantic ports and ports on the West coast of Africa (from southern border of French Morocco to Cape Frio, including Madeira, Canary, Cape Verde, and other islands adjacent to the West African coast), with a minimum of 18 sailings per annum.

*Service No. 2.*—Between U. S. Gulf ports and ports on the West coast of Africa (from the southern border of French Morocco to Cape Frio), with the privilege of calling at St. Thomas and at North Brazilian ports (Para-Pernambuco) outbound, with a minimum of 12 sailings per annum.

2. That Trade Route No. 14, as divided into Service No. 1 (from U. S. Atlantic ports to West Africa and Madeira, Canary, Cape Verde Islands) and Service No. 2 (from U. S. Gulf ports to West African ports), is an essential trade route within the meaning of section 211 of the Merchant Marine Act of 1936, as amended.

3. That the American South African Line, Inc., possesses the ability, experience, financial resources, and other qualifications necessary to conduct the proposed operation so as to meet competitive conditions and promote foreign commerce in the operation of Service No. 1, Trade Route No. 14.

4. That the Mississippi Shipping Company, Inc., possesses the ability, experience, financial resources, and other qualifications necessary to conduct the proposed operation so as to meet competitive conditions and promote foreign commerce in the operation of Service No. 2, Trade Route No. 14.

5. That the granting of the aid applied for by the American South African Line, Inc., under Title VI of the Merchant Marine Act of 1936, as amended, is necessary to place the proposed operation of Trade Route No. 14, Service No. 1, on a parity with those of foreign competitors and will carry out the purposes and policy of the Act.

6. That the granting of the aid applied for by the Mississippi Shipping Company, Inc., under Title VI of the Merchant Marine Act of 1936, as amended, is necessary to place the proposed operation of Trade Route No. 14, Service No. 2, on a parity with those of foreign competitors and will carry out the purposes and policy of the Act.

7. That the application of Seas Shipping Company, Inc., for financial aid under Title VI of the Merchant Marine Act of 1936, as amended, for operation of vessels in Trade Route No. 14, shall be denied.

An appropriate order will be entered.

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## ORDER

At a Session of the UNITED STATES MARITIME COMMISSION,  
held at its office in Washington, D. C., on the 9th day of January  
A. D. 1947.

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### No. S-6

AMERICAN SOUTH AFRICAN LINE, INC., MISSISSIPPI SHIPPING COMPANY,  
INC., AND SEAS SHIPPING COMPANY, INC.—APPLICATIONS FOR FINAN-  
CIAL AID IN THE OPERATION OF VESSELS ON TRADE ROUTE NO. 14  
(UNITED STATES ATLANTIC AND GULF PORTS AND WEST COAST OF  
AFRICA)

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A public hearing having been held, and a full investigation of the  
matters and things involved having been made, upon consideration of  
the record, the Commission having made and entered of record a report  
containing its findings, conclusions, and decision, which is attached  
hereto and made a part hereof;

*It is ordered*, 1. That Trade Route No. 14, as now constituted, be di-  
vided into two services:

*Service No. 1.*—Between U. S. Atlantic ports and ports on the  
West coast of Africa (from southern border of French Morocco to  
Cape Frio, including Madeira, Canary, Cape Verde, and other is-  
lands adjacent to the West African coast), the service to be  
instituted with a minimum of 18 sailings per annum.

*Service No. 2.*—Between U. S. Gulf ports and ports on the West  
coast of Africa (from the southern border of French Morocco to  
Cape Frio), with the privilege of calling at St. Thomas and at North  
Brazilian ports (Para-Pernambuco) outbound, with a minimum of  
12 sailings per annum.

2. That application of American South African Line, Inc., for finan-  
cial aid under Title VI of the Merchant Marine Act of 1936, as  
amended, in the operation of vessels on Service No. 1, Trade Route No.  
14, be approved, and that, subject to compliance with the applicable  
provisions of Title VI of the Act and with such terms and conditions as  
may be imposed by the Commission, a contract be entered into with  
such company for the payment of an operating-differential subsidy for  
the operation of vessels in such service.

3. That application of Mississippi Shipping Company, Inc., for financial aid under Title VI of the Merchant Marine Act of 1936, as amended, in the operation of vessels on Service No. 2, Trade Route No. 14, be approved, and that, subject to compliance with the applicable provisions of Title VI of the Act and with such terms and conditions as may be imposed by the Commission, a contract be entered into with said company for the payment of an operating-differential subsidy for the operation of vessels in such service.

4. That application of Seas Shipping Company, Inc., for financial aid under Title VI of the Merchant Marine Act of 1936, as amended, for operation of vessels in Trade Route No. 14, be denied.

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# UNITED STATES MARITIME COMMISSION

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No. S-7

UNITED STATES LINES COMPANY ET AL.<sup>1</sup>—APPLICATIONS FOR FINANCIAL AID IN THE OPERATION OF VESSELS ON TRADE ROUTES NOS. 12, 17, 22, 28, 29, AND 30

and

GRACE LINE, INC.—APPLICATION FOR PERMISSION TO OPERATE ON FREIGHT SERVICE F OF TRADE ROUTE No. 29, WITHOUT SUBSIDY

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## REPORT OF THE COMMISSION

BY THE COMMISSION:

*Introductory*—This proceeding involves applications filed by all of the applicants here listed, in connection with the operation of vessels in certain services of trade routes described in "Report of the United States Maritime Commission on Essential Foreign Trade Routes and Services Recommended for United States Flag Operation" (hereinafter referred to as the "Report"), approved May 20, 1946, and released May 22, 1946.

The last-named applicant, Grace Line Inc., presently subsidized in other routes, has filed an application to operate a service in Trade Route No. 29 without government aid, permission of the Commission being necessary under the terms of its operating-differential subsidy agreement relating to other routes.

After due notice to the public and all interested parties, a public hearing was held on the applications at Washington, D. C., on August 12, 13, 14 and 15, 1946, before examiners appointed by the Commission. Following the hearing, briefs were filed by all applicants.

The Commission having determined that service by U. S.-flag vessels on the trade routes involved is essential, a detailed discussion of the history of such trade routes is considered unnecessary in this report.

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<sup>1</sup> American President Lines, Ltd., American Export Lines, Inc., Lykes Bros. Steamship Co., Inc., American-Hawaiian Steamship Company, American Mail Line, Ltd., Olympic Steamship Company, and States Steamship Company.

The "Report" was issued by the Commission pursuant to section 211 of the 1936 Act, and all of the trade routes involved in these applications have been listed in the "Report" as "Essential Foreign Services." The findings incorporated in the "Report" were based on *long-range* considerations.

The "Report" further stated:

The Maritime Commission would prefer that private United States flag operation be conducted in the foreign trade without government aid but it will enter into contracts for the payment of operating-differential subsidies, in accordance with the provisions of the law wherever this is found necessary to maintain adequate United States flag service on essential foreign trade routes. It is prepared to grant such a subsidy even though one or more United States flag lines are already in the trade, if it finds that it is necessary to provide adequate service by vessels of United States registry.

Section 605(c) imposes certain limitations on the Commission with respect to the granting of financial aid under Title VI of the Act for (1) the operation of vessels which would be in addition to the service already provided by vessels of United States registry, and (2) the operation of vessels on a service served by two or more citizens of the United States with vessels of United States registry.

The present applications must be examined in the light of the policy expressed in the "Report" and the limitations imposed by section 605(c).

This report is being arranged by trade routes, and the applications relating to a service or services of the trade route involved will be discussed thereunder.

## PART I

### *Trade Route No. 12 (As Described in the "Report")*

(U. S. Atlantic ports (Maine-Key West inclusive)—Far East (Philippine Islands, Manchuria, Korea, China, Japan, U. S. S. R. in Asia, French Indo-China, Formosa and Siam.)

#### 1. *Freight Service A:*

*Itinerary:* New York with calls at Philadelphia, Baltimore and Hampton Roads as traffic offers via Panama Canal, Honolulu to Yokohama, Osaka, Kobe, Shanghai, Hong Kong, Manila and return via same route to U. S. Atlantic ports.

*Sailing Frequency:* 26 fortnightly sailings per year.

*No. and Type of Ships:* 7 C3-type freighters.

NOTE.—To be coordinated with Round-the-World service out of New York to provide weekly sailings.

**2. Freight Service A-1:**

*Itinerary:* New York, Philadelphia, Baltimore, Hampton Roads, Savannah, Jacksonville, via Panama Canal to Japanese, and Chinese ports as traffic offers, Philippine Islands, to load home-ward at Manila and Philippine outports for U. S. Atlantic ports via Panama Canal with occasional calls at Japan and China as inward traffic offers; with privilege of calling at Hawaii and U. S. S. R. in Asia for loading and discharging.

*Sailing Frequency:* 12 monthly sailings per year.

*No. and Type of Ships:* 4 C2 or other suitable type freighters.

**Freight Service B:**

*Itinerary:* New York (calls at other Atlantic ports as traffic offers) via Panama Canal to Manila, Hong Kong, Philippine outports and return direct to U. S. Atlantic with privilege of loading and discharging traffic at French Indo-China and Siam.

*Sailing Frequency:* Every 4 weeks (13 sailings per year).

*No. and Type of Ships:* 3 AP-3 or other suitable type freighters.

NOTE.—To be coordinated with Services C-1, C-2 and C-3 on Trade Route 17 to provide weekly sailings from New York to Manila and Hong Kong.

**United States Lines Company (Trade Route No. 12)**

*Present Service and Proposal:* The United States Lines Company is a corporation organized under the laws of the State of New York. Its stock is listed on the New York Stock Exchange and widely distributed. It is operating under subsidy contracts between North Atlantic ports, the United Kingdom, certain European Continent ports, and in addition, operates services to the Far East and Australasia, pursuant to the terms of an operating-differential subsidy agreement which was entered into between the United States Lines Company and the Commission for operation of the American Pioneer Line under date of July 30, 1940. The operating-differential subsidy agreement covers two routes, referred to therein as "Service A, Far East Service", and "Service C, Atlantic and Gulf Australian Service." The applicant is concerned with the extension of its Far East Service A only, described in its operating agreement as follows:

**"Service A—Far East Service (herein called 'Service A'):**

Between United States Atlantic ports via Panama Canal and ports in Philippine Islands, Hong Kong, China, with the privilege of calling at port or ports in Hawaii, Japan, Manchuria, Russia in Asia, French Indo-China, also North Atlantic Canadian ports."

Sailings as described in the agreement are as follows:

"Service A—Not less than nine (9) nor more than twelve (12) outward sailings per year from United States Atlantic ports."

The above-described service is broad enough to cover Services A-1 and B of Trade Route No. 12, described in the "Report," although the United States Lines Company has operated a service that more nearly parallels Service B.

Applicant requested the following revision of the above service on Trade Route No. 12:

*"Itinerary:*

*Outbound*—U. S. Atlantic ports via Panama Canal, Los Angeles, San Francisco to Yokohama, Kobe, Shanghai, Hong Kong, Manila.

*Inbound*—Manila, Hong Kong, Shanghai, Formosa to San Francisco, Los Angeles via Panama Canal to New York and other U. S. Atlantic ports, as cargo warrants.

With privilege of calling at other port or ports in Hawaii, Philippine Islands, Japan, China, Manchuria, Russia in Asia, French Indo-China and North Atlantic Canadian ports as cargo offers.

*Sailing Frequency:* Every four weeks."

Applicant also requested a service described as follows:

*"Itinerary:*

*Outbound*—U. S. Atlantic ports via Panama Canal, Los Angeles, San Francisco to Manila, Singapore, Penang.

*Inbound*—Penang, Singapore via Suez Canal or Cape of Good Hope, or via the Philippines, China, Japan and Panama Canal if cargo warrants, to New York and other U. S. Atlantic ports.

With privilege of calling at North Atlantic Canadian ports and at port or ports in Hawaii, Philippine Islands, French Indo-China, Straits Settlements, Netherlands East Indies and Siam as cargo offers.

*Sailing Frequency:* Every four weeks."

The last-described service conforms generally to Service C-1 in Trade Route No. 17. Applicant made it clear at the hearing that its primary interest was in obtaining an increase in sailings from 12 to 26 per year in its Far East service and that the request for additional sailings therefor was not contingent upon its being granted the additional ports listed in its application. However, the applicant's request for Service C-1, Trade Route No. 17, will be discussed later in this report.

*Opposition:* The American President Lines, Ltd., a subsidized operator, is now operating a "Round-the-World" combination passenger and cargo service which calls at all of the ports listed in the United States Lines Company's application. It also operates, under a subsidy contract, a service from California ports to the Far East. It objected to granting permission to United States Lines Company to call at California ports, stating that these calls, which are permissive in character, would give it an option, without obligation to provide regular service. This, it was contended, would invade certain ports served by the American President Lines, Ltd., whose agreement requires it to provide service on established schedules.

The Isthmian Steamship Company, an unsubsidized operator, now operating an eastbound and westbound "Round-the-World" service, objected to any extension of trading range for the United States Lines Company. It also objected to its being granted permission to call at California ports and to the proposed increase in sailings to 26 per year. Isthmian stated that it felt that there would be adequate unsubsidized service available in combination with the subsidized service that is already in effect.

*Other Applicants:* There were no other applicants for financial aid in the operation of Trade Route No. 12.

*Foreign Competition:* The records disclose direct foreign competition on Trade Route No. 12, as follows:

The American and Manchurian Line and Bank Line under British flag are operating monthly service from U. S. Atlantic ports to some of the Far East ports. The Lancashire Shipping Co. (Barber Line), Blue Funnel Line, the Prince Line and the Silver Line, under British flag, are operating monthly Round-the-World services from U. S. Atlantic ports via the Far East.

De La Rama, Philippine flag, is operating a service every three weeks from New York to Manila.

Maersk Line, Danish flag, is operating monthly service from U. S. Atlantic ports to the Far East.

Ivaren Line, Norwegian flag, is operating services from North Atlantic ports to the Far East.

North Negros Sugar, Inc., Philippine flag, is operating services from New York to Manila.

*Need for Financial Aid:* The Commission, as already pointed out in this report, is subsidizing the United States Lines Company for partial coverage of Services A-1 and B of Trade Route No. 12. Based on a study by the Commission, as embodied in the "Report," a total of 51 American-flag sailings will be required to furnish adequate American-flag participation on this route. These 51 sailings are in addition to the 26 "Round-the-World" sailings of the American President Lines, Ltd., which provide only outbound service from U. S. Atlantic ports to the Far East. The service Isthmian will provide does not schedule calls at ports in Japan, Korea and U. S. S. R. Moreover, a substantial portion of Isthmian's carryings are of necessity devoted to cargoes from the Straits Settlements and the Netherlands East Indies area. It is apparent that adequate service is not being furnished and that additional sailings will have to be made in order to provide the American-flag service determined by the Commission for the route.

*Conclusions:* We find and determine on the basis of the facts of record:

1. That the service now provided by vessels of United States registry is inadequate and that additional sailings with vessels of U. S. M. C.

United States registry should be made in furtherance of the purposes of the Merchant Marine Act, 1936.

2. That the United States Lines Company possesses the ability, experience, financial resources and other qualifications necessary to make the additional sailings proposed in its application.

3. That the granting of the aid applied for by the United States Lines Company under Title VI of the Merchant Marine Act, 1936, is necessary to place the proposed increased operations on a parity with those of foreign competitors and will carry out the purposes and policies of the Merchant Marine Act, 1936.

4. That the operating-differential subsidy agreement dated July 30, 1940, of the United States Lines Company, be amended so as to conform Service A of such agreement with Services A-1 and B of Trade Route No. 12, as described in the "Report," and for the making of a maximum of 13 sailings per year on each of such services.

5. That the application of the United States Lines Company for authority to extend its service beyond the scope covered by Trade Route No. 12, as described in the "Report," be denied.

An appropriate order will be entered.

## PART II

### *Trade Route No. 17 (As Described in the "Report")*

U. S. Atlantic & Gulf ports (Maine-Texas, inclusive), Straits Settlements and Netherlands East Indies.

#### 1. *Freight Service C-1:*

*Itinerary:* New York (other Atlantic ports as traffic offers), via Panama Canal, Los Angeles, San Francisco to Manila, Hong Kong, Soerabaja, Batavia, Singapore, Belawan and return to U. S. Atlantic ports via Suez Canal; privilege of calling at French Indo-China and Siam as traffic offers.

*Sailing Frequency:* Every 4 weeks (13 sailings per year).

*No. and Type of Ships:* 4 C-3 type freighters.

NOTE.—To be coordinated with Service B on Trade Route No. 12 and Services C-2 and C-3 on Trade Route No. 17 to provide weekly sailings from New York to Manila and Hong Kong.

#### 2. *Freight Service C-2:*

*Itinerary:* New York (other Atlantic ports as traffic offers), via Panama Canal, Los Angeles, San Francisco to Manila, Hong Kong, Singapore, Belawan, Batavia, Soerabaja, Hong Kong and Philippine Islands (as traffic offers) to San Francisco, Los



Angeles and via Panama Canal to New York; privilege of calling at French Indo-China and Siam, as traffic offers.

*Sailing Frequency:* Every 4 weeks (13 sailings per year).

*No. and Type of Ships:* 4 C-3 freighters.

NOTE.—To be coordinated with Service B on Trade Route No. 12 and with Services C-1 and C-3 on Trade Route No. 17 to provide weekly sailings out of New York to Manila and Hong Kong.

### 3. *Freight Service C-3:*

*Itinerary:* New York via Panama Canal, Los Angeles, San Francisco to Manila, Hong Kong, Singapore, Calcutta (Burma and Ceylon as traffic offers), returning via Belawan, Singapore, Batavia, Soerabaja, Hong Kong, Philippine Islands to San Francisco, Los Angeles and via Panama Canal to New York; privilege of calling at French Indo-China and Siam, as traffic offers.

*Sailing Frequency:* Every 4 weeks (13 sailings per year).

*No. and Type of Ships:* 5 C-3 type freighters.

NOTE.—To be coordinated with Service B on Trade Route No. 12 and Services C-1 and C-2 on Trade Route No. 17, to provide weekly sailings out of New York to Manila and Hong Kong.

### 4. *Freight Service C-4:*

*Itinerary:* New York (other Atlantic ports as traffic offers) via Suez Canal to Singapore, Batavia, Soerabaja, Singapore, Belawan; returning via Suez to New York.

*Sailing Frequency:* Every 4 weeks (13 sailings per year).

*No. and Type of Ships:* 4 C-3 type freighters.

NOTE.—Trade Route No. 17 will also be served by westbound Round-the-World vessels.

### *United States Lines Company (Trade Route No. 17)*

*Present Service and Proposal:* As stated hereinbefore, applicant is now operating from U. S. Atlantic ports to the Far East, under an operating-differential subsidy agreement dated July 30, 1940.

It has requested a service described as follows:

#### *"Itinerary:*

*Outbound*—U. S. Atlantic ports via Panama Canal, Los Angeles, San Francisco to Manila, Singapore, Penang.

*Inbound*—Penang, Singapore via Suez Canal or Cape of Good Hope, or via the Philippines, China, Japan and Panama Canal if cargo warrants, to New York and other U. S. Atlantic ports.

With privilege of calling at North Atlantic Canadian ports and at port or ports in Hawaii, Philippine Islands, French Indo-China, Straits Settlements, Netherlands East Indies and Siam, as cargo offers.

*Sailing Frequency:* Every four weeks."

The above described service conforms generally to Service C-1 in Trade Route No. 17.

*American President Lines, Ltd. (Trade Route No. 17)*

*Present Service and Proposal:* The American President Lines, Ltd., is a corporation organized under the laws of the State of Delaware. The Commission controls 93% of voting power of the stock. Applicant is presently operating two services under an operating-differential subsidy agreement dated October 6, 1938, described as follows:

*"Line A—Trans-Pacific Service—*Between a port or ports in California and a port or ports in Japan, China and the Philippine Islands via the Hawaiian Islands. (Sailings 24 to 26 per year)."

*"Line B—Round-the-World Service—*Round-the-World from New York via the Panama Canal, California, Hawaiian Islands, Japan, China, Philippine Islands, Straits Settlements, Ceylon, India, Suez Canal, Egypt, Italy, France in the Mediterranean, New York, with privilege of calling at Boston, Havana, Cuba, ports in the Dutch East Indies and Gibraltar. (Sailings 24 to 26 per year)."

Applicant proposes to supplement its "Line B" Service with the operation of freight service described as follows:

*"New York (other Atlantic ports as traffic offers) via Panama Canal, Los Angeles, San Francisco to Manila, Hong Kong, Singapore, Belawan, Batavia, Soerabaja, Hong Kong and Philippine Islands (as traffic offers) to San Francisco, Los Angeles and via Panama Canal to New York; privilege of calling at French Indo-China and Siam as traffic offers. Thirteen sailings per year are proposed."*

The proposed new service conforms to Freight Service C-2, Trade Route No. 17, of the "Report."

*American Export Lines, Inc. (Trade Route No. 17)*

*Present Service and Proposal:* The American Export Lines, Inc., is a corporation organized under the laws of the State of New York. Its stock is listed on the New York Stock Exchange. Control is in the hands of United States citizens.

Applicant is now operating the U. S. Atlantic-Mediterranean Services in Trade Route No. 10, and a service from U. S. Atlantic ports to India in Trade Route No. 18, under an operating-differential subsidy agreement dated January 24, 1938. The India service of Trade Route No. 18 is described in the operating-differential subsidy agreement of the applicant as follows:

*"India Service—Line E—*From United States Atlantic ports via the Suez Canal to ports in the Red Sea, India and Ceylon in the Karachi-Calcutta range, with privilege of calling at Burma and North Atlantic Canadian ports."

The subsidy contract calls for a minimum of 10 and a maximum of 14 sailings in the above service.

The applicant has requested an extension of its Indian trade territory to include the Straits Settlements and Netherlands East Indies, described in its application as follows:

*Eastbound*

New York to Karachi, Bombay, Colombo, Madras (optional), Singapore, Batavia, Soerabaja, Sabang (optional), Belawan (optional) and Samarang (optional).

*Westbound*

Macassar (optional) to Singapore, Penang, Belawan (optional), Sabang (optional), Rangoon (optional), Madras (optional), Colombo, Karachi, Bombay and New York

and, if and as required, other Indian and Mediterranean ports in the Trade Routes of this company."

In addition to the sailings the applicant is now required to make in the India service, it proposes one sailing every four weeks in the extended service, utilizing EXPORTER-type C3-S-A3 vessels carrying 12 passengers. It proposes to substitute vessels having accommodations for 150 passengers each as soon as available. Applicant's proposal would have the effect of combining its present service under Trade Route No. 18, as described above, with Service C-4 of Trade Route No. 17 in the "Report."

*Opposition.* The American President Lines, Ltd., objected to the granting of permission to the United States Lines Company to call at California ports, Netherlands East Indies, and Straits Settlements, stating that these calls, as proposed, would give it an option, without obligation, to provide regular service, thus invading the berths of the American President Lines, Ltd., whose agreement, with respect to its Round-the-World service, requires it to perform service on established schedules.

Isthmian Steamship Company, an unsubsidized operator, wholly-owned subsidiary of the United States Steel Corporation, is operating an eastbound Round-the-World service described as follows:

"From Atlantic and Gulf ports via the Suez Canal route to the Middle East, Straits Settlements, Netherlands East Indies, returning home from the Straits and Netherlands East Indies via the Philippines, possibly South China coast, to the Pacific coast, California ports, thence to the Gulf on a 28-day schedule."

Isthmian Steamship Company is also operating a westbound Round-the-World service, described as follows:

"A fortnightly service from North Atlantic ports, via California ports, China, Philippines, French Indo-China, Netherlands East Indies, Straits Settlements, returning home by way of Suez to North Atlantic."

Appearance was made by representatives of the Isthmian Steamship Company at the hearing, and objection was entered to the payment of 3 U. S. M. C.

subsidy of any extension of present services by subsidized operators to the Netherlands East Indies and the Straits Settlements. It contended that adequate service was being rendered these ports by the American President Lines, Ltd., with its Round-the-World service, and by unsubsidized operators.

Waterman Steamship Corporation, an unsubsidized operator, in a brief filed following the hearing, makes a blanket objection to any extension of present service to the Netherlands East Indies or the Straits Settlements.

*Need for Financial Aid:* The records show that Isthmian is making 39 scheduled sailings in its eastbound and westbound Round-the-World services, which equal the total sailings required by Services C-1, C-2, and C-4 of Trade Route No. 17, as described in the "Report."

Convincing evidence has not been produced showing that Isthmian, with its Round-the-World services, and the American President Lines' Round-the-World service are not now supplying adequate service in services that substantially parallel C-1, C-2, and C-4 of Trade Route No. 17. No application has been received for operation for Service C-3 of this trade route. Under the circumstances, the Commission concludes that no additional operating-differential subsidy contracts should be awarded covering the operation of additional vessels on Trade Route No. 17.

*Conclusions:* We find and determine on the basis of the facts of record:

1. That the application of the United States Lines Company for financial aid under Title VI of the Merchant Marine Act of 1936, as amended, in the operation of Service C-1 of Trade Route No. 17, should be denied, but without prejudice to the right of the Commission to give further consideration to this matter at some future date should the facts relating to the case seem to warrant such consideration.
2. That the application of American President Lines, Ltd., for financial aid under Title VI of the Merchant Marine Act of 1936, as amended, in the operation of Service C-2 of Trade Route No. 17, should be denied, but without prejudice to the right of the Commission to give further consideration to this matter at some future date should the facts relating to the case seem to warrant such consideration.
3. That the application of American Export Lines, Inc., for financial aid under Title VI of the Merchant Marine Act of 1936, as amended, in the operation of Service C-4 of Trade Route No. 17, should be denied, but without prejudice to the right of the Com-

mission to give further consideration to this matter at some future date should the facts relating to the case seem to warrant such consideration.

An appropriate order will be entered.

### PART III

#### *Trade Route No. 22 (As Described in the "Report")*

U. S. Gulf ports (Key West-Mexican Border)—Far East (Philippine Islands, China, Japan, U. S. S. R. in Asia, French Indo-China, Formosa, Siam, Manchuria and Korea).

#### 1. *Freight Service D:*

*Itinerary:* New Orleans, Galveston, Houston (other Gulf ports as traffic offers) via Panama Canal to Yokohama, Kobe, Osaka (other Japanese ports as traffic offers), Dairen, Shanghai, Hong Kong, Manila, Philippine Island outports returning either direct from Philippine Island outports or from Manila as traffic offers, and via Panama Canal to New York and other Atlantic ports to New Orleans with the privilege of calling at U. S. S. R. in Asia.

*Sailing Frequency:* Approximately 2 sailings per month with seasonal adjustments to provide 30 sailings per year.

*No. and Type of Ships:* 10 C-3 type freighters.

#### 2. *Freight Service D-X:*

*Itinerary:* New Orleans and other U. S. Gulf ports via Panama Canal to ports in Japan (as traffic offers), Manila and Philippine ports (as traffic offers), Hong Kong, French Indo-China and Siam, Straits Settlements and Netherlands East Indies, returning via Suez Canal or via Philippine Islands and Panama Canal to U. S. Gulf ports.

*Sailing Frequency:* 1 sailing per month—12 per year.

*No. and Type of Ships:* Four C-3 type freighters.

#### *Lykes Bros. Steamship Co., Inc. (Trade Route No. 22)*

*Present Service and Proposal:* Lykes Bros. Steamship Co., Inc., is a Louisiana corporation. The company is owned by U. S. citizens, the majority of whom reside in U. S. Gulf territory.

The applicant is presently operating services under an operating-differential subsidy agreement in Trade Routes Nos. 13, 19, 21 and 22. This report relates to the service on Trade Route No. 22 only. The service covered by applicant's current operating-differential subsidy  
3 U. S. M. C.

agreement dated December 31, 1937, is described in said agreement as follows:

*“Line D—Between a United States Gulf port or ports and Japan and/or China and/or Philippine Islands, with the privilege of calling at ports in the Hawaiian Islands, Manchuria (Manchukuo), Russia in Asia, Formosa, Korea, Indo-China, Siam, also ports in Mexico and the West Indies for the loading and/or discharging of cargo to or from foreign ports, with further privilege of calling at United States Atlantic ports homeward with sugar, copra, and liquid cargo in bulk.”*

The agreement provides for a minimum of 10 and a maximum of 16 sailings per annum.

The above service conforms generally to Freight Service D, Trade Route No. 22.

The applicant has requested the following two modifications of its existing Line D so as to make it conform more closely to Freight Services D and D-X of Trade Route No. 22, as hereinbefore described:

“(1) An increase in the permissible sailings from the present maximum of 16 to a maximum of 24.

“(2) A change in the geographic area of the trade route so as to permit calls at ports in the Dutch East Indies-Straits Settlements area on 12 sailings per annum, without the specific permission in each instance of the Director of Operations and Traffic, as now required.”

The applicant, in accordance with the above, has proposed to make a maximum of 24 sailings per year in Trade Route No. 22, 12 of which would include calls at Netherlands East Indies and Straits Settlements ports.

*Opposition:* The Isthmian Steamship Company objected to the extension of Lykes' Gulf-Far East service to include ports of the Netherlands East Indies and Straits Settlements, contending that the 13 sailings made in its eastbound “Round-the-World” service were adequate.

Waterman Steamship Corporation, an unsubsidized operator, also objected to the application of Lykes, stating that it was “ready, willing and able” to serve the ports of the Straits Settlements and Netherlands East Indies in connection with the operation of its Gulf-Far East service.

*Foreign Competition:* The records disclose direct foreign competition on Trade Route No. 22, as follows:

Fern Line and Ivaran Line, Norwegian-flag vessels, are operating services from U. S. Gulf ports to the Far East.

North Negros Sugar Co., Philippine-flag vessels, is operating between U. S. Gulf ports and the Philippine Islands.

The Java New York Line, Netherlands-flag vessels, and the Blue Funnel Lines, British-flag vessels, are operating between U. S. Gulf ports and the Far East, Netherlands East Indies and Straits Settlements.

*Need for Financial Aid:* Isthmian's eastbound Round-the-World service calls at Atlantic and Gulf ports and it contends that this will constitute adequate service for both areas. It is apparent from the record that both the Atlantic and Gulf requirements will not be fully met by such operation. Furthermore, the operation would fail to properly develop service between the Gulf and foreign ports in question.

With respect to Waterman's operations, the Commission's records show that prior to the hearing Waterman made a number of voyages which included calls at Gulf and Far East ports, but no cargoes were loaded or discharged at ports of the Straits Settlements or Netherlands East Indies. Waterman's statement in its brief that it is "ready, willing and able" to serve ports in the Straits Settlements and Netherlands East Indies would not appear to be an important factor in evaluating the adequacy of existing services.

It appears that if adequate service is to be furnished between the Gulf and ports in the Netherlands East Indies and Straits Settlements, the applicant's Gulf-Far East service should be extended to include said ports.

The applicant stated that although a subsidy was not needed at the moment for operation of an extended service to the Netherlands East Indies and Straits Settlements, its application was based on long-range considerations rather than temporary expediency.

Foreign-flag lines are well entrenched in this area, and it is not believed that the service, which would be without industrial connections, could be operated on a long-range basis without Government aid. Also the Commission does not feel that it would further the purposes of the 1936 Act to require that one leg of a subsidized voyage be operated without subsidy.

*Conclusions:* We find and determine on the basis of the facts of record:

1. That the existing American-flag service from U. S. Gulf ports to ports in the Far East, as described in Trade Route No. 22 of the "Report," is not adequate to meet foreign-flag competition and to promote the foreign commerce of the United States.

2. That Lykes Bros. Steamship Co., Inc., has the ability, experience, financial resources, and other qualifications necessary to conduct the proposed operation so as to meet competitive conditions and promote foreign commerce in the operation of Trade Route No. 22.

3. That the granting of the aid applied for by Lykes Bros. Steamship Co., Inc., under Title VI of the Merchant Marine Act, 1936, as amended, is necessary to place the proposed operation of Trade

Route No. 22, Services D and D-X, on a parity with those of foreign competitors and will carry out the purposes and policy of the Act.

4. That the existing subsidy agreement of Lykes Bros. Steamship Co., Inc., shall be amended to provide for a minimum of 20 and a maximum of 24 sailings per year in the combined services described as D and D-X, Trade Route No. 22, of which a minimum of 5 and a maximum of 8 shall include ports in the Netherlands East Indies and Straits Settlements.

An appropriate order will be entered.

#### PART IV

##### *Trade Route No. 28 (As Described in the "Report")*

U. S. Pacific ports—Straits Settlements, Netherlands East Indies, India, Burma, Persian Gulf and Red Sea.

*Itinerary:* Trade between U. S. Pacific coast ports and the foreign areas of Trade Route No. 28 is to be carried in vessels provided for by Services C-1, C-2, and C-3 on Trade Route 17, and Service C-2 on Trade Route No. 30.

NOTE.—No separate services are provided for this route. It is served by vessels in Trade Routes Nos. 17 and 30.

#### PART V

##### *Trade Route No. 29 (As Described in the "Report")*

California ports—Far East (Philippine Islands, China, Manchuria, Korea, Japan, U. S. S. R. in Asia, French Indo-China, Formosa and Siam).

##### 1. *Passenger-Freight Service E:*

*Itinerary:* Los Angeles/San Francisco via Honolulu to Yokohama, Kobe, Shanghai, Hong Kong, Manila and returning via same route to California.

*Sailing Frequency:* 26 fortnightly sailings per year.

*No. and Type of Ships:* 4 P2-R-1 type passenger-freight vessels (to be replaced by a suitable number of special type vessels of adequate speed).

NOTE.—To be coordinated out of California ports with Round-the-World service to provide weekly sailings.

##### 2. *Freight Service F:*

*Itinerary:* Los Angeles, San Francisco to Yokohama, Kobe, Osaka  
3 U. S. M. C.



(other Japanese ports as traffic offers), Shanghai (other North China ports and ports in Manchuria and Korea as traffic offers), Hong Kong, Manila, Philippine Island outports, and French Indo-China and Thailand (as traffic offers) returning to Los Angeles and San Francisco; privilege to be granted of calling at ports of Russia in Asia.

*Sailing Frequency:* 26 fortnightly sailings per year.

*No. and Type of Ships:* 5 C-3 type freighters.

**NOTE.**—Trade Route No. 29 will also be served by west-bound Round-the-World vessels.

*American President Lines, Ltd. (Trade Route No. 29)*

*Present Service and Proposal:* Applicant's service on Trade Route No. 29 is described in its operating-differential subsidy agreement as follows:

"Line A—Trans-Pacific Service—Between a port or ports in California and a port or ports in Japan, China and the Philippine Islands via the Hawaiian Islands. (Sailings 24 to 26 per year)."

Applicant proposes to supplement the above service with the operation of Freight Service F in accordance with schedule laid down in the "Report."

*American-Hawaiian Steamship Company (Trade Route No. 29)*

*Present Service and Proposal:* The American-Hawaiian Steamship Company proposes to organize a company to be incorporated under the laws of Delaware to operate the proposed service. It is understood that the new company will be a wholly-owned subsidiary. The capital stock of the American-Hawaiian Steamship Company is owned by United States citizens.

The applicant has no subsidy contracts with the Commission. It acted as Managing Agent of the Oceanic and Oriental Navigation Co., a company equally owned by Matson Navigation Company and the American-Hawaiian Steamship Company, which company operated with a mail contract between Pacific coast ports and Australia and the Far East from 1928 to 1937. The proposed operation by the applicant is described as follows:

"California ports (with privilege of calling at ports in Oregon and Washington), Yokohama, Kobe, Osaka (other Japanese ports as traffic offers), Shanghai (other North China ports, ports in Manchuria, Korea and U.S.S.R. in Asia as traffic offers), Hong Kong, Manila and Philippine Island outports, French Indo-China (Thailand, Singapore and East Indies as traffic offers)."

No established schedule of sailings is proposed by applicant at the outset, but it stated that it would operate a regular schedule with not less than 26 sailings per annum when conditions permit.

The service proposed covers Trade Route No. 29, Freight Service F, of the "Report," with the addition of calls at Pacific Northwest ports, which are a part of Trade Route No. 30. It also proposes to call at Singapore and Netherlands East Indies, thus cutting across Trade Route No. 28.

*Grace Line Inc. (Trade Route No. 29)*

*Present Service and Proposal:* Grace Line Inc., a Delaware corporation, is a wholly-owned subsidiary of W. R. Grace & Co.

Grace Line Inc. is presently operating subsidized and non-subsidized services in other routes, its subsidized services being a part of Trade Routes Nos. 2 and 25. It proposes to operate the following service, which is substantially the same as Service F of Trade Route No. 29:

*"An unsubsidized fortnightly service between San Francisco, Los Angeles and Cebu, Manila, Hong Kong, Shanghai, Dairen, Kobe, Osaka and Yokohama, with calls at other ports in the Cebu-Yokohama range as cargo offers and conditions warrant."*

Applicant stated that it proposed to supplement the present service and replace in part services previously operated by the Japanese, and contended that service will not interfere with reasonable expansion by American President Lines, Ltd.

The applicant made a definite statement that it would operate two years without subsidy and not request subsidy thereafter unless changed conditions make it necessary.

*Opposition:* Pacific Far East Line stated, through its attorney, that it had filed an application for the purchase of five C-2 cargo vessels which it intended to operate in a service between Pacific coast ports and the Philippines, China, Japan and other Far East areas, and that it objected to the granting of financial aid for the operation of Freight Service F for the reason that the service which it proposed to operate would meet the Commission's requirements. The company asserted the position of an existing operator under section 605(c) of the Act in its brief.

Pacific Transport Lines, Inc., stated that it proposed to operate three C-3 type vessels with 13 scheduled sailings per year, in Freight Service F, Trade Route No. 29, without financial aid, and requested that the Commission defer decision on the applications for financial aid for such service due to the unsettled economic conditions existing in the trade.

American President Lines, Ltd., objected to the application of Grace Line Inc., stating that granting of the application would result in the invasion of the territory it had served for a number of years with the aid of an operating-differential subsidy. It further contended that while Grace would be committed to an operation for a period of two

years without subsidy, the President of the company made it clear that it was not waiving its rights to ask for subsidy if changed conditions made it necessary. The American President Lines, Ltd., also objected to the application of the American-Hawaiian Steamship Company on the ground that it covered areas which are being served by it.

Isthmian Steamship Company objected to the application of American President Lines, Ltd., for a new service or any extension of its existing services.

*Foreign Competition:* Direct competition between California ports and the Far East is provided as follows:

American and Manchurian Line, Bank Line, Ltd., Blue Funnel Line and the Silver Line, the Java Pacific Line, British-flag vessels; De La Rama Line, Philippine flag; East Asiatic Line and Maersk Line, Danish flag; Klaveness Line, Norwegian flag; Salen Line, Swedish flag; are providing monthly service. The Pacific Orient Express Line, Norwegian flag, is providing fortnightly service from U. S. Pacific ports to the Far East.

*Need for Financial Aid:* The Commission in its studies of traffic potentials forming the basis for the "Report" determined that, with changed conditions brought about in part by the elimination of Japanese competition, a freight service should be established to complement and support the pre-war combination passenger and cargo service, and Trade Route No. 29 was divided into the two services. However, it was not the intention of the Commission that these services should be operated separately, but rather that one would supplement and support the other. This intention is evidenced by the fact that the Commission by PR 2330, dated June 27, 1945, invited proposals for the purchase of its stock of the American President Lines, Ltd., and specified as one of the conditions to be imposed upon the buyer that he would operate a combination passenger and freight service on Trade Route No. 29, and in addition, a freight service identical in description with Freight Service F of Trade Route No. 29, as set forth in the "Report."

Prior to World War II, the American President Lines, Ltd., operated, under a subsidy contract, four combination passenger and cargo vessels in the territory now described as Trade Route No. 29. These vessels had a large cargo capacity. They were taken over by the Government during the war. Three of said vessels were lost and the fourth vessel is now owned by the War Department. They had sufficient cargo space to handle all tonnage available to vessels of this type at that time. The applicant, having no vessels of its own for the operation of a passenger service on Trade Route No. 29, has been operating military transport vessels chartered from the Government pending the construction of new tonnage satisfactory for the trade. Only a limited amount of cargo can be handled by this type of vessel, and the applicant, in order to

provide needed freight service on this Route, made a total of 26 voyages with chartered and owned freight vessels in a service corresponding to Freight Service F, Trade Route No. 29, during the period April 1st to August 15, 1946. It does not appear that the freight operation is temporary in character. On the contrary, American President Lines, Ltd., purchased in 1945 six C-3 freight vessels for operation in the trans-pacific service. This company advertised sailings in the service and clearly views it as a permanent operation. Under the circumstances, the Commission finds that the applicant is operating an existing service, corresponding to Service F, within the meaning of section 605(c) of the Act.

The application of the American-Hawaiian Steamship Company covers part of the area embraced by Freight Service F. The Commission is prohibited by section 605(c) of the Act from granting financial aid to American-Hawaiian Steamship Company for the service which it proposes unless it determines that the service provided by American President Lines, Ltd., is inadequate. As the American President Lines, Ltd., is making more sailings on Service F than is recommended in the "Report," it would appear that the service is adequate. Consequently, the application of the American-Hawaiian Steamship Company must be denied.

Although the Commission has determined that the service furnished by the American President Lines, Ltd., in Freight Service F is adequate at the present time, severe foreign-flag competition is encountered on this route both from foreign-flag services originating on the Pacific coast and foreign lines loading at Atlantic ports and stopping off at California ports enroute to the Far East. Therefore, the Commission does not believe that adequate American-flag freight service can be maintained on a permanent long-range basis over this route without subsidy. The freight and passenger services on Trade Route No. 29 are so interrelated that it would not be in furtherance of the purposes and policies of the 1936 Act to have one of the services operated on a subsidized basis and the other on an unsubsidized basis. Under the circumstances, the Commission believes financial aid should be granted to the American President Lines, Ltd., for the operation of Service F.

The application of Grace Line Inc. for permission to operate on an unsubsidized basis in Freight Service F was required by the provisions of its operating-differential subsidy agreement dated November 12, 1940. Such agreement prohibits it from operating any unsubsidized vessels in the foreign commerce of the United States in competition with any other service receiving financial aid, pursuant to the provisions of the Act, without the written approval of the Commission.

The Commission does not believe that it would be consistent with the purposes and policy of the Act to permit a subsidized operator, with respect to other foreign services, to operate vessels with or without subsidy in a service adequately served by another subsidized operator.

As previously stated, the Pacific Far East Line contended that it was an existing operator within the meaning of section 605(c) of the Act in Freight Service F. It does not appear that this company was operating in the area embraced by Freight Service F at the time of the hearing, and the Commission, therefore, finds no basis for the contention of the Pacific Far East Line.

*Conclusions:* We find and determine on the basis of the facts of record:

1. That the American President Lines, Ltd., is an existing operator in Trade Route No. 29, within the meaning of section 605(c) of the 1936 Act, as amended.

2. That the American President Lines, Ltd., has the ability, experience, financial resources, and other qualifications necessary to conduct the operation of the service applied for.

3. That the granting of aid applied for by the American President Lines, Ltd., under Title VI of the Merchant Marine Act of 1936, as amended, is necessary to place the proposed operation of Trade Route No. 29, Freight Service F, on a parity with those of foreign competitors and will carry out the purposes of the Act.

4. That the application of the American President Lines, Ltd., for financial aid in the operation of vessels providing 26 fortnightly sailings per year on Freight Service F on Trade Route No. 29, be approved.

5. That the existing operating-differential subsidy agreement of the American President Lines, Ltd., be amended to include Freight Service F of Trade Route No. 29, with a maximum of 26 sailings per year.

6. That the application of American-Hawaiian Steamship Company for financial aid under Title VI of the Merchant Marine Act of 1936, as amended, for operation of vessels in Trade Routes Nos. 28, 29 and 30, should be denied, but without prejudice to the right of the Commission to give further consideration to this matter at some future date should the facts relating to the case seem to warrant such consideration.

7. That the application of Grace Line Inc. for permission to operate an unsubsidized fortnightly service on Trade Route No. 29, be denied, but without prejudice to the right of the Commission

to give further consideration to the matter should changed conditions appear to warrant such consideration.

An appropriate order will be entered.

## PART VI

### *Trade Route No. 30 (As Described in the "Report")*

Washington and Oregon ports Far East (Philippine Islands, China, Japan, Manchuria, Korea, U.S.S.R. in Asia, French Indo-China, Formosa and Siam).

#### 1. *Freight Service G-1:*

*Itinerary:* Seattle, Tacoma (as traffic offers), Portland, Oregon (alternate sailings) to Yokohama, Osaka, Kobe, Shanghai, Hong Kong and Manila, returning over same route to Pacific Northwest.

*Sailing Frequency:* 26 fortnightly sailings per year.

*No. and Type of Ships:* 4 C-3 type freighters.

#### 2. *Freight Service G-2:*

*Itinerary:* Portland, Oregon, Seattle, Washington, other ports in Washington and Oregon as traffic offers, to Manila, other Philippine ports as traffic offers, Hong Kong, ports in French Indo-China and Siam as traffic offers, Netherlands East Indies, Straits Settlements, Calcutta, other Bay of Bengal ports as traffic offers, returning via Straits Settlements and Dutch East Indies to California ports, thence to ports in Oregon and Washington; vessel to have privilege of calling at British Columbia to load and discharge cargo.

*Sailing Frequency:* Approximately one sailing per month—12 sailings per year; to be coordinated in so far as practicable east-bound with Service C-3 (Trade Route No. 17) from Calcutta to California.

*No. and Type of Ships:* 3 C-2 or other suitable type freighters.

#### 3. *Freight Service H:*

*Itinerary:* Oregon and Puget Sound ports (as traffic offers) to Japan and North China, Manchuria and Korea, returning to Pacific Northwest ports with privilege of calling at U.S.S.R. ports in Asia as traffic offers.

*Sailing Frequency:* 48 irregular sailings per year.

*No. and Type of Ships:* 8 AP-2 or other suitable type freighters.

### *American Mail Line Ltd. (Trade Route No. 30)*

*Present Service and Proposal:* The applicant is a Nevada corporation, its stock being held by United States citizens. It is operating a  
3 U. S. M. C.

service under an operating-differential subsidy agreement dated April 2, 1941, described as follows:

“Not less than 26 and not more than 34 outward sailings per annum between a port or ports in Oregon and/or Washington and a port or ports in Japan, China and the Philippine Islands, with the privilege of calling at a port or ports in Pacific Canada, Maritime Province of Siberia not north of the Island of Sakhalin, Korea, Manchukuo, Hong Kong, Indo-China and Thailand (Siam), returning to a port or ports in Oregon and/or Washington; provided that the operator shall have the privilege of returning to a port or ports in California on the homebound voyage with cargo for discharge at California ports limited to sugar, copra, oil cake, fertilizer, ore, logs and lumber; also any other bulk commodities with respect to which other subsidized American flag operators operating on the homeward route from the Philippines, China and/or Japan to California, signify that they have no objection, or which the Commission, after due hearing, may determine cannot be adequately handled by any other established American flag service on such homeward route.”

The territory covered in the present agreement is substantially the same as Services G-1 and H of Trade Route No. 30.

The applicant requested an extension of the present route to include:

“Straits Settlements, Netherlands East Indies (exclusive of New Guinea), Burma, India (Bay of Bengal only) and Ceylon—all with return to Pacific Coast ports.”

The extension requested by applicant would cover the trading area described in Services G-1, G-2 and H of Trade Route No. 30. It proposes to make 26 annual sailings in Service G-1 and 12 annual sailings in Service G-2. It proposes 12 regular sailings per year in Service H instead of the 48 irregular sailings recommended in the “Report.” It contended that monthly sailings in this service would provide adequate tonnage for some time to come. The applicant stated, however, that it is prepared to make the 48 irregular sailings if the Commission “finds that conditions justify such a program.”

*Olympic Steamship Company, Inc. (Trade Route No. 30)*

The application of the Olympic Steamship Company, Inc., for financial aid in the operation of a service approximating Freight Service G-2 of Trade Route No. 30, has been withdrawn.

*States Steamship Company (Trade Route No. 30)*

*Present Service and Proposal:* The States Steamship Company is a Nevada corporation. Controlling stock of the company is owned by Dant and Russell, Inc., Portland, Oregon, a wholesale domestic and export lumber company.

States Steamship Company has no subsidy contracts with the Commission at the present time. It operated under ocean mail contracts F.O.M. 28 and 29 from 1928 to 1937 (from Pacific Northwest to the Orient), when the contracts were cancelled pursuant to the 1936 Act. It continued in the trade, unsubsidized, until 1938, when the vessels were withdrawn and placed in the world-wide trade.

It applied for financial aid in the operation of bulk and general cargo service, with not less than 14 nor more than 24 annual sailings, described as follows:

"A port or ports in the States of Oregon and Washington to a port or ports in Japan and/or North China, with the privilege of calling at ports in Manchuria, Korea, Maritime Province of Siberia, and the Philippine Islands, and with the privilege of returning via California ports to the area of departure."

The service proposed conforms to Service H, Trade Route No. 30, with the exception that permission to call at Philippine Islands ports and the privilege of returning via California ports is requested.

The service applied for would supplement the proposal of the American Mail Line Ltd. to provide 12 sailings in Service H of Trade Route No. 30.

*Opposition:* The Isthmian Steamship Company objected to the application of American Mail Line Ltd. to extend its service to include the east coast of India, Burma, Straits Settlements and the Netherlands East Indies, and for permission to discharge cargo at California ports on an unrestricted basis. Isthmian also objected to the application of States Steamship Company for permission to return via California ports with no restrictions as to the character of the cargo to be handled.

American President Lines, Ltd., objected to the granting of financial aid with respect to the return of any vessels in Trade Route No. 30, via California ports. This company stated that the permission given to the American Mail Line Ltd. in 1941, to return via California ports for the purpose of discharging certain bulk cargoes, was based on conditions that no longer exist.

*Foreign Competition:* Substantial foreign competition exists in this trade. The Klaveness Line and Pacific Orient Express, Norwegian-flag companies, are each operating monthly services from Pacific coast ports to the Far East. The East Asiatic Line, British flag; The Salen Line, Swedish flag; and the Silver Java Pacific Line, British and Dutch flag, are also operating a monthly service from Pacific coast ports.

*Need for Financial Aid:* The Commission finds that substantial weight should not be given to Isthmian objection in regard to the application of American Mail Line Ltd. for aid in the operation of Service G-2 of Trade Route No. 30 because Isthmian does not offer regular scheduled sailings in this service from the Pacific Northwest.



Under the revised service being recommended for American Mail Line Ltd., this company would only touch California ports with respect to Service G-2. Therefore, in view of the fact that American President Lines, Ltd., was not granted permission to call at ports in the Netherlands East Indies and the Straits Settlements, it appears that operation by the American Mail Line Ltd. on Freight Service G-2, embracing calls at such ports, would not compete with a service provided by the American President Lines, Ltd., and the objection of the latter company to the American Mail Line Ltd. calling at California ports would no longer appear to be relevant.

The application of States Steamship Company for financial aid in connection with the service to be operated by it on Freight Service H embraces the area presently served by the American Mail Line Ltd. under its subsidy agreement. The Commission, therefore, is precluded from granting financial aid to the States Steamship Company for operation in Service H of Trade Route No. 30 unless it determines that the service provided by the established operator, the American Mail Line Ltd., is inadequate.

Although the American Mail Line Ltd. proposes 12 regular sailings per year on this service instead of the 48 irregular sailings recommended in the "Report," the Commission recognizes the uncertain nature of this trade and that a less number of sailings than mentioned in the "Report" may be sufficient. However, the American Mail Line Ltd. has stated that it will increase its proposed sailings to meet the requirements of the trade. Under the circumstances, we are unable to find that the service provided by the American Mail Line Ltd. is inadequate.

The subsidy agreement of the American Mail Line Ltd. covers the subsidizing of its operations on Trade Route No. 30, except for the calls at the additional ports and additional increased sailings set forth in its application.

Strong foreign-flag competition continues on this route, and all the evidence leads to the conclusion that the service cannot be developed and maintained on a long-range basis under American-flag operation without subsidy.

*Conclusions:* We find and determine on the basis of the facts of record:

1. That the American Mail Line Ltd. is the existing operator in Service H of Trade Route No. 30, within the meaning of section 605(c) of the 1936 Act.
2. That the American Mail Line Ltd. possesses the ability, experience, financial resources, and other qualifications necessary to conduct the proposed operations so as to meet competitive conditions and promote foreign commerce in the operation of Trade Route No. 30.

3. That the granting of the aid applied for by the American Mail Line Ltd. under Title VI of the Merchant Marine Act, 1936, as amended, is necessary to place the proposed operations on a parity with those of foreign competitors, and will carry out the purposes and policy of the Act.

4. That the application of the American Mail Line Ltd. for financial aid in connection with the proposed operation be approved.

5. That the operating-differential subsidy agreement of the American Mail Line Ltd. be amended to provide for (a) redefinition of its service so as to conform to Services G-1, G-2 and H of Trade Route No. 30, and (b) for a minimum of 24 and a maximum of 26 annual sailings in Service G-1, a minimum of 10 and a maximum of 13 sailings in Service G-2, and a minimum of 12 sailings in Service H of Trade Route No. 30.

6. That the application of the States Steamship Company for financial aid under Title VI of the 1936 Act, as amended, in the operation of Service H, Trade Route No. 30, should be denied, but without prejudice to the right of the Commission to give further consideration to this matter at some future date should the facts relating to the case seem to warrant such consideration.

An appropriate order will be entered.

3 U. S. M. C.

## ORDER

At a Session of the UNITED STATES MARITIME COMMISSION,  
held at its office in Washington D. C., on the 9th day of June A. D.  
1947.

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No. S-7

UNITED STATES LINES COMPANY ET AL.—APPLICATIONS FOR FINANCIAL  
AID IN THE OPERATION OF VESSELS ON TRADE ROUTES NOS. 12, 17, 22,  
28, 29, AND 30

and

GRACE LINE, INC.—APPLICATION FOR PERMISSION TO OPERATE ON  
FREIGHT SERVICE F OF TRADE ROUTE No. 29, WITHOUT SUBSIDY.

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A public hearing having been held, and a full investigation of the matters and things involved having been made, upon consideration of the record, the Commission having made and entered of record a report containing its findings, conclusions and decisions, which is attached hereto and made a part hereof:

*It is ordered*, 1. That the application of UNITED STATES LINES COMPANY for permission to make a maximum of 26 sailings per annum in Trade Route No. 12 be approved, and that subject to compliance with the applicable provisions of Title VI of the Act, and with such terms and conditions as may be imposed by the Commission, its operating-differential subsidy agreement dated July 30, 1940, be amended so as to provide for the payment of an operating-differential subsidy with respect to such sailings.

2. That the application of LYKES BROS. STEAMSHIP CO., INC., for (1) extension of its trade route to include ports in the Netherlands East Indies and Straits Settlements, and (2) permission to make a maximum of 24 sailings per annum in Services D and D-X of Trade Route No. 22, of which a minimum of 5 and a maximum of 8 shall include ports in the Netherlands East Indies and Straits Settlements, be approved, and that subject to compliance with the applicable provisions of Title VI of the Act, and with such terms and conditions as may be imposed by the Commission, its operating-differential subsidy agreement dated December 27, 1937, be amended so as to provide for the payment of an operating-differential subsidy with respect to such sailings.

3. That the application of AMERICAN PRESIDENT LINES, LTD., for financial aid under Title VI of the Merchant Marine Act of 1936, as amended, in the operation of 26 sailings on Freight Service F of Trade Route No. 29, be approved, and that subject to compliance with the applicable provisions of Title VI of the Act, and with such terms and conditions as may be imposed by the Commission, its operating-differential subsidy agreement dated October 6, 1938, be amended so as to provide for the payment of an operating-differential subsidy for the operation of vessels in such service.

4. That the application of AMERICAN MAIL LINE LTD. for (1) extension of its trade route to include ports in the Netherlands East Indies, Straits Settlements, Calcutta and Bay of Bengal; and (2) permission to make a maximum of 51 sailings in Trade Route No. 30, be approved, and that subject to compliance with the applicable provisions of Title VI of the Act, and with such terms and conditions as may be imposed by the Commission, its operating-differential subsidy agreement dated April 2, 1941, be amended so as to provide for the payment of an operating-differential subsidy with respect to such sailings.

5. That the application of UNITED STATES LINES COMPANY for financial aid under Title VI of the Merchant Marine Act of 1936, as amended, for the operation of vessels in Trade Route No. 17, be denied.

6. That the application of AMERICAN PRESIDENT LINES, LTD., for financial aid under Title VI of the Merchant Marine Act of 1936, as amended, for the operation of vessels in Service C-2 of Trade Route No. 17, be denied.

7. That the application of AMERICAN EXPORT LINES, INC., for financial aid under Title VI of the Merchant Marine Act of 1936, as amended, for the operation of vessels in Trade Route No. 17, be denied.

8. That the application of AMERICAN-HAWAIIAN STEAMSHIP COMPANY for financial aid under Title VI of the Merchant Marine Act of 1936, as amended, for the operation of vessels in Trade Routes Nos. 28, 29 and 30, be denied.

9. That the application of STATES STEAMSHIP COMPANY for financial aid under Title VI of the Merchant Marine Act of 1936, as amended, for the operation of vessels in Trade Route No. 30, be denied.

10. That the application of GRACE LINE INC. for permission to operate vessels in Freight Service F of Trade Route No. 29, without subsidy, be denied.

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# UNITED STATES MARITIME COMMISSION

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No. S-9

LYKES BROS. STEAMSHIP COMPANY, INC.—APPLICATION UNDER SECTION 805 (a), MERCHANT MARINE ACT, 1936, AS AMENDED—EMERGENCY INTERCOASTAL OPERATION

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*Submitted November 34, 1947. Decided November 26, 1947*

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Application for permission to carry two shipments of coconut oil and tallow from Long Beach, California, to New York, New York, granted.

*William Radner* for applicant.

*M. G. de Quevedo* for Intercoastal Steamship Freight Association, intervener.

*Paul D. Page, Jr.*, and *Elmer E. Metz* for the Commission.

## REPORT OF THE COMMISSION

### BY THE COMMISSION:

Hearing in this proceeding was held on November 24, 1947, pursuant to notice in the Federal Register of November 19, 1947. Briefs by the parties and initial or recommended decision by the examiners were waived by counsel for all parties represented.

The application in question was made by Lykes Bros. Steamship Company, Inc., for permission under section 805(a) of the Merchant Marine Act, 1936, as amended, to operate their vessels SSs *Doctor Lykes* and *Dick Lykes* in the intercoastal transportation of cargo on one voyage by each vessel between Long Beach, California, and New York, N. Y., while returning from the Far East on regular scheduled voyages. The SS *Doctor Lykes* is to load approximately 1600 tons of bulk coconut oil and tallow about December 2, 1947, and the SS *Dick Lykes* is to load a similar cargo about December 12, 1947.

Applicant's witness testified that the basis for the application is Procter and Gamble Manufacturing Company's request of Lykes Bros. to move the two shipments as described from Long Beach to New York because of the urgent and critical need of the oil and tallow for manufacturing purposes prior to January 1, 1948.

All certificated intercoastal carriers were offered this cargo, but none will be able to furnish the necessary deep-tank space prior to January 1, 1948. These lines, together with American-flag companies operating between the North Atlantic and the Far East, have specifically waived any objection to applicant performing the transportation in question.

Applicant testified that it intends to apply to the Interstate Commerce Commission for the requisite permit to engage in this transportation, at the rates and subject to conditions stipulated in the current tariff of the Intercoastal Steamship Freight Association on file with said Commission.

We adopt the recommendations of the examiners, that the granting of the application (1) will not result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service; (2) will not be prejudicial to the objectives and policy of the Merchant Marine Act, 1936, as amended; and (3) will be in the public interest and convenience.

The application is hereby granted.

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

Washington, D. C., November 25, 1947.

3 U. S. M. C.

# UNITED STATES MARITIME COMMISSION

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## ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 18th day of February A. D. 1948.

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No. S-10

ARNOLD BERNSTEIN STEAMSHIP CORPORATION ET AL.<sup>1</sup>—APPLICATIONS FOR FINANCIAL AID IN THE OPERATION OF VESSELS ON TRADE ROUTES NOS. 7 AND 8 (U. S. NORTH ATLANTIC PORTS—ANTWERP, HAMBURG RANGE ET AL.) AND TRADE ROUTE NO. 11 (U. S. SOUTH ATLANTIC PORTS—UNITED KINGDOM AND EIRE, CONTINENTAL EUROPE, SCANDINAVIA, AND BALTIC PORTS)

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Whereas, pursuant to the direction of the Commission, a hearing in this matter was held before Examiners G. O. Basham and C. H. McDaniel on November 12, 13 and 14, 1946, following which hearing briefs were submitted by the parties of record; and

Whereas, the said examiners issued a proposed report in this matter, which was served on the parties on September 4, 1947; and

Whereas, certain parties, namely, applicant United States Lines Company, applicant Arnold Bernstein Steamship Corporation, applicant South Atlantic Steamship Lines, Inc., and intervener Waterman Steamship Corporation filed exceptions to the said proposed report and briefs in support of said exceptions, and applicant Black Diamond Steamship Company filed a memorandum in support of said proposed report, together with a motion to strike from the record and not to consider in evidence certain portions of said exceptions of United States Lines Company, Waterman Steamship Corporation, and Arnold Bernstein Steamship Corporation, and said three last mentioned parties filed notices of opposition to the said motion of Black Diamond Steamship Corporation; and

Whereas, the Commission on October 22 and 23, 1947, heard oral

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<sup>1</sup> Black Diamond Steamship Corporation, United States Lines Company, and South Atlantic Steamship Line, Inc.

argument on the exceptions to the said proposed report, the motion of Black Diamond Steamship Corporation, and the notices in opposition thereto; and

Whereas, the Commission has duly considered the aforesaid testimony taken at the hearings before said examiners, as supplemented by evidence stipulated in the record by all parties at said oral argument, the briefs of the parties submitted after the hearing, the proposed report of the examiners, the aforementioned exceptions, motion, objections to said motion and all briefs submitted in connection therewith, and said oral argument; and

It appearing That Trade Route 11 should be extended in scope so as to include service from and to ports in the Hampton Roads area, and the Commission so finds and determines; and

It appearing That Trade Routes 7 and 8 should be considered as separate essential foreign trade routes and that applications for operating-differential subsidy contracts be considered on such basis, and the Commission so finds and determines; and

It appearing That the application of South Atlantic Steamship Company for operating-differential subsidy contract on Trade Route 11 should be approved, subject to compliance with the applicable provisions of the Merchant Marine Act, 1936, as amended, and to such terms and conditions as may be imposed by the Commission, and the Commission so finds and determines; and

It appearing That the applications of Arnold Bernstein Steamship Corporation, Black Diamond Steamship Corporation, and United States Lines Company for operating-differential subsidy contracts on Trade Routes 7 and 8 should be denied;

*It is ordered*, (1) That Trade Route No. 11, as described in the Report of the Commission approved May 20, 1946, be amended to read as follows:

U. S. Atlantic ports (Hampton Roads—Key West inclusive) to United Kingdom and Eire, Continental Europe North of Spanish Border (including Scandinavian and Baltic ports, except as to cargo to and from Hampton Roads).

(2) That Trade Routes Nos. 7 and 8, as described in the Report of the Commission approved May 20, 1946, are hereby separated.

(3) That services under Trade Route 7 shall be constituted as follows:

1. *Passenger and Freight Service:*

*Itinerary:* New York to Hamburg or other German North Sea ports.

*Sailing Frequency:* 26 fortnightly sailings per year.



2. *Freight Service*

*Itinerary:* U. S. North Atlantic ports (North of Hatteras to Hamburg and other German North Sea ports.

*Sailing Frequency:* 52 weekly sailings per year.

(4) That services under Trade Route 8 shall be constituted as follows:

1. *Passenger and Freight Service:*

*Itinerary:* New York to Rotterdam, Antwerp, returning to New York via Boston as traffic offers.

*Sailing Frequency:* 52 weekly sailings per year.

2. *Freight Service:*

*Itinerary:* U. S. North Atlantic ports (North of Hatteras) to Antwerp, Rotterdam and return.

*Sailing Frequency:* 52 weekly sailings per year.

(5) That application of South Atlantic Steamship Line, Inc., dated October 7, 1946, as amended, for financial aid under Title VI of the Merchant Marine Act, 1936, as amended, in the operation of vessels on Trade Route No. 11, is hereby approved, subject to compliance with the applicable provisions of said Act and to such terms and conditions as may be imposed by the Commission.

(6) That the applications for operating-differential subsidy contracts under the provisions of Title VI of the Merchant Marine Act, 1936, as amended, of Arnold Bernstein Steamship Corporation, Black Diamond Steamship Corporation, and United States Lines Company, for operation on Trade Routes 7 and 8 be, and the same hereby are, denied.

(7) That this proceeding be discontinued.

By the Commission.

[SEAL]

(Signed) A. J. WILLIAMS,  
*Secretary.*

3 U. S. M. C.

# UNITED STATES MARITIME COMMISSION

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## RESOLUTION

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 18th day of May A. D. 1948.

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No. S-11

AMERICAN PRESIDENT LINES, LTD.—APPLICATION TO OPERATE, WITHOUT SUBSIDY, SERVICE C-2 OF TRADE ROUTE NO. 17

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Whereas, AMERICAN PRESIDENT LINES, LTD., a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Applicant"), entered into an agreement dated as of October 6, 1938 with the UNITED STATES MARITIME COMMISSION (hereinafter called the "Commission") for an operating-differential subsidy, which agreement the Commission has authorized to be extended to and including June 30, 1949, and

Whereas, said operating-differential subsidy agreement provides, among other things, that

The Operator agrees that, without the express written approval of the Commission, neither the Operator nor any affiliate, subsidiary or holding company will operate or cause or permit any unsubsidized vessels owned or controlled by any of them to be operated in the subsidized service of the Operator or in the foreign commerce of the United States in competition with any other service, route, or line receiving financial aid pursuant to the provisions of the Act.

and

Whereas, pursuant to said provision of said operating-differential subsidy agreement the applicant filed an application with the Commission for authority to operate, without an operating-differential subsidy, vessels in the Atlantic-Straits Freight Service, referred to in the Commission's report approved May 20, 1946 (released May 22, 1946) on essential foreign trade routes and services for United States flag operation as C-2 of Trade Route No. 17 and therein described as follows:

*Itinerary:* New York (other Atlantic ports as traffic offers) via Panama Canal, Los Angeles, San Francisco to Manila, Hong Kong, Singapore, Belawan, Batavia, Soerabaja, Hong Kong and Philippine Islands (as traffic offers) to San Francisco, Los Angeles and via Panama Canal to New York; privilege of calling at French Indo-China and Siam as traffic offers.

and

Whereas, pursuant to notice dated February 5, 1948, published in the Federal Register of February 10, 1948, a hearing was held on February 24, 25 and 26, 1948, on said application and appearances were entered on behalf of the following (hereinafter called the "Interveners"): Port of Boston Authority, American Mail Line, Ltd., a corporation organized and existing under the laws of the State of Delaware, American Export Lines, Inc., a corporation organized and existing under the laws of the State of New York, Isthmian Steamship Company, a corporation organized and existing under the laws of the State of Delaware, and Waterman Steamship Corporation, a corporation organized and existing under the laws of the State of Alabama, and

Whereas, the report of the examiner issued in said hearing was duly served on the Applicant and the Interveners on March 19, 1948, and exceptions to said report were filed by Applicant and all of the Interveners except American Export Lines, Inc., and

Whereas, the Commission has duly considered said application, report of the hearing examiner, exceptions to said report and other facts relating to said application, Now, therefore, be it *RESOLVED*:

*FIRST*, That Applicant be and hereby is authorized to operate on above described C-2 Service of Trade Route No. 17, without operating-differential subsidy, not more than thirteen (13) voyages per annum, subject, however, to the following conditions:

1. Applicant shall (a) use on the C-2 Service of Trade Route No. 17 only such number and type of vessels as may be approved by the Commission; (b) coordinate all its non-subsidized sailings, so far as possible and to the extent required by the Commission, with services of other operators carrying cargo to or from ports included in the itinerary of said C-2 Service of Trade Route No. 17; and (c) enter into an agreement with the Commission, in form satisfactory to the Commission, providing for the protection of Applicant's subsidized operations from the diversion of cargo and revenues by the non-subsidized operations from the vessels operated in its subsidized operations.

2. No non-subsidized voyage in said C-2 Service of Trade Route No. 17 shall be commenced after June 30, 1949.

3. The "capital employed" by the Applicant in the non-subsidized U. S. M. C.

dized operations in said C-2 Service of Trade Route No. 17 and the earnings derived therefrom shall not be taken into account in applying the reserve and recapture provisions of Applicant's operating-differential subsidy agreement with the Commission; however, the Applicant's net profits, if any, as determined by the Commission in accordance with sound accounting practice as determined by the Commission, resulting from Applicant's non-subsidized operation of said C-2 Service of Trade Route No. 17 shall be deposited in Applicant's capital reserve fund maintained pursuant to said operating-differential subsidy agreement as a voluntary deposit and treated accordingly, and such deposits, if any, shall be in addition to any and all statutory requirements of Applicant under said operating-differential subsidy agreement. In no event, however, shall the non-subsidized operations be permitted to reduce the amount of earnings from Applicant's subsidized services subject to recapture by the Commission.

4. Applicant shall file in triplicate with the Commission, at such times and in such form as may be prescribed by the Commission, semiannual profit and loss statements covering its non-subsidized operations in C-2 Service of Trade Route No. 17 and such other data as may be required by the Commission.

5. The Commission shall have the right in its sole discretion to cancel and terminate this authorization upon the expiration of written or telegraphic notice given at least fifteen (15) days prior to the completion of any such non-subsidized voyage.

*SECOND*, That the Secretary of the Commission be and hereby is authorized and directed to mail a certified copy of this Resolution to the Applicant and to each of the Interveners within fifteen (15) days from the date of its adoption.

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 U. S. M. C.

# UNITED STATES MARITIME COMMISSION

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No. S-12

PACIFIC ARGENTINE BRAZIL LINE, INC.—APPLICATION FOR OPERATING-DIFFERENTIAL SUBSIDY (TRADE ROUTE 24)

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*Submitted October 12, 1948. Decided November 5, 1948*

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## REPORT AND ORDER OF THE COMMISSION

### BY THE COMMISSION:

By application dated April 1, 1948, and supplement thereto dated May 14, 1948, Pacific Argentine Brazil Line, Inc., applied under Title VI of the Merchant Marine Act, 1936, for financial aid in the operation of vessels in essential service in the foreign commerce of the United States (Trade Route 24) between the West coast of the United States and the East coast of South America. By notice dated May 11, 1948, the Commission directed that a public hearing be held in San Francisco, California, and Washington, D. C., to receive evidence relevant to determinations which the Commission is required, after hearing, to make pursuant to section 605(c) of the Merchant Marine Act, 1936, as amended.

Such hearings were duly held, and at the conclusion thereof briefs and requested findings and conclusions were submitted by the applicant and by Moore-McCormack Lines, Inc., the presently subsidized United States-flag operator on Trade Route 24. The hearing examiner submitted a recommended decision, served September 24, 1948, which was confined to the issues referred to him for statutory hearing under section 605(c), and thereafter, pursuant to a stipulation and the Commission's informal request, submitted a supplemental report setting forth findings and conclusions of fact.

Moore-McCormack Lines, Inc., filed exceptions to the examiner's recommended decision and supplemental report, and oral argument thereon was heard by the Commission on October 12, 1948.

The Commission has considered the application and supplement thereto, the record of the hearings, the briefs of counsel, including re-

quested findings and conclusions, the examiner's recommended decision and supplemental report setting forth his findings and conclusions of fact, the exceptions of Moore-McCormack Lines, Inc., and oral argument thereon. Its findings and conclusions are hereinafter set forth and embrace the issues required by section 605(c) to be determined after hearing, together with other matters not required to be determined after hearing, but as to which the record compiled at the hearing was found by the Commission to be informative.

We find that:

1. Applicant's predecessor held a pre-war operating-subsidy contract on the route here involved, which contract it permitted to expire February 10, 1940. The Commission thereupon issued invitations to bid for the chartering of vessels to be operated upon the route with the obligation upon the successful bidder to acquire four new C-1 type vessels and to maintain with such vessels a minimum of twelve and maximum of twenty-four sailings annually. The applicant's predecessor and Moore-McCormack made bids of 63 cents per d.w.t. and \$1.16 d.w.t. per month, respectively, the award going to Moore-McCormack.

2. Subsequently Moore-McCormack agreed to and did acquire three new C-3 vessels in lieu of the four C-1s and later allocated to the route five C-3 vessels although the Trade Routes Committee recommended only four C-3s. The five C-3 vessels so allocated have an estimated annual capacity of 188,162 d.w.t. and 11,063,568 cubic feet on this route as against 104,000 tons and 4,856,956 cubic feet annual capacity of the vessels originally advertised. The number of vessels (five) presently allocated to the route was determined after obtaining the recommendations of the Commission (four vessels) and then acquiring and allocating to this and other fleets operated by Moore-McCormack, additional vessels.

3. From March 1947, the applicant made sailings on this route approximately monthly. Had the applicant not done so, Moore-McCormack would probably have tried to sail one or two extra vessels monthly.

4. The present operating-differential subsidy contract between the Commission and Moore-McCormack Lines, Inc., provides for a minimum of twelve and maximum of twenty-four sailings a year by Moore-McCormack Lines, Inc., on Trade Route 24. From the commencement of its service in 1940 through 1947, Moore-McCormack made southbound sailings as follows on the route:

1940, July to December, 6 sailings.

1941, full year, 16 sailings.

1942-43-44, no sailings on account of war.

1945, commencing in October, 3 sailings.

1946, 13 sailings on account of strike conditions from September until after the first of the year.

1947, 22 sailings.

5. Some Moore-McCormack vessels have recently sailed on Trade Route 24 approximately half full. The principal reason for this condition is that during 1948 certain South American governments, for political and economic reasons, issued decrees and regulations which sharply curtailed the movement of cargoes on Trade Route 24 in United States-flag vessels. At least some of the conditions which prompted the issuance of such decrees and regulations are believed by the Commission to be of a temporary nature and it appears that there should in the future be a relaxation of such restrictive measures.

6. Applicant is a wholly owned subsidiary of Pope & Talbot, Inc., organized on December 31, 1940, under the laws of California as successor to a company (now dissolved) known as Pacific Argentine Brazil Line, Inc., which predecessor company was also a wholly owned subsidiary of Pope & Talbot, Inc.

7. Pope & Talbot, Inc., has been long established on the West coast of the United States and has diverse and extensive interests in that region. Its principal owners are residents of the West coast. The present application is strongly supported by shippers and others engaged in business in California, Oregon, and Washington. The applicant clearly has "the support, financial and otherwise, of the domestic communities primarily interested," within the meaning of section 809, Merchant Marine Act, 1936.

8. Applicant's predecessor pioneered Trade Route 24, operating between 1926 and 1940. The present applicant resumed service on the route in February 1947, and has maintained regular service since that date.

9. In 1946 and early 1947, Moore-McCormack's service was physically unable to handle the cargo offerings on Trade Route 24. A large amount of business which otherwise would have flowed through the Pacific coast either did not move or was booked and moved through the Atlantic or Gulf coasts. Many shippers who preferred to use United States-flag vessels had no alternative but to use foreign-flag ships.

10. During 1946 and 1947 frequency and regularity of Moore-McCormack service on Trade Route 24 failed to satisfy the needs of many shippers.

11. Moore-McCormack's services have been characterized by  
3 U. S. M. C.

delay in sailing schedules, having serious consequences to shippers, such as accumulation of demurrage, warehouse, and production problems, and letter of credit complications.

12. Moore-McCormack has provided no service to San Francisco East Bay area and certain Pacific northwest ports, and its service to South American outports has been unsatisfactory to some shippers.

13. Deficiencies in Moore-McCormack service during 1946 and 1947 resulted in part from labor disturbances, in part from the difficulties of resuming service after war-time interruption, in part from congestion in South American ports, and in part from the absence of competition on the Trade Route from vessels of United States registry.

14. South America is experiencing immense industrial development and increase in population, and the effect is to substantially increase the demand for American goods flowing over both the East coast and West coast routes served by Moore-McCormack.

15. The Pacific coast, because of its tremendous industrialization during and since the war, is now, and to an increasing extent will continue in position to compete with the Atlantic coast in supplying types of merchandise required by South America for which it was unable to compete before World War II, and because of its population growth, represents an expanded and expanding market for consumer and related commodities.

We conclude that:

1. The vessels to be operated by the applicant on Trade Route 24 in the service described by its application for operating differential subsidy will not be in addition to the existing service, the applicant being an existing operator.

2. The granting of the application and the execution of a contract thereunder would not give undue advantage or be unduly prejudicial as between citizens of the United States in the operation of vessels in competitive services, routes, or lines, on Trade Route 24.

3. The application of Pacific Argentine Brazil Line, Inc., for an operating differential subsidy on Trade Route 24 should be approved, subject to verification by the Commission with respect to applicant's eligibility under section 601 of the Merchant Marine Act, 1936, to receive an operating-differential subsidy contract, and subject to terms and conditions to be prescribed by the Commission.

On the basis of the foregoing findings and conclusions, it is hereby *Ordered*, 1. That application of Pacific Argentine Brazil Line, Inc.,



for an operating differential subsidy on Trade Route 24 be, and the same hereby is, approved, subject to verification by the Commission with respect to applicant's eligibility under section 601 of the Merchant Marine Act, 1936, to receive an operating-differential subsidy contract and subject to terms and conditions to be prescribed by the Commission;

2. That the requests of the applicant and Moore-McCormack Lines, Inc., for findings and conclusions, and the exceptions of Moore-McCormack Lines, Inc., except as herein granted or allowed by the findings and conclusions hereinabove set forth be, and they hereby are, denied.

Commissioners Smith, Carson, and Coddaira.

Commissioner McKeough dissents.

Commissioner Mellen absent and not participating in the foregoing decision and order.

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

WASHINGTON, D. C., *November 5, 1948.*  
3 U. S. M. C.

# UNITED STATES MARITIME COMMISSION

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No. S-13

ARNOLD BERNSTEIN LINE, INC.—APPLICATION FOR OPERATING-DIFFERENTIAL SUBSIDY FOR OPERATION OF A PASSENGER AND CARGO SERVICE ON TRADE ROUTE NO. 8.

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*Submitted December 1, 1948. Decided March 21, 1949*

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## REPORT OF THE COMMISSION

BY THE COMMISSION:

This is a proceeding in which the Commission is asked to make findings required under section 605(c) of the Merchant Marine Act, 1936, as amended, in connection with the application of Arnold Bernstein Line, Inc., for financial aid in the operation of vessels in the foreign commerce of the United States. The applicant proposes to operate two P-2 type vessels as a combination passenger and freight service making 31 sailings per annum on Service No. 1 of Trade Route 8, New York to Rotterdam, Antwerp, returning to New York via Boston as traffic offers.

Pursuant to the Commission's notice of hearing, leave to intervene was granted to United States Lines Company, Waterman Steamship Company, and Black Diamond Steamship Corporation. The Department of Commerce was permitted to intervene at oral argument. Hearing was duly held in Washington commencing August 30, 1948, and continuing for two days. The examiner's recommended decision was served October 12, 1948. Exceptions to his report, supported by briefs, were then filed, and oral argument was heard by the full Commission on December 1, 1948. By stipulation time was granted to the parties to file additional memoranda analyzing certain statistical information offered by Commission counsel at the argument. Our findings are based on the full record, including briefs and argument.

Section 605(c) inhibits the Commission from granting a subsidy contract under Title VI "with respect to a vessel to be operated on a service, route, or line served by citizens of the United States which would

be in addition to the existing service, or services, unless the Commission shall determine after proper hearing of all parties that the service already provided by vessels of United States registry in such service, route, or line is inadequate, and that in the accomplishment of the purposes and policy of this Act additional vessels should be operated thereon." The second clause of section 605(c) is inapplicable to the present case. As the exceptions filed by the interveners largely stress points involving this second clause, it is appropriate to state expressly that that clause applies only where the applicant is an existing line furnishing services on the trade route with respect to which it asks Government aid. Compare our decisions in the cases involving the applications under Title VI of Pacific Argentine Brazil Line, Inc., decided November 5, 1948, and Shepard Steamship Company, decided this day (Docket Nos. S-12 and S-14).

The present case is one in which a new service is proposed by a line not yet in operation, and which would therefore be in addition to the existing service within the meaning of the first clause of section 605(c). Existing service is provided between New York and Rotterdam and Antwerp with cargo vessels of United States registry owned by interveners United States Lines Company, Waterman Steamship Corporation, and Black Diamond Steamship Corporation, and by various other companies, all of which qualify as citizens of the United States within the meaning of the Act.

The first determination required to be made relates to the adequacy of the existing service thus provided. The problem has two aspects, one relating to cargo and the other to passenger service, of which we consider the passenger aspect as of controlling importance in this case.

With respect to the passenger service, the facts are not in dispute. So far as appears from the record, only the Holland-America Line, a Netherlands corporation, provides any regular service to Rotterdam, and the only service to Antwerp since the war has been provided by freight vessels carrying not in excess of twelve passengers each. While it is contended that in some circumstances a well organized and competitive freight service with accommodations for a small number of passengers may be considered as affording a passenger service, in the present case we do not deem such service to be adequate. The record does not induce us to modify our view that the passenger traffic to Antwerp and Rotterdam is worth pursuing. We believe that the level of such traffic will be sufficiently high to support a regular service of the type we have envisaged, without taking into account the probable effect on the development of western European ports of the weakening of German national pressure which seems to have sustained the rather arti-

furnished in excess of 100,000 passengers to conference lines in 1938 alone, of which almost 40% were carried by the two crack liners the *Bremen* and *Europa*. These vessels, and indeed most German vessels, have been lost or have otherwise passed from German control and there is at present no official prospect of revival of German-flag passenger operations.

Some of the interveners contend that a passenger service to Antwerp and Rotterdam will be competitive with existing United States-flag passenger service to the channel ports. So far as this contention bears on the issue of adequacy, we do not find on the present record that the existing passenger service on Trade Route 5 provides adequate service on Trade Route 8.

We find that existing passenger service, whether considered in terms of Trade Route 8 alone or in conjunction with Trade Route 5, is inadequate. This meets the statutory requirements as to a determination of inadequacy in this case, making unnecessary a discussion of its cargo aspects.

The second determination required by the applicable clause of section 605(c) is whether in the accomplishment of the purposes and policy of the Merchant Marine Act, 1936, as amended, additional vessels should be operated on Trade Route 8.

We have previously determined (Docket No. S-10, *Application of Arnold Bernstein Steamship Corporation et al.*, decided February 18, 1948) that the service to Antwerp and Rotterdam should be maintained as an essential part of American merchant-marine operations. We have prescribed combination vessels for Service 1; there are no such vessels presently in operation, a prima facie showing that additional vessels are required. Nothing in the record convinces us that this conclusion is unsound. The existing service is inadequate with respect to passenger service. This defect cannot be remedied unless suitable vessels are introduced into the trade. Whether the particular vessels applicant proposes are suitable to meet the passenger requirements of Trade Route 8 is not a question relevant under section 605(c).

We determine that in the accomplishment of the purposes and policy of the Merchant Marine Act, 1936, as amended, additional vessels should be operated on Trade Route 8.

It follows that section 605(c) interposes no bar to the further consideration of the application.

The interveners contend that the Commission should have extended the scope of hearing to cover other aspects of the application, particularly those to be considered under section 601(a). We are of opinion that the issues presented by section 605(c) are separate and distinct from those involved in section 601(a), which contains no requirement

for hearing prior to the Commission's administrative determinations thereunder.

The other exceptions to the examiner's recommended decision have been considered and are overruled.

The proceeding under section 605 (c) is accordingly discontinued, and other questions presented by the application will be separately considered and decided in regular course.

By order of the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

WASHINGTON, D. C., *April 28, 1949.*  
3 U. S. M. C.

## UNITED STATES MARITIME COMMISSION

No. S-14

SHEPARD STEAMSHIP Co.—APPLICATION FOR OPERATING-DIFFERENTIAL  
SUBSIDY (TRADE ROUTE No. 1)

*Submitted December 17, 1948. Decided March 21, 1949*

Applicant found to be operating an existing service on Service B of Trade Route No. 1 and therefore not required under section 605(c) of the Merchant Marine Act, 1936, to establish the inadequacy of other existing service on the same route.

The granting of the application under consideration would not give undue advantage, or be unjustly prejudicial, as between citizens of the United States under section 605 (c).

*Harold S. Deming, Charles S. Haight, Thomas K. Roche, and R. L. Price* for Shepard Steamship Co., applicant.

*Ira L. Ewers, M. France, and Albert F. Chrystal* for Moore-McCormack Lines, Inc., *Henry E. Foley* for New England Export Club, Inc and Maritime Association of the Boston Chamber of Commerce, Inc *Walter W. McCoubrey* for Port of Boston Authority, *Herbert S. Evans* for Foreign Commerce Club of Boston, Inc., *Richard M. Cantor* for Sailors Union of the Pacific, *George S. Franklin* for Marine Firemen Union, *Daniel J. Donovan* for International Longshoremen's Association, and *Timothy J. Moriarty* for Marine Warehouse Union, interveners.

*Paul D. Page, Jr., and George F. Galland* for the Commission.

### REPORT OF THE COMMISSION

#### BY THE COMMISSION:

By notice dated May 7, 1948, and published in the Federal Register of May 29, 1948, we directed that a hearing be held on the application of Shepard Steamship Co. (hereinafter referred to as "Shepard"), under Title VI of the Merchant Marine Act, 1936, for an operating-differential subsidy on Service B of Trade Route No. 1 (between United States Atlantic coast ports and East coast ports of South America). Hearings were held before a hearing examiner in Boston, Massachusetts

setts, and New York, New York. Moore-McCormack Lines, Inc. (hereinafter referred to as "Mormac"), the only subsidized operator on Route 1, intervened and opposed the application. Other interveners were New England Export Club, Inc., Maritime Association of the Boston Chamber of Commerce, Inc., Port of Boston Authority, Foreign Commerce Club of Boston, Inc., Sailors Union of the Pacific, Marine Firemen's Union, International Longshoremen's Association, and Marine Warehouse Union.

The hearing examiner filed a recommended decision to which Mormac filed exceptions, which were orally argued before us on December 17, 1948. Our decision is in general accord with the examiner's recommendations, which were limited to issues arising under section 605(c) of the Merchant Marine Act, 1936, which provides:

(1) No contract shall be made under this title with respect to a vessel *to be* operated on a service, route, or line served by citizens of the United States *which would be in addition to the existing service, or services*, unless the Commission shall determine after proper hearing of all *parties that the service already provided by vessels of United States registry* in such service, route, or line is inadequate, and that in the accomplishment of the purposes and policy of this Act additional vessels should be operated thereon; and (2) no contract shall be made with respect to a vessel *operated or to be operated* in a service, route, or line served by two or more citizens of the United States with vessels of United States registry, if the Commission shall determine the effect of such a contract would be to give undue advantage or to be unduly prejudicial, as between citizens of the United States, in the operation of vessels in competitive services, routes, or lines, unless following public hearing, due notice of which shall be given to each line serving the route, the Commission shall find that it is necessary to enter into such contract in order to provide adequate service by vessels of United States registry \* \* \*. (Numbers in parentheses and underscoring supplied)

Shepard contends that the determination of the application is dependent upon section 601 and not section 605(c) of the 1936 Act. In other words, it believes that since it is an existing operator on the route it does not have to prove the inadequacy of Mormac's service in order to be eligible for a subsidy. Mormac urges that not only section 601 but also section 211 for the Act are involved. Mormac and Shepard are clearly correct in asserting that the application presents questions under sections other than 605(c); but such other questions are beyond the scope of the issues assigned for hearing. We shall, of course, pass upon such other issues before disposing of the application on the merits, but we do not do so herein. The purpose of the hearing was to determine whether section 605(c) stood in Shepard's way in securing government aid. In setting a hearing on that question we did all that the law requires of us if, indeed, we did not do more.

If Shepard be found to be an existing operator under the first part of section 605(c), it need not prove that Mormac's service is inadequate.

quate in order to be eligible for a subsidy. See our report and order of November 5, 1948, *In the Matter of Pacific Argentine Brazil Line, Inc.—Application for Operating Differential Subsidy (Trade Route 24) Under Title VI, Merchant Marine Act, 1936*. The second part of the section, however, requires a determination as to whether the award of a subsidy to Shepard would give undue advantage or be unduly prejudicial as between citizens, and if so, whether it is necessary to enter into a subsidy contract in order to provide adequate service by vessels of United States registry.

*Existing service.*—Shepard commenced operation on Route 1 on May 1, 1947, and has rendered continuous and regular service since that time, employing four C-3 vessels which it purchased from the Commission, hereinafter more fully referred to, and two Victory-type vessels under charter from the Commission. Between June and December 1947 it made 12 sailings southbound and handled approximately 67,000 tons of cargo; northbound, there were six sailings and approximately 22,000 tons. For the first six months of 1948, there were 10 sailings southbound with approximately 54,000 tons, and nine sailings northbound with approximately 35,000 tons. Thus, during its first year of operation, Shepard made 22 sailings southbound and 15 northbound, with a total of approximately 178,000 tons carried. It was testified that Shepard has no present intention to withdraw from the trade even though its application for a subsidy be denied. The hearing examiner recommended a finding that Shepard is an existing operator on Route 1 within the meaning of the first part of section 605 (c) of the Act, and therefore does not have to prove the inadequacy of Mormac's service in order to be eligible for a subsidy. His recommendation on this point is fully supported by the record and Mormac's exception thereto is overruled.

*Undue advantage or prejudice.*—In our report of May 22, 1946, on essential foreign trade routes, we split Trade Route No. 1 into four services. The first one, not here involved, is a passenger and freight service. The second, known as Freight Service A, provides for the following itinerary:

New York (regular calls also to be provided at Philadelphia, Baltimore, Hampton Roads and at South Atlantic ports within the Wilmington, North Carolina-Jacksonville range) to Rio de Janeiro, Santos, Montevideo, Buenos Aires, with calls to be arranged at other South American ports within the Pernambuco-River Plate range as traffic offers, loading at River Plate (including up-river ports if conditions warrant) and returning via Brazilian ports to U. S. Atlantic ports; with privilege of calling at Canadian ports to load or discharge cargo but not exceeding 12 calls per year.



To accommodate this schedule it was recommended that 10 C-3 type freight vessels be utilized, making 52 weekly sailings per year.

The third, known as Freight Service B, provides the following itinerary:

U. S. Atlantic ports to East Coast South American ports within the Pernambuco-River Plate range, including up-river ports in the River Plate area, with privilege of calling at Canadian ports to load or discharge cargo but not exceeding 12 calls per year.

Four C-2 type freight vessels were recommended, making 18 to 24 sailings per year.

The fourth, known as Freight Service C, is limited to North Brazil ports and is not involved herein.

Services A and B are much alike, geographically. Mormac's vice president considers the two routes parallel, although it may be significant that nine days after the commencement of Shepard's service, Mormac filed an amendment to its application for resumption of subsidized service, which, for the first time, referred to the B service. The principal difference between Service A and Service B is that Service B, to a greater extent than Service A, contemplates regularity of service to small ports, including up-river ports in the River Plate area.

As early as the beginning of this century Shepard interests owned and operated sailing vessels in many trades, including that to the River Plate. All such vessels were lost during the first world war and shortly thereafter, resulting in a discontinuance of business until 1929, when steam vessels were purchased from the United States Shipping Board and the present company was incorporated. Intercoastal operations via the Panama Canal were thereafter instituted, with a total of seven vessels owned or chartered. In February 1940 the intercoastal service was discontinued and the vessels were placed in the foreign service because of the international situation. All the vessels were eventually lost by enemy action in World War II. Between 1942 and 1944 Shepard was a general agent for War Shipping Administration in the operation of a large number of vessels.

Toward the close of the war the company commenced an intensive study looking toward a suitable foreign trade route after the termination of hostilities. It was testified by Shepard's vice president that encouragement in that respect was received from various members of the Commission's staff, who stated that the Commission was disappointed at the failure of International Freighting Corporation to accept a subsidy on what is now Route 1. The president of that company confirmed to Shepard that the route was a most excellent trade area but that foreign-flag competition would be so heavy that only a subsidized service could survive. For intra-company reasons, International  
3 U.S.M.C.

Freighting Corporation did not want to apply for a subsidy. Shepard having originally applied to the Commission for the purchase of five vessels for use on Route 8, amended its application to cover Service B of Route 1, instead of Route 8. The application was granted in November 1946 although only four vessels of the C-3 type were awarded. As the result of many delays, delivery of the vessels was not made for some time, and actual operation, as heretofore noted, did not commence until May 1, 1947.

The importance of Route 1 can be gauged by the fact that in 1946 it ranked fifth of all routes in volume (4,496,000 tons) and fourth for the first quarter of 1948 (1,336,000 tons). In liner traffic it was third for all routes in the first half of 1947 (1,656,000 tons). In recent years the South American trade has had a dollar deficit averaging more than one billion dollars per year, which has resulted in many exchange controls, import quotas, embargoes, and other restrictions. Recent governmental decrees, especially in Argentina, have brought about a decided slump in trade. In addition to the foregoing factors, large quantities of European competitive cargo are now being unloaded in South America, principally from the United Kingdom and Belgium. The seriousness of the decline may be gathered from the fact that during June and July 1948 Mormac's vessels sailed southbound with available unused cubic ranging (with one exception) from 107,000 to 400,000, and available unused deadweight ranging (with one exception) from 1680 to 6467. Shepard is similarly affected, having about 35 percent unused space southbound and 55 percent northbound. It was testified that during its first 12 months of operation Shepard made a profit but is not breaking even since the slump started. A subsidy, Shepard believes, would eliminate the deficit.

Competition on Route 1 is greater than on any other route. For 1947 U. S.-flag participation in the trade area was 52.1 percent as compared with a national average of 58.4 percent, whereas in the first quarter of 1948 the percentages were 40.3 and 56.0. In only one other trade area was there a comparable decline. American dry-cargo vessels carried only 27 percent of the entire traffic on Route 1 in 1938 as compared with 46 percent in the fiscal year 1948. The 1948 figures represent an increase of almost 400 percent over 1938 traffic but reveal a drop from 1946 and 1947. In the second quarter of 1946 three American lines operated U. S.-flag vessels on the route as compared with 11 foreign lines; in the fourth quarter of 1947 three American lines operated U. S.-flag vessels as compared with 13 foreign lines and 2 American lines operating foreign-flag vessels (one of the latter also operated U. S.-flag vessels); and for the second quarter of 1948 three American lines operated U. S.-flag vessels as compared with 13 foreign lines and

one American line operating, foreign-flag vessels.<sup>1</sup> It is of interest that in the second quarter of 1948 over 40 percent of the sailings were by vessels of nations whose shores were not touched by the route. Sailings of U. S.-flag vessels between January 1947 and June 1948 dropped from 43 percent to 35 percent of the total on the route. Traffic carried in such vessels during the same period dropped from 51 percent to 41 percent of the total. The Argentine and Brazil national lines are steadily expanding and competition from that source may be expected to become intensified. Furthermore, limitations upon foreign-flag carryings of Europe-bound cargo moving under the Foreign Assistance Act may cause a diversion of additional foreign-flag vessels to Route 1.

Efforts are being made by the port of Boston to increase the use of its facilities, but shippers and port officials testified that this can never be done unless shippers are guaranteed frequent and dependable service. It is contended that, since Boston and New York take the same rate from Central Freight Association territory, more frequent service out of Boston would help that port compete with New York for common-origin cargo. Furthermore, the increased service at Boston would eliminate for New England shippers overland and other charges incident to shipment via New York. For example, one exporter saves between \$60.00 and \$100.00 on every car routed through Boston. Mormac's southbound vessels, after leaving Boston, call at Baltimore, Philadelphia, and New York in the order named. Inasmuch as only 3,000 tons of cargo moved from Boston on Route 1 in 1947, Mormac urges that it cannot justify penalizing large-cargo ports in order to give more direct service to Boston. In other words, a vessel sailing with Baltimore and Philadelphia cargo via Boston in order to obtain the latter's higher paying cargo, not only cannot participate in similar high paying cargo out of Baltimore and Philadelphia but will be unable to obtain even a fair share of the lower paying cargo available at those ports in a competitive market. Shepard's vessels call at only one port—New York—after leaving Boston, which permits New England shippers to deliver cargo in their own conveyances to Shepard vessels on the day of sailing, thus saving time and money. This enables the shipper to know exactly what shipping deadline must be met in order to fulfill his contract of sale. Less damage to cargo is said to occur when it is handled in the shipper's own trucks. When movement is overland from New England points to New York it is difficult to trace articles lost prior to loading on shipboard; losses of this kind are minimized when Boston is used.

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<sup>1</sup> The Uruguay Line made one sailing shortly before the hearing, and subsequent to the hearing two Dutch lines (Holland America Line and Nievelt Goudriaan & Co.) entered the trade with a joint service known as Holland Inter-america Line, Agreements 7684 and 7684-A.

Boston is the largest wool market in the world, and about 85 percent of the woolen industry in the United States is located in New England. Ninety percent of the country's purchases of wool from the East coast of South America are imported into Boston. In the 18 months preceding the hearing 51 vessels—30 American and 21 foreign—brought in wool from Argentina. Wool must be imported at frequent and regular intervals, in lots of 50 to 100 tons, as the business is highly competitive. New England has no adequate storage facilities for large amounts, and the industry does not wish to have capital tied up or to take a chance on frequent price changes.

Because of its affiliation with lumber interests, Shepard has been able to increase the movement of lumber into Boston from South America. It has also brought in cotton from the same area, which has not been done by any other line. Shippers appeared to be pleased with the service rendered by Shepard, and were of the unanimous belief that business would be accelerated when South American restrictions are eased. As another hopeful sign for the port of Boston, it was pointed out that the New York, New Haven & Hartford Railroad Co. has recently returned to the control of New England interests. The witness for the Port of Boston Authority agrees that Mormac's unwillingness to penalize larger ports at Boston's expense is good managerial discretion, but believes that that is another reason why Boston must have the Shepard service else the efforts to secure New England traffic now moving via New York would be of no avail. In the opinion of the Greater Boston Development Committee, Shepard's withdrawal would be more far-reaching than the mere loss of Route 1 because shippers would think it was just another case of carriers not being prepared to offer frequent and regularly scheduled service in and out of Boston.

Shepard's Baltimore cargo is mostly steel, which must go in the bottom of the vessel. Boston cargo is mostly machinery, which takes a higher freight rate and must be handled fast; this accounts for the fact that Boston is the next to last port of call for Shepard southbound. Although Shepard's volume out of Baltimore is considerably more than that out of Boston, revenue from the latter about equals that from the former.

Between January 1, 1946, and April 4, 1947, Mormac had 12 sailings from Boston, or one every 40 days. During the same period there were 15 foreign-flag sailings, or one every 32 days. From April 30, 1947, to May 21, 1948, Mormac had 23 sailings, or one every 16 days. Correspondingly, Shepard had 21 sailings, or one every 18 days. Foreign-flag sailings between May 1, 1947, and June 3, 1948, averaged one every 21 days. Mormac would not call for small amounts of cargo during the war and immediately thereafter. It would not be fair to place

upon Mormac the full blame for lack of service during the above dates, nor should its increased activity since the war be attributed solely to the inauguration of Shepard's service, for during the war all tonnage was requisitioned by the Government; it was not until March 1946 that the United Maritime Authority, controlling the use of allied shipping, was terminated; Mormac, in conjunction with other lines, experienced considerable difficulty in securing new vessels and in restoring their older ones to first-class condition; and the last of Mormac's new vessels was not received until May 1948.

Shepard has made intensive efforts to develop small ports in South America and to create new cargo, in line with what Shepard states was the advice of the Commission's staff. Cargo at these ports is called for regardless of whether there is discharge cargo aboard—although it appears that no one of such ports was served frequently or regularly by Shepard in its first year of operation in Service B. Considerable cargo has, however, been secured at up-river ports in Argentina. Porto Alegre is the only small port not accessible to Shepard vessels the entire year. Over 190 different commodities have been carried southbound by Shepard and over 40 northbound.

Table I affords a comparison of Mormac's and Shepard's sailings and the traffic handled on Route 1 between January 1947 and June 1948.

TABLE I

	1947	Jan.-June 1948 <sup>2</sup>
<i>Mormac</i> <sup>3</sup>		
Southbound:		
Sailings .....	153	53
Cargo tons .....	1,008,000	265,000
Average tons per sailing .....	6,588	5,000
Northbound:		
Sailings .....	128	54
Cargo tons .....	596,000	285,000
Average tons per sailing .....	4,656	5,280
<i>Shepard</i>		
Southbound:		
Sailings .....	12	10
Cargo tons .....	67,000	54,000
Average tons per sailing .....	5,583	5,400
Northbound:		
Sailings .....	6	9
Cargo tons .....	22,000	36,000
Average tons per sailing .....	3,670	4,000

<sup>2</sup> Includes 17,000 tons southbound and 27,000 tons northbound to and from north Brazil ports on service 4. Same information not available for 1947.

<sup>3</sup> Excludes passenger-freight vessels *Argentina*, *Brazil*, and *Uruguay*.

During the second half of 1947, after Shepard had commenced its service, Mormac's southbound loadings approximated those of the first half of the year, and continued to show a not-too-great decline for the first half of 1948. Mormac's sailings dropped from 87 in the first half of 1947 to 66 in the second half, but since Shepard had only 9 sailings

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during the second half, Shepard's service would account for only a part of the shrinkage. Mormac conceded that it is improbable that all of Shepard's cargo would have moved by Mormac had Shepard not been in the trade. Northbound, Mormac carried more traffic in the second half of 1947 than in the first half, and approximated the same level for the first half of 1948. Shepard had no northbound sailings in the first half of 1947, and in spite of Shepard's six sailings in the second half, Mormac had 10 more sailings than in the first half. Mormac had 15 fewer northbound sailings, and Shepard 3 more, in the first half of 1948 than in the second half of 1947. Nevertheless, Mormac in the first half of 1948 carried nearly half the tonnage it carried in all of 1947, and its average northbound loading exceeded the 1947 average.

As might be expected, Shepard and Mormac interpret the future of Route 1 in different ways. According to Shepard's witnesses, South America is changing from an agricultural to a much more highly industrialized economy, which means a higher standard of living and therefore an export market for the United States. Argentina, Brazil, and Uruguay are said to be vitally in need of our products, which Europe will not be able to supply competitively and in quantity for some time, and they in turn can offer a balanced and expanding trade flow ranging from foods to raw materials. No fully refrigerated vessels are operated regularly on the route, but refrigerated traffic is quite large. The trade with Brazil already has shown improvement. Our accelerated increase in population, it is thought, will continue for some time, thus increasing our purchases. To mention but one important export from South America, linseed, which has moved heavily until recent months, eventually should move again. Since Shepard has been endeavoring to develop Parana River ports, it expects to profit when exportation of that commodity is resumed. In time, Europe's dollar earning capacity should be available to pay South America for its European exports, and thus provide South America with an important part of its dollar purchasing power. According to the estimates of Shepard's witnesses, trade on Route 1 will eventually rise to about the 1947 level, which was very high. Shepard fears that foreign-carrier competition and not lack of trade will be the long-run problem, and that withdrawing American vessels will mean more foreign competition. Shepard testified that it has secured cargo which formerly moved by foreign lines. The fact that Mormac has asked permission of the Commission to increase the number of its sailings indicates to Shepard that the route is still attractive. Shepard is of the firm belief that staggered sailings by the two American lines would help the over-all picture in their efforts to compete with the foreign lines, but the suggestion for such a plan

has not received any support as Mormac has not "seriously considered that Shepard is going to stay in this trade."

Since resumption of normal service, Mormac has had no minimum requirement for traffic out of Boston, and its vice president believes that improved conditions should cut the loss of time from that port to within a few days of Shepard's schedule. In that witness' opinion 1947 is an abnormal competitive pattern and traffic on Route 1 will not again attain that level for a long time; if it does, there probably will be a return to the same unprecedented port congestion in South America unless new facilities are installed, which is not likely, based on past experience (South American terminals in the large ports are not owned by the carriers). A definite trend for the worse is seen by Mormac in recently concluded trade agreements between Argentina and a number of western European countries for the exchange of products which are competitive with those of the United States. If the policy of forcing certain portions of cargo to national vessels continues in South America, Mormac is doubtful whether it or Shepard will get sufficient cargo to utilize their vessels. Under any circumstances, Mormac believes that Shepard will take more cargo from it than from the foreign lines. Mormac is of the opinion that the stagger system does not tend toward good operation as it does not develop initiative. Because of foreign competition, it believes that the system would be disastrous to Mormac and not good for Shepard.

Mormac's fleet of 24 vessels allocated to route 1 (including the three good neighbor ships) has a deadweight capacity in each direction of about one million tons annually, and Mormac doubts whether southbound liner traffic on Route 1 (excluding coal) can sustain itself at an average much greater than one million tons annually, of which the share of U. S.-flag vessels would be one half under the recommendations of the Commission's Trade Route Committee. Northbound, the long-range traffic would approximate one and a half million tons annually, but since the stowage factor southbound is greater than that northbound, the spread is not so great as might appear. It is stated by Mormac's vice president that the company would not have invested in so many vessels in accordance with the suggestions of the Trade Route Committee had it known that the Commission contemplated subsidizing another company in the use of vessels which would exceed the reasonable needs of the trade.

#### CONCLUSIONS

There is good reason to believe that the present slump on Route 1 is temporary and may be eased in the not too distant future. The development plans of the various South American countries will probably  
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create a strong demand for American goods for some time. The mere fact that Mormac has ample facilities to handle all cargo now moving by American vessels does not mean that Shepard, which has made a good start in the trade, cannot secure cargo without prejudicing the financial standing of Mormac. Indeed, the figures hereinbefore set out indicate that Mormac has been holding its own reasonably well since the Shepard service was commenced. That Shepard has already made inroads on cargo formerly carried by foreign lines has also been noted. In a trade of the magnitude of Route 1, served so predominantly by foreign lines, there is no assurance that one American line can adequately handle at least half of the traffic that potentially will move via all American lines. Instances were cited at the hearing where a foreign line was used when a second American line was not available. Most shippers who testified stated that they prefer to ship by American lines when possible, and that their experience has been that more than one American line in a trade acts as a healthy spur to competition. It is a natural phenomenon that shippers, like buyers, enjoy the opportunity to choose.

As appears from Report No. 1618 of the Senate Committee on Commerce, 75th Congress, 3rd Session, the whole subsidy system is designed "to preserve and expand an industry demanded in the interest of our national welfare" and not aid "for the benefit of the shipowner." Upon the facts of record in this proceeding we conclude that, under the second part of section 605(c) of the Act, the granting of an operating-differential subsidy to Shepard on service B of Trade Route 1 would not "be to give undue advantage or to be unduly prejudicial, as between citizens of the United States, in the operation of vessels in competitive services, routes, or lines."

Mormac's exceptions have been carefully considered, and except to the extent that the examiner's recommended decision has been modified by this report in conformity with those exceptions, they are overruled.

We find:

1. That the vessels being operated and in service in Freight Service B of Trade Route 1 by applicant, Shepard Steamship Co., are providing an existing service, and that applicant, Shepard Steamship Co., is an existing operator on said Service B of Trade Route 1; and

2. That the effect of the granting of an operating-differential subsidy to applicant, Shepard Steamship Co., with respect to the operation of vessels on Freight Service B of Trade Route 1 would not be to give undue advantage or be unduly prejudicial as between citizens of the United States in the operation of vessels in competitive services in said freight service on said Trade Route.



This proceeding under section 605 (c) of the Merchant Marine Act, 1936, is hereby discontinued. Questions arising under other provisions of law will be separately considered and decided in due course.

Coddaire, *Commissioner*, concurring:

The issue presently before the Commission is very narrow—whether section 605(c) of the Merchant Marine Act, 1936, stands in the applicant's way in seeking an operating-differential subsidy covering its operations on Freight Service B of Trade Route 1. The report of the Commission holds merely that section 605(c) does not stand in the way. The Commission has not held that subsidy will be awarded. That question is expressly reserved for future determination.

Moore-McCormack Lines, Inc. (Mormac), holds an operating-differential subsidy contract for service on Trade Route 1. The service which Shepard is now operating and for which it asks a subsidy is in direct competition with Mormac. Mormac insists that since it was the first line to be subsidized in the affected trade and is prepared to furnish all the service recommended by us in our report on essential trade routes, no subsidy may be given to Shepard. There are several answers, all of which I deem conclusive, to Mormac's position.

Under section 601(a), Merchant Marine Act, 1936, the Commission is "authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels \* \* \*." We must assume that the statutory reference to the application of "any citizen" means what it says, and it follows that no citizen applicant may be summarily turned away simply because it was not the first successful applicant for Government aid. Even if the Commission had contracted not to subsidize a Mormac competitor, I should consider the agreement void for inconsistency with the obligation to consider the application of *any* citizen. The Commission may not contract away responsibilities imposed upon it by law.

The legislative history of section 605(c) proves that Congress did not mean to prescribe any rule limiting operating-differential subsidies to a single line in a single trade. The Guffey Bill (S. 4110, 74th Congress), one of the many bills which Congress considered in evolving the Merchant Marine Act, 1936, contained such a restriction, but was never reported out of Committee; and no similar restriction is found in any of the other bills which dealt with the subsidy problem, although the question of single-subsidy versus multiple-subsidies was considered in the legislative proceedings. See, for example, hearings before the Senate Commerce Committee on S. 4110, S. 4111, and S. 3500, 74th Cong., 2d Sess., p. 135.

It is unnecessary, however, to go beyond the Act itself for authority to award dual or multiple subsidies in a proper case. Section 605(c)  
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implicitly recognizes the Commission's power to subsidize competing operators, by setting forth the conditions which must be met before such action is taken. The operators entitled to be heard under that section on questions of adequacy of service, and of undue advantage or undue prejudice, are subsidized as well as unsubsidized lines. If we were forbidden to subsidize competing operators, the law would presumably have told us so instead of setting up the complex scheme found in section 605(c) for the qualified protection of operators (including subsidized operators) against subsidized competition. The Commission has recognized all this—as long ago as 1938 in subsidizing the Robin Line alongside the Farrell Line (American South African Line) on Trade Route 15A, and as recently as 1948 in subsidizing Pacific Argentine Brazil Line (PAB) in competition with Mormac on Trade Route 24.

It follows then that the Commission is entirely free to subsidize two or more United States-flag operators in a particular trade if it finds that such action is in conformity with the purposes of the Merchant Marine Act, 1936, and does not conflict with the prohibitions of section 605(c). The Commission has found that the granting of the Shepard application would not conflict with those provisions and I think that the law and the evidence fully support its findings. If similar findings were justified (as I believe they were) in the PAB case, they are inescapable on the record now before us.

The dissenting opinion raises several points which invite discussion.

The dissent traces the history of Mormac's application for resumption of subsidized operations and concludes, on the basis of various actions taken by the Commission with respect thereto, that such application stands approved, subject to the Commission's direction that notice of approval be withheld from Mormac. I read the record differently. The Commission, having voted to approve the Mormac application on October 14, 1948, rescinded its approval on October 19, 1948, before notice of its action had been transmitted to Mormac. The action of October 19 necessarily constituted a rescission not only of the approval as voted on October 14 but also of the approval previously voted on April 13, 1948—of which notice was withheld pending the Shepard application. Thus, the Mormac application still awaits definitive approval or disapproval; and in view of section 601 of the Act, I should suppose that the Commission ought not to pass upon it except in conjunction with its consideration of the pending Shepard application on its merits.

The dissent includes the opinion that the Act does not contemplate the subsidizing of two or more operators in the same service if the presently subsidized operator has a contract for carrying a "substantial portion" (section 101 of the Act) of cargo moving in the trade and

demonstrates capacity and willingness to fulfill his contract. I have indicated that I think the Commission has no power to foreclose, by contract or otherwise, its consideration of the Shepard application or any other application. I fully agree that the Commission may ultimately, as a matter of policy, determine that Shepard should not be subsidized, but that determination, if made, must be based upon full consideration of the facts. It seems to me in no sense conclusive that Mormac has purchased a fleet so large that Mormac ships alone can provide all of the service recommended by us for Trade Route 1. If that fact were determinative, it would mean that Mormac would be unduly prejudiced whenever a subsidized competitor carried any traffic other than Mormac's overflow. I am convinced that such is not the meaning of the law. The Commission sells no monopolies and Mormac has purchased none.

The other points raised by the dissenting opinion will be relevant when the Commission finally considers whether to award a subsidy. It cannot be over-emphasized that the Commission has not yet made that determination, as is concluded in the dissent. It has had before it, and has made determinations with respect to, only those issues arising under section 605(c). Public hearings were held for the purpose of receiving evidence relative to those issues alone. The Commission's determination that Mormac has failed to demonstrate that it would be unduly prejudiced by the granting of the Shepard application is based upon a record made in public hearings, and upon nothing else. If the record is to have any meaning, it must (except as to facts officially noticed) be the exclusive source of evidence upon which the Commission draws in passing upon the matters in issue. The dissent says, "It could be that the examiner's lack of familiarity with all of the phases of Moore-McCormack's contract caused him to err" in recommending a finding that Mormac would not suffer undue prejudice. Mormac had every opportunity to acquaint the examiner and the Commission with the relevant phases of its contract (which was stipulated into the record), and if there were collateral considerations bearing thereon which were not made matters of record, the examiner, and the Commission as well, properly left them out of account.

The question of expense to the Government is discussed in the dissenting opinion and the conclusion made that the award of a subsidy to Shepard would constitute a waste of Government funds. It does not necessarily follow that a subsidy to Shepard would substantially increase the Government's cost, such cost being dependent on the number of subsidized sailings rather than the number of subsidized operators. In any event, I do not understand that the subject of Government extravagance is related to the question whether Mormac will suffer undue

prejudice; but, the question having been raised, I think it fitting to observe that a subsidy in a proper case is not to be condemned solely because it might be more cheaply withheld than granted. The question in any case is whether Commission action in awarding a subsidy represents a prudent expenditure of Government money in promoting the national maritime policy—which is always a question of policy, not of law. It should not be assumed that a long-range subsidy program can be administered without cost to the Treasury or that such cost may not be many times returned in economic advantage to the nation, if indeed it is not repaid in the form of recapturable profit.

In concluding, it should be noted that the experience in Trade Route 15A, on which the Farrell Line (American South African Line) and the Robin Line have been subsidized side by side for ten years, does not support a finding that dual subsidies are disadvantageous or prejudicial to either of the subsidized competitors or to the interests of United States participation in the doubly-subsidized trade. During the ten years in which the Farrell Line and the Robin Line have been subsidized on Trade Route 15A, they have increased substantially their combined share of the United States-South African trade. The Farrell Line was the first of the two lines to be subsidized, but notwithstanding the grant of a subsidy to its competitor, both Farrell Line and Robin Line during the ten-year period enjoyed comparable increases.

The proportion of traffic on Trade Route 1 carried by United States-flag vessels has been steadily decreasing since 1947, and as early as the first half of 1948 had dropped to considerably less than half of the total, with foreign-flag competition steadily on the increase. If competition between United States-flag operators on Trade Route 1 will tend to increase the share of traffic carried in vessels of United States registry—as competition under dual subsidies seems to have done on Trade Route 15A—there would seem to be scant justification for concluding that the award of a subsidy to Shepard would be unduly prejudicial, either to Mormac or to the United States merchant marine.

By order of the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

Washington, D. C., April 14, 1949.

McKEOUGH, *Commissioner*, dissenting:

1. Shepard Steamship Company filed an application for an operating subsidy under date of April 19, 1948, requesting a minimum of 18 and a maximum of 26 sailings on Service B of Trade Route No. 1.

Following the Commission's approval on May 7, 1948, of recommendation from the Government Aids Division dated April 28, 1948, notice of

public hearing was dated May 7, 1948, and served May 28, 1948. The notice, among other things stated: "The purpose of the hearing is to receive evidence relevant to determinations which the Commission is required, after hearing, to make pursuant to the provisions of Section 605(c) of the Merchant Marine Act, 1936." Hearings were held in Boston and New York in August 1948 before Examiner Robinson. Moore-McCormack Lines, Inc., the only subsidized operator on Trade Route No. 1, intervened and opposed the application.

The examiner's report, served November 24, 1948, contained the following recommendation:

The Commission should find (1) that Shepard is an existing operator on Service B of Route 1, and that as a consequence it is not necessary for Shepard to prove the inadequacy of Moore-McCormack's service in order to be eligible for a subsidy; and (2) that the granting of a subsidy to Shepard would not be to give undue advantage or to be unduly prejudicial as between citizens of the United States. *As previously stated in this decision, the scope of the hearing is limited by the notice thereof to section 605(c) of the Act, hence no recommendation will be made as to whether a subsidy should be granted to Shepard.* [Italics added.]

On December 13, 1948, the intervener, Moore-McCormack Lines, Inc., filed exceptions to the above report and on December 17, 1948, the Commission heard oral argument in connection with the examiner's report.

2. Before filing its application for subsidy on Trade Route No. 1, Shepard had applied on May 27, 1946, for the purchase of five C3-S-A3 vessels for operation on Trade Route 8 (New York-Boston-Rotterdam-Antwerp). On July 31, 1946, Shepard filed an application for an operating-differential subsidy on Trade Route 8 (Antwerp/Rotterdam) in which it stated that it would purchase four C-3 type vessels, converted to carry 74 passengers each, for operation on Trade Route 8, if its application for a subsidy were approved. On September 30, 1946, Shepard withdrew this application for a subsidy on Trade Route 8 and on the same date its vessel purchase application was amended to show that it wanted to operate on Trade Route No. 1, Service B, and that while it preferred five vessels it would accept four vessels. The latter number was actually purchased by Shepard.

Shepard made its first sailing in Service B of Trade Route No. 1 in May 1947 and, as indicated above, applied for a subsidy on that Trade Route on April 19, 1948.

3. The intervener, Moore-McCormack Lines, pursuant to competitive bidding, purchased the American Republics Line, now known as Trade Route No. 1, from the Commission in 1936 and has been operating on that route under an operating-differential subsidy contract since.

Moore-McCormack's current operating-differential contract for Trade Route No. 1 is dated September 30, 1938 and scheduled to expire June 30, 1951.

The American Republics Line (Trade Route No. 1) is described in Moore-McCormack's subsidy contract, as amended, as follows:

"Between United States Atlantic ports and ports on the East Coast of South America south of and including Para, Brazil."

Moore-McCormack's subsidy contract provided for a minimum of 48 and a maximum of 64 voyages. By addenda to this contract the voyages were increased for the calendar year 1940 to a minimum of 64 and a maximum of 94 and for the calendar year 1941 to a minimum of 75 and a maximum of 95. The service was discontinued in 1942 as the vessels of all subsidized operators were taken over by the government for war purposes during 1942. Moore-McCormack resumed operation on Trade Route No. 1 in March 1946.

4. The Commission's Trade Routes Committee Report, issued by the Commission in May 1946, divided the freight services on Trade Route No. 1 as follows:

*Freight Service A:*

*Itinerary:* New York (regular calls also to be provided at Philadelphia, Baltimore, Hampton Roads and at South Atlantic ports within the Wilmington, North Carolina-Jacksonville range) to Rio de Janeiro, Santos, Montevideo, Buenos Aires, with calls to be arranged at other South American ports within the Pernambuco-River Plate range as traffic offers, loading at River Plate (including up-river ports if conditions warrant) and returning via Brazilian ports to U. S. Atlantic Ports; with privilege of calling at Canadian ports to load or discharge cargo but not exceeding 12 calls per year.

*Sailing Frequency:* 52 weekly sailings per year.

*No. and Type of Ships:* 10 C-3 type freight vessels.

*Freight Service B:*

*Itinerary:* U. S. Atlantic ports to East Coast South American ports within the Pernambuco-River Plate range, including up river ports in the River Plate area, with privilege of calling at Canadian ports to load or discharge cargo but not exceeding 12 calls per year.

*Sailing Frequency:* 18 to 24 sailings per year.

*No. and Type of Ships:* 4 C-2 type freight vessels.

*Freight Service C:*

*Itinerary:* U. S. Atlantic ports to Belem (Para), other North Brazil ports, as traffic offers, to and including Bahia; returning via Belem (Para) and other ports in central and north Brazil as traffic offers to U. S. Atlantic ports with privilege of calling at Canadian ports to load or discharge cargo, but not exceeding 12 calls per year.

*Sailing Frequency:* 2 sailings per month—24 sailings per year.

*No. and Type of Ships:* 4 C1-A or other suitable type freight vessels.

Thus a minimum of 94 and a maximum of 100 voyages are called for with respect to the three freight services listed above. It should be noted that the description of Moore-McCormack's service in its original contract previously quoted herein includes the entire territory covered by the three services created on Trade Route No. 1.

In its application of August 22, 1946, for resumption of subsidized operations, Moore-McCormack said,

The minimum sailings are herewith given as proposed by the report of the Commission on essential foreign trade routes and services recommended for U. S. flag operation except as to passenger service.

5. Subsequent to August 22, 1946, Moore-McCormack acquired from the Commission more than sufficient vessels of the type required to cover adequately the three services described under Trade Route No. 1. The recommendation received by the Commission from the staff with respect to these purchases showed that the vessels were being acquired by Moore-McCormack from its Capital Reserve Fund, for the expressed purpose of providing sufficient freight vessels of the type required on Trade Route No. 1 to make the voyages called for by the Trade Routes Committee's Report of May 1946.

6. In its report to the Commission dated March 4, 1948, under subject: "Moore-McCormack Lines, Inc.—Application for Resumption of Subsidized Operations," the Government Aids Division recommended that Moore-McCormack's subsidy contract be modified effective as of the date subsidy payments were to be resumed, January 1, 1947, to provide the following:

<i>American Republics Line (Trade Route No. 1)</i>	
Freight Service A-48 .....	60 sailings per year
Freight Service B-18 .....	24 sailings per year
Freight Service C-18 .....	26 sailings per year
Total .....	84 .....
	110 sailings per year

It was explained in the recommendation that the decrease in the minimum from 94 as provided for in the Trade Routes Committee's Report of May 1946, to 84, and the increase from 100 to 110 was recommended at the suggestion of the Trade Routes Committee, in order to give greater flexibility, particularly during the early post-war period. The same memorandum of March 4, 1948, from the Government Aids Division pointed out that Moore-McCormack had purchased sufficient vessels for Trade Route No. 1 (as well as for its other services, Trade Routes Nos. 6 and 24) to make the number of voyages prescribed in the Trade Routes Committee Report of May 1946. That 110 voyages was the *maximum* number of voyages required to be subsidized in the opinion of the Trade Routes Committee was reaffirmed in a recent  
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memorandum from the Chairman, Trade Routes Committee, to Chief, Bureau of Government Aids, dated February 17, 1949.<sup>1</sup> *This recommendation as to increased number of voyages was consistent with the recommendations made to and approved by the Commission with respect to other subsidized operators.* The Commission has increased the number of voyages of other operators (without public hearing, where the geographical scope of the operators subsidized service as described in its contract was not enlarged and where no change in the type of service was involved) in order to provide for a nominal increase in the number of sailings required on a long-range post-war basis, the Trade Routes Committee Report of May 1946 having been the Commission's guide in this respect.

<sup>1</sup> We wish to refer to your memorandum of December 29, requesting a list of tentatively approved and actual sailings in the subsidized services of the Moore-McCormack Lines for the calendar year 1948, which are listed below:

*American Republics Line:*

Sailings by ownership vessels—subsidized .....	86
Chartered sailings—non-subsidized .....	4
Combination passenger and freight vessels, non-subsidized .....	24
Total .....	114
Tentatively scheduled sailings .....	* 111

\* November was strikebound month when 8 sailings were scheduled, but 4 vessels sailed.

The Trade Routes Committee has approved the minimum and maximum voyages on this service as—

	<i>Minimum</i>	<i>Maximum</i>
A Line .....	48	60
B Line .....	18	24
C Line .....	18	26
Total .....	84	110

*Pacific Republics Line:*

Sailings by ownership vessels, subsidized .....	6
Chartered sailings, non-subsidized .....	3
Total .....	9
Tentatively scheduled sailings .....	*14

\* September, October and November were strikebound months, and 3 ownership vessels were tied-up as the result of the strike.

The Trade Routes Committee has approved the minimum and maximum voyages on this service as—

	<i>Minimum</i>	<i>Maximum</i>
	12	18

*American Scantic Line:*

Sailings by ownership vessels, subsidized .....	33
Chartered sailings, non-subsidized .....	1
Total .....	34
Tentatively scheduled sailings .....	*40

\* November was strikebound month when 4 vessels were scheduled and only 1 sailed.

The Trade Routes Committee has approved the minimum and maximum voyages on this service as—

	<i>Minimum</i>	<i>Maximum</i>
	48	52



7. On April 13, 1948, the Commission approved the aforementioned recommendation of March 4, 1948 for resumption of Moore-McCormack's subsidized operations. However, before Moore-McCormack was advised of that action by letter the Commission ordered that formal notice be withheld until Shepard's application was received.

After the submission of a supplemental memorandum dated April 28, 1948, by the Government Aids Division, the Commission's approval of the resumption application was reaffirmed on October 14, 1948, but once again the Commission instructed the staff not to notify Moore-McCormack "pending consideration of application for subsidy by Shepard Steamship Company." Thus the recommendation of March 4, 1948, from the Government Aids Division stands approved but without formal notification of Moore-McCormack.

8. The following are some of the factors that appear to have a direct bearing on the finding to be made by the Commission under section 605(c) of the 1936 Act:

The Operating Department of the Moore-McCormack Lines has informed us it is their intention to remove the vessels which are now on charter for bulk cargo operation and restore them to subsidized services as indicated below:

*Mormacowl*—Now on charter with full cargo of grain for Italy.

Due Philadelphia March 8. Will be returned to subsidized operation on American Republics Line about March 8.

*Mormacport*—Now on time charter for full cargo of grain from Houston to Italy. Expected to be returned to subsidized operation on the Scantic Line March 10.

*Mormacwave*—Now on charter with a full cargo of grain from Baltimore to Italy. Expected to be returned to subsidized operation on the Scantic Line about February 24.

*Mormacwren*—Completed voyage with full cargo of grain from Baltimore to Italy. Returned to subsidized operation on American Republics at Baltimore on February 5.

When the above vessels are returned to subsidized operation there will be no Moore-McCormack-owned vessels on charter, with grain, coal or Army per diem voyages.

a. The 1936 Act, in my opinion, does not contemplate the subsidizing of two or more operators in the same service if the existing subsidized operator has a contract for carrying a "substantial portion" (section 101 of the 1936 Act) of cargo moving over such service and has shown the capacity and willingness to fulfill the requirement of his contract.

b. Until the recent operating-differential subsidy contract was awarded to the Pacific Argentine Brazil Line, there had been no ap-  
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parent desire on the part of this Commission or any previous Commission to disregard the principle enunciated in "a" above. Only in one case prior thereto had the Commission granted operating-subsidy contracts to two operators on the same service and, in this one instance, I believe the record shows that the existing operator which had a mail contract that was cancelled along with other similar contracts as of June 30, 1937, pursuant to the provisions of the 1936 Act, was not willing to provide sufficient tonnage to move what was considered by the Commission to be a "substantial" portion of the cargo.

c. Moore-McCormack, the existing subsidized operator, purchased the American Republics Line (Trade Route No. 1) upon competitive bidding. The report of the Trade Routes Committee issued by the Commission in May 1946 divided Trade Route No. 1 into three freight services. The total of the three services represented an overall increase over the prewar sailing requirements in the subsidy contract of Moore-McCormack but all ports listed are included in the area covered by Moore-McCormack's contract.

d. Moore-McCormack, with Commission approval, purchased all of the additional vessels required to make the voyages provided for in the report of May 1946, i.e., the anticipated long-range requirements, rather than temporary increases of the period immediately after the war.

e. The Commission has twice approved the recommendation from the Government Aids Division of March 4, 1948, which provided for a minimum of 84 voyages and a maximum of 110, the latter being the maximum number the Trade Routes Committee believed necessary to carry a "substantial portion" of the cargo expected to move on Freight Services A, B, and C of Trade Route No. 1.

f. In 1947, the first full year of postwar operations by Moore-McCormack, as well as in 1948, Moore-McCormack exceeded the minimum number of voyages (84) referred to in "e" above.

g. Section 804 of the 1936 Act provides in part that "Contracts under this Act shall be entered into so as to equitably serve, insofar as possible, the foreign trade requirements of the Atlantic, Gulf, and the Pacific ports of the United States", but the law does not say that the Commission should award a contract to a new operator domiciled in a particular port on the Atlantic seaboard, irrespective of the cargo that normally moves through that port or irrespective of the fact that another operator already has a contract which requires it to serve said port. Notwithstanding all the calls made at Boston by both Shepard and Moore-McCormack in 1947, the examiner points out that only approximately 8,000 tons moved southbound from Boston on Trade Route No. 1 that year during which Moore-McCormack, according to Exhibit 36, made 43 northbound calls at Boston and scheduled 25 outbound

calls and "on most of which they didn't book a ton of cargo," according to a statement by the attorney for Moore-McCormack.

*h.* The examiner stated that to give Shepard a subsidy on Service B of Trade Route No. 1 "would not be to give undue advantage or to be unduly prejudicial, as between citizens of the United States, in the operation of competitive services, routes or lines. This renders moot, under the same part, whether it is necessary to make a contract in order to provide adequate service by vessels of United States registry." It could be that the examiner's lack of familiarity with all of the phases of Moore-McCormack's contract caused him to err in the first conclusion. If, however, we assume, for the purpose of this discussion, that he is correct in his first conclusion, he would presumably be correct in further concluding that he is not concerned as to the *necessity* for subsidizing a second operation in this service. However, this question of the need for a second subsidized service should be of paramount concern to the Commission.

*i.* The Commission cannot subsidize unnecessary operators and unnecessary voyages without *wasting* government funds both by paying out more money in subsidy than is required to carry out the purposes and policies of the 1936 Act and by reducing the profits that otherwise would be subject to recapture.

*j.* The findings of the examiner appear to me to conflict with the requirements of Moore-McCormack's subsidy contract as modified by Commission action of April 13, 1948, which provides for all of the freight voyages (a maximum of 110 voyages) on Trade Route No. 1 found necessary in the Trade Routes Committee Report of May 1946. Naturally, the Commission is free to revise the Trade Routes requirements *but until such revision is made sailings complying with the requirements of the Report of May 1946 must be assumed by operators to be adequate.* (As late as February 17, 1949, the Chairman of the Trade Routes Committee reaffirmed that the maximum voyages per annum which the Commission should require was 110).

*k.* Moore-McCormack also operates the "Good Neighbor" fleet of passenger vessels (owned by the Commission) under bareboat charter in the passenger and freight service of Trade Route No. 1. These vessels are nearing the end of their economic lives of 20 years each. We have no subsidy contract with Moore-McCormack which requires it to construct for its account new vessels of this type for operation in this service. However, it is my impression that we have made considerable progress in our discussions with this company, looking toward it investing some of its capital in the purchase of new combination vessels suitable for this operation. This phase of the Commission's problem with respect to Trade Route No. 1 is of great importance to the U. S. mer-

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chant marine and to the continuation of the Government's "Good Neighbor" policy toward the South American countries. Neither Shepard nor any other company except Moore-McCormack has shown any interest whatsoever in acquiring suitable combination passenger and cargo vessels for operation on Trade Route No. 1. None of the subsidized operators has shown any interest in passenger, or combination passenger and cargo, vessels standing alone; all appear to want such freight services as they can get as a support to the passenger business. If the Commission continues to permit the chiseling away of Moore-McCormack's freight services irrespective of the merits of the case or the requirements of the services, it is reasonable to believe that it will be difficult, if not impossible, to persuade Moore-McCormack on the soundness of any proposal involving the investment by it of millions of dollars in new passenger or combination vessels.

l. The examiner has *not* recommended that a subsidy contract be awarded to Shepard and neither has he recommended against such an award. Hence, the Commission has neither an affirmative nor a negative recommendation on this phase of the matter before it for consideration. Based on the record, it appears obvious that there is no *necessity* for the requested contract, which fact standing alone is ample reason for rejecting the same.

9. In line with the policy of section 101(a) of the 1936 Act, I favor subsidizing an operator where needed, and only where needed, to carry a "substantial portion of the water-borne export and import foreign commerce of the United States" moving over an essential foreign trade route, whether such operator would be in addition to an existing subsidized operator or would be operating on an essential foreign service not heretofore covered by an existing subsidized operator. To follow any other course would be a waste of public funds and most certainly would be contrary to the practices of a "prudent businessman", whose standards the Commission members are admonished to follow in the 1936 Act.

# UNITED STATES MARITIME COMMISSION

No. M-2

## AMERICAN-HAWAIIAN STEAMSHIP COMPANY AND PITTSBURGH STEAMSHIP COMPANY—APPLICATIONS FOR EXTENSION OF PERIOD FOR COMMITMENT OF CONSTRUCTION RESERVE FUND DEPOSITS

*Submitted September 30, 1949. Decided November 30, 1949*

The period from and after December 1, 1949, within which deposits in applicant American-Hawaiian Steamship Company's Construction Reserve Fund, aggregating \$7,236,111.91, shall be expended or obligated for construction or acquisition of new vessels as defined in section 511 of the Merchant Marine Act, 1936, as amended, should be extended to September 30, 1951.

The period from and after December 1, 1949, within which deposits in applicant Pittsburgh Steamship Company's Construction Reserve Fund, aggregating \$852,000, shall be expended or obligated for construction or acquisition of new vessels as defined in section 511 of the Merchant Marine Act, 1936, as amended, should be extended to September 30, 1951.

*Edward P. Farley* and *Donald S. Morrison* for applicant American-Hawaiian Steamship Company.

*Wendell W. Lang* and *Harold L. Hale* for applicant Pittsburgh Steamship Company.

*Hoyt S. Haddock* for CIO Maritime Committee, intervener.

*George F. Galland* for the Commission.

### REPORT OF THE COMMISSION

MELLEN, *Vice Chairman*:

Exceptions were filed by American-Hawaiian Steamship Company to the examiner's recommended report but briefs and oral arguments were waived. Our conclusions differ from those of the examiner.

Hearing on these applications was held on August 31, 1949, in accordance with House and Senate Committee Reports on H. J. Res. 186, 81st Congress, pursuant to notice in the Federal Register of August 26, 1949.

Both applicants are citizens of the United States operating vessels in the foreign or domestic commerce of the United States within the meaning of section 511(b) of the Merchant Marine Act, 1936, as amended.

A Construction Reserve Fund depositor has two years within which to obligate deposits in such a fund and, under section 511(h) of the 3 U. S. M. C.

Act referred to, the Commission has authority to grant extensions for an additional period not in excess of two years. In 1943, a proviso was added to section 511(h) which in effect, authorizes further extensions ending not later than six months after the termination of the war, or such earlier date as might be designated. March 31, 1951 was established as the date of the termination of the war for the purposes of this proviso by Public Law 50—81st Congress (Approved April 20, 1949). This enactment authorizes the Maritime Commission to further extend the period within which to obligate deposits in the Construction Reserve Fund to September 30, 1951. The House and Senate Reports on H. J. Res. 186—81st Congress, state that it is the hope, expectation, and understanding that the Commission:

... will hold open hearings on each application for an extension in which the applicant line will be required to explain fully the need for extension and the steps being taken to undertake construction or acquisition of new vessels within the extended time.

The authority of the Commission to grant extensions of time for the obligation of deposits in the Construction Reserve Fund is permissive rather than mandatory, and is not retroactive as to deposits withdrawn or deposits as to which the time for extension has lapsed.

The questions in this proceeding are whether the applicants have fully explained the need for extension; what steps are being taken to undertake construction or acquisition of new vessels within the extended time; and whether granting the requests of the applicants would foster the development and encourage the maintenance of the American merchant marine, as set forth in Title I of the Merchant Marine Act, 1936, as amended.

By application filed July 15, 1949, American-Hawaiian Steamship Company, hereinafter referred to as American-Hawaiian, requested an extension to September 30, 1951, of the time within which deposits aggregating \$7,236,111.91 in its Construction Reserve Fund may be obligated for the acquisition of new vessels as defined in section 511 of the Merchant Marine Act, 1936, as amended. The deposits with respect to which the extension is requested are as follows:

<i>Date of Deposit:</i>	<i>Amount</i>
April 24, 1945 . . . . .	\$3,228,742.50
February 18, 1946 . . . . .	595,785.25
June 21, 1946 . . . . .	520,000.00
August 8, 1946 . . . . .	730,000.00
November 22, 1946 . . . . .	385,000.00
December 12, 1946 . . . . .	360,000.00
May 9, 1947 . . . . .	340,000.00
July 8, 1947 . . . . .	367,000.00
September 30, 1947 . . . . .	340,000.00
	<hr/>
	6,866,527.75

March 17, 1949, additional deposits on which the statutory two-year period will not expire until March 17, 1951 .....	369,584.16
	\$7,236,111.91

On April 21, 1949, the Commission granted American-Hawaiian an extension of time to September 30, 1949, and, by actions on September 27 and November 10, 1949, granted interim extensions to December 1, 1949, within which any uncommitted deposits in its Construction Reserve Fund, joint accounts Nos. 1 and 2, aggregating \$6,866,527.75 between April 24, 1945, and September 30, 1947, shall be expended or obligated for construction or acquisition of vessels in accordance with the provisions of section 511 of the Merchant Marine Act, 1936, as amended.

The application of American-Hawaiian, upon which the company relied for an extension of time to September 30, 1951, within which to obligate deposits in its Construction Reserve Fund, states, in substance, that the company is continuing to plan for the prudent investment of its Construction Reserve Fund in vessels suitable for the intercoastal trade; that it has recently instituted a careful study of the use of cargo containers as a means of reducing cargo handling costs in that trade; and that the company believes that the restoration of intercoastal shipping will be promoted by the retention of the deposits in the company's Construction Reserve Fund where they will remain available for the acquisition of vessels. In addition to the company's application, further information was adduced during the hearing.

American-Hawaiian has been in the steamship business since 1860 and has been operating an intercoastal service since shortly after 1900. Before the war the company owned 39 vessels, 32 of which were in the intercoastal service. During the war 12 vessels were lost as war casualties, 10 were requisitioned for title by the Government, and the balance have been sold, some in 1940 and the rest since the war.

All receipts received by the applicant as a result of the sale, loss, or requisition of its vessels have been deposited in the Construction Reserve Fund, with the exception of the proceeds from the vessels sold during the early part of 1940, prior to the passage of section 511 of the Merchant Marine Act, 1936, as amended. Since American-Hawaiian established its Construction Reserve Fund, it withdrew from the Fund the sum of \$2,692,302.48 for the acquisition of 5 vessels in the name of its wholly owned subsidiary, Mount Steamship Corporation, now American-Hawaiian Steamship Company (Del.). Two of these 5 vessels were sold shortly after purchase and a Construction Reserve Fund was established with the proceeds of such sales in the name of that subsidiary U. S. M. C.

ary. It also withdrew from the Fund \$6,120,997.52 on September 30, 1948, when the statutory period for commitment of that sum expired. With respect to this withdrawal, the applicant paid a tax of \$1,400,000.

Immediately after the war, American-Hawaiian reestablished its intercoastal organization and at first operated vessels in that trade for the account of the Government as a General Agent. In 1947 the company began intercoastal operations for its own account, and is now using 5 or 6 vessels chartered from the Maritime Commission. Notwithstanding the company's assertion that the intercoastal trade is its primary interest and concern, the company is presently operating about 20 chartered vessels in foreign commerce. Such vessels are employed in maintaining a monthly berth service from Atlantic coast to transpacific ports, are chartered to the Army on a time charter basis, or are operating in the bulk cargo movements.

The charter hire on a vessel owned by the Maritime Commission which is operated in the domestic intercoastal trade is at the rate of 15% per annum of the statutory sales price of the vessel or the floor price, whichever is higher, of which 8½% shall be payable unconditionally and the balance of 6½% shall be payable from the earnings before any participation in such earnings by the charterer. The applicant asserts it has never become obligated to pay any portion of such 6½% on the vessels it operates in its intercoastal service and that its losses in such service from August 1947 to June 1949 were \$1,265,611.33.

American-Hawaiian contends that every effort is being made by the company to reduce its costs, that rates are about as high as can be maintained without a loss of traffic, that terminal and handling costs amount to approximately 50% of gross freight revenue. These costs are felt to be reducible through the use of containers for general freight, which will also save pilferage, damage, and certain rehandling costs. The studies made by the company, as well as those carried on by others, have not yet progressed sufficiently far to indicate the size, type, weight, construction, and other characteristics of a container which would be interchangeable between ship, railroad, and motor truck, or to form the basis for the development of a plan for a specially designed vessel or for the modification of any existing vessel. The load factor on applicant's intercoastal vessels is increasing, and the company alleges that their operations are beginning to show a gain. However, the company asserts that it could not remain in the intercoastal business operating only five or six vessels if it were not for the distribution of overhead between its foreign and intercoastal services.

The basic design of the C-4 cargo vessel, built by the Maritime Commission during the war, was developed by the applicant, and it is now using several vessels of this type, chartered from the Government, in its



intercoastal service. The C-4 type of cargo vessel is considered most desirable by the company for intercoastal operations, due to compartmentation, the engines being aft, and the ease with which it can be loaded and discharged, but it cannot be operated profitably at the present time in those operations.

On behalf of the company it was asserted that it would not be prudent either to plan for the construction of new vessels under prevailing circumstances, or to purchase vessels at prevailing prices. Also, that if the requested extension were not granted it would have no alternative but to withdraw the deposits in its Construction Reserve Fund and pay a substantial portion thereof in taxes, and that this would remove the amount paid in taxes from possible future investment in the American merchant marine.

In the face of demands from some stockholders to liquidate, it was alleged that the Board of Directors of the company has taken affirmative action to stay in the business, although losing money. The company states that if it receives a two-year extension it is confident something can be worked out, otherwise, it would not have made the application.

On the foregoing record, it appears that American-Hawaiian has adequately explained the need for an extension of time, and that to extend the period for the obligation or commitment of the deposits in applicant's Construction Reserve Fund to September 30, 1951, to afford the company an opportunity to place its intercoastal operations on a profitable basis so that management may prudently invest in vessels is in furtherance of the policy of the Merchant Marine Act, 1936, as amended.

Pittsburgh Steamship Company, hereinafter referred to as Pittsburgh, by a letter dated August 3, 1949, as supplemented at the hearing, requested an extension of time to September 30, 1951, within which deposits aggregating \$852,000 in its Construction Reserve Fund may be obligated for the acquisition of new vessels, as defined in section 511 of the Merchant Marine Act, 1936, as amended. The deposits with respect to which the extension is requested are as follows:

<i>Date of deposit:</i>	<i>Amount</i>
June 13, 1945 .....	\$125,000
August 11, 1945 .....	10,000
September 4, 1945 .....	490,000
May 24, 1946 .....	152,000
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	777,000
December 8, 1948, additional deposits on which the statutory two-year period will not expire until December 8, 1950.....	75,000
	<hr/>
	\$852,000

On May 18, 1949, the Commission granted Pittsburgh an extension of time to September 30, 1949, and on September 27, 1949, and November 10, 1949, granted interim extensions to December 1, 1949, within which any uncommitted deposits made in its Construction Reserve Fund shall be expended or obligated for expenditure for construction or acquisition of vessels in accordance with the provisions of section 511 of the Merchant Marine Act, 1936, as amended.

Applicant Pittsburgh is a contract carrier operating exclusively on the Great Lakes, and has no plans to go beyond the Great Lakes. The company operates 61 vessels wholly owned by it. These are all the same type, Great Lakes bulk-cargo carriers. The company's need for new vessels is largely replacement, and it is to the applicant's advantage to pursue plans actively because the average age of its fleet is 30 years. The oldest vessel is 51 years old and the newest vessels were built in 1942.

Occasionally the company utilizes Canadian-flag vessels to carry commodities which normally are and could be carried by its own vessels if they had sufficient capacity. The waiver of coastwise laws under a temporary statute authorizing the use of foreign tonnage has had no effect on the company's construction plans. Its use of the Canadian vessels is sporadic, not a policy or a practice.

Pittsburgh testified that it has developed several plans for modern Great Lakes cargo carriers and, by conducting tests, has eliminated all but two hull patterns from consideration.

During the past year some of the companies for which Pittsburgh carries have made explorations for ore outside of the continental limits of the United States and one of the largest of such companies has already acquired foreign ore properties. The results of these explorations will have an effect on Great Lakes shipping and will influence the respective tonnage requirements for ore, coal, and limestone. The tonnage requirements will, in turn, have a strong bearing on the choice of hull pattern, as well as other vessel characteristics such as unloading machinery and hatches.

The company stated that its hesitation in building is not the result of dissatisfaction with existing designs, but rather because of the uncertainty as to what quantities of what cargoes will be carried. It believes that the present uncertainty will be resolved by 1951 and that there would be no delay in construction simply because the requested extension was granted. The cost of a vessel built according to the plans already prepared by the company was estimated at between \$4,500,000 and \$5,500,000.

A representative of the CIO Maritime Committee appeared in opposition to the application and asserted that it was general knowledge

that Pittsburgh needs ships which it has not built, and one of the reasons it has not built them is because foreign tonnage could be utilized pursuant to the temporary coastwise waiver statute previously referred to. This basis for opposition does not appear controlling in view of the direct statements by applicants that the delay in proceeding with construction has been because of other cogent reasons.

On this record, it appears that Pittsburgh has explained the need for an extension of time and has shown that it has taken steps to undertake construction of new vessels. It further appears that, in view of the uncertainty of the cargo requirements of the company, it is in accordance with the policy of the Merchant Marine Act, 1936, as amended, to grant the extension requested, thereby giving the applicant an opportunity to make a more intelligent determination of the new type of vessel to be constructed in accordance with its plans and tonnage requirements.

The examiner recommended certain limitations upon the extensions of time requested by the applicants for the commitment or obligation of their construction reserve funds. Although such limitations would make possible a reexamination of the matters involved and would not proscribe future applications for further extensions, consideration of all facts relevant to the subject requests leads to the conclusion that advantage would accrue to no one as a result of the recommended limitations. To so limit the time would unnecessarily interrupt the continuity of the companies' plans and developments, require further hearings, and leave the applicants in a state of uncertainty, while factors pertinent to the formulation of sound long range investment decisions continue indefinite.

An appropriate order granting extensions, in each case to September 30, 1951, will be entered.

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# UNITED STATES MARITIME COMMISSION

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No. S-15

MOORE-McCORMACK LINES, INC.—RESUMPTION OF OPERATING-DIFFERENTIAL SUBSIDY FOR “GOOD NEIGHBOR FLEET”

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*Submitted January 12, 1950. Decided April 13, 1950*

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The Commission finds that the passenger carryings of foreign-flag cargo vessels and of certain cruise ships on Trade Route No. 1 constitute foreign competition with the Good Neighbor Fleet, and that an operating subsidy is necessary to meet such competition.

*Ira L. Ewers, Donald Lincoln, Melville J. France, and Albert F. Chrystal* for applicant.

*Paul D. Page, Jr., Solicitor, and Joseph A. Klausner* for the Commission.

## REPORT OF THE COMMISSION

### BY THE COMMISSION:

This proceeding involves the application of Moore-McCormack Lines, Inc., hereinafter referred to as Mormac, for the resumption of payment to it of an operating-differential subsidy on its “Good Neighbor Fleet” on Service 1 of Trade Route No. 1 (between New York, N. Y., and the East coast of South America), as described in the Commission’s Report on Essential Foreign Trade Routes of the American Merchant Marine, issued May 1949. A recommendation favorable to the applicant was submitted by the hearing examiner, based upon grounds which Mormac deemed too narrow. Exceptions were filed by Mormac and argued before the Commission. Our decision follows the examiner’s recommendation that the application be approved, but rests upon somewhat broader grounds.

Trade Route No. 1 was determined by the Commission to be an essential route in the commerce of the United States, pursuant to sec. 211(a) of the Merchant Marine Act, 1936 (hereinafter called the “Act”), which provides:

SEC. 211. The Commission is authorized and directed to investigate, determine, and keep current records of—

(a) The ocean services, routes, and lines from ports in the United States, or in a Territory, district, or possession thereof, to foreign markets, which are, or may be, determined by the Commission to be essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States, and in reaching its determination the Commission shall consider and give due weight to the cost of maintaining each of such steamship lines, the probability that any such line cannot be maintained except at a heavy loss disproportionate to the benefit accruing to foreign trade, the number of sailings and types of vessels that should be employed in such lines, and any other facts and conditions that a prudent business man would consider when dealing with his own business, with the added consideration, however, of the intangible benefit the maintenance of any such line may afford to the foreign commerce of the United States and to the national defense . . .

In accordance with the policy of the Act<sup>1</sup> and in aid of the Government's Good Neighbor Policy in relation to Latin America, the Commission, in 1938, purchased from Panama Pacific Line the passenger vessels *Pennsylvania*, *Virginia*, and *California* for operation in the service under consideration. The vessels were reconditioned and renamed *Argentina*, *Brazil*, and *Uruguay*. On June 17, 1938, the Commission offered for sale or charter, under competitive bidding, its American Republics Line of ten vessels, then operating in the trade between the United States and the East coast of South America, plus the three recently-acquired passenger vessels, the successful bidder to receive an operating-differential subsidy whether the line be purchased or chartered. If chartered, the subsidy was to continue for three years—the duration of the charter—with a two-year extension. The route was divided into three services, the passenger vessels to be used on Line A, which is the present Service 1. There were no bids for the purchase of the line, but Mormac's affiliate, American Scantic Line, Inc., was the successful bidder for operation under charter. The charter-subsidy agreement was signed on September 30, 1938.

By addenda to the charter, the vessels were operated until January 1, 1942, when they were taken over for national defense purposes, provision being made for their eventual return to the charterer if not lost.

<sup>1</sup> Sec. 101 of the Act provides:

"Sec. 101. It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (b) capable of serving as a naval and military auxiliary in time of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States insofar as may be practicable, and (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel. It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine."

Upon the return of any or all of the vessels the charter was to be extended to such "extent as may be necessary so as to make the period between the date of the return of such vessel and the date of expiration equal to the unexpired portion of the charter period as of the date when the vessel was made available for national defense purposes." The last of the vessels was returned to Mormac at midnight of May 7, 1948, and the charter and subsidy again became effective for two years from that time.

Mormac waived a subsidy for the first year after resumption of service but reserved the right to request a subsidy for the second year if it became necessary. Such a request was made on April 12, 1949, and was approved by the Commission on July 14, 1949, "on the basis that, as, if and when, it is determined in principle that an operating-differential subsidy . . . is appropriate and there shall have been found the amount of subsidy that is to be paid, it will be made effective as of May 8, 1949."

In its letter to the Commission of July 27, 1949, concurring in the Commission's action of July 14, Mormac requested a hearing under section 602 of the Act, "since our application is predicated upon direct competition as well as competition which may be considered indirect . . ." The notice of hearing, which was published in the Federal Register of August 25, 1949, recited that the purpose of the hearing "is to receive evidence relevant (1) to determinations which the Commission is required, after hearing, to make pursuant to the provisions of section 602 of the Merchant Marine Act, 1936, as amended, and (2) to the scope and weight of the direct passenger competition provided by foreign-flag dry cargo vessels carrying a limited number of passengers on Trade Route No. 1."

*Mormac's Contentions*—Mormac contends (1) that the movement of passengers on foreign cargo vessels on Trade Route No. 1 is direct and substantial competition for the Good Neighbor Fleet; (2) that interport traffic in South America on Trade Route No. 1 is direct and substantial competition; (3) that cruise competition is direct and substantial; (4) that passenger carryings between South America and Europe are substantial and are indirectly competitive; (5) that passenger carryings from the United States to Europe are substantial and are indirectly competitive; and (6) that the transshipping at New York of passengers to and from Europe and South America is indirectly competitive with carryings between South America and Europe direct.

*Questions Presented*—Section 601(a) of the Merchant Marine Act, 1936, prohibits the approval of applications for operating-differential subsidy unless the Commission determines, among other matters, that the vessels covered by the application are "required to meet foreign-flag

competition and to promote the foreign commerce of the United States"—promotion of such commerce being a basic policy of the Act<sup>2</sup> and a fundamental duty of the Commission. The act imposes no procedural restrictions upon the Commission in determining the facts as to foreign competition, except that under section 602:—

No contract for an operating-differential subsidy shall be made by the Commission for the operation of a vessel or vessels to meet foreign competition, except direct foreign-flag competition, until and unless the Commission, after a full and complete investigation and hearing, shall determine that an operating subsidy is necessary to meet competition of foreign-flag ships.

Mormac having suggested that its application for resumption of operating subsidy was based not only upon direct foreign-flag competition but upon indirect competition as well, the Commission set the matter down for hearing to assure compliance with section 602. The scope of the hearing, however, was broader than section 602, the proceeding having been intended to cover all facts available as to the existence and nature of foreign-flag competition (direct as well as indirect) and the necessity of meeting it. We have now to determine whether the evidence discloses foreign-flag competition which, under the Act, should be met by way of an operating subsidy on the Good Neighbor Fleet. The requirements of section 602 have been fully satisfied. Therefore, there need be no concern with technicalities of definition as to whether a particular species of competition is "direct foreign-flag competition" or "foreign competition except direct foreign-flag competition." In either event, we must decide whether "an operating subsidy is necessary to meet competition of foreign-flag ships," and to promote the commerce of the United States.

*Traffic Data.*—The basic traffic statistics received in evidence at the hearing are set forth in Appendix A to this report. They indicate, among other matters, that: (1) in 1948 Mormac carried 100 percent of the passengers moving on combination vessels on Trade Route No. 1; (2) during the same period, Mormac carried only 31 percent of the passengers moving on freighters whereas foreign-flag freighters accounted for about 61 percent; (3) from January 1, 1948, to June 30, 1949, travel by air between New York and the East coast of South America nearly equalled travel by water; (4) a large number of cruises, only two of which will touch South America, are scheduled by the transatlantic lines during 1949-1950; (5) a very substantial numbers of passengers went by sea and by air from the United States to Europe during the fiscal year ending June 30, 1949; and (6) over one quarter million persons traveled between the East coast of South America and Europe in

<sup>2</sup> See sec. 101, quoted in footnote 1.

1948. In addition, 174 passengers traveling from England to New York were on-carried by Mormac to South America in 1941. At least ten such passengers were carried in 1942, four in 1948, and ten in 1949 up to the time of the hearing. No figures are available for northbound traffic.

The evidence also shows that for the season 1948-1949, the regular transatlantic lines made 28 special winter cruises out of New York to the West Indies/Caribbean area, carrying 12,279 full-cruise and 1,823 part-cruise passengers, and one cruise to South America, carrying 408 full-cruise and 15 part-cruise passengers. Exhibits of record indicate that during 1949-1950 those lines have projected 28 special cruises, only two of which will touch South America. Exhibits also indicate that those lines will make 450 regular round trips to England and the Continent in 1949. During the fiscal year ending June 30, 1949, 363,678 passengers departed by sea and air from the entire United States to Europe, 256,912 of which were by vessel.

*Conclusions*—We find on the record before us that substantial foreign-flag competition is encountered on Trade Route No. 1 and that an operating subsidy for the Good Neighbor Fleet is necessary to meet such competition and to promote the commerce of the United States in furtherance of the policy and purposes of the Act.

Our finding of foreign competition requisite to support an award of subsidy is based primarily upon the parallel competition of passenger-carrying cargo ships of foreign registry; and secondarily upon the competition of foreign-flag cruise ships.

Foreign-flag cargo vessels carried 1,817 passengers on Trade Route No. 1 in 1948, or approximately twice as many as were carried on Mormac's freighters and approximately 10 percent of the total passengers carried on all types of vessels on the route. The revenue from the passengers on the foreign freighters was estimated by Mormac's vice president and treasurer at approximately \$1,000,000. According to Mormac's undisputed figures, the Good Neighbor Fleet lost \$993,490.75 in 1948, and it is argued that the loss would have been wiped out had the passengers on the foreign-flag freighters traveled by the Good Neighbor Fleet instead. The difference in cost, however (fare on the Good Neighbor Ships being higher), might deter some passengers from traveling on the combination vessels. Mormac's freighters made 141 sailings in 1948, carrying 923 passengers. As those vessels are equipped to handle 12 passengers each voyage, their total capacity on the 141 voyages would have been 1,692. Subtracting the 923 actually carried from the potential of 1,692, there remains a potential of 769 that could have been accommodated if all of Mormac's freighters had sailed full on each voyage. Inasmuch as foreign-flag freighter services carried



1,817 passengers during that period, that would leave 1,048 passengers who would have had to use the Good Neighbor vessels for sea travel over this route in the absence of the foreign-flag services.

During 1948 the Good Neighbor Fleet had a passenger capacity southbound of 10,446 and carried 8,112, or approximately 78 percent of capacity. Northbound, with a capacity of 9,018, the vessels carried 6,123 passengers, or approximately 68 percent of capacity. The difference between capacity and the actual number carried may have resulted in some measure from the purchase of extra space by individuals or families desiring to insure their privacy, and from the necessity of separating the sexes, thereby rendering some accommodations unsaleable. While, for such reasons, the record may not be precisely informative as to the extent of unused space actually available to handle the 1948 potential of 1,048 additional passengers on the Good Neighbor Fleet, it is fairly inferable that the Mormac ships could have handled much of this foreign-flag traffic; and that had it done so, its operating loss would have been greatly reduced or, conceivably, eliminated.

The operation, at a loss, of a steamship line on an essential foreign trade route does not of itself entitle the steamship operator to a subsidy, since a subsidy is not intended as a guaranty of profitable operation. The losses of such a steamship operator are relevant, however, to the extent that they enable us to appraise the importance of foreign competition which contributes to such losses.

Mormac is unwilling to continue its service if it will inevitably lose money. Discontinuance of service compelled by losses sustained in consequence of foreign competition would be significant as indicating that foreign competition was substantial, and should be met by way of subsidy to insure continuance of an essential service on an essential trade route.

On the basis of the evidence hereinabove summarized, we find that foreign competition, particularly by passenger-carrying freighters, is of such substantiality as to jeopardize the Mormac Good Neighbor service, and that a subsidy should be awarded to meet such competition.

While the passengers carried on foreign-flag freighters numbered only about 10% of the total movement on the route in 1948, their diversion from the Mormac service was of critical importance to the company, and it is on this basis, rather than on the basis of minimizing small percentages of foreign-flag traffic, that the substantiality of foreign competition should be evaluated.

The Good Neighbor ships are, of course, larger in capacity and superior in service and in certain passenger accommodations than the cargo ships offering passenger competition—a circumstance which in no way detracts from their eligibility for government aid. The number of  
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passengers who use the Good Neighbor Fleet is so vastly in excess of the passenger capacity of any cargo fleet reasonably scaled to the freight requirements of the trade that any project to transport all such passengers in 12-passenger freight ships would be inconceivable. If the passenger trade is to be served by subsidized vessels, the vessels must—as the Good Neighbor ships do—conform in a practical way to the demands of the traveling public and the economic realities of maritime passenger transportation. Competition to be met within the contemplation of the Act is competition of foreign-flag passenger space for the same passengers sought by United States-flag carriers. We find nothing in the purpose or language of the Act to suggest that to meet such competition we should insist that United States-flag operators provide accommodations or vessels identical with those of foreign competitors. To do so would be to permit foreign competitors to dictate the character and composition of the United States merchant marine.

Although we base our conclusion upon existing competition, it would be improvident to shut our eyes to conditions of the past which indicate the competitive probabilities of the immediate future. During 1938, the most recent prewar year of normal operation, a total of 8,283 non-cruise passengers were carried on this route; more than half of that total, 4,247, were carried on foreign-flag ships.<sup>3</sup> The elimination of this foreign competition through the withdrawal of foreign-flag vessels for service in World War II cannot be considered seriously as more than temporary in character. With the revival of foreign shipbuilding and the reconstruction of foreign merchant fleets, it seems a prudent forecast that comparably intense competition on the route must be anticipated in the near future. Since the close of the hearings in this case, the Commission has been informed that three fast and modern Italian-built combination vessels, each having capacity for 116 passengers, will begin regular operation under foreign flag on Trade Route No. 1 within the next few months.

In determining what services are essential to the promotion of the commerce of the United States, the Commission is directed by sec. 211 of the Act to give due weight, among other matters, to “facts and conditions that a prudent business man would consider in dealing with his own business . . .” There can be no doubt that a prudent business man, having responsibilities similar to those of the Commission, would take account not only of his immediate competitive situation, but also of the reasonable probability of future competition. He would not stand idly by while his future competitors established a secure and perhaps permanent competitive advantage—and neither should we.

<sup>3</sup> Source: U.S.M.C. Report No. 2610—Water-Borne Foreign and Non-contiguous Commerce and Passenger Traffic of the United States—Calendar Year 1938, pp. 112, 117.

While basing our determination in this case mainly upon the competition of foreign-flag freighters, we do not disregard the competition of foreign-flag cruise ships. Many of the transatlantic lines operate cruises into the Caribbean area, and a lesser number to South America, during the winter months when European travel is light and travel to warmer climates heavy. The Caribbean cruises are usually cheaper and shorter than a South American round voyage via Mormac, but Mormac claims such Caribbean cruises are effective and substantial competition notwithstanding. Such competition is impossible of any precise evaluation, although it may be true that more travelers would sail to South America via Mormac but for the availability of vacations at sea on foreign ships.

More pertinently competitive are foreign-flag cruises to South America. While such cruises are far less numerous than the shorter cruises to Caribbean destinations, they more nearly rival the offerings of the Good Neighbor service. Only one such foreign-flag cruise touching South America was offered in the 1948-1949 season and two in the current season of 1949-1950. Of the latter cruises, one was made by the *Nieuw Amsterdam* of the Holland-America Line. Since the close of the hearings in this proceeding, Mormac has informed the Commission by letter that the ship carried 607 passengers who paid \$2,700,000 in passage money. It seems clear that this cruise alone must be regarded as providing substantial competition with the Good Neighbor Fleet, being quite costly to Mormac because it sailed (as such cruises usually do) at the peak of the season in the South American trade when Mormac's fares are high—each passenger diverted being a relatively expensive loss—and the maximum number of potential passengers are subject to diversion.<sup>4</sup> We deem it impossible to ignore the effect of cruise competition on Mormac's regularly scheduled service on this essential trade route.

Mormac, as above noted, has asked us to take account of several other types of foreign-flag operations, which, it claims, constitute the sort of foreign competition envisaged by the Act as justification for subsidy. These include movement of passengers from port to port in South America; carriage of passengers from the United States to Europe (i.e., passengers who could have gone to South America instead), and from South America to Europe (potential travelers to the United

<sup>4</sup> The *Nieuw Amsterdam* departed New York February 7, 1950. Mormac sailed its *Uruguay* January 26, 1950, with 117 cruise (i.e. round trip) passengers as compared with 219 on its sailing of the *Argentina* January 28, 1949. The *Argentina* sailed February 9, 1950, with 120 cruise passengers as compared with 216 on the sailing of the *Brasil* February 11, 1949. Mormac states: "Were it not for the voyage of the *Nieuw Amsterdam* there is no reason to believe that we would not have had an equal number of passengers this year with last year"; and says that "The approximate loss of revenue on the S.S. *Uruguay* was \$219,502 and on the *Argentina* \$190,290 based on the average rate we secured last year for cruise passengers."

States), and cruise passengers generally, regardless of itinerary. We find it unnecessary to express an opinion with respect to these contentions, having decided the case on other grounds.

We find that passenger-carrying cargo ships of foreign registry on Trade Route No. 1, and the foreign-flag cruise ships hereinabove described—particularly those cruising to South America—constitute foreign-flag competition with Mormac's Good Neighbor Fleet, and that an operating subsidy is required to meet such competition and to promote the foreign commerce of the United States.

By the Commission.

[SEAL]

(Signed) A. J. WILLIAMS,  
Secretary.

Washington, D. C., April 13, 1950.

McKEOUGH, Commissioner, dissenting:

This proceeding involves the application of Moore-McCormack Lines, Inc., for the resumption of payment of operating differential subsidy on the three passenger vessels *Argentina*, *Brazil*, and *Uruguay*, chartered from the Commission, to cover the period beginning May 8, 1949, and ending May 8, 1950.

The issue, as accurately posed in the report of the majority, is whether the Commission may determine, under section 601(a) of the Merchant Marine Act, 1936, as amended, as a statutory prerequisite of approval of the application, that the operation of such vessels, i.e., the three aforementioned passenger liners, on Trade Route No. 1 between New York and the East coast of South America, "is required to meet foreign-flag competition."

The majority's finding "that passenger-carrying cargo ships of foreign registry on Trade Route No. 1, and the foreign-flag cruise ships hereinabove described—particularly those cruising to South America—constitute foreign-flag competition with Moore-McCormack's Good Neighbor Fleet and that an operating subsidy is required to meet such competition and to promote the foreign commerce of the United States" (underscoring added), is not responsive to and is at variance with the required finding quoted above and, therefore, irrelevant.

The record shows that during the test period (1948) applicant carried all the passengers traveling on passenger or combination passenger-cargo vessels on this route; also that applicant's three passenger vessels, *Argentina*, *Brazil*, and *Uruguay*, through 1948 were filled to approximately 78 percent of their capacity northbound, and approximately 68 percent of capacity southbound, a utilization that compares favorably with commercial operations of passenger or combination passenger-cargo vessels on other trade routes; that the only direct foreign-flag competi-

tion, i.e., foreign-flag competition on the same route, consisted of freighters each having accommodations for a maximum of 12 passengers; that U.S.-flag vessels, including applicant's three passenger vessels, applicant's freighters, and other U. S.-flag freighters, in spite of the fact that during the early part of 1948 not all of the three passenger vessels were in operation, carried 89.4 percent of all passengers traveling on Trade Route No. 1 during 1948, viz., 90.0 percent southbound and 88.7 percent northbound, amounting to a near-monopoly of passenger carriage under the U. S. flag, i.e., far in excess of "a substantial portion of the water-borne export and import foreign commerce of the United States" (see section 101, declaration of policy of the Merchant Marine Act, 1936, as amended) as far as transportation of passengers was concerned; that even disregarding applicant's passenger vessels, U. S.-flag freighters, both those of the applicant and of other U. S. operators, carried nearly 40 percent (38.8 percent) of all passengers traveling on freighters, i.e., likewise a "substantial portion" of this special-type traffic. The record further shows that "cruise competition" by foreign-flag vessels on Trade Route No. 1 consisted of one voyage during the winter 1948/1949 and two voyages during the winter 1949/1950. As far as other than direct foreign-flag competition is concerned (section 602 of the Merchant Marine Act, 1936, as amended), no showing has been made that cruises to other areas than Trade Route No. 1 or carriage of passengers from the United States to Europe or from South America to Europe would permit a determination that the operation of applicant's vessels "in such service, route, or line", viz., Trade Route No. 1, is required to meet foreign-flag competition.

On this record I find it impossible to determine that the operation of the three large luxury-type passenger vessels *Argentina*, *Brazil*, and *Uruguay* was "required to meet foreign-flag competition" during the period at issue.

As to the possible entry into Trade Route No. 1 of three Argentine-flag combination passenger-cargo vessels reported after the close of the hearings in this case, since they are not to come into operation until after the end of the period which is the subject of this proceeding, we need not act on the question of whether they would provide the type of foreign-flag competition which to meet would require the subsidized operation of applicant's vessels. In no event can their possible future competition be used to sustain a retroactive grant of subsidy. Not only the overriding parity principle of the Merchant Marine Act, 1936, as amended, but administrative considerations, too, seem to make improper and impractical the payment of operating differential subsidy except as, if, and when there is actual rather than potential or future foreign-flag competition (sections 601(a), 602, and 603(b)).

## APPENDIX A

TABLE 1.—Number of sailings and passenger carryings of combination or freighter-type line vessels on Trade Route No. 1 in 1948.

Type and flag of vessels	Total passengers	Southbound		Northbound	
		Sailings	Passengers	Sailings	Passengers
Total .....	17,204	269	9,734	260	7,470
American Republics ..	15,157	94	8,636	88	6,521
Combinations ..	14,234	22	8,112	19	6,122
Freighters .....	923	72	524	69	399
Other U. S. ....	230	23	122	19	108
Foreign .....	1,817	152	976	153	841

TABLE 2.—Percentage of passengers carried in combination and freighter line vessels on Trade Route No. 1 during 1948:

Type and flag of vessels	Total		Southbound		Northbound	
	Passengers	Percent	Passengers	Percent	Passengers	Percent
All lines .....	17,204	100.0	9,734	100.0	7,470	100.0
U. S. ....	15,337	89.4	8,758	90.0	6,629	89.7
Foreign .....	1,817	10.6	976	10.0	841	11.3
All types .....	17,204	100.0	9,734	100.0	7,470	100.0
Combination .....	14,234	82.7	8,112	83.3	6,122	81.9
Freighter .....	2,970	17.3	1,622	16.7	1,348	18.1
Combination .....	14,234	100.0	8,112	100.0	6,122	100.0
U. S. ....	14,234	100.0	8,112	100.0	6,122	100.0
Foreign .....	.....	.....	.....	.....	.....	.....
Freighter .....	2,970	100.0	1,622	100.0	1,348	100.0
U. S. ....	1,153	38.8	646	39.8	507	37.6
Foreign .....	1,817	61.2	976	60.2	841	62.4
American Republics ..	15,157	100.0	8,636	100.0	6,521	100.0
Combination .....	14,234	93.9	8,112	93.9	6,122	93.9
Freighter .....	923	6.1	524	6.1	399	6.1

TABLE 3.—Passenger traffic, by sea and by air, between New York and Brazil, Argentina, and Uruguay between January 1, 1948, and June 30, 1949:

	1948			January-June 1949		
	Total	S/B	N/B	Total	S/B	N/B
Total .....	28,505	14,865	13,640	11,655	5,405	6,250
Sea .....	14,981	8,618	6,363	6,051	2,751	3,300
Air .....	13,524	6,252	7,277	5,604	2,654	2,950

TABLE 4.—Number of passengers, by sea and by air, traveling between East coast of South America ports and Europe in 1948:

	Arrived from Europe	Departed from South America
Total .....	195,685	58,698
Sea .....	177,003	44,053
Air .....	18,682	14,645

# UNITED STATES MARITIME COMMISSION

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No. S-16

PACIFIC ARGENTINE BRAZIL LINE, INC.—APPLICATION UNDER SECTION 805 (a) OF THE MERCHANT MARINE ACT, 1936, AS AMENDED, FOR PERMISSION FOR ITS PARENT COMPANY, POPE & TALBOT, INC., TO ENGAGE IN COASTWISE TRADE

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*Submitted May 15, 1950. Decided May 18, 1950*

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Application for permission to engage in northbound transportation of automobiles and parts from California ports south of, but not including, Crescent City to ports in Oregon and Washington, granted.

*William Radner and Robert F. Donoghue for applicant.  
George F. Galland for the Commission.*

## REPORT OF THE COMMISSION

### BY THE COMMISSION:

Hearing in this proceeding was held on May 15, 1950, pursuant to notice in the Federal Register of May 6, 1950. Briefs by the parties and recommended decision by the examiner were waived by counsel for all parties represented.

The application in question was made by Pacific Argentine Brazil Line, Inc., under section 805 (a) of the Merchant Marine Act, 1936, as amended, for permission for its parent company, Pope & Talbot, Inc., to engage in the northbound transportation of automobiles and parts from California ports south of, but not including, Crescent City to ports in Oregon and Washington as a part of its intercoastal service.

Applicant's witness testified that the transportation involved is limited exclusively to vessels of Pope & Talbot, Inc., and only to vessels of that company engaged in the intercoastal trade. Applicant is a wholly owned subsidiary of Pope & Talbot, Inc., and holds a subsidy contract granted by the Commission. Pope & Talbot, Inc., does not hold a subsidy contract under the Merchant Marine Act, 1936.

The facts on which the application is based are postwar developments  
3 U.S.M.C.

and growth in the automobile assembly business in California. It is estimated that between 15,000 and 25,000 automobiles are available for water transportation to the Northwest and Alaska, principally to the Northwest. At present these are handled only by American-Hawaiian and Coastwise. Each of these lines carries about 300 cars monthly which, applicant believes, is not sufficient to carry presently available automobiles, not including anticipated increase as another plant gradually shifts to water.

Applicant plans to operate 26 sailings annually in the intercoastal trade, and expects to handle 75 or more automobiles per sailing, which will not represent cargo diverted from other water carriers, but will represent added traffic by water which would otherwise move by other methods of transportation. This, applicant states, will gross the company between \$3,000 and \$6,000 per voyage in the movement of automobiles and parts, and would be an important contribution to the rehabilitation of its intercoastal service.

No objection has been raised to the proposed operation; all of the certificated water carriers having standing to object have instead furnished the Commission their written waivers and consent; and applicant has a certificate from the Interstate Commerce Commission permitting operation in both the intercoastal and coastwise trades, including transportation between all the ports here involved.

We adopt the recommendations of the examiner, that the granting of the application (1) will not result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service; (2) will not be prejudicial to the objectives and policy of the Merchant Marine Act, 1936, as amended; and (3) will be in the public interest and convenience; provided: that such permission shall be subject to revocation, cancellation, or modification by the Commission upon 60 days' notice in writing to Pacific Argentine Brazil Line, Inc.

The application is hereby granted.

By the Commission.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

WASHINGTON, D. C., *May 18, 1950.*

3 U. S. M. C.



## FEDERAL MARITIME BOARD

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No. M-3

AMERICAN MAIL LINE LTD. ET AL.<sup>1</sup>—APPLICATIONS FOR BAREBOAT CHARTER OF WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE TRANSPACIFIC SERVICE, TO BE TIME CHARTERED TO MILITARY SEA TRANSPORTATION SERVICE

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TO THE SECRETARY OF COMMERCE.

Applications for bareboat charter of 15 war-built Victory-type dry-cargo vessels for use in transpacific service have been filed by the following companies, to be time chartered by them to Military Sea Transport Service:

American Mail Line Ltd.  
Pacific Transport Lines, Inc.  
Pacific Atlantic S. S. Co.  
Pacific Far East Line, Inc.  
American President Lines, Ltd.  
States Marine Corporation

Section 3, Public Law 591, 81st Congress, approved June 30, 1950, provides, in part, as follows:

Notwithstanding the provisions of sections 11 and 14 of this Act, as amended, war-built, dry-cargo vessels owned by the United States on or after June 30, 1950, may be chartered pursuant to this Act for bareboat use in any service which, in the opinion of the Federal Maritime Board, is required in the public interest and is not adequately served, and for which privately owned American flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service. No charter shall be made by the Secretary of Commerce under authority of this subsection until the Federal Maritime Board shall have given due notice to all interested parties and shall have afforded such parties an opportunity for a public hearing on such charters and shall have certified its findings to the Secretary of Commerce.

In accordance with the requirements of the foregoing law due notice of a hearing on the applications was published in the Federal Register of July 13, 1950, and hearing was held today by the Board. The usual fifteen days notice was not given due to the emergency conditions ex-

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<sup>1</sup> Pacific Transport Lines, Inc., Pacific Atlantic S.S. Co., Pacific Far East Line, Inc., American President Lines, Ltd., and States Marine Corporation.

isting and the immediate necessity for transporting military cargoes to Korea.

Witnesses from Military Sea Transport Service, Maritime Administration, and ship-owning organizations testified in support of the applications. No testimony was offered in opposition to the proposed charters. The evidence clearly shows that, in view of the present Korean situation, 15 Victory-type ships, in addition to vessels presently operating, are needed immediately for the transportation of government owned or controlled cargo for the military services and that there are no privately-owned American-flag vessels of the required size, type, and speed available for charter by private operators within the time required for use in such service. The testimony is also clear that regular berth services will not suffice for logistic support of American troops in the Far East as all movements are unit movements and any vessel carrying cargo for such movements must be under direct orders of the Military Sea Transport Service.

The Board accordingly finds and hereby certifies to the Secretary of Commerce—

That the bareboat chartering by applicants of 15 war-built Victory-type, dry-cargo vessels from the Reserve Fleet for use in the transpacific service is required in the public interest;

That such service is not adequately served; and

That privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

In accordance with the above Act, the Board recommends that the following restriction and condition be included in the charters as it deems them necessary and appropriate to protect the public interest and to protect privately-owned vessels against competition from the vessels so chartered:

That the vessels be time chartered to the Military Sea Transport Service to be employed by that service in transporting military and other Government controlled cargoes; and

That the terms of the bareboat charters be limited to such time as the vessels remain so time chartered during the period of military necessity.

By order of the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

JULY 14, 1950.

3 F. M. B.

# FEDERAL MARITIME BOARD

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No. M-4

POPE & TALBOT, INC.—APPLICATION FOR BAREBOAT CHARTER OF WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE INTERCOASTAL TRADE

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## FINDINGS AND CERTIFICATION OF THE FEDERAL MARITIME BOARD TO THE SECRETARY OF COMMERCE

This is an informal proceeding instituted by the Board pursuant to Public Law 591, 81st Congress, approved June 30, 1950, which requires the Board to hold public hearings on applications for bareboat charters of Government-owned war-built dry-cargo vessels, and to make certain findings with appropriate certification thereof to the Secretary of Commerce. In accordance with the law, due notice of a hearing was published in the Federal Register of July 19, 1950, and hearing was held by the Board today. The usual notice of 15 days was not given because of the urgency of the matter, and although counsel for the Committee for the Promotion of Tramp Shipping under the American Flag in Foreign Commerce contended that he had not had sufficient time to secure the desired number of witnesses, he was permitted wide latitude in the presentation of his case and it appears reasonably certain from his statements that the testimony of any additional witnesses would have been merely cumulative.

### STATEMENT OF FACTS

By letter of July 14, 1950, Pope & Talbot, Inc., which owns two C-3 and one Victory-type vessels, filed its application for bareboat charter of the Liberty vessels *Allen C. Balch* and *William Allen White*, presently laid up at Astoria, Washington. At the hearing the applicant limited its application to one round voyage each without prejudice to any further application if the need was present. The regular intercoastal carriers did not oppose the application.

With the exception of the war years, applicant has been engaged in the intercoastal trade since 1923. It also has operated in the foreign trade. As early as May 12, 1950, applicant announced to the trade

that it was planned to place its own vessels in the intercoastal trade upon the withdrawal of the Government-owned vessels therefrom, the first vessel to sail eastbound on July 29 and the second on August 2 of this year. Two additional vessels of the same type were to be secured. One of its vessels to be placed in the service was returning from Japan under charter to States Marine Corporation when the Korean situation developed, and at the request of Military Sea Transport Service she was turned over to that service and diverted to Japan. As a consequence, the applicant sought other vessels to fill its needs to meet its scheduled sailings and booking commitments.

The record shows that presently there are not enough vessels or rail cars to handle the eastbound movement of lumber, for which there is an urgent and critical need. In addition, the efforts made by the individual lines as well as the Board's predecessor to build up the intercoastal trade should be encouraged in every way possible; further, failure to meet scheduled sailings prejudices a carrier with the public.

The evidence is clear that no privately-owned Liberty vessels have been available on the Pacific coast during the period above referred to. On the other hand, two such vessels were available on the Atlantic or the Gulf coasts during that period, which could have arrived on the Pacific coast in early August. This would not have met the schedule for applicant's first sailing but would have been in time for the second sailing. Not only is the time factor of importance, but the vessels would have had to move westbound in ballast at an estimated cost to applicant of approximately \$41,000 per vessel. This cost, added to the charter hire, constitutes an unreasonable rate for one round voyage.

#### FINDINGS AND CERTIFICATION

On the basis of the facts received above, the Board accordingly finds and hereby certifies to the Secretary of Commerce:

That the bareboat charter by applicants of the two war-built dry-cargo Liberty vessels *Allen C. Balch* and *William Allen White*, or substitutes, for one round voyage each in the intercoastal trade is required in the public interest:

That such service is not adequately served; and

That privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

By order of the Board.

(Sgd.) A. J. WILLIAMS,  
Secretary.

JULY 20, 1950.

3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-5

### COASTWISE LINE—APPLICATION FOR BAREBOAT CHARTER OF WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE ALASKA TRADE

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#### FINDINGS AND CERTIFICATION OF THE FEDERAL MARITIME BOARD . . . TO THE SECRETARY OF COMMERCE

This is an informal proceeding instituted by the Board pursuant to Public Law 591, 81st Congress, approved June 30, 1950, which requires the Board to hold public hearings on applications for bareboat charters of Government-owned war-built dry-cargo vessels, and to make certain findings with appropriate certification thereof to the Secretary of Commerce. In accordance with the law, due notice of a hearing was published in the Federal Register of July 22, 1950, and hearing was held by the Board today. The usual notice of 15 days was not given because of the urgency of the matter. No testimony was offered in opposition to the proposed charters, although counsel for Alaska Steamship Company explained that the company could have a suitable vessel at loading point between August 15th and 18th, 1950. He further stated that Alaska Steamship Company could not meet the August 5th date, and urged that if the charters be granted restrictions be imposed limiting the vessels to the transportation of government contract materials.

#### STATEMENT OF FACTS

By letter of July 12, 1950, Coastwise Line filed its application for bareboat charter of the Liberty war-built dry-cargo vessel *James W. Cannon*, and amended its application at the hearing to include the Liberty war-built dry-cargo vessel *John Cropper*, or other suitable war-built dry-cargo vessel, to transport the cargo involved. Both Liberty vessels are presently laid up in the national defense reserve fleet at Astoria, Oregon.

Applicant has been engaged in the Pacific coastwise service for a number of years, and in 1947 extended its service to include southwest Alaska.

About July 11, 1950, applicant was approached by a construction contractor for ship space for transportation of 9,000 tons of Government contract materials, which by testimony adduced at the bearing is now estimated at 12,000 tons, to be shipped to Alaska in one lot from Seattle, Washington, not later than August 5, 1950. Applicant is unable to handle this cargo in its regular operations and thus applies for these charters. Applicant points out that as to the second vessel there may not be enough Government contract materials to fill the ship. In this event they propose carrying commercial cargo, and on return voyages, commercial cargo on both vessels.

There is not now, nor was there on July 11th when applicant was first approached, private tonnage on the West coast suitable to handle this cargo movement by August 5, 1950, the deadline fixed by military authority. There were, however, on July 11th Libertys available on the Atlantic coast and the Gulf. These would have had to move westward in ballast at an estimated cost to applicant of approximately \$41,000 per vessel. This cost, added to the charter hire, constitutes an unreasonable rate for one round voyage.

On the basis of the facts recited above, the Board accordingly finds and hereby certifies to the Secretary of Commerce:

That the bareboat charter by applicant of the two Liberty war-built dry-cargo vessels *James W. Cannon* and *John Cropper*, or suitable war-built dry-cargo substitute vessel for the latter, for one round voyage each in the Alaska trade is required in the public interest:

That such service is not adequately served; and

That privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

It is recommended that the charters should contain a provision that the aforesaid voyage of each vessel, with its attendant rates, terms, and conditions for use of the vessels by shippers or charterers, shall have the approval of the Maritime Administrator.

By order of the Board.

(Sgd.) A. J. WILLIAMS,  
Secretary.

JULY 26, 1950.

3 F. M. B.

# FEDERAL MARITIME BOARD

No. M-6

## ACTIUM SHIPPING CORP. ET AL.<sup>1</sup>—APPLICATIONS FOR BAREBOAT CHARTER OF WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE TRANSPACIFIC AREA UNDER TIME CHARTER TO MILITARY SEA TRANSPORTATION SERVICE OF THE DEPARTMENT OF THE NAVY

### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS OF THE FEDERAL MARITIME BOARD TO THE SECRETARY OF COMMERCE

This is an informal proceeding instituted by the Board pursuant to Public Law 591, 81st Congress, approved June 30, 1950, which requires the Board to hold public hearings on applications for bareboat charters of Government-owned war-built dry-cargo vessels, and to make certain findings with appropriate certification thereof and recommendations thereon to the Secretary of Commerce. In accordance with the law, due notice of a hearing was published in the Federal Register of July 25, 1950, and hearing was held by the Board today. The usual notice of 15 days was not given because of the urgency of the matter.

#### STATEMENT OF FACTS

Applications have been filed by the above-named parties to bareboat charter Government-owned war-built dry-cargo vessels for use in the transpacific area under time charter by such parties to Military Sea Transportation Service of the Department of the Navy. Some of the applications were filed prior to publication of the notice of hearing in the Federal Register and some were filed subsequently thereto in accordance with the permission given in the notice.

<sup>1</sup> Admanthos Ship Operating Co., Inc., Agwilines (New York & Cuba Mail), Albatross Steamship Co., American Foreign S.S. Corp., American-Hawaiian Steamship Co., American Mail Line, American Pacific Steamship Co., American President Lines, Blidberg Rothchild Co., Inc., Burns Steamship Co., Allen Cameron Transportation, Inc., W. R. Chamberlin & Co., Clifton S.S. Corp., Coastwise Line, Cosmopolitan Shipping Co., Dichmann, Wright & Pugh, Dolphin S.S. Corp., Eastern Steamship Line, Eastport Steamship Corp., Firth S.S. Corp., Gulf Range S.S. Corp., Isbrandtsen Co., A. Willard Ivers, Inc., J. Lasry & Sons, Inc., Luckenbach S.S. Co., Mississippi Shipping Co., Moore-McCormack Lines, Inc., North Atlantic & Gulf S.S. Co., Ocean Freighting & Brokerage Co., Olympic S.S. Co., Omnium Trading Co., Orion Shipping & Trading Co., Pacific Transport Lines, Palmer Shipping Corp., Polarus S.S. Co., Prudential S.S. Corp., St. Lawrence Navigation Co., Inc., Senior Lines, Shepard Steamship Co., South Atlantic S.S. Lines, Standard Fruit & S.S. Co., Stockard S.S. Corp., Union Sulphur Co., Inc., United States Lines, U. S. Navigation Co., Wessel Duval & Co., Inc., West Coast Trans-Oceanic S.S. Co., West India Steamship Co., White Range S.S. Co., Daniel F. Young.

The representative of Military Sea Transportation Service testified that on account of the Korean situation there is an urgent need for 20 Victory-type vessels from the Government's reserve fleet to handle Government-owned and controlled cargo, and that there are no privately-owned vessels to meet the Service's time requirements, spaced over a long period. Operation by the Service itself is necessary to meet logistic requirements. Furthermore, Pacific coast liner services are presently being utilized by the Service to their full capacity. There was no opposition to the applications and it appears, from a direct question by the Board to persons in attendance at the hearing, that there are no available privately-owned American-flag vessels for utilization in the service under consideration.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATION

On the basis of the facts adduced of record, the Board accordingly finds and hereby certifies to the Secretary of Commerce:

That the bareboat charter to applicants of 20 Victory-type war-built dry-cargo vessels from the Government's reserve fleet, for use in the transpacific area under time charter by applicants to Military Sea Transportation Service of the Department of the Navy, is required in the public interest;

That such service is not adequately served; and

That privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that the following restrictions and conditions be included in the charters as it deems them necessary and appropriate to protect the public interest and to protect privately-owned vessels against competition from the vessels so chartered:

That the vessels be time chartered to the Military Sea Transportation Service to be employed by it in transporting military and other Government-controlled cargoes; and

That the terms of the bareboat charters be limited to such time as the vessels remain so time chartered during the period of military necessity.

The Board further recommends that as suitable privately-owned American-flag tonnage becomes available under reasonable conditions and at reasonable rates, it be substituted when practicable for equivalent Government-owned tonnage under such charter arrangements.

By order of the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.

JULY 27, 1950.



## FEDERAL MARITIME BOARD

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No. M-6

ACTIUM SHIPPING CORP. ET AL.—APPLICATIONS FOR BAREBOAT CHARTER OF WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE TRANSPACIFIC AREA UNDER TIME CHARTER TO MILITARY SEA TRANSPORTATION SERVICE OF THE DEPARTMENT OF THE NAVY

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On July 27, 1950, the Board conducted a hearing in this matter in accordance with Public Law 591, 81st Congress, and on that date submitted to you its findings, certification, and recommendations. A very large number of applications were received, some of which came in after the notice of hearing appeared in the Federal Register of July 25, 1950, but before the time for filing expired. The applications of the following companies were received in time but the names were inadvertently omitted from the Board's report:

Pacific American Steamship Association  
Pacific Atlantic Steamship Company  
Pacific Far East Line, Inc.  
Ponchelet Marine Corp.  
Pope & Talbot, Inc.  
William J. Rountree Co., Inc.  
States Marine Corp. of Delaware  
T. J. Stevonson & Co., Inc.  
Sudden & Christenson, Inc.  
Transportation, Inc.

While the omission of the names in no way affected the orderly processing of the applications, as will be seen by the fact that vessels were awarded to three of the companies, thus clearly indicating that *all* applications were duly considered, it is believed that the present memorandum is advisable so that the record will show why the above names were not included in the title of the Board's report.

By order of the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

AUGUST 1, 1950.  
3 F. M. B

# FEDERAL MARITIME BOARD

No. M-7

ACTIUM SHIPPING CORP. ET AL.<sup>1</sup>—APPLICATIONS FOR BAREBOAT CHARTER OF WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE TRANSPACIFIC AREA UNDER TIME CHARTER TO MILITARY SEA TRANSPORTATION SERVICE OF THE DEPARTMENT OF THE NAVY.

## FINDINGS, CERTIFICATION, AND RECOMMENDATIONS OF THE FEDERAL MARITIME BOARD TO THE SECRETARY OF COMMERCE

This is an informal proceeding instituted by the Board pursuant to Public Law 591, 81st Congress, approved June 30, 1950, which requires the Board to hold public hearings on applications for bareboat charters of Government-owned war-built dry-cargo vessels, and to make certain findings with appropriate certification thereof and recommendations thereon to the Secretary of Commerce. In accordance with the law, notice of this hearing was published in the Federal Register of August 2, 1950, and hearing was held by the Board today. The usual notice of 15 days was not given because of the urgency of the matter.

<sup>1</sup> Admanthos Ship Operating Co., Inc., Agwilines (New York & Cuba Mail), Alaska Steamship Co., Albatross Steamship Co., American Foreign Steamship Corp., American-Hawaiian Steamship Co., American Mail Line, American Pacific Steamship Co., American President Lines, Arnold Bernstein Line, Inc., Nick Bez, Blidberg Rothchild Co., Inc., A. H. Bull, A. L. Burbank & Co., Burns Steamship Co., W. R. Chamberlin & Co., Clifton Steamship Corp., Coastwise Line, Cosmopolitan Shipping Co., Cuba Mail Line, Diekmann, Wright & Pugh, Dolphin Steamship Corp., Eastern Steamship Line, Eastport Steamship Corp., John S. Emery & Co., Inc., El Dia Steamship Corp., Fall River Navigation Co., Federal Motorship Corp., Firth Steamship Corp., Fribourg Steamship Co., Inc., Flomarey Lines, Inc., James Griffiths & Sons, Gulf Range Steamship Corp., Isbrandtzen Co., A. Willard Ivers, Inc., W. P. Iverson & Co., Inc., J. Lasry & Sons, Inc., Luckenbach Steamship Co., Marine Steamship Co., Marine Transport Lines, Inc. & Marine Navigation Co., Mariner Steamship Co., Inc., Mississippi Shipping Co., Moore-McCormack Lines, Inc., Wm. H. Muller Shipping Corp., Naess Mejlander & Co., Inc., Newtex Steamship Corp., North American Shipping, North Atlantic & Gulf Steamship Co., Ocean Freightage & Brokerage Co., Ocean Tramp Carriers, Inc., Olympic Steamship Co., Omnium Freightage Corp., Orion Shipping & Trading Co., Pacific Transport Lines, Pacific Transport Lines, Inc., Palmer Shipping Corp., Pittston Marine Corp., Polarus Steamship Co., Pope & Talbot, Inc., Prudential Steamship Corp., St. Lawrence Navigation Co., Inc., Senior Lines, Shepard Steamship Co., South Atlantic Steamship Lines, Southern Seas Steamship Co., Inc., Standard Fruit & Steamship Co., Stockard Steamship Corp., Sudden & Christenson, Inc., Sword Line, Tramar Shipping Co., Inc., Transportation, Inc., Wm. J. Rountree Co., Inc., Ponchelet Marine Corp., Pacific-Atlantic Steamship Co., Pacific Far East Line, Inc., States Marine Corp. of Delaware, T. J. Stevenson & Co., Inc., Union Sulphur Co., Inc., United States Lines, U. S. Navigation Co., Wessel Duval & Co., Inc., West Coast Trans-Oceanic Steamship Co., West India Steamship Co., White Range Steamship Co., Daniel F. Young.

## STATEMENT OF FACTS

The Acting Administrator on July 31, 1950, requested the Federal Maritime Board to hold this hearing covering the bareboat charters of thirty Government-owned war-built dry-cargo vessels for use in transpacific service. Applications have been filed by the above-named parties to bareboat charter Government-owned war-built dry-cargo vessels for use in the transpacific area under time charter by such parties to Military Sea Transportation Service of the Department of the Navy. Some of the applications were filed prior to publication of the notice of hearing in the Federal Register, and some were filed subsequently thereto in accordance with the permission given in the notice.

The representative of Military Sea Transportation Service testified that on account of the Far Eastern situation there is an urgent need for 30 Victory-type vessels from the Government's reserve fleet to handle Government-owned and controlled cargo; that there are no privately-owned vessels to meet the Service's time requirements, and operation by the Service itself is necessary to meet logistic requirements. Furthermore, Pacific coast liner services are presently being extensively utilized by the Service. The representative of Military Sea Transportation Service further testified that he has been in daily touch with private owners and no suitable vessels are available within the time requirements. No testimony was adduced at the hearing in opposition to the chartering of the 30 vessels involved and there was no testimony offered showing that any privately-owned American-flag vessels are available.

## FINDINGS, CERTIFICATION, AND RECOMMENDATION

On the basis of the facts adduced of record, the Board accordingly finds and hereby certifies to the Secretary of Commerce:

That the bareboat charter to applicants of 30 Victory-type war-built dry-cargo vessels from the Government's reserve fleet, for use in the transpacific area under time charter by applicants to Military Sea Transportation Service of the Department of the Navy, is required in the public interest;

That such service is not adequately served; and

That privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that the following restrictions and conditions be included in the charters as it deems them necessary and appropriate to protect the public interest and to protect privately-owned vessels against competition from the vessels so chartered:

(a) Provision that the bareboat-chartered vessels be promptly time chartered to Military Sea Transportation Service for transportation of military and other Government-controlled cargo.

(b) Provision that such bareboat charters shall be terminated upon termination of such time charters to Military Sea Transportation Service.

The Board further recommends that as suitable privately-owned American-flag tonnage becomes available under reasonable conditions and at reasonable rates, it be substituted when practicable for equivalent Government-owned tonnage under such charter arrangements.

By order of the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

AUGUST 4, 1950.

3 F. M. B.

# FEDERAL MARITIME BOARD

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No. M-8

ACTIUM SHIPPING CORP. ET AL.<sup>1</sup>—APPLICATIONS FOR BAREBOAT CHARTER OF WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE TRANSPACIFIC AREA UNDER TIME CHARTER TO MILITARY SEA TRANSPORTATION SERVICE OF THE DEPARTMENT OF THE NAVY.

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## FINDINGS, CERTIFICATION, AND RECOMMENDATIONS OF THE FEDERAL MARITIME BOARD TO THE SECRETARY OF COMMERCE

This is an informal proceeding instituted by the Board pursuant to Public Law 591, 81st Congress, approved June 30, 1950, which requires the Board to hold public hearings on applications for bareboat charters of Government-owned war-built dry-cargo vessels, and to make certain findings with appropriate certification thereof and recommendations thereon to the Secretary of Commerce. In accordance with the law, notice of this hearing was published in the Federal Register of August

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<sup>1</sup> Admanthos Ship Operating Co., Inc., Agwilines, Inc. (New York & Cuba Mail), Alaska Steamship Co., Albatross Steamship Co., Inc., American Foreign Steamship Corp., American-Hawaiian Steamship Co., American Mail Line, Ltd., American and Overseas Chartering Co., American Pacific Steamship Co., American President Lines, Ltd., Arnold Bernstein Line, Inc., Nick Bez, W. R. Blackburn and Co., Blidberg Rothchild Co., Inc., A. H. Bull Steamship Co., A. L. Burbank & Co., Burns Steamship Co., W. R. Chamberlin & Co., Clifton Steamship Corp., Coastwise Line, Cosmopolitan Shipping Co., Inc., Cuba Mail Line, Dichmann, Wright & Pugh, Inc., Dolphin Steamship Corp., Eastern Steamship Lines, Eastport Steamship Corp., El Dia Steamship Corp., John S. Emery & Co., Inc., Fall River Navigation Co., Federal Motorship Corp., Firth Steamship Corp., Flomarey Lines, Inc., Fribourg Steamship Co., Inc., James Griffiths & Sons, Gulf Range Steamship Corp., Intercontinental Steamship Corp., Isbrandtsen Co., Inc., A. Willard Ivers, Inc., W. P. Iverson & Co., Inc., J. Lasry & Sons, Inc., Luckenbach Steamship Co., Inc., Lykes Bros. Steamship Corp., Maine Steamship Corp., Marine Navigation Co., Inc., Marine Transport Lines, Inc., Mariner Steamship Co., Inc., Mississippi Shipping Co., Inc., Moore-McCormack Lines, Inc., Wm. H. Muller Shipping Corp., Naess Mojlander & Co., Inc., Neptune Shipping, Inc., Newtex Steamship Corp., North American Shipping & Trading, Nautilus Shipping Co., North Atlantic & Gulf Steamship Co., Ocean Freighting & Brokerage Corp., Ocean Tramp Carriers, Inc., Olympic Steamship Co., Inc., Omnium Freighting Corp., Orion Shipping & Trading Co., Inc., Pacific-Atlantic Steamship Co., Pacific Far East Line, Inc., Pacific Transport Lines, Inc., Palmer Shipping Corp., Pittston Marine Corp., Polarus Steamship Co., Inc., Pochelet Marine Corp., Pope & Talbot, Inc., Prudential Steamship Corp., Wm. J. Rountree Co., Inc., St. Lawrence Navigation Co., Inc., Senior Lines, Shepherd Steamship Lines, Shepard Steamship Co., South Atlantic Steamship Line, Inc., Standard Fruit & Steamship Corp., Tankers Co., Inc., T. J. Stevenson & Co., Inc., Stockard Steamship Company, Sudden & Christenson, Inc., Sword Line, Tramer Shipping Co., Inc., Transportation, Inc., States Marine Corp. of Delaware, Union Sulphur Co., Inc., United States Lines, U. S. Navigation Co., Inc., U. S. Petroleum Carriers, Inc., U. S. Waterways Corp., Wessel Duval & Co., Inc., West Coast Trans-Oceanic Steamship Line, West India Steamship Co., White Range Steamship Co., Southern Seas Steamship Co., Inc., Daniel F. Young, Inc.

12, 1950, and hearing was held by the Board today. The usual notice of 15 days was not given because of the urgency of the matter.

#### STATEMENT OF FACTS

The Administrator on August 8, 1950, requested the Federal Maritime Board to hold this hearing covering the bareboat charters of forty Government-owned war-built dry-cargo vessels contemplated for use in transpacific service. On August 15, 1950, the Administrator requested that hearing cover an additional twenty-five vessels. Applications have been filed by the above-named parties to bareboat charter Government-owned war-built dry-cargo vessels contemplated for use in the transpacific area under time charter by such parties to Military Sea Transportation Service of the Department of the Navy. Some of the applications were filed prior to publication of the notice of hearing in the Federal Register, and some were filed subsequently thereto in accordance with the permission given in the notice.

The representative of Military Sea Transportation Service testified that on account of the Far Eastern situation there is an urgent need for sixty-five Victory-type vessels from the Government's reserve fleet to handle Government-owned and controlled cargo; that there are no privately-owned vessels to meet the Service's time requirements, and operation by the Service itself is necessary to meet logistic requirements. Furthermore, Pacific coast liner services are presently being extensively utilized by the Service. The representative of Military Sea Transportation Service further testified that he has investigated the availability of privately-owned vessels and none suitable is available within the time requirements. No testimony was adduced at the hearing in opposition to the chartering of the sixty-five vessels involved and there was no testimony offered showing that any privately-owned American-flag vessels are available.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATION

On the basis of the facts adduced of record, the Board accordingly finds and hereby certifies to the Secretary of Commerce:

That the bareboat charter to applicants of sixty-five Victory-type war-built dry-cargo vessels from the Government's reserve fleet, for contemplated use in the transpacific area under time charter by applicants to Military Sea Transportation Service of the Department of the Navy, is required in the public interest;

That such service is not adequately served; and

That privately-owned American-flag vessels are not available for char-

ter by private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that the following restrictions and conditions be included in the charters as it deems them necessary and appropriate to protect the public interest and to protect privately-owned vessels against competition from the vessels so chartered:

(a) Provision that the bareboat-chartered vessels be promptly time chartered to Military Sea Transportation Service for transportation of military and other Government-controlled cargo.

(b) Provision that such bareboat charters shall be terminated upon termination of such time charters to Military Sea Transportation Service.

The Board further recommends that as suitable privately-owned American-flag tonnage becomes available under reasonable conditions and at reasonable rates, it be substituted when practicable for equivalent Government-owned tonnage under such charter arrangements.

By order of the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

AUGUST 17, 1950.

3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-9

GRACE LINE, INC.—APPLICATION FOR EXTENSION OF BAREBOAT CHARTER AGREEMENT FOR WAR-BUILT DRY-CARGO VESSELS

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*W. F. Cogswell* and *E. Russell Lutz* for applicant.  
*Max E. Halpern* for the Board.

### REPORT OF THE BOARD

This is an informal proceeding instituted by order of the Board pursuant to Public Law 591, 81st Congress, approved June 30, 1950, for the purpose of considering the application of Grace Line, Inc., for an extension of its bareboat charter agreement beyond October 31, 1950, for war-built dry-cargo vessels and to make certain findings with appropriate certifications thereof to the Secretary of Commerce.

In accordance with the law, notice of this hearing was published in the Federal Register of August 16, 1950, and hearing held before Examiner A. L. Jordan on September 1, 1950. The examiner's recommended decision was issued on September 5, 1950, and the applicant notified of that decision on the same date. Our conclusions agree with those of the examiner and we adopt his findings of fact and recommendations as our own with minor modification.

### FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the record adduced before the examiner, the Board accordingly finds and hereby certifies to the Secretary of Commerce: That the service operated by applicant pursuant to its bareboat charter of war-built dry-cargo C1-MAV-1 vessels *Coastal Nomad*, *Coastal Adventurer*, *Gunners Knot*, and *Anchor Hitch* from and after October 31, 1950, is required in the public interest; that such service would not be adequately served without such extension; and that suitable privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

By order of the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.

SEPTEMBER 26, 1950.



## FEDERAL MARITIME BOARD

No. M-9

### GRACE LINE, INC.—APPLICATION FOR EXTENSION OF BAREBOAT CHARTER AGREEMENT FOR WAR-BUILT DRY-CARGO VESSELS

Applicant's charter of war-built dry-cargo C1-MAV-1 vessels *Coastal Nomad*, *Coastal Adventurer*, *Gunners Knot*, and *Anchor Hitch* should be extended from and after October 31, 1950, indefinitely, subject to termination by either party on fifteen days written notice, and subject to all pertinent limitations of the Merchant Ship Sales Act of 1946, as amended.

*W. F. Cogswell* and *E. Russell Lutz* for applicant.  
*Max E. Halpern* for the Board.

#### RECOMMENDED DECISION OF A. L. JORDAN, EXAMINER

Hearing on this application was held on September 1, 1950, in accordance with Public Law 591—81st Congress, pursuant to notice in the Federal Register of August 16, 1950.

The questions in this proceeding are: whether applicant has shown that extension of its bareboat charter of the vessels here involved from and after October 31, 1950, is required in the public interest, whether the trade the vessels are used in would be adequately served without such extension, and whether privately-owned American-flag vessels are available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

By application dated July 5, 1950, Grace Line, Inc., hereinafter referred to as applicant, requested an extension of its charter of the C1-MAV-1 vessels *Coastal Nomad*, *Coastal Adventurer*, *Gunners Knot*, and *Anchor Hitch* to October 31, 1950, and thereafter until action is concluded on its long-range program. The application states that these vessels are used in conjunction with applicant's C-2 vessels operating to the West coast of Central and South America, which vessels, due to loaded draft, cannot serve many of the smaller ports; that continued use of the C-MAV-1 vessels is required in order to provide sufficient American-flag service in this trade; that there are no American-flag vessels available for charter on the Pacific coast that can be obtained to replace these C1-MAV-1s; that to charter vessels elsewhere and make all the necessary changes in crew quarters to comply with West coast union agreements and move such vessels to the Pacific coast for entering the service would require a substantial expenditure for the short period of time pending action on applicant's long-range program; and

that the vessels here involved augment applicant's subsidized service and the results from their operation are included in its subsidized operations for the purpose of reserve and recapture and capital necessarily employed.

Applicant's witness testified that the four vessels here involved were delivered to the company between August 13, 1946, and January 22, 1947. The charter has been extended from time to time, and the last extension expires October 31, 1950. The characteristics of each vessel are: speed 10.5 knots, deadweight 6,034 tons, dry cargo bale capacity approximately 225,000 cubic feet, refrigerator space approximately 9,800 cubic feet, draft 21 feet loaded. Service with these vessels between U. S. Pacific ports and ports on the West coast of Mexico and West coast of Central America was commenced on November 30, 1946, and extended to Caribbean ports on July 23, 1948, with a sailing approximately every three weeks.

The witness testified that the importance of this service to the commerce of the United States is demonstrated by the revenue tons carried during 1949 and the first six months of 1950, as follows: in 1949, outward, 111,237 tons, homeward 46,169 tons; first six months of 1950, outward 40,257 tons, homeward 30,169 tons. Dry cargo from the United States in greatest volume was asphalt, burlap bags, chemicals, canned goods, cement, milk, explosives, flour, lubricating oil, cocoanut oil, caustic soda, NOS soda, tallow, paraffin wax, oil well and refining supplies, paper and paper products, wheat and wood pulp; and to the United States, principally coffee, used steel pipe, sugar in sacks, hardwood logs and lumber, sesame seed, cocoa beans, sesame seed oil, henequen, canned pineapple, and cotton. The 1949 outward reefer cargo totaled 41,825 cubic feet, and first six months of 1950, 10,119 cubic feet consisting principally of fresh fruits and vegetables and frozen fruits and vegetables; and homeward 1949, 1,602 long tons, and first six months of 1950, 809 long tons, consisting principally of frozen fish.

Applicant stated that on certain voyages the refrigerated boxes were used to capacity; and that even if not fully utilized, they are necessary in order to be in a position to handle all refrigerated cargo offerings not only because of the desirable higher revenue but in order to accommodate shippers who favor lines that can furnish facilities for taking care of all their requirements for both dry and refrigerated cargo. Applicant's principal competitor is the foreign-flag Independence Line operating four vessels, three of which are C1-MAV-1s having refrigerated space available.

Applicant's vessels here involved, in addition to the service described above, lift cargo from Mexico and Central America for transshipment at Cristobal to U. S. Atlantic and Gulf ports, and lift cargo at Cristobal

transshipped from U. S. Atlantic and Gulf ports for Mexico and Central America. The importance of this is indicated by their transshipment of 25,642 tons in 1949 and 14,074 tons in the first six months of 1950, and their loading transshipment cargo at Cristobal in 1949 of 49,247 tons and in the first six months of 1950 of 19,419 tons.

At present these four vessels are carrying capacity loads of dry cargo southbound and reefer cargo to the extent of 25 per cent of reefer capacity. In this connection applicant stated that fruit and vegetables are becoming available in increasing amounts and it is anticipated that approximately 75 per cent of the reefer space will be used for reefer cargo in the very near future. Northbound they are using about two-thirds of capacity, the reefer space being filled with frozen cargoes.

Applicant stated that except for vessels which it owns and operates, calling en route to the West coast of South America, there is no American-flag service between U. S. Pacific ports and ports on the West coast of Mexico and West coast of Central America.

Applicant's witness further testified that he is familiar with the charter market and has investigated through steamship brokers the availability of privately-owned American-flag vessels and none is available for charter which would be suitable for operation in the service described herein.

No testimony was adduced at the hearing in opposition to extension of applicant's bareboat charter agreement beyond October 31, 1950, covering the four war-built dry-cargo vessels named, and there was no testimony offered showing that comparable or suitable privately owned American-flag vessels are available.

On this record the Board should find, certify, and recommend to the Secretary of Commerce:

That extension, indefinitely, of applicant's bareboat charter of war-built dry-cargo CI-MAV-1 vessels *Coastal Nomad*, *Coastal Adventurer*, *Gunners Knot*, and *Anchor Hitch* from and after October 31, 1950, for continued use in conjunction with applicant's service between U. S. Pacific coast ports and the West coast of Central and South America, is required in the public interest; that such service would not be adequately served without such extension; and that privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service; and that in order to protect the public interest and to protect privately-owned vessels against competition in respect to such charter extension, such charter should include a provision that it be subject to termination by either party on fifteen days written notice, and subject to all pertinent limitations of the Merchant Ship Sales Act of 1946, as amended.

## FEDERAL MARITIME BOARD

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No. M-10

PACIFIC FAR EAST LINE, INC.—APPLICATION FOR EXTENSION OF BARE-BOAT CHARTER AGREEMENT FOR FULLY-REFRIGERATED WAR-BUILT DRY-CARGO VESSELS

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*William Radner* for applicant.

*L. W. Hartman* for American Mail Line, Ltd.

*William I. Denning* for States Steamship Company.

*Noah M. Brinson* for American President Lines, Ltd.

*Henry A. Cockrum* and *Charles D. Turner* for United States Department of Agriculture.

*Katherine P. Casey* for International Apple Association.

*Max E. Halpern* for the Board.

### REPORT OF THE BOARD

This is an informal proceeding instituted by order of the Board pursuant to Public Law 591, 81st Congress, approved June 30, 1950, for the purpose of considering the application of Pacific Far East Lines, Inc., for an extension of its bareboat charter agreement beyond October 31, 1950, for fully-refrigerated war-built dry-cargo vessels and to make certain findings with appropriate certifications thereof to the Secretary of Commerce.

In accordance with the law, notice of this hearing was published in the Federal Register of August 16, 1950, and hearing held before Examiner A. L. Jordan on September 1, 1950. The examiner's recommended decision was issued on September 6, 1950, and the parties notified of that decision on the same date. Our conclusions agree with those of **the examiner** and we adopt his findings of fact and recommendations as our own with minor modifications.

### FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the record adduced before the examiner, the Board accordingly finds and certifies to the Secretary of Commerce:

That the service operated by applicant pursuant to its bareboat charter

of war-built dry-cargo R2-S-BVI and C2SU vessels *Surprise*, *Flying Scud*, *Tradewind*, *Fleetwood*, *Contest*, and *Flying Dragon* from and after October 31, 1950, is required in the public interest; that such service would not be adequately served without such extension; and that suitable privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

By order of the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

SEPTEMBER 26, 1950.  
3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-10

PACIFIC FAR EAST LINE, INC.—APPLICATION FOR EXTENSION OF BARE-BOAT CHARTER AGREEMENT FOR FULLY-REFRIGERATED WAR-BUILT DRY-CARGO VESSELS.

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Applicant's charter of fully-refrigerated war-built dry-cargo vessels *Surprise*, *Flying Scud*, *Tradewind*, *Fleetwood*, *Contest*, and *Flying Dragon* should be extended from and after October 31, 1950, indefinitely, subject to termination by either party on fifteen days written notice, and subject to all pertinent limitations of the Merchant Ship Sales Act of 1946, as amended.

*William Radner* for applicant.

*L. W. Hartman* for American Mail Line, Ltd.

*William I. Denning* for States Steamship Company.

*Noah M. Brinson* for American President Lines, Ltd.

*Henry A. Cockrum* and *Charles D. Turner* for United States Department of Agriculture.

*Katherine P. Casey* for International Apple Association.

*Max E. Halpern* for the Board.

### RECOMMENDED DECISION OF A. L. JORDAN, EXAMINER

Hearing on this application was held on September 1, 1950, in accordance with Public Law 591—81st Congress, pursuant to notice in the Federal Register of August 16, 1950.

The questions in this proceeding are: whether applicant has shown that extension of its bareboat charter of the vessels here involved from and after October 31, 1950, is required in the public interest, whether the trade the vessels are used in would be adequately served without such extension, and whether privately-owned American-flag vessels are available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

By application dated July 7, 1950, Pacific Far East Line, Inc., hereinafter referred to as applicant, requested an extension of its charter of the fully-refrigerated vessels *Surprise*, *Flying Scud*, *Tradewind*, *Fleetwood*, *Contest* and *Flying Dragon* indefinitely, subject to limitations

of the Merchant Ship Sales Act of 1946, as amended. The application states that these vessels are used primarily to provide for military requirements in Japan, Korea, Okinawa, and other points in the Pacific; that the increased requirements resulting from the recent developments in the Pacific will make necessary the continuation of these vessels in that operation; and that no privately-owned reefer vessels are available for the handling of the military requirements referred to.

Applicant's witness testified that these six vessels are basically the C2 type freighter design, modified for refrigerated cargo installations. They are of two types: the R2-S-BV1 and C2SU. They have a capacity of approximately 325,000 cubic feet each, which is about 8,000 measurement tons of 40 cubic feet. After allowing for broken stowage, this has worked out to approximately 6,500 stowed tons per vessel.

Applicant's reefer service operates primarily out of California ports. The vessels do not call at Portland, Oregon, but have called at Puget Sound ports at the request of military authorities to load military cargo both to Alaska and to Oriental destinations. Applicant does not load commercial cargo, either dry or reefer, to the Orient out of Puget Sound, nor does it discharge such cargo from the Orient into Puget Sound. The witness stated that applicant has no intention to depart from this practice unless it appears that the existing lines find themselves in a position where they are unable to handle the movement of traffic, and the movement is cleared by applicant with the existing lines.

The destination points served with these refrigerated vessels are Adak, Alaska, Japan, Okinawa, Guam, and Hong Kong. Military cargo receives preference, and non-military cargo space is made available only after all military requirements have been provided for.

The six vessels here involved have been operated by applicant since the latter part of 1946. The charter has been extended from time to time, and the last extension expires October 31, 1950. The vessels are making about three sailings per month, and provide about 1,000,000 cubic feet of reefer space per month. Applicant states that without this capacity there would be a serious inadequacy of reefer space in the areas served. During July and August 1950 applicant had six sailings with refrigerated vessels on which there was handled approximately 9,500 long tons, or 16,500 measurement tons, each month, of reefer cargo, of which over 90 per cent was military and less than 10 per cent commercial. In addition, there was handled approximately 2,000 tons per month of non-reefer cargo, of which approximately 60 per cent was military. The vessels sailed substantially full. The service is primarily an outbound one, but small amounts of reefer and non-reefer cargo have been secured homebound to California ports. Applicant's witness states that the only other major source of reefer space in the trans-

acific trade is the fleet of American President Lines which, he understands, has been utilizing substantially all of its reefer space in recent months.

Applicant states that it has been able to provide its service to the military at negotiated freight rates which are approximately half of the conference rates; and that this is due in part to its ability to book space not required by the military for movement of essential commercial cargo, which would not be possible on the basis of military operation.

Applicant's witness further testified that there are no privately-owned refrigerated cargo vessels under American flag suitable for transpacific operation other than the ships of the United Fruit fleet, which obviously are not available for charter for such operation.

A representative of Military Sea Transportation Service testified in support of this application for permission to continue to charter reefer vessels in the transpacific trade for the carriage of military reefer cargo; that at least six reefer vessels as now operated on established routes in the Pacific are necessary for current military operations; that any reduction in the fleet at this time would be extremely detrimental to the national defense interests; and that the Military Sea Transportation Service relies upon these vessels to supply the bulk of the perishable food requirements of our troops in the Japan-Korea area.

A representative of the United States Department of Agriculture testified that that Department has been advised by a number of shippers who have used applicant's reefer vessels that the service has been of major importance to the agricultural industry on the West coast; that the service has made possible the movement of substantial quantities of agricultural commodities from U. S. Pacific coast ports to Oriental destinations, which otherwise would not have moved. He further testified that the Department of Agriculture recognizes that the Korean situation necessarily involves a greater space utilization for strictly military cargo which must take precedence over commercial shipments, but believes it is important that the remaining space should be made available for the movement of agricultural commodities out of U. S. Pacific coast ports; that the Department is certain that if the service is suspended or converted into a strictly military operation without any unused space being made available to the agricultural industry, it will be seriously prejudicial to the agricultural interests of the United States.

A representative of the International Apple Association read into the record a copy of a telegram from this association addressed to the Board, stating, in substance, that the fruit and vegetable industry of the United States, as represented in the membership of the International Apple Association, approximately 1,500 firms, requests that applicant's



reefer service be continued; and that it is of utmost importance that it be continued, for without it, it is impossible to carry on the export business of this association.

States Steamship Company, through counsel, takes the position that any extension of the charter under consideration should be limited to the transportation of reefer cargo; that the charter should not be extended indefinitely, but contain a definite termination date subject to review on application for further extension; and in any event should be terminated when the military need for the service involved ceases.

American Mail Line, through counsel, contends that there is plenty of reefer space out of the Pacific Northwest; and takes the same position as taken by States Steamship Company with respect to termination of charter.

The Board's counsel offered for consideration a communication from the American President Lines to the Board dated August 29, 1950. The parties agreed that it may be received in the record with the understanding that it shall not be considered as evidence of any facts, but merely a statement of the party sending it, and for all practical purposes the equivalent of a statement of counsel. The communication, in substance, states that American President Lines owns and operates vessels with refrigerated space in the transpacific trade with which the vessels here involved compete; that they recognize the military authorities currently require the use of some fully-refrigerated vessels; that the reefer space of American President Lines is utilized at present; and that as long as this remains they have no objection to the continuance of applicant's charter to meet military requirements. The communication further states that the charter should be limited to the time the vessels are required to meet the military needs for the transportation of refrigerated cargo, and should be subject to termination at any time in respect of any or all of the chartered vessels if and when they are no longer required for such purpose.

With respect to period of extension and conditions to be included in the charter, counsel for applicant, contending for extension indefinitely, stated that he would have no objection to a provision that the case be reviewed at any time on a showing, by parties having a bona fide interest, that conditions have changed substantially, requiring a further consideration of the merits; and that if the military need ceases, the case ought to be reviewed.

Counsel for the Board suggested that if an extension be granted it should be for a period not exceeding one year, subject to the terms and conditions of the existing charter, particularly the provision for cancellation on fifteen days notice.

The six vessels here involved are used primarily to provide for military service.

tary requirements in the Far East. The application is predicated on and supported by military necessity. When this necessity no longer exists, the charter should be reviewed by the Board.

With the same understanding by which the communication from American President Lines was received into the record, counsel for the Board offered for consideration several communications from shippers and other interested parties,<sup>1</sup> addressed to the Board. These communications, in substance, urge that applicant's reefer service be continued.

No testimony was adduced at the hearing in opposition to extension of applicant's bareboat charter agreement beyond October 31, 1950, covering the six fully-refrigerated war-built dry-cargo vessels named, and there was no testimony offered showing that comparable or suitable privately-owned American-flag vessels are available.

On this record the Board should find, certify, and recommend to the Secretary of Commerce:

That extension, indefinitely, of applicant's bareboat charter of the fully-refrigerated war-built dry-cargo vessels *Surprise*, *Flying Scud*, *Tradewind*, *Fleetwood*, *Contest*, and *Flying Dragon* from and after October 31, 1950, for continued use in the transpacific trade, is required in the public interest; that such service would not be adequately served without such extension; and that suitable privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service; and that in order to protect the public interest and to protect privately owned vessels against competition in respect to such charter extension, such charter should include a provision that it be subject to termination by either party on fifteen days written notice, and subject to all pertinent limitations of the Merchant Ship Sales Act of 1946, as amended.

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<sup>1</sup> A. Levy and J. Zentner Co., American Fruit Growers, Inc., Armour & Co., Barclay & Co., Inc., California Fruit Exchange, California Fruit Growers Exchange, Connell Bros., Ltd., Cinelli & Co., D. B. Berelson & Co., Di Giorgio Fruit Corp., Duthie & Co., Fidelity Trading Co., Inc., Ghiselli Bros., Gordon Graham Avoset Co., Gwin White & Prince, Inc., Harry C. Suze Co., International Trade Representative, Jacobs Malcolm & Burtt, Jensen-McLean Co., Inc., John Demartini Co., Jones & Guerrero Co., Liberty Gold Fruit, Inc., Midstate Horticultural Co., Mutual Orange Distributors, Normlee Co., Pacific Produce Co., Pan Asiatic Exporting Co., Inc., Paramount Export Co., Perham Fruit Corp., Sunrise Produce Co., Inc., Sunset Produce Co., United Fresh Fruit & Vegetable Ass'n., Washington State Apple Commission, Wenatchee Valley Traffic Ass'n., Wilbur Ellis Co., World Distributors Inc., Yakima Fruit Growers Ass'n., and Ziel & Co., Inc.

# FEDERAL MARITIME BOARD

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No. M-11

ALASKA STEAMSHIP COMPANY—APPLICATION FOR BAREBOAT CHARTER  
EXTENSION WITH PERMISSION TO TIME CHARTER TO GRACE LINE, INC.

COASTWISE LINE—APPLICATION FOR BAREBOAT CHARTER EXTENSION

*Stanley B. Long* and *Ira L. Ewers* for Alaska Steamship Company.  
*W. F. Cogswell* and *E. Russell Lutz* for Grace Line, Inc.  
*William Radner* and *Odell Kominers* for Coastwise Line.  
*M. E. Halpern* for the Board.

## REPORT OF THE BOARD

This is an informal proceeding instituted by order of the Board pursuant to Public Law 591, 81st Congress, approved June 30, 1950, for the purpose of considering an application of Alaska Steamship Company for the extension beyond October 31, 1950, of its bareboat charter agreement of Government-owned, war-built, dry-cargo motor vessels *Coastal Monarch*, *Coastal Rambler*, *Flemish Knot*, *Lucidor*, *Palisana*, *Ring Splice*, *Sailor's Splice*, *Square Knot*, and *Square Sinnet* for operation in the Alaska trade. The application was amended to request permission for the time charter of certain of the vessels to Grace Line, Inc.<sup>1</sup> The Board is required to make certain findings to the Secretary of Commerce.

Coastwise Line made application for extension of its bareboat charter of the S. S.'s *King S. Woolsey* and *James W. Cannon* but this application was withdrawn at the hearing without prejudice to its renewal or resubmission.

In accordance with the law, notice of hearing was published in the Federal Register of September 6 and 20 and October 4, 1950, and hearing was held before Examiner F. J. Horan on October 10, 1950. The examiner's recommended decision was issued on October 11, 1950, and the parties notified of that decision on the same date. No exceptions thereto were filed. Our conclusions agree with those of the examiner and we adopt his findings of fact and recommendations as our own.

The arrangement contemplated by the Alaska application for con-

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<sup>1</sup> It developed at the hearing that three vessels are proposed to be time chartered to Grace Line, Inc., during the period between approximately October 15 and April 15.

tinuance of the bareboat charter and the time charter of certain of these vessels to Grace Line, Inc., has advantages accruing to the Alaska Steamship Company, Grace Line, Inc., and the Government. Under ordinary circumstances during the period between approximately October 15 and April 15 certain of the vessels bareboat chartered from the Government would be laid up, due to conditions prevailing in the Alaskan trade. The time charter arrangement with Grace Line, Inc., provides a means for utilizing certain of these vessels during that approximate period, as was done in the past by Alaska Steamship Company with its privately-owned vessels, and also affords uninterrupted employment to the officers and crews of the vessels. The Government will benefit from the increase in basic charter hire from 8½% to 15% payable unconditionally so long as the vessels remain in the offshore trade and additional charter hire.

The Federal Maritime Board on September 26, 1950, made findings and certification to the Secretary of Commerce that the service operated by Grace Line, Inc., (between Pacific ports of the United States and the West coast of Mexico, West coast of Central America, and Caribbean ports) pursuant to its bareboat charter of war-built dry-cargo C1-M-AV1 vessels *Coastal Nomad*, *Coastal Adventurer*, *Gunners Knot* and *Anchor Hitch*, from and after October 31, 1950, was required in the public interest; that such service would not be adequately served without such extension; and that suitable privately-owned American-flag vessels were not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service. The vessels to be time chartered from Alaska Steamship are to augment the service provided by the four vessels above-mentioned. The evidence indicates that these additional vessels will be fully booked and unless additional vessels are available to Grace the business will probably go to a foreign-flag competitor.

#### FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

The Board finds and hereby certifies to the Secretary of Commerce:

(1) That the service operated by applicant, Alaska Steamship Company, pursuant to its bareboat charter of war-built dry-cargo C1-M-AV1 vessels *Coastal Monarch*, *Coastal Rambler*, *Flemish Knot*, *Lucidor*, *Palisana*, *Ring Splice*, *Sailor's Splice*, *Square Knot*, and *Square Sinnet*, from and after October 31, 1950, is required in the public interest; that such service would not be adequately served without such extension; and that suitable privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

(2) That the service for which three of the vessels named in the next

preceding paragraph are proposed to be time chartered by Alaska Steamship Company to Grace Line, Inc., is required in the public interest; that such service would not be adequately served without such extension; and that suitable privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that the terms and conditions of the time charter agreement between Alaska Steamship Company and Grace Line, Inc., shall be subject to approval of the Secretary of Commerce.

By order of the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

OCTOBER 17, 1950.

3 F M B.

## FEDERAL MARITIME BOARD

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ALASKA STEAMSHIP COMPANY—APPLICATION FOR BAREBOAT CHARTER  
EXTENSION WITH PERMISSION TO TIME CHARTER TO GRACE LINE, INC.

COASTWISE LINE—APPLICATION FOR BAREBOAT CHARTER EXTENSION

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In proceeding under Public Law 591—81st Congress, found that continuance of the service for which certain Government-owned war-built dry-cargo vessels are now bareboat chartered and of the service for which three of such vessels are proposed to be time chartered during a certain period is required in the public interest; that the former service would not be adequately served without the use therein of such vessels, nor the latter service without the use therein of three of them; and that privately-owned American-flag vessels will not be available for charter by private operators on reasonable conditions and at reasonable rates for use in such services.

*Stanley B. Long* and *Ira L. Ewers* for Alaska Steamship Company.  
*W. F. Cogswell* and *E. Russell Lutz* for Grace Line, Inc.  
*William Radner* and *Odell Kominers* for Coastwise Line.  
*M. E. Halpern* for the Board.

### RECOMMENDED DECISION OF F. J. HORAN, EXAMINER

This is a proceeding under Public Law 591—81st Congress concerning an application of Alaska Steamship Company for (1) the extension beyond October 31, 1950, of the bareboat charter to it of the Government-owned war-built dry-cargo motor vessels *Coastal Monarch*, *Coastal Rambler*, *Flemish Knot*, *Lucidor*, *Palisana*, *Ring Splice*, *Sailor's Splice*, *Square Knot*, and *Square Sinnet* for operation in the Alaskan trade, and (2) permission "during any period for which the vessels are not needed in the Alaska trade to time charter them to Grace Line, Inc., for operation in conjunction with the C-2 vessels in the trade from the West Coast of the United States to the West Coasts of Mexico, Central America and South America, including ports in the Canal Zone and the Caribbean now served by four C1-MAV-1 vessels chartered from the Government."<sup>1</sup> As indicated in notices of hearing published in the Federal Register,<sup>2</sup> the questions to be determined are whether continu-

<sup>1</sup> The proceeding also concerned an application of Coastwise Line for extension of its bareboat charter of the steamships *King S. Woolsey* and *James W. Cannon*. This application was withdrawn at the hearing.

<sup>2</sup> 15 F. R. 6001, 6298, and 6687.

ance of the service for which the above-named vessels are now bareboat chartered and of the service for which such vessels or some of them are proposed to be time chartered to Grace Line, Inc., is required in the public interest; whether such services would be adequately served without the use therein of such vessels, and whether privately-owned American-flag vessels will be available for charter by private operators on reasonable conditions and at reasonable rates for use in such services. The Board is required by Public Law 591 to certify its findings to the Secretary of Commerce.

In House Report No. 39, 80th Congress, it was said at page 3:

The people of the Territory of Alaska are completely dependent upon continuation of this water-borne service, both to insure that they are supplied with the necessities of life and to provide means of bringing their products to the continental United States for sale. Approximately 90,000 persons are now residents of the Territory, of whom about 37,000 are of Indian blood. Several thousand veterans have recently settled there and others are steadily moving to this new frontier. All of these people would be completely marooned should this water-borne service be discontinued or inadequately maintained. Moreover, development of the Territory would be set back many years. Because of the strategic importance of the Territory of Alaska, it is also necessary that adequate service be provided to supply our military garrisons and to insure adequate defense installations in that area.

Applicant's vice president and general manager testified that the situation depicted by the above-quoted statements, except with respect to the population of Alaska, which has increased, still exists and that it will continue to exist beyond October 31, 1950. He also points out that the Alaskan service was one of the reasons for extending the authority of the Secretary of Commerce to charter vessels and, in this connection, quotes from the report of the Merchant Marine and Fisheries Committee of the House of Representatives on the bill which became Public Law 591 as follows:

The Alaskan service is essential both in the public interest and the interest of national security, but until adequate American-flag service can be attracted to this trade on reasonable conditions and at reasonable rates, the way should be left open for the continuation of the service with chartered Government-owned tonnage.

He likewise calls attention to the report on the same bill of the Interstate and Foreign Commerce Committee of the Senate, in which it was said:

The peculiarities of the Alaskan trade and the need in that service for special-type vessels not generally available in the private market is an apt illustration of the situation described above. The continuation of limited authority provided for in the bill would make it possible to charter vessels on a bareboat basis.

The annual rate of water-borne commerce in the Alaskan trade is in excess of 700,000 tons. It consists principally of general merchandise and military cargo northbound and canned salmon and frozen fish southbound. In the calendar year 1949, 693,000 tons of the traffic transported in the service was carried by applicant. In 1950, during the peak seasons, that is, from April 15 to September 30 northbound and from July 25 to October 15 southbound, the cargo transported by applicant averaged 80 percent of vessel capacity. It was testified that indications are that the traffic will increase and that all of the vessels chartered to applicant, and perhaps additional ones, will be needed next season.

Applicant owns and operates in the Alaskan service four combination vessels, two Liberties, 1 C1-MAV-1, and one small freighter. Seven of the nine chartered vessels in question are of the C1-MAV-1 type, and the remaining two are R1-MAV-3's. All nine are comparatively small vessels and, because of this fact, can get into and out of certain harbors in Alaska that are unable to accommodate larger vessels, such as a Liberty. There are no privately-owned C1-MAV-1's or R1-MAV-3's available for charter.

While the continuance beyond October 31, 1950, of the use of the chartered vessels in question in the Alaskan service appears to be required, such requirement is due to the volume of the traffic between the middle of April and the middle of October. It is estimated by applicant that several of the C1-MAV-1's will not be needed by it during the period between October 15 and April 15, and it is proposed to time charter three of them to Grace Line, Inc., during this period.

Grace Line, Inc., hereinafter called Grace, operates a service with four C1-MAV-1's chartered from the Government, the *Gunners Knot*, *Coastal Nomad*, *Anchor Hitch*, and *Coastal Adventurer*, between Pacific ports of the United States and the west coast of Mexico, west coast of Central America, and Caribbean ports. These four vessels offer a sailing approximately every three weeks in conjunction with Grace's operation of C-2 vessels to the west coast of Mexico, west coast of Central America, and west coast of South America. The ports of call are Manzanillo, Acapulco, Salina Cruz, Champerico, San Jose de Guatemala, Acajutla, La Libertad, La Union, Amapala, Corinto, Puntarenas, Golfito, Puerto Armuelles, Balboa, Cristobal, Barranquilla, Santa Marta, Maracaibo, Curacao, and Amuay Bay. The route between United States Pacific ports and ports on the west coasts of Mexico and Central America has been declared a part of essential trade route 25, and the route between United States Pacific ports and Caribbean ports also has been declared essential (Trade Route No. 23).

During the calendar year 1949 and the first six months of 1950, the



revenue tons carried to and from the United States in this service were as follows:

Outward to:	6 months of 1960	
	1949	
West coast of Mexico .....	13,115	8,464
West Coast of Central America .....	49,691	19,016
Caribbean ports .....	<sup>1</sup> 48,431	<sup>2</sup> 12,777
	<hr/>	<hr/>
	111,237	40,257
Homeward from:		
Caribbean ports .....	4,451	3,531
West coast Central America } .....	41,718	26,638
West coast Mexico }		
	<hr/>	<hr/>
	46,169	30,169

<sup>1</sup> Including 11,544 Balboa and Cristobal.

<sup>2</sup> Including 2,367 Balboa and Cristobal.

Shipments from the United States of dry cargo included many items, those in greatest volume being asphalt, burlap bags, chemicals, canned goods, cement, milk, explosives, flour, lubricating oil, coconut oil, caustic soda, NOS soda, tallow, paraffin wax, oil well and refining supplies, paper and paper products, wheat, lumber, wood pulp, and refrigerated cargo. The homeward dry cargo consisted principally of coffee, used steel pipe, sugar in sacks, hardwood logs and lumber, sesame seed, cocoa beans, sesame seed oil, henequen, canned pineapple, frozen fish, and cotton.

The four vessels mentioned also lift cargo at Mexican and Central American ports for transshipment at Cristobal to United States Atlantic and Gulf ports, as well as transhipped cargo at Cristobal.

Except for vessels which are owned and operated by Grace and which call enroute to the west coast of South America, there is no American-flag service between United States Pacific ports and ports on the west coasts of Mexico and Central America. Before the war, Grace found it necessary to supplement with chartered vessels service by its own vessels to west-coast-of-Mexico and west-coast-of-Central America ports. There is no American-flag service between United States Pacific ports and the other ports named above except Balboa, Cristobal, and Curacao.

Grace's principal competitor in this trade is the foreign-flag Independence Line, which is operating four vessels of the C1-MAV-1 type having refrigerated space available.

There has recently been a substantial increase in cargo offerings in this trade. The *Gunners Knot*, which sailed from Los Angeles on October 1, was loaded to capacity, as was the *Coastal Nomad*, which

ation in this trade are booked to capacity through their November sailings. In addition, it has on its books cargoes sufficient to fill practically to capacity an October 15 sailing to the west coast of Mexico, west coast of Central America, and the Caribbean, and a sailing in late October to the west coast of Mexico, west coast of Central America, and the west coast of South America as far south as Callao. More space is needed to care for the normal cargo offerings from regular shippers who depend upon it to take care of their requirements up to the date of sailing, and it is testified that, if not protected by it, the business will go to foreign competitors.

On the basis of present indications of cargo offerings, it is estimated that three additional C1-MAV-1's will be required for the trade, with initial sailings in October and November, two for two round voyages each or a period of from five to six months for each vessel and one for at least one voyage of approximately 90 days' duration. These are the minimum time requirements. If cargo offerings should continue in volume as currently, it would be Grace's plan to charter the third vessel for an additional period.

Grace desires to charter the three additional vessels from Alaska Steamship Company on a time basis. The C1-MAV-1's which the latter operates have refrigeration facilities, which are particularly important in view of the movement of frozen fish northbound and the growing demand for the carriage southbound of fruits and vegetables. Prior to World War II, it was Grace's practice to charter vessels of Alaska Steamship Company during the off-season in the Alaskan trade, which is the period of its heavy seasonal coffee movement from Central America.

The *Ring Splice* will complete its last voyage of the season in the Alaskan trade around October 15-18 and the *Sailor's Splice* around October 27-30. It is contemplated that these vessels would immediately be made available to Grace, which would obviate the necessity of placing them in lay-up, thereby saving considerable expense.

The vice president and treasurer of Grace Line testified that he had made inquiries regarding the availability for charter on the United States Pacific coast of privately-owned American-flag vessels which would be suitable for operation in the trade and that no such vessels have been found. He further testified that no privately-owned American-flag C1-MAV-1's, which is the type most suitable for the trade because of its many shallow-draft ports, are available in any market.

There is no opposition to Alaska Steamship Company's proposal to time charter to Grace.

The Board should find and certify to the Secretary of Commerce:

- (1) That the continuance beyond October 31, 1950, of the service for

which the *Coastal Monarch*, *Coastal Rambler*, *Flemish Knot*, *Lucidor*, *Palisana*, *Ring Splice*, *Sailor's Splice*, *Square Knot*, and *Square Sinnet* are now bareboat chartered is required in the public interest; that such service would not be adequately served from and after such date without the use therein of such vessels; and that privately-owned American-flag vessels are not, and will continue beyond such date not to be, available for charter by private operators on reasonable conditions and at reasonable rates for use in such service; and

(2) That the service for which three of the vessels named in the next preceding paragraph are proposed to be time chartered by Alaska Steamship Company to Grace is, and will continue beyond October 31, 1950, to be required in the public interest; that such service is not, and without the use therein of such three vessels would continue beyond October 31, 1950, not to be, adequately served; and that privately-owned American-flag vessels are not, and will continue beyond October 31, 1950, not to be, available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

3 F. M. B.

# FEDERAL MARITIME BOARD

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No. M-12

## POPE & TALBOT, INC.—APPLICATION FOR BAREBOAT CHARTER OF WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE INTERCOASTAL TRADE

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The intercoastal service is in the public interest and requires the operation by applicant under bareboat charter of the Government-owned, war-built, dry-cargo vessels *Allen C. Balch* and *William Allen White* for one additional round voyage each; such service is not adequately served; and privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

*William Radner* and *Odell Kominers* for applicant.

*Marvin J. Coles* for the Committee for Promotion of Tramp Shipping.

*Sterling F. Stoudenmire, Jr.*, for Waterman Steamship Corp.

*Max E. Halpern* for the Board.

### REPORT OF THE BOARD

On July 20, 1950, following a hearing on the application of Pope & Talbot, Inc., under Public Law 591, 81st Congress, for the bareboat charter of the Government-owned, war-built, dry-cargo vessels *Allen C. Balch* and *William Allen White* for operation in the intercoastal trade, the Board found and certified to the Secretary of Commerce that such charter for one round voyage of each of those vessels was required in the public interest, that such service was not adequately served, and that privately-owned, American-flag vessels were not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service. In accordance with applicant's request of September 29, 1950, the Board reopened the proceeding and set for hearing the requested extension of the bareboat charter of the foregoing vessels for one additional round voyage each, and hearing was duly held on October 13, 1950.

The record adduced at the hearing of October 13 shows that the situation at the present time is substantially the same as that which existed at the time of the hearing on July 20. The two C-3 vessels owned by applicant which were planned to be put in the intercoastal trade are still under charter to Military Sea Transportation Service, and the lat-

ter does not know when they will be returned in view of world conditions.

It is clear that Liberty vessels, privately owned, have been available since the last hearing and that applicant could have chartered them had it so wished. On the other hand, the conditions attendant upon their charter have not been reasonable. Such vessels are still not available on the Pacific coast, where applicant's voyages commence, and taking such vessels in ballast from the Atlantic coast or the Gulf coast to the Pacific coast would entail an expense to applicant in excess of \$40,000 per vessel. Counsel for the Committee for the Promotion of Tramp Shipping contends, however, that the Maritime Administration could permit redelivery of the two bareboat-chartered vessels in question on the Atlantic coast and that applicant could then charter privately-owned vessels in such area, thus eliminating the taking of the latter vessels to the Pacific coast in ballast. Redelivery, however, of the Government-owned vessels on the Atlantic coast would necessitate repatriation of the crew at applicant's expense pursuant to its labor contract. Although applicant might possibly integrate its operations in the manner described, timing is such an important factor that the Board does not feel such procedure can be insisted on.

#### FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the record of the October 13 hearing, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the intercoastal service is in the public interest and requires the operation by applicant under bareboat charter of the Government-owned, war-built, dry-cargo vessels *Allen C. Balch* and *William Allen White* for one additional round voyage each;
2. That such service is not adequately served; and
3. That privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

By the Board.

(Sgd.) A. J. WILLIAMS,  
Secretary.

OCTOBER 17, 1950.  
3 F. M. B.

# FEDERAL MARITIME BOARD

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No. M-13

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.<sup>1</sup>—APPLICATIONS FOR  
EXTENSION OF BAREBOAT-CHARTER AGREEMENTS OF WAR-BUILT DRY-  
CARGO VESSELS IN THE INTERCOASTAL TRADE

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*Clement C. Rinehart* for American-Hawaiian Steamship Company.  
*William Radner* and *Odell Kominers* for Luckenbach Steamship Com-  
pany, Inc., and *Pope & Talbot, Inc.*

*William I. Denning* for Pacific-Atlantic Steamboat Co.

*Marvin J. Coles* for the Committee for Promotion of Tramp Shipping.

*Sterling F. Stoudenmire, Jr.*, and *Warren Price, Jr.*, for *Waterman  
Steamship Corp.*

*C. A. Luce* for West Coast Lumbermen's Association.

*R. Granville Curry* and *Frederick M. Dolan* for Albany Port District  
Commission.

*Max E. Halpern* for the Board.

## REPORT OF THE BOARD

This proceeding was instituted by order of the Board pursuant to Public Law 591, 81st Congress, approved June 30, 1950, for the purpose of considering the applications of American-Hawaiian Steamship Company, Luckenbach Steamship Company, Inc., Pacific-Atlantic Steamship Company, and Pope & Talbot, Inc., made to the Secretary of Commerce, for an extension of certain bareboat charters of Government-owned, war-built, dry-cargo vessels in the intercoastal trade, and to determine whether the Board should make certain findings with appropriate certification thereof to the Secretary of Commerce.

Applicants are operators in the intercoastal trade under a certificate of convenience and necessity from the Interstate Commerce Commission. Each has operated in such trade prior to World War II and resumed operations following the termination of hostilities.

At the hearing before an examiner, counsel for the parties stipulated that the applications originally filed for an unlimited period should be

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<sup>1</sup> Luckenbach Steamship Company, Inc., Pacific-Atlantic Steamship Co., and Pope & Talbot, Inc.

amended to limit the extension from November 1, 1950, to January 31, 1951, without prejudice to applications for further extensions beyond that time. We are therefore concerned only with extensions during this period.

The examiner has recommended that the Board find and certify to the Secretary of Commerce that the extension from October 31, 1950, (November 1, 1950) to and including January 31, 1951, of the bareboat-charter agreements of American-Hawaiian Steamship Company, Luckenbach Steamship Company, Inc., Pacific-Atlantic Steamship Company, and Pope & Talbot, Inc., for the operation of Government-owned, war-built, dry-cargo vessels in the intercoastal trade is required in the public interest; that such service is not adequately served; and that there are no privately-owned American-flag vessels available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

Exceptions were filed by Waterman Steamship Corporation, Committee for Promotion of Tramp Shipping, as interveners, and by counsel to the Board, and the matter was argued orally before the Board.

Pope & Talbot, Inc., one of the applicants, has filed a memorandum agreeing with the conclusions of the examiner but recommending that several issues set forth in the examiner's recommended decision be not acted upon because of their controversial nature and the short term of the charter extension. Counsel to the Board, while excepting to one phase of the examiner's report, concurs in his recommendations.

The record is quite clear that the intercoastal service is required in the public interest and for the present would not be adequately served without the use of Government-owned chartered vessels. The examiner correctly points out that the importance of the intercoastal trade has been recognized by the Congress, the Interstate Commerce Commission, and by the Maritime Commission. Thus, in 1947 the Maritime Commission, in order to encourage the rehabilitation of the intercoastal service, interrupted by World War II, authorized the charter of war-built vessels in that service and fixed the basic charter hire rate of 15% per annum of the statutory sales price of the vessel, or of the floor price, whichever was higher, of which 8½% is payable unconditionally and the balance of 6½% is payable from earnings before any participation in such earnings by the charterer. This rate was fixed after a hearing with intercoastal operators to offset expected substantial losses during the period of rehabilitation. The charter hire in the foreign trade is 15% per annum of the statutory sales price of the vessel, or of the floor price, whichever is higher, which is paid unconditionally, and additional charter hire is also provided for.

Prior to June 30, 1950, there had been announcement of, and meas-  
3 F. M. B.

ures taken towards, replacement of Government-owned bareboat vessels in the intercoastal trade by privately-owned vessels. This transition was in keeping with Congressional intent and the policy of this Board's predecessors. It remains the policy of this Board.

The unanticipated and heavy demand for cargo vessels in transpacific areas as a result of the United Nations action in Korea interrupted this orderly transition to privately-owned vessels in the intercoastal trade. Public Law 591, 81st Congress, 2nd session, authorizing charters of Government-owned vessels under specific conditions, is sufficiently broad to meet such emergencies as were created by the Korean incident.

Some of these applicants, at the urgent request of the Military Sea Transportation Service, chartered their owned vessels for military purposes for use in the transpacific areas. Other vessels of applicants are privately chartered and are being operated in the transpacific areas carrying a substantial amount of cargo under the control of the military. The time of return of these vessels for availability in the intercoastal trade is a matter of conjecture. The forward demand of the Military Sea Transportation Service is far from clear, but the demand's impact on privately-owned vessels for use in the intercoastal trade may be more readily determinable prior to January 31, 1951.

Waterman Steamship Corporation, an operator in the intercoastal service and a party in opposition in this proceeding, has indicated that the company intends to place additional vessels in the service to meet the needs of the intercoastal service, but some delay is indicated as its principal witness testified that all of its vessels are presently employed.

American-Hawaiian Steamship Company claims it has no owned vessels suitable for their needs in this service. There is strong suggestion in the record that this applicant should purchase vessels and thus terminate the competition of chartered Government-owned vessels with privately-owned vessels in this trade. The law, of course, imposes no requirement to purchase vessels. Failure to purchase, even refusal to do so, while entitled to consideration, should not be determinative of whether the applicants have met the conditions of Public Law 591, particularly for purposes of this decision, for a temporary extension of charter of Government-owned vessels.

While there is some conflict in the testimony as to whether privately-owned vessels are available on the West coast for charter on reasonable rates and conditions, the record is sufficiently clear to justify a finding at this time that such vessels are not so available.

Opponents contend further that the Board should require applicants Pope & Talbot, Inc., and Pacific-Atlantic Steamship Company to redeliver their bareboat-chartered vessels on the Atlantic and Gulf coasts



and require that privately-owned tonnage presently available on the Atlantic and Gulf coasts be chartered in their place. Such an arrangement might involve taking a vessel from the East or Gulf coast to the West coast in ballast and the expense of repatriation of crews (see decisions of the Board of July 20, 1950, and October 17, 1950, applications for charter by Pope & Talbot, Inc., Docket Nos. M-4 and M-12). The current charter requires redelivery to the Maritime Administration on the West coast.

Opponents contend that the burden of proof is upon applicants and, on this point, we agree. We think that the applicants have met this burden sufficiently to justify the Board in making the required findings under Public Law 591.

We feel it unnecessary to pass upon the other exceptions filed to the examiner's report, in view of the short term of the extension. Should further extensions be applied for, it may then be necessary to review the problems mentioned in the exceptions.

#### FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the record adduced in this case the Board accordingly finds and hereby certifies to the Secretary of Commerce:

That the service operated by applicants pursuant to their bareboat charters of war-built dry-cargo vessels from and after October 31, 1950, until January 31, 1951, is required in the public interest; that such service would not be adequately served without such extension; and that suitable privately-owned vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

By order of the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

OCTOBER 17, 1950.  
3 F. M. B.

# MARITIME ADMINISTRATOR

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No. S-20<sup>1</sup>

AMERICAN PRESIDENT LINES, LTD.—APPLICATION FOR PERMISSION TO OPERATE VESSELS BETWEEN CALIFORNIA PORTS AND GUAM, MIDWAY, AND WAKE UNDER SECTION 805(a) OF MERCHANT MARINE ACT, 1936

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Whereas the Maritime Administrator on November 21, 1950, published in the Federal Register (15 F. R. 7952) notice of a proposed rule relative to the status of Guam, Midway and Wake under section 805(a), Merchant Marine Act, 1936; and

Whereas by said notice, interested persons were afforded opportunity to comment on the proposed rule on or before December 4, 1950; and

Whereas no objections to the proposed rule have been received by the Administrator,

*Now, therefore, it is hereby ordered,* That the aforesaid proposed rule be and it is hereby adopted, as follows:

*Guam, Midway and Wake.*—Steamship service between ports of the United States mainland and ports in the islands of Guam, Midway and Wake is not “domestic intercoastal or coastwise service” within the meaning of section 805(a) of the Merchant Marine Act, 1936. This interpretation is limited to Guam, Midway and Wake and does not signify that a similar interpretation is or would be applicable to Hawaii, Puerto Rico or Alaska.

Dated: DECEMBER 13, 1950.

((Sgd.) E. L. COCHRANE,  
*Maritime Administrator, Department of Commerce.*

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<sup>1</sup> The rule here set forth was printed in the Federal Register on December 19, 1950 (15 F. R. 9065).

3 M. A.

# FEDERAL MARITIME BOARD

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No. M-15

AMERICAN EXPORT LINES, INC., ET AL.<sup>1</sup>—APPLICATIONS FOR BAREBOAT CHARTER OF WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE CARRIAGE OF COAL AND GRAIN FROM THE UNITED STATES TO EUROPEAN COUNTRIES

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## FINDINGS AND CERTIFICATION OF THE FEDERAL MARITIME BOARD TO THE SECRETARY OF COMMERCE

This is an informal proceeding instituted by the Board pursuant to Public Law 591, 81st Congress, which requires the Board to hold public hearings on applications for bareboat charters of Government-owned, war-built, dry-cargo vessels, and to make certain findings with appropriate certification thereof to the Secretary of Commerce. In accordance with such law, notice of this hearing was published in the Federal Register of December 14, 1950, and hearing was held by the Board on December 18, 1950. The usual notice of 15 days was not given because of the urgency of the matter.

### STATEMENT OF FACTS

Applications have been filed by the above-named parties to bareboat charter Government-owned, war-built, dry-cargo vessels for the transportation of cargo to those countries within the purview of the Foreign Assistance Act of 1948, as amended. Some of the applications were filed prior to publication of the notice of hearing in the Federal Register, and some were filed subsequently thereto in accordance with the permission given in the notice.

<sup>1</sup> American Foreign Steamship Corp., American-Hawaiian Steamship Co., Blidberg Rothchild Co., Inc., A. L. Burbank & Co., Burns Steamship Co., Clifton Steamship Corp., Coastwise Line, Dichmann, Wright & Pugh, Inc., Dolphin Steamship Corp., Drytrans Incorporated, Eagle Ocean Transport Corp., Eastern Steamship Lines, Inc., East Harbor Trading Corporation, Eastport Steamship Corp., Firth Steamship Corp., Fribourg Steamship Co., Inc., Isbrandtsen Co., Inc., Luckenbach Steamship Co., Inc., Lykes Bros. Steamship Co., Inc., Maine Steamship Corp., Manning Brothers, Inc., Marine Navigation Co., Inc., Moore-McCormack Lines, Inc., North Atlantic and Gulf Steamship Co., Inc., Orion Shipping & Trading Co., Inc., Pacific-Atlantic Steamship Co., Pacific Far East Line, Inc., Pittston Marine Corp., Polarus Steamship Co., Inc., Seatrade Corporation of Delaware, Seven Seas Steamship Corp., Shepard Steamship Co., South Atlantic Steamship Line, Inc., States Marine Corporation, T. J. Stevenson & Co., Inc., Stockard Steamship Corporation, Transportation, Inc., Union Sulphur & Oil Corp., United States Lines Company, U. S. Navigation Co., Inc., and Wessel, Duval & Co., Inc.

The representative of Economic Cooperation Administration, which carries out the mandates of the Foreign Assistance Act of 1948, testified that current and potential programs for the movement of Economic Cooperation Administration financed and non-Economic Cooperation Administration financed cargo to countries having an Economic Cooperation Administration program are in excess of the capacity of available privately-owned vessels, American and foreign. He also testified that the failure to make additional vessels available promptly will result in further aggravation of the conditions now prevailing, will compel the Economic Cooperation Administration and the participating countries to pay even greater premiums for vessels, and will also prevent or delay those countries from receiving all of the cargoes they so vitally need. Substantiating testimony as to the amount of cargo now available and the scarcity of vessels to carry it was given by a representative of the Department of Agriculture. It was generally conceded that there are not enough privately-owned American-flag vessels to handle present cargo or cargo that will move in the immediate future, and there was no testimony to the contrary.

Although it was testified by the representatives of Economic Cooperation Administration and the Department of Agriculture that cargoes, including those under the Mutual Defense Assistance Pact, are now and in the immediate future will be consigned to countries other than European, for which there will not be enough vessels, the findings herein are limited to cargoes for European countries, in conformance with the notice in the Federal Register under the terms of Public Law 591.

#### FINDINGS AND CERTIFICATION

On the basis of the facts adduced of record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the services considered, being for the carriage of coal and grain from the United States to Europe, are required in the public interest;
2. That such services are not adequately served; and
3. That privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such services.

By the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

DECEMBER 20, 1950.

3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-18

LYKES BROS. STEAMSHIP CO., INC.—APPLICATION TO BAREBOAT CHARTER  
WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE GULF, U.K., CONTI-  
NENT, AND MEDITERRANEAN SERVICES

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### FINDINGS, CERTIFICATION, AND RECOMMENDATION OF THE FEDERAL MARI- TIME BOARD TO THE SECRETARY OF COMMERCE

This is an informal proceeding instituted by the Board pursuant to Public Law 591, 81st Congress, which requires the Board to hold public hearings on applications for bareboat charters of Government-owned, war-built, dry-cargo vessels, and to make certain findings with appropriate certification thereof and recommendations thereon to the Secretary of Commerce. In accordance with such law, notice of this hearing was published in the Federal Register of January 5, 1951, and hearing was held by the Board on January 10, 1951. The usual notice of 15 days was not given because of the urgency of the matter.

#### STATEMENT OF FACTS

Application has been filed by Lykes Bros. Steamship Co., Inc., to bareboat charter the Government-owned, war-built, dry-cargo vessels *Princeton Victory*, *Legion Victory*, and *Fisk Victory*, or suitable substitutes, for use in its subsidized services over Trade Routes Nos. B-2 and C, that is, Gulf, U. K., Continent, and Mediterranean services.

Applicant's witness testified that all of the company's vessels are now fully employed on its several trade routes except those made available to Military Sea Transportation Service to meet urgent military requirements; that the company made available to MSTTS seven of its C-2 and C-3 type vessels, five of which have been returned and the other two are not expected to be available for outbound employment for approximately 90 days; that accordingly, the company is two vessels short of its normal complement, and its schedule with respect to the remaining vessels has been reduced by MSTTS deferred redeliveries; that currently, the company's fleet is being called upon to handle a greatly enlarged volume of inbound and outbound traffic, and is unable to accommodate

cargo offered for January 1951 shipment; and that the situation is especially acute with respect to outbound cotton, grain, flour, beans and other agricultural commodities, packing house products, and general commodities which, in the main, is Economic Cooperation Administration financed cargo.

On the day before the hearing applicant applied for the purchase of three Government-owned vessels of the AP-3 Victory-type (second choice being AP-2's), and requests that its charter application herein be considered as covering the gap between the time of its purchase application and the date when the vessels covered by its purchase application will be delivered, and that in the event delivery is obtained on one or more of the vessels in time for January 1951 sailing, the company will forego sailing of a like number of chartered vessels. At the hearing, applicant amended its charter application to request charter for one voyage only of each vessel involved. Opposition to the application was thereupon withdrawn.

Applicant's witness testified that there are no suitable privately-owned American-flag vessels available for charter to handle the company's late January 1951 sailings, and that the trade routes here involved will not be adequately served unless additional vessels are made available. There was no testimony to the contrary.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATION

On the basis of the facts adduced of record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the services under consideration are required in the public interest;
2. That such services are not adequately served; and
3. That privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such services.

The Board recommends that adequate provisions be made to protect the interest of the Government under its operating-differential subsidy contracts with applicant.

By the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

JANUARY 10, 1951.

3 F. M. B.

# FEDERAL MARITIME BOARD

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No. M-19

## AMERICAN EXPORT LINES, INC.—APPLICATION FOR BAREBOAT CHARTER OF A WAR-BUILT DRY-CARGO VESSEL FOR USE BETWEEN NORTH ATLANTIC AND MEDITERRANEAN PORTS

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### FINDINGS, CERTIFICATION, AND RECOMMENDATION OF THE FEDERAL MARITIME BOARD TO THE SECRETARY OF COMMERCE

This is an informal proceeding instituted by the Board pursuant to Public Law 591, 81st Congress, which requires the Board to hold public hearings on applications for bareboat charters of Government-owned, war-built, dry-cargo vessels, and to make certain findings with appropriate certification thereof and recommendations thereon to the Secretary of Commerce. In accordance with such law, notice of this hearing was published in the Federal Register of January 5, 1951, and hearing was held by the Board on January 10, 1951. The usual notice of 15 days was not given because of the urgency of the matter.

#### STATEMENT OF FACTS

Application has been filed by American Export Lines, Inc., to bareboat charter the Government-owned, war-built, dry-cargo vessel *Elmira Victory*, or a suitable substitute, for a period of up to six months, for the transportation of general cargo in applicant's liner service between North Atlantic ports of the United States and Mediterranean ports. It was testified by a representative of applicant that one of its vessels was under charter to Military Sea Transportation Service and that another one recently sustained damage and will have to be repaired extensively, and that applicant's vessels are not able to meet the abnormal demand for space resulting from world conditions. It was further testified that applicant has been unable to secure privately-owned American-flag vessels of suitable capacity, type, and speed for charter upon reasonable terms and conditions for operation in the service under consideration. There was no opposition to the application.

Applicant expressed its willingness to operate the chartered vessel without subsidy, and to incorporate any profits therefrom in its sub-

dized operation account so that such profits will, to the extent provided by the Merchant Marine Act, 1936, as amended, and by its operating-differential agreement with the Board, be available for the repayment to the Government of any operating-differential subsidy received in connection with the operation of its other vessels.

FINDINGS, CERTIFICATION, AND RECOMMENDATION

On the basis of the facts adduced of record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service under consideration is required in the public interest;
2. That such service is not adequately served; and
3. That privately-owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that adequate provision be made to protect the interest of the Government under its operating-differential subsidy contracts with applicant.

By the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

JANUARY 10, 1951.

3 F. M. B.



# FEDERAL MARITIME BOARD AND MARITIME ADMINISTRATOR

No. S-17

AMERICAN PRESIDENT LINES, LTD.—APPLICATION TO CONTINUE OPERATION AFTER DECEMBER 31, 1949, OF ATLANTIC-STRAITS FREIGHT SERVICE C-2, TRADE ROUTE NO. 17, WITHOUT OPERATING-DIFFERENTIAL SUBSIDY.

*Submitted December 1, 1950. Decided January 24, 1951*

Application of American President Lines to continue to operate unsubsidized vessels in Atlantic-Straits Freight Service C-2 of Trade Route No. 17 approved, with conditions.

*Reginald S. Laughlin and Willis R. Deming for applicant.*

*William Radner, Odell Kominers, and William F. Ragan for Luckenbach Steamship Company, Inc., and Luckenbach Gulf Steamship Company, Inc., Donald D. Geary and David Dawson for United States Lines Company, Walter S. McPherson and Donald S. Morrison for American-Hawaiian Steamship Company, Bon Geaslin, Sterling F. Stoudenmire, Jr., and Warren Price, Jr., for Waterman Steamship Corporation, Thomas F. Lynch and Wendell W. Lang for Isthmian Steamship Company, William I. Denning and Earl C. Walck for States Steamship Company and Pacific-Atlantic Steamship Company, Timothy J. Murphy and Walter W. McCoubrey for Port of Boston Authority, and G. Stewart Henderson for Baltimore Association of Commerce, interveners.*

*Paul D. Page, Jr., and Joseph A. Klausner for the Board.*

## REPORT OF THE BOARD AND MARITIME ADMINISTRATOR.

This proceeding is based upon an application filed by American President Lines, Ltd., a subsidized line, for permission to continue the operation on Trade Route No. 17 (United States Atlantic and Gulf ports—Straits Settlements and Netherlands East Indies)<sup>1</sup> of its "At-

<sup>1</sup> Due to postwar political changes, the areas formerly called *Straits Settlements* and *Netherlands East Indies* have been re-named and will be referred to throughout this report as, respectively, **3 F. M. B.—M. A.**

lantic-Straits" unsubsidized Freight Service "C-2" described as follows:

*Freight Service C-2:* (Commission's report of May 20, 1946, on essential foreign trade routes and services recommended for United States-flag operation)

*Itinerary:* New York (other Atlantic ports as traffic offers) via Panama Canal, Los Angeles, San Francisco to Manila, Hong Kong, Singapore, Belawan, Batavia, Soerabaja, Hong Kong and Philippine Islands (as traffic offers) to San Francisco, Los Angeles and via Panama Canal to New York; privilege of calling at French Indo China and Siam as traffic offers.

Permission is required under applicant's operating-differential subsidy contract, paragraph 6:

"Competition. The Operator agrees that, without the express written approval of the Commission, neither the Operator nor any affiliate, subsidiary or holding company will operate or cause or permit any unsubsidized vessels owned or controlled by any of them to be operated in the subsidized service of the Operator or in the foreign commerce of the United States in competition with any other service, route, or line receiving financial aid pursuant to the provisions of the Act."

As the Atlantic-Straits service is via the Panama Canal and California ports and thus affords opportunity for competition with domestic intercoastal services, the proceeding also brings in issue section 805(a) of the Merchant Marine Act, 1936, as amended.

Since May 1941 applicant has filed three applications for a subsidy on this route. Two filed during the war were not acted upon and the third, filed July 31, 1946, was denied without prejudice because our predecessor, the Maritime Commission, determined under section 605(c) of the Act, that the then-existing American-flag services were adequate. (*Trans-Pacific cases*, June 9, 1947).\*

Thereupon applicant filed an application on June 19, 1947, for permission to operate the service without subsidy. After hearing, the

Malaya and Indonesia, it being understood for the purpose of the report that the term Malaya includes the British crown colony of Singapore.

*Malaya.* The present Federation of Malaya consists of the nine states of the Malay peninsula (Perak, Selangor, Negri Sembilan, Pahang, Johore, Kedah, Perlis, Kelantan, Trengganu) and the two British settlements of Penang and Malacca; Singapore, the third of the former Straits Settlements, is now a separate colony. (From 1826 to 1946, Malacca and Penang were incorporated with Singapore under a single government which, from 1867 to 1946, was a British crown colony known as Straits Settlements.)

*Indonesia.* The United States of Indonesia (U.S.I.) comprises a great number of islands between the southernmost tip of the Asian mainland (Malaya) and the north shore of Australia. *Sumatra*, *Java*, and *Lesser Sunda*s form the western and southern boundary, the latter connecting in a north-easterly direction with *New Guinea*. Western *New Guinea* is claimed by the U.S.I. but its claim is disputed by the Netherlands, which controls the territory. Other large islands within U.S.I. are *Borneo* (more than two thirds of the land area of which is in U.S.I., the remainder consisting of British-governed Sarawak, Brunei, and North Borneo), *Celebes*, and the *Moluccas*.

\* This proceeding is now known as Docket No. S-7, *United States Lines Company et al.—Applications for Financial Aid, etc.*

Commission, by Resolution of May 18, 1948, authorized applicant to operate on the above-described C-2 Service of Trade Route No. 17, without operating-differential subsidy, not more than thirteen voyages per annum, subject to the following conditions:

1. Applicant shall (a) use on the C-2 Service of Trade Route No. 17 only such number and type of vessels as may be approved by the Commission; (b) coordinate all its non-subsidized sailings, so far as possible and to the extent required by the Commission, with services of other operators carrying cargo to or from ports included in the itinerary of said C-2 Service of Trade Route No. 17; and (c) enter into an agreement with the Commission, in form satisfactory to the Commission, providing for the protection of Applicant's subsidized operations from the diversion of cargo and revenues by the non-subsidized operations from the vessels operated in its subsidized operations.

2. No non-subsidized voyage in said C-2 Service of Trade Route No. 17 shall be commenced after June 30, 1949.

3. The capital employed by the Applicant in the non-subsidized operations in said C-2 Service of Trade Route No. 17 and the earnings derived therefrom shall not be taken into account in applying the reserve and recapture provisions of Applicant's operating-differential subsidy agreement with the Commission; however, the Applicant's net profits, if any, as determined by the Commission in accordance with sound accounting practice as determined by the Commission, resulting from Applicant's non-subsidized operation of said C-2 Service of Trade Route No. 17 shall be deposited in Applicant's capital reserve fund maintained pursuant to said operating-differential subsidy agreement as a voluntary deposit and treated accordingly, and such deposits, if any, shall be in addition to any and all statutory requirements of Applicant under said operating-differential subsidy agreement. In no event, however, shall the non-subsidized operations be permitted to reduce the amount of earnings from Applicant's subsidized services subject to recapture by the Commission.

4. Applicant shall file in triplicate with the Commission, at such times and in such form as may be prescribed by the Commission, semiannual profit and loss statements covering its non-subsidized operations in C-2 Service of Trade Route No. 17 and such other data as may be required by the Commission.

5. The Commission shall have the right in its sole discretion to cancel and terminate this authorization upon the expiration of

3 F. M. B.—M.A.

written or telegraphic notice given at least fifteen (15) days prior to the completion of any such non-subsidized voyage.

On March 17, 1949, applicant asked to have the June 30, 1949, limitation removed, whereupon the Commission ordered an administrative hearing on the application. By successive Commission and Board actions, applicant's operating authority has been temporarily extended, most recently to January 31, 1951. Previous authorizations for applicant's C-2 Service are superseded by this decision.

On June 28, 1949, the proceeding was enlarged, upon motion of the Commission's counsel, to embrace issues under section 805(a) of the Act.<sup>2</sup> Hearings were held from September 14 to October 4, 1949, and briefs were filed on October 25 and 31, 1949. Thereafter the presiding examiner submitted a recommended decision adverse to the applicant, to which exceptions were filed, upon which the Commission heard argument. Reargument was heard by the Board on November 14, 1950, following which a limited hearing before the examiner was held for the purpose of receiving information bringing certain portions of the record down to date. While we agree with many of the examiner's findings of fact, our conclusions differ from his with respect to the advisability of authorizing continued operation of the applicant's C-2 Service.

#### CONTENTIONS OF THE PARTIES

The applicant's position is that its Atlantic-Straits service should be continued because (1) it is necessary to provide adequate service between United States Atlantic ports and the C-2 area and between California ports and Malaya and Indonesia; (2) foreign-flag lines dominated these trades before World War II, and the favorable position gained by American-flag lines after the war has already been lost and overcome; (3) the C-2 Service will not endanger or impair any other American-flag services, either foreign or domestic; and (4) the termination of its C-2 Service will not further the maintenance or development of the American merchant marine. Further, the applicant contends that it should be allowed to continue the carriage of intercoastal cargo as a part of the C-2 Service, on the ground that the intercoastal leg is required for the soundness of the C-2 Service as a whole.

The application is opposed upon the basic grounds (a) that existing

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<sup>2</sup> Permission to intervene was granted to Luckenbach Steamship Company and its subsidiary, Luckenbach Gulf Steamship Company, Waterman Steamship Corporation, Isthmian Steamship Company, States Steamship Company and its subsidiary, Pacific-Atlantic Steamship Company (Quaker Line), American-Hawaiian Steamship Company, and United States Lines Company (American Pioneer Line). All of these lines, except United States Lines, operate services in the intercoastal trade; and all except Luckenbach operate services in the trade area of Service C-2 of Trade Route No. 17. The Baltimore Association of Commerce and the Port of Boston Authority intervened in support of the application.

services both in the foreign and domestic trades involved are more than adequate, and (b) that continuance of the service will continue to result in diffusion of available traffic.

Specifically, the principal contentions are (1) that the competition clause of applicant's subsidy contract must be so construed as to be consistent with and effectuate the purposes of the Act; (2) that the purpose of section 605(c) of the Act was to prevent undue prejudice to unsubsidized as well as subsidized operators; (3) therefore, before the application may be granted the Commission must find existing services inadequate, including the applicant's subsidized services, but excluding its unsubsidized operation, and that the grant will not give undue advantage to the applicant or be unduly prejudicial to operators of existing services, including applicant's subsidized services; (4) that operation of applicant's C-2 Service has failed to meet the aims and objectives of Service C-2 of Trade Route No. 17; (5) that applicant has no "grandfather" rights under section 805(a)<sup>3</sup> because of interruptions and changes in its service since 1935 and therefore it has the burden of proving the operation is necessary to provide adequate service in the intercoastal trade; (6) that there have been diversions of cargo from applicant's subsidized to its unsubsidized operations resulting not only in a breach of the conditions of the outstanding authorization and subsidy contract, but in unfair competition contrary to section 805(a) and in contravention of the objects and policy of the Act.

Broadly viewed, the issues are of two kinds: those which involve an appeal to our discretion, and those which hinge on particular statutory or contractual restrictions. Differently stated, the questions are whether the general policy of the Act would be served by the granting of the application, and if so, whether the promotion of that general policy would deprive the Government or competitors of the applicant of rights protected by law or contract.

#### THE C-2 SERVICE AND ITS OBJECTIVES

The Act (sec. 101) declares as a policy that the United States shall have a merchant marine sufficient to carry its domestic water-borne commerce and a "substantial portion" of its water-borne export and import foreign commerce; and calls for execution of that policy in various ways, among them by determining trade routes and services "essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States . . ." (sec. 211). In the performance of that duty, our predecessor established such routes and described services thereon, including Route 17 and Service C-2.

<sup>3</sup> The applicant concedes, for the purposes of this case, that it has no such rights.

The Commission's Trade Routes Committee found Route 17 to be essential because of the strategic importance of Malaya and Indonesia as sources of rubber, tin, palm and other vegetable oils, as well as tapioca, fibers, teas, spices, and a variety of raw materials important to the economy of the United States. It noted that trade between our Atlantic ports and the Malaya-Indonesia area had been historically dominated by foreign-flag carriers—a condition which rendered the United States dependent upon transportation systems over which it had virtually no control, for the importation of substantial quantities of strategic and necessary materials. "There is a strong need for United States shipping here", the Committee found.

Traffic to Malaya-Indonesia from the Atlantic coast of the United States is considerably lighter than in the reverse direction. In establishing the C-2 Service the Trade Routes Committee took account of this circumstance by designating Manila and Hong Kong as regular ports of call outward in order to fill space unlikely to be needed for Malaya-Indonesia cargo, and by authorizing calls at Hong Kong and at the Philippines only as traffic should offer on the inward voyage, on which it was anticipated that Malaya-Indonesia cargo would be considerably heavier than outbound. The service was primarily an Atlantic/Malaya-Indonesia service. It was in no sense intended to serve primarily the Philippines and Hong Kong.

The route between U. S. Atlantic and Malaya-Indonesia via California, Philippines, and Hong Kong is materially longer than via Suez. This, of course, was known to the Commission when it established the C-Service, as was the fact that because of the longer C-2 itinerary the C-2 operator would be pressed for time in competing from Malaya-Indonesia to U. S. Atlantic against operators via Suez. It was expected that the C-2 operator, having regard for the main objective of the service, would develop homeward traffic from the Malaya-Indonesia area by calling at several Indonesian ports and two or more ports in Malaya. Unless Malaya-Indonesia cargo were to be sacrificed, the schedule of the C-2 Service admitted of no material delays resulting from pursuit of Philippine and Hong Kong cargo for the homeward voyage. The privilege of loading Philippine and Hong Kong cargo on the homeward voyage was the privilege of loading such cargo as might be readily available—not of concentrating on such cargo at the expense of the basic schedule from Malaya-Indonesia to U. S. Atlantic ports.

#### APPLICANT'S OPERATION OF THE C-2 SERVICE

In considering the present application, we are obliged to focus upon the foregoing considerations, and to compare the service rendered by applicant with the objectives sought to be attained, to ascertain whether

those objectives have been attained in fact, or, if not, whether they are reasonably attainable. On the record, we must conclude, as did the examiner, that the objectives of the C-2 Service have not been substantially met by the applicant's method of operation in the past. It appears, however, that with certain modifications of service, for which we shall provide in disposing of the case, there is a reasonable possibility of their attainment.

An important objective for Trade Route No. 17 was to provide transportation by U. S.-flag vessels of at least 50% of the cargo, outbound and inbound, between U. S. Atlantic ports and Malaya-Indonesia. It was anticipated that cargo to Philippines-Hong Kong from California as well as from Atlantic ports would be required to fill out the vessel on the outward voyage, inclusion of California ports outbound being practicable since calls at these ports would not involve excessive deviation.

As operated by the applicant, the C-2 Service has developed in a manner considerably different from the Commission's expectations as manifested by the route description. In the large inward trade from Malaya-Indonesia to the Atlantic, the applicant's C-2 Service carryings have been quite insignificant, amounting to only 1,400 tons in the first half of 1949, the most recent period of which a complete record is available. During the same period, total inbound traffic from Malaya-Indonesia to the Atlantic was 196,000 tons, of which 78,000 tons was carried by U. S.-flag lines.<sup>4</sup> U. S.-flag service to the Atlantic consisted (during the same period) of the applicant's C-2 Service and a westward subsidized Round-the-World service by the applicant; eastbound and westbound services by Isthmian; and two voyages by Isbrandtsen. U. S.-flag participation accounted for 40% of inbound traffic. The inward carryings of the applicant's C-2 Service were less than 1% of the total inward traffic (U. S.-flag and foreign-flag) and about 2% of the U. S.-flag carryings. Having regard for the fact that the C-2 Service was established as one of the important services on this route, it is obvious that the applicant has failed to meet the Commission's expectations, even in the light of supplemental information received after the case was reargued. From July 1949 through June 1950 applicant's C-2 Service, while showing a considerable percentage increase over the first half of 1949 in Atlantic-bound carryings from Malaya-Indonesia, averaged less than 1,000 tons of such cargo per sailing (14 voyages), as against an average of 4,000 tons (28 voyages, via Suez) for Isthmian and an average of 2,200 tons (Malaya cargo only, 25 voyages, via Suez) for applicant's Round-the-World Service. Isthmian's gains tonnage-

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<sup>4</sup> Throughout this report, "tons" refers to cargo tons of 2240 pounds.

wise in the latter period over the former greatly exceeded those of applicant's C-2 Service.

Outward from U. S. Atlantic to Malaya-Indonesia, the applicant's C-2 Service carried about 16,000 tons during the first half of 1949. During the same period the total outward traffic (U. S.-flag and foreign-flag) from U. S. Atlantic to Malaya-Indonesia was 142,000 tons, of which U. S.-flag lines (including applicant's C-2 Service) carried 47,000 tons. Applicant's C-2 carryings were about 11% of the total traffic and about 33% of U. S.-flag traffic. U. S.-flag lines collectively were 33% of the total.<sup>5</sup> It thus appears that the applicant has obtained an appreciable volume of the outward trade—a volume sufficient to indicate a prospect of successful future operation. In this connection, it is significant that of the 47,000 tons of U. S.-flag outward traffic from Atlantic to Malaya-Indonesia, more than half (about 26,000 tons) moved over the route of the C-2 Service via Panama; and that of this traffic, the applicant's C-2 Service carried the major share (about 60%). During the period July 1949 through June 1950, the outward traffic from U. S. Atlantic to Malaya-Indonesia declined considerably—but the decline was less severe for the C-2 Service than for any other—again indicating considerable vitality in the C-2 Service outbound.

The principle carryings of applicant's C-2 Service have consisted of U. S./Philippines—Hong Kong cargo. In the first half of 1949 the applicant's inward traffic of this description on the C-2 Service was 30,000 tons (79% of applicant's total inward carryings from the entire C-2 area); outward it was nearly 23,000 tons (56% of applicant's total outward carryings to the entire C-2 area). Philippines-Hong Kong carryings are thus seen to have preponderated heavily during the first half of 1949 over Malaya-Indonesia carryings (and this preponderance continued through the next 12 months), whereas the reverse should be true, particularly as to inbound traffic. Operation of the service in accordance with the Commission's objectives calls for emphasis on traffic to and from the Malaya-Indonesia area.

Although the C-2 objectives, especially with respect to inward traffic from Malaya-Indonesia, have conspicuously failed of attainment in the case of carryings to the Atlantic, the applicant's accomplishment is much more substantial measured by the volume of Malaya-Indonesia cargo to California. In the first six months of 1949 such cargo carried via the C-2 Service was 6,580 tons (as against 1,400 tons to the Atlantic). Total Malaya-Indonesia cargo to California during the same period was 35,700 tons, of which the U. S.-flag share was 10,600 tons. The applicant's C-2 carryings of such cargo are thus seen to constitute

<sup>5</sup> This discussion relates to traffic between U. S. Atlantic and Malaya-Indonesia. Traffic between California and Malaya-Indonesia is discussed below.



18% of the total and 62% of the share carried by U. S.-flag vessels.<sup>6</sup> Further, the applicant's C-2 carryings of Malaya-Indonesia cargo to California amounted to 17% of its total inbound C-2 carryings during the first six months of 1949 (and in the corresponding period in 1950). It thus appears that the inward cargo of this description has reached substantial proportions in the post-war period. The Trade Routes Committee contemplated that the principal flow of Malaya-Indonesia cargo would be to and from the Atlantic, but it did not foresee the substantially increased importance of California and the Pacific coastal area as a user of and as a gateway for imported materials of Malaya-Indonesia origin. Although the applicant has fallen short of meeting the Commission's expectations as to Atlantic-bound inward traffic, it has contributed substantially to the movement of imports via California.<sup>7</sup>

Applicant's C-2 operations provide California with its only assured service from both Malaya and Indonesia, and during the first half of 1949 it carried a larger volume of such cargo than the combined volume of the other two U. S.-flag operators in the inbound trade—and its carryings during the ensuing 12 months exceeded the rate for the first half of 1949. Even so, total U. S.-flag carryings between California and Malaya-Indonesia during the first half of 1949 were much less than the foreign-flag carryings, which accounted for 66% of the outward traffic from California to Malaya-Indonesia and 70% of the inward traffic.

Since U. S.-flag lines (including applicant's C-2 Service) are carrying substantially less than half of the cargo, both outward and inward, between the United States Atlantic and California ports and Malaya-Indonesia, the objective being at least half of such cargo in both directions, the C-2 Service is needed.<sup>8</sup> We find that substantial opportunity exists for successful operation of such Service by the applicant, with concentration on cargo to and from Malaya and Indonesia—which will necessitate regularity of sailings to and from that area, adequate service of the ports, minimization of transit time (particularly homeward), and resistance of the temptation to regard Malaya-Indonesia as an optional and sometimes inconvenient extension of a route between the United States mainland and Philippines-Hong Kong.

<sup>6</sup> The U. S.-flag services consists of the applicant's C-2; Isthmian's Round-the-World Service homeward via Panama; American Mail Line homeward via California to the Pacific Northwest; and occasional sailings by Isbrandtsen.

<sup>7</sup> It may be noted that for the period in question the volume of applicant's California traffic from Malaya-Indonesia in the C-2 Service exceeded that of California traffic from Philippines-Hong Kong (8,580 tons as against 5,880 tons).

<sup>8</sup> This report is concerned only with Atlantic and California/Malaya-Indonesia traffic and in no way relates to the trade between the latter areas and U. S. Gulf ports, in which trade Lykes Bros. is the principal operator. No operator in the Gulf/Malaya-Indonesia trade is a party to this proceeding.

## UNITED STATES-FLAG COMPETITION

Several U. S.-flag operators in trades to and from the C-2 area intervened and sought to prove that applicant's C-2 Service constituted unfair competition. The principal objectors were Waterman and Isthmian. At the time of the hearings and for some time theretofore and thereafter, Waterman was not serving Malaya-Indonesia and can scarcely be heard to protest against service of that area by the applicant or any other operator. Waterman contends that applicant's C-2 Service results in unfair competition for the foreign traffic of nine U. S.-flag lines other than Waterman and Isthmian. Of these nine lines, three are subsidized and six are not. Of the same nine lines, only three intervened in the case (States Steamship Company, American-Hawaiian Steamship Company, and United States Lines). States and American-Hawaiian confined their objections to applicant's intercoastal activities (as to which they relied on the case made by Luckenbach). United States Lines, which is engaged in foreign trade exclusively, took no position relative to the application. (It does not proceed into the C-2 area beyond Philippines-Hong Kong.) Six of the nine lines to which Waterman refers were not represented in the proceedings. In these circumstances, we are unable to accept Waterman's contention that unfair competition or undue prejudice in foreign trade will be experienced by the nine lines in question, none of which made any such contention in its own behalf, and none of which serves more than a fraction of the C-2 area.

Isthmian conceded on the record that as regards Malaya-Indonesia cargo, the competition of applicant's C-2 Service was inconsequential. In the first half of 1949 the applicant's C-2 Service carried 7,981 tons from Malaya-Indonesia to U. S. ports (Atlantic and California), as against 51,265 tons carried by Isthmian via Panama and Suez. For the first half of 1950 the corresponding tonnages were: APL, 16,002; Isthmian, 70,786. In both periods the major share of total inward cargo was destined to the Atlantic, although the larger share of APL cargo was to California. As to Atlantic-bound traffic alone, Isthmian's services (via Panama and Suez) in the first half of 1949 carried 49,693 tons out of 51,094 for Isthmian and APL's C-2 Service combined; in the first half of 1950 Isthmian carried 67,453 tons out of 74,833.<sup>9</sup>

The great preponderance of Isthmian's carryings to the Atlantic over those of applicant's C-2 Service invites attention to the transit time between Malaya and New York of the two operations.

Isthmian's Atlantic-bound carryings from Malaya-Indonesia move

<sup>9</sup> First half 1949: 39,550 tons via Suez, 10,143 tons via Panama. First half 1950: 66,847 tons via Suez, and 606 tons via Panama.

mainly over Suez. During the 12 months ending June 30, 1949, its transit time to New York averaged, from Penang 33 days, from Singapore 38. The applicant's published schedules covering the past year for its C-2 Service, which operates via Panama, call for transit time to New York averaging, from Penang 56 days, and from Singapore 52. The handicap to the applicant of its substantially slower C-2 Service is obvious. Even applicant's Round-the-World Service, which calls at many intermediate ports homeward (via Suez) from Malaya, is scheduled to reach New York from Penang in 44 days, and from Singapore in 48—materially faster than C-2. To render C-2 competitive on the vital homeward run, its time must be reduced to approximately that of the principal carriers in the trade—Isthmian and the Java-New York line. Such reduction involves the shortening of the C-2 homeward schedule by about two weeks.

#### PORT INTERESTS

Applicant was supported by two intervening port interests: Port of Boston Authority and Baltimore Association of Commerce. Boston's case was founded largely on the inadequacy of Far East service available to Boston as compared with New York. Baltimore showed that the applicant's C-2 Service has conferred substantial benefits upon the port, moving foreign-bound traffic in considerable volume, some of which had not flowed through Baltimore until the C-2 Service was established. (The applicant does not serve Baltimore intercoastally).

#### COMPETITION BETWEEN APPLICANT'S C-2 SERVICE AND ITS SUBSIDIZED SERVICES

Paragraph 1 of the Commission's Resolution of May 18, 1948, granting temporary permission for operation of the applicant's C-2 Service, required applicant to "enter into an agreement with the Commission . . . providing for the protection of Applicant's subsidized operations from the diversion of cargo and revenue by the non-subsidized operations \* \* \*." The record shows that some traffic and revenue have in fact been diverted from applicant's subsidized services to the C-2 Service.

Because of the intersecting and overlapping pattern of applicant's several routes, some measure of diversion is possible and the condition above quoted should be modified to take account of this fact. Our aim is prevention of undue diversion, having regard for the practical problems encountered in such operations as the services of the applicant embrace.

For example, both the applicant's C-2 Service and its Round-the-World service operate from New York to Manila via California. From

California, C-2 proceeds to Manila direct, whereas Round-the-World proceeds via Japan and Hong Kong, the result being that Manila-bound cargo from New York or California on C-2 Service vessels requires a week to ten days less time in transit than such cargo via Round-the-World ships. As to Malayan destinations, C-2 has no transit-time advantage to Penang, but Round-the-World has an advantage of about a week to Singapore. Indonesia is not served by applicant's Round-the-World ships. Inbound, C-2 fails, by one or two weeks, to meet the Round-the-World transit time from Malaya to New York—which offers an explanation of the fact that the Round-the-World service in 1949 and the first nine months of 1950 consistently carried several times as much Malaya-Indonesia cargo to U. S. Atlantic ports as did the C-2 Service. Thus, the only decisive transit-time advantage of C-2 over applicant's Round-the-World service, as to ports common to both, is found in the *outward* run from either U. S. coast to Manila. This time advantage is inevitable, owing to the more direct C-2 route. The competitive transit time of C-2 to Penang is not objectionable when account is taken of the fact that C-2 was intended, as Round-the-World was not, to provide the most direct of transpacific services to Malaya.

From the foregoing summary it clearly appears that by reason of its excessive transit time between Malaya and U. S. Atlantic, the C-2 Service has not drawn substantial cargo (if it has drawn any) from applicant's Round-the-World Service (or from Isthmian); and further, that it is unlikely to succeed in the future as an Atlantic/Malaya-Indonesia carrier unless its transit time, particularly homeward, can be materially reduced. Such reduction might result in diversion of some Malayan cargo from applicant's Round-the-World service—which would be unobjectionable since the C-2 Service was established primarily to provide efficient homeward carriage of Malayan-Indonesian products. The Round-the-World Service, because of its many intermediate calls enroute homeward from Malaya, is not ideally suited to such assignment. Moreover, it should not be substantially harmed by the loss of Malayan cargo to C-2 since Round-the-World has opportunities to load cargo at intermediate ports enroute homeward from Malaya—service of such intermediate ports being one of its important functions.<sup>10</sup>

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<sup>10</sup> While the possibility of some cargo diversion must be recognized, such diversion does not seem inevitable. The inward trade from Indonesia-Malaya should make substantial gains as the result of increasing industrial and defense requirements in the United States and it may develop that the flow of cargo will be large enough to sustain the present loadings of all carriers, and in addition, provide adequate cargoes for C-2. Whether the trade thus increases or not, the fact is that the preponderance of Atlantic-bound carryings from Malaya-Indonesia is by foreign-flag ships—the foreign-flag percentage having risen from 35% in the first half of 1947 to 60% in the first half of 1949. Between the same two periods, foreign-flag tonnage to U. S. Atlantic increased from 75,000 tons to 118,000 tons. Clearly there is an adequate reservoir of traffic for which APL can compete without diverting cargo from its own subsidized service, or the services of its U. S.-flag competitors.

Applicant's C-2 Service and its transpacific service are approximately competitive as to transit time between California and Manila-Hong Kong. It does not follow, however, that the C-2 Service ships, with one sailing each four weeks, will divert substantial traffic from applicant's much more frequent sailings in its transpacific services, unless the C-2 sailings blanket the others. While there is evidence in the record of such blanketing, it is not inevitable and the practice is unjustifiable.

#### ALLOCATION OF VESSELS BY APPLICANT

The record indicates that at the time of the hearing the applicant was operating a number of owned ships (along with chartered ships) in its C-2 Service, simultaneously operating several chartered vessels in subsidized services. Charges for the hire of chartered ships are generally in excess of capital charges on owned ships. Consequently the use of chartered ships in subsidized services tends to reduce the net earnings of those services, to the prejudice of the Commission's position relative to recapturable profits of the subsidized services. The practice of allocating vessels to the several services in this manner ignores the provision of the Commission's Resolution of May 18, 1948, providing that "In no event, however, shall the non-subsidized operations be permitted to reduce the amount of earnings from applicant's subsidized services subject to recapture by the Commission." It is also inconsistent with our view of sound operating practice which calls for the employment of applicant's own ships in its subsidized services. Applicant's subsidized, rather than unsubsidized, services must be accorded first claim on applicant's owned vessels suitable for use in the respective subsidized operations.

#### INTERCOASTAL OPERATIONS

Authorization to operate the C-2 Service does not automatically confer upon the operator the right to transport cargo between United States Atlantic coast ports and California ports, since the description of the C-2 Service makes no reference to intercoastal cargo. Whether permission should be granted for continued intercoastal operation as a part of applicant's C-2 Service depends chiefly upon applicant's ability to meet the requirements of section 805(a) of the Act.

Section 805(a) permits us to authorize intercoastal operation by a subsidized operator only if it has grandfather rights by virtue of continuous operation over the route in question since 1935, or in the absence of a Commission finding that the intercoastal operation will result in unfair competition to any line operating "exclusively" in coastwise or intercoastal trade, or will be prejudicial to the objects and policy of the Act. Applicant concedes, for the purposes of this case, that it has no

grandfather rights under section 805(a). Accordingly, we are concerned only with questions of unfair competition, and prejudice to the objects and policy of the Act.

Before World War II eastbound intercoastal cargoes exceeded westbound cargoes by a ratio of about 3-2, which resulted in considerable unused space in westbound sailings. Since World War II the flow of traffic has been more nearly equal in both directions. During the most recent period of record (first half of 1949), Luckenbach operated eastbound with practically no empty space, while westbound it had on the average 10% unused space. It claims that had it filled such space its losses for the period in question would have been eliminated. Despite its inability to fill its ships westbound, Luckenbach at the time of the hearings had been obliged to sail two extra ships eastbound to handle a peak canned-goods movement to the Atlantic. (One of these ships proceeded to the Pacific in ballast.) The other intercoastal operators furnished no statistics on unused space but adopted generally the Luckenbach testimony, which was concentrated against the westbound intercoastal operation of applicant's C-2 Service.

There is no substantial evidence that in the present state of the intercoastal trade, operators engaged "exclusively" in that trade (i.e., operators furnishing an intercoastal service that does not include foreign ports) have experienced unfair competition from applicant's C-2 Service eastbound. As to its westbound operation, however, we find that applicant's C-2 Service has resulted in unfair competition to "exclusive" intercoastal operators.

In adopting the Merchant Marine Act, 1936, Congress manifested a special concern for the protection of coastwise and intercoastal operators, who are not eligible for subsidy, against the competition of subsidized lines (secs. 506, 605(a), 805(a)). The great importance to our merchant marine of its domestic fleet, and the serious difficulties that have attended the reestablishment of domestic shipping in the period since World War II, should prompt us to resolve all doubts against activities of subsidized companies whose operations might tend to impede the development of domestic transportation by sea.

As above indicated, Luckenbach believes that its westbound sailings would have been on a break-even basis had it been able to fill its 10% of unused westbound space during the first half of 1949. The record satisfies us that the applicant's westbound carryings on the C-2 Service deprive the regular intercoastal lines of cargo which they need, have the capacity to carry, and to which they are fundamentally entitled.

The foregoing, however, does not apply to the applicant's westbound carryings of refrigerated cargo. Some of its ships in the C-2 Service have refrigerated space, and moderate quantities of reefer cargo have

been regularly carried from Boston and New York to California (but none in the opposite direction). No other intercoastal carrier offers refrigerator service. Luckenbach objects to the applicant's reefer service for the reason, among others, that it is allegedly furnished at non-compensatory rates. Luckenbach has reefer space in some of its vessels, but is not offering it to shippers.

We regard the applicant's reefer service as a valuable contribution to the intercoastal trade, and find no merit in objections offered by competitors who themselves offer no comparable service. Their complaint that the rates are non-compensatory carries little weight in view of the fact that such rates are fixed by the intercoastal conference, of which all the principal intercoastal operators are members. Intercoastal rates are subject to regulation by the Interstate Commerce Commission, which has authority to pass upon complaints relative to such rates. If applicant's intercoastal reefer charges are too low, the logical remedy lies in remedial conference action or appropriate I. C. C. proceedings, rather than in the present attempt to destroy the service. See *Alabama Great Southern R. R. Co. v. U. S.*, 340 U. S. 216.

While applicant's eastbound intercoastal carryings do not appear, on the basis of this record, to have had a serious effect on the intercoastal lines—because those lines have been operating virtually at capacity eastbound—we are not to be understood as deciding that they may not have such effect in the future. For example, any substantial reduction in the volume of available eastbound cargo of the regular intercoastal carriers might necessitate a finding that applicant's eastbound C-2 Service, no less than westbound, resulted in unfair competition to those carriers. Moreover, applicant's foreign service is susceptible to operation in a manner which might result in unfair competition, eastbound or westbound, to the regular intercoastal lines. The record indicates that in some instances the applicant has found it profitable to shut out foreign cargoes in order to save space for intercoastal cargoes—a practice which can not be justified on any ground and which is particularly objectionable because of its tendency to divert to the applicant's ships cargo which should be reserved for the "exclusive" intercoastal lines.

Because of our inability to forecast future conditions with sufficient accuracy, our authorization for applicant's continuance of eastbound intercoastal service will be limited to April 30, 1952. If applicant desires to participate in intercoastal trade thereafter in its C-2 Service, it will be obliged to make timely application for such modification of our present action as it deems appropriate.

## GENERAL REQUIREMENTS OF THE C-2 SERVICE

The importance of the service as envisaged by the Trade Routes Committee and the Commission has been demonstrated during the post-war period and is illustrated by recent events. Although the applicant's method of operation has been unsuccessful as regards the primary aim of developing our commerce with Malaya-Indonesia, the fact is that considerable traffic is available but that it is being predominantly carried by foreign-flag ships, as it was before the applicant began operation on Trade Route 17. A U. S.-flag operator *concentrating on Malaya-Indonesia* should be able to obtain a substantial share of what foreign-flag lines are now carrying to and from that area.

The record proves to our satisfaction that the failure of the applicant to develop Malaya-Indonesia traffic on the C-2 Service results from its failure to operate in a manner that rendered the service competitive with that of other carriers. This is not to say that applicant's service should be discontinued, but rather that its future operation should be subjected to such conditions as will afford a reasonable prospect of success in terms of the purpose of the service as described by the Maritime Commission. Such conditions are prescribed herein. They have the effect, among others, of depriving the applicant of certain cargoes between some intermediate ports on the route, and will (a) shorten time in transit, (b) require concentration on more important cargo, and (c) afford opportunity for more adequate coverage of key ports—thereby making the service attractive to the shippers it was chiefly meant to serve.

## CONCLUSIONS

We conclude that:

1. U. S.-flag services between United States Atlantic and California ports and Malaya-Indonesia are inadequate, since such services (including applicant's C-2 Service) are carrying, outbound and inbound, substantially less than 50% of the traffic in that trade. Consequently, there is need for the applicant's C-2 Service to and from Malaya-Indonesia, and such service, if efficiently conducted, will promote the purposes and policy of the Merchant Marine Act, 1936.

2. Continued operation in foreign commerce of applicant's C-2 Service, if conducted in conformity with the description and objectives of the C-2 Service will not result in unfair competition or be unduly prejudicial to any U. S.-flag operator, subsidized or unsubsidized.

3. Applicant's operation of its C-2 Service has not substantially conformed to the Commission's description of such service or its objectives with respect thereto, since (a) it has concentrated on cargo from Philip-



piners-Hong Kong to the United States at the expense of service to and from Malaya-Indonesia; (b) it has failed on some voyages to call at either Indonesia or Malaya; (c) its port coverage of Indonesia has been inadequate; (d) it has failed to maintain scheduled transit time, due in part to time spent in serving Philippine outports on homeward voyages; and (e) it has blanketed sailings of its own subsidized services and those of other U. S.-flag operators.

4. Westbound intercoastal carriage of non-refrigerated cargo in applicant's C-2 Service results in unfair competition to persons, firms, and corporations operating exclusively in the intercoastal service, and is prejudicial to the objects and policy of the Merchant Marine Act, 1936. Eastbound intercoastal operation of not to exceed 13 sailings a year of vessels in such service, and the westbound carriage of refrigerated cargo, are not shown to result in unfair competition to persons, firms, or corporations operating exclusively in the intercoastal service, or to be prejudicial to the objects and policy of the Merchant Marine Act, 1936.

5. Applicant has employed owned vessels (along with chartered vessels) in the C-2 Service, concurrently using chartered vessels in subsidized services. We look upon this practice with disfavor.

6. The need for applicant's C-2 Service in foreign commerce having been established, applicant is authorized to continue such service, without subsidy, subject to the following conditions:

(a) This authorization shall be subject to review at any time but in no event later than April 30, 1952;

(b) Applicant shall operate each voyage in its C-2 Service to Indonesia and Malaya, and shall call on each such voyage at not less than six ports (including Singapore) in the Indonesia-Malaya area.

(c) Applicant shall so schedule its operations that the elapsed time homeward from Singapore to New York shall not exceed 38 days. To maintain this schedule, applicant's C-2 Service vessels on homeward voyages shall call at not more than one Philippine port and one California port, and if necessary, shall omit Hong Kong.

(d) Applicant's vessels in C-2 Service may carry intercoastal cargo eastbound from California to Atlantic ports, but may not carry intercoastal cargo other than refrigerated cargo westbound in such service on any vessel departing New York after January 31, 1951.

(e) Applicant shall so schedule its C-2 sailings as to avoid blanketing the sailings of its own subsidized vessels, and also avoid blanketing in all possible instances the sailings of competing U. S.

flag operators in U. S. foreign trade and eastbound intercoastal trade.

(f) Applicant shall not refuse to book inbound cargo from Malaya-Indonesia to U. S. Atlantic ports in the interest of reserving space for intercoastal carriage of cargo from California to such ports, and likewise shall not neglect the solicitation of inbound cargo from Malaya-Indonesia to California or Atlantic ports in the interest of reserving space for the carriage of cargo from intermediate foreign ports to such ports.

(g) Applicant shall not operate owned freighters on voyages in its C-2 Service while chartered freighters are employed in its subsidized services.

(h) Applicant shall obtain in advance the Maritime Administrator's approval of the sailing schedule of each voyage commencing after January 31, 1951. To be eligible for approval, a schedule must meet the conditions hereinabove set forth, and must be submitted at least 30 days before commencement of the voyage or voyages covered thereby.

(i) Applicant may at any time (upon good cause shown) apply for permission to depart from any of the foregoing conditions.

7. Provisions of the Commission's Resolution of May 18, 1948, are continued in force with the following amendments:

(a) Paragraph 1, parts (a) and (c), are amended to read:

"(a) use on the C-2 Service of Trade Route 17, only such number and type of vessels as may be approved by the Administrator, with a sailing from the Atlantic Coast approximately each four weeks, on the following itinerary: From New York (other Atlantic ports as traffic offers) via the Panama Canal, Los Angeles and/or San Francisco to a Philippine port, Hong Kong, not less than six ports (including Singapore) in Malaya and Indonesia, thence via a Philippine port, to Los Angeles or San Francisco and via Panama Canal to New York; with privilege of calling as traffic offers and as schedules permit, at French Indo China and Siam, and at Hong Kong homeward."

"(c) enter into an agreement with the Board, in form satisfactory to the Board, providing for the protection of Applicant's subsidized operations from the undue diversion of cargo and revenues by the non-subsidized operations from the vessels operated in its subsidized operations."

(b) Paragraph 2 thereof is cancelled.

The applicant, if it continues operation of its C-2 Service after the date of this decision, is directed to comply with the foregoing requirements, without other or further order of the Board, with respect to all sailings after January 31, 1951. Between the date of this decision and January 31, 1951, applicant's authorization under the Maritime Commission's Resolution of May 18, 1948, as extended, is continued in effect.

By the Board and Maritime Administrator.

[SEAL]

A. J. WILLIAMS,  
*Secretary.*

WASHINGTON, D. C., *January 24, 1951.*

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# FEDERAL MARITIME BOARD

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No. M-14

AMERICAN-HAWAIIAN STEAMSHIP COMPANY AND LUCKENBACH STEAMSHIP COMPANY, INC.—APPLICATIONS TO BAREBOAT CHARTER WAR-BUILT DRY-CARGO VESSELS IN THE INTERCOASTAL TRADE

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*Clement C. Rinehart* and *J. A. Stumpf* for American-Hawaiian Steamship Company.

*William Radner* for Luckenbach Steamship Company, Inc., and Pope & Talbot, Inc.

*William I. Denning* and *Earl C. Walck* for Pacific-Atlantic Steamship Company.

*Sterling F. Stoudenmire, Jr.*, for Waterman Steamship Corporation.

*Marvin J. Coles* for the Committee for Promotion of Tramp Shipping.

*Paul D. Page, Jr.*, and *Max E. Halpern* for the Board.

## REPORT OF THE BOARD

This proceeding was instituted by order of the Board (Federal Register of November 21, 1950) pursuant to Public Law 591, 81st Congress, for the purpose of considering the application of American-Hawaiian Steamship Company and the cross application of Luckenbach Steamship Company, Inc., for the bareboat charter of Government-owned, war-built, dry-cargo vessels in the intercoastal trade.

Hearing on the applications was held before an examiner December 6-8, 1950, and exceptions to his recommended decision were filed and the matter was argued orally before the Board. We adopt the findings of fact, conclusions, and recommendations of the examiner as our own, excepting that portion dealing with the Luckenbach application for its Gulf intercoastal service.

### AMERICAN-HAWAIIAN STEAMSHIP COMPANY

The application of American-Hawaiian covers the bareboat charter of five C-4 type vessels and one AP-3 Victory-type vessel, such charter to become effective for an indefinite period upon termination (January 31, 1951) of applicant's existing charter of six vessels.

Subsequent to the hearing before the examiner, but before oral argument before the Board, American-Hawaiian Steamship Company (Delaware) filed an application with the Maritime Administrator for the purchase of five C-4 type vessels and in addition, one AP-3 Victory-type vessel. The sale to American-Hawaiian Steamship Company (Delaware) of the six vessels (four of which are C-4s presently under charter to them), "or such other vessels of similar type as may be selected by the applicant," was authorized on January 14, 1951, and contracts therefor were executed the following day. The company stated that these vessels are to be operated in the intercoastal service.

#### LUCKENBACH STEAMSHIP COMPANY, INC.

The cross application of Luckenbach covers the bareboat charter of eight C-4 type vessels for operation in the Atlantic/Pacific intercoastal trade. In addition, Luckenbach requested for its Gulf intercoastal service four AP-2 Victory-type vessels, two of which are now being operated by it under charter in this service.

As in the case of American-Hawaiian, subsequent to the hearing before the examiner, but before oral argument before the Board, Luckenbach filed an application with the Maritime Administrator for the purchase of five vessels of the C-4 type. Sale to Luckenbach of five C-4 type vessels (3 of which are presently under charter to them), "or such other vessels of C-4 type as may be designated by the Administration and accepted by the applicant," was authorized on January 15, 1951, and contracts therefor were executed the following day. The company stated that it intends to use the five vessels in its Atlantic/Pacific intercoastal service.

#### CONCLUSIONS

The sale to American-Hawaiian and Luckenbach of the C-4 type vessels sought to be chartered removes the necessity of a determination as to whether or not those specific vessels should be chartered.

Both applicants have stated that the purchased vessels will be used in the Atlantic/Pacific intercoastal service and it appears that satisfactory arrangements can be made within the time limit of existing charters for an orderly transition of the vessels from chartered to ownership status without interruption of service.

With respect to the application of Luckenbach for the charter of four AP-2 Victory-type vessels for its Gulf intercoastal service we consider the record as insufficient to enable the Board to make necessary findings under Public Law 591, 81st Congress. At the present time Luckenbach is serving this route with two owned vessels and two vessels under charter from the Government, which charter expires January 31, 1951.

## FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the basis of the record adduced in this case the Board is unable to make the required findings under Public Law 591, and the applications for charters of American-Hawaiian Steamship Company and Luckenbach Steamship Company, Inc., for the Atlantic/Pacific intercoastal operation should be denied.

The application of Luckenbach Steamship Company for the bareboat charter of four AP-2 Victory-type vessels for its Gulf intercoastal service is remanded to the examiner for the receipt of additional evidence.

Exceptions may be filed to the examiner's supplemental recommended decision in accordance with the Board's rules of procedure, and the Board may grant oral argument.

By the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

JANUARY 24, 1951.

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# FEDERAL MARITIME BOARD

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No. M-14

AMERICAN-HAWAIIAN STEAMSHIP COMPANY AND LUCKENBACH STEAMSHIP COMPANY, INC.—APPLICATIONS TO BAREBOAT CHARTER WAR-BUILT DRY-CARGO VESSELS IN THE INTERCOASTAL TRADE

---

The Board should find and so certify to the Secretary of Commerce that the application of American-Hawaiian Steamship Company and the cross-application of Luckenbach Steamship Company, Inc., to bareboat charter Government-owned war-built dry-cargo vessels for use in the intercoastal trade from and after January 31, 1951, should be denied.

*Clement C. Rinehart* and *J. A. Stumpf* for American-Hawaiian Steamship Company.

*William Radner* for Luckenbach Steamship Company, Inc., and Pope & Talbot, Inc.

*William I. Denning* and *Earl C. Walck* for Pacific-Atlantic Steamship Company.

*Sterling F. Stoudenmire, Jr.*, for Waterman Steamship Corporation.

*Marvin J. Coles* for the Committee for Promotion of Tramp Shipping.

*Max E. Halpern* and *Paul D. Page, Jr.*, for the Board.

## RECOMMENDED DECISION OF A. L. JORDAN, EXAMINER

Hearing on these applications was held December 6-8, 1950, in accordance with Public Law 591, 81st Congress, pursuant to notice in the Federal Register of November 21, 1950.

The questions in this proceeding are: whether applicants have shown that the intercoastal service for which the vessels here involved are proposed to be chartered for bareboat use from and after January 31, 1951, is required in the public interest, whether the intercoastal trade would be adequately served without such chartering, and whether privately-owned American-flag vessels are available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

## AMERICAN-HAWAIIAN STEAMSHIP COMPANY

By application filed November 7, 1950, American-Hawaiian applied for a charter for the bareboat use in its intercoastal service of the 3 F. M. B.

Government-owned war-built dry-cargo vessels *Mount Whitney*, *Mount Rogers*, *Mount Greylock*, *Willis Victory*, *Marine Arrow*, and *Saginaw Victory*, all being C-4s except the last, which is an AP-3 Victory, such charter to become effective upon the termination (January 31, 1951) of applicant's existing charter of these vessels and remain in effect indefinitely, subject to termination by either party on such notice as may be agreed upon and subject to annual review by the Board.

American-Hawaiian has been engaged in the intercoastal trade for the past 50 years. The company maintains a fast express package type service between the major North Atlantic and Pacific coast ports, carrying, on regular schedule, the heaviest to the lightest materials in ordinary commercial trade. This service, applicant states, is such that the company can only use the C-4 type vessels or possibly, as a less satisfactory substitute, C-3s, the C-4s being superior to other war-built vessels in respect of speed, deadweight, cargo care, cargo hatches, cargo gear, number of between decks, number of cargo compartments, deep tanks, refrigerated space, on-deck cargo areas, and location of engines. All C-4 vessels are owned by the Government, applicant states, and there are no privately-owned American-flag C-3s available for charter. The *Saginaw Victory* is used as an extra ship in the trade and calls at some ports occasionally not served by the C-4s. The vessels are running practically full in both directions, carrying about one sixth of the total traffic. It was testified that the number of shippers American-Hawaiian serves is: westbound 19,045 to 12,697 consignees, and eastbound 4,027 to 6,967 consignees; and that the tonnage carried in 1949 was: westbound 282,582 tons in 782 commodity brackets, originating with 7,455 shippers located at 1,094 eastern origins to 8,745 consignees on the Pacific coast; and eastbound 396,262 tons in 587 commodity brackets, originating with 1,985 Pacific coast shippers to 2,644 consignees at 289 eastern destinations.

From January 1, 1950, through December 2, 1950, the company had a total of 18,722,786 cubic feet of space available westbound, and the open space was 298,593 cubic feet. Eastbound the available space was about 19,036,743 cubic feet and the open space was about 266,237 cubic feet. Declined or shut out cargo is substantial per ship; for example, eastbound in September 2,554 tons were declined, and in October 169 tons were turned down and 461 tons were shut out. Therefore, the trade, according to applicant, does not have sufficient vessel tonnage at present to accommodate the cargo offerings, and can stand 6 to 10 more big ships.

Applicant states that although its vessels are running practically full there is only a precarious margin between its revenue and costs, and that the company now has a cumulative loss of \$346,858 covering the



period July 1, 1947, through September 30, 1950. Some of its cost comparisons, going back to 1938, are:

	1938	1st 9 mos. of 1950
Crew wages, per man per day .....	\$4.15	\$14.40
Fuel per barrel.....	.94	1.75
Repairs per voyage day.....	67.00	121 00
Stevedoring per ton .....	3.32	9.64
Clerking, checking, and terminal charges per ton ...	1.57	4.83
Subsistence of crew per man day . . . . .	.76	2.00

In 1938 the company had, after expenses, 5.7 cents out of each revenue dollar as against approximately 1.6 cents in 1950.

American-Hawaiian's intercoastal profit and loss operation since World War II shows:

	Before Overhead	Overhead <sup>1</sup>	After Overhead <sup>2</sup>
Last half of 1947, loss.....	\$4,443	\$207,426	\$211,869
Full year 1948, loss .. . . .	151,325	1,014,151	1,165,476
Full yr. 1949 revenue over expense.....	1,857,759	1,039,307	818,452
1st 9 mo. 1950 revenue over expense .	2,109,774	1,830,560	279,214

<sup>1</sup> Under allocation formula between offshore and intercoastal.

<sup>2</sup> May not be exact because of one or two half legs of voyages.

The company has been reducing overhead since 1947; and although freight rates since 1938 have gone up 120% per ton, cargo handling takes 50% of the revenue. The company is studying new methods of handling cargo, and in this connection has acquired a number of cargo containers of different types and sizes from 140 to 300 to 1000 cubic feet each, the use of which on a large scale would involve a new design of ship with more suitable handling gear, larger hatches, and other feature improvements. The company has spent \$75,000 on cargo containers. It now has 112 on hand and 8 on order. Most of them are made of steel, some aluminum, and some are a combination of plywood, aluminum, and steel. The most cargo carried in containers on any voyage has been 90 tons. The company, it was testified, has designs on paper for a cargo container ship, but there are no early prospects of construction.

The company's working capital in 1949 was \$12,800,000, consisting of cash, accounts receivable, government bonds, and shipping inventory. The company's vessel terminated voyage revenue in 1949 from its intercoastal operation was approximately \$14,900,000, and from all operations in 1949 it was \$26,307,000.

American-Hawaiian considers Luckenbach its only competitor in the intercoastal trade, and agrees with Luckenbach that an overhead of \$2,500,000 per annum is high for a 5 or 6 ship operation in the trade, and if more ships were added it would effect a very substantial saving in 3 F. M. B.

overhead per ship; but does not agree that its and Luckenbach's C-4 vessels should be turned over to just one of applicants, because of the value of competition.

American-Hawaiian requests a new charter with the same terms and conditions as are stated in its existing charter, including particularly the same charter hire basis and cumulative loss provisions. The company states that it could not operate profitably in the trade on a 15% charter hire payable unconditionally. Its application is made on a long-range basis, and is not based on national emergency.

LUCKENBACH STEAMSHIP COMPANY, INC.

On November 13, 1950, Luckenbach filed a cross application for permission to operate chartered vessels in the intercoastal trade, objecting to the application of American-Hawaiian and applying for the allocation to Luckenbach of such of the six vessels named in American-Hawaiian's application, or additional C-4 or other liner-type vessels required for operation in the intercoastal trade beyond January 31, 1951, including those presently chartered to Luckenbach or others and those redelivered June 30, 1950. The application states that there may not be need for continued operation of chartered vessels in the intercoastal trade after January 31, 1951; but if there is such need, such chartered vessels should be allocated preferentially to Luckenbach, who has purchased vessels from the Government for operation in that trade, and none should be allocated to companies which have failed to purchase vessels.

Luckenbach requests allocation of 10 C-4s; that is, the 3 C-4s they now operate in the North Atlantic intercoastal trade, 2 C-4s redelivered to the Government, and the 5 C-4s now allocated to American-Hawaiian. As to the Gulf intercoastal trade they request the 2 AP-2s they now operate under charter and the 2 AP-2s redelivered to the Government; and they are willing to accept satisfactory substitutes in all cases.

The company owns 11 C-3s, 5 C-2s, and 2 pre-war vessels and intends operating all of its war-built vessels in the intercoastal trade as soon as practicable, with at least a weekly frequency in the North Atlantic service. Its vessels now in the trade have had about 10% unused space westbound, and less than 10% eastbound.

From July 1, 1947, to September 30, 1950, while paying the Government approximately \$2,500,000 charter hire (8½% basis), the company, it was testified, incurred a cumulative loss of approximately \$2,000,000.

The company's profit and loss operation on chartered ships, 8½% charter hire basis, in the North Atlantic intercoastal trade since July 1, 1947, shows:

	<i>Before Overhead</i>	<i>Overhead</i>	<i>After Overhead</i>
Last half of 1947, loss.....	\$160,836.47	\$98,626.05	\$259,462.52
Full year 1948, loss.....	82,331.42	328,193.59	410,525.01
Full year 1949, profit.....	994,763.24	445,272.16	<sup>1</sup> 549,049.18
First 9 mos. of 1950, profit.....	1,063,024.00	416,282.09	<sup>2</sup> 646,742.52
Total operating profit.....	1,814,619.96	1,288,373.89	<sup>3</sup> 526,246.07

<sup>1</sup> Plus \$441.90 to balance.

<sup>2</sup> Minus 61¢ to balance.

<sup>3</sup> Profit.

Luckenbach desires to return its own vessels to the intercoastal trade and is agreeable to discontinuing charters now, except for 60 to 90 days or whatever time is necessary for the substitution of owned for chartered vessels. The company offers to place in the Atlantic intercoastal trade as soon as practicable 10 or 11 C-3 vessels (2 being in already); but, if American-Hawaiian is allowed to continue in the intercoastal trade with chartered vessels, Luckenbach is unwilling to operate in the Atlantic intercoastal trade with owned vessels, and requests permission to operate the same number and type of chartered vessels as may be chartered to American-Hawaiian. In this event, Luckenbach will withdraw its 2 privately-owned C-3s from the Atlantic intercoastal trade and replace them with 2 C-4s previously chartered by Luckenbach and redelivered to the Government, and use the C-3s to supplement the service if required by traffic needs. The C-3s, it was testified, are just as good as C-4s for the service.

Luckenbach's witness states that its overhead for the operation of a strictly intercoastal service would be approximately \$2,750,000 per annum, and American-Hawaiian's, he believes, would be about the same; that either company could operate double its Atlantic intercoastal fleet without substantial increase in overhead; that neither company's operation can stand such an overhead cost on a 5 or 6 ship operation; that both companies have temporarily reduced overhead for accounting purposes only by allocating a portion of overhead to offshore operations, but if such allocations had not been made, the overhead would have been prohibitive; that the only manner in which Luckenbach can continue to operate in the Atlantic intercoastal trade is by restoring the size of the operation to the point where it will support an overhead of approximately \$2,500,000 to \$3,000,000 per annum; that until this is achieved, continued operation in the Atlantic intercoastal trade will be possible only if it is indirectly subsidized by offshore operations which absorb part of the overhead.

Luckenbach, it was testified, would like to put its 11 C-3s in the Atlantic intercoastal trade immediately; that its ultimate projection for the Atlantic intercoastal trade contemplates the operation of 17  
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ships, with which it is feasible to operate two sailings per week which will provide approximately 200% of the capacity available from a fleet of 10 C-4s operated independently by American-Hawaiian and Luckenbach, and that by alternating or staggering ports of call, the average turnaround would be reduced from approximately 70 to 60 days, resulting in a saving of nearly 15% of the vessel operating costs and capital charges, and could produce savings of \$2,000,000 per annum, as compared to a 70 day turnaround; and in addition, provide a much more attractive service by reason of the increased frequency and reduced time in transit between ports.

Luckenbach states that the situation in its Gulf intercoastal trade (maintained at present with 2 privately-owned C-2s and 2 chartered AP-2 Victories) presents a more difficult problem; that from July 1, 1947, through September 30, 1950, the company has lost a total of \$1,565,791.82 before overhead; that during this period the company paid over \$850,000 in bareboat charter hire for the use of the vessels on which this loss was sustained; that for the first 9 months of 1950 their loss on the chartered ships was over \$12,000 before overhead, and over \$300,000 after overhead; that on its privately-owned vessels operated in the Gulf intercoastal trade during 1950, there was a net profit of \$63,000 for the 9 voyages involved, before repairs, depreciation, interest, overhead, and capital charges; that at capital charges of 8½% for depreciation and interest the loss would exceed \$187,000; that if these vessels had been operated in the offshore trade the earnings would have exceeded \$400,000 for the bareboat use; that by continuing the Gulf intercoastal service during the first 9 months of 1950, both with chartered and owned vessels, the loss is over \$650,000; and that under these circumstances it cannot be expected to continue operation in the Gulf intercoastal trade with owned vessels. Therefore, the company asks permission to charter 4 AP-2 type vessels for continued operation in the Gulf intercoastal service; that is, two in addition to the present two. The company further requests, in view of the uncertain financial results of the proposed operations, that the charter rate be reduced from 8½% to 5%.

Luckenbach, for its North Atlantic intercoastal service, requests a charter with the same terms and conditions as are stated in its existing charter, including particularly the same charter-hire basis and cumulative loss provisions. The company states it may not reject a 15% charter hire payable unconditionally in the North Atlantic service, but would have to fold up before paying 15% unconditionally in the Gulf service, and that as to the North Atlantic service, the company could pay a higher charter hire for operation of 11 or 12 ships, compared to 5 or 6, because of overhead spread and have a better chance of profit.

The Waterman Steamship Corporation appeared as an interested party in opposition to chartering to either of the applicants herein. Waterman and its subsidiaries own and operate 42 C-2 vessels, 11 of which are at present operated in the intercoastal service under the trade name "ARROW LINE," in competition with several other intercoastal carriers, including American-Hawaiian and Luckenbach, between Atlantic and Pacific coast ports on a 7 day frequency both ways, not serving California ports eastbound. The company operates no chartered vessels in any trade.

Waterman's witness testified that his company can handle more intercoastal cargo because its vessels are not running full in either direction. The C-2s, he says, are just as good for the intercoastal trade as the C-4s, the only difference being in the amount of cargo they can carry. His company opposes any further chartering of Government-owned vessels for operation in the intercoastal trade on the ground that it is grossly unfair for privately-owned vessels to be forced to compete with Government-owned vessels in any berth service, because the company owning vessels provides capital assets, while the charterer is getting the benefit of such assets owned by the Government. Sufficient privately-owned vessels will be available for adequate service, Waterman believes, if Government-owned vessels are not permitted to operate in the intercoastal trade after January 31, 1951. The witness states that Waterman will put in additional privately-owned ships if the need arises.

Waterman desires, it was testified, to maintain its intercoastal service on a long-range basis exclusively with its privately-owned vessels, but in the event operation of Government-owned vessels in the trade is permitted after January 31, 1951, Waterman will be compelled to make application for the bareboat charter of a sufficient number of suitable types of Government-owned dry-cargo vessels for intercoastal operation in order to be placed on an equal competitive footing with its competitors operating Government-owned vessels in this trade.

Counsel for applicant American-Hawaiian contends that the statutory requirements in this proceeding under Public Law 591, 81st Congress, have been met; that there is no guarantee of substitutions if chartered vessels are withdrawn; that the trade involved requires all of the vessels in it, and more; that success of the operation depends upon continuance of the same sort of service the public has had for 50 years from American-Hawaiian, which cannot be provided with Libertys or Victories; that discontinuance of such service would be prejudicial to public interest (not referring simply to the emergency) in view of American-Hawaiian's outstanding record of owning, designing, and operating ships. Counsel also argues that buying or chartering ships

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must be decided by each management; that public interest is protected by annual review of charters; and that, if an organization like American-Hawaiian is to be disbanded with its capacity to run a hundred more vessels in emergency times, it would be prejudicial to the Government's interest.

Counsel for applicant Luckenbach suggests that this record should be held open 30 days or more to determine whether, due to the military situation, vessels ought to be taken out of the foreign trade and brought into the intercoastal trade. As to the long-term issues, he contends that it is not necessary to charter to American-Hawaiian to assure adequate service, because Luckenbach and others are prepared to put privately-owned tonnage into the trade as soon as adjustments and arrangements therefor can be made, which would probably take 60 or 90 days; and that no one has standing to charter in a trade that will be adequately served by owned vessels, as would be the case here.

Counsel for Waterman argues that Government-owned vessels should not, as Congress intended they should not, compete with privately-owned vessels in the same trade; that the record does not justify continued chartering to either applicant; that Waterman operates exclusively with privately-owned vessels, and will put additional ones in when necessary; that Luckenbach is ready to put 10 privately-owned vessels in the service; that privately-owned vessels are available to provide adequate service in the trade; and that the applications should be denied.

Counsel for Pacific-Atlantic Steamship Company, an interested party, argues that there is an emergency which justifies chartering beyond January 31, 1951; that his company intends to put privately-owned tonnage in the intercoastal trade, having 3 owned vessels therein now; and in connection with its pending application, later to be heard, for continuing its present charter agreement, it will request continuance for a temporary period of 60 or 90 days.

Counsel for the Committee for Promotion of Tramp Shipping argues that it is contrary to the public interest to use chartered ships in the intercoastal service because such use results in unfair competition with owned vessels, those chartering having no capital risk; that it prevents others from buying who may wish to do so, and militates against the long-range program of the American merchant marine designed for privately-owned American-flag vessels; that the evidence shows there are enough suitable privately-owned vessels available for adequate service in the trade if charters are terminated; but if chartering is to continue, the charter hire should be 15% per annum of the statutory sales price, payable unconditionally. He further argues that the burden

placed upon the applicants, under the statute, has not been met, and that applicants' charters should therefore be discontinued.

Counsel for the Board contends that the findings to be recommended should be uniform with respect to both applicants; that is, there should be no chartering as to both; there should be chartering on long-term basis to both; or for limited period to both. He points out that the intercoastal trade is a matter of public interest, and must continue; that the type of vessel requested, C-type, is not available for charter on any basis on any coast; and that the remaining question as to adequacy of service depends on whether as of the termination of charters the intercoastal trade would be left without adequate service. He is impressed by the declaration on the part of Waterman and Luckenbach herein, which was not made in the recent proceeding involving intercoastal chartering, that they will return to the intercoastal trade privately-owned tonnage adequate to meet all of the demands of shipping interests upon the termination of chartering on January 31, 1951.

#### CONCLUSIONS

The burden of proof in this proceeding is upon applicants.

Both applicants are operators in the intercoastal trade under certificates of convenience and necessity from the Interstate Commerce Commission. The importance of this trade has been recognized by the Congress, the Interstate Commerce Commission, the Maritime Commission, and the Federal Maritime Board.

The record is clear that the intercoastal service is required in the public interest. The applicants therefore have met the first condition of Public Law 591, 81st Congress, section 3 (e) (1).

On the question whether privately-owned American-flag vessels are available for charter by private operators on reasonable conditions and at reasonable rates for use in such service, the record shows that there are no privately-owned C-4 vessels; and while there is some conflict in the evidence as to other vessels which may be suitable and available, the record justifies a finding that applicants have met this condition also.

The remaining statutory condition is whether the trade would be adequately served from and after January 31, 1951, when applicants' present charters expire, if the vessels involved should not be chartered for bareboat use in this service. On this question there is conflict in the testimony. Top officials of American-Hawaiian, on the one hand, testified that the trade would not be adequately served and that it will stand additional large ships. On the other hand, the President of Luckenbach and the Executive Vice President of Waterman testified that the trade will be adequately served because they will replace all

of the chartered tonnage now in the trade with their privately-owned vessels, and supply more tonnage if necessary. They give definite assurances to this effect on the record, and the Board is entitled to rely thereon.

In view of these assurances, it cannot be said that the trade would be inadequately served after January 31, 1951, if the applications herein are not granted. Therefore, such applications should be denied.

The conclusions and recommended findings herein are based entirely upon the record as made in this proceeding, and do not take into consideration possible altered circumstances resulting from the President's proclamation of national emergency made on December 16, 1950.

#### RECOMMENDATIONS

The Board should find and so certify to the Secretary of Commerce that the application of American-Hawaiian Steamship Company, and the cross-application of Luckenbach Steamship Company, Inc., to bareboat charter Government-owned war-built dry-cargo vessels for use in the intercoastal trade from and after January 31, 1951, should be denied.

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## FEDERAL MARITIME BOARD

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No. M-16

PACIFIC-ATLANTIC STEAMSHIP COMPANY—APPLICATION FOR BAREBOAT CHARTER OF WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE INTERCOASTAL TRADE

No. M-17

POPE & TALBOT, INC.—APPLICATION FOR BAREBOAT CHARTER OF WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE INTERCOASTAL TRADE

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*William I. Denning* and *Earl C. Walck* for Pacific-Atlantic Steamship Company.

*William Radner* for Pope & Talbot, Inc.

*Sterling F. Stoudenmire, Jr.*, for Waterman Steamship Company.

*Marvin J. Coles* for Committee for Promotion of Tramp Shipping.

*Paul D. Page, Jr.*, and *M. E. Halpern* for the Board.

### REPORT OF THE BOARD

This proceeding was instituted pursuant to Public Law 591, 81st Congress, upon the applications, as amended, of Pacific-Atlantic Steamship Company and Pope & Talbot, Inc., to bareboat charter Government-owned, war-built, dry-cargo vessels for use in the intercoastal trade for further voyages beginning after January 31, 1951, when the present charters to the applicants expire, but beginning not later than April 15, 1951.

A hearing was held before an examiner on January 4, 1951. The decision of the examiner, filed on January 10, 1951, recommended that the Board certify and find that the service for which application is made is required in the public interest, that such service is not adequately served, and that privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service. Exceptions to said decision as to the application of Pacific-Atlantic Steamship Company were filed by the Committee for the Promotion of Tramp Shipping. No exceptions were filed to the decision as respects the application of

3 F. M. B. 489

Pope & Talbot, Inc. Oral argument was had before the Board on January 26, 1951. The Board adopts the findings and certification recommended by the examiner, except as herein modified.

The applicants are both certificated operators in the intercoastal trade.

Pope & Talbot, Inc., has contracted to purchase three Victory-type vessels and now seeks to charter for that trade suitable vessels, preferably of the Victory type, for the temporary period necessary to obtain delivery of the vessels purchased, and in no event for voyages to begin later than April 15, 1951.

Pacific-Atlantic Steamship Company also desires to charter for the same temporary period suitable vessels to enable it to effect an orderly replacement of chartered with owned tonnage for use in the same trade. Pacific-Atlantic now operates in this trade with privately-owned tonnage supplemented by a Government-owned AP-3 Victory and two Government-owned Liberty ships under bareboat charter. States Steamship Company, the parent company of Pacific-Atlantic, has recently purchased two Victory-type vessels in order that the combined fleet may serve both the transpacific and intercoastal trades. Pacific-Atlantic is committed to operate in the intercoastal trade with its own tonnage, but part of this is now on charter to Military Sea Transportation Service.

While it is the expressed purpose of both applicants to operate in the intercoastal trade with privately-owned tonnage, neither undertakes an unconditional obligation to do so within the prescribed period.

The purpose of each application in this proceeding appears so closely alike that no difference in treatment is warranted. The record is sufficiently clear to justify the Board in making the required findings under Public Law 591. The exceptions above referred to, if applicable at all, are equally applicable in both cases, but in view of the record the exceptions cannot in any event be sustained.

With respect to the level of charter rates, the record in the instant applications discloses the substantial rehabilitation of the Atlantic-Pacific intercoastal trade. The evidence is uncontradicted that the 8½ percent provisional rate established effective as of July 1, 1947, is no longer justified. Moreover, Pacific-Atlantic's Vice President testified in this case that he would recommend acceptance of a charter, if the application is granted, with provision that charter hire be at the rate of 15 percent of the statutory sales price of the vessels.

#### FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the basis of the record in this proceeding, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the intercoastal service for which applications are made to bareboat charter the vessels referred to in this case for voyages to begin after January 31, 1951, but not later than April 15, 1951, is required in the public interest;

2. That such service will not otherwise be adequately served during such period; and

3. That privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

It is recommended that the Secretary of Commerce include in such bareboat charters as may be entered into with Pacific-Atlantic Steamship Company and Pope & Talbot, Inc., a provision that the charter hire payable thereunder shall be not less than 15 percent of the statutory sales price of the vessels chartered, as provided by section 5(b) of the Ship Sales Act of 1946, as amended.

By order of the Board

JANUARY 26, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-16

PACIFIC-ATLANTIC STEAMSHIP COMPANY—APPLICATION FOR BAREBOAT CHARTER OF WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE INTERCOASTAL TRADE

No. M-17

POPE & TALBOT, INC.—APPLICATION FOR BAREBOAT CHARTER OF WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE INTERCOASTAL TRADE

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In proceeding under Public Law 591—81st Congress, found that service for which certain Government-owned war-built dry-cargo vessels are proposed to be bareboat chartered for period of seventy-five days from January 31, 1951, is required in the public interest; that such service would not be adequately served during such period without the use therein of such vessels; and that privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

*William I. Denning* and *Earl C. Walck* for Pacific-Atlantic Steamship Company.

*William Radner* for Pope & Talbot, Inc.

*Sterling F. Stoudenmire, Jr.*, for Waterman Steamship Company.

*Marvin J. Coles* for Committee for Promotion of Tramp Shipping.

*Paul D. Page, Jr.*, and *M. E. Halpern* for the Board.

### RECOMMENDED DECISION OF F. J. HORAN, EXAMINER

This is a proceeding under Public Law 591—81st Congress, concerning applications of Pacific-Atlantic Steamship Company and Pope & Talbot, Inc., hereinafter called Pacific-Atlantic and Pope & Talbot, respectively, to bareboat charter Government-owned war-built dry-cargo vessels beyond January 31, 1951, the expiration date of their present charters, for use in the intercoastal trade. As indicated in the notice of hearing published in the Federal Register of December 19, 1950, the questions to be determined are whether the service for which such vessels are proposed to be chartered is required in the public interest; whether such service would be adequately served without the

use therein of such vessels, and whether privately-owned American-flag vessels are available for charter on reasonable conditions and at reasonable rates for use in such service. The Board is required by Public Law 591 to certify its findings to the Secretary of Commerce.

Pacific-Atlantic, which is wholly owned by States Steamship Company, hereinafter called States, owns four vessels. Of these, one AP-3 Victory is chartered to the Military Sea Transportation Service, one AP-3 Victory and one C-2 are operated in transpacific service by States, and one AP-3 Victory is operated by Pacific-Atlantic intercoastally. States, also, owns four vessels. Three of these, two of the AP-3 Victory-type and one a C-2, are operated by it in transpacific service; the other, an AP-3 Victory, is operated by Pacific-Atlantic in the intercoastal trade. Besides the intercoastal vessel owned by States and the one such vessel owned by Pacific-Atlantic, the latter company operates in the intercoastal trade a Government-owned AP-3 Victory and two Government-owned Liberty ships bareboat chartered to it. These are the three vessels that it seeks by its instant application to bareboat charter beyond January 31.

Prior to the Korean emergency, Pacific-Atlantic operated six Liberty ships under bareboat charter in the intercoastal trade. Preparing, at that time, to replace its chartered tonnage with its own vessels, it canceled the charters and began redelivering the six Liberty ships to the Maritime Administration. After three of the vessels had been redelivered, the Korean situation developed, and Pacific-Atlantic asked permission of the Administration to retain the other three under bareboat charter, which was granted. These three Liberty vessels were supplemented by three Victory ships which it and/or States owned, and a fourth Victory owned by it was about to be placed in the trade when Military Sea Transportation Service asked for it, to which it was chartered. Since then, one of the three Victory ships has been placed on a transpacific berth.

It is testified that Pacific-Atlantic is very anxious to have its (and/or States) own vessels in the intercoastal trade. States recently purchased an AP-3 Victory-type vessel and made application for the sale to it of another with the intention of building up its and Pacific-Atlantic's combined fleet in order to be able to serve both the intercoastal and transpacific berths, but the Navy insisted that the ship which was bought be placed in transpacific service, which was done, and it has made a like request with respect to the vessel for which an application to purchase is pending. The application for the bareboat charter of three vessels to Pacific-Atlantic, which limits the charter period to seventy-five days from January 31, 1951, is made in the hope that within that time the requirements of the Military Sea Transportation Service will

permit of adjustment of the combined fleet so that vessels engaged in transpacific service may be put on berth in the intercoastal trade.

Pope & Talbot's application likewise is to charter three vessels for a period of seventy-five days, or to such earlier time as delivery can be made to it of three Government-owned AP-3 Victory-type vessels which it has made application to purchase. It is planned by this applicant to operate six privately-owned vessels of the C-3 or AP-3 Victory type in the intercoastal trade. It now owns one AP-3 Victory and one C-3-type vessel, which it operates in the intercoastal trade, and, also, a C-3 which is under charter to Military Sea Transportation Service. Pending the return to it of the vessel last referred to and delivery by the Maritime Administration of the three vessels which it has applied to purchase, it finds it necessary to operate in the intercoastal trade with chartered vessels. It has under charter until January 31, 1951, three Liberty-type vessels, but, preferring AP-3 Victory ships, it seeks by its charter application to bareboat charter three vessels of the latter type. It hopes to be able to operate exclusively with its own tonnage within thirty to sixty days after January 31, 1951, the expiration date of its present charter, but this is contingent to some extent on international developments. With the three chartered ships and the Victory and C-3 owned by it and now in operation in the intercoastal trade, the tonnage which would be employed by it would still be less than that called for by its plans.

The importance of the intercoastal trade has been recognized by the Congress, the Interstate Commerce Commission, and the Maritime Commission. *In the Matter of Applications of American-Hawaiian Steamship Company, etc.*, decided October 17, 1950. Both Pacific-Atlantic and Pope & Talbot operate in this service under certificates of public convenience and necessity issued by the Interstate Commerce Commission, carrying principally lumber eastbound and general cargo, largely iron and steel products, westbound. Pacific-Atlantic is being offered a large volume of cargo in both directions. In fact, its ships are running full and, at times, have been overbooked. Pope & Talbot has had difficulty in securing cargo for Liberty vessels westbound, but, with respect to the C-3 and AP-3 westbound, it was testified that it was "probably doing fairly well." Eastbound, its vessels have been operating substantially full, and, in some cases, it has had to turn away cargo. For the months of January, February, and March 1951, it has scheduled two sailings a month, one with a ship of its own and one with a chartered ship, and present indications are that, if this schedule is carried out, the vessels will be booked full. Carrying out of the schedule, of course, depends upon approval of the charter application.

Privately-owned American-flag vessels becoming available for char-

ter are being absorbed by the foreign trades. The charter-hire rates being charged for them, though perhaps reasonable for ships to be placed in such trades, where freight rates are said to have risen substantially, are too high for vessels which are to be employed in the intercoastal service. Liberty-type vessels, which a few months ago were being offered in the market at approximately \$40,000 to \$42,000 per month, are now commanding \$52,500 per month and even as high as \$55,000 or \$60,000 per month. The record is convincing that applicants, engaged as they are in intercoastal transportation at pre-Korean freight rates, which, as a practical matter, they are prevented from increasing due to railroad competition, could not pay such charter hire without incurring serious financial loss.

There are references in the record to a previous proceeding in which Waterman and Luckenbach Steamship Company made commitments, conditioned upon the discontinuance of charter operations in the intercoastal service, to place in that service additional vessels of their own. It appears, however, that the commitments related to replacing with their own ships the chartered vessels of Luckenbach and American-Hawaiian Steamship Company and assumed that the other operators would continue approximately their present services. It further appears that it was assumed that from sixty to ninety days would be allowed to fulfill the commitments.

Waterman and the Committee for Promotion of Tramp Shipping, believing that within seventy-five days from January 31, 1951, Pope & Talbot will have secured delivery of the vessels which it is seeking to purchase from the Maritime Administration and placed them in the intercoastal service in lieu of the tonnage chartered to it, except, perhaps, such chartered tonnage as it may deem necessary to retain until redelivery of its C-3 under charter to the Military Sea Transportation Service, do not object to the bareboat charter to this applicant of the three vessels for which it has applied, but they oppose Pacific-Atlantic's application, not being satisfied that within the seventy-five day period this applicant will replace its chartered tonnage with its own or States' vessels. The representations which the applicants make do not warrant the taking of these different positions. On behalf of Pacific-Atlantic it was testified that during the interim period of seventy-five days it would make a bona-fide attempt to put its own vessels into the intercoastal trade and that, barring something unforeseen in world affairs, it may be assumed that at the end of such period its own vessels will be in the trade. This, it was stated, depends upon whether Military Sea Transportation Service will redeliver the Victory ship that it has under time charter and whether Pacific-Atlantic "can get loose from other commitments to MSTs." On behalf of Pope & Talbot, which has  
3 F. M. B.

named five vessels from which to fill the complement of three which it has applied to purchase, it was testified that all of the good AP-3 vessels are in operation, including the five which it has nominated; that it is hopeful that three of them will be returned to a United States port and delivered to it under its ship-sales contract promptly after January 15 but that "it may be ninety days from January 15, which is seventy-five days from January 31, before that can be accomplished, conceivably longer." It was further stated that if the vessel chartered by Pope & Talbot to Military Sea Transportation Service should not be redelivered within the seventy-five day period and a ship should not be available for charter in the market at a reasonable rate, this applicant would have to file another bareboat-charter application with the Maritime Administration. Thus, there is no unqualified commitment on the part of either applicant. If the charter applications are granted, it should be understood by both applicants that they will be expected to make every reasonable effort to substitute, within the period of the application, their own for chartered tonnage.

Applicants, under their present bareboat charters, are paying the 8½-percent rate of charter hire. Pacific-Atlantic's vice-president, asked whether Pacific-Atlantic would, if its charter application under consideration were granted, accept a charter containing a provision for 15-percent charter hire, said that he would "certainly recommend that they do." If favorable action should be taken on the charter applications and it should be decided to insert a 15-percent charter-hire provision in Pacific-Atlantic's bareboat charter, it would seem that a like provision should be included in the charter agreement with Pope & Talbot.

#### FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

The Board should find and certify to the Secretary of Commerce that the service for which Pacific-Atlantic and Pope & Talbot propose to bareboat charter Government-owned war-built dry-cargo vessels for the period of seventy-five days from January 31, 1951, is required in the public interest; that such service would not be adequately served during such period without the use therein of such vessels; and that privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.



# FEDERAL MARITIME BOARD

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No. M-15

AMERICAN MAIL LINE, LTD., ET AL.<sup>1</sup>—APPLICATIONS FOR BAREBOAT CHARTER OF WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE CARRIAGE OF SULPHUR, COAL, COKE, PITCH, LUMBER, AND GRAIN FROM THE UNITED STATES TO EUROPEAN COUNTRIES, INDIA, AND SOUTHEAST ASIA, AND THE IMPORT OF METALLIC ORES TO THE UNITED STATES.

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## FINDINGS AND CERTIFICATION OF THE FEDERAL MARITIME BOARD TO THE SECRETARY OF COMMERCE

On December 20, 1950, following a hearing on numerous applications under Public Law 591, 81st Congress, for bareboat charters of Government-owned, war-built, dry-cargo vessels for the transportation of cargo to certain countries within the purview of the Foreign Assistance Act of 1948, as amended, the Board found and certified to the Secretary of Commerce that the services considered, being for the carriage of coal and grain from the United States to Europe, were required in the public interest, that such services were not adequately served, and that privately-owned American-flag vessels were not available for charter by private operators on reasonable conditions and at reasonable rates for use in such services.

At the request of the Economic Cooperation Administration the Board re-opened the proceeding and set for further hearing all applications hereinbefore filed and such other applications received on or before 5:00 p.m. February 12, 1951, to bareboat charter war-built, dry-cargo vessels for use in the export of full cargoes of sulphur, coal, coke, pitch, lumber, and grain from the United States to European countries in which the Economic Cooperation Administration has a program, their dependent overseas territories, India, and countries in Southeast Asia, and the import of full cargoes of metallic ores from countries in these areas to the United States. Notice of the further hearing was

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<sup>1</sup> American President Lines, Ltd., Amerocean Steamship Co., Inc., & Blackchester Lines, Inc., American Union Transport, Inc., Atlantic Ocean Transport Corp., Central Gulf Steamship Corp., Dover Steamship Corp., Farrell Lines, Inc., Flanigan Loveland, Inc., Olympic Steamship Co., Inc., Overseas Navigation Corp., Pacific Transport Line, Inc., Seatrade Corporation, Shipenter Lines, Inc., Terrace Navigation Corp. and Traders Steamship Corp.

published in the Federal Register of February 7, 1951, and hearing was held by the Board on February 13, 1951. The usual notice of 15 days was not given because of the urgency of the matter.

The applicants are those shown above as well as those shown in the heading of the Board's findings and certification of December 20, 1950.

Representatives of Economic Cooperation Administration, General Services Administration, Committee for Promotion of Tramp Shipping, and Newtex Steamship Corporation testified at the further hearing. No opposition to the applications was made. The testimony of the Government witnesses is convincing that world shipping conditions are more acute than at the time of the first hearing and that our original findings and certification should be broadened to the extent described herein. Testimony of the carrier witnesses developed matters that might well receive consideration by the Administrator, but they were beyond the scope of this proceeding.

#### FINDINGS AND CERTIFICATION

On the basis of the facts adduced of record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the services considered are required in the public interest;
2. That such services are not adequately served; and
3. That privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such services.

By the Board.

February 16, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-14

AMERICAN-HAWAIIAN STEAMSHIP COMPANY AND LUCKENBACH STEAMSHIP COMPANY, INC.—APPLICATIONS TO BAREBOAT CHARTER WAR-BUILT DRY-CARGO VESSELS IN THE INTERCOASTAL TRADE.

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*William Radner* and *Odell Kominers* for Luckenbach Steamship Company, Inc.

*Sterling F. Stoudenmire, Jr.*, for Waterman Steamship Corporation.

*Marvin J. Coles* for the Committee for Promotion of Tramp Shipping.

*Willis R. Deming* for American President Lines, Ltd.

*Harry Ross, Jr.*, and *Charles D. Turner* for the United States Department of Agriculture.

*S. H. Moerman* for International Paper Company.

*William R. Peterson* for General Petroleum Company.

*W. W. Balkcom* for Florida Cannery Association.

*Harold B. Say* for Portland, Oregon, Chamber of Commerce.

*Paul A. Amundsen* for Alabama State Docks and Terminals.

*Everett T. Winter* for Mississippi Valley Association.

*M. K. Eckert* for Port of Houston, Texas.

*George C. Whitney* for Port of New Orleans Board of Harbor Commissioners.

*Chester McMullen* for Port of Tampa and Florida Cannery Association.

*Paul D. Page, Jr.*, and *Max E. Halpern* for the Board.

### REPORT OF THE BOARD

This proceeding was originally instituted by order of the Board (Federal Register November 21, 1950) pursuant to Public Law 591, 81st Congress, for the purpose of considering the application of American-Hawaiian Steamship Company and the cross application of Luckenbach Steamship Company, Inc., for the bareboat charter of Government-owned, war-built, dry-cargo vessels in the intercoastal trade.

The Board rendered its decision on January 24, 1951, with respect to the Atlantic-Pacific intercoastal operation of American-Hawaiian Steamship Company and Luckenbach Steamship Company, Inc., but

remanded to the examiner the application of Luckenbach Steamship Company for the bareboat charter of four AP-2 Victory-type vessels for its Gulf intercoastal service for the receipt of additional evidence. The examiner on February 15, 1951, filed his decision with the recommendation that the Board should find and so certify to the Secretary of Commerce that the Gulf intercoastal service, in which Luckenbach Steamship Company, Inc., proposes to bareboat charter four Government-owned, war-built, dry-cargo AP-2 Victory-type vessels, is in the public interest, that such service would not be adequately served without the use therein of such vessels, and that privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service. Exceptions were filed by Waterman Steamship Corporation but oral argument was not requested.

Luckenbach's application is for permission to bareboat charter four war-built, dry-cargo AP-2 Victory-type vessels for operation in its Gulf intercoastal service at a bareboat charter hire rate of 5% of the statutory sales price or 100% of the earnings, whichever is higher. Luckenbach now has under charter from the Government in this service two AP-2 Victory-type vessels and is also operating two of its privately-owned C-2 vessels.

Luckenbach's witness testified that the company can no longer operate its two privately-owned C-2 vessels in the Gulf intercoastal service in view of financial results of the past and prospective financial results in the future, and that if its charter application is entirely denied the company will be obliged to terminate its Gulf service. The company believes that release of its two privately-owned C-2 vessels would enable those vessels to earn enough in offshore employment to overcome most of the company's anticipated Gulf intercoastal loss with chartered vessels.

Luckenbach's witness further testified that the company might continue with only two chartered AP-2's by eliminating some ports and effecting shorter turnarounds. Although it is stated a minimum of four AP-2 vessels is necessary to carry the Gulf cargo, the record is bare of the probable outcome of operating four vessels, either all owned, all chartered, or a combination of owned and chartered, on a revised schedule, eliminating minor ports and concentrating on the major sources of traffic. The service now covers the Gulf ports of Tampa, Mobile, New Orleans, Houston, Beaumont, Corpus Christi, Panama City, and Havana, Cuba. The West coast ports are Los Angeles, San Francisco Bay Area, Portland, and Seattle. Isthmian Steamship Lines is the only other certificated carrier on this route at present, but has furnished practically no service for the past year. In 1950 Luckenbach made 20

Gulf intercoastal voyages eastbound, running about 97% full, and 21 voyages westbound, running about 88% full, having an overall average of slightly more than 92%. The result of these operations has shown losses. Except for paying 15% charter hire on the Havana portion of the voyages, the current charter hire is payable on the basis of 15%, of which 8½% is payable unconditionally and the remaining 6½% payable if earned.

Luckenbach's policy as stated is to maintain freight rates as far as it is deemed possible, consistent with rail rate structure and the rate relationships between the Gulf and intercoastal trades and other factors that must be taken account of in sound rate-making practice. The railroads now have an application before the Interstate Commerce Commission for a 6% increase, and, if granted, the company has indicated that it will effect corresponding increases in water rates. Even with this increase in rates and with a 5% charter hire rate, the Company claims its Gulf operations would not be on a profitable basis, principally because of increased costs since October 1950 for labor, supplies, fuel, etc., amounting to approximately 7½% exclusive of increased overhead.

Many shipper witnesses testified that the Gulf intercoastal service is extremely important due to a large extent to the shortage of rail freight cars. Government representatives testified that the railroads, because of shortage of freight cars, are not prepared to assume the burden of additional freight tonnage except at the expense of other important movements.

Luckenbach's application for a 5% charter rate or 100% of the earnings, whichever is higher, is the first application of its kind which has been made. Waterman Steamship Corporation opposes the application on the basis of its position that chartering of Government-owned vessels for use in the intercoastal trade should not be sanctioned as long as privately-owned vessels are operating in the trade. Waterman further states, "If Luckenbach is to be permitted to withdraw its privately-owned vessels for operation in the more lucrative foreign trades, and at the same time be permitted to continue its service in the Gulf intercoastal trade with chartered Government-owned vessels at the extremely low rate of 5%, it would be a rank discrimination to deny other operators the right to also operate their intercoastal services with Government-owned chartered vessels." While Waterman Steamship Corporation is not certificated for the Gulf intercoastal operation, the Luckenbach Gulf operation is competitive with Waterman's South Atlantic intercoastal service to the extent 10% to 15% of Gulf intercoastal traffic could move optionally via South Atlantic ports. The Merchant Ship Sales Act of 1946, as amended, may be sufficiently broad to permit the proposed  
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charter rate. We do not, however, concern ourselves at this time with the legality of the proposed charter rate as it is our opinion such is not warranted under the present circumstances.

#### CONCLUSION

In our decision of October 17, 1950, in Docket No. M-13, *American-Hawaiian Steamship Company et al.—Applications for Extension of Bareboat Charter, etc.*, we set forth fully our view that the intercoastal service is required in the public interest. This applies with equal force to the Gulf intercoastal service, and it is clear on the record that the applicant has met the first condition of Public Law 591, 81st Congress, section 3(e) (1), that the Gulf intercoastal service is required in the public interest. It is also clear that the trade will not be adequately served without the four vessels now serving it, or their equivalent. Luckenbach proposes removing their two owned vessels from this trade and placing them in the more lucrative foreign trade and desires in substitution thereof to bareboat charter two additional Government-owned vessels to round out the operation with four Government-owned vessels. There has been no dispute over the fact that four vessels are needed for this particular service at this time, but it does not follow that there is sufficient justification for the bareboat charter of Government-owned vessels to an operator in substitution for his own privately-owned vessels now in operation in the service under consideration, and we recommend against it. As to the remaining statutory condition as to whether other privately-owned American-flag vessels are available for charter by private operators on reasonable conditions and at reasonable rates for use in such service, the record is sufficiently clear to justify the finding that such vessels are not available at reasonable rates and on reasonable conditions.

#### FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the record adduced in this case, the Board accordingly finds and hereby certifies to the Secretary of Commerce that the Gulf intercoastal service operated by applicant is required in the public interest; that such service would not be adequately served without a further charter of Government-owned, war-built, dry-cargo AP-2 vessels; and that suitable privately-owned vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

#### RECOMMENDATION

The Board recommends the continued charter of only two Government-owned, war-built, dry-cargo vessels, and that the basic charter rate be fixed at 15% of the statutory sales price of the vessel or of the

floor price, whichever is higher, of which  $8\frac{1}{2}\%$  is payable unconditionally and the remainder of  $6\frac{1}{2}\%$  payable if earned, under the same general conditions as now prevail.

By the Board.

March 1, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F.M.B.

# FEDERAL MARITIME BOARD

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No. M-20

AMERICAN PRESIDENT LINES, LTD.—APPLICATION TO BAREBOAT CHARTER WAR-BUILT DRY-CARGO VESSELS FOR EMPLOYMENT IN ITS ATLANTIC/STRAITS SERVICE (C-2, TRADE ROUTE No. 17)

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*Willis R. Deming* for American President Lines, Ltd.

*William Radner* for American-Hawaiian Steamship Company, Luckenbach Steamship Company, Inc., and Pacific Far East Line.

*Marvin J. Coles* for the Committee for Promotion of Tramp Shipping.

*Sterling F. Stoudenmire, Jr.*, for Waterman Steamship Corporation.

*L. W. Hartman* for American Mail Line.

*Max E. Halpern* and *Joseph A. Klausner* for the Board.

## FINDINGS AND CERTIFICATION OF THE FEDERAL MARITIME BOARD TO THE SECRETARY OF COMMERCE

This proceeding was instituted under Public Law 591, 81st Congress, upon the application of American President Lines, Ltd., for the bareboat charter of two Government-owned, war-built, dry-cargo AP-2 vessels (Victory-type vessels) for use in the company's Atlantic/Straits service (Service C-2 of Trade Route No. 17). It was heard by an examiner who has recommended that "The Board should find and so certify to the Secretary of Commerce that the application of American President Lines, Ltd., to bareboat charter two Government-owned, war-built, dry-cargo AP-2 vessels for employment in applicant's Atlantic/Straits service (Service C-2 of Trade Route No. 17) should be denied. In the alternative, if the Board should find that applicant has satisfied the requirements of Public Law 591, the Board should recommend to the Secretary of Commerce that the charter should be limited to one vessel for one voyage unless applicant has two sailings in March, in which case the charter should be for two vessels but for one voyage for each vessel."

Exceptions to the recommended decision of the examiner were filed by the applicant; Pacific Far East Line (partly excepting to, but primarily in support of, the recommended decision); Luckenbach Steamship Company (partly excepting to, but primarily in support of, the recommended decision); American-Hawaiian Steamship Company (partly excepting to, but primarily in support of, the recommended decision); Waterman Steamship Corporation (supporting the recommended decision); and counsel for the Board.



Our conclusions differ from the examiner's recommended decision.

The American President Lines, Ltd., is engaged in the operation on Trade Route No. 17 Service C-2 Atlantic/Straits Service pursuant to the authority of the Board and Maritime Administrator. Docket No. S-17, *Application of American President Lines, Ltd., to Continue Operation After December 31, 1949, of Atlantic-Straits Freight Service C-2, Trade Route No. 17, Without Operating-Differential Subsidy*, decided January 24, 1951.

In the operation of its several services the company in addition to its owned vessels had under bareboat charter from the Maritime Administration two war-built, dry-cargo C-4 type vessels which were required to be redelivered to the Administration at the completion of current voyages, these vessels having been sold to another steamship company pursuant to the Merchant Ship Sales Act 1946, as amended. The company has stated that the two AP-2 Victory-type vessels are to be used in place of the C-4s.

Predicated upon the decision in Docket No. S-17 (supra) and the testimony offered in this case, we have no difficulty in finding that the service is required in the public interest. The substantial question involved in this case is whether or not the service would be adequately served without the charter of the two vessels applied for. The testimony of the applicant's witnesses as to a shortage of space is disputed by other witnesses and there is some doubt from the record whether there is an actual shortage of space. It is admitted that the greatest need for westbound space is to the North transpacific area which is not covered by the applicant on its S-2 service. The record is not clear on the exact situation with respect to the requirement for space in the eastbound movement to Atlantic coast ports. Applicant's witness testified that their vessels in the C-2 service were substantially full in both directions for the past six months. It was testified that during February and March there would not be enough space to handle inbound and outbound cargo. On the other hand, it was conceded that the existing lines can handle all anticipated cargo eastbound to the Pacific coast. There was no substantial disagreement on this phase of the applicant's testimony. While there were some statements as to the heavy movement of rubber and tin from Malaya-Indonesia, this testimony was disputed. One witness stated that movement homeward to Pacific coast ports was relatively light and that any additional cargo which might come out of Malaya-Indonesia could be handled by his company. However, this company did not indicate that it has, or is contemplating, a regular service to or from Malaya-Indonesia to Pacific ports.

The testimony offered by the Chief, Trade Analysis Branch, Maritime Administration, who has the responsibility for supervising the sail-

ings for applicant's vessels, indicates that the applicant needs one vessel to meet its early March sailing on the C-2 service. He predicated this testimony upon the Board's decision in Docket S-17 (*supra*) and pointed out that one of the requirements of that decision is that the company may make not to exceed 13 sailings a year, or approximately one every four weeks. While admitting that this requirement is a limitation as to maximum sailings per annum, it was his view that in a berth service such as this, regularity as well as a reasonably frequent service is important. Adequacy of service cannot be measured in terms of spot availability of cargo alone. In the case of a berth service operation there must be taken into account regularity and frequency of the service, continuity of that service, its schedules, speed, and other factors which give assurances to shippers to enable them to meet their commitments in a businesslike manner.

The record is sufficiently clear that without another vessel applicant's schedule for a reasonable berth service cannot now or in the immediate future be maintained. It further does not appear that applicant is presently in a position to adjust its round-the-world or transpacific service to make available another owned vessel for the C-2 service without serious dislocations. This matter, in any event, is under constant surveillance of the Administrator and, should changed conditions warrant, there is authority for his prompt adjustment.

In the light of the foregoing testimony, we are of the opinion that the applicant has met the requirement of Public Law 591 as to adequacy of service.

As respects the availability of American-flag vessels for charter in this trade, the evidence is uncontradicted that the applicant unsuccessfully endeavored through brokers and otherwise to charter privately-owned vessels suitable to its needs. The evidence is sufficient that there are no suitable vessels available to the applicant to meet its sailing schedule for early March.

#### FINDINGS AND CERTIFICATION

On the basis of the facts adduced of record the Board finds and hereby certifies to the Secretary of Commerce (1) that the service considered is required in the public interest; (2) that such service will not be adequately served without one additional vessel; and (3) that privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

By the Board.

[SEAL]

March 1, 1951.

A. J. WILLIAMS,

*Secretary.*

3 F. M. B.

# FEDERAL MARITIME BOARD

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No. M-22

DEPARTMENT OF THE NAVY, MILITARY SEA TRANSPORTATION SERVICE—  
APPLICATION TO MAKE AVAILABLE NECESSARY GOVERNMENT-OWNED,  
WAR-BUILT, DRY-CARGO VESSELS TO PRIVATE OPERATORS UNDER BARE-  
BOAT CHARTER FOR TIME CHARTER USE OF THE MILITARY SEA TRANS-  
PORTATION SERVICE OF THE DEPARTMENT OF THE NAVY TO MEET ITS  
IMMEDIATE AND PROJECTED WORLD-WIDE REQUIREMENTS

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## REPORT OF THE BOARD

This is an informal proceeding instituted by the Board pursuant to Public Law 591, 81st Congress, which requires the Board to hold public hearings on applications for bareboat charters of Government-owned, war-built, dry-cargo vessels, and to make certain findings with appropriate certification thereof to the Secretary of Commerce. In accordance with such law, notice of this hearing was published in the Federal Register of February 24, 1951, and hearing was held by the Board on March 2, 1951. The usual notice of 15 days was not given because of the urgency of the matter.

### STATEMENT OF FACTS

The private operators whose applications are under consideration are listed in Appendix A. Such applications are to bareboat charter Government-owned, war-built, dry-cargo vessels for use in world-wide trades under time charter by such applicants to the Military Sea Transportation Service of the Department of the Navy.

The representative of Military Sea Transportation Service testified that due to the loss of privately-owned ships plus several highly classified moves which involve trade routes in different areas of the world, Military Sea Transportation Service requests that there be made available from the Government's reserve fleet to private operators Victory-type vessels to be time chartered to the Military Sea Transportation Service for the support of its military forces world-wide; that all vessels taken from the reserve fleet and time chartered to the Military Sea Transportation Service will be used in transporting Government-owned

or controlled cargo and will be utilized in the support of military operations for international security; and that sufficient privately-owned American-flag vessels cannot be obtained. No opposition to the applications was made and testimony was offered showing that no privately-owned American-flag vessels are available.

#### FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the basis of the facts adduced of record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the services considered are required in the public interest;
2. That such services are not adequately served; and
3. That privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such services.

#### RECOMMENDATIONS

The Board recommends that the following restrictions and conditions be included in the charters as it deems them necessary and appropriate to protect the public interest and to protect privately-owned vessels against competition from vessels so chartered:

(a) Provision that the bareboat-chartered vessels be promptly time chartered to Military Sea Transportation Service for transportation of military and other government-controlled cargo.

(b) Provision that such bareboat charters shall be terminated upon termination of such time charters to Military Sea Transportation Service.

The Board further recommends that as suitable privately-owned American-flag tonnage becomes available under reasonable conditions and at reasonable rates, it be substituted when practicable for equivalent Government-owned tonnage under such charter arrangements.

By the order of the Board.

A. J. WILLIAMS,  
*Secretary.*

March 6, 1951.

#### APPENDIX A

Actium Shipping Corp.	Albatross Steamship Co., Inc.
Admanthos Ship Operating Co., Inc.	American Export Lines, Inc.
Agwilines Inc. (New York and Cuba Mail)	American Foreign Steamship Corp.
Alaska Steamship Co.	American-Hawaiian Steamship Co.
	American Mail Line, Ltd.

- American & Overseas Chartering Co.  
 American Pacific Steamship Co.  
 American President Lines, Ltd.  
 American Union Transport, Inc.  
 Atlantic Ocean Transport Corp.  
 Arnold Bernstein Line, Inc.  
 Nick Bez  
 W. R. Blackburn & Co.  
 Blidberg Rothchild Co., Inc.  
 A. H. Bull Steamship Co.  
 A. L. Burbank & Co.  
 Burns Steamship Co.  
 W. R. Chamberlin & Co.  
 Clifton Steamship Corp.  
 Coastwise Line  
 Cosmopolitan Shipping Co., Inc.  
 Cuba Mail Line  
 Dichmann, Wright & Pugh, Inc.  
 Dolphin Steamship Corp.  
 Drytrans, Inc.  
 Eastern Steamship Lines  
 Eastport Steamship Corp.  
 El Dia Steamship Corp.  
 John S. Emery & Co., Inc.  
 Fall River Navigation Co.  
 Federal Motorship Corp.  
 Firth Steamship Corp.  
 Flomarcy Lines, Inc.  
 Flanigan, Loveland, Inc.  
 Fribourg Steamship Co., Inc.  
 Garrett-Williams & Co. Inc.  
 Grace Line Inc.  
 James Griffiths & Sons  
 Gulf Range Steamship Corp.  
 Intercontinental SS Corp.  
 Isbrandtsen Co., Inc.  
 A. Willard Ivers, Inc.  
 W. P. Iverson & Co., Inc.  
 J. Lasry & Sons, Inc.  
 Luckenbach Steamship Co., Inc.  
 Lykes Bros. SS Co.  
 Maine SS Corp.
- Marine Navigation Co., Inc.  
 Marine Transport Lines, Inc.  
 Marine SS Co.  
 Mariner Steamship Co., Inc.  
 Matson Navigation Company  
 Mississippi Shipping Co., Inc.  
 Moore-McCormack Lines, Inc.  
 Wm. H. Muller Shipping Corp.  
 Naess Mejlaender & Co. Inc.  
 Nautilus Shipping Co.  
 Newtex Steamship Corp.  
 North American Shipping & Trading  
 North Atlantic & Gulf Steamship Co.  
 Ocean Freightng & Brokerage Corp.  
 Ocean Tramp Carriers, Inc.  
 Olympic Steamship Co., Inc.  
 Omnium Freightng Corp.  
 Orion Shipping & Trading Co., Inc.  
 Pacific-Atlantic Steamship Co.  
 Pacific Far East Line, Inc.  
 Pacific Transport Lines, Inc.  
 Palmer Shipping Corp.  
 Pittston Marine Corp.  
 Polarus Steamship Co., Inc.  
 Ponchelet Marine Corp.  
 Pope & Talbot, Inc.  
 Prudential Steamship Corp.  
 Wm. J. Rountree Co., Inc.  
 St. Lawrence Navigation Co., Inc.  
 Senior Lines  
 Shepard Steamship Co.  
 South Atlantic Steamship Line, Inc.  
 Standard Fruit & Steamship Corp.  
 States Marine Corp. of Delaware  
 T. J. Stevenson & Co., Inc.  
 Stockard Steamship Corp.  
 Sudden & Christenson, Inc.  
 Sword Line  
 Tankers Co., Inc.  
 Tramer Shipping Co., Inc.  
 Trans Marine Navigation Corp.  
 Union Sulphur & Oil Corp.  
 United States Lines  
 U. S. Navigation Co., Inc.  
 U. S. Petroleum Carriers, Inc.  
 U. S. Waterways Corp.  
 Wessel Duval & Co., Inc.  
 West Coast Trans-Oceanic Steamship  
 Line  
 West India Steamship Co.  
 White Range Steamship Co.  
 Daniel F. Young, Inc.
- Allen Cameron Transportation, Inc.  
 American Steamship Company, Inc.  
 Amerocean Steamship Co., Inc.  
 Blackchester Lines, Inc.  
 Luckenbach Gulf Steamship Company  
 Neptune Shipping, Inc.  
 Shepherd Steamship Lines  
 Southern Seas Steamship Co., Inc.  
 Transportation Inc.

## FEDERAL MARITIME BOARD

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No. M-21

LYKES BROS. STEAMSHIP CO., INC.—APPLICATION TO BAREBOAT CHARTER WAR-BUILT DRY-CARGO VESSELS FOR EMPLOYMENT IN THE GULF/EAST COAST OF UNITED KINGDOM, CONTINENT, AND MEDITERRANEAN SERVICES (TRADE ROUTES NOS. 21 AND 13)

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*William Radner* for applicant.

*Sterling F. Stoudenmire, Jr.*, for Waterman Steamship Corporation.

*John Tilney Carpenter* for States Marine Lines.

*Paul D. Page, Jr.*, Solicitor, and *M. E. Halpern* for the Board.

### FINDINGS AND CERTIFICATION OF THE FEDERAL MARITIME BOARD

This proceeding was instituted under Public Law 591, 81st Congress, upon the application of Lykes Bros. Steamship Co., Inc., for the bareboat charter of five Government-owned, war-built, dry-cargo vessels for use interchangeably in the company's subsidized Gulf/East Coast of United Kingdom and Continent service (Trade Route 21) and Gulf/Mediterranean service (Trade Route 13).

Hearings were held before an examiner on February 27, 1951, who has recommended that "The Board should find and so certify to the Secretary of Commerce that the Gulf/East Coast of United Kingdom, Continent, and Mediterranean services in which Lykes Bros. Steamship Co., Inc., proposes to bareboat charter five Government-owned, war-built, dry-cargo vessels is in the public interest, that such services would not be adequately served without the use therein of such vessels, and that privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such services." Exceptions were filed to the examiner's decision by Waterman Steamship Corporation. Our conclusions agree with the examiner's recommended decision, which we adopt and make a part of this decision.

Our comments relate to Waterman's exceptions and the request of counsel for the Board for the inclusion of certain restrictive clauses in the Board's decision. Waterman Steamship Corporation, which operates vessels in the subject trade areas of the applicant on an unsub-

sidized basis, argues that the applicant has failed to meet the burden of proof required under Public Law 591 to establish that the vessels proposed to be chartered are necessary to meet a specific emergency, pointing out that in their opinion it was the intention of Congress under Public Law 591 that chartering of Government-owned vessels should only be approved in specific emergencies. The law, however, contains no such limitation.

Insofar as the burden of proof is concerned, the law is clear that the applicant must affirmatively show that the service in which the ships are desired to be chartered is in the public interest; that such service is not otherwise adequately served; and that privately-owned vessels are not available on reasonable conditions and at reasonable rates for use in such service. The applicant has met the burden of proof with respect to these requirements of the statute.

The record conclusively shows that the present volume of traffic out of the Gulf is so great that not only the applicant but all of the other carriers combined are unable to move it, and that, as late as January 1, 1951, thousands of tons of cargo have been refused because of the lack of vessel space. Much of this cargo is the result of the increased Government aid furnished to countries served by applicant's trade routes 21 and 13.

In its second exception, Waterman argues that if the application is approved the vessels should be restricted to a particular trade route or service, pointing out that the word "service" as used in Public Law 591 does not permit interchangeability from one trade route to the other. The applicant maintains that no such restriction should be imposed and that the company be permitted to operate these vessels interchangeably according to the requirements of each service. The examiner has stated that in view of the short time contemplated for use of the vessels no such restriction would appear necessary. The company now has authority under the terms of its operating-subsidy agreement with the Board to use its owned subsidized vessels interchangeably in these two trade routes. In view of the limited period contemplated for charter operation, we see no reason to place any such restriction on these vessels.

In its next exception, Waterman points out that the cargo required to be moved on the trade routes involved could or should be moved by vessels operated by the Government through General Agents rather than by charter of Government-owned vessels to a subsidized operator. This exception apparently is not predicated upon any requirement of the statute but simply involves a policy matter within the discretion of the Maritime Administrator. We do not therefore pass upon this point.

Counsel for the Board has suggested that certain limitations might  
3 F. M. B.

be imposed to prevent chartered vessels from competing with the company's subsidized vessels. This point is well taken, but, since the company's subsidized operation is controlled by the terms of its operating-differential subsidy agreement, the Maritime Administrator under Reorganization Plan 21 of 1950 is fully clothed with authority to impose such restrictions as may be necessary under the subsidy agreement, as had been done in other similar cases.

#### FINDINGS AND CERTIFICATION

On the basis of the facts adduced of record, the Board finds and hereby certifies to the Maritime Administrator (1) that the services considered are required in the public interest; (2) that such services will not be adequately served without five additional vessels; and (3) that privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

#### RECOMMENDATION

The Board recommends that adequate provision be made to protect the interest of the Government under its operating-differential subsidy contracts with applicant.

By the Board.

(Sgd.) R. L. McDONALD,  
*Assistant Secretary.*

MARCH 19, 1951.

3 F. M. B.



## FEDERAL MARITIME BOARD

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No. M-21

LYKES BROS. STEAMSHIP CO., INC.—APPLICATION TO BAREBOAT CHARTER WAR-BUILT DRY-CARGO VESSELS FOR EMPLOYMENT IN THE GULF/EAST COAST OF UNITED KINGDOM, CONTINENT, AND MEDITERRANEAN SERVICES (TRADE ROUTES NOS. 21 AND 13)

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The Board should find and so certify to the Secretary of Commerce that the Gulf/East Coast of United Kingdom, Continent, and Mediterranean services in which Lykes Bros. Steamship Co., Inc., proposes to bareboat charter five Government-owned, war-built, dry-cargo vessels is in the public interest, that such services would not be adequately served without the use therein of such vessels, and that privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such services.

*William Radner* for applicant.

*Sterling F. Stoudenmire, Jr.*, for Waterman Steamship Corporation.

*John Tilney Carpenter* for States Marine Lines.

*Paul D. Page, Jr.*, Solicitor, and *M. E. Halpern* for the Board.

### RECOMMENDED DECISION OF ROBERT FURNESS, EXAMINER

This is a proceeding under Public Law 591, 81st Congress, on an application of Lykes Bros. Steamship Co., Inc., to bareboat charter five Government-owned, war-built, dry-cargo vessels for employment in its subsidized Gulf/East Coast of United Kingdom, Continent, and Mediterranean services on Trade Routes Nos. 21 and 13 respectively. The vessels are requested to accommodate cargo in excess of the present berth capacity of applicant's owned vessels. It estimates that the present backlog of cargo offering on the Gulf of Mexico will be relieved within about 120 days if the application is approved.

Hearing on the application was had February 27, 1951. The only testimony of record is that of the vice-president in charge of traffic of Lykes Bros. Counsel for Waterman Steamship Corporation, States Marine Lines, and the Board participated in examination of the witness.

Lykes now owns 54 vessels and has been operating on these routes for many years. The routes have been determined to be essential

under section 211 of the Merchant Marine Act, 1936, and, as pointed out by applicant's witness, form important arteries for the movement of cotton, foodstuff and other commodities originating in southern and central areas of the United States. Recently the volume of movement has increased due to expanded Government aid to such countries as Greece, Italy, western Germany, France, and Yugoslavia. The testimony is uncontradicted that at present the volume is so great that not only Lykes but all of the other carriers combined are unable to move it. Figures are produced showing that thousands of tons of cargo have been refused since January 1, 1951, because of lack of vessel space. The testimony is also convincing that Lykes has no other vessels available and none can be secured from private sources at any rate. The factual data presented in support of the testimony above is not challenged.

Waterman operates unsubsidized services in these trade areas and opposes the application. Its counsel argues that no special emergency has been proven by Lykes and urges that if the application is approved, the vessels should be restricted to a particular route rather than allow them to be shifted at will from one route to another.

Counsel for the Board suggests that certain limitations might be imposed to prevent the chartered vessels from competing with subsidized vessels.

In view of the short time contemplated for use of the vessels, no such restrictions would appear necessary.

#### CONCLUSIONS AND RECOMMENDATIONS

The Board should find and so certify to the Secretary of Commerce that the Gulf/East Coast of United Kingdom, Continent, and Mediterranean services in which Lykes Bros. Steamship Co., Inc., proposes to bareboat charter five Government-owned, war-built, dry-cargo vessels is in the public interest, that such services would not be adequately served without the use therein of such vessels, and that privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such services.

3 F. M. B.

# FEDERAL MARITIME BOARD

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No. M-24

COASTWISE LINE—APPLICATION TO BAREBOAT CHARTER WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE PACIFIC COAST-ALASKA SERVICE

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## REPORT OF THE BOARD

This is an informal proceeding instituted by the Board pursuant to Public Law 591, 81st Congress, which requires the Board to hold public hearings on applications for bareboat charters of Government-owned, war-built, dry-cargo vessels, and to make certain findings with appropriate certification thereof to the Secretary of Commerce. In accordance with such law, notice of this hearing was published in the Federal Register of March 13, 1951. The usual notice of 15 days was not given because of the urgency of the matter.

## STATEMENT OF FACTS

Applicant requests bareboat charter of two Government-owned, war-built, dry-cargo Liberty-type vessels for use in its combined Pacific coastwise, Pacific coast/Alaska, Pacific coast /British Columbia and intra-Alaskan service. Its witness testified that the two vessels applied for are urgently required to supplement its regular berth service now maintained by two privately-owned and three privately-owned chartered vessels, and are required to accommodate cargo being offered for movement beginning approximately April 1, 1951, which cannot be handled by its existing vessels, and that such cargo as moves in the Pacific coast/Alaska and intra-Alaskan segments of their combined service is principally for use by the military or by contractors in connection with the national defense program.

Applicant requests that one vessel be made available to it in time to commence loading April 1, 1951, and the other in time to commence loading approximately April 15, 1951. Applicant states that it is unable to charter privately-owned American-flag vessels on reasonable conditions and at reasonable rates for use in this service, and represents that the service is required in the public interest and is not adequately served.

Applicant requests charter for indefinite period subject to termination by either party on such notice as may be agreed and subject to annual review by the Board.

A representative of the Interior Department appeared in support of the application and testified that augmentation of applicant's Pacific coast/Alaska and intra-Alaska service is needed for the national defense and the economy of Alaska, and that construction and other materials will move in this trade in greater quantities this year than ever before.

A letter dated March 15, 1951, was received in evidence from the Corps of Engineers, U. S. Army (Office of the Division Engineer, North Pacific Division, Portland, Oregon) addressed to applicant advising that the Army Engineers have a large scale construction program for the Army Air Force in Alaska in 1951 and 1952 many times greater than it had in 1949 and 1950, that the construction material is to be shipped by the contractors from Pacific coast domestic ports, and that in addition there is a large military procurement of lumber in southeast Alaska for delivery to southwest Alaska.

A traffic representative of the Crown Zellerbach Company, a principal manufacturer and distributor of paper products on the Pacific coast, appeared in support of the application and testified that the shortage of box cars is seriously affecting their production capacity and that there is an urgent need for additional coastwise transportation facility. This witness testified that in 1950 Zellerbach shipped from Oregon to California alone over 48,000 tons via vessels of the applicant and that if additional vessels were provided they could more than double this movement. They anticipate additional vessels would also enable them to increase the movement from their Port Townsend, Washington, plant to California, which has been averaging around 30,000 tons per year.

Alaska Steamship Company, a competitor of applicant in the Alaska trade, serves Alaska only from Puget Sound ports and, as does the applicant, maintains an intra-Alaska service. Alaska Steamship Company opposed the application on the ground that there had been no showing of inadequacy of service since Alaska Steamship Company had not had to refuse any dry-cargo offerings in the competitive services; and it would be able to accommodate present and anticipated shipping requirements. Alaska Steamship now operates nine privately-owned and nine vessels bareboat chartered from the Government under Public Law 591.

Counsel for the Board pointed out that in measuring adequacy or inadequacy of service, factors in addition to the spot condition of cargo offerings or the space utilization of vessels on particular voyages should be considered in connection with a regular service. He urged that

proper emphasis should be given to whether or not there is need for vessels to insure greater regularity of sailings, reasonable continuity, promptness, and other factors which make a berth service valuable to shippers.

FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the basis of the facts adduced of record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service considered is required in the public interest;
2. That such service is not adequately served; and
3. That privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

By order of the Board.

(Sgd.) R. L. McDONALD,  
*Assistant Secretary.*

MARCH 26, 1951.  
3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-27

AMERICAN PRESIDENT LINES, LTD., AND PACIFIC FAR EAST LINE, INC.—  
APPLICATIONS TO BAREBOAT CHARTER WAR-BUILT DRY-CARGO REFRIG-  
ERATED VESSELS FOR USE IN THE TRANSPACIFIC TRADE

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### FINDINGS, CERTIFICATION, AND RECOMMENDATION OF THE FEDERAL MARITIME BOARD TO THE SECRETARY OF COMMERCE

This is an informal proceeding instituted by the Board pursuant to Public Law 591, 81st Congress, which requires the Board to hold public hearings on applications for bareboat charter of Government-owned, war-built, dry-cargo vessels, and to make certain findings with appropriate certification thereof and recommendations thereon to the Secretary of Commerce. In accordance with such law, notice of this hearing was published in the Federal Register of March 27, 1951, and hearing held before an examiner on April 2, 1951. The usual notice of 15 days was not given because of the urgency of the matter.

The examiner's decision was handed down on April 4, 1951, and, by stipulation of the parties, the time for filing exceptions expired April 5, 1951, at the close of business. No exceptions were filed,<sup>1</sup> and a memorandum in support of the recommended decision of the examiner was filed by one of the applicants, American President Lines, Ltd.

The examiner has recommended that both applicants have qualified under the provisions of Public Law 591, 81st Congress, and that the Board should make the required statutory findings to the Secretary of Commerce. We agree with the conclusions of the examiner and adopt his findings and conclusions as our own.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATION

On the basis of the facts adduced of record, the Board finds and hereby certifies to the Secretary of Commerce:

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<sup>1</sup> On April 6, 1951 (after time for filing exceptions had expired), a letter was filed by Pacific Transport Lines, Inc., requesting that certain restrictions be included in the charter.

1. That the service under consideration is required in the public interest;
2. That such service is not adequately served; and
3. That privately-owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that adequate provision be made to protect the interest of the Government under its operating-differential subsidy contracts with the applicant, American President Lines, Ltd.

Board Member Williams, being absent from the city, took no part in this decision.

By the board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

APRIL 9, 1951.

3 F. M. B.

## FEDERAL MARITIME BOARD

No. M-27

AMERICAN PRESIDENT LINES, LTD., AND PACIFIC FAR EAST LINE, INC.—  
APPLICATIONS TO BAREBOAT CHARTER WAR-BUILT DRY-CARGO REFRIG-  
ERATED VESSELS FOR USE IN THE TRANSPACIFIC TRADE

The Board should find and so certify to the Secretary of Commerce that the transpacific service in which American President Lines, Ltd., and Pacific Far East Line, Inc., propose to bareboat charter two Government-owned, war-built, dry-cargo refrigerated vessels is in the public interest, that such service would not be adequately served without the use therein of such vessels, and that privately-owned American-flag refrigerated vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

*Noah M. Brinson* and *A. B. Luckey, Jr.*, for American President Lines, Ltd.

*William Radner* for Pacific Far East Line, Inc.

*L. W. Hartman* for American Mail Line.

*Hans S. Ericksen* for Pacific Transport Lines, Inc.

*Paul D. Page, Jr.*, and *Max E. Halpern* for the Board.

### RECOMMENDED DECISION OF A. L. JORDAN, EXAMINER

Hearing on these applications was held April 2, 1951, in accordance with Public Law 591, 81st Congress, pursuant to notice in the Federal Register of March 27, 1951.

The questions to be determined are whether applicants have shown that the transpacific service for which the vessels here involved are proposed to be chartered is required in the public interest, whether such service would be adequately served without the use therein of such vessels, and whether privately-owned American-flag vessels are available for charter on reasonable conditions and at reasonable rates for use in such service.

The applications under consideration are for permission to charter the C-2 type refrigerated vessels *Sea Serpent* and the *Lightning*, laid up on the West coast, and stated to be the only two reefer vessels presently available. Both applicants request allocation of these vessels. Each applicant opposes the allocation of both vessels to the other ap-



plicant, and each takes the position that it is entitled to and will accept a minimum of one of such vessels.

PACIFIC FAR EAST LINE, INC.

By application dated March 16, 1951, this applicant states that it now operates six reefer vessels under charter from the Government in the transpacific trade; that it is advised by the Military Sea Transportation Service that there is urgent need for additional reefer capacity in this trade; that the proposed operation of the two vessels here involved will necessitate the handling of cargo from California ports and Seattle, to be discharged at transpacific destinations designated by the military authorities, and at Adak, Alaska; that scheduled operations of these vessels would be synchronized with applicant's existing fleet of six reefer vessels satisfactory to MSTTS and the Maritime Administration; and that in the event requirements for reefer vessels should be reduced in the future, these vessels should be returned to the reserve fleet promptly in order to avoid undue interference with the basic six-vessel operation of applicant's present reefer fleet.

The two reefer vessels here involved are generally the same type as the six reefers now operated in the transpacific service, that is, basically the C-2 type freighter design, modified for refrigerated cargo installations. They have a capacity of approximately 325,000 cubic feet each, which is about 8,000 measurement tons of 40 cubic feet. Allowing for broken stowage, this works out to approximately 6,500 stowed tons per vessel.

Applicant has been operating the six reefer vessels referred to in the transpacific trade since 1946. This service operates primarily out of California ports. The vessels do not call at Portland, Oregon, but have called at Puget Sound ports at the request of military authorities to load military cargo both to Alaska and to Oriental destinations. Applicant does not load commercial cargo, either dry or reefer, to the Orient out of Puget Sound, nor does it discharge such cargo from the Orient into Puget Sound. Applicant's witness states that there is no intention to depart from this practice unless it appears that the existing lines find themselves in a position where they are unable to handle the movement of traffic, and the movement is cleared by applicant with the existing lines. This, applicant assures, will continue to be its policy with one or both of the ships here involved if the application is granted.

The destination points served with applicant's six reefer vessels are Adak, Alaska, Japan, Okinawa, Guam, and Hong Kong. The two vessels here applied for are to be integrated into this service. Military cargo receives preference, and non-military cargo space is made available only after all military requirements have been provided for. Ap-  
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plicant's present fleet of six reefer vessels are making about three sailings per month, and providing about 1,000,000 cubic feet of reefer space per month. Without this capacity there would be a serious inadequacy of reefer space in the areas served. Approximately 90 per cent of the cargo handled is military and less than 10 per cent commercial. The vessels sail substantially full, and there is a growing need by the military for additional refrigerated space. The service is primarily an out-bound one, but small amounts of reefer and non-reefer cargo have been secured homebound to California ports.

With applicant's presently operated six reefers in this service its frequency spread of sailings is eight to nine days, and with two additional reefers the spread would be six to seven days. In connection with integrating additional vessels it would be easier, the witness states for one company to synchronize the scheduling, but he sees no difficulty if it is handled by two companies.

Applicant's witness further testified that he has investigated the availability of privately-owned American-flag refrigerated cargo vessels and finds none suitable for transpacific operation other than the ships of the United Fruit fleet, which obviously are not available for charter for such operation; and there is not at this time, he states, privately-owned reefer tonnage in the transpacific trade adequate to handle the current additional military requirements.

With respect to charter period of time, applicant requests charter for the duration of military requirements.

#### AMERICAN PRESIDENT LINES

By application dated March 17, 1951, this applicant states that it is informed by the MSTS that two vessels of the type here involved are needed as promptly as possible for use in the transpacific service; and that predicated upon this need applicant requests at least one of the two C-2 type refrigerated vessels named.

This applicant's witness testified that his company is substantially in agreement with the testimony of Pacific Far East Line. His company believes it is entitled to allocation of one of the reefer-type vessels involved and offers no objection to a similar allocation to Pacific Far East Line, but would strongly object to the allocation of both vessels to Pacific Far East Line. American President Lines' application for one or both of the vessels for employment in the Pacific is based primarily on military needs for additional refrigerated space to supply American forces in Alaska and the Far East. Allocation of at least one of the vessels will, it is stated, afford this applicant increased reefer space to meet its obligations to MSTS under its existing reefer-space contract.

Both applicants, the witness states, pursuant to understanding with MSTs, have formulated plans and schedules for the complete integration of the two additional vessels with the six now under bareboat charter to Pacific Far East Line, and realize that they must operate as a unit under the control of MSTs.

With respect to calling the additional vessels at Pacific Northwest ports (Oregon and Washington) to lift or discharge commercial reefer and dry cargo, the position of American President Lines is the same as that hereinbefore stated by Pacific Far East Line.

The witness also states that there are no privately-owned American-flag refrigerated vessels available for charter in the service under consideration.

A representative of Military Sea Transportation Service testified in support of releasing two reefer vessels from the Maritime laid up fleet to commercial operators for implementing the present berth schedule of commercial reefers operating from the West coast area to the Far East. He further testified that in order to meet the needs of the armed forces both vessels must have the option to receive cargo at San Francisco, Seattle, or both; that due to the Korean requirements, the present six reefer vessels in this trade will be inadequate to support the Army's increased reefer need; and that already for the month of April a full reefer cargo remains unbooked, and it is desirable that the two vessels involved be ready for cargo April 10 and April 20, 1951, respectively.

This witness also testified that he is familiar with the fact that the American Mail Line maintains partial reefer service on five of its nine vessels that serve Yokohama, among other destinations, and he states that the use in the Northwest of the two vessels applied for, if released, is not to eliminate utilization by MSTs of the reefer space American Mail Line operates or has available. The witness further testified that it is of no interest to MSTs whether one or more of the vessels applied for is assigned to either or both applicants, and that the only interest of MSTs in this respect is that the schedule must be integrated with the other reefers, synchronized as a unit, which both applicants assure. MSTs desires the ships for military cargo out of Seattle but has no objection to their receiving commercial cargo out of Los Angeles and San Francisco on any occasion when military cargo would be insufficient to fill the ship.

Pacific Transport Lines, Inc., through its Washington, D. C., representative, takes the position that while it in no way opposes these applications for military requirements, it feels that to the extent reefer service carries commercial dry cargo out of California ports the charters should contain suitable restrictions to protect privately-owned tonnage operating in the same trade routes. The representative of Pacific

Transport did not testify or offer any evidence on his stated position, or outline any type of restriction.

American Mail Line, through counsel, states that it has no objection to the applications in view of the assured policy (reflected in this report) of both applicants limiting utilization of chartered reefer vessels to military reefer cargo out of the Northwest.

#### CONCLUSIONS AND RECOMMENDATIONS

The two C-2 type refrigerated vessels *Sea Serpent* and *Lightning* applied for are requested for use primarily to provide military requirements in the Far East. The applications are predicated upon and supported by military necessity. No testimony was adduced at the hearing in opposition to granting the applications. Testimony was offered showing that no privately-owned American-flag reefer vessels are available for charter by private operators. Applicants have met the statutory requirements of Public Law 591, 81st Congress.

The Board should find and so certify to the Secretary of Commerce that the transpacific service in which American President Lines, Ltd., and Pacific Far East Line, Inc., propose to bareboat charter two Government-owned, war-built, dry-cargo refrigerated vessels is in the public interest, that such service would not be adequately served without the use therein of such vessels, and that privately-owned American-flag refrigerated vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

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## FEDERAL MARITIME BOARD

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No. M-16

PACIFIC-ATLANTIC STEAMSHIP CO.—APPLICATION TO BAREBOAT CHARTER WAR-BUILT DRY-CARGO VESSELS FOR EMPLOYMENT IN THE INTERCOASTAL TRADE

No. M-17

POPE & TALBOT, INC.—APPLICATION TO BAREBOAT CHARTER WAR-BUILT DRY-CARGO VESSELS FOR EMPLOYMENT IN THE INTERCOASTAL TRADE

No. M-28

LUCKENBACH STEAMSHIP COMPANY, INC.—APPLICATION TO BAREBOAT CHARTER WAR-BUILT DRY-CARGO VESSELS FOR EMPLOYMENT IN THE INTERCOASTAL TRADE

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### REPORT OF THE BOARD

This proceeding was instituted pursuant to Public Law 591, 81st Congress, upon applications of Pacific-Atlantic Steamship Company and Pope & Talbot, Inc., to bareboat charter Government-owned, war-built, dry-cargo vessels for use in the intercoastal trade.

Luckenbach Steamship Company, Inc., by telegram of March 22, 1951, made certain objections and observations concerning these applications and applied for a charter of an unnamed number of vessels in proportion to its owned vessels.

The examiner served his recommended decision on April 11, 1951, and no exceptions were filed within the two-day period provided for in the notices of the hearing published in the Federal Register on March 27, 1951, and March 30, 1951. Pacific-Atlantic filed a memorandum in support of the examiner's recommended decision.

The examiner has recommended that the statutory findings be made to the Secretary of Commerce with respect to the intercoastal service involving Pacific-Atlantic Steamship Company and Pope & Talbot,  
3 F. M. B.

Inc., and further recommends that the record be held open for such further hearings or consideration as may be deemed necessary by any party or by the Board in the light of conditions existing at the time the voyages are about to be terminated.

By agreement between counsel the applications of Pacific-Atlantic Steamship Company and Pope & Talbot, Inc., were limited to one and a half voyages for each of the three vessels operated by these two applicants, and the applicants agreeing that delivery of such vessels shall be made on the Atlantic coast and all expenses incident thereto shall be absorbed by such applicants. After agreement had been reached by the parties limiting the charters to one and one-half voyages for each vessel, Luckenbach thereupon agreed that consideration of its application and objections should be deferred.

The facts adduced in this record and the record in other proceedings firmly establishes that the intercoastal service is in the public interest. This record is equally clear that such service would not be adequately served without the continued use of the three vessels each now being operated by applicants.

Testimony offered by witnesses of the applicants, Pacific-Atlantic Steamship Company and Pope & Talbot, Inc., clearly indicates that suitable privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

#### FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the basis of the record in this proceeding, the Board finds and hereby certifies to the Secretary of Commerce;

1. That the intercoastal service is required in the public interest;
2. That such service, beginning after April 15, 1951, will not be adequately served without the use therein of vessels of the type applied for; and
3. That privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

It is recommended that the charters be limited to one and one-half voyages for each vessel applied for, such voyages to terminate on the Atlantic coast, with a requirement that the charterers shall assume all expenses incident thereto and that the charter hire payable thereunder shall continue to be not less than 15% of the statutory sales price of the vessels chartered, as provided by section 5(b) of the Ship Sales Act of 1946, as amended.

The record will be held open for such further hearing or consideration

as may be deemed necessary by any party or by the Board in the light of conditions existing at or about the time the voyages are to be terminated.

By order of the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

APRIL 17, 1951.  
3 F. M. B.

# FEDERAL MARITIME BOARD

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No. M-25

## ISTHMIAN STEAMSHIP COMPANY—APPLICATION TO BAREBOAT CHARTER WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE GULF INTERCOASTAL TRADE

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### FINDINGS, CERTIFICATION, AND RECOMMENDATION OF THE FEDERAL MARITIME BOARD TO THE SECRETARY OF COMMERCE

This proceeding was instituted by order of the Board pursuant to Public Law 591, 81st Congress, for the purpose of considering the application of Isthmian Steamship Company for the bareboat charter of Government-owned, war-built, dry-cargo vessels in the Gulf intercoastal trade.

The examiner, on April 13, 1951, filed his decision recommending that the Board find and certify to the Secretary of Commerce that the applicant has met the statutory requirements of Public Law 591.

Time for filing exceptions expired on April 20, 1951, and no exceptions were filed.

We agree with the recommendations of the examiner and adopt his findings and recommendation as our own.

The Isthmian application was originally for the charter of two AP-2 Victory-type vessels at charter hire of 5 percent of the statutory sales price of the vessel, but during the hearing before the examiner the applicant offered an amendment to the application to accept the vessels on the same terms and conditions as were granted to Luckenbach Gulf Steamship Company pursuant to the Board's decision in Docket M-14, decided March 14, 1951, covering charter of vessels in the same trade. In that decision the Board made all of the required findings under Public Law 591, including a finding "that the trade will not be adequately served without the four vessels now serving it, or their equivalent." Pursuant to the Board's decision in that case, the Maritime Administrator authorized a charter to Luckenbach Gulf Steamship Company of two AP-2 Victory-type vessels, there being in service at that time two Luckenbach privately-owned vessels subsequently withdrawn and placed in the company's North Atlantic intercoastal service.



Isthmian proposes a synchronization of its operation with Luckenbach's operation, and, while the details of the proposed coordinated sailings and ports have not been worked out, a coverage of all principal ports on the Pacific coast and ports in the Gulf of Mexico is contemplated.

Isthmian is a certificated common carrier in the Gulf intercoastal trade and has operated before and since World War II in the Gulf intercoastal trade with its own and chartered vessels. It discontinued operations in that trade about August 23, 1950. Its owned fleet is principally engaged in offshore operations.

There has been no substantial change in the Gulf intercoastal trade since our decision in Docket M-14. The record in this case fully substantiates this fact. Much of the testimony adduced in Docket M-14 was by stipulation incorporated in the record in this case.

#### FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the record adduced in this case, the Board accordingly finds and hereby certifies to the Secretary of Commerce that the Gulf intercoastal service is in the public interest; that such service will not be adequately served without the use therein of two additional Government-owned, war-built, dry-cargo vessels; and that suitable privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

#### RECOMMENDATION

The Board recommends that the basic charter rate be fixed at 15 percent of the statutory sales price of the vessel or of the floor price, whichever is higher, of which 8½ percent is payable unconditionally and the remainder of 6½ percent payable if earned, under the same general conditions as now prevail.

By order of the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

APRIL 23, 1951.  
3 F. M. B.

# FEDERAL MARITIME BOARD

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No. M-25

## ISTHMIAN STEAMSHIP COMPANY—APPLICATION TO BAREBOAT CHARTER WAR-BUILT DRY-CARGO VESSELS FOR USE IN THE GULF INTERCOASTAL TRADE

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The Board should find and so certify to the Secretary of Commerce that the Gulf intercoastal service in which the Isthmian Steamship Company proposes to bareboat charter two Government-owned, war-built, dry-cargo AP-2 Victory-type vessels is in the public interest, that such service would not be adequately served without the use therein of such vessels, and that privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

*Wendell W. Lang* and *Thomas F. Lynch* for Isthmian Steamship Company.

*William Radner* for Luckenbach Gulf Steamship Company.

*Willis R. Deming* for American President Lines, Ltd.

*Paul D. Page, Jr.*, and *Max E. Halpern* for the Board.

### RECOMMENDED DECISION OF A. L. JORDAN, EXAMINER

Hearing on this application was held April 5, 1951, in accordance with Public Law 591, 81st Congress, pursuant to notices in the Federal Register of March 13 and 29, 1951.

The application under consideration is for permission to charter two AP-2 Victory-type vessels for operation in the Gulf intercoastal service at 5% charter hire, but applicant is willing to accept such vessels under the same terms and conditions as two AP-2 Victories were chartered to Luckenbach pursuant to the Board's decision of March 1, 1951, in Docket No. M-14.

Isthmian desires the two vessels applied for at the earliest practicable date in order to synchronize the use of them with the two Victories now in operation in this service by Luckenbach. Delivery is desired at a Gulf port, preferably New Orleans or Mobile.

Charter for indefinite period is requested, preferably not less than a year unless the vessels should be required for the military or other urgent national use.

Before and since World War II Isthmian has operated both its own and chartered vessels in this service. It has been in the trade since 1929. In 1937 it joined the Gulf Intercoastal Conference, and in 1939 undertook a staggering of its service with Luckenbach which continued until 1941 when, along with others, it was ordered to discontinue due to the war. Isthmian returned after the war, again operating jointly with Luckenbach, and remained until termination of general agency with the Maritime Commission. During 1948 and a part of 1949 and 1950 it operated some of its own, some bareboat, and some time chartered vessels in this service. After outbreak of the Korean situation it became impossible, it is stated, to obtain privately-owned time charters at acceptable rates for the Gulf service.

Isthmian and Luckenbach are the only certificated common carriers in the Gulf intercoastal trade. Both normally serve the principal Pacific coast and Gulf ports.

Isthmian's witness testifies that a 60-day turnaround is planned which, synchronized with Luckenbach's operation, would mean two sailings monthly in each direction. He states that while details of the proposed synchronized sailings and ports have not been worked out, they contemplate coverage of the whole range of principal ports, such as Seattle (Puget Sound), Portland (Columbia River), San Francisco (East Bay), Los Angeles (Long Beach), Houston, New Orleans, Mobile, and Tampa. He estimates that on this basis the four vessels would load to about 65% of capacity.

Isthmian owns four C-3 type and four pre-war type vessels. These are engaged in off-shore operations, some of which are supplemented with time-chartered ships. At present the company does not operate any vessel in the Gulf intercoastal service, the last sailing having been August 23, 1950. Since then, applicant states it has been unable to obtain suitable vessels at acceptable rates for this service. However, it maintains offices or agencies and docking facilities in the ports served. It is also a party to tariffs which provide for joint ocean, barge, motor, and rail carrier rates showing interior areas served through the Gulf from Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Missouri, Mississippi, Minnesota, Ohio, Oklahoma, Tennessee, Texas, and Wisconsin. The commodities carried in the trade are steel, canned goods, petroleum products, agricultural products, and general cargo.

A summary of Isthmian's Gulf intercoastal operating and financial results for the years 1940 and 1947 through 1950 are shown in Appendix A. This shows a loss of \$1,669,846 for the period covered. Expenses, the witness states, have run about 15% ahead of revenue, due principally to increased labor charges. Overhead is about 8% of gross  
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revenue. Freight rates, it is stated, were increased about 2% effective April 7, 1951. Freight rates are maintained in close relationship to rail rates, the latter being the ceiling. On the basis of a 60-day turnaround, sailings as to ports coordinated with Luckenbach, the operation would result, it is stated, in a substantial loss, roughly \$30,000 a voyage at a charter hire of 8½%. Notwithstanding such loss applicant states that it is willing to make a further effort to rehabilitate the service.

Applicant's witness states that four Victory-type vessels are required to adequately serve the Gulf intercoastal trade; that only two such vessels are in it now; that Luckenbach's withdrawal of two of the four it had has resulted in an embargo of the entire west Gulf-Texas and Pacific Northwest ports, greatly increasing the need for additional tonnage.

Isthmian's witness further testifies that he has investigated the charter market and no privately-owned Victory-type vessel is available; that the time charter hire on such or comparable vessels would not be less than \$70,000 a month. This, he states, is equivalent to about 40% bareboat, which the Gulf intercoastal service could not stand.

Limited to the questions of public interest and adequacy of service, it was stipulated into this record that certain witnesses who testified in Docket No. M-14 (Luckenbach Gulf intercoastal application) would, if called, give the same testimony in this proceeding. The witnesses were representatives of the Defense Transport Administration, the Secretary of Agriculture, and several shippers. The substance of their testimony is that reduction in steamship capacity would injure the national defense effort, and that thousands of shippers need and rely upon the service and would be greatly disadvantaged without it.

Counsel for the American President Lines, Ltd., participated in the hearing but took no position in support or opposition to the application.

Luckenbach Gulf Steamship Company states that it has no objection to the application in view of Isthmian's stated plan to properly synchronize its operation with the operation of the two vessels chartered by Luckenbach pursuant to the Board's findings of March 1, 1951, in Docket No. M-14.

The Board's counsel offered for consideration a communication from Crown-Zellerbach Corporation. By agreement of all counsel, it was received in the record with the understanding that it shall not be considered as evidence of any facts, but merely as a statement of the party sending it and for all practical purposes the equivalent of statement of counsel. The communication urges approval of Isthmian's application.

## CONCLUSIONS AND RECOMMENDATIONS

There are two AP-2 Victory-type vessels presently operated in the Gulf intercoastal trade. Four such or comparable vessels are required in order to provide adequate service. No testimony was adduced at the hearing in opposition to granting this application. Testimony was offered showing that no privately-owned American-flag Victory-type vessels are available for charter by private operators. Applicant has met the statutory requirements of Public Law 591, 81st Congress.

The Board should find and so certify to the Secretary of Commerce that the Gulf intercoastal service in which Isthmian Steamship Company proposes to bareboat charter two Government-owned, war-built, dry-cargo AP-2 Victory-type vessels is in the public interest, that such service would not be adequately served without the use therein of such vessels, and that privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

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APPENDIX A  
Isthmian's Intercoastal Operations (Gulf Service)

Year	Number of voyages <sup>1</sup>	Net tons	Average rate per ton of revenue	Average cost per ton of cargo	Charter hire	Gross revenue	Expenses before overhead	Net result before overhead <sup>2</sup>
1940	31	257,096	\$10.19	\$11.16	\$867,871	\$2,653,561	\$2,778,937	— <sup>3</sup> \$125,376
1947	17	109,709	13.65	23.72	99,474	1,495,375	2,089,499	—565,508
1948	12	93,789	15.51	24.03	111,730	1,489,356	2,064,703	—575,347
1949	10	78,585	17.23	20.59	64,415	1,303,400	1,481,708	—178,218
1950	7	13,437	20.16	37.70	197,246	231,097	456,494	—225,397
Totals	77	552,596	15.35	23.25	1,340,726	7,172,879	\$8,871,341	—1,699,846

<sup>1</sup> Westbound, eastbound, round trip, not here separated.

<sup>2</sup> Vessels owned, chartered, G.A.A., not here separated.

<sup>3</sup> — Represents a loss.

## FEDERAL MARITIME BOARD

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No. M-26

PACIFIC FAR EAST LINE, INC.—APPLICATION TO BAREBOAT CHARTER WAR-BUILT DRY-CARGO VESSELS FOR USE BETWEEN PACIFIC COAST PORTS OF THE UNITED STATES AND PORTS IN THE MEDITERRANEAN AREA.

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*William Radner* for applicant.

*John E. Andrews* for States Marine Corporation.

*Paul D. Page, Jr.*, and *Max E. Halpern* for the Board.

### REPORT OF THE BOARD

This proceeding was instituted by order of the Board (Federal Register March 27, 1951) pursuant to Public Law 591, 81st Congress, for the purpose of considering the application of Pacific Far East Line, Inc., to bareboat charter four Victory- or Liberty-type vessels for operation in its service between Pacific coast ports of the United States and ports in the Mediterranean area, including, without limitation, ports in Italy, Greece, Turkey, Yugoslavia, Israel, and North Africa. The examiner's decision, served April 12, 1951, recommends that the Board make the required findings under Public Law 591. Exceptions were filed to the recommended decision by States Marine Corporation of Delaware. We accept and adopt the statutory findings of the examiner.

Pacific Far East Line, Inc., has operated a berth service on the route covered by the application for the period of more than a year and has attempted to provide monthly sailings, although according to testimony offered, such a schedule has not been met in recent months for the reason that privately-owned tonnage has not been available for charter at reasonable rates. This service is now being operated by applicant primarily with privately-chartered vessels although one of the applicant's own vessels, the *China Bear*, is scheduled to move in April 1951. The company hopes to replace this sailing of the *China Bear* with a vessel to be chartered from the Government pursuant to this application so as to permit placing the *China Bear* back in the applicant's trans-pacific service. The applicant owns eight C-2- and Victory-type vessels

and charters from private sources about twelve C-2, C-3-, Victory-, and Liberty-type vessels. It also charters about twelve vessels from the Government, of which seven are reefers and five are Victories rechartered on a per diem basis to Military Sea Transportation Service.

The company has need for all its owned and chartered vessels presently operated in its transpacific service in that area, where the applicant's vessels as well as most others are now running loaded to approximately 100 percent of capacity outbound from the Pacific.

The applicant's vessels chartered from private owners which are being used in its Mediterranean service have been chartered on a voyage basis from the Pacific coast to the Mediterranean and back to the North Atlantic coast of the United States with redelivery north of Hatteras. Applicant states that these private charters cannot be renewed at reasonable rates, and that the service is therefore jeopardized. If the application is granted the applicant expects to maintain monthly sailings to the Mediterranean, using vessels chartered from the Government exclusively. In 1950 there were two foreign-flag lines and two American lines operating from Pacific coast ports to the Mediterranean, making a total of thirty-five sailings during the year, of which ten were made by the applicant and six by States Marine, the other American-flag operator. One of the foreign-flag operators making eight sailings in 1950 has now suspended operations. In the first three months of 1951 the applicant and States Marine each have had two sailings, and each plans a third sailing in April.

The record amply confirms that the service contemplated is in the public interest. The record shows that the Mediterranean countries are now more dependent than before World War II upon a number of Pacific coast products, Israel being a particularly important destination. Many of these countries are now receiving aid from the United States. What this Board has said in prior cases with regard to the importance of the service from Atlantic and Gulf ports to the Mediterranean area applies with equal force to the service here involved from the Pacific coast.

Furthermore, the record clearly shows that the route from the Pacific coast to Mediterranean destinations is not even now adequately served, and in view of the contemplated termination of the applicant's charters of privately-owned vessels now operating in this trade, the service will be even less adequate in the future unless some relief is granted. According to a survey made by the applicant, there is a minimum of 235,000 long tons of cargo, exclusive of at least 25,000 tons of military cargo, for export from the Pacific coast on this route in 1951. In view of the reduction in service in 1951, with only three carriers on the route, applicant's testimony indicates that without its service the combined



sailings would be less than half of the minimum requirement, and with the applicant's projected sailings of one sailing a month would be not over 75 percent of the minimum requirement. The testimony clearly shows that the applicant will need four vessels in order to maintain a monthly sailing, with a 120-day turnabout. The possibility of delays at Mediterranean ports indicates that even this number may not be enough. The record is likewise clear that privately-owned American-flag vessels are not now available for charter on reasonable terms and at reasonable rates for use in the service contemplated.

States Marine Corporation, appearing at the hearing, expressly stated that it did not oppose the application. However, in its exceptions to the examiner's report it modified that position, declaring that it opposed in principle any bareboat chartering of Government-owned vessels which would permit an operator to maintain a berth service exclusively with such Government vessels. The record shows that the Pacific coast/Mediterranean service of States Marine Corporation has been maintained with vessels which it either owns or charters from private source.

The point raised in the exceptions does not attack the validity of the statutory findings of fact made by the examiner, which, as previously stated, we approve. It does, however, raise a question of policy which may well be taken into consideration by the Secretary of Commerce in exercising his discretion as to whether or not charters should be made for this service as the result of the present application.

The problem is not dissimilar from that presented in the application of Luckenbach Steamship Company, which recently applied in No. M-14 to bareboat charter four vessels for its Gulf intercoastal service. The charters were asked as continuations of existing charters, and two more were asked to permit the charterer to remove an equal number of owned vessels into other trades. In that case we said on March 1, 1951:

There has been no dispute over the fact that four vessels are needed for this particular service at this time, but it does not follow that there is sufficient justification for the bareboat charter of Government-owned vessels to an operator in substitution for his own privately-owned vessels now in operation in the service under consideration, and we recommend against it.

On similar considerations we are not satisfied that, where competition exists as in this case, there is sufficient justification for the bareboat chartering of a Government-owned vessel to replace an owned ship of the applicant. In this instance we feel that the applicant should, while using Government-chartered ships, continue to maintain in the service either the *China Bear* or one of its other owned ships.

## FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the record adduced in this case the Board accordingly finds and hereby certifies to the Secretary of Commerce that the Pacific coast/Mediterranean service operated by applicant is required in the public interest; that such service is not now and will not, without the addition of chartered vessels, be adequately served; and that suitable privately-owned vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

By the Board.

(Sgd.) R. L. McDONALD,  
*Assistant Secretary.*

APRIL 26, 1951.

3 F. M. B.

# FEDERAL MARITIME BOARD

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No. M-26

## PACIFIC FAR EAST LINE, INC.—APPLICATION TO BAREBOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR USE BETWEEN PACIFIC COAST PORTS OF THE UNITED STATES AND PORTS IN THE MEDITERRANEAN AREA

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The Board should find and so certify to the Secretary of Commerce that the Pacific coast/Mediterranean service in which Pacific Far East Line, Inc., proposes to bareboat charter four Government-owned, war-built, dry-cargo vessels is in the public interest; that such service would not be adequately served without the use therein of such vessels; and that privately-owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

*William Radner* for applicant.

*John E. Andrews* for States Marine Corporation.

*Paul D. Page, Jr.*, and *Max E. Halpern* for the Board.

### RECOMMENDED DECISION OF C. W. ROBINSON, EXAMINER

This proceeding involves the application, under Public Law 591, 81st Congress, of Pacific Far East Line, Inc., hereinafter referred to as "applicant", to bareboat charter Government-owned, war-built, dry-cargo vessels for an indefinite period for operation in applicant's service between Pacific coast ports of the United States and ports in the Mediterranean area, including, without limitation, ports in Italy, Greece, Turkey, Yugoslavia, Israel, and North Africa. Notice of hearing was published in the Federal Register of March 27, 1951, and the matter was heard on April 2, 1951. The usual notice of 15 days was not given because of the urgency of the matter. There was no opposition to the application.

Applicant has operated a berth service on the route involved for over a year, and although it has tried to furnish approximately monthly sailings this has not been possible, in applicant's opinion, because of the unavailability of privately-owned tonnage at reasonable rates. The service is the only one by American-flag vessels from the Pacific

coast exclusively, and is the only one to Israel from the Pacific coast. Israel was stated to be the most important destination because of its growing population and industrialization. According to applicant, the Mediterranean countries now are more dependent than before World War II upon such Pacific-coast products as lumber, canned goods, and cotton. The largest operator of three on the route (a fourth has had no sailings since September 1950), applicant had 10 sailings in 1950 and two during the first 3 months of 1951.

Many of the countries on the route receive financial or other form of aid from the United States. Over 100 shippers on the Pacific coast were interviewed by applicant to ascertain their prospective traffic requirements. It is applicant's belief, based upon this survey, that a minimum of 235,000 long tons of cargo, exclusive of at least 25,000 tons of military cargo, will be available for export on the route in 1951. Sailings on the route have declined about 40 percent for the first 3 months of 1951 over 1950, in spite of the growth of traffic. Applicant has been forced to refuse large quantities of cargo, and shippers generally are unable to obtain space on any of the lines. Because of the shortage of space on the Pacific coast, large quantities of Pacific-coast cargo move by rail to Atlantic and Gulf coast ports for transshipment. In February and March 1951 over 2,000 tons of military cargo moved to Mediterranean destinations through Atlantic-coast ports rather than Pacific-coast ports. Some Pacific-coast shippers have failed to bid on many large orders for Mediterranean points because of the lack of space from the Pacific coast. Furthermore, it appears that some Pacific-coast traffic has been diverted to foreign-flag vessels because of the scarcity of American-flag tonnage. Although return cargo on the route is negligible, there has been a recent development of copper concentrates in Cyprus, for transportation to Tacoma, Wash., for stockpiling and industrial purposes. It is estimated that the copper concentrates movement will not expand into more than one cargo every 90 days (it is not clear whether the vessel will handle a full cargo of that commodity or merely part thereof in conjunction with other cargo).

The type of cargo (including lumber and military) moving on the route measures about 80 cubic feet per long ton, and after allowing for broken stowage, stows 90-100 cubic feet to the ton. On this basis, applicant estimates that about four sailings a month of Liberty vessels are needed to provide sufficient capacity to handle the volume of traffic with reasonable regularity, frequency, and dependability. Applicant prefers Victory vessels since speed is essential in a liner service, but Liberty vessels would be acceptable if the former are not available. Even if an average 120-day turnaround is possible with four Liberty

vessels (some voyages have been substantially longer), applicant is doubtful whether the service will be sufficient on the basis of the traffic projections. Since only three carriers serve the route, applicant is of the opinion that without its service the combined sailings would be less than half of the minimum requirement, and that even with applicant's vessels the service may be only 75 percent of the minimum. Furthermore, the deficiency will be increased if the other carriers reserve space for cargo out of Atlantic or Gulf ports.

The time-charter rate for privately-owned Liberty vessels has risen from about \$30,000 per month prior to the commencement of hostilities in Korea to about \$60,000 at the present time. Applicant's witness testified that owners of such vessels generally prefer full cargoes on a tramp basis because of high profits. Although Liberty vessels occasionally have been available in the past several months, the witness stated that any attempt on applicant's part to compete with bulk-cargo shippers would result in further increasing the inflationary pressure on rates. Applicant's eight owned vessels were said to be urgently required for service in the transpacific and Persian Gulf services. All American-flag vessels in the former trade have been running approximately 100 percent full out-bound because of the military situation in the Far East. Applicant's Mediterranean service is maintained almost entirely with chartered tonnage, and although one owned vessel is scheduled for that trade in April, it is hoped to put her back in the transpacific service if the present application is granted. It was testified that applicant is faced in the near future with the loss of its chartered tonnage in trades other than the one under consideration, and that applicant has not been able so far to work out any plans for its replacement.

Current charter rates of privately-owned vessels, according to applicant, make it impossible to operate a Mediterranean service because the trade is not profitable, the turnaround is extremely long, port conditions are poor, particularly in Israel, and, as already noted, home-ward cargoes are negligible. In some instances there have been substantial out-of-pocket losses. Losses as high as \$40,000-\$50,000 per voyage are anticipated from operation under current charter rates and, on a basis of the Government rate of 15 percent, there probably will not be an appreciable profit after overhead, even under favorable conditions. For the past many months, applicant has chartered vessels on the Pacific coast for a single trip to the Mediterranean, with redelivery on the Atlantic coast. It was testified that efforts have been made to obtain privately-owned vessels and that inquiries have been made of brokers, but inasmuch as the market is so far out of reach

there is no use discussing the matter. Applicant points out that it receives no subsidy on any of its routes.

#### CONCLUSIONS AND RECOMMENDATIONS

The Board should find and so certify to the Secretary of Commerce that the Pacific coast/Mediterranean service in which Pacific Far East Line, Inc., proposes to bareboat charter four Government-owned, war-built, dry-cargo vessels is in the public interest; that such service would not be adequately served without the use therein of such vessels; and that privately-owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-23

ISBRANDTSEN CO., INC.—APPLICATION TO BAREBOAT CHARTER A WAR-BUILT DRY-CARGO VESSEL FOR USE AS ANIMAL CARRIER TO EUROPE

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*John J. O'Connor* for Isbrandtsen Co., Inc.

*Paul D. Page, Jr.*, and *Max E. Halpern* for the Board.

### REPORT OF THE BOARD

This is a proceeding under Public Law 591, 81st Congress, upon an application of Isbrandtsen Co., Inc., made to the Maritime Administration, to bareboat charter the S. S. *Pass Christian Victory* for use as an animal carrier from ports in the United States to European ports. This report is on a motion by counsel for the Board to dismiss the application with prejudice for lack of prosecution.

An application to bareboat charter the *Pass Christian Victory* was first made by Isbrandtsen under date of November 10, 1950. After reference to the Board, hearing thereon was scheduled to be held on December 4, 1950, but, prior to the date of hearing, the application was withdrawn.

Isbrandtsen renewed the application in February 1951, and a hearing thereon was called, after due notice, on March 20, 1951, but Isbrandtsen did not appear at the hearing.

A hearing was then set for March 30, 1951. This was postponed upon Isbrandtsen's request until April 23, 1951, on which date Isbrandtsen again failed to appear, whereupon the above-mentioned motion was made.

Directed to show cause why the motion to dismiss with prejudice should not be granted, Isbrandtsen, appearing by counsel on May 10, 1951, made apology and stated that it still wished to charter the vessel in question. Its only excuse for its failure to appear at the hearings called in this proceeding was that the matter was forgotten.<sup>1</sup>

The Board is unable to make the statutory findings. There is as much to warrant dismissal of the application with prejudice here as existed for dismissal of the complaint with prejudice in *Weis-Fricker Mahogany Company v. M/V "F. V. Hill" and/or Peter Paul, Inc.*, 2 U. S. M. C. 705. Accordingly, the record is returned to the Maritime Administrator with recommendation that the application of Isbrandtsen Co., Inc., be dismissed with prejudice.

By order of the Board.

May 16, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

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<sup>1</sup> Applicant's counsel, during the oral argument on May 10, 1951, said: "I might state that while the company has been most regretful, and their forgetfulness, at the same time there has been a question whether or not within the company itself they had an immediate use for this specialized boat. On several occasions I had heard that conversation between representatives of the company, one feeling that they could use it: at the moment there was demand for it, and another doubtful about the availability of the business."



# FEDERAL MARITIME BOARD

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No. M-30

COASTWISE LINE—APPLICATION TO BAREBOAT CHARTER WAR-BUILT DRY  
CARGO VESSELS FOR USE IN THE PACIFIC COAST-ALASKA SERVICE

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No. M-31

ALASKA STEAMSHIP COMPANY—APPLICATION TO BAREBOAT CHARTER  
WAR-BUILT DRY CARGO VESSELS FOR USE IN THE PACIFIC COAST-  
ALASKA SERVICE

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## REPORT OF THE BOARD

This is an informal proceeding instituted by the Board pursuant to Public Law 591, 81st Congress, to consider the application of Coastwise Line and of Alaska Steamship Company for the bareboat charter of war-built vessels and to make certain findings with appropriate certification thereof to the Secretary of Commerce. Notice of the hearing was published in the Federal Register on May 15, 1951, and the case was heard by an examiner, who has recommended that the Board make the findings required by Public Law 591. No exceptions were filed to the examiner's recommended findings, and we adopt such findings of fact and conclusions as our own.

Coastwise Line's application is for three war-built dry-cargo vessels to be operated in the Pacific coastwise-Alaska trade, including calls at Canadian ports, to supplement its present fleet of seven vessels, all of the Liberty type. Two of the seven vessels now operating are owned by Coastwise, three are privately chartered, and two are under charter from the Maritime Administration pursuant to the Board's decision in Docket M-24, decided March 26, 1951.

Alaska Steamship Company operates between Puget Sound ports and Alaska and between ports in Alaska. It employs in this service about twenty vessels, nine of which are bareboat chartered from the Government.

Testimony by witnesses of both companies indicates a substantial increase in the volume of Alaska traffic during the year 1951. Most

of this traffic is directly or indirectly connected with the national defense effort.

In the Pacific coastwise trade operated by Coastwise Line there has been a substantial increase in the southbound movement of lumber, aluminum bars, plywood, and other commodities, and due to the rail car shortage there is urgent need for additional vessels to carry this traffic.

Both applications are supported by the Department of the Interior, the Territory of Alaska, the military, and by private shippers.

In prior decisions of the Board it has been held that the Alaska service is required in the public interest. The record in this case substantially corroborates this finding.

Testimony offered by witnesses for both applicants indicates that efforts have been made to charter privately suitable vessels and that none are available on reasonable conditions and at reasonable rates for use in such service. Testimony likewise indicates that without the vessels applied for the service would not be adequately served. No opposition was offered to the application of either company.

#### FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the basis of the facts adduced of record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service considered is required in the public interest;
2. That such service is not adequately served; and
3. That privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

By the order of the Board

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

JUNE 4, 1951.

3 F. M. B.

# FEDERAL MARITIME BOARD

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No. M-30

COASTWISE LINE—APPLICATION TO BAREBOAT CHARTER WAR-BUILT DRY CARGO VESSELS FOR USE IN THE PACIFIC COAST-ALASKA SERVICE

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No. M-31

ALASKA STEAMSHIP COMPANY—APPLICATION TO BAREBOAT CHARTER WAR-BUILT DRY CARGO VESSELS FOR USE IN THE PACIFIC COAST-ALASKA SERVICE

The Board should find and certify to the Secretary of Commerce that the services for which applicants propose to bareboat charter Government-owned, war-built, dry-cargo vessels are required in the public interest; that such services are not adequately served, and that privately-owned American-flag vessels are not available for charter on reasonable conditions and at reasonable rates for use in such services.

*William Radner* and *Odell Kominers* for Coastwise Line.

*Ira L. Ewers* for Alaska Steamship Company.

*Irwin W. Silverman* for Department of the Interior.

*Max E. Halpern* for the Board.

## RECOMMENDED DECISION OF F. J. HORAN, EXAMINER

This is a proceeding under Public Law 591, 81st Congress, concerning an application of Coastwise Line to bareboat charter three Liberty-type vessels for operation in the Pacific coastwise-Alaska trade and an application of Alaska Steamship Company to bareboat charter three Liberty-type vessels or three C1-M-AV1's for operation in the Alaska trade.

Coastwise Line, which, prior to World War II, operated six vessels in the Pacific coastwise trade, is the only regular common carrier operating in this trade. It holds a certificate from the Interstate Commerce Commission authorizing such operation. With the exception of occasional calls made by Alaska Steamship Company's vessels at California ports, it also is the only common carrier operating

between ports in California, Oregon, and southwest Washington<sup>1</sup> and ports in Alaska, and it is the only common carrier that has a contract with the Military Sea Transportation Service for transportation from Los Angeles, San Francisco, and Portland to Alaska. In addition, it provides service between Seattle and Alaskan ports and from southeast to southwest Alaska. Its operations also embrace the trade between the United States, Alaska, and British Columbia. It is estimated that about 60 to 70 percent of its total traffic is carried between ports that are not served by other American-flag carriers. During the 1950 shipping season, it operated from five to seven vessels. It is now operating seven vessels, all of the Liberty type, two of which it owns, three of which it chartered on a long-term-contract basis from private owners, and two of which it chartered from the Maritime Administration.

Alaska Steamship Company has been operating in the Alaska trade for over fifty years. It serves the entire Alaskan territory, operating between Puget Sound ports and Alaska, between ports in Alaska, and occasionally between California and Gulf ports and Alaska. It employs in this service about twenty vessels, nine of which are bareboat chartered from the government.

The major portion of the traffic to Alaska is directly or indirectly connected with the national-defense effort. The volume in which this traffic is moving greatly exceeds the 1950 level, and the indications are that it will increase still further.

In the Pacific coastwise trade, there has been a substantial increase in the southbound movement of lumber, aluminum bars, plywood, and other commodities. Due to the rail-car shortage, there is an urgent need for vessels to carry this traffic.

All of Alaska Steamship Company's vessels are operating to Alaska substantially full. This applicant has received requests for space for over 14,000 tons which it has been unable to assign, and other requests are coming in daily from contractors with the Army District Engineer in Alaska, and from the Alaska Railroad, the Alaska Railroad Commission, and private shippers. In addition, it has a total of 380 automobiles, trucks and house trailers waiting for space, and it is receiving requests for space for about 75 to 100 additional units per week.

Likewise, Coastwise Line's vessels are operating at full capacity and are unable to handle all cargoes offered.

The peak of the shipping season in the Alaska trade is reached during June, July, and August, and, in the opinion of the executive vice president of Coastwise Line, even with the addition of six vessels

3 F. M. B.

<sup>1</sup> The Washington ports are primarily lumber ports on the Columbia River and the Pacific Ocean.

to the trade, freight space will be tight during those three months of this year. This also is the opinion of the Chief of the Alaska Division of the Office of Territories of the Interior Department, who indicated that more than the six vessels involved in the two applications under consideration may be needed to move the traffic in the trade during the coming season. Military and Government programs contemplate an enormous increase in the volume of traffic during the next three months. In the view of the witness last mentioned, the winter movement, also, "is going to be far greater than we have ever had before, because we have let the contracts."

Applicants' witnesses testified to the effect that privately-owned American-flag vessels are not available for charter on reasonable conditions and at reasonable rates for use in the trades in question. No evidence indicating the contrary was presented.

#### FINDINGS AND CERTIFICATION

The Board should find and certify to the Secretary of Commerce—

(1) That the service for which Coastwise Line proposes to bareboat charter three Liberty-type vessels and the service for which Alaska Steamship Company proposes to bareboat charter three Liberty-type vessels or three C1-M-AV1's are required in the public interest;

(2) That privately owned American-flag vessels are not available for charter on reasonable conditions and at reasonable rates for use in such services; and

(3) That such services are not adequately served.

3 F. M. B.

## FEDERAL MARITIME BOARD

No. M-29

PONCE CEMENT CORPORATION—APPLICATION TO BAREBOAT CHARTER A DRY-CARGO VESSEL FOR OPERATION FROM PUERTO RICO TO FLORIDA, CARIBBEAN AREA, AND NORTH ATLANTIC COAST OF SOUTH AMERICA

## REPORT OF THE BOARD

This is an informal proceeding instituted by the Board pursuant to Public Law 591, 81st Congress, to consider application of Ponce Cement Corporation for the bareboat charter of a war-built dry-cargo vessel, and to make certain findings with appropriate certification thereof to the Secretary of Commerce. Notice of the hearing was published in the Federal Register on May 8, 1951, and the case was heard by an examiner, who has recommended, among other things, that the Board should find and certify to the Secretary of Commerce, "(3) That there is no showing that such service is not adequately served." Exceptions were filed to the examiner's recommended decision by the applicant, and a memorandum in support of the recommended decision has been filed by Lykes Bros. Steamship Co., Inc. Oral argument was not requested.

Ponce Cement Corporation is a Puerto Rican corporation which manufactures at its own or controlled plants in Puerto Rico approximately 2,200 tons of cement per day. About 60 percent of the output is sold on the island and the balance, amounting to something over 200,000 tons per year, is exported to ports in Florida and also to ports in the Caribbean area and on the North Atlantic coast of South America. Of the applicant's exports it is estimated that better than 50 percent will be shipped to Florida in 1951. Applicant points out that availability of an export market for its product permits continuous operation of its plants and is essential to economical operation. Continuous operation also insures continuous employment of labor.

Applicant is applying to use the vessel sought to be chartered solely to transport its own cargoes of cement and not to make the vessel available as a common carrier. It now owns and operates the Motor Vessel *Ponce*, having a deadweight capacity of 4,500 tons, and has chartered a Honduran-flag Liberty-type vessel of about 10,000 tons deadweight capacity. This charter is renewable to September 3, 1951,

at the present charter rate which is deemed reasonable, but any further renewals of this or a similar type foreign- or American-flag vessel are not possible in the present market at rates deemed reasonable by the applicant. The *Ponce* is able to make deliveries to Florida ports every 10 to 14 days, and in the course of a year could probably lift 130,000 to 150,000 tons. Recently, applicant's Florida exports have not required the entire use of the *Ponce*, which has operated also as a carrier for others, carrying sulphur, phosphate, fertilizer, or other shipments that have been available.

Applicant has made unsuccessful attempts to charter privately-owned American-flag vessels to carry cement from Puerto Rico to Florida on a voyage-charter basis, and in addition has ascertained that American-flag vessels are not available for term charter at reasonable rates. There are common carriers operating from Puerto Rico to Venezuela and also from Puerto Rico to various ports in Florida. Applicant points out that it sells its product in Florida, Venezuela, Honduras, and over the Caribbean area wherever it finds a market, and its owned or chartered vessels in the past have criss-crossed the existing services which touch at Puerto Rico. Lykes Bros. Steamship Co., Inc., operates a service from Puerto Rico both to Tampa and Venezuela, and Waterman Steamship Corporation and Bull Insular Line operate from Puerto Rico to Florida east coast ports. Except for one or two shipments recently made by applicant to Tampa on Lykes vessels, the record fails to indicate that applicant has used the common carrier services calling at Puerto Rico. Applicant's witness also testified that some small craft lift cement at Puerto Rico for various markets. Applicant claims that berth operators have shown only occasional interest in the movement of cement, and space would only be offered when these operators were unable to obtain other cargoes. Therefore, applicant concludes that these services are irregular and undependable and not adequate to serve applicant's interest. The record fails to show that applicant offered any shipments to common carriers which were refused.

The service for which the application is made in this case is to cover the area of applicant's general export business. Applicant's own vessel, the *Ponce*, is apparently able to lift applicant's export cement except for 50,000 to 70,000 tons a year. Common carriers and small craft should be able to handle this balance. Whether the evidence in this case justifies a finding that the public interest requires the chartering of a Government-owned vessel for service of the type indicated (limited to a single product of a single exporter), and whether privately-owned American-flag vessels are available for charter on reasonable conditions and at reasonable rates need not be decided

at this time, since the record supports the examiner's finding that there is no showing that the service is inadequately served.

The Board is unable to make the statutory findings required by Public Law 591.

By order of the Board.

JUNE 8, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.



# FEDERAL MARITIME BOARD

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No. S-25

AMERICAN PRESIDENT LINES, LTD.—INTERCOASTAL OPERATIONS,  
ROUND-THE-WORLD SERVICE

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*Decided June 13, 1951*

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Applicant or its predecessor in interest shown to have been in bona-fide operation as a common carrier by water in the intercoastal trade in 1935, and has so operated since that time except as to interruptions of service over which it had no control.

*Reginald S. Laughlin* for applicant.

*William Radner, Odell Kominers, Sterling S. Stoudenmire, William I. Denning, and Earl C. Walck* for interveners.

*George F. Galland* for the Board.

## REPORT OF THE BOARD

This is a proceeding on an application filed by American President Lines, Ltd., for resumption of subsidized operations effective January 1, 1947, as to operations in its round-the-world service which were interrupted as a result of World War II.

The United States Maritime Commission executed an operating-differential subsidy agreement with applicant on October 6, 1938, covering operations of passenger vessels in the transpacific service and combination vessels in the round-the-world service, including intercoastal operations westbound. Applicant operated under this agreement and amendments thereto until prevented by war conditions in 1942. Operations were resumed as of January 1, 1947, with the approval of the Maritime Commission, subject, however, to the necessary findings, supplemental actions, and determinations required to be made by law.

In 1949 the Maritime Commission made some modifications in applicant's round-the-world service and provided for 24 to 26 sailings a year. In July 1950 Luckenbach Steamship Company, Inc., one of the interveners in these proceedings, protested applicant's intercoastal operation.

It appears that applicant has operated the intercoastal leg of its round-the-world service with the approval of the Maritime Commission, in each year since 1938, except for the war period, and received subsidy payments up to 1942. In order to meet the requirements of section 805(a) with respect to subsidy payments to applicant on its round-the-world service, including the intercoastal leg, accruing subsequent to January 1, 1947, we held a hearing on May 29, 1951, on the sole question whether, within the meaning of that section, applicant or its predecessor in interest was in bona fide operation as a common carrier by water in the domestic intercoastal trade in 1935 in connection with its round-the-world service, and whether it has so operated since that time except as to interruptions of service over which it had no control.

American-Hawaiian Steamship Company, Luckenbach Steamship Company, Inc., Waterman Steamship Corporation, and Pacific-Atlantic Steamship Company intervened but offered no testimony. Only the last-named intervener now asserts that applicant has not operated in the intercoastal trade since 1935.

Applicant's round-the-world service, including westbound domestic intercoastal via the Panamá Canal, was inaugurated in 1924 by applicant's predecessor in interest. In 1935, 26 voyages were made, transporting in the aggregate 73,103 revenue tons of freight and 1,563 passengers on the intercoastal leg. Applicant's witness testified that during that year and ever since, with the exception of the interruption of World War II, it has held itself out as ready, able, and willing to transport passengers and commodities in the intercoastal trade on its round-the-world vessels, and that it has done so as to all business offering, subject to availability of space. There would be no question to determine were it not for reductions in service at the end of 1936 and the beginning of 1937 and in 1938. The record shows that in 1936 there were in all 22 sailings, including two every month up to November, except April and October, when there were three sailings. In 1937 there were 24 sailings, including two every month, beginning with February, except that in May, October, and December there were three sailings, and in November, only one sailing.

Counsel for intervener Pacific-Atlantic Steamship Company state that there was a complete cessation of operation of service for the duration of 3 months and 7 days between October 29, 1936, and February 5, 1937, but it is pointed out by counsel for applicant that during the period in question the West coast long-

shoremen and crews declared a strike. The records of the former Maritime Commission show that this strike extended from October 30, 1936, until February 4, 1937. Applicant's testimony shows that one round-the-world voyage carrying intercoastal cargo was commenced on October 29, 1936, and another round-the-world voyage carrying intercoastal cargo was commenced on February 5, 1937, the day after the strike ended.

Between December 31, 1937, and June 18, 1938, there were six sailings, in no case with an interval of as much as 60 days, and in both November and December of 1938 there were two sailings. As to the interval between June 18, 1938, and November 4, 1938, witness for applicant states that this reduction in service was caused by the strengthening of the company's financial position and management and by extensive repairs and improvement of vessels. He shows that during that year nine sailings were made, and although no voyages were begun during the period between June 19 and November 3, there was no time when at least one vessel was not in operation on the route. Throughout the year the company maintained its various intercoastal staff functions, continued to solicit intercoastal business, maintained its membership in the Intercoastal Steamship Freight Association, and remained party to westbound intercoastal rate schedules.

The record is convincing that the reductions in service above mentioned did not amount to a cessation or interruption of service.

We find that applicant or its predecessor in interest is shown to have been in bona-fide operation as a common carrier by water in the intercoastal trade in 1935 and has so operated since that time, except as to interruptions of service over which it had no control.

By order of the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# FEDERAL MARITIME BOARD

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No. 675

THE PORT COMMISSION OF THE CITY OF BEAUMONT, ET AL.  
v.  
SEATRAN LINES, INC.

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*Submitted November 15, 1950. Decided January 11, 1951*

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Respondent's port equalization practice is not a regulation or practice connected with the receiving, handling, storing, or delivering of property within the meaning of section 17(2) of the Shipping Act, 1916.

Equalization rates in question are "regular" rates, and do not constitute an unjust or unfair device or means to obtain transportation at less than regular rates in violation of section 16(2) of said Act.

Respondent's motion to dismiss denied.

Record inadequate to make determinations on issues under sections 16(1) and 17(1) of said Act, and is remanded to the examiner for further hearing and report on such issues.

*Robert E. Quirk and F. G. Robinson* for complainants.

*Arthur L. Winn, Jr.*, for respondent.

*C. D. Arnold* for The Southwest Louisiana Traffic Bureau, *Louis A. Schwartz* for New Orleans Traffic and Transportation Bureau and *C. B. Waterman* and *Rene J. Mittlebronn* for Waterman Steamship Corporation, interveners.

## REPORT OF THE BOARD

### BY THE BOARD:

Complainants, representing the port interests of Beaumont, Galveston, Houston, and Orange, Tex., and Lake Charles, La. hereinafter called the "Gulf ports", complain that respondent's rate equalization and absorption practices established by its Port Equalization Circular-Belle Chasse No. 1, effective March 19, 1948 with respect to the transportation of clean rice and other commodities originating in or near the five Gulf ports and from other interior points to Cuban destinations are unjust and unreasonable, unduly prejudicial, and unjustly discriminatory against the Gulf ports, and unduly preferential to the port of Belle Chasse (New

Orleans, La.) on the Mississippi River, in violation of sections 16 and 17 of the Shipping Act, 1916, and constitute an unjust and unfair device in violation of section 16(2) of the Act. Respondent filed an answer denying that the complaint stated any grounds for relief, and likewise admitting most but not all of the allegations of the complaint. Respondent neither cross-examined complainants' witnesses nor offered any evidence of its own, and at the close of the hearing before the examiner moved that the complaint be dismissed. The examiner has recommended that the complaint states a cause of action, and that respondent's equalization and absorption practices should be found to be an unjust device or means in violation of section 16(2) of the Act in that they permit persons to obtain transportation at less than regular rates. We agree that the complaint states a cause of action, but we do not find that the record before us is sufficient to determine the nature and extent of relief to be granted.

The controversy concerns mainly, but not exclusively, the transportation of clean rice, which is one of the principal commodities moving from the complainant ports to Cuba. These ports are located in the heart of the largest rice producing area in the United States, which is a strip about 50 miles wide running from New Iberia, La., to a point about 100 miles west of Houston, Tex. All railroads serving the territory publish rules permitting rough rice to be milled in transit at through rates from points of origin to the port of export. Rice mills for this area are located, generally speaking, in the vicinity of the complainant ports. For instance, there are 7 mills in the port of Houston alone, which is about 350 miles from Belle Chasse. On the eastern end of the territory there are 36 mills located at 17 different points in southeastern Texas and western Louisiana, and, according to the record, the average distance from these mills to Lake Charles, the nearest port, is 48 miles as compared to an average of 201 miles from the same points to Belle Chasse.

Testimony shows that the five complainant Gulf ports all have substantial facilities for the berthing of ocean vessels, the handling of cargoes in foreign commerce, and that very large amounts of money, said to aggregate \$85,000,000, have been spent from public and private funds to improve the harbor facilities of these ports and the channels leading to them from the Gulf.

Lykes Bros. Steamship Co., Inc., was the only ocean carrier maintaining regular sailings from the Gulf ports to Cuba at the time of the hearings. At that time a Government licensing system covered the export of rice and cut down such exports so that

Lykes Bros. sailings were limited to about two sailings a month from Galveston and Houston and no sailings from the other Gulf ports. Lykes Bros. service to Cuba runs regularly to Havana, but if shipments of rice aggregating 500 tons are made on any vessel destined for a Cuban outport the vessel will discharge at the outport at the regular Havana rate. Lykes Bros. accepts shipments of less than 500 tons of rice for outports, but such cases are subject to transshipment at Havana, and the full Havana rate is collected for ocean carriage, plus Cuban rail and handling charges to destination. Rice has contributed 70 percent to 75 percent of Lykes Bros. tonnage from the Gulf ports to Cuba. If this tonnage is substantially diverted to other ports, the record shows that Lykes Bros. will be forced to reduce the service.

Since the war, rice is the only commodity which has moved through Beaumont to Cuba, 8,784 tons having been handled during the year 1947. From Galveston the heaviest moving commodities to Cuba are rice and flour. From Houston the total volume of exports to Cuba, other than petroleum, in the year 1947 amounted to 77,638 tons, of which 52,798 tons consisted of clean rice. Most of the rice moving through Houston originates within 100 miles and a substantial volume is milled by the seven rice mills located in the city. In 1947, 78 percent of all exports from Lake Charles to Cuba consisted of rice, and that commodity is the only one moving from the port of Orange to Cuba.

Belle Chasse is on the west bank of the Mississippi River opposite New Orleans and is the only Gulf terminal from which respondent now operates a service to Cuba. Respondent has a terminal at Texas City, Tex., near Galveston and Houston, where its vessels can dock, but for a number of years has used this terminal only for its coastal service between New York harbor and Texas City. Respondent's type of service between Belle Chasse and its terminal at Hacendados, near Havana, Cuba, as well as its coastal service is unusual, and has been described in *Beaumont Port Commission v. Seatrain Lines, Inc.*, 2 U. S. M. C. 500, at 502 as follows:

Seatrain's service differs materially from that offered by the break-bulk lines. It is conceded by all parties to be of a superior nature. When using Seatrain, a shipper can load the car at his plant and further handling is eliminated until it is delivered at the consignee's place of business. Cargo handled by break-bulk lines must be transported to the dock, handled, loaded into a car or truck and finally delivered at the consignee's place of business. Seatrain's terminal consists of a railroad spur and a patented loading crane which fastens to the loaded car, picks it up and deposits it on one of the tracked decks in the vessel. The loaded car is strapped to the deck and

at the point of discharge is raised, run onto a railroad track and moved intact to the final point of destination. This difference in handling effects a saving to the shipper in packing goods and reduces loss and damage claims, and losses of business resulting from service delays.

Ordinarily respondent serves Havana proper, but for the past few years, due to controversies in Cuba, its service has been limited to interior points and outports reached by rail from Hacendados (Havana). Cuban rail and terminal charges at destination are added to respondent's ocean rate to Hacendados.

The domestic railroad freight rates from the rice shipping points to the nearest of the Gulf ports are in all cases less than the freight rates from such shipping points to Belle Chasse, and even when the switching, handling, and wharfage charges are added to the railroad rates, the total in all cases is less than the total to Belle Chasse. Respondent, in an effort to attract business, and especially shipments of rice originating in the rice growing territory, established in November 1947 special proportional ocean freight rates between Belle Chasse and Hacendados to equalize domestic rail and ocean combinations of rates on traffic moving through competing ports, including the complainant ports. The proportional rate practice of November 1947 was modified, effective March 19, 1948, when respondent issued its Port Equalization Circular-Belle Chasse No. 1. Respondent's practices under this circular create the issues in this case.

The circular states that respondent will reduce its rates from Belle Chasse to Havana (Hacendados) to the extent necessary to equalize the through rates and charges from points of origin to Havana (Hacendados) via other United States ports of exportation on the Atlantic and Gulf coasts, under conditions summarized as follows: (a) equalization is based on common carrier rail charges, including terminal charges; (b) and (c) describe the traffic to be affected; (d) equalization is based only on ports from which bona fide service is offered to Havana; (e) no equalization shall reduce the local port to port rate, including surcharge, by more than 25 percent; (f) when rail rates and charges from point of origin to shipside at port of exportation on which the equalization will be based are 12¢ per 100 pounds or less, the amount to be used as rail rates and charges in determining the equalization shall be 12¢, subject to (e) above; provided, that paragraph (f) does not apply to ports of export on the Mississippi River or to ports within 50 miles of New Orleans.

The equalization circular thus provides for the reducing of Seatrain's ocean freight rate so that its reduced ocean rate plus

the rail rate from point of origin to Belle Chasse shall equal the combination of railroad rate and ocean carriers rate via the competing route, subject to the 12¢ and 25 percent limits as stated. To take an example, the railroad rate and terminal charges from a typical mill shipping point in Texas to Belle Chasse are 31.20¢ per 100 pounds. From the same shipping point to a Texas port they are 20.45¢ per 100 pounds. Thus, under the circular, respondent reduces its ocean freight rate by the difference of 10.75¢ per 100 pounds so as to offer the shipper at the point of origin a through rate via Belle Chasse exactly equal to the through rate which he has via the Texas port. The foregoing example applies to shipments arising at mills outside of the complainant ports, but, as pointed out, there are in Houston and other Gulf ports rice mills where shipments originate. The domestic charges to get such shipments from the local mill to shipside are substantially less because a domestic rail haul is not needed. In the case of Houston, for instance, the local switching, handling, and wharfage charges to shipside, assuming a 50-ton load in each rail car, amount to 6.83¢ per 100 pounds. These charges are less than 12¢ per 100 pounds and, therefore, bring into play paragraph (f) of the circular under which the equalization is based on a differential of 12¢ per 100 pounds rather than the actual figure of less than 12¢. Respondent, therefore, takes the rail rate from Houston to Belle Chasse of 31.20¢ per 100 pounds and deducts from this 12¢, which makes an equalization allowance of 19.20¢ per 100 pounds which respondent deducts from its ocean rate. In such case the reduction in the ocean rate does not make a full equalization of the rate through the Texas port, but only partially equalizes it.

The complaint is made that respondent's rate-equalization practice prevents complainant Gulf ports from handling not only the tonnage originating and produced locally in those ports, but also tonnage originating at interior points which are naturally tributary to the Gulf ports.

Respondent's answer admits the material facts of the complaint, but denies that respondent's equalization practice deprives the Gulf ports of the tonnage produced locally or produced at interior tributary points of Texas and Louisiana or elsewhere mentioned in the equalization circular (Answer, Article 6), and denies that the practice causes diversion of this tonnage to Belle Chasse (Answer, Article 8). At the oral argument, however, respondent's counsel stated that for the purpose of the motion to dismiss no issues of fact were involved between the parties



and that all questions for decision were matters of law. Respondent's position is, therefore, somewhat unusual. We shall first consider the motion to dismiss on the basis of the allegations in the complaint.

Complainants charge:

1. The equalization rates give an undue preference and advantage to Belle Chasse over the Gulf ports in violation of section 16(1) of the Shipping Act, 1916, and unjustly discriminate between Belle Chasse and the Gulf ports in violation of section 17(1) thereof.

2. The equalization rates constitute an unjust or unfair device or means to permit persons to obtain transportation at less than regular rates in violation of section 16(2) of the Act.

3. The equalization rates constitute unjust or unreasonable regulations or practices connected with the receiving, handling, storing, or delivering of property in violation of section 17(2) of the Act.

Complainants point to the large investment in their harbor facilities, the differentials in rail rates under Belle Chasse which secure to them the handling of tonnage from their ports and certain tributary territory, and the threat that Lykes Bros., which alone maintains regular sailings to Cuba from their ports, may be forced to curtail service if tonnage diminishes. Complainants also point to the provisions of section 8 of the Merchant Marine Act, 1920, wherein Congress has made it the duty of our predecessors to make investigations with the object of promoting and encouraging the various ports of the United States. Complainants point to certain reports of our predecessors (to be considered more in detail hereinafter) wherein we have expressed disapproval of attempts of carriers by artificial means to control the flow of traffic not naturally tributary to their lines.

Taking up the specific charges of complainants in reverse order, we have no difficulty in holding in respect to charge (3) that respondent's equalization practice is not a regulation or practice connected with the receiving, handling, storing, or delivering of property within the meaning of section 17(2) of the Act. The rates under the circular, to be sure, include charges for services at the receiving and at the delivering end of the voyage as is true generally of freight rates of water carriers. If we were to say that such incidental element in the rates gave us full jurisdiction to enforce reasonable rates for carriers in foreign commerce, we should be disregarding the difference of our authority over such carrier under sections 16 and 17 of the Act from our juris-

diction over certain offshore carriers in interstate commerce where, under section 18 of the Act, as amended, we are authorized to enforce reasonable rates. The cases of *California v. United States*, 320 U.S. 577, and *American Union Transport Company v. United States*, 327 U.S. 427, do not support complainants' position.

In considering complainants charge (2) we do not find that the equalization rates are not "regular rates" or that they are an "unjust or unfair device or means" within the meaning of section 16(2) of the Act. Complainants argue that respondent's local rate from Belle Chasse to Havana is its only "regular rate" and, consequently, that the equalization rate is not regular. But we believe the term "regular rate" in section 16(2) is synonymous with "rate which would otherwise be applicable" in the first paragraph of section 16, and means any rate duly established and published or determined by a specific method published in the tariff. In our opinion a proportional rate or equalization rate is just as "regular" as a local rate, each being applicable to a separate type of traffic and inapplicable to any other type. Our predecessors as well as the Interstate Commerce Commission and the courts have frequently recognized proportional and equalization rates as regular rates, always different and lower than local rates. In *Texas & Pacific Railway Co. v. United States*, 289 U.S. 627, the court, referring to *Texas & Pacific Railway Co. v. Interstate Commerce Commission*, 162 U.S. 197, said at page 637:

Since that decision it has been recognized that export and import shipments, although not made on through bills, might lawfully be transported at rates below those charged for domestic traffic between the same points.

In *Intercoastal Rate Structure*, 2 U. S. M. C. 285, at page 304, our predecessors said:

Proportional rates have existed with approval in railroad and water transportation for many years.

In this case respondent, having filed its equalization circular, is bound to apply the equalized rate on traffic originating at points mentioned, and may not on such through traffic apply the local rate. The equalized rate is the only "regular rate" that may be charged in such case.

Moreover, the equalization practice of respondent does not come within the meaning of "other unjust or unfair device or means" described in section 16(2) of the Act, which defines criminal offenses. We quote from section 16

That it shall be unlawful \* \* \*

Second. To allow any person to obtain transportation for property at less than the regular rates or charges 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.

“Unfair device or means”, coming at the end of a list of dishonest practices such as false billing, etc., must be construed as limited to practices of the same general class as those specifically mentioned. This is the rule of “ejusdem generis.” In construing section 10(3) of the Interstate Commerce Act the Circuit Court of the 8th Circuit, in *Armour Packing Co. v. United States*, 153 Fed. 1, explained the words “other device”, saying, page 16:

The gist of the shipper's offense under paragraph 3 of section 10, as amended by the Act of 1889, is the fraud of obtaining transportation at a rate less than the established rate by false billing, false classification, false weighing, false representation of the contents of the package or false report of weight or by any other device. Under the familiar maxim, *noscitur a sociis*, the device of this paragraph is a device of the same character as the false representations with which it is associated, a deceptive or fraudulent device. *Davis v. United States*, 104 Fed. 136. Obtaining transportation at a rate less than the regular published rate, without committing any fraud or making any false representation to secure it, is not unlawful under this act of 1889. And an averment of the fraudulent device by which the transportation is secured is indispensable to an indictment founded upon that act, because the fraudulent device is the substance of the offense.

Finally, coming to complainant's charge (1), it is said that the equalization rate practice gives undue preference and advantage to Belle Chasse as against the Gulf ports, and creates unjust discrimination between them. Complainant points out that respondent, when formerly operating from Texas City to Cuba, established equalization rates on traffic originating in Beaumont which absorbed the local rail charges between Beaumont and Texas City and effectively drew traffic away from Beaumont. Respondent was then a member of a conference and operated under a conference agreement which authorized such action. On complaint of the Port of Beaumont, our predecessors found that respondent's equalization practice subjected Beaumont to undue prejudice and disadvantage in violation of section 16(1) of the Act, *Port Commission of Beaumont v. Seatrrein Lines, Inc.*, 2 U. S. M. C. 500, and said at page 504:

However, a port and its transportation services are indissolubly linked together, are interdependent, and a practice harmful to one injures the other. Therefore, the diversion of traffic from the port and the consequent crippling of essential carrier services there, constitute undue prejudice and unjust discrimination against the port. \* \* \* We take judicial notice

of the recent abandonment and curtailment of essential water carrier services, which is accounted for in no small degree by indiscriminate rate-cutting through absorptions and otherwise. "Traffic raiding" through unsound methods of rate-making should be a thing of the past.

In the *Beaumont* case our predecessors quoted with approval from the report in *City of Mobile et al. v. Baltimore Insular Line, Inc., et al., supra*, at page 486, as follows:

To permit continuation of unrestricted solicitation by carriers for business through condonation of a practice whereby unfavorable inland rates are overcome, would wholly ignore the right of a port to traffic to which it may be entitled by reason of its geographical location. Such right appears fundamental under statutes designed to establish and maintain ports. Under section 8 of the Merchant Marine Act, 1920, we are required to recognize territorial regions and zones tributary to ports, and should there exist rates to seaboard which, among other things, do not recognize the natural direction of the flow of traffic, recommendations may be made to the Interstate Commerce Commission for such action as it deems necessary. The contention has been made that section 8 has no relation to rate regulatory provisions of the Shipping Act, 1916. But to wholly ignore specific policies of Congress would be unwarranted.

And from *Contract Routing Restrictions*, 2 U.S.M.C. 200, at 226, quoted the following:

We do not look with favor upon the attempt of carriers by artificial means to control the flow of traffic not naturally tributary to their lines.

In *Baltimore Insular Line, supra*, respondent was engaged in interstate commerce and was, therefore, subject to section 18 of the Act, and in *Beaumont v. Seatrail Lines, Inc., supra*, respondent's action was taken pursuant to a conference agreement which made respondent subject to section 15 of the Act. Yet in both cases our predecessors held that there was undue preference and prejudice to the complaining ports under section 16 of the Act because of the effect of the carrier's equalization practices. In this case no interstate commerce or conference agreement is involved, but insofar as it concerns traffic alleged to be drawn from complainant ports and the area around them, to which they claim to be entitled by reason of their geographical location, we find the same kind of undue prejudice to complainant ports. In this case, Beaumont and the other ports are prejudiced to the advantage of Belle Chasse or New Orleans, as in the earlier case Beaumont was prejudiced to the advantage of Texas City.

But, respondent replies that it does not serve both Belle Chasse and the Gulf ports and, therefore, preference and prejudice under the Act are legally impossible. Respondent argues that it is legally impossible to accuse a carrier of discriminating between two port

when it does not serve both of them and has no responsibility or connection with the rates to or from one of them, relying on *Texas and Pacific Ry. Co. v. United States*, 289 U.S. 627.

The *Texas and Pacific* case, *supra*, arose under section 3(1) of the Interstate Commerce Act, which section 16(1) of the Shipping Act, 1916, closely parallels, with certain important elaborations discussed hereinafter. The Supreme Court said of rail rates, at page 650 of that case:

A carrier, or group of carriers, must be the common source of the discrimination—must effectively participate in both rates if an order for correction of the disparity is to run against it or them.

But here we have a different condition, the prejudice is not created by the separate acts of independent carriers. Here, if equalization exists, the prejudice is created by the sole act of a single carrier: in this case, the respondent, Seatrain. The prejudice is the drawing away of traffic inherently and geographically belonging to the Gulf ports. Furthermore, Seatrain by a through route established with the domestic rail carriers reaches into and serves the Gulf ports, and because of the through route may be held responsible for the prejudice, on the authority of *St. Louis and S. W. Ry. Co. v. United States*, 245 U.S. 136, which also involved section 3(1) of the Interstate Commerce Act. Respondent, however, argues that the case last cited is inapplicable because Seatrain neither has, nor can obtain, power to control the through rate although the through route exists. But this argument is not convincing since by its equalization practice Seatrain does in fact determine the through rate to Cuba.

As stated, section 16(1) of the Shipping Act, 1916, is patterned generally after section 3(1) of the Interstate Commerce Act. While both sections prohibit undue preference and prejudice *in any respect whatsoever*, section 16(1) contains the additional injunction that such unlawful acts shall not be done "*either alone or in conjunction with any other person, directly or indirectly.*" (Emphasis supplied.)

Counsel for respondent argues, in effect, that the additional words are surplusage, since the Supreme Court held in the *Shreveport* case (*Houston, E. & W. T. Ry. Co. v. United States*, 1914) 234 U.S. 342), that section 3(1) of the Interstate Commerce Act reached discriminations of every kind to the full limit of congressional power to regulate the rates on interstate and foreign commerce.

However, it must be remembered that the Shipping Act, 1916, was enacted subsequent to the *Shreveport* case, and it cannot be

assumed that Congress was unaware of such decision, or that it was indulging in mere tautology. Plainly, therefore, section 16 (1) was intended to have a broader sweep than section 3(1). If it be assumed that the alleged drawing away of traffic from the Gulf ports is not directly due to the equalization plan in question (with which assumption we cannot agree), then certainly it cannot be disputed that such diversion is due *indirectly* to respondent's method of proportional rates and absorption practices.

In any event, the fact of the drawing away of traffic is admitted for the purpose of the motion to dismiss. We find that a drawing away of traffic from the Gulf ports results in undue prejudice and is due to the individual act of respondent in establishing its equalization practice. Respondent's fault in this case is analogous to the fault of the respondents in *Chicago I. and L. Ry. Co. v. United States*, 270 U.S. 287, where the Court said, page 293:

Whenever discrimination is in fact practiced, an order to remove it may issue and the order may extend to every carrier who participates in inflicting the injury.

The Supreme Court, in *Texas and Pacific Ry. Co. v. United States*, *supra*, page 652, in explaining the *Chicago I. and L. Ry. Co.*, case, *supra*, said p. 652:

The order of the Commission was held proper, because each defendant railroad was *solely* responsible for the prejudice resulting from its own refusal to maintain interchange arrangements with the electric line and for the preference of maintaining such arrangements with other carriers in Michigan City, *each could without reference to the conduct of the other correct the unjust discrimination which it individually practiced.* (Emphasis supplied.)

The sole responsibility of respondent for the condition under consideration is clear. It can be corrected by the unilateral action of respondent. Furthermore, neither Lykes Bros. nor the land carriers can remove the prejudice by their separate or joint action even if they so desire. Any lowering or raising of their rates even if made for that or any other purpose would, under respondent's circular, require an immediate change in Seatrain's ocean rates to continue the equalization, and this of course would perpetuate the prejudice and preference.

Paraphrasing the language of the sentence of the Supreme Court last quoted to meet the situation in this case, it may be said that Seatrain can, without reference to the conduct of any other person, correct the unjust discrimination which it individually practices. We conclude, therefore, that the complaint states a cause of action, and the motion to dismiss must be denied.

The question remains whether respondent's equalization circular is in violation of sections 16(1) and 17(1) of the Act as charged in (1) above. To approach this question we examine the entire record, including the denials contained in respondent's answer that the equalization circular does in fact divert traffic from complainant ports and from territory naturally tributary thereto. As has been observed, the equalization circular includes the 12¢ limit already described, which gives certain protection to complainant ports and the territory closely surrounding them, and as to such ports and territory the circular effects partial, rather than total, equalization. Thus respondent's equalization practice differs from the practice in *Beaumont v. Seatrains Lines, Inc., supra*, already discussed, where no protection was given to traffic originating at the complainant ports. The record in this case shows to some degree the effect of respondent's present equalization circular and includes an analysis of rice shipments carried from Belle Chasse for the eight-month period from November 1, 1947, to June 30, 1948. This period covered one month of operation prior to equalization and seven months of operation under the equalization circulars of November 26, 1947, and March 19, 1948. During this period, however, there were several months when no rice whatever was carried due to the seasonal nature of the trade. From this breakdown the following appears:

Rice carried from Belle Chasse to Hacendados—

November 1 to November 26, 1947, without equalization:

	Carloads
From five complainant ports . . . . .	15
From other Texas and Louisiana territories, except New Orleans	79
From New Orleans . . . . .	20

November 26, 1947, to December 31, 1947, with equalization:

From five complainant ports . . . . .	29
From other Texas and Louisiana territories, except New Orleans	67
From New Orleans . . . . .	9

January 1, 1948, to June 30, 1948:

From five complainant ports . . . . .	7
From other Texas and Louisiana territories, except New Orleans	30
From New Orleans . . . . .	10

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It thus appears that some rice moved from complainant ports to Hacendados even without equalization during the 26 days before the first circular became effective, and this was increased

during the 35 days thereafter. A similar detailed analysis of shipments of other commodities from Belle Chasse is lacking, nor does there appear to be a statement of comparative figures from complainant ports broken down into relevant periods for comparative analysis.

The examiner, in view of his other findings, was not required to make an analysis and report as to whether respondent's present circular did in fact draw traffic from complainant ports and the territory adjacent to them so as to prejudice unreasonably or discriminate unjustly against those ports, nor did the examiner make any finding as to what were the limits of the adjacent territory which could be considered as naturally and geographically tributary to complainant ports. The record seems to us not adequate to make a determination on these issues which we now deem material to a decision on the validity of respondent's equalization circular.

Summing up, we find: (1) That respondents equalization practice is not a regulation or practice connected with the receiving, handling, storing, or delivering of property within the meaning of section 17(2) of the Shipping Act, 1916; (2) that the equalization rates in question are "regular" rates, and do not constitute an unjust or unfair device or means to obtain transportation at less than regular rates in violation of section 16(2) of said Act; (3) that upon the facts admitted by respondent for the purpose of the motion to dismiss, the complaint states a cause of action and the motion should be denied; and (4) that the record herein is not adequate to make a determination on the issues under sections 16(1) and 17(1) of the Shipping Act, 1916, and should be remanded to the examiner for further hearing and report on such issues.

The case is so remanded.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.



# FEDERAL MARITIME BOARD

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No. 692

LOS ANGELES TRAFFIC MANAGERS' CONFERENCE, INC.

v.

SOUTHERN CALIFORNIA CARLOADING TARIFF BUREAU, ET AL.

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*Submitted February 7, 1951. Decided March 9, 1951*

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Collection of both carloading and handling charges on cargo handled in continuous movement not unlawful.

Collection of separate handling charges by respondent common carriers for transportation of freight from southern California terminals to world ports not unlawful whether or not those respondents also transport like freight from United States Atlantic and Gulf ports to common world ports without collection of separate handling charges.

*W. E. Maley and T. W. Brendes* for complainant.

*Ira S. Lillick, Joseph J. Geary, John C. McHose and Allan E. Charles* for Southern California Carloading Tariff Bureau, Master Contracting Stevedores Association of Southern California, Pacific Westbound Conference, Pacific Indonesian Conference (formerly Pacific Netherlands East Indies Conference), Pacific Straits Conference, Kerr Steamship Company, Inc., Funch, Edye & Co., Inc., Norton, Lilly & Co., Transpacific Transportation Company, W. H. Wickersham & Co., and Transmarine Navigation Corporation, respondents.

*Chalmers G. Graham and Leonard G. James* for Capca Freight Conference, Pacific Coast Australasian Tariff Bureau, Pacific Coast/Caribbean Sea Ports Conference, Pacific Coast European Conference, Pacific Coast/Panama Canal Freight Conference, Pacific Coast River Plate Brazil Conference, Pacific/West Coast of South America Conference, Balfour, Guthrie & Co., Cosmopolitan Shipping Company, Fred Olsen Line, Ltd., Furness, Withy & Company, Ltd., General Steamship Corporation, Ltd., Grace Line, Inc., Interocean Steamship Corporation, H. S. Lear, Salen-Skaugen Line, Rederi A. B. Jamaica, Rederi A. B. Pulp, and D/S A/S Eikland, Salamis A/S, respondents.

*W. G. Holland* for California-Arizona Cotton Association, *B. C. Neill* for California Fruit Growers Exchange, *K. L. Vore* and *W. G. O'Barn* for Los Angeles Chamber of Commerce, *L. E. Osborne* for California Manufacturers Association, *L. A. Bey* for William Volker & Company of Los Angeles, Inc., *T. R. Stetson*, *Edwin A. McDonald, Jr.*, and *Omar L. Crook* for Pacific Coast Borax Company, *H. A. Leatart* and *Martin A. Meyer, Jr.*, for American Potash & Chemical Corp., *Eugene A. Read* for Oakland Chamber of Commerce, *James A. Keller* and *W. S. Mayoock* for California Portland Cement Company, Monolith Portland Cement Company, Southwestern Portland Cement Company, Pacific Portland Cement Company, and Santa Cruz Portland Cement Company, *Earle J. Shaw* for Chilean Nitrate Sales Corporation, and *S. A. Moore* and *John Bosche* for Permanente Cement Company, interveners.

*C. S. Connolly* for Interstate Terminal's and *Charles A. Bland* for City of Long Beach, California.

#### REPORT OF THE BOARD

##### BY THE BOARD:

Complainant, an association of industrial shippers, complains that the practice at California ports of collecting a handling charge on rail cargo serviced in "continuous"<sup>1</sup> movement, in addition to a carloading or unloading charge, is an improper and unreasonable practice in violation of sections 15 and 17 of the Shipping Act, 1916. It also complains that the imposition of handling charges on cargo shipped for export from California ports by ocean common carriers serving Atlantic and Gulf ports as well as California ports, whether in "continuous" movement to or from rail cars or otherwise, is unjustly discriminatory and unduly and unreasonably prejudicial to California shippers and ports, and unduly preferential to Atlantic and Gulf shippers and ports, since no similar handling charge is collected at the latter ports. The alleged discrimination is said to violate sections 15, 16, and 17 of the Shipping Act, 1916.

<sup>1</sup> There are three types of car service at Southern California ports described as follows in the Board's Report No. 651, *Carloading at Southern California Ports*, 3 F.M.B. 261, 262:

"As has been pointed out in the prior reports, the term 'car service' means the loading or unloading of railroad cars on steamship piers. There are three ways of accomplishing the car service for unloading: 'indirect' car service, which involves the use of a place of rest on the pier at which the commodity is deposited pending further movement, which may be indefinitely deferred; 'direct' service, which is the unloading of open top cars immediately under ship's tackle; and 'continuous' car service, which involves the substantially continuous movement of the commodity directly from the car to the ship's tackle."

Originally the complaint named as respondents master stevedore contractors and ocean common carrier lines and conferences serving the entire Pacific coast, but by amendment certain respondents not serving southern California ports were dropped, and the evidence was confined to outbound traffic moving over Los Angeles and Long Beach ocean terminals. Various parties intervened in support of the complaint, but of these only Pacific Coast Borax Company, American Potash & Chemical Company, and certain cement manufacturers offered any supporting evidence.

The examiner recommended findings by the Board (1) that the collection of separate handling charges on cargo in "continuous" movement, in addition to carloading or unloading charges, is not a duplicating or overlapping charge and is not unlawful, excepting as in conflict with the examiner's second finding; and (2) that the collection of separate handling charges on cargo shipped from southern California ocean terminals to world ports by ocean common carrier respondents transporting like cargo from Atlantic or Gulf terminals to the same world ports without collecting there separate handling charges, is unduly prejudicial to southern California shippers and traffic, and unduly preferential to Atlantic and Gulf shippers and traffic in violation of section 16 of the Shipping Act, 1916.

We agree with the examiner's first recommended finding but disagree with his second recommended finding.

The following descriptions and definitions of the terms "handling" and "handling charges" are taken from Pacific coast conference tariffs and are generally representative:

Rule 10, Eighth Revised Page No. 27, Pacific Westbound Conference Local Tariff No. 1-U:

(a) The carrier, its agent, or stevedore, shall perform at the expense of the consignor or consignee, the handling service at all Pacific coast ports, at rates hereinafter provided:

1. On terminal direct from place where unloaded from railroad car or other vehicle to ship's tackle.

2. From place of rest on terminal, barge or lighter to ship's tackle, including ordinary breaking down and trucking.

Item No. 13, Second Revised Page No. 11, Pacific/West Coast of South America Conference Freight Tariff No. 13:

(a) *Definition*—The services performed in moving or conveying cargo, including ordinary breaking down, sorting and trucking (1) from place where unloaded from railroad car,

truck or other vehicle on the terminal to ship's tackle, or (2) from place of rest on terminal, barge or lighter to ship's tackle shall be known as "handling" and the charges therefor shall be known as "handling charges."

The tariffs show that the separate handling charge imposed at southern California ports range in the neighborhood of 85¢ per ton on the commodities mentioned in the evidence, but the charge is not uniform nor does it apply to all trades. For example, Pacific Coast European Conference, Pacific Coast River Plate Brazil Conference, and Pacific/West Coast of South America Conference impose handling charges on a commodity rate basis generally higher than the flat charge of 80¢ per ton published by Pacific Westbound Conference. On the other hand, carriers in the Puerto Rican and Hawaiian Islands domestic trade impose no handling charges, their rates being applicable from point of rest on the terminal rather than from ship's tackle.

Complainants and interveners do not object to the payment of charges for carloading or car unloading, but complain that where cargo moves from cars to ship's tackle in "continuous" movement the imposition of a charge for "handling" is a duplication and hence an unreasonable practice under section 17 of the Act. In other words, the complaint raises the question whether the collection of both the carloading or car unloading charge and the handling charge in "continuous" movement constitutes a double charge against the shipper for a single service, or whether there is an overlapping of charges for services in "continuous" movement. The alleged double charge is said to be an unreasonable practice on the ground that each charge should be established on the basis of the cost of service. "Continuous" movement is said to involve only one operation and to cost less than the two operations included in "indirect" movement, and from this it is argued that the handling charge in "continuous" movement should be eliminated.

Many of the same arguments with respect to cost were presented to the Board in No. 651, *Carloading at Southern California Ports, supra*, note 1, and many of the same witnesses testified in both cases. The complaint in this case was filed before the decision in that case, wherein this Board held that there could be no difference in the charges for carloading and car unloading at southern California ports whether performed in connection with "indirect" service or with "continuous" service. We find from the evidence in this case that whether the cargo handling

is performed in connection with "indirect" service or with "continuous" service, it is a separate and distinct service from the loading or the unloading of the cars. It follows that a separate and distinct charge may be made for "handling" cargo in addition to the charge for the car service. The provisions contained in Rule 10, Eighth Revised Page No. 27, Pacific Westbound Conference Local Tariff No. 1-U, already quoted, providing for the imposition of the handling charge for movement across the dock "from place where unloaded from railroad car or other vehicle to ship's tackle" (continuous movement) as well as "from place of rest on terminal, barge or lighter to ship's tackle" (indirect movement), insure the imposition of equal handling charges for cargo whether in "indirect" movement or "continuous" movement just as the requirements of this Board in No. 651, *Carloading at Southern California Ports, supra*, require the imposition of equal charges for car service regardless of the manner of movement employed. We hold that respondents' practice of making a separate charge for handling is therefore not improper or unreasonable or a violation of section 17 of the Act.

The history of the practice of collecting separate handling charges by ocean carriers serving the Pacific coast is found in *Los Angeles By-Products Co., et al. v. Barber Steamship Lines, Inc., et al.*, 2 U.S.M.C. 106. Our predecessor, the United States Maritime Commission, in that case considered the practice of the ocean carrier to divide its total charges against shippers so as to specify separately the charge for handling from railroad cars or point of rest to ship's tackle, and the charge for ocean carriage from ship's tackle at loading port to destination. The practice was held then, as we hold now, not to be unreasonable or in violation of the second paragraph of section 17 of the Act. Our predecessor said, page 114:

Our conclusion is that the separate charges for handling cannot be condemned as an unreasonable practice. The right of rail carriers to make a separate charge for terminal services incident to delivery has been recognized by the Supreme Court. *I.C.C. v. Stickney*, 215 U.S. 98, and *I.C.C. v. C., B. and Q. R.R. Co.*, 186 U.S. 320. In view of the foregoing conclusion, it follows necessarily that the conference agreements in respect of said charges have not been shown to be unreasonable or unfair.

That decision was affirmed by the United States District Court in *Sun-Maid Raisin Growers Asso. v. United States* (N. D. California S. D.), 33 Fed. Supp. 959, and by the Supreme Court, 312 U. S. 667.

Coming next to the charge of discrimination between Califor-  
3 F. M. B.

nia ports and shippers, on the one hand, and Atlantic and Gulf ports and shippers, on the other hand, a further analysis must be made. Complainant made a very brief case before the examiner, offering in evidence certain tariffs deemed typical and certain bills of lading issued pursuant thereto, from which the fact appeared that the handling charge was made on certain West coast cargo, and that no handling charge was made on similar cargo moving from Atlantic and Gulf ports to the same foreign destinations. A general charge was made that the ocean carriers serving both California and Atlantic ports were guilty of discrimination and prejudice against the California ports and shippers, but no evidence was given by complainant of specific cases. At the conclusion of complainant's case and before interveners' testimony was heard, respondents moved that the entire proceeding be dismissed for lack of proof. Under our Rules of Procedure the examiner could not rule on this motion, and thereupon intervening shippers offered testimony. However, the examiner recommended denial of the motion in his report and we agree with such recommendation.

Intervener American Potash & Chemical Corporation showed that it produced salt cake, soda ash, potash, and borax at Trona, California, about 200 miles inland from Los Angeles, and that about 25 per cent of its total product was exported through southern California terminals. This intervener showed it faced competition from producers along the Gulf coast such as potash producers at Carlsbad, N. M., exporting from Galveston and Houston, and soda ash producers at Corpus Christi, Tex., and Baton Rouge, La., the former being a port on the Gulf and the latter being about 80 miles by rail from New Orleans. The cement interveners showed that their plants were located at various points in southern California between 60 and 140 miles from Los Angeles. They showed that a substantial part of their product was sold for export and that they were in competition with cement plants located on the Atlantic and Gulf coasts, some actually at seaboard at New Orleans, La., Norfolk, Va., and Mobile, Ala., and others on the Hudson River within 100 miles of New York harbor. The third intervener, Pacific Coast Borax Company, offered evidence to show that a very substantial tonnage of crude borate, borax, and boric acid originated at its mines 135 miles inland from Los Angeles and was shipped by rail or truck to Los Angeles and Long Beach for export to foreign countries. This intervener was unable to show that it faced any competition

from producers shipping from Atlantic or Gulf ports. No evidence was offered of any competitive situation as between shippers of the same commodity in various trades out of California ports so as to require identical handling charges for all such trades.

The charge of discrimination and prejudice can only apply to such of respondent ocean carriers operating from both California and Atlantic or Gulf ports to the same foreign destinations, for only in such cases is the carrier the common source of the alleged discrimination. *Texas and Pacific Ry. Co. v. United States*, 289 U. S. 627 at 650.

Intervener American Potash and Chemical Corporation showed a drop in the volume of its products exported from 1939 to 1949, but the evidence was lacking in proof that the drop was due to the handling charge. On the contrary this intervener admitted that prior to 1941 it had the benefit of more favorable ocean rates than East coast competitors, which benefit had since been eliminated. The record also showed that the rail rate on soda ash from intervener's competitor's plant at Baton Rouge to shipside at New Orleans was at the time of the hearing \$3.27 per ton, whereas the rail rate from intervener's plant at Trona to the Los Angeles dock on soda ash was \$5 per ton, a differential of \$1.73 per ton in favor of the Gulf exporter, which might account for intervener's unfavorable position in the export trade. Moreover, as to potash, the same intervener disclosed that recently potash exports were "practically nil, due to the fact that at this time there is a shortage of the potash supply in this country, and we, in our efforts to take care of our domestic customers, have been unable to ship potash to any extent for export."

The cement interveners pointed to tariffs from all three coasts to Valparaiso, Chile, for example, where the ocean freight rate on cement was in each case \$17 per ton, and where the West coast exporters paid the handling charge of 85¢ per ton in addition, but no specific cases of actual loss of business due to this charge were reported. They showed that their West coast factories were at varying distances inland from Los Angeles, whereas many of the Atlantic and Gulf cement plants were at seaboard within the port switching areas so that rail charges operated unfavorably to California cement exporters. Also, as already indicated, ocean rates on cement to some foreign centers were lower from Atlantic than Pacific ports, quite regardless of the handling charge (i. e., to Panama City, referred to below).

West coast cement interveners showed that their export business was decreasing in 1949 below comparative figures in prior years, but failed to show whether or not the East coast or Gulf producers had suffered similar losses.

Intervenors could not say that the falling off in their California exports was not due in some measure to the foregoing causes, nor to other causes having nothing to do with the handling charge, including the drop in export demand due to lack of dollar credits abroad, devaluation of foreign currency, bartering arrangements between nations, and other international conditions developing as the aftermath of the war.

To support the charge of unjust discrimination and unreasonable prejudice, there must, of course, be evidence of actual loss of business due to the discriminatory rate situation. General statements as to the possibility of damage are not sufficient.

In *Port of Philadelphia Ocean Traffic Bureau v. The Export Steamship Corp.*, 1 U.S.S.B.B. 538, our predecessors said, page 541:

It is well settled that the existence of unjust discrimination and undue prejudice and preference is a question of fact which must be clearly demonstrated by substantial proof. As a general rule there must be a definite showing that the difference in rates complained of is undue and unjust in that it actually operates to the real disadvantage of the complainant. In order to do this it is essential to reveal the specific effect of the rates on the flow of the traffic concerned and on the marketing of the commodities involved, and to disclose an existing and effective competitive relation between the prejudiced and preferred shipper, localities, or commodities. Furthermore, a pertinent inquiry is whether the alleged prejudice is the proximate cause of the disadvantage. Manifestly, the general representations made by witnesses for complainant do not afford convincing proof of the alleged disadvantages under which they and other interests at Philadelphia operate, or that the rate situation is solely responsible therefor. It may be that their conclusions are based on specific facts bearing upon the question of discrimination and prejudice, but the Department cannot accept such conclusions without an examination of the underlying facts upon which they are based, which facts are not of record in this proceeding.

We do not feel that there is satisfactory proof in this case that there has been loss or damage or prejudice to intervenors resulting from the collection of the "handling" charge at southern California ports. The alleged drop in intervenors' export business may be general to all exporters or may have resulted from any one or more factors already mentioned which may have permitted Atlantic and Gulf coast competitors to quote a lower delivered price than intervenors.

But regardless of the lack of satisfactory proof of discrim-



ination, the complaint must fail for a more fundamental reason. The examiner's finding of discrimination was based on the theory that the carrier made a charge for handling on the West coast and performed the same service without charge on the Atlantic and Gulf coasts. We think that an analysis and comparison of West coast with East and Gulf coast tariffs and their practical application shows that in both cases a charge for the service was made, as appears from the following examples which are typical.

Pacific Coast/Panama Canal Freight Conference, Freight Tariff No. 3, issued May 10, 1948, provides, Item 17 (D) (original page No. 11) :

All bills of lading shall be claused as follows:

Any provision herein to the contrary notwithstanding, goods may be received and/or delivered by carrier at ship's tackle and receipt and delivery beyond ship's tackle shall be entirely at the option of the carrier and solely at the expense of the shipper or consignee.

Item 13 (sixth revised page No. 9) provides:

*Handling Charges at Pacific Coast Loading Ports*

(A) *Definition.*—The services performed in moving or conveying cargo, including ordinary breaking down, sorting and trucking, (1) from place where unloaded from railroad car, truck or other vehicle on the terminal direct to ship's tackle, or (2) from place of rest on terminal, barge or lighter to ship's tackle shall be known as "handling" and the charges therefor shall be known as "handling charges."

*Schedule of Handling Charges*

Cement.....per ton \$0.85

Freight rate to Panama (Second revised page No. 18) :

Cement..... \$11

On the other hand, Atlantic & Gulf/Panama Canal Zone, Colon & Panama City Conference, Freight Tariff No. P-2, effective June 21, 1948, Item 2 (b) (original page No. 3) provides:

Rates published herein, and as may be amended or superseded by the Conference, apply from shipside, Atlantic and/or Gulf ports of the United States of America, as served by participating carriers, to ports of destination.

Freight rate to Panama (Original page No. 9) :

Cement..... \$9

From this particular comparison it appears that the ocean rate from Atlantic and Gulf ports to Panama is \$9 whereas the ocean rate from California ports to the same destination is \$11 plus handling charge. In a number of other cases the ocean rate to a common destination on cement was identical from the Atlantic

and Gulf ports and from the California ports, except for the handling charge.

The Atlantic and Gulf tariffs apparently do not define the term "shipside" but from the record it is clear that the term is not equivalent to "ship's tackle" in California ports. As a practical matter, on the East coast and Gulf the shipper is not billed separately for a handling charge to move cargo from point of rest on dock to ship's tackle, whereas on the West coast this is expressly provided for in the tariff and included as a separate charge against the shipper.

In Far East Conference Tariff No. 19, effective June 15, 1948, page 68, specifying rates from Atlantic and Gulf ports of the United States to the Far East, the following language is contained:

All rates shown herein apply from and to ship's tackle. Tolls, wharfage, lighterage, and cost of landing, and all other expenses beyond ship's tackle are for account of owner, shipper or consignee of the cargo.

Cargo delivered to vessel's loading berth alongside or on wharf shall be assessed the rate in effect at time of such delivery.

This tariff provision is not altogether clear. Perhaps the second sentence applies only at destination, and perhaps the third sentence is a limitation on the broad statement in the first sentence. On the other hand, a different interpretation might make an opening so as to permit a carrier to make a separate handling charge under this East coast tariff as is expressly provided under the West coast tariffs already referred to. However, this tariff does not provide for any separate handling charge, and all the testimony in the case is to the effect that under all East coast and Gulf tariffs, including this one, no handling charge is imposed. Thus, by the application of this tariff, as well as the other Atlantic coast and Gulf tariffs, above-mentioned, the shipper does not pay a separate handling charge on the East coast, and this is the gravamen of the charge of discrimination made by the West coast shippers in this case.

It is clear that the duty of the ocean common carrier in transporting cargo of the description considered in this case, such as borax, potash, soda ash, and cement in bag or package lots, is to pick it up from some place on the dock where the shipper places it and move it to the ship's tackle, load it on board, and carry it to destination. The carrier is entitled to charge for this entire service. Whether he divides the charge into two items (as on the West coast) or includes total service in a single charge

(as on the Atlantic coast), the remuneration is for the total service which the carrier is bound to give.

In *Sun-Maid Raisin Growers Ass'n. et al. v. United States*, *suprà*, the court said, page 961:

It is well established and is conceded that the duty of moving freight from the place of delivery on the dock to the ship's tackle and thence to a place on the dock at the port of delivery is a part of the duty of the carrier transporting the freight from port to port (*Puget Sound Stevedoring Co. v. Tax Commission of the State of Washington*, 302 U.S. 90) and in the absence of a special handling charge the freight rate would cover this duty. That is to say, the freight rate would cover the stevedoring charge.

In *J. G. Boswell Company et al. v. American-Hawaiian Steamship Company et al.*, 2 U.S.M.C. 95, the Maritime Commission said at page 101:

It is well settled that a carrier is entitled to compensation for any transportation service rendered and the fact that all parties were advantaged by the receipt and delivery of general cargo at place of rest instead of at ship's tackle could not operate to prohibit the carriers from charging for the service actually rendered in performing the handling beyond ship's tackle, when, as here, it is not shown that the published tackle-to-tackle rates included any compensation for that service or were in excess of fair and reasonable rates for the tackle-to-tackle service actually rendered by the carriers.

It follows that the total freight rate from California ports to destination is the ocean rate as quoted plus the handling charge as quoted, the latter being a factor in the total combination charge. On the East coast and Gulf the total rate for performing the carrier's total obligation is included in a single charge. In order to determine whether or not discrimination exists there must be a comparison of like charges and like services. In this case it appears that the failure to charge separately for handling on the East coast and Gulf when compared with the making of a separate charge on the West coast is not a comparison of like with like, for on the East coast and Gulf the ocean rate includes handling across the dock whereas on the West coast the ocean rate excludes handling. On the East coast and Gulf the handling charge is an unspecified part of the total; on the West coast it is specified.

It is true that the evidence shows that in some cases the total rate to destination from a California port is greater than the total rate to the same destination from an Atlantic or Gulf port, and the basic complaint of complainant and interveners may remain, i. e., that the total ocean rate from California is greater than the total rate from Atlantic and Gulf coasts. But this

difference does not constitute an unreasonable discrimination, for as said in *Intercoastal Cancellations and Restrictions, supra*, page 401:

Similarity of transportation conditions is a necessary element of undue preference and prejudice.

In *Eastbound Intercoastal Lumber*, 1 U.S.M.C. 608, our predecessors stated at page 620:

\* \* \* the Commission has no authority to reduce a rate primarily to protect an industry from foreign or domestic competition. *Atchison, T. & S. F. Ry. Co. v. Interstate Commerce Commission*, 190 Fed. 591. This decision is a reflection of the basic rule expressed by the Supreme Court of the United States in *Interstate Commerce Commission v. Diffenbaugh*, 222 U. S. 42, 46, that "The law does not attempt to equalize fortune, opportunities or abilities" of competitors.

No showing has been made in this case that the general conditions of transportation from Atlantic and Gulf ports to foreign destinations are so similar to conditions on the West coast as to make any difference in overall rates an unjust discrimination.

We therefore hold that the separate handling charges collected on the West coast by ocean carriers serving also the Atlantic and Gulf coasts are not unjustly discriminatory or unreasonably prejudicial to California shippers and ports in violation of any of the sections of the Shipping Act, 1916.

#### FINDINGS

1. The collection of both an unloading charge and a handling charge on cargo exported from southern California ports handled in "continuous" movement from rail car is not shown to be an improper and unreasonable practice in violation of sections 15 or 17 of the Shipping Act, 1916, or otherwise unlawful;

2. The collection of a separate handling charge at southern California terminals in connection with the transportation of cargo from southern California terminals to world ports by common carrier respondents transporting like cargoes from United States Atlantic and Gulf ports without separate handling charge to the same world destinations is not a practice unduly prejudicial to southern California shippers, is not unduly preferential to Atlantic or Gulf shippers, and does not constitute unjust discrimination in violation of sections 15 and 17 of the Shipping Act, 1916, it appearing that the common carriers perform identical service for compensation for the shippers on both coasts with respect to the handling of cargo at the respective terminals.

An order dismissing the complaint will be entered.

# FEDERAL MARITIME BOARD

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No. 675

THE PORT COMMISSION OF THE CITY OF BEAUMONT, ET AL.  
*v.*  
SEATRRAIN LINES, INC.

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*Submitted March 19, 1951. Decided April 10, 1951*

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Respondent having discontinued operation of the service covered by the challenged equalization practice, the complaint is dismissed without prejudice to the filing of another complaint in event of resumption by respondent of operation of such service and the use of the equalization practice involved.

*Robert E. Quirk and F. G. Robinson* for complainants.

*Arthur L. Winn, Jr.*, for respondent.

*C. D. Arnold* for The Southwest Louisiana Traffic Bureau, *Louis A. Schwartz* for New Orleans Traffic and Transportation Bureau, and *C. B. Waterman* and *Rene J. Mittlebronn* for Waterman Steamship Corporation, interveners.

## SUPPLEMENTAL REPORT OF THE BOARD

### BY THE BOARD:

Subsequent to the decision in this case, served January 11, 1951, complainants filed their petition advising that Seatrain Lines, Inc., during February or March 1950, discontinued the operation of its vessels between Belle Chasse (New Orleans, La.) and Hacendados (Havana), Cuba, and has not resumed such operation. Complainants allege that if the complaint should be assigned for further hearing by the examiner as directed by the Board's prior decision, the parties would be dealing with a non-existent operation by Seatrain between Belle Chasse and Hacendados, and with such facts as to the diversion of traffic, etc., that existed prior to February or March 1950. Complainants conclude that if such a hearing should be held under present conditions it apparently would serve no practical purpose, and that unless and until Seatrain resumes operation between Belle Chasse and

Hacendados, under equalization rules and practices similar to those herein assailed, complainants will not be injured. Complainants, therefore, pray that the proceeding be held in abeyance until respondent resumes operations under equalization rules and practices assailed by complainants as unlawful.

Respondent opposes the petition and prays that the case should either be set for hearing or that the complaint should be dismissed.

The complaint charged that respondent's equalization and absorption practices from complainant ports and the territory tributary thereto to Cuban destinations were unjust and unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 16 and 17 of the Shipping Act, 1916, and constituted an unjust and unfair device in violation of section 16(2) of the Act. Complainants prayed for the entry of an order directing respondent to cease and desist from the alleged violations. No reparation was demanded.

We agree that since respondent has discontinued the carriage of cargo by its vessels from Belle Chasse to Hacendados, the entry of an order granting the relief prayed for in the complaint would now be an idle gesture. It appears that the case has now become moot. If respondent should at a later date resume operations in a manner believed by complainants to be unlawful, complainants can readily institute a new proceeding. Necessary testimony in support of complainants' case may as conveniently be taken in such new proceeding as in the present case. The practice of holding cases open for an indefinite period in the future to consider possible future violations is not favored by the Board.

Accordingly, an order will be entered dismissing the proceedings without prejudice to the complainants to bring new proceedings before the Board for appropriate relief in the event of resumed operations of service by respondent with any equalization practice charged to be in violation of law.

By the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., on the 10th day of April A.D. 1951.

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No. 675

THE PORT COMMISSION OF THE CITY OF BEAUMONT, ET AL.

v.

SEATRAN LINES, INC.

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This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and investigation of the matters and things involved having been had, and the Board, on January 11, 1951, having made and entered of record a report stating its conclusions and decisions thereon, which report is hereby referred to and made a part hereof, in which the matters were remanded to the examiner for further hearing and report; and

Complainants having filed a petition requesting that the Board withhold further action herein inasmuch as respondent has discontinued operation of the service covered by the challenged equalization practice; and

The Board, on April 10, 1951, having considered said petition and the answer thereto of respondent, and having made and entered of record a report stating its conclusions and decisions thereon, which report is hereby referred to and made a part hereof:

*It is ordered*, That the complaint herein be, and it is hereby, dismissed, without prejudice to complainants to file another complaint in event of resumption by respondent of operation of such service and the use of any equalization practice charged to be in violation of law.

By the Board.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# FEDERAL MARITIME BOARD

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SPECIAL DOCKET NO. 237

OXENBERG BROS., INC.

v.

UNITED STATES OF AMERICA, WAR SHIPPING ADMINISTRATION,  
AND NORTHLAND TRANSPORTATION COMPANY, AGENT

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Uncontested case *Decided April 17, 1951*

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## REPORT OF THE BOARD

### BY THE BOARD:

This is a special docket proceeding arising under rule 201.58 of the Rules of Procedure of this Board (General Order No. 41 Revised) as the result of an application by respondents United States of America, War Shipping Administration, and Northland Transportation Company, Agent, as common carriers, for authority to make voluntary payment of reparation resulting from the collection of unreasonable freight charges. The charges were collected August 7, 1946, and complaint was filed July 12, 1948, within the statutory 2-year period. The examiner found:

That under bill of lading issued July 2, 1946, by Northland Transportation Company, as agent for the United States of America, acting by and through the Administrator, War Shipping Administration, Astorian Fisheries Corporation consigned to complainant a shipment of 39 tierces of mild cured salmon and 11½ tierces of salted salmon, weighing 46,450 pounds, which moved on respondents' MS. *Sailors Splice* from Bethel, Alaska, to Seattle, Washington; and

That at the time the shipment moved there was no southbound rate on refrigerated fish published in Freight Tariff No. 18 of Northland Transportation Company (U.S.M.C. No. 5); and

That the rate of \$60 per 2,000 pounds applicable on cold storage cargo northbound was assessed in accordance with the tariff provision that northbound rates would apply where there were no applicable southbound rates; and

That freight charges in the amount of \$1,393.50 were collected from complainant on August 7, 1946, on the basis of the said rate of \$60 per 2,000 pounds, plus a surcharge of 16 percent, or \$222.96, in accordance with said tariff, plus advances of \$34.83, plus wharfage of \$29.73, totalling \$1,681.02; and



That effective May 23, 1947, by supplement No. 4 to the said tariff, it was provided that on southbound shipments of refrigerated cargo there would be an additional charge of 40 percent of the rate applicable to the particular commodity, and under such provision the rate on the said shipment would have been \$10 per 2,000 pounds, plus 40 percent thereof, or \$325.15, plus surcharge of \$52.02, plus advances of \$34.83, plus wharfage of \$29.73, or a total of \$441.73; and

That at the time of the shipment here involved the ordinary-stowage southbound rate on fish from Bethel was \$10 per 2,000 pounds, plus surcharge of 16 percent; that from Nome, Alaska, north of Bethel, the rate was \$10 per 2,000 pounds, plus 40 percent if in cold storage, plus surcharge of 16 percent; and that from the Bristol Bay area and Goodnews Bay, south of Bethel, the rate was 25 cents per cubic foot (\$10 per 2,000 pounds), plus 40 percent if in cold storage, plus surcharge of 16 percent; and

That the rate assessed the said shipment was unlawful to the extent it exceeded \$10 per 2,000 pounds, plus 40 percent thereof, and the applicable surcharge; that complainant paid the said charge and has been damaged to the extent of the difference between the charges paid, or \$1,681.02, and the charges which would have accrued at the rate of \$10 per 2,000 pounds, plus the various applicable charges, or \$441.73; and that complainant is entitled to reparation in the sum of \$1,239.29.

We fully agree with and adopt the examiner's findings. The rate originally charged by the carrier for this southbound shipment was the northbound rate on refrigerated cargo made applicable to southbound shipments in accordance with the published tariff. This rate varied so greatly from other southbound rates for refrigerated transportation of fish from nearby points as to be clearly unreasonable and, therefore, unlawful in violation of section 18 of the Shipping Act, 1916, as amended.

The proceeding was instituted by the request for authority to refund the alleged unreasonable portion of the charges, prepared and filed on behalf of the United States of America and War Shipping Administration by Northland Transportation Company Agent. The application as filed carried the customary written concurrence of complainant. No individual liability was incurred by Northland Transportation Company, which acted as agent only in connection with the shipment in question. We have held in *Sigfried Olsen, d.b.a. Sigfried Olsen Shipping Company v. War Shipping Administration and Grace Line Inc.*, 3 F.M.B. 254, that War Shipping Administration, an agency of the United States Government, while operating merchant vessels as common carriers, is subject to the requirements of the Shipping Act, 1916, as amended. Congress has expressly declared in favor of equal treatment as between Government-owned and privately-owned merchant vessels. See Merchant Marine Act, 1920, as amended, section 19(4).

War Shipping Administration ceased to exist September 1, 1946, by virtue of Public Law 492, Seventy-ninth Congress (60 Stat. 501), which transferred all its functions, powers, and duties to the United States Maritime Commission. By Reorganization Plan No. 21 of 1950, these functions were again transferred to the Secretary of Commerce and by him delegated to the Maritime Administrator. Under the circumstances, the relief requested can best be granted through administrative action.

The chairman of this Board, as Maritime Administrator, will give administrative direction for the payment of the reparation found due in this decision from appropriate funds and, upon receipt of advice that the necessary action has been taken, an order will be entered discontinuing the proceeding.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

# FEDERAL MARITIME BOARD

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No. 705

WEST COAST LINE, INC., AND REDERIET OCEAN A/S  
v.  
GRACE LINE INC., ET AL.

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*Submitted April 19, 1951. Decided May 14, 1951*

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Pooling agreements covering freighting operations of respondents Grace Line Inc. and Compania Sud Americana de Vapores in the United States Atlantic-Chile trade, and freighting operations of the latter and respondent Gulf & South American Steamship Co., Inc., in the Gulf-Chile trade not shown to be unjustly discriminatory or unfair as between complainants and respondents, or to subject complainants to undue or unreasonable prejudice or disadvantage, or to operate to the detriment of the commerce of the United States, or to be in violation of the Shipping Act, 1916, as amended. Complaint dismissed.

*John W. Cross, Alfred E. Notarianni, and Robert B. House, Jr.*, for complainants.

*William Radner and Odell Kominers* for Grace Line Inc. and Gulf & South American Steamship Co., Inc.

*Cletus Keating and David Dawson* for Compania Sud Americana de Vapores.

*Samuel H. Williams* for Chamber of Commerce of Philadelphia, intervener.

*Paul D. Page, Jr., and George F. Galland* for the Board.

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## REPORT OF THE BOARD

### BY THE BOARD:

The complaint filed in this case by West Coast Line, Inc., and Rederiet Ocean A/S, trading jointly as West Coast Line, against Grace Line Inc. (hereinafter called "Grace"), Gulf & South American Steamship Co., Inc. (hereinafter called "Gulf & South American"), and Compania Sud Americana de Vapores (hereinafter called "C.S.A.V."), attacks two proposed pooling agreements, No. 7796 covering Atlantic coast/Chile trade, and No. 7797 covering Gulf coast/Chile trade, both of which have been

submitted to the Board for approval under section 15 of the Shipping Act, 1916. It is claimed that the operation of these pooling agreements, in combination with the import control system of the Government of Chile, will permit the establishment of a complete monopoly of the trades by the members of the two pooling agreements, and thus will be destructive of free commerce, detrimental to the commerce of the United States, and will be unjustly discriminatory and unfair to the complainants whose joint service is the only other service in the trades, and will subject them to undue and unreasonable prejudice. Complainants allege that they have requested membership in the two pools, but have been refused. Accordingly, complainants have applied to this Board either to direct the modification of the pooling agreements so as to permit complainants to participate therein, or, in the alternative, to disapprove the agreements for the reasons stated.

The examiner recommended minor modifications of the agreements so that they will comply with section 20 of the Shipping Act, 1916, prohibiting disclosure of trade information. Apart from this, the examiner found that the agreements and their operation were not shown to be unjustly discriminatory and unfair, or detrimental to the commerce of the United States, and recommended that the complaint be dismissed. Exceptions were filed by the complainants and the case was submitted without oral argument. In general, we agree with the examiner's recommendations.

The complaint expressly avers that ordinary pooling agreements between shipping companies are not *per se* a violation of the Shipping Act, 1916, as amended, but charges that they may become unjustly discriminatory and unfair because of their actual method of operation in combination with other factors. Here complainants point to the Chilean import license system as the chief outside factor operating with the pooling agreements which produces the alleged unjust discrimination and unfairness. In order to obtain the necessary background it is necessary, first, to consider the provisions of the two pooling agreements, and then the origin, operation, and effect of the Chilean licensing system.

Agreement No. 7796, as amended, covers the freighting operations of Grace and C.S.A.V. on all southbound cargo, with specified minor exceptions, shipped from ports on the U. S. Atlantic coast destined to Chile (not including cargo destined to Bolivia)

and on all northbound copper (metal only) from Chile to U. S. Atlantic ports. Cargo shipped under local bills of lading only is covered, thereby excluding shipments originating in Canada or Europe and transhipped at United States ports. Likewise mail, passengers' baggage, including passengers' automobiles, are expressly excluded. Grace and C.S.A.V. each undertakes to maintain a minimum of 25 southbound sailings per annum, spaced not more than 25 days apart, and to provide southbound capacity, averaged over each period of 3 months, adequate to accommodate 50 percent of the southbound pool tonnage carried by both parties during such period. They agree that each will maintain a minimum of 15 sailings northbound per annum, spaced not more than 30 days apart, and that each will provide northbound capacity similarly averaged to accommodate the portion of northbound pool cargo offered to its line. After deduction of a handling charge of \$9 per revenue ton on southbound pool tonnage and a handling charge of \$6.50 on north bound pool tonnage, the remainder of the gross freight earnings accruing on pool tonnage is to be pooled separately northbound and southbound. The southbound pool revenue is to be divided between Grace and C.S.A.V. on the basis of 50 percent to each line. The northbound pool revenue is to be divided so that each line retains for itself the percentage which corresponds to the percentage of northbound pool tonnage actually carried by it during each year, but if either line during any year fails to carry at least 30 percent of the northbound pool tonnage without any deficiency in the number of sailings or agreed capacity, it will receive 30 percent of northbound pool earnings and the other party will receive 70 percent of such earnings. In case of failure by either party to maintain sailings or available capacity either northbound or southbound as required by the agreement, the percentage of pool revenue of such party is reduced in a specified manner. The computations and divisions of pool revenues are to be made beginning November 1, 1950, and the pools are to continue until December 31, 1960, and thereafter from year to year, subject to termination by either party on 3 months' prior written notice before the end of any calendar year. Provision is also made for the termination of the agreement on 60 days' notice if either the United States or Chile should adopt any laws or regulations which treat one party differently from the other with respect to the routing of cargo, and for other reasons not material to this proceeding.

Agreement No. 7797 is substantially similar to No. 7796, ex-

cept that it covers the freighting operations of Gulf & South American and C.S.A.V. only on southbound cargo shipped from points on the Gulf coast of the United States destined to ports of Chile (not including cargo destined to Bolivia); Gulf & South American and C.S.A.V. each undertakes to maintain a minimum of 10 sailings per annum, spaced not more than 45 days apart, and to provide capacity, averaged over a 6-month period, adequate to accommodate the portion of pool cargo constituting the minimum guarantee (35 percent of the pool revenue). A handling charge of \$8 per revenue ton is deducted from gross freights, and the balance of pool revenue is apportioned between the parties on the basis of the pool revenue produced by each line, but if either of the parties during the yearly pool period fails to produce at least 35 percent of the pool revenue without deficiency in number of sailings or cargo capacity, such party is to receive 35 percent of the pool revenue and the other party the remaining 65 percent with specified modifications of percentage division in case either party fails to maintain the agreed minimum sailings or capacity.

Both agreements were submitted to the Federal Maritime Board for approval on November 2, 1950, and notice thereof was published in the Federal Register, but as yet they have not been approved. On November 15, 1950, complainants wrote to each of the parties to the two agreements requesting admission to membership, but, as above stated, admission was refused. Complainants, as well as respondents, are members of all conference agreements in the trades in question.

Complainant West Coast Line, Inc., is a New Jersey corporation, organized in 1940 to engage in the steamship operation and agency business. By Agreement No. 7578, filed with the United States Maritime Commission on May 24, 1946, and approved June 20, 1946, West Coast Line, Inc., and J. Lauritzen, a Danish citizen, organized a joint service between U. S. Atlantic and Gulf ports and ports in Chile, Peru, Ecuador, and the West coast of Colombia, under the name of West Coast Line. Wessel, Duval & Company, Inc., an American trading corporation, owns 88 percent of the stock of West Coast Line, Inc., and had, as shipowner, been in this trade since 1825, using the name "West Coast Line" over the years. In 1946 West Coast Line, Inc., acted as a common carrier, but since that time has acted as agent in the United States for J. Lauritzen and more recently for Rederiet Ocean A/S, the successor of J. Lauritzen, the other party to the

joint service agreement No. 7578 above mentioned. West Coast Line, Inc., claims to be a common carrier in said agreement No. 7578, but whether at the present time, in view of its reduced activities, it is still technically a common carrier so as to be eligible for admission to any pooling agreements need not here be decided since the complaint is brought both in the name of West Coast Line, Inc., and of Rederiet Ocean A/S, and the latter, as owner and operator of Danish-flag ships, is clearly a common carrier by water within the definition of that term in the Shipping Act, 1916.

Rederiet Ocean A/S, a Danish corporation, has been since 1946 supplying the ships for the joint service known as West Coast Line, and has been operating a fortnightly service in the trade between U. S. Atlantic coast ports and the West coast of South America, and monthly between U. S. Gulf ports and the West coast of South America. While the first service is the successor to one of ancient origin, the second service began only in 1950.

Grace, an American-flag subsidized carrier, maintains a weekly service with combination passenger and cargo ships from U. S. North Atlantic ports to West coast of South America ports, and this service is supplemented by a fortnightly freighter service. Grace has been operating in this trade for about 100 years.

Gulf & South American, an American-flag carrier, in which Grace interests own a 50 percent share, began operating in the U. S. Gulf/West coast of South America trade in 1946. Prior to that time, between 1918 and 1938 and between 1941 and 1946, Grace had operated on the route. Gulf & South American operates with fortnightly sailings.

C.S.A.V. is a Chilean corporation, now maintaining a fortnightly service between U. S. North Atlantic ports and Chilean and other West coast of South America ports. This service commenced in 1920, but was suspended from 1932 until 1938, since when it has operated continuously. Some of C.S.A.V. vessels proceed from Chile to United States Atlantic ports and thence to Europe and return by the same route. C.S.A.V.'s Gulf service was instituted in 1942, discontinued in 1945, and reestablished in 1947, since which time it has been in continued operation. In 1950, 7 southbound sailings on this route were made.

In the U. S. Atlantic-West coast of South America trade there have been two previous pooling agreements. One, No. 5893, between Grace Line Inc. and West Coast Line, was in effect from

July 1, 1937, to September 19, 1940. It was then disapproved by the Maritime Commission because, on account of war conditions, the Danish-flag carrier could no longer provide its agreed share of the tonnage. (See *Pooling Agreement No. 5893*, 2 *U.S.M.C. 372*). The other agreement, No. 7340, between Grace Line Inc. and C.S.A.V., was approved January 23, 1941, but pooling payments thereunder were suspended during World War II and have not been resumed. Unlike Agreement No. 7796, Agreements Nos. 5893 and 7340 covered the freighting operations of the parties from U. S. Atlantic coast ports to Pacific ports of Colombia, Ecuador, Peru, as well as Chile, and like No. 7796 they provided for a division of revenue on a percentage basis. At the time that these two prior pools were in effect, there were three carriers in the trade, so that, in effect, then as now, one of the three carriers was excluded from every pool.

Since World War II the Chilean Government has become increasingly active in the support of Chilean-flag merchant vessels. The country has an extended coast line and has declared that an adequate national merchant marine is required for security, both in peace and war. The commerce and industry of the country have grown, and many large firms which, in former years, were directed by non-Chileans, have now passed into the control of Chilean citizens. The following extract from the Note of the Chilean Ambassador to the State Department, dated January 16, 1951, urging the approval of the pooling agreement, here under consideration, indicates the recent trend:

\* \* \* Because of her extensive coastline, the improvement and development of an adequate merchant marine, making it possible to carry a substantial part of her foreign trade, is of vital importance to Chile.

This importance is clearly evident in time of peace, and of imperative necessity in case of war, since Chile must have assured means of transportation for her exports and imports. Her economy is such that she must be able to convert, by essential purchases, the foreign exchange which will be made available by the operation of an appropriate merchant marine. \* \* \*

In February 1950, pursuant to this national policy, the Chilean Government adopted a new import permit system requiring importers to answer the following question:

9. Ocean freight charges: (Specify if these will be contracted for on Chilean vessels; and if so, whether they will be paid in Chilean or foreign currency).

In May 1950, by Circular No. 37, issued by the Ministry of Foreign Affairs to Chilean consuls abroad, it was announced: the National Council of Foreign Trade \* \* \* has given instructions



to its local Commissions to the effect that confirmations of import permits shall bear a stamp, in a visible place, stating whether the merchandise in question is to be shipped on Chilean vessels or on Foreign vessels.

Consequently, you may only visa shipping documents submitted to you provided they comply with this requirement, which should be indicated on the respective Confirmation of Import Permit.

At first, two stamps were used on the import permits:

“Shipment National Vessels” and “Shipment Foreign Vessels.”

Thereafter, in August 1950, the Chilean licensing system was further implemented by Resolution No. 281, providing as follows:

The H. (Hon.) governing council agreed to authorize the Local Commission to establish in their anticipated applications the requirements to shipping cargo in national vessels, up to the amount of fifty percent of the anticipated freight from ports served by the regular lines of the Chilean Shipping companies. This requirement will be limited to the cargo capacity of the Chilean ships.

The clear purpose of this regulation was to give 50 percent of the southbound traffic to Chilean vessels, leaving the remaining 50 percent to all of the carriers in the respective trades.

Against this background the pooling agreements were signed by Grace, Gulf & South American, and C.S.A.V. on October 20, 1950. Although the agreements have not yet been approved, there was a prompt change in the operation of the Chilean import permit system. A new stamp reading “Shipment National or Associated Vessels” was made available in substitution for “Shipment National Vessels”. Under Agreement No. 7796, Grace became associated with C.S.A.V. on the North Atlantic shipments, and under Agreement No. 7797, Gulf & South American became associated with C.S.A.V. on Gulf shipments. Very shortly thereafter, Chile announced a free list (i. e., cargo not subject to import licensing) and the items on this free list have come to include those which in the first 10 months of 1950 made up more than 49 percent of complainants’ southbound carrying from U.S. Atlantic ports to Chile. Furthermore, according to complainants’ own witness, the operation of the Chilean import licensing system since the signing of the pooling agreements indicates that Chile’s objective is to assure that 50 percent of non free-list imports shall move via Chilean lines and associated lines together, and not that 50 percent must move via Chilean lines exclusively. Furthermore, complainants’ witness admitted that since the pooling agreements had been signed, he knew of no application by Wessel, Duval & Company for permit to import licensed cargo on ships of complainants’ line which had been denied.

Complainants also charge that the effect of the pooling agreement is unreasonably preferential to C.S.A.V., and conversely unfair and unreasonably prejudicial and discriminatory to complainants. They charge that C.S.A.V. vessels do not have the capacity to carry one-half of the southbound tonnage from the United States to Chile, and that a pooling agreement which in effect gives C.S.A.V. more freight revenue than it is capable of earning within its total capacity, should be stricken down. This argument appears to be based on the number of southbound sailings from Atlantic ports in 1950, as follows:

Grace .....	78
C.S.A.V. ....	29

However, it is pointed out that the relationship as to southbound sailings does not necessarily imply inability by C.S.A.V. to carry 50 percent of the trade. The Traffic Officer of Grace testified that C.S.A.V. could, with its existing tonnage, easily accommodate 50 percent of the trade from U. S. Atlantic ports to Chile and have space to spare, and that C.S.A.V. capacity was ample to handle 100 percent of the traffic from the Gulf. More specifically, the witness elaborated on the North Atlantic trade, saying:

By handling fifty percent of the trade from Europe, from England and North continental ports, excluding Scandinavia, and handling fifty percent of the trade from U. S. Atlantic to Chile, and I am only talking cargo to Chile, that the C.S.A.V. with the fleet they now have in service would be only eighty-five percent full after they had accommodated fifty percent of the two movements I have mentioned.

No substantial countervailing testimony was offered in opposition to the foregoing. The conclusion was supported by computations based on the first 9 months of the 1950 southbound cargo carried from North Atlantic ports to Chile and the first 6 months of 1950 cargo carried from Gulf ports to Chile, showing that a fair estimate of the cargo space on C.S.A.V. vessels for the year 1950 supported the general statements made by the witness of Grace. It must be pointed out that no sailings of the carriers here involved from the United States to Chile are direct sailings; all of them usually carry some cargo for Colombia, Ecuador, Peru, or Bolivia. This appears to be a factor favorable to general flexibility to meet the special requirements of each destination. While it was testified that the movement of traffic in the southbound trades in 1950 was below normal, it does not appear that the volume is likely to increase to a point where C.S.A.V.'s capacity would be insufficient to accommodate at least 50 percent of it.

Complainants have also offered some estimates, based on 1950 carryings, of the possible payment which Grace may have to make to C.S.A.V. under Pooling Agreement No. 7796. These also are estimates only and may prove greatly at variance from actual experience. In any event, these estimates point to a detriment to Grace rather than to complainants.

It is to be pointed out that in this case we are considering the pooling agreements under the Shipping Act, 1916. The regulatory problems thus presented are, in our opinion, distinct and must be treated separately from any questions which may arise under any subsidy agreement of Grace under the Merchant Marine Act, 1936. By reason of circumstances over which neither Grace nor the United States of America has control, C.S.A.V. became the beneficiary of Chilean regulations which aimed to reserve to C.S.A.V. 50 percent of the entire southbound Chilean trade, a larger proportion than that company had theretofore enjoyed. Thus Grace, as well as other carriers in the trade, were faced with a very practical fiscal problem. They had to forecast what might be their decrease in revenue if the Chilean regulations remained in full force as against more favorable results to be hoped for if the regulations could be eased as the result of agreement among the parties or some of them.

The evidence shows that the pooling agreements have been followed by a relaxation of Chilean import regulations in a manner which is deemed to be satisfactory to Grace, and at the same time are not shown to have resulted in reducing the participation of complainants in the trades, nor are they shown to have operated in other respects to the detriment or prejudice of complainants.

One thing seems reasonably clear and that is that the pooling agreements between respondents were not entered into for the purpose of eliminating complainants as a factor in the trade. It was readily testified to by a witness of Grace that the Chilean regulations were a very important motivating circumstance that led to the execution of the pooling agreements. The pooling agreements developed as the result of a number of other factors also, but the Chilean regulations were clearly dominant.

Complainants argue that there is a reasonable possibility in the future that the pooling agreements may have an unjustly discriminatory or unfair result, and that Chile may hereafter change her policy and increase her presently indicated requirements in excess of 50 percent of regulated imports on "National

or Associated Vessels." In this connection, a paragraph from the Note of the Chilean Ambassador to the State Department, dated January 16, 1951, already referred to, indicates that the Chilean Government presently intends that the operation of the regulations shall not be detrimental to nonmembers of the pool such as West Coast Line:

It should be noted that the agreements give identic treatment to national shipping lines and lines actually representing United States shipping interests in the traffic with the United States. At the same time, the Government of Chile deems that the proposed agreements are not detrimental to the interests of other shipping lines, such as the West Coast Line which operates Danish vessels, because importers are authorized to designate such vessels for shipment.

This Board is only able to decide cases on the evidence of existing facts and the reasonable deductions to be drawn therefrom. It is not authorized to base decisions on speculative possibilities. However, the Board points out that a finding at this time that the operations of the pooling agreements in question do not today result in unfair discrimination does not close the door to a re-examination of the same pooling agreements at a future date if changed conditions bring about changed results. Section 15 of the Shipping Act, 1916, expressly provides that the Board may "disapprove, cancel, or modify any agreement \* \* \* *whether or not previously approved by it*, that it finds to be unjustly discriminatory or unfair" etc. (Emphasis supplied.)

Mention should be made of the intervening petition of the Chamber of Commerce of Philadelphia, which has an interest in continued and regular service to Chile. In 1950 complainants made 25 sailings from Philadelphia to Chile whereas Grace made not more than 14. It does not appear that the approval of Agreement No. 7796 will adversely affect complainants' service from Philadelphia. In any event, Grace testified without contradiction that it is willing and able to provide all the service that may be required either from Philadelphia or any other Atlantic port in the event that complainants' service is withdrawn.

Counsel for the Board raise a question in respect to one term of the agreements which provides for the exchange of manifests and other shipping documents between members of the pools. It was pointed out that such an exchange would violate section 20 of the Shipping Act, 1916, and thereupon Grace agreed that it was not necessary for the purpose of the pool to reveal the names of shippers or consignees and indicated that the pooling

agreements would be operated so as to prevent violating either the letter or the spirit of section 20.

#### CONCLUSIONS

We conclude that an agreement to pool earnings by two or more carriers in a particular trade is not *per se* unlawfully discriminatory or a violation of the Shipping Act, 1916, as amended. Nor does the refusal by the members of a pool to admit an additional applicant necessarily render the continued operation of the pool unjustly discriminatory or a violation of the Shipping Act, 1916. The division of earnings, losses, or traffic by members of a pool contemplates close relations and exchanges of confidential information between them which may well be voluntarily assumed by competitors, but which should hardly be imposed upon them from the outside.

We find from the evidence in this case that Pooling Agreements Nos. 7796 and 7797, when operated in the manner indicated, are not shown, even when considered in connection with the present operation by the Chilean Government of its import regulations, to be unjustly discriminatory or unfair as between complainants and respondents, or to subject complainants to undue or unreasonable prejudice or disadvantage, or to operate to the detriment of the commerce of the United States, or to be in violation of the Shipping Act, 1916, as amended. Accordingly, an order will be entered dismissing the complaint,

3 F. M. B.

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., on the 14th day of May A. D. 1951

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No. 705

WEST COAST LINE, INC., AND REDERIET OCEAN A/S

*v.*

GRACE LINE INC., ET AL.

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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, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

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

By the Board.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# FEDERAL MARITIME BOARD

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No. M-32

AMERICAN PRESIDENT LINES, LTD.—APPLICATION TO BAREBOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO REFRIGERATED VESSELS FOR USE IN THE TRANSPACIFIC TRADE, AND PERMISSION TO CALL AT ADAK, ALASKA, UNDER SECTION 805 (a), MERCHANT MARINE ACT, 1936

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## SUPPLEMENTAL REPORT OF THE BOARD

In the Board's findings, certification, and recommendation herein dated May 24, 1951, this proceeding was held open to permit any party so desiring to file a supplemental application for operation of vessels in a broader trading area.

By application dated May 31, 1951, American President Lines, Ltd., requested permission to operate the refrigerated M. V. *Lightning*, bareboat chartered to applicant in Docket No. M-27, and the M. V. *Shooting Star*, bareboat chartered to applicant in this proceeding, in the transpacific trade on such routes and with such itineraries as may be prescribed or requested by Military Sea Transportation Service, Department of the Navy, including the port of Adak, Alaska.

Further hearing was held by the Board in this proceeding under Public Law 591, Eighty-first Congress, and section 805 (a) of the Merchant Marine Act, 1936, on June 15, 1951, in accordance with notice thereof published in the Federal Register of June 9, 1951. The usual notice of 15 days was not given because of the urgency of the matter. Parties desiring to intervene were permitted to do so at the time of the hearing.

## STATEMENT OF FACTS

Applicant's witness testified that the two vessels involved are for use in its transpacific service as nonsubsidized vessels to meet requirements of Military Sea Transportation Service in the Far East. He further testified that enlarging the trading area of these two vessels to include Adak for outbound cargo only will

not result in unfair competition to other companies operating exclusively in the intercoastal or coastwise service; nor will it be prejudicial to the objects and policies of the Merchant Marine Act, 1936. He also testified that the only American-flag companies operating from the Pacific Northwest and Alaska are Alaska Steamship Company and Coastwise Line; that he has discussed this application with counsel for these lines, and instead of being opposed to it they are in favor of it. Applicant's witness further testified that the present reefer service is inadequate to meet military requirements, and that there are no such privately owned American-flag vessels available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

A representative of Military Sea Transportation Service testified that enlarging the trading area of these two vessels to include Adak, for operation in the transpacific trade in conjunction with other reefer vessels on a synchronized schedule, is necessary in order to meet the requirements of the armed forces. He also testified that cargo carryings to Adak on these vessels will be restricted to outbound cargo from Pacific and northwest Pacific ports, and that it will be military cargo only. He further testified that this operation is very important to the military as there are no privately owned American-flag reefer-type vessels available for charter.

No testimony was adduced at the hearing in opposition to this application, either as to the chartering or as to the broadening of the trading area.

#### SUPPLEMENTAL FINDINGS, CERTIFICATION, AND RECOMMENDATION UNDER P.L. 591

On the basis of the facts adduced of record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the transpacific service under consideration, to include Adak, Alaska, is required in the public interest;
2. That such service is not adequately served; and
3. That privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that adequate provision be made to protect the interest of the Government under its operating-differential subsidy contracts with applicant.



PERMISSION UNDER SECTION 805(a), MERCHANT MARINE ACT,  
1936

Applicant is a subsidized operator. Its application here includes request for permission to have the ships involved call at Adak, Alaska. In this connection there was no evidence adduced at the hearing to the effect that permission to have the vessels involved call at Adak would result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service or that it would be prejudicial to the objects and policy of the Merchant Marine Act, 1936.

We conclude that the granting of the application (1) will not result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service; (2) will not be prejudicial to the objectives and policy of the Merchant Marine Act, 1936, as amended; and (3) will be in the public interest and convenience; provided: that such permission shall be subject to revocation, cancellation, or modification by the Board upon thirty days' notice in writing to American President Lines, Ltd.

The application for permission under section 805(a) of the Merchant Marine Act, 1936, as amended, is hereby granted, subject to the conditions indicated.

By the Board.  
JUNE 19, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

# FEDERAL MARITIME BOARD

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No. M-33

SOUTH ATLANTIC STEAMSHIP LINE, INC.—APPLICATION TO BARE-BOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR EMPLOYMENT IN THE SOUTH ATLANTIC/UNITED KINGDOM AND ATLANTIC EUROPE SERVICE (TRADE ROUTE No. 11)

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## REPORT OF THE BOARD

This proceeding was instituted under Public Law 591, Eighty-first Congress, upon the application of South Atlantic Steamship Line, Inc., to bareboat charter two Government-owned, war-built, dry-cargo vessels for use in applicant's existing berth service on Trade Route No. 11 between South Atlantic ports of the United States, including Hampton Roads ports, and ports in the United Kingdom and Atlantic Europe, and for calls east-bound only at Philadelphia and/or Baltimore as cargo offers to load bulk grain in liner parcels and/or armed services cargo for United Kingdom and/or Continent/Bordeaux/Hamburg range. Pursuant to the Board's notice of hearing dated June 4, 1951, a hearing was held before an examiner on June 12, 1951. The examiner has recommended that except for the calls at Philadelphia and Baltimore,

The Board should find and so certify to the Secretary of Commerce that the South Atlantic/United Kingdom and Atlantic Europe services in which South Atlantic Steamship Line, Inc., proposes to bareboat charter two Government-owned, war-built, dry-cargo vessels is in the public interest, that such services would not be adequately served without the use therein of such vessels, and that privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

Waterman Steamship Company, the only intervener, did not except to the examiner's recommended decision. Counsel for the Board, while not excepting to the examiner's recommended decision, submitted a memorandum "for the purposes of clarification \* \* \* ." The applicant states that the examiner's recommendation is acceptable.

A recitation of the facts set forth in the examiner's recom-

mended findings is not considered necessary, and we adopt such findings of fact as our own. Our comments deal with the memorandum of counsel for the Board. He first suggests a possible ambiguity in the examiner's description of the services on which the vessels are to be used, and suggests that in lieu of the language above quoted from the examiner's recommendation, the service be more specifically described. We think that the record is reasonably clear as to what is meant, but in order to avoid any possibility of error, the service will be more narrowly described in our recommendation to the Secretary, and our statutory findings and certifications will be limited to the service so described.

Counsel for the Board also questions the correctness of the examiner's rulings excluding evidence relating to possible charter restrictions and conditions such as may be brought to the attention of the Secretary of Commerce for inclusion in the charter, pursuant to section 3 of the statute. It is true that the notice of hearing before the examiner in this case stated that the purpose of the hearing was

to receive evidence with respect to whether the service for which such vessels are proposed to be chartered is required in the public interest and would not be adequately served without the use therein of such vessels, and with respect to the availability of privately owned American-flag vessels for charter on reasonable conditions and at reasonable rates for use in such service.

If the evidence were to be strictly limited by the above specifications, the examiner's ruling would be technically correct. However, history of the Board's consideration of cases arising under Public Law 591, including cases heard directly by the Board, indicates that evidence relating to terms and conditions of charter has been admitted to guide the Board in its recommendations to the Secretary. Despite lack of specific reference to such matters in the notice, we think the excluded evidence should have been admitted. The notice indicated that the hearing was to be held pursuant to section 3 of the statute, and should have been conducted by the examiner in a manner so as to place upon the record material evidence on all matters pertinent to the Board's statutory functions. Without the evidence the Board cannot be properly advised as to appropriate restrictions or conditions, if any, which it may wish to bring to the attention of the Secretary. Future notices under Public Law 591 should clearly indicate that evidence of this sort will be received. In this case the record will be referred back to the examiner with directions to obtain

evidence on the issues heretofore excluded. This may be obtained either by stipulations of the parties or in the usual manner. Thereafter a supplemental recommendation may be submitted to the Board.

By the Board.

JULY 2, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-33

### SOUTH ATLANTIC STEAMSHIP LINE, INC.—APPLICATION TO BARE-BOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR EMPLOYMENT IN THE SOUTH ATLANTIC/UNITED KINGDOM AND ATLANTIC EUROPE SERVICE (TRADE ROUTE NO. 11)

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The Board should find and so certify to the Secretary of Commerce that the South Atlantic/United Kingdom and Atlantic Europe services in which South Atlantic Steamship Line, Inc., proposes to bareboat charter two Government-owned, war-built, dry-cargo vessels is in the public interest, that such services would not be adequately served without the use therein of such vessels, and that privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such services.

The Board should further find and so certify to the Secretary of Commerce that applicant has not shown that the services from Baltimore and Philadelphia to the same destination areas are inadequate.

*William I. Denning* and *Earl C. Walck* for applicant.

*Sterling F. Stoudenmire, Jr.*, for intervener.

*Max E. Halpern* for the Board.

#### RECOMMENDED DECISION OF ROBERT FURNESS, EXAMINER

This is a proceeding under Public Law 591, Eighty-first Congress, on an application of South Atlantic Steamship Line, Inc., to bareboat charter two Government-owned war-built, dry-cargo vessels for use in applicant's existing berth service on Trade Route No. 11 between South Atlantic ports of the United States, including Hampton Roads ports, and ports in the United Kingdom and Atlantic Europe, and for calls eastbound only at Philadelphia and/or Baltimore as cargo offers to load bulk grain in liner parcels and/or armed services cargo for United Kingdom and/or Continent/Bordeaux/Hamburg range. The vessels are requested to accommodate cargo in excess of the present berth capacity of applicant's owned fleet of five vessels. It estimates that the cargo offering would require operation of the two vessels sought for about one year.

Hearing on the application was had June 12, 1951. Waterman Steamship Corporation appeared at the hearing and opposed the application.

South Atlantic has been operating from South Atlantic ports since 1886 and is the only carrier furnishing regular berth service from ports south of Hampton Roads, such as Charleston, S. C., Savannah, Ga., and Jacksonville, Fla. Cargo originating in those areas consists largely of paper mill products, naval stores, cotton, hardwood lumber, tobacco, and manufactured products from the interior.

Until May 1951 applicant had been able to accommodate all the cargo offered, but since then has not been able to book all freight due to unavailability of space. In one instance applicant refused 1,200 tons of soy bean cake, and in another it lost 1,500 bales of cotton. Foreign-flag vessels called for and transported both parcel lots. Some freight has been transported by railroad north to Hampton Roads for shipment to Europe because South Atlantic had no space available at the southern ports. Applicant testifies that space demands are steadily increasing and figures are offered fully supporting such testimony.

Applicant is unable to show, however, that the services out of Philadelphia and Baltimore are inadequate. Waterman produced evidence that those services are adequate, and argues that if the application is granted the two vessels may not be permitted to call at those ports under the terms of the statute. Counsel for the Board makes the same contention.

Public Law 591 requires findings as to the availability for charter of privately-owned vessels. The record is clear that no such vessels are available at reasonable rates and on reasonable conditions. Exhibits of record reveal that in May 1951 a quotation of \$80,000 per month was given applicant for charter of a Victory-type vessel which might be available in July, and that another quotation of \$100,000 per month was obtained from a private owner. Applicant testifies that he suffered substantial loss within the past six months on a Liberty-type vessel at a charter rate of about \$50,000 per month.

#### CONCLUSIONS AND RECOMMENDATIONS

The Board should find and so certify to the Secretary of Commerce that the South Atlantic/United Kingdom and Atlantic Europe services in which South Atlantic Steamship Line, Inc., proposes to bareboat charter two Government-owned, war-built,

dry-cargo vessels is in the public interest, that such services would not be adequately served without the use therein of such vessels, and that privately owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

The Board should further find and so certify to the Secretary of Commerce that applicant has not shown that services from Baltimore and Philadelphia to the same destination areas are inadequate.

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# FEDERAL MARITIME BOARD

No. M-33

SOUTH ATLANTIC STEAMSHIP LINE, INC.—APPLICATION TO BARE-BOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR EMPLOYMENT IN THE SOUTH ATLANTIC/UNITED KINGDOM AND ATLANTIC EUROPE SERVICE (TRADE ROUTE No. 11)

## SUPPLEMENTAL REPORT OF THE BOARD

In our report in this case of July 2, 1951, we set forth fully the facts relating to the application of South Atlantic Steamship Line, Inc., to bareboat charter two Government-owned, war-built, dry-cargo vessels for use in the applicant's existing berth service on Trade Route No. 11.<sup>1</sup> In that decision we remanded the case to the examiner with directions to obtain evidence relating to possible charter restrictions and conditions such as may be brought to the attention of the Secretary of Commerce for inclusion in the charter pursuant to section 3 of Public Law 591, Eighty-first Congress.

The examiner has now reported back to the Board that a stipulation has been entered into between counsel for applicant and counsel for the Board, dated July 5, 1951, and the examiner states:

In view of the nature of the stipulation, I deem it unnecessary to offer any further recommendations or to suggest any restrictions or conditions to be included in the terms of the charter which the Board might recommend to the Secretary of Commerce.

A review of the stipulation satisfies the Board that no restrictions or conditions need be included in the standard form of charter at this time.

## FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the record adduced in this case, the Board accordingly finds and hereby certifies to the Secretary of Commerce that the service

<sup>1</sup> Trade Route 11 is described in *Arnold Bernstein S. S. Corp.—Subsidy, Routes 7, 8, 11*, 3 U.S.M.C. 851, as follows: U. S. South Atlantic ports (Hampton Roads-Key West inclusive)—United Kingdom and Ireland, Continental Europe north of Spanish border (including Scandinavian and Baltic ports except as to cargo to and from Hampton Roads).



operated by the applicant within Trade Route No. 11 between South Atlantic ports of the United States, including Hampton Roads ports, and ports in the United Kingdom and Atlantic Europe, is required in the public interest; that such service would not be adequately served without the charter of two Government-owned, war-built, dry-cargo vessels; and that suitable privately-owned vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

By the Board.

JULY 6, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

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# FEDERAL MARITIME BOARD

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No. 676

D. L. PIAZZA COMPANY

v.

WEST COAST LINE, INC., ET AL.

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*Submitted November 22, 1950. Decided July 9, 1951*

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Freight charges for carriage of refrigerated cargo from Chile to New York in accordance with oral agreement with agents of vessel were not unjustly discriminatory, unreasonably prejudicial or unreasonably disadvantageous and did not constitute an unreasonable practice in violation of sections 14, 16, or 17 of the Shipping Act, 1916.

Imposition of charge as alleged demurrage on vessel at destination was, in the absence of any agreement for demurrage, an unreasonable practice in violation of section 17 of the Act. Reparation awarded.

*Edward B. Hayes* for complainant.

*Stanley W. Schaefer* for respondents.

## REPORT OF THE BOARD

### BY THE BOARD:

The complaint in this case charges that respondents violated sections 14, 16, and 17 of the Shipping Act, 1916, causing damage to complainant for which reparation is claimed under section 22 of that Act. Total damages demanded are \$51,132.69, of which \$48,632.69 is claimed to be excessive freight resulting from alleged discrimination in violation of sections 14, 16, and 17 of the Act, and \$2,500 is claimed to enforce a refund of that amount, said to have been collected by respondents as demurrage for the detention of the SS. *Argentinean Reefer* at destination, which collection is said to constitute an unreasonable regulation or practice relating to the handling, storing, or delivering of property in violation of section 17 of the Act. The complaint is filed against West Coast Line, Inc., Wessel, Duval & Co., Inc., two American corporations, and J. Lauritzen, a Danish partnership, who share the same offices in New York City.

The examiner recommended that the claim for refund of excessive freight be disallowed, and that the claim for refund

of demurrage be allowed against all three respondents. We agree with the examiner's result on the freight, and partly agree with the result on the demurrage.

Complainant is a partnership with an office in Minneapolis, Minn. It is an importer and distributor of fruits and vegetables. In March 1946 it planned to import fresh fruit from South America and sent one Samuel Chertok, who was in the fruit business in Chicago, to New York to obtain space for the importation. About April 1, Chertok applied at respondents' New York office for refrigerated cargo space. He was referred to Mr. Tage Nielsen in that office, who said there was no such space available. Chertok left word with Nielsen to telephone him in Chicago if refrigerated space should later become available "in little spaces, or a vessel." Some days later, Nielsen called Chertok in Chicago and Chertok proceeded to New York where the two began negotiations for the charter of the refrigerated motor vessel *Argentinean Reefer*, then in San Francisco, for a voyage from Valparaiso, Chile, to New York. At first, the only cargo discussed was apples and Nielsen indicated that the freight for the ship would have to be on the basis of 90,000 cases of apples at \$2 a case. Chertok objected that the rate was too high and that he was not sure that he could get that much merchandise. Nielsen finally suggested a rate of \$1.75 per case of apples, and indicated that a deposit of \$10,000 would be required before the ship sailed from San Francisco to the loading port, and a further deposit of \$5,750 when she sailed from Valparaiso. Chertok thereupon went to Chicago, and after talking with one of the complainant partners returned to New York for further conversations with Nielsen on April 15. Chertok said that his principals could not provide 90,000 cases, but could possibly make up 84,000 to 85,000 cases. Complainant now says that the agreement as made was to load 84,000 to 85,000 cases, while respondents say that it was to load 90,000 cases.

An oral agreement was made that day between Chertok, acting for complainant, and Nielsen, that the entire refrigerated space of the ship would be chartered on the basis of \$1.75 per case of apples from Valparaiso to New York, and that in the event an all-apple cargo could not be furnished, the deficiency in cubic feet might be supplied with other fruit yielding the same revenue per cubic foot.<sup>1</sup> Advance payments of \$10,000 and \$5,750 above

<sup>1</sup> A case of apples measures 1-8/12 cubic feet; freight \$1.75.

A case of pears measures 1-5/12 cubic feet; freight \$1.4875.

Cases of grapes measure 9/12 cubic feet or 1-3/12 cubic feet; freight \$0.875 or \$1.31.

mentioned were agreed to, with the understanding that the balance of freight was to be paid two days before arrival of the vessel at New York. It was agreed that the vessel owners would unload the ship at New York. Nothing was said about demurrage, dead freight, bills of lading, or the transportation of goods of other persons on the ship, and there was disagreement as above indicated as to the quantity to be loaded. Chertok apparently did not know at that time who were the owners of the *Argentinean Reefer*, but understood that Nielsen was authorized to act for them, and as the result of the conversation both parties understood that a definite agreement had been made. No written charter party was ever entered into nor were the terms of the oral charter confirmed in writing by either party to the other. Nevertheless, upon the payment of the deposit of \$10,000 on April 18, the vessel started in ballast from San Francisco to Valparaiso where she arrived on April 28. At Valparaiso the vessel owner was represented by A. J. Broom & Co., Ltd., and complainant by a certain Alberto Zavala.

Zavala supplied the following cargo for complainant, which was loaded into refrigerated spaces:

- 74,996 cases of apples
- 4,000 cases of pears
- 6,752 cases of grapes (in small cases)
- 1,000 cases of grapes (in large cases)
- 2 barrels of tomato paste

For shippers other than complainant, Zavala tendered for carriage to Cristobal, C. Z., in refrigerated spaces:

- 1,000 cases of pears
- 3,000 cases of grapes (in small cases)

For shippers other than complainant, Zavala tendered for carriage to the Canal Zone and New York, in non-refrigerated spaces:

- 600 cases of onions
- 3,955 cases of melons
- 300 cases of garlic
- 37 cases of lentils

There was some duplication of effort in the chartering arrangements. Mr. A. J. Broom of Valparaiso testified that he was "General Agent for the Lauritzen Line, Copenhagen, to which the vessel belongs." Mr. Broom testified that the shipper of all the cargo was Mr. Alberto Zavala, and stated further "We had to take cargo other than apples as Mr. Zavala could not fill the

vessel with this fruit and had to fill her somehow or other in order to avoid paying false freight, in view of his obligation to give the vessel a full and complete cargo."

Each shipment was covered by a separate bill of lading. These bore the heading,

"WEST COAST LINE

For West Coast of South America

West Coast Line, Inc. Agents

67 Broad Street, New York

BILL OF LADING.",

and were signed,

"For the Master, West Coast Line, Inc., Agents

A. J. Broom and Co., Ltd."

Each bill of lading showed the name of the shipper, the destination, consignee, party to be notified, the marks and number of cases, the weight, and the freight, with a notation, "Freight payable by consignee at least two days before arrival of vessel." The bills of lading did not refer to the charter. All bills were "order" bills of lading and except for Canal Zone shipments were made out to the order of the shipper or a bank. They did not disclose the name of the carrier or the owner of the vessel. There appear to have been five separate shippers of the fruit destined for complainant, and at least three of the five were also shippers of cargo destined for other parties either at Cristobal or New York. Respondents claim they did not know and had no means of knowing what shipments were made for complainant's account.

The *Argentinean Reefer* sailed from Valparaiso on May 3, and a week later arrived at Cristobal where she discharged 1,000 cases of pears and 3,000 cases of grapes from the refrigerated space and the garlic and lentils from the nonrefrigerated space. She then proceeded to New York and docked at Pier 19, Staten Island, Friday, May 17. Discharge of nonrefrigerated cargo not consigned to complainant commenced on May 17 at 1 p.m. Unloading of complainant's fruit from the refrigerated space began on the following Monday morning, May 20. Respondents claim and complainant denies that complainant was not ready to take delivery of its cargo at 1 p.m. May 17. Accordingly, West Coast Line, Inc., as agent for the vessel owner, made a charge against complainant of \$6,250 for demurrage, which was paid under protest. Subsequently, \$3,750 of this amount was refunded by West Coast Line, Inc., to complainant, with a letter stating that

the demurrage charge had been adjusted to \$2,500. The vessel completed discharge of all the cargo on May 22 and departed the following morning.

Complainant paid the balance of the freight on its cargo by check to West Coast Line, Inc., which, with the deposits previously made, came to a total of \$144,350.

The foregoing rates were higher than the rates contemporaneously in effect on like traffic from Valparaiso to New York via regular liner vessels of Grace Line or the Chilean Line. On the basis of the liner rates, the freight on complainant's shipments would have been \$95,717.31. The difference of \$48,632.69 is the alleged overcharge of freight for which complainant seeks reparation, in addition to the \$2,500 retained as demurrage and unrefunded.

Respondents take the position that the Board is without jurisdiction to determine this matter, claiming that no one of the respondents was a common carrier within the definition and requirement of sections 1 and 22 of the Shipping Act, 1916, on which jurisdiction is based. Respondents claim that the testimony proves a charter and not common carriage. Where a charter gives to the charterer the full capacity of the ship and the charterer is the only shipper, the carrier is not a common carrier. *The Fri*, 154 Fed. 333; cert. den. 210 U. S. 431. But here there were various shippers whose order bills of lading made no reference to the charter. Their rights were, therefore, determined by their respective bills of lading, *The Titania*, 131 F. 229, and the ship was, therefore, a common carrier.

Respondents also object that the complaint was filed too late, relying on paragraph 22 of the bill of lading and the limitation in section 22 of the Act. Neither defense is valid. As between vessel owner and charterer the agreement of carriage is not modified by the bill of lading. *The G. R. Crowe*, 294 Fed. 506. The statutory violations are claimed to have arisen from the payment of freight and demurrage on May 21, 1946, and May 24, 1946. The complaint was filed on May 5, 1948, well within the 2-year statutory period.

The effect of complainant's proceeding under chapter XI of the Bankruptcy Act should also be considered. On September 4, 1948, four months after filing the original complaint herein, claiming \$51,132.69, and six weeks before filing the amended complaint claiming the same amount, complainant filed in the U. S. District Court for the District of Minnesota a petition

under title XI of the Bankruptcy Act for authority to make an "Arrangement" with its creditors, and, thereupon, on the same day, the Court passed an order continuing the complainant as a "debtor in possession" with full authority to continue its business. It thus appears that the members of the complainant partnership were, after September 4, 1948, authorized to continue the prosecution of the complaint which they had on May 5, 1948, filed in this case. It is significant, however, that in Schedule B of the Debtor, filed on September 4, 1948, signed and sworn to by Providence F. Piazza, one of the members of the partnership, and purporting to be a schedule of all the property and claim of complainant, the only reference to any claim against respondents in this case is the listing of an unliquidated claim against West Coast Steamship Company of \$9,832.72.

Coming now to consideration of complainant's claim for excess freight of \$48,632.69, complainant does not charge that this was based on a higher rate than it had agreed to pay. Complainant charges that the rate which complainant and respondents agreed to was unreasonable and unjustly discriminatory in violation of sections 14, 16, and 17 of the Act, unreasonably prejudicial in violation of section 16 of the Act, and unreasonably disadvantageous in violation of section 16 of the Act. It charges that the agreement was to charter the entire ship and the charter rate was based on complainant's exclusive use of the ship. Since the vessel owner carried fruit belonging to other persons, and since the refrigerated spaces were opened at the Canal Zone to discharge shipments of other persons, complainant claims it did not receive the exclusive service it paid for, and hence is entitled to damages. Complainant measures these damages not by any depreciation in the value of its fruit caused by any fault of the vessel, but by the difference between the agreed rate and the advertised rate of other lines. Respondents answer is that shipments for persons other than complainant were accepted only in order to minimize damages for dead freight. Respondents claim that whether complainant agreed to ship 90,000 cases of apples or only 84,000 to 85,000 cases of apples, its own shipments were substantially less than either figure. Witness MacDonald for respondents computed that the total fruit shipments made for complainant's account in Chile were the equivalent of only 31,699 cases of apples. Furthermore, respondents point out that Zavala, complainant's agent in Chile, tendered all shipments to

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the vessel whether actually for the account of complainant or for the account of outsiders, and claim that neither the vessel owner nor its agent in Chile knew or could have known which shipments were for complainant's account until the vessel reached New York and complainant presented the bills of lading.

As above stated, the New York bills of lading were all order bills of lading. The evidence is not entirely clear as to whether the vessel owner's agent in Chile had knowledge that some of the shipments were for persons other than complainant, but, under the circumstances, this point is not material for in any event complainant failed to deliver to the ship the maximum of 84,000 cases of apples or its equivalent in other fruit which it had agreed to ship. This was a breach of complainant's duty. Complainant urges that its shipments were within 10 percent of the agreed quantity and that it was legally entitled to this leeway. This was not an agreement to ship "about" 84,000 cases, but an agreement by complainant's own testimony to ship between 84,000 and 85,000 cases and in such a situation no leeway is allowed. *The Emilie Maersk*, 1929 A.M.C. 343.

Under the circumstances the shipowner was authorized to fill the space which complainant had agreed to take, and in fact was required to make reasonable effort to do so to minimize the damages which complainant's breach of contract might occasion. *Wallem's Rederij v. W. H. Muller & Co.*, 1927 2 K.B. 99; *Scrutton, Charter Parties*, 14th Ed., Art. 46. Indeed, since complainant's agent in Chile, Zavala, actually tendered all the shipments to the vessels—both those which eventually passed into complainant's hand and those of outsiders—the vessel owner, if in fact he was aware that there was any distinction as to ultimate ownership of the various shipments, was entirely reasonable in assuming that the shipments for outsiders were being tendered with complainant's full approval. There is evidence that complainant's agent Zavala cabled complainant about shipments for outsiders before the vessel left Chile and that complainant either made no comment or stated he was not interested. Mr. Zavala, complainant's Chilean representative, testified:

I made all the work necessary to obtain the necessary fruit for Messrs. Piazza and also I secured orders for myself from my friends in the Commissary Division in Cristobal in order to obtain the necessary cargo to fill the boat.

Q. State whether or not you communicated with D. L. Piazza Company relative to loading cargo on the vessels for others than them.

A. Yes I did.



Q. If your answer to the preceding interrogatory is in the affirmative state what you communicated to them and what, if any, replies they made to you.

A. In the case of the shipment to the Panama Canal I did not have any reply either affirmative or negative from Mr. Piazza and in the case of other shipments to New York he told me he was not interested.

We find that the shipowner's failure to give complainant the exclusive use of the ship under the circumstances described created no unjust discrimination or unreasonable prejudice or disadvantage.

Complainant charges discrimination in that the rates charged by respondents were higher than the advertised rates of the regular lines in the trade. However, there was no refrigerated space available at the time on any of the regular liners, and the *Argentinean Reefer* was sent specially in ballast for complainant's cargo from San Francisco so that the services are not comparable. In any event, respondents had no responsibility for the lower advertised rate of the regular liners, and legal discrimination cannot be charged against respondents on this showing since respondents were not the common source of the alleged discrimination or prejudice. *Texas and Pacific Ry. Co. v. U. S.*, 289 U. S. 650; *Sugar from Virgin Islands to United States*, 1 U.S.M.C. 695, 699.

Complainant, still maintaining that respondents were in fact the common source of discrimination, pointed out that the vessel owner charged only the liner rate on nonrefrigerated cargo carried for other persons whereas it charged more than the liner rate on complainant's refrigerated cargo. But the mere fact that the vessel owner's rate for nonrefrigerated cargo matched the liner rate does not mean that a difference between them existing in the refrigerated rate constituted unjust discrimination. The services are not comparable. The *Argentinean Reefer* was primarily a refrigerated vessel with a small amount of nonrefrigerated space. The liner vessels were the reverse, with ample nonrefrigerated space, and moreover, as stated above, no liner refrigerated space was available.

Complainant next charges unjust discrimination in that the vessel owner, in order to discharge some of the cargo accepted from others, opened some of the refrigerated spaces at Cristobal. The complaint does not charge damage or delay to complainant's shipments resulting from this act. Clearly that stop cannot be a basis for a claim for unjust discrimination.

Complainant argues that the foregoing acts also amounted to an unreasonable practice connected with the handling, storing, or delivering of property contrary to the second paragraph of section 17. Complainant urges that the acceptance by respondents of the agreed freight rate without furnishing the exclusive use of the ship was an unreasonable practice. As already stated, the taking of shipments of outsiders was justified. The vessel owner's action in this regard was not unreasonable or unlawful, and in any event was not a practice connected with the handling, storing, or delivering of property within the statutory language as interpreted in *California v. United States*, 320 U. S. 577, at 583-84. Accordingly, we find no unlawful action by the vessel owner in collecting freight at the rate agreed upon.

Next, the circumstances leading up to the charge for demurrage require consideration. MacDonald, the ship's agent at New York, testified that on May 13, 1946, four days before the vessel's arrival in New York, he lunched with Chertok and advised that the ship would arrive on the morning of Friday, May 17, would be promptly cleared, and would commence discharging at 1 p.m. MacDonald testified that Chertok objected, saying he could not utilize the fruit over the week-end and did not want it lying on an unrefrigerated pier, and insisted that no fruit be discharged until the following Monday. MacDonald testified that he told Chertok that if the vessel was to be used as a refrigerated warehouse, he would have to pay demurrage. MacDonald continued, that it was rather warm and the vessel owner would not take the risk of discharging fruit and leaving it lay on the wharf.

Chertok testified that he and his buyers with refrigerated trucks went to the pier on Friday, but were told by MacDonald that the vessel would not discharge the fruit from the vessel either Friday or Saturday. Chertok admits that nonrefrigerated cargo was discharged from the vessel Friday afternoon.

There is thus a direct conflict as to whether the ship declined to discharge on Friday or complainant declined to accept cargo on that day. Contemporary documents tend to support the vessel owner's position.

By letter dated May 17 (Friday), MacDonald wrote Chertok:

This will confirm telephone conversation of today with your representative Mr. George Otto at which time we pointed out to him that as previously advised this vessel arrived at the port of New York the morning of May 17th

and docked at Pier 19, Staten Island where discharge was commenced at 1 p.m. today.

Inasmuch as we have not as yet received any indication from you or your broker as to when and how you expect to take delivery of the Fruit consigned to your Company, we have placed you on notice and hereby confirm same that it is our intention to hold you responsible for demurrage at the rate of \$2,500 per calendar day beginning from 1 p.m. May 17th until such time as you make satisfactory arrangements to take delivery of the Fruit.

On Monday, May 20, discharge started at 8 a.m. without difficulty as complainant and his buyers were on hand with refrigerated vehicles.

On the next day, May 21, the vessel's agent sent complainant a bill for 2½ days' demurrage (May 17, 1 p.m., to May 20, 8 a.m.) at \$2,500 per day, or a total of \$6,250. Mr. George Otto, complainant's New York agent, replied to the vessel's agent on May 21 (Exhibit R-41) saying:

We are very much surprised that you should bill us for this charge. We understand that the vessel discharged other cargo upon arrival and that, therefore, the ship itself was not held up by us. As a matter of fact, had you unloaded around the clock, as you state you would have been obliged to, it would have involved overtime expense, also considerable expense for unloading on Saturday and Sunday. We understand, it is not customary for ships therefore to unload in this manner.

Under the circumstances, we feel that your charge for demurrage is not only exorbitant, but an improper charge. Rather than delay the discharge of this vessel, we are enclosing herewith our check dated May 21st, 1946, payable to your order in amount of \$6,250.00, which sum we are paying to you under protest, reserving all of our rights against the vessel and/or its agents and/or its owners.

It is to be noted that the last letter quoted does not refer either to any refusal of the vessel owner to discharge on Friday or Saturday or to the fact that complainant was then ready to receive the cargo. Furthermore, complainant's sworn amended complaint, paragraph III. F., filed October 20, 1948, recites:

\* \* \* contrary to the terms and conditions of said charter party and agreement the respondent Wessel Duval & Co., Inc. upon its behalf and upon the behalf of said other respondents wrongfully insisted upon the immediate discharge of complainant's cargo and wrongfully insisted upon the payment of demurrage which said demurrage complainant was wrongfully compelled to pay in the net amount of \$2,500.

It is to be noted that there is no statement in the foregoing to the effect that vessel owner refused to discharge the fruit promptly on arrival of the ship.

Upon the record in this case, we find that the vessel owner gave due notice to complainant that the vessel would be ready

to discharge complainant's cargo beginning Friday, May 17, at 1 p.m., that complainant was not able or willing to take delivery until Monday, May 20, at 8 a.m., and that the vessel owner's failure to discharge the refrigerated cargo onto an unrefrigerated dock in the interval was justified.

As already stated, the oral agreement made no reference to demurrage, and, therefore, demurrage as such (based on an expressed agreement) was not collectible.<sup>2</sup> However, in the absence of an express agreement, the charterer was under an implied obligation to receive cargo at such time as was reasonable in view of the existing facts and circumstances. The burden of proof was on the vessel owner to justify the imposition of the charge which it made for the vessel's detention by showing the charterer failed in its duty to accept the cargo seasonably, and to show the extent of the vessel owner's resulting damages. *Empire Trans. Co. v. Philadelphia & R. Coal & Iron Co.*, 77 Fed. 919, at page 925.

The vessel owner, after making the initial charge for 2½ days detention at \$2,500 per day, modified its position, reducing the charge to \$2,500 for 1 day's detention, thus waiving detention damages after 1 p.m. on May 18. There was testimony that stevedore charges on Saturdays and Sundays as well as after 5 p.m. on week days, was 50 percent above regular rates, and that the overtime charges on either Saturday or Sunday to discharge the refrigerated fruit would cost the vessel owner approximately \$1,160 per day. The delay in unloading until Monday, therefore, saved the vessel owner this extra expense. There is uncertainty as to how much refrigerated cargo might have been discharged on the half day of Friday if complainant had been ready to accept as was his duty, or whether this would have permitted the vessel to leave the discharging berth earlier than the morning of May 22 when she actually left. Furthermore, there is an absence of testimony as to the reasonable daily value of the vessel. The figure of \$2,500 a day, stated to be the owner's usual rate for the vessel, is, of course, not proof of the vessel's fair daily value at the time. Thus, while it appears that complainant's default prevented the discharge of refrigerated cargo beginning Friday at 1 p.m., the record does not show with reasonable certainty what damages the vessel owner sustained

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<sup>2</sup> The clause in the bills of lading providing for demurrage must be disregarded, since as between shipowner and charterer the bill of lading does not modify the contract contained in the charter. *The G. R. Crowe, supra.*

therefrom. We therefore conclude, as did the examiner, that the charge of \$2,500 collected as demurrage was unreasonable and must be returned. However, the circumstances are not such as in our judgment require the payment of interest on this refund.

A final question remains as to which, if any, of the respondents is liable to make the refund of the \$2,500 charge unreasonably collected. This sum was part of \$6,250 paid under protest to West Coast Line, Inc., as agent of the vessel owner. This company handled the ship at New York, collected freight and other moneys, and transmitted them, subject to the agent's commission and fee, to the vessel owner.

All complainant's negotiations in New York leading to the charter were with Tage Nielsen, the representative of Rederiet Ocean A/S, the Danish corporation which owned the vessel, but which was not proceeded against in this case. He was not an officer or agent of any of the respondents in this case although he had an office with them at 67 Broad Street. On the door of that office were the names of the three respondents as well as War Shipping Administration and United States Maritime Commission, but not the vessel owner's name.

West Coast Line, Inc., in April and May 1946, was the American agent of Rederiet Ocean A/S and also the agent of respondent J. Lauritzen, the Danish partnership which acted as general agent for Rederiet Ocean A/S. Bills of lading were signed by West Coast Line, Inc., as agent for the master. Respondent Wessel, Duval & Co., Inc., owned substantially all the stock of West Coast Line, Inc., and its vice president and director was the president and director of West Coast Line, Inc. When Chertok applied at respondents' office in April for the person in charge of refrigerated space, he was referred to Nielsen, but neither then or later was he told of the existence of Rederiet Ocean A/S. In a letter addressed to West Coast Line, Inc., under date of April 23, 1946, Chertok specifically asked the "name of the shipping line," but this information was not furnished to him. On May 24, 1946, J. Lauritzen and West Coast Line, Inc., entered into an agreement to maintain a joint service between U. S. Atlantic and Gulf ports to the ports of Chile and other South American countries under the trade name of "West Coast Line," but this agreement was not in existence at the time that the charter was made or when the bills of lading on the West Coast Line form were issued in Chile for the cargo on the *Argentinean Reefer*.

We think it is clear that J. Lauritzen, the general agent for the Danish vessel owner, must assume responsibility for the charter as fully as if it were in fact the vessel owner. J. Lauritzen was doing business at 67 Broad Street as such general agent and must be held responsible for the manner in which the affairs of the vessel owner were there being conducted by Tage Nielsen. In the absence of any disclosure to complainant by either J. Lauritzen or Tage Nielsen of the identity of the vessel owner or carrier with whom complainant was contracting, the agent itself becomes, on familiar principles, legally bound by the contract which it makes. In fact, the identity of the vessel owner and its general agent was so close that even Mr. Broom, the agent's representative in Chile, testified that Lauritzen was the vessel owner. We hold, therefore, that respondent J. Lauritzen is responsible to make the refund of \$2,500, but we are not satisfied that there is sufficient evidence to hold either of the other two respondents. There would seem to be no reason to believe that Chertok thought that he was dealing with all three respondent companies when he made the charter just because their names were on the office door. The Master's use of a bill of lading, signed by West Coast Line, Inc., as agent for the Master, fully disclosed the principal's identity (i. e., the master) as far as the bill of lading was concerned. The acts of West Coast Line, Inc., at ship's destination were the usual acts of an agent and would not in themselves involve the agent in a principal's liability. The relationship of respondent Wessel Duval & Co., Inc., as a stockholder in West Coast Line, Inc., is even more remotely connected with the transaction, even though that company's telegraph blanks were used by Tage Nielsen, and that company's South American representative was kept informed as to the progress of negotiations.

#### FINDINGS

The freight charges collected from complainant for the carriage of refrigerated cargo from Chile to New York in accordance with oral agreement with agents of SS. *Argentinean Reefer* were not unjustly discriminatory, unreasonably prejudicial or unreasonably disadvantageous and did not constitute an unreasonable practice in violation of sections 14, 16, or 17 of the Shipping Act, 1916.

The imposition of the charge of \$2,500 as alleged demurrage on the SS. *Argentinean Reefer* at destination was, in the absence

of any agreement for demurrage, an unreasonable practice in violation of section 17 of the Act.

Complainant is entitled to recover \$2,500 without interest from respondent J. Lauritzen, but is not entitled to recover any amounts from the other respondents.

Accordingly, an order will be entered directing the payment of \$2,500 to complainant by respondent J. Lauritzen.

By the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., on the 9th day of July A.D. 1951

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No. 676

D. L. PIAZZA COMPANY

v.

WEST COAST LINE, INC., ET AL.

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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, on the date hereof, having made and entered of record a report stating its conclusions, decision, and findings thereon, which report is hereby referred to and made a part hereof;

*It is ordered*, That respondent J. Lauritzen be, and it is hereby, notified and directed to pay unto complainant D. L. Piazza Company, Minneapolis, Minnesota, on or before August 13, 1951, the sum of \$2,500 as reparation on account of the unlawful collection of that amount as demurrage.

By the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*



## FEDERAL MARITIME BOARD

No. 704

AFGHAN-AMERICAN TRADING COMPANY, INC.

v.

ISBRANDTSEN COMPANY, INC.

*Submitted June 29, 1951. Decided July 25, 1951*

In the absence of undue prejudice or unjust discrimination, the failure of a carrier in foreign commerce to file with the Board an increase in its tariff rate, as required by the order in Docket No. 128, *Section 19 Investigation, 1935*, 1 U.S.S.B.B. 470, affords no basis for an award of reparation to a shipper. Complaint dismissed.

*Samuel W. Earnshaw* for complainant.

*John J. O'Connor* for respondent.

## REPORT OF THE BOARD

## BY THE BOARD:

Exceptions to the report of the examiner were filed by the respondent. Oral argument was heard. Our conclusions differ from those of the examiner.

Complainant shipped refined sugar in bags from New York, N. Y., to Karachi, Pakistan, on January 13 and 31, 1949, and paid to respondent a rate of \$19.50 per 2,240 pounds. At the time of shipment, respondent's India, Ceylon, and Burma Outward Freight Tariff No. 2, on file with the Maritime Commission, our predecessor, showed the applicable rate to be \$19 per 2,240 pounds. Complainant demands reparation in the sum of \$753.75, with interest, being the excess over the tariff rate on file. The examiner recommended that the Board award reparation, with interest.

The material facts have been stipulated and may be summarized as follows: Complainant is an exporter, and respondent is a common carrier by water in foreign commerce subject to the Shipping Act, 1916, as amended. Freight charges on the two shipments of sugar were prepaid by complainant at the \$19.50 rate, amounting to \$29,396.25. Respondent's tariff on file with

the Maritime Commission at the time in question contained the following provision:

Rates and conditions contained herein are subject to change without notice and are contingent upon space being arranged.

The parties have also stipulated that respondent intended to change the tariff to reflect the bill of lading rate of \$19.50 per ton for the shipment involved, but through oversight or error such change was not filed until May 9, 1950, effective January 2, 1949, and was received by the Maritime Commission on May 11, 1950; also, that respondent did not transport refined sugar in bags for other shippers at the rate of \$19 per ton, or transport any sugar in bags between New York and Karachi, Bombay, Colombo, or Calcutta during 1948 or 1949, except the shipment here involved.

Complainant, upon discovering the discrepancy between the rate assessed and the tariff rate on file, filed a claim with respondent, which was rejected. On August 9, 1950, complainant filed an informal complaint with the Board, and in September 1950 was advised by the Board that the controversy did not appear to be susceptible of voluntary adjustment. Thereafter, on November 9, 1950, a formal complaint was filed with the Board.

Complainant alleges that the rates exacted by respondent are discriminatory and unlawful, in violation of sections 16 and 17 of the Shipping Act, 1916, and in violation of the order in Docket No. 128, *Section 19 Investigation, 1935*, 1 U.S.S.B.B. 470.

Since it is stipulated that no other shipper paid lower rates than were charged complainant in this case, there is no showing of undue prejudice in violation of section 16 of the Act or of unjust discrimination in violation of section 17 of the Act. *Remis v. Moore-McCormack Lines, Inc.*, 2 U.S.M.C. 687, 692.

Complainant urges that regardless of actual undue prejudice or unjust discrimination, the rate charged was unlawful because respondent failed to file its new rate in accordance with the order in Docket No. 128, *supra*. The material part of the order in that proceeding, so far as this case is concerned, is as follows:

(1) Every common carrier by water in foreign commerce shall file with the United States Shipping Board Bureau of this department schedules showing all the rates and charges for or in connection with the transportation of property, except cargo loaded and carried in bulk without mark or count, from points in continental United States, not including Alaska or the Canal Zone, to foreign points on its own route; \* \* \*

(2) Schedules \* \* \* shall be filed as aforesaid within thirty (30) days from the date such schedule, change, modification or cancellation becomes effective.

The rule was established pursuant to section 19 of the Merchant Marine Act, 1920, which authorizes rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in foreign trade.

It is to be noted that the rule requires the filing of new rates within 30 days *after* they become effective. It contains no provision that the carrier may not lawfully charge rates other than the filed rates — in fact, such a provision in the rule would not be consistent or workable in view of the requirement that the new rate need not be filed until 30 days *after* its effective date. The report of the Secretary of Commerce in promulgating the rule shows that it was designed primarily to correct certain methods and practices of foreign-flag nonconference carriers who were openly or secretly soliciting freight at cut rates and creating conditions unfavorable to shipping in the foreign trade. The Secretary pointed out that sections 16 and 17 of the Shipping Act, 1916, placed an obligation on every common carrier by water in foreign commerce to make its rates public and available on equal terms to all shippers in order to prevent undue prejudice and unjust discrimination between shippers. The rule did not go so far as to declare that the charge by the carrier of a rate not filed within 30 days after its effective date was unlawful where no undue prejudice or unjust discrimination was shown.

In this case the parties agreed on the \$19.50 rate. It was not, when charged, contrary to law or regulation, since the carrier's old rate on file at the time provided that the old rate was "subject to change without notice", and since the order in Docket No. 128 permitted the filing of a changed rate within 30 days thereafter. The order is quite different from provisions of law affecting rail carriers and coastwise and intercoastal water carriers, which require the filing of rates *before* they become effective so that they may be referred to and checked by the shipper before he pays or agrees to pay a rate.

The question presented in this case is whether the shipper, who agreed to the \$19.50 rate, is entitled to a refund because the carrier through oversight or error failed to post the new rates within the 30-day period. We hold he is not so entitled where no undue prejudice or unjust discrimination is shown and where, as here,

there is no showing that the failure caused the shipper in any way to change its position.

Complainant relies on the decisions of the courts and the Interstate Commerce Commission allowing recoveries for all deviations from the published rate, of which *Louisville & Nashville R.R. Co. v. Maxwell*, 237 U.S. 94, is typical. And complainant calls attention to the general similarity between the Interstate Commerce Act and the Shipping Act, 1916, referred to by the Supreme Court in *U. S. Navigation Co. v. Cunard S.S. Co.*, 284 U.S. 474. But in the latter case the court, at page 480, recognized that "similarity of construction" could not apply where there was "dissimilarity in the terms" of the statutes.

The Interstate Commerce Act, section 6 (3 and 7) [49 U.S.C. 6 (3 and 7)] requires that changed rates be filed with the Commission 30 days *before* their effective date unless a shorter time is permitted, and that no carrier shall collect a greater or less or different rate than the tariff rate on file. The dissimilarity of this statute from the Shipping Act, 1916, and the order in Docket No. 128 is obvious.

Again, complainant relies on decisions of our predecessors awarding reparation to shippers involving interstate and inter-coastal carriers by water, of which *Muir-Smith Co. et al. v. Great Lakes Transit Corp.*, 1 U.S.S.B. 138, is typical. In those cases recovery has been allowed where the shipper has paid rates in excess of those filed pursuant to section 18 of the Shipping Act, 1916, or different from those filed pursuant to section 2 of Inter-coastal Shipping Act, 1933. The last mentioned statutes require that carriers governed by their terms shall file maximum rates or actual rates, as the case may be, with the Board, and expressly prohibit such carriers from charging a greater rate than that on file. The Intercoastal Shipping Act, 1933, which partially superseded section 18 of the Shipping Act, 1916, is more explicit than section 18, and requires that all changes of rates be filed with the Board 30 days *before* they become effective unless a shorter period is permitted, and prohibits carriers subject thereto from collecting a greater or less or different rate from that which is filed.

From the foregoing it is clear that there is similarity in the statutory requirements on the one hand for rail carriers and water carriers subject to the 1933 Act, but on the other hand, different statutory requirements for carriers in foreign commerce.

Complainant also relies on cases where common carriers in foreign commerce agreed to adhere to regular rates established

by the conference, of which they were members, and then by an unfair means or device charged *less* than the established rate. Recovery of the uncollected balances in such cases is the duty of the carrier. See *Prince Line v. American Paper Exports*, 55 F. (2nd) 1053. Recovery there, however, is based on violation of the express provisions of section 16 (second) of the Shipping Act, 1916, which provides:

That it shall be unlawful for any common carrier by water, \* \* \*

Second. To allow any person to obtain transportation for property at *less* than the regular rates or charges 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. (Emphasis supplied.)

Here recovery is sought because the carrier charged *more* than the alleged regular rate.

Upon the facts in this case we are of the opinion that complainant is not entitled to reparation. Nothing herein contained, however, shall be deemed in any way to relax the requirements of the rule announced in Docket No. 128, *supra*, which this Board expects common carriers in foreign commerce to comply with faithfully. We do not condone respondent's disregard of its plain duty under this rule.

An order will be entered dismissing the complaint.

3 F. M. B.

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., on the 25th day of July A. D. 1951

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No. 704

AFGHAN-AMERICAN TRADING COMPANY, INC.

v.

ISBRANDTSEN COMPANY, INC.

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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, on the date hereof, having made and entered of record a report stating its conclusions, decision, and findings thereon, which report is hereby referred to and made a part hereof;

*It is ordered,* That the complaint be, and it is hereby, dismissed.

By the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# FEDERAL MARITIME BOARD

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No. M-34

PRUDENTIAL STEAMSHIP CORPORATION — APPLICATION TO BARE-BOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR USE IN THE U. S. ATLANTIC-GULF/MEDITERRANEAN SERVICE

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## REPORT OF THE BOARD

This is a proceeding under Public Law 591, 81st Congress, to consider the application of Prudential Steamship Corporation to bareboat charter two Victory-type, war-built, dry-cargo vessels for operation in berth service between U. S. Atlantic/Gulf ports and ports in the Mediterranean (including Morocco, Algiers, Italy, Greece, Turkey, Syria, Israel, Egypt, and Trieste).

Lykes Bros. Steamship Co., Inc., and American Export Lines, Inc., intervened.

The application was amended at the time of the hearing before the examiner and ports on the Gulf of Mexico and Atlantic coast ports south of Charleston, South Carolina, were eliminated. Lykes Bros. Steamship Co., Inc., withdrew as an intervener after the application was thus amended.

Counsel for applicant stated that applicant requested the discharge ports mentioned in the original application "should be supplemented by a reference to Lisbon, if that be regarded as a Mediterranean port, also Spain, possibly, and Jugoslavia, to the extent that country is not served by Trieste."

The amendment calling for the elimination of Gulf ports and ports south of Charleston and addition of Mediterranean ports of discharge not specifically enumerated in original application was objected to by intervener American Export Lines, Inc. The examiner has found that the notice reference to "ports in the Mediterranean" was sufficient to cover Mediterranean ports in Spain and Jugoslavia. He did not, however, regard Lisbon as a Mediterranean port. On both points we agree with the examiner. We also agree with the examiner that the elimination of Gulf

ports and Atlantic ports south of Charleston and the enumeration of additional Mediterranean ports before the examiner do not affect the Board's jurisdiction in the proceeding.

Since our conclusions in other respects differ from those of the examiner, a review of the facts is considered appropriate.

Applicant has maintained a berth service to the Mediterranean since March 1946. Since the middle of April 1950, twenty-two sailings have been made from North Atlantic ports at irregular intervals. In some months there have been two, three, or four sailings, and in others, one or none. It owns the SS. *Moline Victory*, bareboat charters on a long term basis the SS. *Newberry Victory*, time charters the SS. *Algonquin Victory*, and partially owns the SS. *Paul Revere*, a converted Liberty tanker. All four of these vessels are now being used in applicant's berth service to the Mediterranean. The time charter of the SS. *Algonquin Victory* expires on August 10, 1951, and applicant proposes to replace this vessel with one chartered from the Government, and to also replace the Liberty-type SS. *Paul Revere* because it contends she is not as well suited for the Mediterranean berth service as is a Victory-type vessel.

It is applicant's position that with four Victory-type ships it will be possible to establish a minimum of two sailings a month and maintain a competitive position in the Mediterranean service.

The testimony by applicant's witness indicates that the space available eastbound is not sufficient for the cargo offerings to applicant and, by reason of the fact that for the past nine months its ships had sailed full or down, or full and down, it was necessary for applicant to refuse cargo offerings and to limit its freight solicitations. Applicant further testified that in many instances applicant's vessels had been completely booked two or three weeks in advance of sailings.

American Export Lines offered no testimony in opposition to applicant's evidence on its cargo operations of the recent past, or otherwise to the applicant's case. It relied mainly upon an argument that the past carryings of the applicant do not afford definite proof as to what volume of business might lie ahead. It is true that Public Law 591, for purposes of determining such factual conditions as the adequacy of a service or the availability of vessels under charter from private operators for use in such service, requires consideration of current conditions. In the absence of definite statistics from both applicant and intervener, the testimony as to applicant's present cargo operations as well



as those of the past nine months, which was uncontradicted, is sufficient to serve as a basis for projecting cargo volume, available space, and generally, the market conditions under which the applicant will operate in the immediate future. In any event, there is adequate provision in the statute and adequate provision will be included in any Government charter to applicant to protect competitors in case of materially changed conditions in the future.

In its exceptions the intervener points out that there is a complete lack of evidence in the record that the use of the two vessels applied for is required in the public interest, and that the burden of proof on that issue is upon the applicant. Public Law 591, Eighty-first Congress, does not provide that the *use of the vessels* shall be in the public interest. It provides that war-built, dry-cargo vessels owned by the United States may be chartered for bareboat use in *any service* which, in the opinion of the Federal Maritime Board, is required in the public interest. There is a lack of direct evidence in the record that the service contemplated is in the public interest, which the applicant should have, and we believe readily could have, supplied. This lack might indicate that the case should be dismissed or remanded to the examiner to take fuller testimony on the point. However, in view of our recent consideration of services from this country to the Mediterranean area we can and do take judicial notice of the fact that the service designated in this application is in the public interest. In our decision in M-26, *Pacific Far East Line, Inc.—Charter of War-Built Vessels*, 3 F.M.B. 535, we stated:

The record amply confirms that the service contemplated is in the public interest. The record shows that the Mediterranean countries are now more dependent than before World War II upon a number of Pacific coast products, Israel being a particularly important destination. Many of these countries are now receiving aid from the United States. *What this Board has said in prior cases with regard to the importance of the service from Atlantic and Gulf ports to the Mediterranean area applies with equal force to the service here involved from the Pacific coast.* (Emphasis added.)

We find nothing in this record which would modify the conclusions so recently reached in prior cases with respect to the Mediterranean services. See also Docket M-19, *American Export Lines, Inc.—Charter of War-Built Vessel*, 3 F.M.B. 455.

The examiner has stated that "the evidence is persuasive that, upon the expiration of the charter of the *Algonquin Victory*, without additional vessels, the trade would not be adequately served." With this conclusion we agree. The record is also clear

that privately owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

The record in this case will support the three statutory findings and a recommendation for the charter of one Victory-type vessel as a replacement for the *Algonquin Victory* after August 10, 1951. We are not at all satisfied, however, that sufficient justification has been shown for the bareboat charter of an additional Government-owned vessel in substitution for applicant's partially-owned vessel now in operation in the service in which charter is applied for. In Docket No. M-14, *Am.-Haw. S.S. Co.—Charters of War-Built Vessels*, 3 F.M.B. 476, we stated, under somewhat analogous circumstances, that while there may be no dispute over the fact that a specified number of vessels is needed in a particular service at the time in question, "it does not follow that there is sufficient justification for the bareboat charter of Government-owned vessels to an operator in substitution for his own privately-owned vessels now in operation in the service under consideration." We do not mean to imply, however, that Public Law 591 forecloses all possibility of substitution for privately-owned vessels of Government-owned chartered vessels in a particular service, but rather that such substitution would require a showing of unusual circumstances which are not here present.

Counsel for the Board, in a memorandum agreeing with the conclusions of the examiner, suggests that the Board in its findings and certification clarify the service intended to be covered, and we agree that such clarification should be included.

#### FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the basis of the facts adduced of record the Board finds and hereby certifies to the Secretary of Commerce:

(1) That the service between U. S. Atlantic ports (including the port of Charleston, S. C., but excluding all ports south thereof) and ports in the Mediterranean (including ports in Morocco, Algiers, Italy, Greece, Turkey, Syria, Israel, Egypt, Jugoslavia, and Spain) for which applicant proposes to charter two Victory-type vessels, is required in the public interest;

(2) That such service will not adequately be served without the use of one additional Victory-type, war-built, dry-cargo vessel after withdrawal from such service of the SS. *Algonquin Victory*; and

(3) That privately owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

By the Board.

JULY 26, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

FEDERAL MARITIME BOARD

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No. 702

INCREASED RATES—ALASKA STEAMSHIP COMPANY

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No. 702 SUB 1

NORTHWEST FISH TRAFFIC COMMITTEE

*v.*

ALASKA STEAMSHIP COMPANY

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No. 702 SUB 2

KETCHIKAN COLD STORAGE CO., ET AL.

*v.*

ALASKA STEAMSHIP COMPANY

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No. 702 SUB 3

TERRITORY OF ALASKA

*v.*

ALASKA STEAMSHIP COMPANY

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*Submitted June 11, 1951. Decided August 10, 1951*

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Increased rates on frozen fish from ports in Alaska to Seattle, Washington, not shown to be unreasonable or otherwise unlawful. Board's order of August 29, 1950, vacated and complaints dismissed.

*Fred H. Tolan, Robert L. Jernberg, Irwin W. Silverman, and George Sunberg* for complainants.

*Stanley B. Long, Arthur G. Grunke, Ira L. Ewers, and A. H. Ziegler* for respondent.

*Chas. B. Bowling, J. W. Bourke, Chas. W. Bucy, and Walter D. Matson* for U. S. Department of Agriculture, intervener.

REPORT OF THE BOARD

BY THE BOARD:

Alaska Steamship Company, 30 days or more before the announced effective date, filed proposed increased rates on frozen

fish (hereinafter referred to as the "new rates") from various ports in Alaska to Seattle, Wash., to become effective September 1 and September 5, 1950. Protests were filed praying for suspension pursuant to Intercoastal Shipping Act, 1933, section 3. The Board, by prior order, denied suspension and directed the carrier to impound the revenue resulting from the increase pending filing of formal complaints by protestants and determination as to the lawfulness of the new rates by the Board.

Complaints were duly filed (1) by Northwest Fish Traffic Committee on its own behalf and on behalf of various member corporations dealing in frozen fish in Chicago, Ill., and Seattle, (2) by Ketchikan Cold Storage Co. and other dealers in frozen fish at Ketchikan, Alaska, and (3) by the Territory of Alaska. The first two complaints charged that the new rates were unduly preferential and prejudicial in violation of sections 16 and 17 of the Shipping Act, 1916, and unreasonable in violation of section 18 of the Act, and prayed that the new rates be set aside. The third complaint charged that the rates were unreasonable and prayed for public hearings in Alaska. The Secretary of Agriculture and the Secretary of the Interior intervened in support of the complaints. Hearings were held in Ketchikan and Seattle.

The examiner found that there was no showing that the new rates were unreasonable or otherwise unlawful, and recommended that the complaints be dismissed. Exceptions were filed by some complainants and the matter was submitted without oral argument. We agree with the conclusions of the examiner.

Halibut and salmon constitute the bulk of frozen fish produced in Alaska. The catching of halibut is governed by a treaty with Canada, pursuant to which an International Fisheries Commission determines the volume that may be caught in given areas and fixes the opening and closing of the season which, during the last two years, was between May 1 and some time in July. The salmon season runs from earlier in the year to October. The total fish frozen in Alaska in 1949 was roughly 40 million pounds, of which 11 million were frozen in Ketchikan.

Fishermen bring their catches to port where the fish are sold to buyers making the highest bids. The buyers then arrange to have the fish processed, frozen, and put in cold storage pending shipment. Some frozen fish moves each month of the year, but the heaviest shipping season is between June and October. About 75 percent of all frozen fish originating in Alaska is shipped in

carload lots by water to Prince Rupert, B. C., thence by refrigerator rail car to destinations east of the Rocky Mountains in the United States. A small amount is shipped overland from Seattle. Chicago, New York, and Boston are the principal points of destination where market competition is encountered with fish from the Atlantic, Gulf, and Pacific coasts, the Great Lakes, and even Japan and other foreign countries. Most frozen fish landed in Seattle is placed in cold storage for local distribution along the Pacific coast and throughout the western states.

Frozen fish generally is packed in boxes of five standard sizes and cubic measurements as follows:

- 100-pound size equaling 4 cubic feet.
- 200-pound size equaling 8 cubic feet.
- 300-pound size equaling 13 cubic feet.
- 400-pound size equaling 14 cubic feet.
- 500-pound size equaling 18 cubic feet.

As a rule, respondent accepts the weights stenciled on the boxes and shown in bills of lading by shippers. The larger-sized boxes frequently bulge. The bulge is caused by over-packing the boxes or by the natural shape of large fish.

Respondent is the only common carrier transporting frozen fish from Alaska to Seattle. There are, however, small vessels actively engaged in carrying such fish from Alaska to Prince Rupert and Seattle, operating on a charter basis.

According to exhibits of record, respondent originated nearly three times as much frozen fish in southeastern Alaska as in the rest of the entire Territory between 1945 and 1949 inclusive. Cold storage plants are located at Ketchikan, Wrangell, Petersburg, Juneau, Sitka, and Pelican in that area. The originating points in southwestern Alaska are Cordova, Valdez, Latouche, Point Ashton, Port Nellie Juan, and Seward. On Cook Inlet frozen fish is loaded at Seldovia. In the Kodiak Island range the fish is taken on at Port Williams, and, off the Alaska Peninsula, Sand Point has had a cold storage plant since 1948. Small quantities have originated on Bristol Bay since 1948, although there are no cold storage plants there. Some of the smaller shipping ports do not have wharf facilities, and at times frozen fish is loaded directly from fishing vessels, such vessels having freezing equipment. Ketchikan leads all Alaskan ports in producing and shipping frozen fish, and is the last port of call on respondent's southbound schedules.

The latest general investigation into Alaskan rates was *Alas-*

kan Rate Investigation No. 3, 3 U.S.M.C. 43, where a general description of the peculiarities of the trade in that area was set forth.

For many years prior to the new rates, respondent's tariff on frozen fish was on a cubic basis. The new rates are on a weight basis. Complainant Northwest Fish Traffic Committee furnished respondent with an average weight of 32 pounds per cubic foot for conversion purposes.

The following table prepared from exhibits of record sets forth in concise form the points of origin, distances to Seattle, and the rates, based on a density of 32 pounds per cubic foot.

From	Distance	Rates in dollars and cents				
		Prior to year 1944	Year 1944	Year 1947	Sept. 1, 1950	
	Miles	Per cubic foot	Per cubic foot	Per cubic foot	Per cubic foot	Per 100 pounds
Ketchikan.....	757	.21	.2436	.25	.305	.95
Wrangell.....	859	-----	.261	.265	.32	1.00
Petersburg.....	907	.225	.261	.265	.32	1.00
Juneau.....	1,033	.245	.284	.285	.335	1.05
Sitka.....	1,218	.2625	.3074	.305	.355	1.10
Pelican.....	1,261	.2625	.3074	.305	.355	1.10
Cordova.....	1,599	.325	.377	.35	.42	1.30
Seward.....	1,856	.325	.377	.35	.42	1.30
Seldovia.....	2,033	.375	.435	.38	.43	1.35
Point Williams.....	2,068	-----	.435	.38	.43	1.35
Sand Point.....	2,416	-----	-----	.40	.448	1.40
Bristol Bay.....	2,345	-----	-----	.50	.50	1.50

<sup>1</sup> This rate was established in 1948 when the cold storage plant was established.

Mileages are those over the usual routes through the inside channel, except that from Bristol Bay the distance shown is on the outside ocean lane direct to Seattle.

The complaints raise three main objections to the new rates: (1) The change of basis from cubic to weight is unlawful; (2) the rates are unduly prejudicial to Ketchikan and unduly preferential to other shipping ports more distant from Seattle; and (3) any increase in frozen fish rates is unreasonable.

Taking up the first complaint, it appears that some of the complainants in this case participated in a movement to obtain through ship and rail rates from Alaskan ports through Seattle to eastern United States destinations. All rail rates are charged on a weight basis. Apparently the same complainants objected vigorously when respondent computed its new rates on a weight basis in order to bring about uniformity between local ship rates and through ship and rail rates. The record shows there was difficulty in assessing proper freight charges based on cubic

rates because of the bulges of the standard fish boxes when packed. The carrier made some effort to re-measure boxes and recompute charges when there were serious bulges, but this practice was not always uniform. Complainants urge that the carrier should not change to a weight basis but should meticulously measure every bulging box. We cannot see that such a practice is necessary. If, for reasons of uniformity with rail practices or for other reasons of practicability, the carrier believes that charges based on a weight rather than on a cubic content are preferable, they should not be set aside for that reason alone. In a similar case, the carrier has been given the option to charge either by weight or by cubic content. *Alaskan Rate Investigation*, 1 U.S.S.B. 1.

It is next charged that the new rates are unduly prejudicial to Ketchikan in violation of sections 16 and 17 of the Shipping Act, 1916. Section 17, of course, applies to rates in foreign commerce only and is not applicable to this case. Section 16, however, is applicable and prohibits any undue prejudice to any person, locality, or description of traffic. Ketchikan complainants contend that the new rates discriminate against that port in favor of every other Alaska port originating frozen fish, in that it narrows the spread of difference in rates from the other ports as against Ketchikan to the disadvantage of Ketchikan. It will be observed from the table above that as distance increases the rate increases, and that Ketchikan, being nearest to Seattle, takes the lowest rate. The alleged discrimination is claimed to result because the percentages of rate differentials at the northern ports over Ketchikan have decreased, thus changing port percentage relationships in favor of the northern ports. They compare the differentials of the new rates with those which existed prior to 1944, and with those resulting from the rate adjustments in 1944 and 1947. For example, prior to 1944 the Petersburg rate differential was 7.1 percent over Ketchikan; in 1947 it was reduced to 6 percent; and on September 1, 1950, it became 5 percent. At Seldovia the drop was more drastic, from 78.6 percent prior to 1944 it became 52 percent in 1947 and 42 percent on September 1, 1950. Similar comparisons are made with differentials at Juneau, Sitka, Pelican, Cordova, Seward, Kodiak, and Sand Point, which show the same trend in varying degrees. All comparisons and percentages are based on the tariff rates reflected in the table herein and do not include war surcharges. By contrast it may be noted that the absolute money differential



between ports is almost the same by the new rates as by the 1947 rates.

Ketchikan complainants also charge undue prejudice on the ground that Ketchikan shipments to Seattle pay a greater ton-mile rate than those from ports more distant. They assert that from Ketchikan the ton-mile rate is 3.46 cents whereas from Sand Point it is 2.14 cents, although the basis for the computation is not explained. Respondent concedes that long hauls yield less gross revenue than short hauls per mile, showing a ton-mile rate of 1.61 cents from Ketchikan and 7.4 mills from Sand Point, computed upon a measurement ton of 40 cubic feet at the rates per cubic foot and the distances shown in the foregoing table.

Respondent testified that it has never used a percentage relationship of port differentials in rate making and that further increases to the distant ports over Ketchikan would dry up northern traffic. That ton-mile revenue should decrease as distance increases is a cardinal principle of rate making. Water carriers are required to pay certain terminal costs such as stevedoring and port charges at each end of any carriage. These charges may vary with port conditions but bear no relation to the number of miles that the cargo is carried. The matter of distance is not controlling as a factor in rates for water transportation. *Eastbound Intercoastal Lumber*, 1 U.S.M.C. 608, 622. Furthermore, it is well established that the question of reasonableness is not a matter of mathematical computation but one of fact. The lessening of the Ketchikan percentage differential in rates under the more distant ports in 1947 apparently caused no loss of business after that date. Ketchikan's freezings of 1948 and 1949 increased substantially over the 1947 figure. Proof is lacking that the new change in percentage differential will have a different effect. The record reveals various considerations, other than price, governing the port at which fishermen choose to deliver their fish: weather and storms; distance from fishing areas to port; shortening of the halibut season which makes unprofitable long trips from the fishing areas; and the imposition by the Territory of non-resident fishing taxes which result in diversion of some fish from Alaskan ports. Furthermore, respondent's testimony develops that prices bid for fish will fluctuate as much as two or three cents in a single day at the same port.

We find, therefore, that the evidence does not support complainants' charge of undue prejudice or unreasonableness based

on respondent's failure to maintain the percentage differentials between ports which existed in prior tariffs or on the ground that the ton-mile rate to Seattle for the haul from Ketchikan is higher than the ton-mile rate from more distant ports.

Finally, complainants charge that the increased rates are unreasonable and impose an undue burden on the frozen-fish industry. Complainants urge that the frozen-fish business has proved unprofitable since 1947, and one of the complainants contends that it has recently been losing money. Further, it is urged that the business is unprofitable because of the tremendous influx of foreign frozen fish into the United States in competition with the Alaskan product. While these facts are doubtless true, they are not proof of unreasonableness of respondent's new rates. In *Eastbound Intercoastal Lumber, supra*, our predecessors said at page 623,

We cannot require of carriers the establishment of rates which assure to a shipper the profitable conduct of his business. The carrier may not impose an unreasonable transportation charge merely because the business of the shipper is so profitable that he can pay it; nor, conversely, can the shipper demand that an unreasonably low charge shall be accorded him simply because the profits of his business have shrunk to a point where they are no longer sufficient.

The law does not contemplate the equalization of natural advantages and disadvantages through adjustment of freight rates. *Intercoastal Cancellations and Restrictions*, 2 U.S.M.C. 397, 399.

Complainants also charge that the new rates are unreasonable because they single out frozen fish for the present rate increase, thus putting an undue burden on this traffic to its disadvantage in comparison with other commodities carried. The table quoted above shows that respondent's new rate on frozen fish from Ketchikan to Seattle makes an increase over the 1944 rate of approximately 25 percent. There was a minor rate increase from 24.36 cents per cubic foot to 25 cents per cubic foot in 1947, at a time when respondent's other rates were generally increased about 36 percent to meet the carrier's increased operating costs. Respondent states that in realization of the situation of frozen fish packers at that time, the overall 35 percent increase was not then added to the frozen fish rate.

Respondent shows that while frozen fish rates from Ketchikan to Seattle will, as a result of the new rates, show an increase of about 25 percent over 1944, the rate on freight N.O.S. has gone up in the same period 45 percent, and the rate on canned fish

has gone up 70 percent. For the same period, respondent's operating costs, including stevedoring, but exclusive of overhead or return on invested capital, have gone up 82.5 percent.

Respondent shows that the new rates produced a total increase of revenue from all Alaskan ports to Seattle on frozen fish amounting to \$2,005.72 in September 1950, and \$5,942.63 in October 1950, and are expected to produce in a single calendar year an increase of \$33,895.65 from the entire territory of Alaska, including \$5,514.53 increased revenue from Ketchikan. For the year 1949 respondent reported total operating revenues of \$14,687,441. It thus appears that while respondent's revenue from frozen fish is a relatively small part of its entire business, it is a part which in recent years has not faced the increase in rates imposed upon respondent's other traffic.

Complainants point out that respondent's gross revenue from frozen fish has increased 152 percent since the prior increase in rates without any increase in the number of ships to handle the traffic. This argument is not convincing in the absence of a showing that increase in gross revenue has also brought an increase in net revenue and in the absence of proof that the carrier's present service is inadequate.

The Board has carefully considered the record in this case, including the testimony of the intervener, the Secretary of Agriculture, and the prepared statement of the intervener, the Secretary of the Interior. The Board finds there is no showing that the new rates are unduly preferential or prejudicial, or unreasonable, or otherwise unlawful. Accordingly, an order will be entered vacating the Board's order of August 29, 1950, in Docket 702 and dismissing the complaints in Dockets 702 Sub 1, 702 Sub 2, and 702 Sub 3.

Chairman Cochran, being absent, took no part in the decision.

3 F. M. B.

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in  
Washington, D. C., on the 10th day of August A. D. 1951

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No. 702

INCREASED RATES—ALASKA STEAMSHIP COMPANY

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No. 702 SUB 1

NORTHWEST FISH TRAFFIC COMMITTEE

v.

ALASKA STEAMSHIP COMPANY

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No. 702 SUB 2

KETCHIKAN COLD STORAGE CO., ET AL.

v.

ALASKA STEAMSHIP COMPANY

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No. 702 SUB 3

TERRITORY OF ALASKA

v.

ALASKA STEAMSHIP COMPANY

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These cases being at issue upon complaints 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, on the date hereof, having made and entered of record a report containing its conclusions, decision, and findings thereon, which report is hereby referred to and made a part hereof:

*It is ordered*, That the Board's order of August 29, 1950, in Docket No. 702, be, and it is hereby, vacated; and

*It is further ordered*, That the complaints in Docket Nos. 702 Sub 1, 702 Sub 2, and 702 Sub 3 be, and they hereby are, dismissed.

By the Board.

(Sgd.) A. J. WILLIAMS,  
Secretary.

## FEDERAL MARITIME BOARD

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No. M-35

LYKES BROS. STEAMSHIP CO., INC.—APPLICATION TO BAREBOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR USE IN THE U. S. GULF/FAR EAST SERVICE (TRADE ROUTE No. 22—LINE “D”)

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### REPORT OF THE BOARD

This is a proceeding under Public Law 591, Eighty-first Congress, on an application of Lykes Bros. Steamship Co., Inc., to bareboat charter two Victory-type Government-owned, war-built, dry-cargo vessels for use in its subsidized U. S. Gulf/Far East service on Line “D” of Trade Route No. 22 for a minimum of one voyage, and such additional voyages as may be justified by traffic conditions.

The case was heard by an examiner on August 20, 1951, and the examiner has recommended that the required statutory findings and certification be made by the Board. There was no opposition to the application and no exceptions were filed to the recommended decision of the examiner except by Board counsel, who recommends that the charter applied for be limited to one round trip voyage with each vessel. The facts are set forth fully in the examiner's recommended decision and we adopt his statement of facts as our own. We also adopt his recommendation that the Board make the required findings and so certify them to the Secretary of Commerce. Our comments deal with the proposed limitation to one round voyage for each vessel, which has been recommended by counsel of the Board.

In its application the company states that it desires two vessels for a minimum of one voyage each, and such additional voyages as may be justified by traffic conditions. Testimony offered in this case, which is not disputed, shows clearly that applicant's vessels have sailed substantially full from July 1 to August 15, 1951, and that the company has found it necessary to decline a very substantial amount of cargo offered for prompt or reasonably prompt shipment. Applicant has maintained a schedule of

48 sailings per annum on this line for the past two years. The testimony also shows that the vessels moving outbound on this route are all booked full through September, and that the situation is becoming more acute every day and will even become worse during the next 60 to 90 days when the cotton crop becomes available for export. In addition, it is expected that due to increased production in the Philippines of sugar and copra, which will begin to move in volume in November, and a heavy and growing import of logs and lumber from the Philippines, the situation will be equally acute on inbound cargo. The evidence clearly shows that the Board can at this time make the three statutory findings. There appear to be no circumstances in this case which make it appropriate at this time to recommend the placing of restrictions on the charter of these vessels as to time or number of voyages. It is to be noted that the standard form of bareboat charter contains a 15-day termination clause, which the Maritime Administrator is at liberty to exercise at any time changed conditions warrant such termination.

#### FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

Upon the record in this case, the Board finds and hereby certifies to the Secretary of Commerce: (1) That the service considered is required in the public interest; (2) that such service will not be adequately served without two additional vessels; and (3) that privately owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that adequate provision be made to protect the interest of the Government under its operating-differential subsidy contracts with applicant.

Board member Gatov, being absent, took no part in this decision.

By the Board.

AUGUST 31, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

## FEDERAL MARITIME BOARD

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No. M-35

LYKES BRÓS. STEAMSHIP CO., INC.—APPLICATION TO BAREBOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR USE IN THE U. S. GULF/FAR EAST SERVICE (TRADE ROUTE NÓ. 22—LINE “D”)

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The Board should find and so certify to the Secretary of Commerce that the U. S. Gulf/Far East service in which Lykes Bros. Steamship Co., Inc., proposes to bareboat charter two Victory-type, Government-owned, war-built, dry-cargo vessels is in the public interest, that such service would not be adequately served without the use therein of such vessels, and that privately-owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

*William Radner* for applicant.

*M. E. Halpern, Joseph A. Klausner, and Alan F. Wohlstetter* for the Board.

### RECOMMENDED DECISION OF A. L. JORDAN, EXAMINER

This is a proceeding under Public Law 591, Eighty-first Congress, on an application of Lykes Bros. Steamship Co., Inc., to bareboat charter two Victory-type, Government-owned, war-built, dry-cargo vessels for use in its subsidized U. S. Gulf/Far East service on Line “D” of Trade Route No. 22 for a minimum of one voyage, and such additional voyages as may be justified by traffic conditions. The vessels are sought to accommodate cargo in excess of the present berth capacity of applicant’s owned vessels in this service.

Hearing on the application was held August 20, 1951, pursuant to notice in the Federal Register of August 10, 1951. The usual notice of 15 days was not given because of the urgency of the matter. There was no opposition to the application, and the only testimony of record is that of applicant’s vice president in charge of traffic.

Trade Route No. 22 is one of the essential foreign trade routes of the American merchant marine. It has been served by Lykes since 1937 under subsidy contract. Three other American-flag

operators are serving certain segments of this route. States Marine and Waterman primarily to Japan and Korea; Isthmian to some extent with only two out-bound sailings in the first seven months of 1951. Inbound participation by these lines is negligible which practically leaves Lykes as the sole American-flag operator inbound.

Over a million and a half tons of cargo outbound and 700,000 tons inbound move over the route annually. Outbound cargo is principally cotton, fertilizers, chemicals, foodstuffs, petroleum, naval stores, and manufactured goods. Inbound cargo is primarily sugar, copra, canned pineapple, logs and lumber from the Philippines, and rubber, tin, and bauxite from the N.E.I.-Straits area.

Lykes' subsidy contract provides for a maximum of 24 sailings per annum on this route. In addition, by authority of the Maritime Administration, it is permitted to make two additional sailings per month over Line "D" with owned vessels without subsidy. Notwithstanding this, all of its vessels for the past several months on this route have sailed approximately 100 percent full, and substantial cargo offerings had to be declined. Applicant's witness testified that from July 1 to August 15, 1951, Lykes has had to decline more than 77,000 tons of cargo offered for prompt or reasonably prompt shipment, and is already booked full through September on this route. Recent offerings declined for lack of space, for instance, were 10,000 tons of rice, Export-Import Bank financed, to N.E.I.-Straits, and 38,000 drums of gasoline and 5,000 tons of fertilizer for Formosa. The backlog at present, it is stated, is more than enough to fill two Victories, and cargo is being declined by Lykes for lack of space at the rate of 12,000 tons weekly. This condition, the witness states, is getting worse every day, and will become more acute during the next 60 to 90 days, when the cotton crop becomes available for export. He estimates that in excess of 1,500,000 bales will be exported to the Far East, and states that many of the cotton shippers have requested Lykes to increase its number of sailings to handle this movement.

The situation, the witness states, during the coming months will be equally acute inbound, due to increased production in the Philippines of sugar and copra, the sugar crop to begin to move in volume in November; and unless additional tonnage is provided, essential imports of sugar and copra will not be able to



move to the United States. Also from the Philippines it is expected there will be a continued heavy and growing import of logs and lumber.

The witness testified there is urgent need for additional capacity on this route, both outbound and inbound, and that the need will continue indefinitely.

It is essential, the witness states, that the route be serviced with fast liner-type vessels. Liberty vessels, he says, could be used if no other alternative existed, but their use would result in delay in the delivery of critically needed cargoes such as aviation gasoline and delay of import of such strategic commodities as rubber and tin; and, moreover, the use of Liberty vessels, when Victory vessels are available from the Government fleet, could needlessly impair the standing and reputation of the established American liner operations.

Applicant states that it has recently surveyed the charter market and is advised by New York brokers there are no fast liner-type vessels available for charter; that such Libertys as are available are held at a time-charter rate of \$65,000 per month; and that Victory vessels, when available, have been offered at time-charter rates of between \$80,000 and \$85,000 per month. These rates, the witness testified, cannot be justified for regular, round-trip service in liner-type operation such as provided by Lykes, and operation at the current market rates with such chartered tonnage would produce an out-of-pocket loss in Lykes' service. The witness testified, for instance, that a Victory will carry 6,650 tons of gasoline in 55 gallon drums. At the tariff rate of \$34.50 per ton the revenue would amount to \$229,425, enabling the company to barely break even.

Lykes purchased three Victory vessels in the early part of this year, and owns other vessels employed in other services. The witness testified that none of these could be withdrawn and put into the service under consideration without impairing such other services.

Counsel for the Board takes the position that applicant for the present has met the three statutory requirements of Public Law 591, Eighty-first Congress, but has not shown that suitable vessels may not be available after one voyage, the length of which is about 4 months. He also suggests that consideration should be given to a charter rate higher than 15 percent.

The record does not justify the limitation suggested by counsel for the Board.

## CONCLUSIONS AND RECOMMENDATIONS

The Board should find and so certify to the Secretary of Commerce that the U. S. Gulf/Far East service in which Lykes Bros. Steamship Co., Inc., proposes to bareboat charter two Victory-type, Government-owned, war-built, dry-cargo vessels is in the public interest, that such service would not be adequately served without the use therein of such vessels, and that privately owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-20

AMERICAN PRESIDENT LINES, LTD.—APPLICATION TO BAREBOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR EMPLOYMENT IN ITS ATLANTIC/STRAITS SERVICE (C-2, TRADE ROUTE No. 17)

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### REPORT OF THE BOARD

This proceeding was originally instituted under Public Law 591, Eighty-first Congress, upon application of American President Lines, Ltd., for the bareboat charter of two Government-owned, war-built, dry-cargo AP-2 vessels (Victory type) for use in the company's Atlantic/Straits service (Service C-2 of Trade Route No. 17). The Board, on March 1, 1951, made the required findings and certification to the Secretary of Commerce as to the charter of one vessel in that service (3 F.M.B. 504). The company has now applied for one additional AP-3 or AP-2 Victory-type vessel for use in the same service, and the examiner has made the following recommendation:

The Board should withhold its findings and certification to the Secretary of Commerce and hold this record open for the purpose of affording applicant an opportunity to submit additional facts in support of the application. It is recommended that further hearing herein be had on or about October 1, 1951.

Exceptions to the examiner's decision were filed by American President Lines, and a memorandum of American-Hawaiian Steamship Company and Luckenbach Steamship Company supports the recommended decision.

Oral argument was held on August 21, 1951.

In its letters dated June 11 and June 18, 1951, applicant stated that because of delays incident to the procurement of the *Anchorage Victory* (which was chartered pursuant to the Board's finding of March 1, 1951, in this case) the company was unable to provide a sailing in February 1951; that delays incurred by that vessel in the Indonesia-Malaya area and the other causes beyond its control indicated that a further break in the service appeared to be inevitable in June or July; and that a maximum of only 11 voyages could be completed in the calendar year 1951

with the 4 vessels then in service. It was further stated that demands for shipping space from both East and West coast outbound for each of the four sailings prior to June 11 had far exceeded each vessel's capacity, and that applicant's vessels had been booked to capacity on inbound voyages. It was pointed out that the *Anchorage Victory* on her latest in-bound voyage found it necessary to decline an offer of 1,000 tons of rubber due to shortage of space.

The company now operates four vessels in this unsubsidized service, one of which is under bareboat charter from the Government pursuant to our prior findings in this case decided March 1, 1951. From the record before us we should have no difficulty in making the findings (1) that the service is required in the public interest, and (2) that privately owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates. The substantial question here involved is whether there is sufficient evidence upon which the Board can make a finding that the service for which the applicant intends the vessel is not adequately served.

We understand that applicant claims the need of a further ship to make a sailing from New York in November 1951, a date which is sufficiently close at hand so that a decision may be made on the presently available evidence. We feel that applications like the present must stand or fall on the evidence presented when the cases are heard. Applicants are always at liberty to make new applications if new conditions arise.

Applicant contends that a prima facie case of inadequacy of service is made out because applicant's vessels have been shutting out cargo in both directions, and because, due to port delays in the Far East, voyages are taking longer than 120 days to complete, thus making a sailing from the Atlantic coast approximately each 4 weeks a practical impossibility with the 4 ships now available. Applicant points out that by the decision in S-17, dated January 24, 1951, we held that United States-flag services between U. S. Atlantic and California ports and Malaya-Indonesia were inadequate and that there was a need for applicant's C-2 service with a sailing approximately each 4 weeks. Applicant points out that there was a gap of over 50 days between its June 9, 1951, and its July 30, 1951, sailings and that applicant, without an extra ship, might be unable to make a sailing in November. We take official notice, however, that irrespective of applicant's statements of inability to maintain a 120-day schedule, on August

27, 1951, it made application to the Maritime Administration for permission to call its C-2 service vessels out-bound from U. S. Atlantic and Pacific at Guam. Even though it were possible to cover the added Guam port time by a corresponding reduction of port time at some subsequent port (an operation not always attainable), the deviation itself necessary to include Guam tends to diminish the possibility of meeting the basic 120-day schedule of the service.

The inadequacy of service contemplated by the statute is inadequacy of all American-flag operations in the service, not merely the inadequacy of the service of a particular applicant or line. A clear showing by an applicant that its American-flag vessels are unable to provide adequate service is some evidence that all American-flag vessels are unable to do so, and in the absence of evidence to the contrary from competitive or other sources may well be sufficient to support the statutory finding. But it must always be kept in mind that the adequacy or inadequacy of applicant's own operations are important so far as the statutory requirements are concerned only as they are evidence of the total inadequacy of all American-flag operations in the service contemplated. See *Report No. 1783 of Senate Committee on Interstate and Foreign Commerce, Eighty-first Congress, Second Session.*

Luckenbach Steamship Company, appearing in opposition to the application, showed that the present intercoastal carriers could readily carry the estimated 3,000 tons of intercoastal cargo which American President Lines carries on the average east-bound on each sailing of its C-2 service. A witness of Pacific Far East Line, also appearing in opposition to the application, showed that company to be operating between California and Malayan ports with a minimum of 14 sailings eastbound in 1951 and much free space, and that it was in 1951 in a position to carry a substantial amount of additional cargo from the Indonesia-Malaya area to California. Of course, it may be pointed out that the intercoastal service offered by Luckenbach Steamship Company and American-Hawaiian Steamship Company, and the California-Indonesia service offered by Pacific Far East Line covers parts or segments only of the entire Atlantic coast-Indonesia service offered by applicant. Applicant urges that the mere fact that competitors are able to supply segments of the total C-2 service should not be given weight against applicant's claim of inability to provide adequacy over the entire service. We do not need to express our opinion on this point to decide this case. In any event,

competitors along segments of a service may very well be protected in other ways.

The question in this case is whether there is an inadequacy of the service as a whole. In the decision in S-17 it was emphasized more than once that the C-2 service was primarily a Malaya-Indonesia service. The carriage of intermediate cargo between the Philippines and Hong Kong and United States ports was not to interfere with the primary purpose of maintaining a service to and from Malaya-Indonesia. Looking then at applicant's testimony in the light of the primary purpose of its C-2 service, this shows that its vessels on sailing from Atlantic ports carry approximately 40 percent of capacity for the Indonesia-Malaya area and approximately 40 percent for other transpacific ports, leaving apparently some space to be filled at California ports. Applicant urges that its evidence supports the claim that its vessels are fully loaded, and may even have to refuse cargo for some one or more transpacific destinations. When analyzed, however, this testimony does not show that applicant's vessels are concentrating on Indonesia-Malaya cargo, or that there is more of such cargo than the vessels can carry if they exclude shipments to ports which we have declared to be secondary in this service. Similarly, the record shows that while applicant's vessels may be fully loaded on their home-bound voyages when cargo from all ports is considered, there is no showing that they are fully loaded with cargo originating in the Indonesia-Malaya area. In fact, the reverse appears from the evidence. A witness of American President Lines testified that normally a ship should be around 60 to 70 percent loaded leaving Singapore. The witness further testified that even if it were possible to fill the C-2 service vessels at Singapore home-bound, they would not so book them, stating:

We are trying to give service, and serve all segments of the route. We have shippers that depend on us in the Philippines and Hong Kong, just the same as they do in Indonesia and Malaya.

Thus, when all the evidence is analyzed, it does not support a finding that there has been in the recent past an inadequacy of service on the C-2 service as a whole as outlined in Docket S-17.

Accordingly, on the basis of the record, the Board is unable to make the third finding of inadequacy of service.

By the Board.

SEPTEMBER 13, 1951

(Sgd.) A. J. WILLIAMS,  
*Secretary*

## FEDERAL MARITIME BOARD

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No. M-16

PACIFIC-ATLANTIC STEAMSHIP CO.—APPLICATION TO BAREBOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR EMPLOYMENT IN THE INTERCOASTAL TRADE

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No. M-17

POPE & TALBOT, INC.—APPLICATION TO BAREBOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR EMPLOYMENT IN THE INTERCOASTAL TRADE

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No. M-28

LUCKENBACH STEAMSHIP COMPANY, INC.—APPLICATION TO BAREBOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR EMPLOYMENT IN THE INTERCOASTAL TRADE

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REPORT OF THE BOARD

This proceeding, instituted under Public Law 591, Eighty-first Congress, is based upon applications of Pacific-Atlantic Steamship Co., Pope & Talbot, Inc., and Luckenbach Steamship Company, Inc., to bareboat charter Government-owned, war-built, dry-cargo vessels for use in the intercoastal trade. The case was heard before an examiner, who has recommended that the Board make the statutory findings: (1) That the service for which Pacific-Atlantic proposes to bareboat charter the *Linfield Victory*, *Jeremiah S. Black*, and *Elmer A. Sperry*, and Pope & Talbot proposes to bareboat charter the *Pere Marquette*, *Albert S. Burlinson*, and *M. M. Guhin*, for one additional round voyage each, is required in the public interest; (2) That such service would not be adequately served without the use therein of such vessels; and (3) that privately owned American-flag vessels are not available for charter on reasonable conditions and at reasonable rates for use in such services.

Waterman Steamship Corporation, one of the interveners, has filed exceptions to the examiner's recommended decision as respects the application of Pacific-Atlantic Steamship Company but did not except to that portion of the examiner's recommended decision relating to Pope & Talbot, Inc. The other interveners, West Coast Lumbermen's Association, American-Hawaiian Steamship Company, and American President Lines, Ltd., did not except to the examiner's decision, and Luckenbach, at the hearing before the examiner, withdrew its application. The application of Pope & Talbot was not opposed.

These cases were considered by the Board in January 1951 (3 F.M.B. 489), and again in March 1951. The Board's last report was on April 17, 1951 (3 F.M.B. 525), wherein it was recommended that the applications, as amended, of Pacific-Atlantic Steamship Company and Pope & Talbot, Inc., be limited to one and one-half voyages for each of three vessels operated by those two applicants, such voyages to terminate on the Atlantic coast, with a requirement that the charterers should assume all expenses incident thereto and that the charter hire payable thereunder shall continue to be not less than the 15 percent of the statutory sales price of the vessels chartered as provided in section 5(b) of the Ship Sales Act of 1946, as amended.

The necessary statutory findings were made in both proceedings and the Board authorized the record to be held open for such further hearing or consideration as may be deemed necessary by any party or by the Board in the light of conditions existing at or about the time the voyages are to be terminated.

We adopt the examiner's entire findings of fact and recommendations with respect to the application of Pope & Talbot, Inc. We also adopt his findings of fact and recommendations with respect to the application of Pacific-Atlantic Steamship Company that the service is required in the public interest and that privately owned American-flag vessels are not available for charter on reasonable conditions and at reasonable rates for use in such service. Our other conclusions with respect to the Pacific-Atlantic application basically agree with his recommendation as to the finding of inadequacy of service, as will be noted below.

The vessels applied for by Pacific-Atlantic are the war-built Victory-type *Linfield Victory* and two Liberty-type war-built vessels *Jeremiah S. Black* and *Elmer A. Sperry*.

According to testimony of applicant's witness, Pacific-Atlantic's vessels have been operating in the intercoastal trade eastbound



with capacity loads and, in most instances, westbound; approximately 60 percent of which eastbound is for the transportation of lumber and the remainder for the carriage of general cargo.

Testimony further indicates that in so far as lumber eastbound is concerned other carriers likewise are being offered more lumber than they can carry and the applicant is experiencing no difficulty filling the space allocated for this commodity. As to the general cargo eastbound, it was testified by the witness of the applicant that the canned goods movement is at its peak, which will continue until about the middle of next March. He expressed the view that the canned goods movement will be greater than the vessels in the trade can handle without delay.

It is proposed by applicant that the two Liberty vessels applied for will carry lumber and general cargo eastbound for Baltimore, Philadelphia, New York, and Albany, and on the Victory vessel lumber for these four ports and general cargo for Baltimore and Albany only, the latter arrangement being the result of an agreement between counsel for Pacific-Atlantic and Luckenbach.

As a result of this agreement to limit the carriage of cargo eastbound, Luckenbach Steamship Company withdrew its application and American-Hawaiian Steamship Company does not oppose the application of Pacific-Atlantic Steamship Company.

Waterman Steamship Corporation has excepted to the recommended decision of the examiner, substantially arguing that a privately-owned Victory of the applicant is being operated by its parent corporation, States Steamship Company, in the trans-pacific trade at substantial profits while on the other hand a Government-owned Victory would be bareboat chartered to applicant at a rate lower than applicant's vessel is being bareboat chartered to its parent company, States Steamship Company. The exceptions point out further that applicant had redelivered to it an owned Victory-type vessel in May 1951, which vessel had been under time charter to Military Sea Transportation Service, which is one of the reasons previously advanced by applicant in various proceedings similar to this as justification for charter of Government-owned vessels in the intercoastal trade. Exceptions further point out that instead of placing "this vessel back in the intercoastal trade in May 1951, the vessel was placed in the trans-pacific trade." Waterman then stated that applicant has not shown that the vessel redelivered to it in May from M. S. T. S. could not be placed in the intercoastal trade, and what is being asked for is a vessel in substitution for a privately-owned vessel,

which applicant "intended for use in the intercoastal trade" on its availability from M. S. T. S. It is argued that the effect of chartering a Government-owned war-built vessel under the circumstances is tantamount to a substitution of a privately-owned vessel contrary to our comments on such substitutions in the decision in *Docket M-34, Prudential Steamship Corporation—Charter of War-Built Vessels*, 3 F.M.B. 627. We do not feel that the circumstances here are similar to those in *Docket M-34*.

Whereas applicant has clearly indicated that it is its parent company's intention, when conditions permit, to adjust its two services so that applicant's intercoastal service is tonnaged only with privately-owned vessels, it is not clear that the owned vessel which was under time charter to M.S.T.S. was committed for immediate use in the intercoastal service on its release from time charter. Applicant testified that whereas in this and prior hearings on the same application it argued that one of the factors making it necessary to apply for charter of Government-owned ships in the intercoastal service was the nonavailability of an owned vessel chartered to the military, it was not the only reason. It is also urged in the exceptions that this arrangement will result in substantial losses to the Government because the Government would realize a greater financial return if the *Linfield Victory* were operated under charter in the foreign trade, but this argument becomes unimportant in view of the circumstances stated below.

Subsequent to the filing of exceptions in this case and before a decision by the Board, the Maritime Administrator advised the Board that the *Linfield Victory* will be required by the Maritime Administration for other employment in the Pacific and requested that if the Board determines that statutory findings can be made, that such findings be limited to one round voyage for each of two Liberty vessels, an eastbound voyage for another Liberty vessel, and a westbound voyage for the *Linfield Victory*.

Counsel for applicant has been advised of the requirements of the Maritime Administrator and is satisfied with this arrangement in the event that the Board makes the required findings under Public Law 591.

Counsel for Luckenbach Steamship Company has also been advised of the Maritime Administrator's requirements and has stated that in the event the Board makes the required findings no objection will be interposed to granting Pacific-Atlantic

Steamship Company permission to operate the *Linfield Victory* under bareboat charter on the westbound leg, and will relieve the applicant of any obligation not to carry general cargo for ports other than Baltimore and Albany if such cargo moves in a Liberty vessel.

Counsel for Waterman Steamship Corporation also has been advised of the Maritime Administrator's requirement and has stated in the event the Board makes the required findings that no objection will be interposed to granting Pacific-Atlantic Steamship Company permission to operate the *Linfield Victory* under bareboat charter on the westbound leg, but desires to insist on its objection to the principle of using bareboat chartered vessels, regardless of type, in the intercoastal service in competition with privately-owned vessels.

It is noted, however, that this objection has been raised by Waterman by exceptions as to chartering of Government vessels to Pacific-Atlantic and not to the chartering of vessels to Pope & Talbot. Waterman did not offer evidence to controvert testimony of applicants on inadequacy of service.

Under the circumstances, the Board does not find that the exceptions of Waterman Steamship Corporation in this case prevent statutory findings required to grant the application of Pope & Talbot for one additional voyage for three Liberty ships, and the application of Pacific-Atlantic for one additional voyage for two Liberty ships and westbound voyage for the *Linfield Victory* and one eastbound voyage for one Liberty ship.

#### FINDINGS AND CERTIFICATION TO THE SECRETARY OF COMMERCE

On the basis of the facts adduced of record the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service considered is required in the public interest;
2. That such service will not be adequately served without the use by Pope & Talbot, Inc., of three Liberty-type, war-built, dry-cargo vessels for one round voyage each, and by Pacific-Atlantic Steamship Company of two Liberty-type, war-built, dry-cargo vessels for one round voyage each and the Victory-type, war-built vessel *Linfield Victory* for a westbound voyage and one Liberty-type, war-built, dry-cargo vessel for one eastbound voyage, and
3. That privately owned American-flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

## RECOMMENDATION

It is recommended that applicants' obligations as to redelivery of the vessels at an Atlantic coast port, except as to the *Linfield Victory*, as set forth in the Board's decision of April 17, 1951, be continued in effect except that applicant Pacific-Atlantic Steamship Company be permitted to terminate on the Pacific coast the voyage of the *Linfield Victory*, both charterers assuming all expenses incident to the redelivery of the vessels involved in this proceeding as follows:

Pope & Talbot, Inc., three Liberty vessels for delivery Atlantic coast port.

Pacific-Atlantic Steamship Co., three Liberty vessels for delivery Atlantic coast port.

Pacific-Atlantic Steamship Co., one Victory vessel (*Linfield Victory*) for delivery on Pacific coast.

By the Board.

SEPTEMBER 14, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-16

PACIFIC-ATLANTIC STEAMSHIP CO.—APPLICATION TO BAREBOAT CHARTER, GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR EMPLOYMENT IN THE INTERCOASTAL TRADE

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No. M-17

POPE & TALBOT, INC.—APPLICATION TO BAREBOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR EMPLOYMENT IN THE INTERCOASTAL TRADE

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No. M-28

LUCKENBACH STEAMSHIP COMPANY, INC.—APPLICATION TO BAREBOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR EMPLOYMENT IN THE INTERCOASTAL TRADE

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The Board should find and certify to the Secretary of Commerce that the service for which Pacific-Atlantic Steamship Company and Pope & Talbot, Inc., propose to bareboat charter Government-owned, war-built, dry-cargo vessels is required in the public interest; that such service would not be adequately served without the use therein of such vessels, and that privately owned American-flag vessels are not available for charter on reasonable conditions and at reasonable rates for use in such service.

*William I. Denning* for Pacific-Atlantic Steamship Company.

*Odell Kominers* for Pope & Talbot, Inc., Luckenbach Steamship Company, Inc., and American-Hawaiian Steamship Company.

*Sterling F. Stoudenmire, Jr.*, for Waterman Steamship Corporation.

*Willis R. Deming* for American President Lines, Ltd.

*C. A. Luce* for West Coast Lumbermen's Association.

*M. E. Halpern, Joseph A. Klausner, and Alan T. Wohlstetter* for the Board.

RECOMMENDED DECISION OF F. J. HORAN, EXAMINER

This is a proceeding under Public Law 591, Eighty-first Congress, concerning applications of Pacific-Atlantic Steamship

Company, Pope & Talbot, Inc., and Luckenbach Steamship Company, Inc., hereinafter called Pacific-Atlantic, Pope & Talbot, and Luckenbach, respectively, to bareboat charter Government-owned, war-built, dry-cargo vessels for use in the intercoastal trade.

West Coast Lumbermen's Association, Waterman Steamship Corporation, American-Hawaiian Steamship Company, and American President Lines, Ltd., intervened.

Luckenbach, at the hearing, withdrew its application.

There is no opposition to the application of Pope & Talbot. Waterman Steamship Corporation, hereinafter called Waterman, opposes the application of Pacific-Atlantic. West Coast Lumbermen's Association requests that both applications be granted.

The charters for which Pacific-Atlantic and Pope & Talbot make application would, in effect, be extensions of those which the Board in its report herein on April 17, 1951, recommended be limited to one and one-half voyages for each vessel applied for, such voyages to terminate on the Atlantic coast. In that report the Board also stated that the record would be held open for such further hearing or consideration as might be deemed necessary by any party or by the Board in the light of conditions existing at or about the time the voyages were to be terminated. It appears that the first of the voyages referred to, that of the *Jeremiah S. Black*, will be terminated about September 15, 1951. By the applications, Pacific-Atlantic seeks to charter the *Linfield Victory* and the two Liberty-type vessels *Jeremiah S. Black* and *Elmer A. Sperry*, and Pope & Talbot seeks to charter the three Liberty vessels *Pere Marquette*, *Albert S. Burleson*, and *M. M. Guhin*, for one additional round intercoastal voyage each.

Witnesses for applicants and the West Coast Lumbermen's Association, through whom all of the evidence of record was presented, all testified to the effect that there is a shortage of freight space in the intercoastal trade for the movement of lumber.

In addition to the three vessels chartered to Pacific-Atlantic, this applicant is operating in the intercoastal trade one Victory-type vessel owned by it and one such vessel owned by States Steamship Company, of which it is a subsidiary. It serves the Columbia River area, Coos Bay, Newport, San Francisco Bay ports, Long Beach, and San Diego, on the Pacific coast, and Baltimore, Philadelphia, New York, and Albany, on the Atlantic coast, carrying lumber and general cargo eastbound and general cargo, largely steel products, westbound. Since last April, it was testified, this carrier's ships have been transporting capacity

loads eastbound and probably in most instances westbound. About 60 percent of the capacity of Pacific-Atlantic's vessels is utilized, eastbound, for the transportation of lumber, and the remainder for the carriage of general cargo. No difficulty has been experienced by this applicant in filling with lumber the space which it has allocated for that commodity, and it appears that the other intercoastal carriers likewise are being offered more lumber than they can carry. Nor is applicant having any difficulty in filling the space allocated by it for eastbound general cargo. Its vice president testified that the canned-goods season is at its peak and will last until about the middle of next March and that there should be a much greater volume of canned goods than the ships in the trade can handle without delay. At the time of hearing, in the San Francisco Bay area alone, applicant had booked for a vessel in loading berth and one expected to arrive during the following week approximately 4,000 tons of general cargo and had requests for space for 4,300 tons in excess of what it could lift on those two vessels.

Pacific-Atlantic proposes to load the two Liberty vessels for which it has applied with lumber and general cargo for all four of the Atlantic ports mentioned above, and the *Linfield Victory* with lumber for such ports and general cargo for Baltimore and Albany only. It was due to the elimination of New York and Philadelphia as general-cargo ports for the *Linfield Victory* that Luckenbach, which serves those ports, withdrew its application. For the same reason, the application of Pacific-Atlantic is not opposed by American-Hawaiian Steamship Company.

Vessels owned by Pacific-Atlantic which are not employed in the intercoastal trade are being operated in transpacific service, carrying for the most part military and Government cargo.

Pope & Talbot intends to use the vessels for which it has made application exclusively in the carriage of lumber eastbound, with the possible exception of occasional shipments of bulk silicate of soda. Its witness testified that, though the need for ships to carry lumber is not as acute as it was at the time of the last decision herein, it is still urgent. He testified further that, despite efforts of Pope & Talbot to accommodate demands made upon it for space, it has had to turn cargo away.

Westbound, Pope & Talbot operates from Baltimore, primarily, and Philadelphia. There is a considerable volume of low-grade freight, in addition to steel, available at Baltimore for intercoastal movement, and it is such freight that Pope & Talbot en-

deavors to obtain. It was testified that this applicant's ships sail westbound reasonably full.

Besides the three ships chartered to it, Pope & Talbot is operating in the intercoastal trade four vessels of its own. These call at Puerto Rican ports with lumber and general cargo in addition to serving intercoastal ports. Applicant also owns two other vessels. One of these is under charter to the Military Sea Transportation Service, and the other is employed in the service of its subsidiary, Pacific-Argentine-Brazil Line, Inc., between the Pacific coast of the United States and the East coast of South America as a result of a finding of the Board that an actual emergency existed necessitating the operation of the vessel on that route. Thus, Pope & Talbot owns no vessel not employed by it in the intercoastal trade which it is free at this time to operate in that trade in place of any of the vessels which it has under charter.

Time-charter rates prevailing on both the Atlantic and Pacific coasts, which range from \$60,000 to \$70,000 per month for Liberty vessels, prohibit the charter of privately owned American-flag vessels for use in the intercoastal trade.

The importance of the intercoastal trade has been recognized by the Congress, the Interstate Commerce Commission, the Maritime Commission, and the Board. That the trade would not be adequately served without the use therein of the vessels applied for, so far as the movement of lumber is concerned, is not disputed. Nor is it disputed that the rates being asked for the charter of privately owned American-flag vessels are unreasonable for the intercoastal trade.

Waterman opposes Pacific-Atlantic's application because, if the application should be granted, the vessels applied for therein would be used in carrying general cargo to Baltimore. The Interstate Commerce Commission recently granted Waterman a certificate to operate from California ports to Baltimore and the South Atlantic, and an announcement has been made to the effect that such service will be inaugurated in the early part of September 1951. There is no showing, however, that, with this service but without that of the vessels for which Pacific-Atlantic has made application, Baltimore would be adequately served. According to the announcement referred to, Waterman recognizes the need for additional service to Baltimore.

#### FINDINGS AND CERTIFICATION

The Board should find and certify to the Secretary of Commerce (1) that the service for which Pacific-Atlantic proposes to bare-



boat charter the *Linfield Victory*, *Jeremiah S. Black*, and *Elmer A. Sperry*, and Pope & Talbot proposes to bareboat charter the *Pere Marquette*, *Albert S. Burlison*, and *M. M. Guhin*, for one additional round voyage each, is required in the public interest; (2) that such service would not be adequately served without the use therein of such vessels, and (2) that privately owned American-flag vessels are not available for charter on reasonable conditions and at reasonable rates for use in such service.

3 F. M. B.

# FEDERAL MARITIME BOARD

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No. M-19

AMERICAN EXPORT LINES, INC.—APPLICATION FOR BAREBOAT CHARTER OF GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSEL FOR USE IN THE SERVICE BETWEEN U. S. NORTH ATLANTIC AND MEDITERRANEAN PORTS

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## REPORT OF THE BOARD

This proceeding was originally instituted under Public Law 591, Eighty-first Congress, upon application of American Export Lines, Inc., for the bareboat charter of a Government-owned, war-built, dry-cargo vessel (Victory type) for use, without subsidy, in the company's North Atlantic-Mediterranean service (applicant's line B) for a 6 months' period. The Board on January 11, 1951, made the required findings and certification to the Secretary of Commerce as to the charter of one Victory-type vessel in that service. Thereupon the *Elmira Victory* was chartered to the applicant without subsidy, and with the agreement of the applicant to incorporate any profits therefrom in its subsidized earnings. The company has now applied for an extension of the charter of this ship for an additional 6 months. Due notice of hearing on the second application was published in the Federal Register and a hearing was held before the examiner on August 28, 1951. The examiner's report, served September 7, 1951, recommends that the Board should make the necessary statutory findings and certification to the Secretary of Commerce permitting an additional 6 months' charter of the vessel in the service indicated. No interveners opposed the application, and no exceptions have been filed to the examiner's report. We agree with the examiner's conclusions.

The testimony in the case shows that the service between U. S. North Atlantic and Mediterranean ports continues to be in the public interest, not only because of its general importance, but also as the result of world-wide conditions which influence and augment the flow of military and related supplies from this country to various countries in the Mediterranean areas served

by applicant. As recently as July 26, 1951, in Docket No. M-34, *Application of Prudential Steamship Corp.*, 3 F.M.B. 627, we made a finding that this service was in the public interest.

The record supports the examiner's finding that there are no suitable privately owned American-flag vessels available for charter by private operators on reasonable conditions and at reasonable rates for use in the service. Applicant's witness testified that there were at the time of the hearing no vessels of type suitable for applicant's service available in the open market, regardless of rate.

Applicant offered testimony that it planned to continue the use of the *Elmira Victory* on that part of its Line B service running from North Atlantic ports to Venice, Trieste, and Fiume. Applicant's witness testified that the volume of traffic moving from U. S. North Atlantic ports to the Mediterranean area is now very heavy and that it is likely to remain so for some time, although applicant's vessels have not always sailed full. The unused space on sailing was accounted for by the nonarrival at loading port of cargo intended for particular sailings, or by industrial interruptions, such as strikes. In general, however, applicant's witness felt that presently-operating American tonnage in this service is not now able to handle the offered traffic as a whole and probably will not be able to do so in the foreseeable future. Applicant pointed out that its Line B service to the Mediterranean was formerly supplied by four vessels calling at Genoa, Leghorn, Naples, Venice, Trieste, and Fiume on a fortnightly basis with a turnaround of about 56 days. To improve this service, applicant made a division so that three vessels now call at Genoa, Leghorn, and Naples on a fortnightly basis, with a turnaround of about 42 days, and two vessels, including the *Elmira Victory*, call at Venice, Trieste, and Fiume on a monthly basis. Furthermore, applicant's vessels of another line running between U. S. North Atlantic ports and Israel also call at Venice, Trieste, and Fiume, so that with applicant's line B vessels these last-named ports are furnished fortnightly service. Applicant frankly states that the continued use of the *Elmira Victory* in this group of vessels serving the ports of Venice, Trieste, and Fiume is also important to applicant in order that it can develop its long-range plans to round out its general program.

We base our findings in this case, that the service for which the application is made is not now adequately served, on the general requirements of the trade indicated above rather than

on the operator's desire to develop its long-range program.

At the present time applicant has one owned vessel, the *SS. Exmouth*, under charter to Military Sea Transportation Service. Since the withdrawal from its Indian service and charter to Military Sea Transportation Service of this vessel was a factor in applicant's original application, and was considered by the Board in its original findings in this case, it would seem that any release by Military Sea Transportation Service of applicant's owned C-3 type vessel might provide applicant with sufficient owned tonnage to meet its needs on the service here in question without the use of a Government-owned chartered vessel that may be granted pursuant to findings of the Board in this case.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced of record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service under consideration is required in the public interest;
2. That such service is not adequately served; and
3. That privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that in any extension of charter that may be made with applicant, provision be included to protect the interests of the Government under its operating-differential subsidy contracts with applicant, and that provision be made for review of the charter in the event that applicant obtains redelivery of its owned vessel now under charter to Military Sea Transportation Service.

Chairman Cochrane, being absent, took no part in this decision.

By the Board.

SEPTEMBER 21, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

freight type vessels, to make a minimum of 17 voyages and a maximum of 20; with 5 C-2 freight vessels, to make a minimum of 16 voyages and a maximum of 20; and with 3 C-1A freight vessels, to make a minimum of 10 voyages and a maximum of 12 per annum, the latter vessels serving primarily shallow water ports of North Brazil. The applicant also operates a subsidized service on Trade Route 14 between the Gulf and the West coast of Africa with a feeder service from African ports not directly served. In mid-1950 the services between Gulf and South American ports were heavily overtonnaged. Upon the return of applicant's vessel *Del Alba* from South America to New Orleans in June 1950, that vessel was chartered to Military Sea Transportation Service, which then greatly needed tonnage, the applicant feeling at that time that it could make its required number of sailings without the *Del Alba*.

Because of the need for an additional vessel in the West African service, applicant applied for and received permission from the Maritime Administration, in March of 1951, to transfer one of its South American C-1A vessels, the *Del Campo*, to its African service for use therein for not more than four voyages to be completed not later than March 31, 1952. On about March 25, 1951, or about the same time that the *Del Campo* was transferred to the West African service, the *Del Alba* was returned by the Military Sea Transportation Service and was reintroduced into applicant's South American service.

Applicant's witness has testified that the situation on the West African route has not improved, but, in fact, has become more acute, and indicates that the withdrawal of the *Del Campo* from the West African service for return to the South American service would only further aggravate the situation on the West African route. Applicant intends to apply to the Maritime Administration for permission to use the *Del Campo* in that service for at least two additional voyages beyond March 31, 1952.

Port congestion on Trade Route 20 has, in the meantime, been steadily increasing from the beginning of 1951. Applicant has, consequently, had fewer sailings than scheduled. In July 1951, applicant considered applying to the Government for the chartering of an additional vessel for use on Trade Route 20. The situation was aggravated when applicant's vessel, the *Del Mar*, went on the rocks at Recife on August 27, 1951, and was so badly damaged as to be unable to make her October 11 sailing from the Gulf, and probably to be unusable until December 1951.

Applicant's witness has testified that there is a considerable amount of southbound cargo available for current and near-future sailings for which it has no available space. Northbound coffee offerings to applicant in 1951 are expected to exceed the 1950 figure by more than 500,000 bags. Although applicant's vessels have not always sailed full northbound, its witness stated that coffee is sold in the United States on a position basis and that the vessel that is in position is the one which gets the business, and that in order to obtain such business there must be frequent sailings and proper spacing. Foreign-flag vessels in the trade, according to the witness, are sailing substantially full, and one foreign line recently chartered an additional vessel for early October sailing.

From the above record it is clear that the service on Trade Route 20 will not be adequately served without an additional vessel in the immediate future.

Applicant has been advised by brokers that there are no suitable privately-owned vessels available for use by applicant in this service for the time desired at reasonable rates. C-1A type vessels are most suitable for applicant's needs because of their shallow draft, whereas Victory-type vessels are larger than required. Applicant's witness testified that one Victory-type vessel might possibly be obtained in September at a time charter rate of \$90,000 a month, but this vessel was available for one month only and, therefore, not adaptable to applicant's needs. Accordingly, it appears that the examiner's findings that there are no suitable privately owned American-flag vessels available for charter by private operators on reasonable conditions and at reasonable rates is supported by the record.

The examiner has recommended that the statutory findings be made, and that the charter be limited to three round-trip voyages. A round-trip voyage requires approximately 90 days, and, therefore, three such voyages will require approximately 9 months. It appears, however, that within approximately 6 months the *Del Mar* should be back in service, and the *Del Campo*, applicant's C-1A-type vessel, will be due from the West African service. Accordingly, it is not certain that applicant's need for chartered tonnage on Trade Route 20 will continue longer than that period.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced in the record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service under consideration is required in the public interest;

2. That such service is not adequately served; and

3. That privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that any charter that may be granted pursuant to the recommendations in this case be for an indefinite period, subject to the usual right of cancellation by either party on 15 days notice, and that the Administrator review the charter prior to March 31, 1952, to determine what effect the then status of the *Del Campo* and the *Del Mar* as to their future use may have on the continued use of the Government-owned chartered vessel on Trade Route 20. The Board also recommends that any such charter include provisions to protect the interest of the Government under the operating-differential subsidy agreement with applicant.

Chairman Cochrane, being absent, took no part in this decision.

By the Board.

SEPTEMBER 21, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-21

LYKES BROS. STEAMSHIP CO., INC.—APPLICATION TO BAREBOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR EMPLOYMENT IN THE U. S. EAST GULF/UNITED KINGDOM, EUROPEAN CONTINENT, BALTIC, AND SCANDINAVIAN SERVICE (TRADE ROUTE NO. 21), AND IN THE U. S. GULF & SOUTH ATLANTIC/MEDITERRANEAN & BLACK SEA SERVICE (TRADE ROUTE NO. 13)

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*William Radner* for applicant.

*Allen C. Dawson* for the Board.

### REPORT OF THE BOARD

This proceeding was instituted pursuant to Public Law 591, Eighty-first Congress, upon the application of Lykes Bros. Steamship Co., Inc., to extend the existing charters of five Victory-type, Government-owned, war-built, dry-cargo vessels, and to bareboat charter three additional vessels of the same type, in the company's subsidized services between U. S. South Atlantic and Gulf ports and Mediterranean ports (Trade Route No. 13), and between U. S. Gulf ports and the United Kingdom, Ireland, Continental Europe, Scandinavian, and Baltic ports (Trade Route No. 21).

Applicant is presently operating five Victory-type ships in the above-mentioned services under bareboat charter pursuant to the findings and certification of the Board in this case, dated March 19, 1951 (3 F.M.B. 510). On August 8, 1951, applicant requested that the charters be extended because of anticipated heavy traffic movements during the forthcoming fall and winter seasons. Applicant, on September 6, 1951, requested that its application be amended so as to include a request for the bareboat charter of three additional Victory-type ships for an indefinite period. Notice of hearing on the original application was published in the Federal Register of September 12, 1951, and on the amended application, in the Federal Register of September 21, 1951. Because of the urgency of the matter the usual 15 days' notice was not given. Hearing on the application, as amended, was held be-



fore an examiner on September 25, 1951. No party appeared in opposition to the application, although counsel for the Board participated in the examination of applicant's only witness.

The examiner has recommended in his decision, which was served on October 2, 1951, that the necessary statutory findings be made by the Board to the Secretary of Commerce. Counsel for the Board, the only party other than applicant appearing at this hearing, has given notice that he will file no exceptions to the examiner's recommended decision.

It appears from the record that the current traffic situation over Trade Routes 13 and 21 is somewhat similar to the traffic situation which existed at the time that the Board made its previous determination in this case on March 19, 1951, except that during the forthcoming fall and winter months it is anticipated that the volume movement of cargo will materially increase as a result of the huge cotton crop in prospect in the United States. The Department of Agriculture has estimated that a cotton crop of approximately 17,200,000 bales will be produced, which represents a substantial increase over the crop of last year. Export quotas on cotton were eliminated on September 25, 1951, and applicant's cotton shippers predict an exceptionally heavy export movement over Trade Routes 13 and 21. At the time of the hearing, all of applicant's scheduled outbound September sailings over the above routes were practically fully booked, except for space held in reserve to fulfill outstanding contracts. From all present indications, there will be a continued heavy movement of foodstuffs, carbon black, and miscellaneous cargo, in addition to the prospective heavy volume of cotton.

During the first 8 months of 1951, applicant has refused a total of 207,000 tons of cargo for export shipment over Trade Route 13, and, during this period, has also refused a total of 267,590 tons for export shipment over Trade Route 21. In addition, for the months of September and October, applicant has already turned down 67,000 tons of Trade Route 13 export cargo and 49,955 tons of Trade Route 21 export cargo. Among the commodities that applicant has been forced to decline are lubricating oil and other petroleum products, grain, phosphorous, iron, carbon black, hardwood lumber, cottonseed meal and cake, machinery, tobacco, cotton, Gilsonite, corn in bags, grain in bulk, sulphur, phosphate, powdered milk, flour, fire clay, and numerous other commodities, including considerable cargo offered by the Army and Military Sea Transportation Service.

The eight vessels covered by this application will provide between four and five voyages per month, and they will handle approximately 37,000 tons of export cargo per month. Since five of the vessels are already in operation, the cargo turned down by applicant reflects the cargo turned down after taking into account the capacity of these five ships. It appears from the record that applicant will be able to utilize the full capacity of the eight vessels.

In addition to the above facts, which support a finding that the trade is not adequately served, we take official notice of the legislation now pending before Congress which, if passed, will provide for substantial additional appropriations for military and economic aid to Europe. See *Report of the Conference Committee on H. R. 5113, Senate Document No. 73, Eighty-second Congress, First Session*. Any such additional Government aid should substantially increase the export traffic on both Trade Routes 13 and 21. We also take official notice of an expanding public interest in Trade Route 13 because of the recent extension of the North Atlantic Pact to include Greece and Turkey, and because of the recent United States loans to Spain which have caused that country to become very active in the export market. Applicant's witness stated that in September 1951 the company had refused 6,000 bales of cotton for export to Spain, which subsequently was shipped via an Italian steamer.

Despite this situation of greatly increased traffic on Trade Routes 13 and 21, other American-flag operators on the whole have decreased their sailings over these routes. On Trade Route 13, during the first 8 months of 1950, other American-flag lines made a total of 70 sailings as compared with only 26 sailings during the same period in 1951. Similarly, on Trade Route 20, the only other American-flag operators made 34 sailings during the first 8 months of 1950 as compared with 23 sailings during the comparable period in 1951.

From the above record it is clear that the services under consideration are required in the public interest and that these services will not be adequately served without the vessels applied for.

Applicant has been informed by its broker that there are no suitable privately-owned vessels available at the present time for short or long term charter at reasonable rates. The only types of vessels suitable for service on these routes are Victory and C-type vessels. Applicant's witness testified that the company had canvassed the market and that no Victory or C-type vessels were available at any price. Accordingly, it appears that the record sup-

ports the finding that there are no suitable privately owned American-flag vessels available for charter by private operators on reasonable conditions and at reasonable rates.

In our decision of March 19, 1951, pursuant to which applicant was granted the charter of five Victory-type vessels, we declined to recommend that the chartered vessels be restricted to one particular trade route or service. In view of the fact that vessels operating on Trade Routes 13 and 21 carry predominantly export cargo from Gulf ports, we believe that it is in the best interest of the Government and the public to allow applicant to employ the chartered vessels interchangeably over these routes as the public need dictates. Applicant has authority under the terms of its operating-differential subsidy agreement with the Board to use its own subsidized vessels interchangeably on these two trade routes. It would appear unnecessary for the Board, therefore, to recommend that any such restrictions be placed on these vessels which would prevent them from being utilized most advantageously as the exigencies of the Gulf trade may require.

FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced in the record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the services under consideration are required in the public interest;
2. That such services are not adequately served; and
3. That privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that the charters which may be granted pursuant to the recommendations in this case be for an indefinite period, subject to the usual right of cancellation by either party on fifteen days' notice, and subject further to annual review of the charter as provided in Public Law 591. The Board also recommends that any such charter include provisions to protect the interests of the Government under the operating-differential subsidy agreement with applicant.

By the Board.

OCTOBER 8, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-37

LYKES BROS. STEAMSHIP CO., INC. — APPLICATION FOR BAREBOAT CHARTER OF GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSEL FOR EMPLOYMENT IN THE GULF/SOUTH AND EAST AFRICAN SERVICE (TRADE ROUTE NO. 15-B)

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*William Radner* for applicant.

*Allen C. Dawson* for the Board.

### REPORT OF THE BOARD

This proceedings was instituted pursuant to Public Law 591, Eighty-first Congress, upon the application of Lykes Bros. Steamship Co., Inc., for bareboat charter for an indefinite period of one Victory-type, Government-owned, war-built, dry-cargo vessel for employment in its subsidized service between United States Gulf ports and ports in South and East Africa (Trade Route No. 15-B, Line E in applicant's subsidy contract). Notice of hearing on the application was published in the Federal Register of September 15, 1951, and hearing was held on September 25, 1951. Because of the urgency of the matter, the usual 15 days' notice was not given. Counsel for the Board participated in the examination of applicant's only witness. There was no opposition to the application.

The examiner's report was served on October 4, 1951, and counsel for the Board, the only party other than applicant appearing at the hearing, has given notice that he will file no exceptions thereto. The examiner has recommended that the Board make the necessary statutory findings to the Secretary of Commerce.

Trade Route 15-B has been determined by the Maritime Commission to be an essential trade route. Applicant is the only American-flag operator serving this route. It is in addition the only carrier of any nationality operating over the entire route and providing a regular service from South and East Africa to the Gulf of Mexico. Generally speaking, applicant's service covers Gulf ports and all ports in South and East Africa. Under its operating-differential subsidy agreement, applicant is permitted to

make a maximum of 13 sailings per year, or approximately 1 sailing per month.

Cargo offerings for transport over Route 15-B have increased substantially during the past several months, and applicant's vessels were, at the time of hearing, booked full through September, with more cargo being then offered for its October steamer than it could possibly handle. Applicant has turned down only a small amount of inbound cargo, but has found it necessary to decline substantial outbound cargo offerings. Between February and October, applicant turned down cargo offered for transport to South and East Africa totaling 46,977 tons.

It appears from the record that there is a substantial volume of commerce that flows outbound and inbound on this route. The types of commodities that move outbound are petroleum products (consisting principally of lubricating oil), asphalt, tinplate, flour, steel, carbon black, staves and headings, road graders, agricultural implements, automobiles, veneer, sulphur, and numerous other commodities. These commodities are essential for the economic well-being and development of the area serviced by the route in South and East Africa. Inbound, the principal commodities are lead ore, manganese ore, magniferrous ore, vermiculite, asbestos, coffee, sisal, fish meal, and iron ore. These commodities, particularly the ores, are needed in American industry and for our defense effort.

Applicant competes on this route with South African Marine Corp., Ltd.,<sup>1</sup> operating foreign-flag tonnage with occasional American-flag chartered vessels, and British-Dutch ships of the Silver-Java Pacific Lines.<sup>2</sup> The services of these companies have been substantially curtailed during the past several months, and, for the period of January through August 1951, of the six sailings provided by the South African Marine Corporation, all of them partially loaded at North Atlantic and/or South Atlantic ports. The Silver-Java Pacific Lines had seven sailings for the same period, with all of these vessels calling at Pacific coast ports prior to Gulf ports, leaving very little space for Gulf shippers. Only recently, Silver-Java Pacific Lines sold to Cunard S. S. Co., Ltd., two of its liner ships that it had used in the Gulf trade, and it has indicated that the company will shortly further curtail its service from the Gulf, or abandon it altogether. South African Marine

<sup>1</sup> South African Marine Corp., Ltd., is partly owned by States Marine Corporation.

<sup>2</sup> Silver-Java Pacific Line is a combination of Silver Lines and Java Pacific Lines, the Silver Lines being a British operator and Java Pacific being a Dutch Line. These lines have operated for many years out of the Gulf as a joint service.

Line has also curtailed its Gulf sailings to a certain extent. Thus, while the amount of space available to the shipping public for cargo carriage over this route is materially below the amount of space that was available last year, the amount of cargo offered for transport over this route has substantially increased.

From the above record, it is clear that the service under consideration is required in the public interest and that this service will not be adequately served without the vessel applied for.

Applicant requires and is presently operating C-2 type vessels on this route but has stated that a Victory-type vessel is suitable. Applicant has been informed by its brokers that there are no Victory or C-2 type vessels available for short or long term charter. Accordingly, it appears that the record supports the finding that there are no suitable privately owned American-flag vessels available for charter by private operators on reasonable conditions and at reasonable rates.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced in the record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service under consideration is required in the public interest;
2. That such service is not adequately served; and
3. That privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that the charter which may be granted pursuant to the recommendations in this case be for an indefinite period, subject to the usual right of cancellation by either party on 15 days' notice, and subject further to annual review of the charter as provided in Public Law 591. The Board also recommends that any such charter include provisions to protect the interests of the Government under the operating-differential subsidy agreement with applicant.

By the Board.

OCTOBER 9, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.

## FEDERAL MARITIME BOARD

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No. S-32

IN THE MATTER OF THE APPLICABILITY OF SECTION 802 OF THE MERCHANT MARINE ACT, 1936, AS AMENDED, TO CONSTRUCTION-DIFFERENTIAL SUBSIDY AGREEMENTS COVERING THE VESSELS OF AMERICAN PRESIDENT LINES, LTD. — SSS. PRESIDENT VAN BUREN, PRESIDENT JOHNSON, AND PRESIDENT HARRISON (EX. USSS. BOLIVAR, CALLAWAY, AND CLAY)

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*Decided October 10, 1951*

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### REPORT OF THE BOARD

The matter here under consideration grows out of the granting of construction-differential subsidies to American President Lines, Ltd., in 1948 for the reconditioning of three vessels. These vessels, now known as the *President Van Buren*, *President Johnson*, and *President Harrison*, were sold by the Maritime Commission to American President Lines, and, pursuant to application of American President Lines, the Commission on September 30, 1948, notified American President Lines that the reconstruction subsidies had been granted. The letter of notification, accepted by American President Lines, contained the terms of the subsidy arrangement, and controlled the interests of the parties pending preparation of more formal contracts.

The point now to be determined arises under section 802 of the Merchant Marine Act, 1936, and the following clause in the Commission's letter of September 30, 1948, outlining the following requirement to be included in the final contracts:

(3) a provision for applicability of Section 802 of the Act should the United States subsequently acquire ownership of the vessels through purchase or requisition, with such revision of the standard provisions as may be necessary for consistency with the pertinent provisions of the Merchant Ship Sales Act of 1946;

Section 802 of the Merchant Marine Act, 1936, provides:

Sec. 802. Every contract executed by the Commission under authority of title V of this Act shall provide that—

In the event the United States shall, through purchase or requisition, acquire ownership of the vessel or vessels on which a construction-differential subsidy was paid, the owner shall be paid therefor the value thereof, but in no event shall such payment exceed the actual depreciated construction cost thereof (together with the actual depreciated cost of capital improvements thereon, but excluding the cost of national-defense features) less the depreciated amount of construction-differential subsidy theretofore paid incident to the construction or reconditioning of such vessel or vessels, or the fair and reasonable scrap value of such vessel as determined by the Commission, whichever is the greater. Such determination shall be final.\* \* \*

The foregoing provision respecting the requisition or the acquisition of ownership by the United States shall run with the title to such vessel or vessels and be binding on all owners thereof.

In March 1949 the General Counsel of the Maritime Commission submitted to American President Lines for execution formal construction-differential subsidy agreements covering the three vessels, which included the following article 6:

*Requisition of vessel.*—In the event the United States shall hereafter acquire ownership of the Vessel through purchase or requisition, the Owner shall be paid therefor the value thereof.

For the purpose of this Article, the value of the Vessel shall in no event exceed the actual depreciated acquisition cost thereof to the Owner, together with the actual depreciated cost of capital improvements thereof (but excluding the cost of national defense features), less the depreciated amount of construction-differential subsidy theretofore paid incident to the reconstruction and reconditioning of the Vessel, or the fair and reasonable scrap value of the Vessel as determined by the Commission, whichever is greater. It is agreed that such determination shall be final. Acquisition cost to the Owner shall be the actual final price paid by the Owner to the Commission in acquiring the Vessel under the Act of March 8, 1946, the Merchant Ship Sales Act. In computing the depreciated value of the Vessel, depreciation shall be computed on the schedule adopted by the Bureau of Internal Revenue for income tax purposes.

The foregoing provisions respecting the requisition or the acquisition of ownership by the United States, including the valuation of the Vessel in the event of such requisition or acquisition of ownership, shall run with the title to the Vessel and be binding on all owners thereof.

In the same month American President Lines returned the contracts to the Commission unexecuted, objecting to the inclusion of the words "depreciated acquisition cost" on the ground that they were contrary to the statute and not contemplated by the agreement of the parties. The final contracts are still unexecuted, and American President Lines has agreed to abide by the decision of the Board in the matter.

It may be noted that the statute refers to the purchase or requisition by the United States of vessels on which a construction-differential subsidy has been paid, and provides that in such



case the owner shall be paid the *value* thereof, not exceeding, however, the depreciated *construction* cost thereof. This section of the law is applicable in cases of construction-differential subsidies granted for the reconstruction or reconditioning of vessels as well as for original construction, the term "construction-differential subsidy" applying equally to both situations. [See sec. 501 (c).]

The staff, in recommending that article 6 be included in the American President Lines final contracts, points out that the vessels were purchased from the Government under the provisions of the Merchant Ship Sales Act of 1946, and that a requisition price up to the depreciated construction cost of the vessels could give compensation in excess of the price at which the owner acquired the vessels; that since the vessels had been "acquired" under the 1946 Act and not "constructed," a departure from the standard contract language dealing with the applicability of section 802 for newly constructed vessels was required. The staff takes the position that article 6 in controversy was incorporated into the final draft of contracts "consistent with the intended meaning" of the clause of the September 30, 1948, commitment letter quoted above.

The matter has been considered by the Board's General Counsel, who points out that since American President Lines has agreed to be bound by the Board's decision, our consideration of the matter should be from a judicial point of view, and with this observation we agree. The General Counsel pointed out that:

It does not appear that the quoted provision in the Commission's letter to American President Lines, Ltd. would normally be construed to mean that the statutory Section 802 provision would be modified to substitute the words 'acquisition cost' for the words 'construction cost'.

The General Counsel also appropriately suggested that the matter should not be finally determined without first giving American President Lines an opportunity to be heard. This has been done, and American President Lines, under date of August 25, 1951, has submitted its comments in the form of a detailed memorandum prepared by its legal counsel.

In considering the matter of the Commission's original agreement of 1948, reference is made to section 501(c) of the 1936 Act, which gives the statutory basis for the contracts to be entered into between the Commission and American President Lines. That section provides that the Commission consider applications for subsidy aid for the purpose of reconstructing or

reconditioning certain United States-flag vessels and make contracts therefor

subject to all the applicable conditions and limitations of this title and under such further conditions and limitations as may be prescribed in the rules and regulations the Commission has adopted as provided in section 204(b) of this Act.

It may be argued that the Commission might have made a rule under section 204(b) that in granting construction-differential subsidy aid for the reconstruction or reconditioning of war-built vessels acquired by applicants under the Merchant Ship Sales Act of 1946, the limitation of just compensation to "construction cost", as directed by section 802, should be qualified to provide a ceiling limitation not exceeding "acquisition cost," but the Commission made no such rule, and we do not, therefore, have to decide what the legal effect of any such attempted modification of a statutory provision by a rule of the Commission might have been.

The real question is whether the agreement contained in the Commission's letter of September 30, 1948, and accepted by American President Lines, constituted an agreement by American President Lines to accept "depreciated acquisition cost" as a ceiling limit on fair value in case of Government requisition, instead of "depreciated construction cost" as specified in section 802. As quoted above, the original agreement provided for the inclusion in the final contracts of a provision (a) for the applicability of section 802 of the Act in case of purchase or requisition, and (b) such revision of the standard provisions as might be necessary for consistency with the Merchant Ship Sales Act of 1946.

It is argued by American President Lines that the United States Maritime Commission, having agreed to enter into the contracts, certain aspects of which would be governed by specific statutes, was without authority to insist that the formal contracts resulting from the agreement contain clauses not covered in such specific statutes. We agree with this contention.

In our opinion, the use of the words "depreciated acquisition cost" in the proposed final contracts submitted to American President Lines is not in accordance with the language of section 802. The remaining inquiry is whether a ceiling limit of "depreciated acquisition cost" is either authorized by the 1946 Act or necessary for consistency with its pertinent provisions.

We find nothing in the 1946 Act authorizing the change from

“construction cost” to “acquisition cost” or making such change necessary for consistency with its pertinent provisions. We do not see that American President Lines, in accepting the September 30, 1948, letter of the Commission can reasonably be expected to have gathered from that letter that any such change was contemplated by the Commission. The Merchant Ship Sales Act of 1946 includes no provision regarding the price for which vessels purchased under that Act may be reacquired by the Government. The legislative history of that Act shows that early drafts included a provision that vessels purchased pursuant thereto should be subject to acquisition by the Government at the purchase price. However, Congress, after extensive hearings and full consideration, rejected and eliminated this provision and determined that sales should be made “without strings.”

Accordingly, we find that the use of the term “depreciated acquisition cost” in the proposed article 6 of the draft of construction-differential subsidy contracts prepared by the Commission and submitted to American President Lines is not in accordance with the original agreement of the parties. We are not advised that the proposed formal construction-differential subsidy contracts contain any matters in controversy other than what has been referred to. With the elimination of reference to “acquisition cost” and in place thereof appropriate reference to “construction cost,” the contracts should be in form for prompt execution.

By the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-38

MOORE-McCORMACK LINES, INC.—APPLICATION FOR BAREBOAT CHARTER OF GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR EMPLOYMENT IN THE UNITED STATES ATLANTIC/EAST COAST OF SOUTH AMERICA SERVICE (TRADE ROUTE No. 1) AND IN THE UNITED STATES NORTH ATLANTIC/SCANDINAVIAN AND BALTIC SERVICE (TRADE ROUTE No. 6)

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### REPORT OF THE BOARD

This proceeding was instituted pursuant to Public Law 591, Eighty-first Congress, upon the application of Moore-McCormack Lines, Inc., for bareboat charter of two Victory-type, Government-owned, war-built, dry-cargo vessels for operation in the company's subsidized services between United States Atlantic ports and ports on the East coast of South America (Trade Route No. 1), and between United States North Atlantic ports and Scandinavian ports and/or ports in the Baltic Sea (Trade Route No. 6).

Notice of hearing was published in the Federal Register of October 17, 1951. Because of the urgency of the matter, the usual 15 days' notice was not given. Hearing on the application was held before an examiner on October 23, 1951. No party appeared in opposition to the application, although counsel for the Board participated in cross-examination of applicant's only witness.

The examiner has recommended in his decision, which was served on October 25, 1951, that the Board make the statutory findings to the Secretary of Commerce in so far as Trade Route No. 1 is concerned. The examiner also made certain recommendations as to Trade Route No. 6. We concur in the examiner's recommendations insofar as Trade Route No. 1 is concerned. No exceptions have been filed to the examiner's recommended decision within the 1-day period agreed to by applicant and counsel for the Board.

Although the original application requested two vessels for operation on either Trade Route No. 1 or Trade Route No. 6,

applicant's only witness, its vice president in charge of traffic, explained at the hearing that the additional capacity is needed and desired at this time only for Trade Route No. 1. All of the testimony and evidence presented at the hearing was consequently directed to Trade Route No. 1. In explanation of the original application, applicant's witness testified that:

It is conceivable that if we knew that we were going to be allocated additional vessels for Trade Route No. 1 at some particular time we might be able to release a vessel from Trade Route No. 6 to meet a desired position on Trade Route No. 1 and substitute a chartered vessel for the vessel so withdrawn from Trade Route No. 6. That is the reason why our application requests two vessels for operation either on Trade Route No. 1 or Trade Route No. 6 but the additional capacity is needed and desired at this time only for Trade Route No. 1.

Public Law 591 permits charter of Government-owned vessels only for use in services where the applicant has successfully met certain requirements, viz., (1) that the service under consideration is required in the public interest; (2) that such service is not adequately served; and (3) that privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service. In view of this and the testimony of applicant's only witness in addition to the fact that no evidence was presented with respect to Trade Route No. 6, we consider that the application embraces two Victory-type vessels for Trade Route No. 1.

It appears that the volume of freight offered for southbound carriage over Trade Route No. 1 has been increasing for some time, and that applicant's vessels operating over the route have sailed outbound from the United States with capacity cargoes, including deck loads. Applicant's witness testified that during the month of September 1951 the company was offered and had to decline 442,000 cubic feet of southbound cargo, consisting primarily of vehicles and resin, and that between the last of September and October 17, 1951, the company has had to decline 618,000 cubic feet of southbound general cargo.

In order to alleviate this situation, applicant has allocated a vessel from its subsidized service between United States Pacific ports and ports on the East coast of South America (Trade Route No. 24) to Trade Route No. 1, which vessel will become available about the second week in December 1951. Applicant has also adjusted its vessel employment on the various elements of Trade Route No. 1 in an effort to employ its vessels where the need is greatest. Applicant does not feel that it is possible to

additional vessels from its other services or to make further intra-Trade Route No. 1 adjustments for any appreciable period of time.

The cargo which applicant has refused was all for shipment from United States Atlantic ports to East coast of South America. It was testified that the vessel that will be diverted from Trade Route No. 24 will not be sufficient to lift the extra cargo since there is a growing need for additional ships in the southbound berth from Atlantic ports.

The general traffic situation on Trade Route No. 1 has been further aggravated by the fact that applicant's vessel the *Mormacsea* was grounded at Santos on September 25, 1951, and was out of operation for about two or three weeks. Applicant's witness, however, testified that even after the *Mormacsea* returns to service, both of the additional vessels requested will be necessary in order to serve properly the route, for some time to come.

Applicant at present operates C-1, C-2, and C-3 type vessels over Trade Route No. 1. The present application is for Victory-type vessels, or satisfactory substitutes, which applicant's witness explained to be either C-2 or C-3 type vessels.

There is no doubt that the freight service from United States Atlantic ports to the East coast of South America is in the public interest of the United States. Applicant's vessels serving this route carry primarily mining machinery, agricultural machinery, vehicles, and a variety of general cargo destined to Brazil, Uruguay, and Argentina.

Applicant has made a recent inquiry of the charter brokers and has been informed that "vessels of types desirable for operation in Trade Route No. 1 are practically not available at all."

#### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced in the record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service on Trade Route No. 1, under consideration by the Board, is required in the public interest;
2. That such service will not be adequately served without two additional Victory-type, war-built, dry-cargo vessels; and
3. That privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that the charters which may be granted pursuant to the recommendations in this case be for an

indefinite period, subject to the usual right of cancellation by either party on 15 days' notice, and subject further to annual review of the charter as provided in Public Law 591. The Board also recommends that any such charter include provisions to protect the interests of the Government under the operating-differential subsidy agreement with applicant.

The Board deems it unnecessary to make any finding with respect to Trade Route No. 6.

By the Board.

NOVEMBER 1, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

## FEDERAL MARITIME BOARD

No. M-47

### ANNUAL REVIEW OF EXISTING BAREBOAT CHARTERS OF GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS RECOMMENDED FOR USE DURING THE PERIOD BETWEEN JUNE 30, 1950, AND JUNE 30, 1951, UNDER PUBLIC LAW 591, EIGHTY-FIRST CONGRESS

In accordance with section 3(e)(1) of Public Law 591, Eighty-first Congress, an annual review has been made of existing bareboat charters of Government-owned, war-built, dry-cargo vessels authorized under that law and in effect on June 30, 1951.

By order of the Board dated October 10, 1951, the Board has tentatively found that existing conditions justify the continuance of the charters recommended for the use of the Military Sea Transportation Service, until such time as they can be converted to a general agency operation. These charters have been executed pursuant to the findings, certifications, and recommendations of the Board in Docket Nos. M-3, M-6, M-7, M-8, and M-22, dated July 14, 1950, July 27, 1950, August 4, 1950, August 17, 1950, December 20, 1950, and March 6, 1951, respectively.

By order of the Board dated October 10, 1951, the Board also has tentatively found that existing conditions justify the continuance of the following charters upon the conditions previously certified by the Board:

Charterer	Vessel	Docket No.	Date of delivery
Alaska Steamship Company, Inc.-----	John H. Quick-----	M-31	June 4, 1951
American President Lines, Ltd.-----	Anchorage Victory-----	M-20	Mar. 7, 1951
	Lightning-----	M-27	Apr. 16, 1951
	Shooting Star-----	M-32	May 23, 1951
Coastwise Line-----	Tarleton Brown-----	M-24	Apr. 3, 1951
	John W. Burgess-----	M-24	Apr. 13, 1951
	Charles Crocker-----	M-30	May 28, 1951
Isthmian Steamship Company, Inc.-----	Las Vegas Victory-----	M-25	June 1, 1951
Luckenback-Gulf Steamship Co., Inc.---	Pine Bluff Victory-----	M-14	Mar. 28, 1951
	Wayne Victory-----	M-14	Apr. 23, 1951
Pacific Far East Line, Inc.-----	Louis Sloss-----	M-26	May 2, 1951
	Selma Victory-----	M-26	June 15, 1951
	Sea Serpent-----	M-27	Mar. 28, 1951

Notice of the foregoing orders was served on all interested



parties and was published in the Federal Register of October 31, 1951.

No objections to the tentative findings of the Board were filed within the time allowed.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of evidence considered by the Board, the Board finds and hereby certifies to the Secretary of Commerce that conditions continue to exist which justify the continuance of charters above mentioned upon the conditions originally certified by the Federal Maritime Board.

By the Board.

NOVEMBER 29, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-39

MISSISSIPPI SHIPPING COMPANY, INC.—APPLICATION FOR BAREBOAT CHARTER OF A GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSEL FOR USE IN THE SERVICE BETWEEN THE GULF AND THE EAST COAST OF SOUTH AMERICA

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### REPORT OF THE BOARD

This proceeding was instituted pursuant to Public Law 591, Eighty-first Congress, upon the application of Mississippi Shipping Company, Inc., for bareboat charter of a Victory-type, Government-owned, war-built, dry-cargo vessel for use for an indefinite period in its service between the Gulf coast of the United States and the East coast of South America (Trade Route No. 20). Notice of hearing on the application was published in the Federal Register of October 27, 1951, and hearing was held before an examiner on November 6, 1951. Because of the urgency of the matter, the usual 15 days' notice was not given. There was no opposition to the application.

The examiner's recommended decision was served on November 8, 1951, in which it was recommended that the Board make the necessary statutory findings to the Secretary of Commerce. No exceptions were filed to the examiner's decision within the 24-hour period agreed to by counsel for applicant and counsel for the Board, although counsel for the Board has filed a memorandum requesting that any charter granted pursuant to this proceeding provide for review prior to March 31, 1952, similar to that provided for in the decision of the Board in Docket No. M-36 (*Application of Mississippi Shipping Co.*), 3 F.M.B. 664.

Applicant has been granted a charter of a C-1A-type vessel pursuant to our findings in Docket No. M-36, which vessel met an October 15 sailing from the Gulf coast. Hearing on the previous application was held on September 18, 1951, and the report of the Board recommending the charter was dated September 21, 1951. Since much of the factual situation as explained in that

record still exists, it will be unnecessary for us to restate the general situation on Trade Route No. 20, and we shall incorporate by reference our previous report insofar as it is relevant here.

The present application is for a Victory-type vessel. In Docket No. M-36, applicant's witness stated that the *Del Mar*, which went on the rocks at Recife on August 27, 1951, and was badly damaged, was expected to be available for service in time to make a scheduled sailing in early December 1951. The *Del Mar*, however, has incurred additional damage in its removal and has been considerably delayed both in her temporary repairs and in discharging cargo at Santos. The *Del Mar* consequently will not be in sailing position until January 17, 1952, which is two weeks short of two full voyages, whereas the prior expectation was a loss of only one voyage. Even with the return of the *Del Mar*, and with the continued operation of the C-1A-type vessel previously chartered pursuant to our findings in Docket No. M-36, it appears that an additional vessel will be necessary in order to handle the increased cargo offerings on Trade Route No. 20.

In addition to the substantial increase in cargo offerings, the traffic condition on Trade Route No. 20 has been aggravated because of serious port congestion at various South American ports, principally at the Brazilian ports of Santos and Rio de Janeiro. It has thus been necessary for applicant to increase its estimated turnaround time from about 75 days to more than 100 days for those vessels which are serving these congested ports. This congestion is caused by an accelerated cargo movement and by various deficiencies at the port terminals. Applicant's witness also stated that another factor contributing to the congestion is that at Santos and Rio de Janeiro there is no limit on cargo free time at transit terminals, and consignees consequently take full advantage of this free storage opportunity.

It does not appear from the record that this situation is likely to improve in the foreseeable future. Because of this congestion, applicant had three vessels in Santos at the time of the hearing; although it appears that they will also be in position for December loading at Gulf ports, applicant's witness testified that there will be no trouble filling these ships. Applicant's witness testified that because of increased cargo offerings, the additional vessel will be necessary even should the port congestion be substantially alleviated.

As we have stated in Docket No. M-36, applicant received

transfer one of its South American C-1A-type vessels, the *Del Campo*, to its subsidized West African service (Trade Route No. 14) for use therein for not more than four voyages to be completed not later than March 31, 1952. However, cargo offerings in the West African service have increased substantially, and applicant has now filed an application for bareboat charter of a Government-owned vessel for that service.

Nevertheless, unless its present authority is extended, applicant is bound to return the *Del Campo* to its South American service not later than March 31, 1952. There can be no present certainty, therefore, that the need for the vessel herein applied for on Trade Route No. 20 will continue beyond this date.

Applicant has been advised by its brokers that there are no suitable privately-owned vessels available for charter in its South American service at reasonable rates. It was indicated that a Victory-type vessel was available in September at a time-charter rate of \$90,000 per month, but even for that vessel the owners appear to be reluctant to charter in expectation of higher rates. Applicant's witness testified that a Victory-type vessel is satisfactory for this service since it has both the speed and the capacity to fit into the schedule of a C-2-type vessel.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced in the record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service on Trade Route No. 20 under consideration is required in the public interest;
2. That such service will not be adequately served without one additional Victory-type, war-built, dry-cargo vessel; and
3. That privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that any charter that may be granted pursuant to the recommendations in this case be for an indefinite period, subject to the usual right of cancellation by either party on 15 days' notice, and subject further to annual review of the charter as provided for in Public Law 591. The Board also recommends that the Administrator review the charter prior to March 31, 1952, according to our recommendations in Docket No. M-36, to determine the then status of the *Del Campo* and *Del Mar*, and the then existing traffic situation on Trade Route No. 20, and that any such charter include provisions to protect

the interests of the Government under the operating-differential subsidy agreement with applicant.

Chairman Cochrane, being absent, took no part in this decision.

By the Board.

NOVEMBER 16, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-44

MISSISSIPPI SHIPPING COMPANY, INC.—APPLICATION FOR BARE-BOAT CHARTER OF GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSEL FOR USE IN THE SERVICE BETWEEN UNITED STATES GULF PORTS AND PORTS ON THE WEST COAST OF AFRICA (SERVICE 2 OF TRADE ROUTE No. 14)

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### REPORT OF THE BOARD

This proceeding was instituted pursuant to Public Law 591, Eighty-first Congress, upon the application of Mississippi Shipping Company, Inc., for bareboat charter of a C-1A- or a C-1B-type, Government-owned, war-built, dry-cargo vessel for use "for a period of not less than 4 months and probably for a period of 6 months or more" in the company's subsidized freight service on Trade Route No. 14.

Hearing on the application was held before an examiner on November 2, 1951. Because of the urgency of the matter, the usual 15 days' notice was not given. There was no opposition to the application. The examiner's recommended decision was served on November 13, 1951, in which he recommended that the Board should make the necessary statutory findings in favor of the application. No exceptions were filed to the examiner's recommended decision within the 24-hour period agreed to by counsel for applicant and counsel for the Board.

Trade Route No. 14 has been determined to be an essential foreign trade route of the American merchant marine. Applicant is at present the only regular American-flag operator between United States Gulf ports and ports on the West coast of Africa, which is Service 2 of Trade Route No. 14. Applicant inaugurated its subsidized service on this route in May 1947 with three C-1A-type vessels. Originally applicant was authorized to make a minimum of 10 and a maximum of 12 sailings yearly. In July 1950 applicant was authorized to increase its sailings to a minimum of 14 and a maximum of 18 sailings yearly.

Cargo offerings over this route have been steadily increasing. In May 1951 applicant obtained approval from the Maritime

Administration for the transfer of a C-1A-type vessel, the *Del Campo*, from its South American service (Trade Route No. 20) to its West African service (Service 2 of Trade Route No. 14) for a maximum of four voyages to be completed not later than March 31, 1952. Applicant intends to apply to the Maritime Administration for authority to retain the *Del Campo* in the West African service beyond March 31, 1952.

The cargo moving over Trade Route No. 14 is important both to the economy and the defense effort of the United States and to the economy and the development of the area serviced in West Africa. Outbound from the United States Gulf coast applicant carries such cargo as petroleum, petroleum products, road-building machinery, and vehicles. Inbound applicant carries such cargo as bauxite, manganese, fish meal, mahogany, asphalt, rubber, and coffee. There promises to be a substantial increase in the movement of ore to the United States, principally from the Belgian Congo, with the further development of this area. We have no difficulty in finding that this service is in the public interest.

The evidence is undisputed that tonnage offering on this service far exceeds available vessel space. All of applicant's vessels are sailing substantially full outbound from the Gulf, and they are sailing 65 to 75 percent full inbound. Applicant's witness testified that as to recent sailings there has not been enough outbound space for the cargo offered, and that the backlog of cargo has continued to pile up. Up until the time of hearing, applicant had been offered 6,000 tons of cargo for December alone, which it cannot presently carry, and indications are that the volume of offerings which applicant must refuse will increase. This tonnage includes road machinery, petroleum products, automobiles, tractors, and general cargo.

The application herein involved is for a C-1A- or a C-1B-type vessel or, if such vessels are unavailable, a Victory-type vessel. At the hearing, however, applicant stated that a Victory-type vessel would not be suitable for operation in this service. Applicant has made a canvas of the private-charter market and its witness testified that he was informed that there are no privately owned C-1A- or C-1B-type vessels available for charter at any price.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced in the record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service under consideration is required in the public interest;

2. That such service will not be adequately served without the use therein of the additional Government-owned vessel herein applied for; and

3. That privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that the charter which may be granted pursuant to the findings in this case be for an indefinite period, subject to the usual right of cancellation by either party on 15 days' notice, and subject further to annual review of the charter as provided for in Public Law 591. The Board also recommends that any such charter include provisions to protect the interests of the Government under the operating-differential subsidy agreement with applicant for this service.

Chairman Cochrane, being absent, took no part in this report.

By the Board.

NOVEMBER 16, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.



## FEDERAL MARITIME BOARD

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No. M-41

AMERICAN-HAWAIIAN STEAMSHIP COMPANY—APPLICATION FOR BAREBOAT CHARTER OF SEVEN VICTORY-TYPE, GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR USE IN THE INTERCOASTAL SERVICE

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### REPORT OF THE BOARD

This proceeding was instituted pursuant to Public Law 591, Eighty-first Congress, upon the application of American-Hawaiian Steamship Company for bareboat charter of seven Victory-type, Government-owned, war-built, dry-cargo vessels for employment in the intercoastal service.

Hearing on the application was held before an examiner on November 7, 1951, pursuant to notice in the Federal Register of October 29, 1951. Because of the urgency of the matter, the usual 15 days' notice was not given. Although American President Lines, Ltd., Luckenbach Steamship Company, Inc., Waterman Steamship Corporation, and West Coast Lumbermen's Association appeared as interveners, there was no basic objection to the granting of the application. The examiner's recommended decision was served on November 9, 1951, in which he recommended that the Board should make the necessary statutory findings in favor of the application. A memorandum on behalf of Luckenbach requests amplification of the examiner's recommended decision pursuant to suggestions which will be set forth below. A memorandum in behalf of applicant requests an expedited decision by the Board adopting the recommended decision of the examiner. No exceptions were filed to the examiner's recommended decision within the 7-day period provided for in the notice of hearing.

Applicant bases the present application on the inadequacy which will result upon a proposed 9-month charter to Military Sea Transportation Service (hereinafter referred to as MSTs) of its five C-4-type vessels presently engaged in the intercoastal service. A representative of MSTs testified that these vessels

are required as a matter of sudden urgency in order to move a special type of vehicles to various off-shore areas within a time limit. The details of this movement are restricted to military information. MSTS desires to place these five C-4-type vessels in its service between now and January 1, 1952, and their use will be spread over at least a 9-month period. These particular vessels are requested by MSTS because of their large amount of deck space which makes them especially adaptable to the carriage of vehicles. The witness from MSTS testified that applicant's vessels are the only vessels of this type that are presently available from any source.

Applicant's president expressed the desire of his company to do whatever it can to accommodate MSTS, but he also stated that the company is reluctant to suspend, even temporarily, its own intercoastal service, which would be the case were their owned vessels chartered to MSTS without replacement by other tonnage simultaneously. While it may be recognized that the granting of this application would immediately promote the defense effort by releasing applicant's owned vessels to the military for a highly desirable purpose, the present application, being founded on Public Law 591, must stand or fall on the requirements of that Act. Public Law 591 requires the Board to find (1) that the service under consideration is required in the public interest, (2) that such service will not be adequately served without the use therein of the vessels applied for, and (3) that privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates.

We have no difficulty in finding that the intercoastal service is in the public interest. Applicant's witness testified that the company's vessels are running substantially full in both directions, and that the company has been forced to decline some cargo. The witness testified that there has been no substantial change in the space situation on this service since applicant's earlier application in Docket No. M-13, wherein the Board found, in its report of October 17, 1950 (3 F.M.B. 446), that the service would be inadequately served without the use therein of applicant's vessels.

It was testified that traffic has increased somewhat since the time of that report. The representative of West Coast Lumbermen's Association testified that there is a definite lack of vessel space to handle eastbound shipments of lumber, which situation

is aggravated by the shortage of rail cars. The total cubic space of the seven Victory-type vessels herein applied for is less than that of the five C-4-type vessels applicant proposes to charter to MSTs.

The evidence is undisputed that there are no privately-owned vessels available for charter from private operators on reasonable conditions and at reasonable rates. Letters from three vessel brokers to applicant satisfactorily support this conclusion.

Counsel for Luckenbach has urged before the examiner and in a memorandum to the examiner's recommended decision that any charter granted to applicant should "contain a provision permitting reopening of this proceeding by a competitor for good cause shown to permit the Board to determine whether the charter should be continued or terminated, or alternatively \* \* \* that the Board's decision herein recognize the right of competing carriers to request a cancellation under the usual 15-day cancellation clause to be included in the charter." We agree with the examiner that such a provision is unnecessary since any interested person may petition the Board for good cause shown to reexamine the then-current necessity for the continuation of an existing charter, and may thereby cause the Board to invoke the 15-day cancellation clause should the Board at that time be unable to make the necessary statutory findings. Luckenbach does not otherwise oppose the present application.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced in the record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service under consideration is required in the public interest;
2. That such service will not be adequately served without the use therein of the seven Government-owned vessels herein applied for; and
3. That privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that the charters which may be granted pursuant to the findings in this case be effective upon consummation of arrangements with MSTs and be limited to a period of 9 months, or to such lesser period ending upon the redelivery to applicant of its five C-4-type vessels from MSTs, and that such charters be at the rate of 15 percent per annum of the

statutory sales price of each vessel computed as of the date of the charter.

Vice-Chairman Williams concurs in this report.

By the Board.

NOVEMBER 19, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-42

POPE & TALBOT, INC.—APPLICATION TO EXTEND EXISTING BARE-BOAT CHARTER OF THREE LIBERTY-TYPE, GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR USE IN THE INTERCOASTAL SERVICE

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### REPORT OF THE BOARD

This proceeding was instituted pursuant to Public Law 591, Eighty-first Congress, upon the application of Pope & Talbot, Inc., to extend for an indefinite period the existing bareboat charters of three Liberty-type, Government-owned, war-built, dry-cargo vessels for employment in the intercoastal service.

Hearing on the application was held before an examiner on November 7, 1951, pursuant to notice in the Federal Register of November 2, 1951. Because of the urgency of the matter, the usual 15 days' notice was not given. Although American President Lines, Ltd., Luckenbach Steamship Co., Inc., Pacific-Atlantic Steamship Company, Waterman Steamship Corporation, and West Coast Lumbermen's Association appeared as interveners, there was no objection to the granting of the application. The examiner's recommended decision was served on November 21, 1951, in which he recommended that the Board should make the necessary statutory findings. No exceptions were filed to the examiner's recommended decision within the 7-day period provided for in the notice of hearing.

Since July 1950 applicant has operated an average of eight vessels in its intercoastal service except for the period from July through September 1951. During the latter period, one of applicant's vessels was chartered for a single voyage to Pacific Argentine Brazil Line, Inc., a wholly-owned subsidiary of applicant, for operation under subsidy contract on 'Trade Route No. 24. At the present time applicant is operating five of its owned vessels in the intercoastal service, viz., four Victorys and one C-3. Another C-3 owned by applicant, the *P.&T. Explorer*, is under charter to Military Sea Transportation Service. The charter of

the *P.&T. Explorer* expires in December 1951 and applicant has been advised by MSTs that an extension of that charter will be requested. Applicant will agree to such extension.

In addition to its owned vessels, applicant operates three Liberty vessels under bareboat charter from the Government pursuant to our recommendations in Docket No. M-17. The existing authority for applicant's operation of these vessels will expire with respect to one of the vessels on December 16, 1951, and as to the other two vessels, in the middle of January 1952. The present application is for an indefinite extension of these charters. Applicant's witness states that two of the three Libertys under consideration are required as substitutes for the C-3 under charter to MSTs; the witness states that because of larger cubic capacity and greater speed, the C-3-type vessel has the approximate transportation equivalent of two Liberty vessels.

As we have recently stated in Docket No. M-41 (*Application of American-Hawaiian S.S. Co.*), 3 F.M.B. 693, we have no difficulty in finding that the intercoastal service is in the public interest. The importance of this service to the national defense and the national economy of the United States has been confirmed by the Interstate Commerce Commission, the Congress, and the Maritime Board and Administration.

Because of heavy lumber shipments, all of the vessels operated by applicant on this service have been operating at full capacity eastbound. Applicant plans to operate the three Liberty vessels applied for in this proceeding eastbound primarily in the lumber trade, carrying nothing eastbound other than lumber and occasional shipments of bulk commodities, such as silicate of soda. This has been the past method of operation of these Libertys by applicant, and no change in this method of operation is presently contemplated. Applicant's present vessel capacity is urgently needed for the movement of lumber and other commodities from the Pacific Northwest area of the United States.

Applicant's westbound service operates from Philadelphia, Baltimore, and Norfolk. The company has been able to obtain reasonably full westbound cargoes for the past 6 months, and it has been advised by its shippers that the need for its present capacity for westbound traffic will continue.

It appears clearly from the evidence that there are no suitable privately-owned vessels available for charter to applicant upon reasonable conditions and at reasonable rates. Applicant's witness states that the current private-charter rate is far beyond that

which can be paid for vessels to be employed in the intercoastal service without the charterer incurring prohibitive losses.

During the course of the hearing before the examiner, applicant expressed a desire to have the privilege of using the applied-for vessels for calling at Puerto Rico eastbound should it become necessary to do so. The examiner ruled that the application did not cover Puerto Rican calls. We agree with the examiner, with the understanding that it in no way prejudices applicant's right to apply for the inclusion of Puerto Rican calls under all the conditions of Public Law 591.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced in the record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service under consideration is required in the public interest;

2. That such service will not be adequately served without the use therein of the three Government-owned vessels herein applied for; and

3. That privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that any charters which may be renewed pursuant to the findings in this proceeding be for an indefinite period except that the renewal of two such charters be effective upon the consummation of an extension of the charter of applicant's C-3-type vessel, *the P.&T. Explorer*, to MSTS, and that said two charters be reviewed upon the redelivery by MSTS to applicant of the *P.&T. Explorer*. The Board further recommends that any charters renewed pursuant to our findings herein be subject to the usual right of cancellation by either party on 15 days' notice and subject further to annual review as provided for in Public Law 591.

By the Board.

DECEMBER 5, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

# FEDERAL MARITIME BOARD

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No. M-45

PRUDENTIAL STEAMSHIP CORPORATION—APPLICATION FOR BARE-BOAT CHARTER OF A VICTORY-TYPE, GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSEL FOR EMPLOYMENT IN ITS BERTH SERVICE BETWEEN UNITED STATES NORTH ATLANTIC PORTS AND NEAR EAST PORTS

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## REPORT OF THE BOARD

This proceeding was instituted pursuant to Public Law 591, Eighty-first Congress, upon the application of Prudential Steamship Corporation for bareboat charter for an indefinite period of a Victory-type, Government-owned, war-built, dry-cargo vessel for use in its berth service between United States Atlantic ports (excluding ports south of Charleston, S. C.) and Mediterranean and Near East ports (including ports in Morocco, Algiers, France, Italy, Greece, Turkey, Lebanon, Syria, Israel, Egypt, Trieste, Spain, Yugoslavia, Tunisia, and Libya).

Hearing on the application was held before an examiner on November 21, 1951, pursuant to notice in the Federal Register of November 3, 1951. The examiner's recommended decision was served on November 27, 1951, in which he recommended that the Board should make the necessary statutory findings. No exceptions were filed to the examiner's recommended decision.

We have no difficulty in finding that the service under consideration is in the public interest. See *Application of American Export Lines, Inc.*, Docket No. M-19, 3 F.M.B. 455, and *Application of Prudential Steamship Corporation*, Docket No. M-34, 3 F.M.B. 627.

Applicant now regularly employs three Victory-type vessels in its Mediterranean service, viz., an owned vessel, a vessel bareboat chartered from private interests, and a vessel bareboat chartered from the Government. The partially owned Liberty-type vessel, which applicant was employing in this service at the time of hearing in Docket No. M-34, was withdrawn and is presently engaged in the carriage of bulk cargo to and from the Far East.



Applicant stated this vessel is unsuited for operation in their berth service and when in the service was incurring a considerable loss. In place of the withdrawn Liberty ship, applicant, pending a decision on its application in this case, chartered the SS. *Frances*, a privately-owned C-2-type vessel, which went on berth November 11, 1951. This vessel is under charter for one voyage of approximately 60 days. The time-charter rate was reported as \$90,000 per month. According to applicant's witness, the only justification for the charter of the SS. *Frances* at this rate "is the Company's willingness to suffer a loss to insure that its service to its shippers will be maintained." Applicant estimated that a loss of about \$40,000 would be sustained on the venture. The present application is for the introduction into its berth service of a vessel to take the place of the SS. *Frances*, which returns to its owner at the expiration of the present charter.

Since July 26, 1951, applicant has made seven sailings out-bound in the Mediterranean berth, and all of its vessels have sailed substantially full. In many cases the vessels were fully booked two or three weeks in advance of sailing and cargo offerings had to be refused. From July 26 and up to October 15, 1951, the commencement date of the East coast longshoremen's strike, applicant was compelled to refuse cargo for shippers aggregating 28,639 deadweight tons. In addition, applicant was unable to accept an equal, if not greater, quantity of military cargo. Since the end of the longshoremen's strike on November 9, 1951, applicant has had to refuse cargo from approximately 13 shippers, representing 8,489 deadweight tons. Applicant's witness stated that these figures represent only firm commercial cargo offerings which were refused, and do not include informal solicitations or requests for space. Demand is expected to increase because of the efforts of shippers to secure space for cargo that has failed to move during the longshoremen's strike.

It appears from the evidence that no privately owned American-flag vessels suitable for operation in the United States North Atlantic/Mediterranean berth service are available for charter upon reasonable conditions and at reasonable rates.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced in the record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service under consideration is required in the public interest:

2. That such service will not be adequately served without the use therein of the additional Government-owned vessel herein applied for; and

3. That privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that any charter which may be granted pursuant to the findings in this case be for an indefinite period, subject to the usual right of cancellation by either party on 15 days' notice, and subject further to annual review of the charter as provided for in Public Law 591.

By the Board.

DECEMBER 5, 1951

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-40

GRACE LINE INC.—APPLICATION TO BAREBOAT CHARTER GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR OPERATION BETWEEN CALIFORNIA PORTS AND PORTS IN VENEZUELA

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### REPORT OF THE BOARD

This is a proceeding under Public Law 591, Eighty-first Congress, to consider the application of Grace Line Inc. to bareboat charter two Government-owned, war-built, dry-cargo vessels of the Liberty type for a period of from 8 months to 1 year for operation primarily between Los Angeles, Calif., and contiguous oil ports in Venezuela.

Notice of the hearing before the examiner was published in the Federal Register of October 27, 1951, and such hearing was held on November 7-9, 1951. The usual 15 days' notice was not given because of the urgency of the matter. The examiner, on November 15, 1951, issued his report recommending that the Board make the required statutory findings. Exceptions to the recommended decision of the examiner were filed by the Committee for the Promotion of Tramp Shipping, and oral argument was heard by the Board on December 3, 1951.

According to testimony in this case, applicant operates in a service between the United States and Canadian ports and the West coast of Mexico, West coast of Central America, and Caribbean ports with four C1-MA-V1 vessels chartered from the Government. These vessels, in conjunction with applicant's operation of C-2 vessels to the West coast of Mexico, West coast of Central America, and West coast of South America, provide a sailing approximately every 3 weeks. Between November 1950 and May 1951, due to seasonal cargo offerings, applicant obtained additional tonnage from Alaska Steamship Company of C1-MA-V1-type vessels bareboat chartered from the Government pursuant to this Board's findings in Docket No. M-11. There is now pending before this Board an application for the time charter of vessels from Alaska Steamship Company for the current winter

# FEDERAL MARITIME BOARD

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No. M-43

PACIFIC-ATLANTIC STEAMSHIP COMPANY—APPLICATION FOR BARE-BOAT CHARTER OF GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSELS FOR USE IN THE INTERCOASTAL TRADE

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## REPORT OF THE BOARD

This proceeding was instituted pursuant to Public Law 591, Eighty-first Congress, upon the application of Pacific-Atlantic Steamship Company to extend the existing bareboat charter on three Government-owned, war-built, Liberty-type vessels now employed by applicant in the intercoastal trade.

Hearing on the application was held before an examiner on November 8, 1951, pursuant to notice in the Federal Register of November 2, 1951. Because of the urgency of the matter, the usual 15 days' notice was not given. The examiner's recommended decision was served on November 21, 1951, in which he recommended that the Board make the necessary statutory findings. All parties have waived the filing of exceptions, except the applicant, which, through its counsel, has filed a letter in support of the examiner's recommended decision.

We agree with the examiner's statement of fact and conclusions, which we adopt as our own.

The examiner correctly finds, predicated upon prior decisions of the Board, that the intercoastal service is in the public interest. See also *Application of Pope & Talbot, Inc.*, Docket No. M-42, decided December 5, 1951.

Applicant owns three Victory-type and one C-2-type vessels. One of the Victory-type vessels and three currently chartered Libertys, in addition to one Victory owned by its parent company, States Steamship Company, are presently being operated in the intercoastal trade. Its other vessels are engaged in the trans-pacific trade carrying principally military-type cargoes.

Testimony introduced in this case indicates that applicant's vessels eastbound are sailing substantially full; westbound, its vessels are running about 90 percent full. Much of the cargo

moving eastbound is lumber; westbound, steel and general cargo. Testimony offered by West Coast Lumbermen's Association indicates a shortage of space for the carriage of lumber, which is accumulating at several ports in substantial volume. Testimony further indicates that the lumber market continues strong, and because of the shortage of rail cars lumber must move by water. It is clear, therefore, that the intercoastal service will not be served adequately without the use therein of the vessels applied for.

Applicant's witness stated that suitable privately-owned vessels are available only at rates which are not practicable or feasible for intercoastal operation. There was no contrary evidence.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced in the record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service under consideration is required in the public interest;

2. That such service will not be adequately served without the use therein of the three Government-owned vessels herein applied for; and

3. That privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that any charters renewed pursuant to its findings herein be subject to the usual right of cancellation by either party on 15 days' notice, and subject further to annual review as provided for in Public Law 591.

By the Board.

DECEMBER 6, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-43

### PACIFIC-ATLANTIC STEAMSHIP COMPANY — APPLICATION FOR BAREBOAT CHARTER OF GOVERNMENT-OWNED, WAR-BUILT, DRY- CARGO VESSELS FOR USE IN THE INTERCOASTAL TRADE

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The Board should find and so certify to the Secretary of Commerce that the intercoastal service is required in the public interest, that such service will not be adequately served without the use therein of the vessels for which the present application is made, and that there are no suitable privately-owned American-flag vessels available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

*William I. Denning* for applicant.

*Sterling F. Stoudenmire, Jr.*, for Waterman Steamship Corp., *Robert H. Duff* for American President Lines, Ltd., *Odell Kominers* for Luckenbach Steamship Company, Inc., and *K. C. Batchelder* for West Coast Lumbermen's Association.

*Alan F. Wohlstetter* for the Board.

#### RECOMMENDED DECISION OF C. W. ROBINSON, EXAMINER

Pacific-Atlantic Steamship Company, hereinafter referred to as applicant, presently has under bareboat charter from the Government, pursuant to Public Law 591, Eighty-first Congress, three Liberty-type vessels which are employed in the intercoastal trade. By letter of October 15, 1951, applicant seeks to charter the same vessels for an indefinite period upon the termination of the current charters. Notice of hearing on the application was published in the Federal Register of November 2 and hearing was held on November 8, 1951. The usual 15-day notice was not given in view of the urgency of the matter. No objection was interposed to the granting of the application.

*Public interest.*—On November 19, 1951, in Docket No. M-41, the Board stated as follows:

We have no difficulty in finding that the intercoastal service is in the public interest.

Inasmuch as the hearing in Docket No. M-41 was held 1 day prior to the hearing in the instant proceeding, the same conclusion on the particular point must here be reached.

*Adequacy of service.*—Applicant owns three Victory-type and one C-2-type vessels; its parent company, States Steamship Company, owns four Victories and one C-2. One of applicant's Victories and its three currently-chartered Libertys, in addition to one Victory owned by States, are presently being operated by applicant in the intercoastal trade. Applicant's two other Victories and C-2 are engaged in the transpacific trade. According to its president, applicant does not prefer the transpacific to the intercoastal trade, and would like to use its Victories intercoastally, but the transpacific needs of Military Sea Transportation Service are such as to make this impracticable. In the transpacific trade applicant's vessels are running 60 – 70 percent with military cargo, the remainder being principally foodstuffs. Three of the vessels in that trade go to Japan from the Pacific coast and then turn around; the fourth goes to the Philippines, sometimes to Indo-China and Hong-Kong, and then back to Japan before proceeding homeward.

It was testified by applicant's president that eastbound intercoastal cargo has increased since July 1951, and that his company is unable to handle all that has been offered to it. The peak season, it was said, is now extending over a longer period than previously because of shippers' inability to obtain space. Eastbound, applicant's individual vessels, owned as well as chartered, carry between  $3\frac{1}{2}$  and  $4\frac{1}{2}$  million feet of lumber (60 percent of capacity) and 3,500 tons of general cargo (40 percent of capacity), principally canned goods. Lumber is stowed in the lower holds and on deck, and general cargo is stowed in the 'tween decks, the general cargo being lifted mainly in California. It was stated that there would be no difficulty in filling the entire space of applicant's vessels with lumber, which is piling up in substantial lots, but that good business judgment requires that a part of the space be allotted to shippers of general cargo. Westbound, applicant's vessels are running about 90 percent full, loaded principally with steel and general cargo.

The witness for West Coast Lumbermen's Association stated that the members thereof are experiencing a serious shortage of space, that lumber is accumulating at several ports in substantial volume for lack of space, that the market continues strong, and that there is a shortage of rail cars. The witness further

stated that the Association depends upon applicant to carry 16 million board feet of lumber eastbound in November and December 1951.

Applicant's witness stated that there are fewer vessels in the intercoastal trade at the present time than in 1950, and that without the three vessels here sought the present aggravated condition in the trade will be worsened. From the evidence as a whole it is clear that the intercoastal service will not be served adequately without the use therein by applicant of the vessels under consideration.

*Availability of vessels.*—Applicant's vessel broker has advised applicant that the time-charter rate for Liberty vessels is about \$65,000 per month. Operation in the intercoastal trade at this rate, in the opinion of applicant's witness, probably would result in a loss. There is no evidence to the contrary on the availability of Liberty vessels in the private market. (See the Board's report of November 19, 1951, in Docket No. M-41, 3 F.M.B. 693).

*Miscellaneous.*—Because of unchanged conditions in the trade, and the inability accurately to foresee changes, applicant requests that the charters be on an indefinite basis, with the usual 15-day cancellation provisions. This request should be accorded under the circumstances.

#### CONCLUSIONS AND RECOMMENDATION

The Board should find and so certify to the Secretary of Commerce:

1. That the service in question is required in the public interest;
2. That such service will not be served adequately without the use therein of the vessels here sought; and
3. That there are no suitable privately owned American-flag vessels available for charter by private operators on reasonable conditions and at reasonable rates for use in such service.

It is recommended that the charters be for an indefinite period if the application be granted, with the usual 15-day cancellation provision.



# FEDERAL MARITIME BOARD

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No. M-46

GRACE LINE INC.—TIME CHARTER OF TWO GOVERNMENT-OWNED C1-M-AV1 TYPE VESSELS FROM ALASKA STEAMSHIP COMPANY FOR USE IN THE SERVICE BETWEEN UNITED STATES PACIFIC COAST PORTS AND PORTS ON THE WEST COASTS OF MEXICO AND CENTRAL AMERICA AND VIA PANAMA CANAL FOR CALLS AT CARIBBEAN PORTS

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## REPORT OF THE BOARD

This proceeding was instituted by order of the Board upon its own motion for the purpose of considering whether existing conditions justify the granting to Alaska Steamship Company of permission to time charter two Government-owned C1-M-AV1-type vessels to Grace Line Inc. The vessels were bareboat chartered to Alaska Steamship Company pursuant to the Board's decision in Docket No. M-11.

Amended notice of hearing was published in the Federal Register on November 20, 1951, and hearing was held on November 27, 1951. The usual 15 days' notice was not given because of the urgency of the matter. Alaska Steamship Company, Moore-McCormack Lines, Inc., Pacific Argentine Brazil Line, Inc., and the Committee for the Promotion of Tramp Shipping appeared as interveners.

Whether permission should be granted to Alaska to time charter the vessels to Grace this winter as it did last, depends upon whether the record shows that the service for which Grace intends the vessels meets the requirements of Public Law 591. The examiner has recommended (1) that the service is in the public interest, (2) that the service is not adequately served, and (3) that privately owned American-flag vessels are not available for charter on reasonable conditions and at reasonable rates for use in the service. No exceptions have been filed to the examiner's recommended decision although counsel for the Board recommends certain restrictions to any charter that may be granted.

Alaska has nine C1-M-AV1-type vessels under bareboat charter from the Government for use in the Alaskan service pursuant

to our findings in Docket No. M-11, which included permission to time charter three of them to Grace from October 15, 1950, to April 15, 1951. The extension of Alaska's bareboat charters was approved by our action of August 31, 1951. In our report in Docket No. M-11, 3 F.M.B. 435, we pointed out the advantages of the tripartite arrangement which was authorized for the winter season of 1950-1951. The same advantages may be expected to accrue during the present winter season if permission is granted to Alaska to make the time charters here under consideration.

Grace is presently operating between United States Pacific coast ports and ports on the West coast of Mexico, West coast of Central America, and Caribbean ports with four C1-M-AV1-type vessels chartered directly from the Government pursuant to the provisions of the Merchant Ship Sales Act, 1946, as extended by our action above referred to, dated April 31, 1951. Sailings are offered every 3 weeks to the following ports as conditions require.

West coast of Mexico: Manzanillo, Acapulco, Salina Cruz.

West coast of Central America: Champerico, San Jose de Guatemala, Acajutla, La Libertad, La Union, Amapala, Corinto, Puntarenas, Golfito, Puerto Armuelles.

Caribbean: Balboa, Cristobal, Barranquilla, Maracaibo, Amuay Bay.

The Caribbean portion of the service is on Trade Route 23 and the remainder is on Trade Route 25, both being essential foreign trade routes of the American merchant marine.

The increasing importance of this service to the trade and commerce of the United States is demonstrated by the revenue tons carried to and from the United States during the calendar year 1950 and during the first 6 months of the year 1951, which was as follows:

	<i>1950, tons</i>	<i>First 6 months 1951, tons</i>
Outward	78,671	63,885
Homeward	59,733	40,670

The seasonal requirements of this trade have made it necessary for Grace to augment its service between the months of November and May in order to satisfy the requirements of the trade. These requirements were met during the 1950-51 season by the three C1-M-AV1 type vessels chartered from Alaska. It is necessary for Grace to have additional vessels during this period when the tonnage movement is particularly heavy; this period includes seasonal movements of fresh fruits to Central American ports and coffee movements from Central American and Mexican ports

northbound starting in January. The C1-M-AV1-type vessels that Grace proposes to charter from Alaska have refrigeration facilities which are particularly important during this season. All of the vessels now operated by Grace in this trade are fully booked outbound through their December sailings. In addition, Grace indicates that it has sufficient cargo offerings to fill substantially the first voyages of the two vessels which it proposes to charter from Alaska.

Grace's witness testified that it has been advised by its brokers that there are no C1-M-AV1 vessels available for charter in this service. Counsel for the Board suggests that adequate provisions be incorporated into any new charter made with Grace so as to assure that Alaska will receive no profit from the arrangement, and that Alaska's net income from the subcharter be taken into account in computing additional charter hire on its fleet charters with the administrator. Accordingly, Board counsel suggests that Grace should be required to pay not merely the full 15 percent rate, but that any additional profits should be absorbed into Grace's obligation for additional charter hire under its direct charters with the administrator.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced in the record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the services under consideration are required in the public interest;
2. That such services will not be adequately served without the use therein of the two additional Government-owned vessels herein considered; and
3. That privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that the terms and conditions of any time charter agreement between Alaska Steamship Company and Grace Line Inc. shall be subject to approval of the Administrator so as to include all necessary provisions to protect the interests of the Government.

By the Board.

DECEMBER 10, 1951.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.

# FEDERAL MARITIME BOARD

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No. S-21

## UNITED STATES LINES COMPANY—APPLICATION FOR OPERATING- DIFFERENTIAL SUBSIDY ON TRADE ROUTE NO. 8, SERVICE 2

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*Submitted April 19, 1951. Decided January 7, 1952*

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Applicant is found to be an existing operator on Service 2 of Trade Route No. 8 within the meaning of section 605(c) of the Merchant Marine Act, 1936.

The effect of a subsidy contract with applicant for operation of vessels on Service 2 of Trade Route No. 8 would not be to give undue advantage or be unduly prejudicial as between citizens of the United States in the operation of vessels in competitive services, routes, or lines.

Section 605(c) of the Act creates no bar to the making of an operating-differential subsidy contract with the applicant.

*Cletus Keating* for applicant.

*John J. O'Connor* for Isbrandtsen Company, Inc., *Francis H. Inge* for Waterman Steamship Corporation, and *John Tilney Carpenter* for States Marine Corporation, interveners.

*Joseph A. Klausner* for the Board.

### REPORT OF THE BOARD

This proceeding concerns an application filed on May 31, 1950, by United States Lines Company for an operating-differential subsidy, under Title VI of the Merchant Marine Act, 1936, as amended, for operation of freight vessels in the commerce of the United States on Service 2 of Trade Route No. 8, described by applicant as between United States North Atlantic ports, north of Cape Hatteras, and Antwerp, Rotterdam, and Amsterdam. Hearings were held before an examiner in November 1950, at which Isbrandtsen Company, Inc., Waterman Steamship Corporation, and States Marine Corporation intervened.

Applicant and the three interveners, all American citizens, are common carriers engaged in foreign commerce. Applicant holds subsidy contracts on other routes. The purpose of the hearing was to receive evidence on issues under section 605(c) of the Mer-

chant Marine Act, 1936, as amended (hereinafter referred to as the Act). The examiner's recommended decision served on March 2, 1951, recommended that the Board find (1) that the vessels for which applicant seeks subsidy would not be in addition to the existing service or services; (2) that the effect of a subsidy contract with applicant would not be to give undue advantage or be unduly prejudicial as between citizens of the United States in the operation of vessels in competitive services, routes, or lines; and (3) that a subsidy contract is necessary to provide adequate service by vessels of United States registry. Exceptions were filed by Waterman and States Marine. Oral argument was heard by the Board in April 1951.

Service 2 of Trade Route No. 8 is described in the report of the Maritime Commission on Essential Foreign Trade Routes of the American Merchant Marine as follows:

TRADE ROUTE No. 8.—U. S. North Atlantic ports (Maine-Cape Hatteras, inclusive)—Belgium and Netherlands \* \* \*

2. Freight Service (Commission recommendation of May 20, 1946; amended).

Itinerary: U. S. North Atlantic ports (north of Cape Hatteras) to Antwerp and Rotterdam and return to U. S. North Atlantic ports.

Sailing frequency: 52 weekly sailings per year.

Number and type of ships: Not specified.

It is to be noted that the itinerary of Service 2 does not include the port of Amsterdam, although applicant's subsidy application embraces Amsterdam as well as Antwerp and Rotterdam. Counsel for Waterman challenges the authority of the Board "to set for hearing under section 605(c) an application for a subsidy over a trade route which has not been declared essential under section 211 of the 1936 Act." Trade Route No. 8, as described in the report of the Commission, provides primarily a United States North Atlantic-Belgium and Netherlands service. The itinerary described in the service should not be considered inflexible. Most of the lines in the service move Amsterdam cargo through Rotterdam, covering the distance between Amsterdam and Rotterdam by barge. Applicant's service providing direct Amsterdam calls is, of course, much quicker and involves less handling. The appeal of this service is evidenced by the fact that in the fiscal year 1950, 15 percent of applicant's outbound and

35 percent of its homeward carryings on Trade Route No. 8 was Amsterdam cargo.<sup>1</sup> It would seem desirable that Amsterdam should be an optional call on this route as traffic offers, since this would provide a more adequate service and would afford a subsidized operator greater flexibility.<sup>2</sup>

For the purpose of this hearing the itinerary of Service 2 of Trade Route No. 8 will be considered to include the port of Amsterdam; the final determination on this point will be made by the Maritime Administrator.

The only issue presently before the Board is whether section 605(c) of the Act is an obstacle to the granting of a subsidy. We agree with the examiner that section 605(c) is not an obstacle; but whether a subsidy will in fact be awarded depends on other issues as well, and this question is expressly reserved for future determination.

Section 605(c) provides as follows:

(1) "No contract shall be made under this title with respect to a vessel to be operated on a service, route, or line served by citizens of the United States which would be in addition to the existing service, or services, unless the Commission shall determine after proper hearing of all parties that the service already provided by vessels of United States registry in such service, route, or line is inadequate, and that in the accomplishment of the purposes and policy of this Act additional vessels should be operated thereon; and

(2) no contract shall be made with respect to a vessel operated or to be operated in a service, route, or line served by two or more citizens of the United States with vessels of United States registry, if the Commission shall determine the effect of such a contract would be to give undue advantage or be unduly prejudicial, as between citizens of the United States, in the operation of vessels in competitive services, routes, or lines,

(3) unless following public hearing, due notice of which shall be given to each line serving the route, the Commission shall find that it is necessary to enter into such contract in order to provide adequate service by vessels of United States registry.

(4) The Commission, in determining for the purposes of this section whether services are competitive, shall take into consideration the type, size, and speed of the vessels employed, whether passenger or cargo, or combination passenger and cargo, vessels, the ports or ranges between which they run, the character of cargo carried, and such other facts as it may deem proper." (Subparagraphing supplied.)

Applicant contends (a) that it is an existing American-flag

<sup>1</sup> The only other lines serving the route that made calls at Amsterdam during that period were Isbrandtsen and three foreign-flag carriers. Their combined outbound carryings to Amsterdam were less than one-tenth of applicant's in the same period, and they carried none homebound.

<sup>2</sup> Official notice may be taken of the new Amsterdam-Rhine River Canal, which will be opened to traffic in May 1952, which promises to increase materially Amsterdam's importance as a transit port for the whole of western Europe.

operator on Trade Route No. 8, and that there is, therefore, no problem under subparagraph (1); (b) that the granting of a subsidy to applicant would not result in undue prejudice or advantage as between American-flag operators on the route; and (c) that a subsidy to applicant is necessary, in any event, to maintain adequate service on the route by vessels of United States registry. The interveners, while admitting that applicant is an existing operator on the route, dispute the latter two contentions.

Applicant has been engaged in Trade Route No. 8 operations since 1945. Until 1948 applicant acted as berth agent for War Shipping Administration and was an independent operator of chartered vessels. In 1946 it made 19 chartered sailings carrying general cargo, and in 1947 it made 46 such sailings. During this period full cargoes of coal and grain were also carried on this route. Since March 1948 applicant has operated on the route with a fleet of five or six 15½-knot Victory-type vessels purchased from the Maritime Commission. Forty-five sailings were made during 1948. In 1949 weekly sailings were scheduled between North Atlantic ports and Belgium and Holland and have been continued to the present time. Applicant calls at Antwerp and Rotterdam, and at Amsterdam when cargo warrants; in 1949, 32 calls were made at the latter port. Applicant is clearly an existing operator within the meaning of the first subparagraph of section 605(c) of the Act, thus making further discussion of that part of the section unnecessary. Applicant says that it has always, since beginning its Trade Route No. 8 service, intended to apply for an operating-differential subsidy, although it opposed the applications of others in 1946 and in 1948 on approximately the same grounds now urged against it by the present interveners.

#### TRADE ROUTE NO. 8 IN GENERAL

Proceeding now to the succeeding subparagraphs of section 605(c), the relevant issues to be determined are (1) whether a subsidy to applicant would give an undue advantage or would be unduly prejudicial as between applicant and other American-flag operators on Trade Route No. 8, and (2) if the preceding question should be determined in the affirmative, whether it is necessary to enter into a subsidy contract with applicant in order to provide adequate service on the route by vessels of United States registry. Before attempting to resolve these issues it is necessary to describe the existing situation on Trade Route

No. 8 and the nature of the services thereon. No United States-flag operator presently holds an operating-differential subsidy contract for operations on this route. Of the 31 essential trade routes in the foreign commerce of the United States, Trade Route No. 8 stands about sixth in total volume of tonnage moved. The importance of this route has increased in the postwar years, since it appears that the ports of Antwerp, Rotterdam, and Amsterdam are natural European gateways. With the collapse of German nationalistic pressure, which promoted Hamburg and Bremen, a greater proportion of traffic is now moving through Antwerp, Rotterdam, and Amsterdam. In the fiscal year 1948 approximately 1,500,000 tons of export liner cargo and 176,000 tons of import liner cargo moved over Trade Route No. 8, and in the fiscal year 1950 the export figure decreased to about 1,000,000 tons and the import figure increased to about 561,000 tons. The outbound segment of this service is clearly the more important one.

Before World War II, the sole American-flag line on this route was Black Diamond Line, which made 70 annual sailings and carried 35 percent of the tonnage moving over the route; there were only five foreign-flag competitors. From 1945 to 1948 there was a large amount of cargo moving on Trade Route No. 8, and relatively few foreign vessels. Freight rates were at a satisfactory level and the position of the American-flag lines on the route in the first postwar years was favorable. In the fiscal year 1948 there were 257 American-flag sailings as compared with 190 foreign-flag sailings; the American lines carried 53 percent of outbound tonnage and 49 percent of the inbound. Since 1948, however, the American position in this trade has steadily deteriorated in contrast with the foreign lines so that in the fiscal year 1950 United States-flag vessels carried 28.7 percent of outbound tonnage and 17.8 percent of the inbound. Black Diamond, which made 114 United States-flag sailings in 1948 with chartered vessels, now operates foreign-flag vessels only. Waterman, in 1948, offered direct weekly service but now calls at German ports before Route No. 8 ports, and recently reduced its sailings to one every 10 days. Waterman's share of Route No. 8 export cargo has dropped from 11 percent in the fiscal year 1948 to 4.5 percent in the fiscal year 1950. Isbrandtsen's share has also fallen but to a lesser degree. Conversely, the number of foreign-flag operators serving Route No. 8 ports has increased from 5 to 14, and foreign sailings have increased to an estimated 317



per year as against 151 United States-flag sailings for the same period.

Applicant, on the contrary, in the fiscal year 1950 carried 2½ percent more of the total Trade Route No. 8 export cargo and 2.9 percent more of the total import cargo than in the fiscal year 1948. It is the only American line that shows an increase in this period. For the fiscal year 1950 the percentage of the total export cargo carried by applicant (14.5%) exceeded the combined total (14.2%) carried by the three interveners, and applicant's percentage of the total import carryings (10.9%) exceeded their combined total (6.9%).

#### AMERICAN OPERATORS ON TRADE ROUTE NO. 8

It appears that Waterman, States Marine, Isbrandtsen, and South Atlantic Steamship Line, Inc., presently serve the route in addition to applicant, although South Atlantic does not carry commercial cargo to or from ports north of Hampton Roads.

*Applicant*—A brief history of applicant's operation on Trade Route No. 8 has been stated above. Applicant is the only American-flag carrier operating exclusively between United States North Atlantic ports and Antwerp, Amsterdam, and Rotterdam. By means of its exclusive, direct service, applicant maintains a running time of 9 to 10 days in each direction.

Applicant's executive vice president testified that in 1949 his company lost \$667,614.50 from its operations on the route, including depreciation, interest, taxes, and other overhead expenses; the witness testified that in 1950 the estimated loss on the same basis would be approximately \$800,000. The company believes that it would have been better off financially if it had called at other ports and had not served Trade Route No. 8 exclusively. Applicant's witness expressed the opinion that in order to keep the following of shippers and increase the company's business on Trade Route No. 8 "it is absolutely essential to give them an opportunity of shipping once per week from a regular loading berth on ships that have speed equal to the competition." Applicant's president testified that he does not believe that any American line can remain in this service indefinitely without a subsidy under present conditions, but stated that applicant will stay on the route as long as it can.

*Waterman Steamship Corporation.*—This company commenced service on Trade Route No. 8 with a sailing from New York in

April 1946. Until April 1948 it served Trade Route No. 8 ports directly on the outbound voyage, returning via German ports.

Beginning with the sailing of the *Beauregard* on April 17, 1948, it "reversed the discharging itinerary by calling at German ports before calling at Antwerp and Rotterdam for the reason that it was impossible for [it] to obtain military cargo as well as United States mail destined to Germany unless [it] made direct sailings to Germany." This procedure increased the running time to Antwerp by three or four days. Its carriage of Trade Route No. 8 export cargo has fallen, as already indicated, from 11 percent to 4.5 percent of the total movement. In the fiscal year 1950 approximately 80 percent of Waterman's outbound tonnage and approximately 63 percent of its inbound tonnage moved to or from foreign ports other than Antwerp, Amsterdam, and Rotterdam.

Operating C-2-type vessels in its North Atlantic/European service, Waterman covered a wide range of ports and services, including Trade Routes Nos. 7 and 8. It reported a profit on this operation in 1949 and expected to "show a comparatively small profit" in 1950.

*States Marine Corporation.*—States Marine operates a combined service over Trade Routes Nos. 7 and 8 with approximately two sailings per month, using owned and chartered vessels of various types. The company usually runs its vessels westward in ballast because it does not believe that the amount of cargo available westbound justifies any other operation. In short, the company attempts to keep its various owned and chartered vessels in continuous balance, sending the vessels where the cargo appears to be moving at the time.

In the fiscal year 1950 States Marine carried 5.3 percent of the outbound tonnage on Trade Route No. 8. Approximately 64 percent of the tonnage which it carried outbound was for ports not on Trade Route No. 8. The vice president of States Marine testified that the company has been "making money right straight along."

*Isbrandtsen Company.*—Isbrandtsen offered no testimony, but evidence from others shows that it operates a combined Trade Route Nos. 7 and 8 service, with approximately two sailings a month, with various types of ships, mostly chartered vessels. Although most of its outbound sailings to Trade Route No. 8 ports have been direct, some have been indirect. In the fiscal

year 1950 about two-thirds of Isbrandtsen's Trade Routes Nos. 7 and 8 carryings were for destinations not on Route No. 8.

*South Atlantic Steamship Line, Inc.*—This company did not intervene in the proceeding and can hardly be called a direct competitor of the four lines last mentioned. It operates approximately two outbound sailings per month from South Atlantic ports and Hampton Roads (with limited calls for military cargo at Philadelphia and Baltimore) to Antwerp and Rotterdam, and to German and British ports, returning to United States ports south of Hampton Roads. In the fiscal year 1950 it carried only 1,619 tons of outbound cargo to Trade Route No. 8 destinations and 47 tons inbound.

#### UNDUE ADVANTAGE OR PREJUDICE

Since Trade Route No. 8 is served by two or more citizens of the United States, subparagraph (2) of section 605 (c) of the Act, as quoted above, requires that the Board determine as an initial question whether the effect of a subsidy contract would be to give undue advantage or would be unduly prejudicial as between citizens of the United States in the operation of vessels in *competitive* services, routes, or lines. Interveners allege that the contract would have such an effect. In determining whether services are *competitive*, subparagraph (4) of section 605(c), as quoted above, provides that the Board shall take into consideration "the type, size, and speed of the vessels employed, whether passenger or cargo, or combination passenger and cargo, vessels, *the ports or ranges between which they run*, the character of cargo carried, and such other facts as it may deem proper." (Emphasis supplied.) We agree with the finding of the examiner that the effect of granting the present subsidy application would not be to give undue advantage or be unduly prejudicial as between citizens of the United States in the operation of vessels in competitive services, routes, or lines.

Waterman contends that, if the subsidy be granted, applicant "will be able to schedule and to provide more sailings on Trade Route No. 8 than are justified under present conditions, the result of which will be to deprive Waterman and the other American-flag operators of substantial cargo which none of them can providently share with applicant." But there is no indication in the record of any such intention by applicant. Waterman further asserts that the "subsidy awards can be used by applicant to intensify its solicitation and advertising for the cargo moving

over Trade Route No. 8, all of which can only result in serious economic injury to Waterman and other American-flag operators." This is, of course, quite uncertain, but in any event such use would not support a charge of undue prejudice. States Marine contends that in view of the volume of United States military and Government-financed cargo moving to "North European ports," the grant of the subsidy "would amount to a double subsidy" to applicant. States Marine itself shares in the carriage of military and Government cargo as do all United States-flag lines on this route. They are not subsidized within the meaning of the 1936 Act, and the carriage of such cargo has indeed no bearing upon the issue of undue advantage or undue prejudice under section 605(c) of the Act.

Several things stand out about applicant's service. It is concentrated on direct runs between North Atlantic and European ports on Route No. 8 and thus gives quicker time than that offered by interveners who operate between these ports by indirect routes. Applicant's direct service to Antwerp, Rotterdam, and Amsterdam has resulted in a net loss to the company over 2 years ending 1950, but has resulted in a relative increase of applicant's share of the trade to and from these ports. Waterman and States Marine have been financially successful during the 2 years in question when the results of their service to Route No. 8 ports are combined with the Route No. 7 German ports. Isbrandtsen has disclosed no operating results. However, the financial gain of interveners has been at the expense of the completeness and directness of their services to Route No. 8 ports, and in contrast to applicant, interveners Waterman and Isbrandtsen have dropped back percentagewise in the amount of cargo which they have carried to and from Route No. 8 ports. States Marine combines its service to Route No. 8 ports with service to Route No. 7 German ports on the outbound leg and offers no transportation from Route No. 8 ports homebound. If a subsidy is granted in this case applicant will be required to agree to continue to operate exclusively between North Atlantic and Route No. 8 European ports and will not be permitted to combine that operation with service to other European ports no matter what profit might appear to result from such combination. A subsidy under such circumstances is thus no more than a fair allowance for the necessary restriction and will not give to applicant undue advantage as compared with the interveners who are now and will hereafter be free to seek higher voyage revenues because

of freedom from such restriction. The importance of Trade Route No. 8 to the foreign commerce of the United States, together with the steady deterioration of the relative carryings of American-flag vessels in recent years as compared with their foreign-flag competitors on the route, as well as the facts bearing on the nature of applicant's service, lead necessarily to the conclusion already indicated that the granting of a subsidy to applicant would not give undue advantage or be unduly prejudicial as between citizens of the United States in the operation of vessels in competitive services, routes, or lines. The opposition of applicant to the granting of a subsidy on Trade Route No. 8 to Black Diamond in 1946 and to Arnold Bernstein in 1948 does not militate against applicant's present position because of the very different conditions which exist on the route today.

#### OTHER MATTERS

The examiner considered the question of inadequacy of service by vessels of United States registry within the meaning of subparagraph (3) and recommended that the Board make a finding that a subsidy contract with applicant was necessary to provide adequate service on the route. The record shows that at the time of the hearings in the case there was substantial unused deadweight and cubic capacity of the vessels of applicant and some of the interveners serving European ports on Route No. 8. The existence of such unused space is one of the elements of the "adequate service" mentioned in section 605(c), but not the only one. In view of our findings on the issue of undue advantage and undue prejudice within the meaning of subparagraph (2) of this section, it is unnecessary for us to determine the question of adequacy of service under subparagraph (3).

The exceptions of the various interveners have been carefully considered and, except to the extent that the examiner's recommended decision has been modified by this report in conformity with any of the exceptions, they are overruled.

#### CONCLUSIONS

The Board, therefore, concludes:

1. Applicant, United States Lines Company, provides an existing service on Trade Route No. 8, Service 2, within the meaning of section 605(c) of the Act;

2. The effect of the making of an operating-differential subsidy contract with applicant, United States Lines Company, with

respect to the operation of vessels on Trade Route No. 8, Service 2, would not be to give undue advantage or be unduly prejudicial as between citizens of the United States in the operation of vessels in competitive services, routes, or lines; and

3. The provisions of section 605(c) of the Act create no bar to the making of an operating-differential subsidy contract with applicant for the operation of cargo vessels on Trade Route No. 8, Service 2. All questions arising under other sections of the Act are reserved for future determination.

By the Board.

JANUARY 7, 1952.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

# FEDERAL MARITIME BOARD

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No. M-49

ISBRANDTSEN COMPANY, INC.—APPLICATION FOR BAREBOAT CHARTER OF GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSEL FOR USE IN THE SERVICE BETWEEN UNITED STATES NORTH ATLANTIC PORTS AND PORTS IN THE UNITED KINGDOM AND CONTINENTAL EUROPE

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## REPORT OF THE BOARD

This proceeding was instituted pursuant to Public Law 591, Eighty-first Congress, upon the application of Isbrandtsen Company, Inc., for bareboat charter of one Government-owned, war-built, dry-cargo Victory-type vessel for employment in its berth service between United States North Atlantic ports and ports in the United Kingdom and continental Europe (Bordeaux/Hamburg Range). The vessel proposed to be chartered is needed principally to make up a deficiency in service occasioned by the recent loss of applicant's SS. *Flying Enterprise*, a C-1-type vessel.

Hearing on the application was held before the Board January 14, 1952, pursuant to notice in the Federal Register of January 10, 1952. Because of the urgency of the matter, the usual 15 days' notice was not given. Applicant's president testified in support of the application, which was not opposed.

We have no hesitancy in recognizing, in the light of present world conditions and the defense measures being taken by the United States, Great Britain, and western Europe, that the service involved is in the public interest. Applicant's witness testified that approximately 50 percent of his eastbound traffic in the service was military-controlled cargo and that in addition a considerable amount of Government-aid cargo was handled. On the question whether the service would be adequately served without replacement of the *Flying Enterprise*, the testimony is that not only have applicant's vessels been sailing fully laden eastbound but probably all other American-flag eastbound vessels in the same service are now sailing likewise. The eastbound

leg of the service is clearly the more important one. Applicant's witness further testified that it will require several months to reorient the company's schedules to fill in the gap unless the application is granted. Cargo had been booked for the next voyage of the lost ship. Applicant's witness testified further that he was unable to charter a suitable privately-owned vessel upon reasonable terms and conditions. Isbrandtsen plans eventually to purchase a ship with which to replace the one lost. The evidence of record is convincing that privately owned American-flag vessels are not available for charter on reasonable conditions and at reasonable rates for use in the North Atlantic service.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced in the record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service under consideration is required in the public interest;
2. That such service will not be adequately served without the use therein of one additional Government-owned vessel herein applied for; and
3. That privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that the charter which may be granted pursuant to the findings in this case be for an indefinite period, subject to the usual right of cancellation by either party on 15 days' notice, and subject further to annual review of the charter as provided for in Public Law 591.

By the Board.

JANUARY 14, 1952.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.



## FEDERAL MARITIME BOARD

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No. M-51

### AMERICAN PRESIDENT LINES, LTD.—APPLICATION FOR BAREBOAT CHARTER OF A VICTORY-TYPE, GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSEL FOR EMPLOYMENT IN THE ROUND-THE-WORLD SERVICE

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This proceeding was instituted pursuant to Public Law 591, Eighty-first Congress, upon the application of American President Lines, Ltd., for the bareboat charter for an indefinite period of a Victory-type, Government-owned, war-built, dry-cargo vessel for employment in Line B of the company's round-the-world service.<sup>1</sup>

Hearing on the application was held before an examiner on February 11 through February 14, 1952, pursuant to notice in the Federal Register of February 1, 1952. Because of the urgency of the matter the usual 15 days' notice was not given. Luckenbach Steamship Company, Inc., Pacific Far East Line, Inc., and Waterman Steamship Corporation appeared as interveners. The examiner's recommended decision was served on February 20, 1952, in which he recommended that the Board should make the statutory findings. Exceptions to the examiner's recommended decision were filed by Pacific Far East Line and counsel for the Board. An original request for oral argument attached to the exceptions of Pacific Far East Line was subsequently withdrawn, and the proceeding was submitted to the Board without oral argument.

Applicant explains its present application to be in the nature of an interim emergency measure, designed to fill what would otherwise be nearly a 30-day gap in its normal 14-day sailing schedule. Applicant desires the vessel herein applied for to begin a sailing from the Pacific coast, and, for this reason, requested

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<sup>1</sup> Described in applicant's operating-differential subsidy agreement as follows: From New York via Panama Canal, California, Hawaiian Islands, Japan, China, Hong Kong, Philippine Islands, Straits Settlements (Malaya, including Singapore), Ceylon, India and Pakistan, Suez Canal, Egypt, Italy, France in the Mediterranean, to New York, with the privilege of calling at Boston, Havana (Cuba), ports in the Dutch East Indies (Indonesia) and Gibraltar.

at the hearing before the examiner that its eligibility for inter-coastal operations should be reserved, without prejudice, for future determination. The present application may, therefore, be considered modified so as to exclude from our present consideration the intercoastal segment of applicant's round-the-world service.

Applicant further explains that its present application for one Victory-type vessel for employment in its round-the-world service is part of a larger plan which involves another application for the bareboat charter of three Government-owned vessels for employment in its Atlantic/Straits service. The latter application for three vessels will include the vessel herein applied for should the present application be granted. The basic intention of applicant is to operate its owned vessels in its subsidized round-the-world service, pursuant to the mandate of the Board in Docket No. S-17 that chartered vessels should not be employed on subsidized services at a time when owned vessels are being operated on an unsubsidized service. It is applicant's purpose, therefore, to transfer two owned vessels from its unsubsidized Atlantic/Straits service to its round-the-world service, and to use the three Government-owned vessels on its Atlantic/Straits service. The final result of this plan, should these charters be granted, would be to provide two additional vessels for applicant's round-the-world service and one additional vessel for applicant's Atlantic/Straits service. We are presently concerned, however, only with the instant application for the bareboat charter of a Government-owned vessel for employment in applicant's round-the-world service, and our findings are consequently limited to this service and the vessel for which applicant herein applies.

Applicant's round-the-world service has been determined essential to the foreign commerce of the United States, and it appears that applicant carries military and commercial cargo which is essential to the defense effort of the United States and the economy of the areas serviced. We have no difficulty, therefore, in finding that the service under consideration is in the public interest.

Applicant's witness testified that this is primarily a measurement trade, and that for a total of 28 sailings from the last continental port of the United States in 1951 the average free space available on each vessel was about 1 percent; and that for the same period and same number of sailings inbound to the first United States port the average free space on each vessel

was about 10 percent. It was testified that during the year 1951 applicant was forced to decline 35,855 tons of cargo outbound from the Atlantic coast and 70,492 tons of cargo outbound from the Pacific coast. For the same period, cargo declinations of inbound cargo amounted to 17,742 tons, of which 9,642 tons was rubber destined for the Atlantic coast. Applicant's witness stated that the cargo declined during 1951 may have subsequently moved, but he did not know whether it had moved on United States-flag or foreign-flag vessels.

Applicant's witness also testified that since January 1, 1952, there has been no free space available on any of its vessels sailing from the last United States port on this service. Applicant's evidence discloses that, during January and the first 12 days of February 1952 the company has declined offerings from San Francisco amounting to 5,960 tons destined for all areas on this service, including Malaya (approximately 1,000 tons of this cargo was for ports in Indonesia). In addition, applicant's exhibit discloses that there are forward bookings of cargo from the Pacific coast either under consideration or declined since January 1, 1952, amounting to approximately 130,000 tons.

Counsel for the Board in his exceptions argues that the charter of the vessel herein applied for should be limited to one voyage since there is insufficient evidence in the record to support a finding of inadequacy of American-flag service from the Atlantic coast of the United States. Counsel for the Board agrees that the evidence is convincing that there is a present inadequacy of service from the Pacific coast. He contends, however, that there is an inference from statements made by applicant's witness that a second voyage of the vessel herein applied for will accommodate to a very limited extent, if at all, the needs of Pacific coast shippers. Counsel for the Board points out that the expectation of applicant is to operate the ship virtually full from the Atlantic coast. We believe that applicant has sustained its burden of proving inadequacy on the service herein involved, and that applicant's obligation to serve the requirements of the route can, in any event, be administratively controlled. It is also to be noted that the standard form of bareboat charter contains a 15-day termination clause, which the Maritime Administrator is at liberty to exercise at any time changed conditions warrant such termination.

Pacific Far East Line excepts to the finding of the examiner that the notice of hearing in this proceeding is broad enough to

include the privilege of serving Indonesia. Although the notice stated that the application was for a vessel "for employment in (applicant's) round-the-world service," and applicant's operating-differential subsidy agreement includes Indonesia as a privilege call, Pacific Far East Line contends<sup>1</sup> that the notice "places in issue only ports regularly served by the *existing* round-the-world service of APL, and does not include calls at the 'privilege' ports in Indonesia, which have not been served for at least 2 years." Counsel for Pacific Far East Line maintains that this contention is supported by the Board's decisions in *Application of Prudential Steamship Corporation* (Docket M-34), 3 F.M.B. 627, *Application of Pope & Talbot, Inc.* (Docket M-42), 3 F.M.B. 697, and *Application of American Export Lines, Inc.* (Docket M-48), 3 F.M.B. 763. The cited cases fail to support this contention. In the *Prudential* and *American Export Lines* cases we held that the reference in the notice of hearing "to ports in the Mediterranean" was not sufficiently broad to cover ports in Portugal, Spanish Atlantic ports, and ports in the Black Sea. In the *Pope & Talbot* case, we held that an application for a vessel to be used in the intercoastal service was not sufficiently broad to permit calling at Puerto Rico. The question is ultimately whether the Board has "given due notice to all interested parties" in accordance with the requirements of Public Law 591.

Although we agree with the examiner that a reference in the notice of hearing to the descriptive title of applicant's service is broad enough to include privilege port calls on such service, even though such ports have not been regularly served in the period immediately preceding the application, we conclude in this instance, however, that the privilege for calls at ports in the Dutch East Indies (Indonesia) must be denied for the following reasons:

(1) The showing of inadequacy for this segment of the service was insufficient, applicant not being certain whether it would make Indonesian calls even if permission were granted;

(2) Applicant has not, according to our own records, served Indonesia in its round-the-world service for at least 2 years; and

(3) Applicant has an application pending before the Board which, if successful, would provide an additional vessel for its Atlantic/Straits service which includes, as one of its principal objectives, service between ports on the East and West coasts of the United States and Indonesia.

It appears from the evidence that no privately owned United States-flag vessels suitable for operation in this service are

available for charter upon reasonable conditions and at reasonable rates.

FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced in the record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service under consideration is in the public interest;
2. That such service (exclusive of the intercoastal service and service to Indonesia) is not adequately served; and
3. That privately owned United States-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that any charter which may be granted pursuant to the findings in this case be for an indefinite period, subject to the usual right of cancellation by either party on 15 days' notice, and subject further to annual review of the charter as provided for in Public Law 591. The Board also recommends that any such charter include provisions to protect the interests of the Government under its operating-differential subsidy agreement with applicant for this service.

By the Board.

FEBRUARY 28, 1952.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.

## FEDERAL MARITIME BOARD

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No. S-22

### GRACE LINE INC.—APPLICATION FOR OPERATING-DIFFERENTIAL SUBSIDY ON TRADE ROUTE NO. 4

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*Submitted August 6, 1951. Decided January 15, 1952*

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Applicant is found to be subject to direct foreign-flag competition, both passenger and cargo, on Trade Route No. 4.

Applicant is found to be an existing operator on Trade Route No. 4 within the meaning of section 605(c) of the Merchant Marine Act, 1936.

The Board is unable to find that the effect of a subsidy contract with applicant for operation of vessels on Trade Route No. 4 would give undue advantage or be unduly prejudicial as between citizens of the United States in the operation of vessels in competitive services, routes, and lines.

Neither section 602 nor 605(c) of the Act creates any bar to the making of an operating-differential subsidy contract with applicant.

*W. F. Cogswell* for applicant.

*William A. Weber* for Alcoa Steamship Company, Inc.

*George F. Galland* and *Joseph A. Klausner* for the Board.

#### REPORT OF THE BOARD

This proceeding concerns an application, dated November 27, 1950, of Grace Line Inc. for an operating-differential subsidy under Title VI of the Merchant Marine Act, 1936, as amended (hereinafter referred to as "the Act"), for the operation of combination passenger and freight vessels and also freight vessels in the foreign commerce of the United States on services on Trade Route No. 4 between United States North Atlantic ports and ports in the Netherlands West Indies, Venezuela, and the North coast of Colombia. Hearings were held before an examiner in May 1951. Alcoa Steamship Company, Inc., entered an appearance but did not participate in the hearings, and no party appeared in opposition to the application.

The stated purpose of the hearing was to receive evidence upon relevant issues arising under sections 602 and 605(c) of the Act. The examiner, on July 20, 1951, recommended that the Board find

(1) That foreign competition, except direct foreign-flag competition, has not been shown;

(2) That the vessels with respect to which applicant seeks an operating-differential subsidy would not be in addition to the existing service or services;

(3) That the effect of a subsidy contract would not be to give undue advantage or be unduly prejudicial as between citizens of the United States in the operation of vessels in competitive services, routes, or lines;

(4) That, in view of the findings under (1), (2), and (3) above, no determinations after hearing are required pursuant to the provisions of sections 602 or 605(c) of the Act.

No exceptions to the examiner's recommended decision were filed within the required time limit, and the case was thereupon submitted for decision without oral argument. We agree with the essential findings of the examiner.

Counsel for the Board suggests a possible lack of jurisdiction of the Board to determine the issues presented because the services on Trade Route No. 4 described by applicant in its application have not been determined to be essential by the Maritime Commission (our predecessor) or the Maritime Administrator. The report of the Maritime Commission on Essential Foreign Trade Routes of the American Merchant Marine describes Trade Route No. 4 as follows:

U. S. Atlantic ports (Maine-Key West inclusive)—Caribbean ports (Commission recommendation of May 20, 1946).

The Caribbean is served by a variety of steamship services many of which touch at the same ports en route but most of which ultimately end at different Caribbean termini. Caribbean liner services generally are operated as a part or in conjunction with industrial operations. To a great extent these services are dependent upon crop conditions and other variable factors so that they do not remain constant year after year as to the ships employed, the frequency of sailings or even as to the route followed. In view of these circumstances it is considered impractical to attempt to specify ships and schedules for such services.

It is true that before any operating-differential subsidy contract can be entered into with applicant there should be a determination by the Administrator that the services are essential in the foreign commerce of the United States. However, a decision in these proceedings need not be delayed until a determination of this question. The only issues presently before the Board are whether section 602 or 605(c) of the Act presents any obstacle to the granting of a subsidy for the services. Our determination that these sections do not present obstacles still leaves for future determination other issues before a subsidy contract can be executed.

## GRACE LINE OPERATIONS

Applicant has been operating a service between United States North Atlantic ports and ports of Venezuela, the North coast of Colombia, and the Netherlands West Indies since 1938. A predecessor company, which Grace purchased in 1937, had operated a service to this area for many years before. Applicant at present offers a weekly sailing over each of the following three services, with calls at some of the smaller ports only as traffic offers:

1. Between New York and Curacao, Netherlands West Indies, LaGuaira and Puerto Cabello, Venezuela, and Cartagena, Colombia, with two 18-knot combination passenger and cargo vessels of the *Santa Rosa* type with passenger accommodations for 228 and deadweight cargo capacity of 7,121 tons each.

2. Between New York and Puerto Cabello, Venezuela (Aruba, Netherlands West Indies, optional), Amuay Bay (Las Piedras, Punta Cardon), Maracaibo (and lake ports), Venezuela, and Barranquilla (Cartagena), Colombia, with three 16-knot C-2 combination passenger and cargo vessels with passenger accommodations for 52 and deadweight cargo capacity of 8,700 tons each.

3. Between New York (Philadelphia, Boston) and Aruba, Netherlands West Indies (Amuay Bay, Las Piedras, Punta Cardon), La Guaira, Guanta, Puerto La Cruz, Puerto Sucre (Cumana) Carupano, Venezuela, and St. Marc, Haiti (north-bound only), with four 16-knot C-2-type freighters, two of which have passenger accommodations for eight and two have no passenger accommodations, and having deadweight cargo capacity ranging from 9,290 tons to 10,310 tons.

The vessels on these three services operate as an integrated group and furnish a complete over-all service to a large number of ports for commercial travelers, merchants, tourists, including cruise passengers, mail, and general cargo, including refrigerated freight. The combination vessels on services No. 1 and No. 2 carry substantial amounts of freight as well as passengers, while the freighters on service No. 3 carry but few passengers.

## FOREIGN-FLAG COMPETITION

Some of the foreign-flag competition on the services is made up of a number of lines operating smaller and slower cargo vessels than the Grace ships and with passenger facilities for not more than 12 persons. The foreign-flag competition also includes a number of large luxury liners making cruises during the winter months into the area served by Grace and carrying



for the most part cruise passengers, but also some passengers seeking foreign destinations.

*Freight.*—The three principal foreign-flag freight-carrying competitors on Trade Route No. 4 which operate cargo vessels with limited passenger accommodations substantially parallel to Grace on a weekly or more frequent basis are Flota Mercante Grancolombiana S. A., a company organized by the governments of Colombia, Venezuela, and Ecuador; Compania Venezolana de Navegacion, a company wholly owned by the Venezuelan government; and Royal Netherlands Steamship Company. In addition, there is evidence that applicant is subject to direct foreign-flag competition from the following companies also operating freighters with limited passenger accommodations: Compania Colombiana de Navegacion Martina S. A., States Marine Corporation,<sup>1</sup> Barber Steamship Lines, Inc., North Atlantic & Gulf Steamship Company, Saguenay Terminals Company, Ltd., Swedish American Line, Alcoa Steamship Company, Inc.,<sup>1</sup> and United Fruit Company.<sup>1</sup> There are also a number of small freighters, generally individually owned, offering minor competition. The extent of the cargo carryings on these services by Grace, other United States-flag carriers, and foreign-flag carriers for the years 1948, 1949, and 1950 is shown in the following table:

## CARGO STATISTICS

	1948			
	South-bound		North-bound	
	Tons	Percent	Tons	Percent
Grace.....	459,188	42.6	97,099	55.3
Other United States flag.....	238,852	22.1	29,207	16.6
Foreign flag.....	380,171	35.3	49,454	28.1
Total.....	1,078,209	100.0	175,760	100.0
	1949			
	South-bound		North-bound	
	Tons	Percent	Tons	Percent
Grace.....	368,814	37.2	48,368	48.4
Other United States flag.....	45,128	4.5	19,361	19.3
Foreign flag.....	578,301	58.3	32,301	32.3
Total.....	992,243	100.0	100,030	100.0
	1950			
	South-bound		North-bound	
	Tons	Percent	Tons	Percent
Grace.....	308,962	42.6	45,204	43.0
Other United States flag.....	23,803	3.3	17,754	18.9
Foreign flag.....	369,928	51.1	25,870	24.6
All carriers except Grace—N.W.I. only.....	21,835	3.0	16,320	15.5
Total.....	724,330	100.0	105,148	100.0

<sup>1</sup> Also operators of United States-flag ships.

From the foregoing table it appears that the southbound carryings far exceed the northbound carryings, and that since 1948 the southbound carryings of American-flag vessels not operated by Grace have greatly diminished. This table, as well as the other evidence presented, clearly shows direct competition by foreign-flag cargo carriers.

*Passengers.*—With respect to passengers, applicant contends that its vessels are subject to direct competition from (1) foreign-flag freighters and tankers with limited passenger accommodations, and (2) foreign-flag cruise ships calling at one or more points on applicant's itineraries. The passenger carryings to the ports on applicant's itineraries for the years 1949 and 1950 are shown in the following table.

## PASSENGER STATISTICS

	1949					
	Local passengers		Cruise passengers		Total	
	Number	Percent	Number	Percent	Number	Percent
Grace Line.....	11,730	90	3,953	36	15,683	65
Other United States flag.....	411	3	0	0	411	2
Foreign flag.....	921	7	7,019	64	7,940	33
Total.....	13,062	100	10,972	100	24,034	100
	1950					
Grace Line.....	11,334	85	3,857	39	15,191	65
Other United States flag.....	627	5	0	0	627	3
Foreign flag.....	1,402	10	6,099	61	7,501	32
Total.....	13,363	100	9,956	100	23,319	100

From the above table it appears that during the 2 years under consideration the passengers carried by foreign-flag freighters and tankers were not numerous in comparison to the noncruise passengers carried by the Grace vessels. On the other hand, the passengers carried in this area during the winter months by the competing foreign-flag cruise ships were very substantial in number, Grace participation on this kind of traffic being only 36 percent to 39 percent of the total. Whereas Grace is the principal all-year passenger carrier on the route, the table shows that the Grace cruise passengers on the route make up approximately one-fourth of the total number of passengers which the company carries. The evidence supports a finding that Grace is subject to direct foreign-flag passenger competition on the trade route.

## ISSUES UNDER SECTION 602

The language of section 602 of the Act which is important in this proceeding is as follows:

No contract for an operating-differential subsidy shall be made by the Commission for the operation of a vessel or vessels to meet foreign competition, except direct foreign-flag competition, until and unless the Commission, after a full and complete investigation and hearing, shall determine that an operating subsidy is necessary to meet competition of foreign-flag ships.

We observed in *New York and Cuba Mail Steamship Company—Application for Resumption of Operating-Differential Subsidy on Trade Route No. 3*, Docket No. S-24, 3 F.M.B. 739:

We construe this section (section 602) to mean that the investigation and hearing provided for under it is required only to determine competition other than direct foreign-flag competition. Section 601 and other sections of Title VI of the Merchant Marine Act, 1936, as amended, permit determinations of direct foreign-flag competition without the requirement of a hearing.

As indicated above, the evidence in the case shows that Grace is subject to direct foreign-flag competition, both as to cargo and as to passengers, on Trade Route No. 4. No claim is made or evidence offered that applicant is subject to foreign competition other than direct foreign-flag competition. Under the circumstances, it is unnecessary to make any determination as to competition other than direct competition, and section 602 of the Act creates no obstacle to the making of an operating-differential subsidy award.

Counsel for the Board contends that the foreign-flag competition in the passenger field is not substantial, and that there may thus be an obstacle to the granting of a subsidy under sections 601(a), 603(b), or other provisions of the Act, but this issue need not be determined at this time. The record here presented, however, with such other evidence as the parties may desire to introduce, may readily form the basis of the determination of this and other issues not now decided.

## ISSUES UNDER SECTION 605(c)

There are two requirements under section 605(c), the first part of which may, for the purpose of this proceeding, be paraphrased to the effect that no contract shall be made with respect to a vessel to be operated on a service, route, or line served by citizens of the United States which would be *in addition to the existing service or services*. The evidence is clear that the ser-

vices for which applicant is seeking a subsidy contract have been in existence for many years and are not new services so as to be "in addition" to existing United States-flag services now serving the route.

The second requirement of section 605(c) may be paraphrased to the effect that no contract shall be made with respect to a vessel to be operated in a service, route, or line served by two or more citizens of the United States with vessels of United States registry if the Board shall determine that the effect of such contract would *give undue advantage or be unduly prejudicial as between citizens of the United States*, unless, after hearing, the Board shall find that a subsidy contract is necessary to provide adequate United States-flag service. The two principal operators of United States-flag vessels on Trade Route No. 4 are Alcoa Steamship Company, Inc., and United Fruit Company, but each of these also operates vessels under foreign flags as well. In any event, neither these or any other American operators made any claim that the granting of a subsidy contract to applicant would give to applicant undue advantage or as to them would be unduly prejudicial. Clearly, any evidence on this issue should come from parties claiming undue prejudice under this section. In the absence of any such complaint or evidence, the Board is not in a position to find that the making of the contract would give undue advantage or be unduly prejudicial as between citizens of the United States, and is, therefore, not required to make any further finding under this second requirement of section 605(c) as a condition to entering into a subsidy contract.

#### CONCLUSIONS

The Board therefore concludes:

1. Within the requirements of section 602 of the Act, applicant, Grace Line Inc., is subject to direct foreign-flag competition, both with respect to the transportation of cargo and passengers, on its existing services on Trade Route No. 4 and, therefore, foreign-flag competition, except direct foreign-flag competition, becomes immaterial;

2. Applicant, Grace Line Inc., provides existing services on Trade Route No. 4 within the meaning of section 605(c) of the Act;

3. The Board is unable to find that the effect of the making of an operating-differential subsidy contract with applicant, Grace Line Inc., with respect to the operation of vessels on Trade

Route No. 4 would be to give undue advantage or be unduly prejudicial as between citizens of the United States in the operation of vessels in competitive services, routes, or lines within the meaning of section 605(c) of the Act;

4. Neither the provisions of section 602 or 605(c) of the Act create any bar to the making of an operating-differential subsidy contract with applicant, Grace Line Inc., for the operation of cargo and passenger vessels on Trade Route No. 4. All questions arising under other sections of the Act are reserved for future determination.

By the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.

# FEDERAL MARITIME BOARD

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No. S-24

## NEW YORK AND CUBA MAIL STEAMSHIP COMPANY—APPLICATION FOR RESUMPTION OF OPERATING-DIFFERENTIAL SUBSIDY ON TRADE ROUTE No. 3

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*Submitted July 31, 1951. Decided August 3, 1951*

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An operating subsidy to applicant on Trade Route No. 3 is required to meet foreign-flag competition.

*William Radner and Odell Kominers* for applicant.

*Samuel H. Moerman* for The Port of New York Authority,  
intervener.

*Joseph A. Klausner and George F. Galland* for the Board.

### REPORT OF THE BOARD

#### BY THE BOARD:

This proceeding was based upon an application by New York and Cuba Mail Steamship Company for the resumption of its operating-differential subsidy covering vessels operating on Trade Route No. 3, between United States Atlantic ports and the East coast of Mexico, with privilege of calling at Havana and other Cuban ports.

The hearing was held before the examiner for the purpose of receiving evidence to enable the Board to make determinations with respect to foreign-flag competition pursuant to section 602 of the Merchant Marine Act, 1936, as amended. The examiner has recommended that the Board find:

1. That between 1947 and 1950 applicant encountered direct competition, although not substantial, from foreign-flag lines operating between United States North Atlantic ports and Mexico; substantial direct competition from such lines between eastern Canadian ports and Mexico; substantial direct competition from lines between New Orleans and Mexico; and substantial competition from such lines (1) direct between foreign countries and Mexico and (2) by transshipment via New Orleans;

2. That there is insufficient evidence upon which to make a finding as to whether applicant encountered competition from foreign-flag lines, from 1947 to 1950, on its Cuba service operated as a segment of its over-all Mexico service;

3. That competition encountered by applicant from foreign-flag lines on its strict Cuba service is not within the scope of the proceeding; and

4. That an operating subsidy to applicant on Trade Route No. 3 is necessary to meet competition from foreign-flag vessels.

Counsel for applicant has filed a memorandum, primarily in support but partially in exception to the recommended decision. Counsel to the Board has filed a memorandum partly supporting and partly excepting to the examiner's recommended decision. Both agree with the ultimate conclusion of the examiner that applicant is subject to substantial foreign-flag competition. Counsel to the Board suggests that, under certain conditions, oral argument be granted. We do not consider that oral argument is necessary.

Applicant has been engaged in vessel operations on Trade Route No. 3 as a subsidized line since 1937. Previously, applicant or its predecessors had been engaged in this trade for over 70 years and in the Cuba trade for over 100 years. Applicant now operates on this route three owned C-1B's and one C1-M-AV1 chartered from an affiliate. Applicant also operates a separate service between New York and Havana, Cuba.

We deem it unnecessary to recite the additional facts, which are set forth fully in the examiner's recommended decision.

The substantial question here involved is whether for the period 1947 through 1950 there was competition from foreign-flag vessels, either direct or indirect, or both, sufficient to justify the making of an operating-differential subsidy contract. Section 602 of the Merchant Marine Act, 1936, as amended, upon which this proceeding is predicated, provides as follows:

No contract for an operating-differential subsidy shall be made by the Commission for the operation of a vessel or vessels to meet foreign competition, except direct foreign-flag competition, until and unless the Commission, after a full and complete investigation and hearing, shall determine that an operating subsidy is necessary to meet competition of foreign-flag ships.

We construe this section to mean that the investigation and hearing provided for under it is required only to determine competition other than direct foreign-flag competition. Section 601 and other sections of Title VI of the Merchant Marine Act, 1936,

as amended, permit determinations of direct foreign-flag competition without the requirement of a hearing. Findings of the examiner deal with various elements of competition, and each element is discussed by him at some length.

In his recommendation 1, the examiner has recommended that the Board make specific findings with regard to each element of foreign-flag competition on this trade route. We do not feel that such Board action is necessary or contemplated by the Merchant Marine Act, 1936, as amended. It is our view that applicant, during the period January 1, 1947, to December 31, 1950, in the operation on Trade Route 3, encountered direct foreign-flag competition sufficient to justify a finding under section 601 of the Act that an operating subsidy is necessary to meet competition of foreign-flag ships. Under these circumstances no finding by the Board is necessary as to competition other than direct foreign-flag competition.

With regard to the examiner's proposed findings numbers 2 and 3, we hold that since applicant's strict and exclusive Cuba service is not within the purview of this inquiry, no finding regarding that service is necessary. As to applicant's Cuba service, which is a privilege-call segment of its Trade Route 3 operation between United States ports and Mexico, such service constitutes only an estimated 13 percent of applicant's north and south traffic on the route. Since direct competition clearly exists on the route as a whole, a separate finding of competition on this segment of the route is not necessary.

Finally, with regard to the examiner's proposed finding number 4, we find, as above stated, that an operating subsidy to applicant on Trade Route No. 3 is required to meet foreign-flag competition.

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# FEDERAL MARITIME BOARD

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No. S-24

## NEW YORK AND CUBA MAIL STEAMSHIP COMPANY—APPLICATION FOR RESUMPTION OF OPERATING-DIFFERENTIAL SUBSIDY ON TRADE ROUTE NO. 3

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Between 1947 and 1950 applicant encountered direct competition, although not substantial, from foreign-flag lines operating between U. S. North Atlantic ports and Mexico; substantial direct competition from such lines between eastern Canadian ports and Mexico; substantial direct competition from such lines between New Orleans and Mexico; and substantial competition from such lines (1) direct between foreign countries and Mexico and (2) by transshipment via New Orleans.

There is insufficient evidence upon which to make a finding as to whether applicant encountered competition from foreign-flag lines, from 1947 to 1950, on its Cuba service operated as a segment of its over-all Mexico service.

Competition encountered by applicant from foreign-flag lines on its strict Cuba service is not within the scope of the proceeding.

An operating subsidy to applicant on Trade Route No. 3 is necessary to meet competition from foreign-flag vessels.

*William Radner and Odell Kominers* for applicant.

*Samuel H. Moerman* for The Port of New York Authority, intervener.

*Joseph A. Klausner and George F. Galland* for the Board.

### DECISION RECOMMENDED BY C. W. ROBINSON, EXAMINER

This proceeding involves the application of New York and Cuba Mail Steamship Company, hereinafter referred to as applicant, for the resumption of payment of operating-differential subsidy for its vessels on Trade Route No. 3 (between United States Atlantic ports and the East coast of Mexico, with privilege of calling at Havana and other Cuban ports), as described in the United States Maritime Commission's report of Essential Foreign Trade Routes of the American Merchant Marine, issued May 1949. Notice of the hearing was published in the Federal Register of May 18, 1951, and hearing was held on May 31 and

June 1, 1951. The Port of New York Authority intervened on behalf of applicant.

As announced in the notice of hearing, the purpose of the hearing was "to receive evidence relevant to the following determinations which the Board is required, after hearing, to make pursuant to the provisions of section 602 of the Merchant Marine Act, 1936, as amended;<sup>1</sup> (1) whether, and to what extent, the operations of New York and Cuba Mail Steamship Company on Trade Route No. 3 were subject to foreign-flag competition between January 1, 1947, and the present date, or any part of that period; (2) whether such competition, if any, was (a) direct foreign-flag competition, or (b) competition other than direct foreign-flag competition, within the meaning of section 602; and (3) whether an operating subsidy to New York and Cuba Mail Steamship Company on Trade Route No. 3 is necessary to meet competition of foreign-flag vessels." At the hearing, counsel for the Board raised the question whether competition encountered by applicant on the Cuba leg of its Mexico operation was involved inasmuch as the description of the freight service for Trade Route No. 3 in the Maritime Commission's report issued May 1949 does not refer to calls at Cuban ports. In view of the terms of the notice of hearing, however, the examiner ruled that the Cuba phase was in issue.

Applicant and its predecessors have been in the Mexico trade for over 70 years and in the Cuba trade for over 100 years, operating on Route No. 3 as a subsidized line since 1937. Four vessels are employed on the route, three owned C-1B's and one C1-M-AV1 chartered from an affiliate. Although New York has been the traditional terminal port in the United States, Baltimore, Md., was added in the latter part of 1949, at which time there was no foreign-flag competition at that port. Applicant's sailings from both New York and Baltimore call at Havana, the terminal ports in Mexico being Tampico and Vera Cruz. A separate service is operated between New York and Havana only. Southbound, Mexican traffic handled by applicant consists principally of iron and steel products, chemicals, building materials, industrial raw materials, and manufactured goods generally; northbound, coffee, ixtle fiber, canned pineapple, and lead and other minerals. There has been no major shift in the nature of the traffic since 1948.

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<sup>1</sup> Quoted hereinafter.

Applicant contends that it competes with foreign-flag lines operating (1) between United States North Atlantic ports and Mexico, (2) between eastern Canadian ports and Mexico, (3) between New Orleans, La., and Mexico, (4) between foreign ports and Mexico, direct, or by transshipment at New Orleans, and (5) between United States North Atlantic ports and Havana.

*United States North Atlantic competition.*—Since 1947 applicant has encountered competition from the following foreign-flag lines out of New York, Baltimore, Boston, Mass., and Philadelphia and Chester, Pa.: Federal Commerce and Navigation Company, Ltd. (Canada-Mexico Line), from 1947 to 1950; Clipper Line, commencing in 1949; and Smith and Johnson (Mexican Line), commencing in 1950. Smith and Johnson does not call regularly at Baltimore.

Table 1 shows the number of tons of cargo handled by applicant and the foreign-flag lines from United States North Atlantic ports to Mexico between 1947 and 1950, with the percentages of the totals for each.<sup>2</sup>

TABLE 1

	1947	1948	1949	1950	Total
N. Y. & C. M.:					
Tons.....	148,600	102,080	114,653	132,623	497,936
Percentage.....	99.8	98.03	96.47	89.64	95.31
Foreign lines:					
Tons.....	591	2,049	4,200	15,329	24,487
Percentage.....	0.4	1.97	3.53	10.56	4.69
Total.....	149,191	104,109	118,853	147,952	522,423

Although no figures were given, applicant's witness testified that his records indicate a downward trend for applicant in 1951 over 1950 in the percentage of the total movement from United States North Atlantic ports to Mexico. In 1950 a considerable amount of cargo was diverted by applicant to Baltimore from New York after service was started from the former place late in 1949. The 1950 figures are said to reflect panic buying in Mexico resulting from the war in Korea, but this business is on the downward trend at the moment. The unused space in applicant's vessels, southbound, was 2.16 percent in 1947, 39.54 percent in 1948, 54.4 percent in 1949, and 28.3 percent in 1950. Since it appears that cargo in the trade runs preponderantly to measurement, weight seldom is determinative. Based on experience, applicant's witness is of the opinion that the over-all unused space picture for 1951 will be about the same as for 1950.

<sup>2</sup> Statistics in Mexico are based on the metric ton, measuring 2,204.6 pounds.

The sailings of the foreign-flag lines from United States North Atlantic ports totaled one in 1947, seven in 1948, 14 in 1949, and 47 in 1950. It is believed by applicant's witness that there will be a greater number of sailings by those lines in 1951. The foreign-flag sailings aggregated 2.7 percent of applicant's sailings in 1947, 16.7 percent in 1948, 25 percent in 1949, and 47 percent in 1950. The participation of the foreign-flag lines in the traffic, in relation to participation in the number of sailings, was less than 1 percent in 1947, less than 2 percent in 1948, less than 5 percent in 1949, and less than 14 percent in 1950. Applicant's witness is of the opinion that no substantial part of the company's business could be retained if its rates were increased; the foreign-flag competition out of the United States North Atlantic ports was sufficient during the period to preclude such move by applicant. The foreign-flag lines have advertised regularly in the New York Journal of Commerce since 1947, have actively solicited cargo, and are represented by well-known American agents. Brokerage has been paid by those lines since their services began, a practice which applicant started in 1949 when some traffic was lost to a competitor.

Table 2 shows the number of tons of cargo handled by applicant and the foreign-flag lines from Mexico to United States North Atlantic ports between 1947 and 1950, with the percentages of the totals for each.

TABLE 2

	1947	1948	1949	1950	Total
N. Y. & C. M.:					
Tons.....	71,460	77,559	81,036	108,866	338,921
Percentage.....	100.0	100.0	94.6	90.7	95.6
Foreign lines:					
Tons.....			4,585	11,189	15,774
Percentage.....			5.4	9.3	4.4
Total.....	71,460	77,559	85,621	120,055	354,695

The improved northbound movement for applicant in 1950 stems from the carriage of lead to Philadelphia, for use in the war effort, but this type of traffic was said to be uncertain for the future. The rate on lead is only \$9 per ton as compared with applicant's average rate of \$21.44 per ton for its entire service, and provides about a 10-cent profit per ton, according to applicant's witness. No figures were given, but it was testified that the northbound unused space on applicant's vessels for the 1947-50 period was considerably greater than that southbound.

*Canadian competition.*—Prior to World War II there was no regular berth service between eastern Canada and Mexico, all Canadian liner cargo being routed to and from Canada via New York on applicant's vessels. It was testified that there are approximately 168 traffic accounts in Canada that are interested in shipping on the route. Direct sailings to and from eastern Canada have been furnished since World War II by the following foreign-flag lines: Federal Commerce and Navigation Company, Ltd. (Canada-Mexico Line), since 1947; Swedish-American Line, since 1948; and Saguenay Terminals, since 1949.

Table 3 shows the number of tons of cargo handled by the foreign-flag lines between eastern Canadian ports and Mexico between 1947 and 1950.

TABLE 3

	1947	1948	1949	1950	Total
Southbound .....	15,458	20,689	25,130	21,639	82,916
Northbound .....	276	1,541	6,903	7,076	15,796
Total.....	15,734	22,230	32,033	28,715	98,712

The southbound traffic is approximately 15 percent of the total Canadian-United States North Atlantic movement and approximately 4 percent of the northbound movement. Applicant's participation in the traffic is estimated to have decreased from 100 percent in 1946 to 20-25 percent in 1950.

According to the witness for The Port of New York Authority, the rail rates to and from points on and west of a line from Chicago, Ill., to Cincinnati, Ohio, are lower to and from Montreal, Canada, than New York, and are equal to Halifax and St. John, Canada. Customarily, Halifax, St. John, and Montreal rates on imports are on the Baltimore level, which is lower than New York. The foreign-flag lines serving eastern Canadian ports have always paid brokerage, sometimes have enjoyed a favorable exchange, and occasionally have sought traffic by rate reductions. Saguenay Terminals has appealed to Canadian shippers to ship via Canadian vessels, and that carrier transports most of the aluminum of its parent, Canadian Aluminum Company. Applicant's participation in the Canadian business, it was testified, has been maintained because of faster and more frequent service via New York, long and favorable standing with important shippers, the desire of some shippers to assist in maintaining competitive services out of New York, and various other competitive

reasons, and it is believed that applicant could compete for the aluminum traffic were it not for the tie-in of the shipper with the parent company. Applicant has tried, as far as possible, to maintain the same rates out of New York on Canadian traffic as those applicable at eastern Canadian ports, and reductions have been made in some instances. In the opinion of applicant's witness, there is no doubt that the Canadian traffic would move through New York if the foreign-flag services out of eastern Canadian ports were discontinued.

*New Orleans competition.*—Foreign-flag operations between New Orleans and Mexico are considered by applicant's witness to be the most important competition that it must meet. The following foreign-flag lines have operated between New Orleans and Mexico at some time since January 1947: Smith & Johnson (Mexican Line), since 1947; Standard Fruit & Steamship Co., discontinued in 1948; Mexican Government services, discontinued in 1947; Noca Line, discontinued in 1948; and Continental Navigation Company, discontinued in 1947. Smith & Johnson, the only line now operating, operates on approximately a fortnightly basis, and since 1947 its sailings have been stepped up to take up part but not all of the slackening off by the other lines, and has the capacity to handle all the Mexico cargo via that port.

Table 4 shows the number of tons of cargo handled by the foreign-flag lines between New Orleans and Mexico from 1947 to 1950.

TABLE 4

	1947	1948	1949	1950	Total
Southbound .....	65,214	32,112	29,923	32,814	160,063
Northbound .....	10,478	15,274	15,402	19,568	60,722
Total.....	75,692	47,386	45,325	52,382	220,785

Transit time between New Orleans and Mexico is three or four days as compared with eight or nine days between New York and Mexico, and the ocean rate from New Orleans, differentially lower over New York since 1949, is at present more than 10 percent lower. A witness for intervener Port of New York Authority testified that New York is keenly competitive on traffic to and from points on and west of a line from Chicago to Cincinnati, and that the rail rates to and from this territory are lower to and from New Orleans than New York. He further testified that competitive ports and railroads serving them fre-

quently carry on extensive promotional work in New York. Applicant's witness testified that the rail-rate differential ordinarily is three cents higher to New York over New Orleans from the midwest area; that from Michigan, part of Ohio, eastern Indiana, and eastern Kentucky it is cheaper to ship via New York, but is more expensive from Chicago, Indianapolis, Ind., Milwaukee, Wis., Evansville, Ind., Cincinnati, and numerous other important points; and that barge facilities at cheaper rates have enabled New Orleans to penetrate into the area normally serviced by New York if rail rates were the sole governing factor. Of approximately 4,500 shippers to Mexico, applicant's witness estimates that nearly 10 percent are located in the general midwest area, and that in spite of the various handicaps encountered, applicant has been able to obtain some of the traffic even from areas that normally are tributary to New Orleans. This has been possible because of a weekly service, some rail-rate advantages, and applicant's historic position in the trade. According to the witness, applicant is considering the reinstatement of equalization practices to draw from New Orleans traffic which originates at competitive points in the midwest where the cost to the port places applicant at a disadvantage.

A shipper witness for applicant, whose company sells iron and steel commodities in Mexico, testified that the company uses both New York and New Orleans; that New Orleans, merely because of its shorter distance from Mexico, does not necessarily get all the business which shippers must deliver by a certain date, frequency of service helping to overcome this factor; and that his company would not ship out of New Orleans unless the producing point were favorably located. This witness is of the opinion that applicant out of North Atlantic ports and the foreign-flag lines out of New Orleans offer direct competition to each other.

As further competition applicant's witness cites (1) traffic which the shipper may move out of a production point tributary to New Orleans or a point tributary to New York, as he prefers, and (2) traffic generally handled by exporters dependent upon New York in competition with exporters who are dependent upon New Orleans for their water service. A list of 14 major shippers was cited as being able to ship from either New York or New Orleans, and that the volume of their business would account for 10,000-12,000 tons annually. Some Louisiana cargo naturally moves out of New Orleans, but applicant has no records of the

amount which is indigenous to New Orleans and environs as distinguished from that which comes from other origins.

Competition is said to exist in the import trade also, and importers have advised applicant's witness that lower rates have been a major factor in influencing a large part of the business via New Orleans. A substantial part of the imports are destined to interior points.

In reply to the suggestion that applicant possibly might consider having its vessels call at New Orleans, applicant's witness stated that such a move would be out of the question because of the added time in transit and the days in New Orleans. Furthermore, any such delays would have a tendency to encourage shippers to route their cargo via foreign-flag direct lines.

*Transshipment competition.*—In addition to its other traffic, applicant handles business which originates in or is destined to foreign countries and transshipped at New York to or from Mexico. It is contended that on this traffic applicant competes (1) with the services of foreign-flag lines operating direct between foreign countries and Mexico, and (2) with foreign-flag lines serving New Orleans who influence transshipment at that port rather than at New York. Applicant has a general European agent as well as sub-agents in 50 cities in Europe and the Mediterranean area, and advertising is done in those areas to obtain cargo for Mexico. The cargo thus secured moves on applicant's through bills of lading. Most of the transshipment cargo originates in or is destined to Europe or the Mediterranean area, although some of it is from or to South America, the Caribbean area, and the Far East.

The total transshipment traffic handled by applicant amounted to 6.6 percent of its total revenue in 1947 and 17.68 percent in 1950; in 1938, a representative prewar year, the percentage was 28 percent. Southbound, the percentage relationship of applicant's transshipped cargo and total cargo was 6.22 percent in 1947; 11.09 in 1948; 11.46 in 1949; and 16.41 in 1950. Northbound, the percentages were 7.97, 19.22, 24.90, and 20.09, respectively. Applicant considers transshipment cargo very desirable, and it is believed that the volume will increase with the years. It was estimated that if applicant obtained all the transshipment business it would amount to an additional 19,000 tons annually, which, at \$22 per ton, the approximate average rate for all commodities carried by applicant, would represent over



\$400,000 additional revenue, or about 12 percent of applicant's gross revenue.

(a) Table 5 shows the number of tons of foreign cargo handled by applicant in the Mexico service, with transshipment at New York, as well as cargo handled by direct foreign-flag lines to and from Mexico for the years 1947-50, with the percentages for each method of routing. The amounts and the percentages would differ to a small extent if only European cargo be considered.

TABLE 5

	To Mexico—					From Mexico—				
	1947	1948	1949	1950	Total	1947	1948	1949	1950	Total
N. Y. & C. M.:										
Tons.....	4,852	9,368	12,030	16,729	42,979	2,580	6,000	9,853	9,234	27,776
Percentage..	6.6	14.4	17.6	9.6	11.1	2.7	7.5	14.9	22.4	9.8
Foreign lines:										
Tons.....	68,716	55,488	56,192	157,116	337,512	91,372	73,767	56,068	32,055	253,262
Percentage..	93.4	85.6	82.4	90.4	88.9	97.3	92.5	85.1	77.6	90.2
Total....	73,568	64,856	68,222	173,845	380,491	93,952	79,767	65,921	41,289	280,929

In 1947 there were five foreign-flag lines operating between Europe and Mexico, whereas at the present time there are 12.

The shipper witness already referred to, whose company deals in iron and steel commodities to Mexico, testified that shortages brought about in this country because of the war in Korea have forced his company to place some of its orders in Europe, some moving direct to Mexico and some via transshipment at New York. The witness believes that speed is a very important factor in some cases in determining the route, and where the freight rate is lower the shipment usually moves from Europe to Mexico direct. Unless the European shipment is sold c. & f. (cost and freight) or c. i. f. (cost, insurance, freight), the shipper or the ultimate consignee decides the routing. European suppliers are said to advertise extensively in Mexico and try to sell c. i. f.

In its transshipment business applicant concentrates on higher-rated commodities inasmuch as the low-rated items do not supply applicant with sufficient revenue when split with the participating carriers. It is estimated by applicant's witness that solicitation is directed to substantially less than one-third of the total Europe-Mexico business, and is based on a greater frequency of service and a shorter time in transit. Applicant's rates from New York to Mexico are higher on local than on transshipment cargo.

(b) Table 6 shows the number of tons of cargo transshipped

at New York and New Orleans to and from East coast of Mexico ports between 1948 and 1950.

TABLE 6

	Southbound				Northbound			
	1948	1949	1950	Total	1948	1949	1950	Total
New York.....	16,121	18,017	23,013	57,151	7,361	11,137	13,618	32,116
New Orleans.....	9,270	7,041	9,396	25,707	12,678	10,765	16,492	39,926
Total.....	25,391	25,058	32,409	82,858	20,039	21,902	30,110	72,042

Applicant's witness is of the opinion that practically all of the transshipment cargo could move by either New York or New Orleans. There is more frequent transshipment service from Europe to New Orleans than direct service from Europe to Mexico. New York and New Orleans compete on Far East rubber transshipped to Mexico, this commodity accounting for about 9 percent of Smith and Johnson's New Orleans business in 1950. It was testified that Smith and Johnson do not obtain much transshipment cargo at New York as they are not members of the particular conference covering the trade, but that their application for membership in the conference is now pending.

*United States North Atlantic/Mexico and Europe/Mexico competition.*—Although Board counsel is not fully satisfied with the evidence, it seems reasonably clear that the same general run of commodities move from United States North Atlantic ports to Mexico as from Europe to Mexico, and that United States exporters are in direct competition with European suppliers for the business. The shipper witness heretofore referred to testified that his company is in keen competition with European exporters and that the company has lost some business to them although he has no way of knowing the amount. Low-rated commodities from Europe, moving direct to Mexico, are said to be depressed in order to permit competition, and low rates have been established by the direct lines on a number of basic commodities; in most instances, these low rates are about the same as or slightly lower than those of applicant, notwithstanding the latter's shorter haul. Applicant has received requests at various times from United States exporters for lower competitive rates, and representative letters to that effect were made part of the record. Most shippers using the direct lines from Europe ship under exclusive patronage arrangements whereby they receive rebates from the lines.

Table 7 shows (1) the number of tons of United States cargo handled by applicant to Mexico and (2) the number of tons carried by foreign-flag lines from Europe to Mexico direct, between 1947 and 1950; also the percentage of the total movement in each case.

TABLE 7

	1947	1948	1949	1950	Total
N. Y. & C. M.:					
Tons.....	138,606	85,792	94,247	108,681	427,326
Percentage.....	69.2	63.8	63.5	41.3	57.2
Direct lines:					
Tons.....	61,663	48,730	54,246	154,479	319,118
Percentage.....	30.8	36.2	36.5	58.7	42.8
Total.....	200,269	134,522	148,493	263,160	746,444

The tons allocated to applicant in table 7 are approximate only, calculated as follows: from the total number of tons carried by applicant is subtracted (1) the number of tons handled by applicant by transshipment from foreign countries other than Canada, and (2) the approximate number of tons of Canadian cargo handled by applicant. It should be stated that applicant's transshipment figures are not separated in such manner as to show the volume from Europe as distinguished from the volume from other areas.

*Cuba competition.*—Table 8 shows the number of tons of cargo handled by applicant between United States North Atlantic ports and Havana as a part of the over-all Mexico service from 1947 to 1950.

TABLE 8

	1947	1948	1949	1950	Total
To Havana.....	-----	10,136	4,870	21,124	36,130
From Havana.....	14,679	28,956	17,719	15,528	76,882
Total.....	14,679	39,092	22,589	36,652	113,012

The record contains no evidence as to the competition, if any, offered by foreign-flag lines between United States North Atlantic ports and Havana as a segment of the Mexico service.

Table 9 shows the number of tons of cargo handled by applicant, other United States-flag lines, and foreign-flag lines, with percentages of the total for each group, from United States North Atlantic ports to Havana, with Havana as the terminal port, during the years 1947-50.

TABLE 9

	1947	1948	1949	1950	Total
N. Y. & C. M.:					
Tons.....	192,658	142,976	81,701	109,280	526,615
Percentage.....	40.3	34.4	22.0	25.6	31.1
Other American lines:					
Tons.....	139,468	126,229	92,346	79,035	437,078
Percentage.....	29.2	30.3	24.8	18.4	25.8
Foreign lines:					
Tons.....	145,553	146,641	197,618	239,369	729,181
Percentage.....	30.5	35.3	53.2	56.0	43.1
Total.....	477,679	415,846	371,665	427,684	1,692,874

The record is devoid, however, of concrete evidence as to the amount of cargo carried by applicant and foreign-flag lines from Havana to United States North Atlantic ports, with Havana as the terminal port, although applicant's witness testified that the foreign-flag participation was to a lesser extent than southbound.

*Applicant's financial position.*—As already observed, the notice of hearing calls for evidence on "whether an operating subsidy to New York and Cuba Mail Steamship Company on Trade Route No. 3 is necessary to meet competition of foreign-flag vessels," but it is questionable whether this would entail consideration of applicant's financial position; rather, it would seem to mean that inquiry should be made as to whether the foreign-flag competition is sufficiently substantial to justify a subsidy. Be that as it may, evidence relating to applicant's financial position was received in aid of the Board's determination of the application.

The chairman of applicant's executive committee testified that operating results for the past 4 years do not justify continuation without a subsidy; that the company would not have operated for the past 2 years had it known that there would be no subsidy; and that the company will not operate in the future without one. The witness further testified that as of December 31, 1950, applicant's book value for the years 1947-50, without subsidy, was approximately \$17,000,000; that if subsidy is paid for that period the book value, net after taxes, would be a trifle over \$19,000,000; and that as about half of the assets of the company are employed in the Mexico service, the invested capital in that service is about \$9,500,000 with subsidy and \$8,500,000 without subsidy.

Table 10 shows the voyage results for applicant's vessels in the Mexico service, with calls at Havana, for the years 1947-50.

Based upon table 10, applicant's average annual income for the years 1947-50, after subsidy and before income tax, was

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TABLE 10

	1947	1948	1949	1950	Total
Before subsidy.....	\$357,388.96	\$133,214.94	\$65,742.80	<sup>1</sup> \$53,288.78	\$503,057.92
Estimated subsidy.....	459,144.15	490,834.52	535,144.26	774,750.28	2,259,873.21
After subsidy and before income tax.....	816,533.11	624,049.46	600,887.06	721,461.50	2,762,931.13

<sup>1</sup> Loss.

approximately \$690,000. Subtracting the arbitrary tax figure of 45 percent, the average annual net income would be approximately \$370,000. If it be assumed that a fair net return after income taxes would be 10 percent on the capital necessarily employed, the annual income of \$370,000 would represent a maximum of \$3,700,000 in capital necessarily employed. As indicated, however, applicant's witness estimated that the invested capital in the Mexico service would approximate \$9,500,000 with subsidy and \$8,500,000 without subsidy. On the foregoing assumptions, the annual net income of \$370,000 would be considerably below a fair return on the capital necessarily employed.

Applicant's witness was of the opinion that the substantial inroads of the foreign-flag lines in the trade would continue, and he doubted whether, in the future, the net income before subsidy can be anticipated as any higher than at present, and would be pleased if it did not go lower.

#### CONCLUSIONS

Section 602 of the Merchant Marine Act, 1936, as amended, hereafter referred to as the Act, upon which this proceeding is predicated, provides as follows:

No contract for an operating-differential subsidy shall be made by the Commission for the operation of a vessel or vessels to meet foreign competition, except direct foreign-flag competition, until and unless the Commission, after a full and complete investigation and hearing, shall determine that an operating subsidy is necessary to meet competition of foreign-flag ships.

Applicant concedes for present purposes that the foreign-flag competition must be substantial to justify an operating subsidy. For all practical purposes it is immaterial whether the competition be direct or so-called "indirect," for the existence of either in substantial degree satisfies the requirements of section 602, the only mandate being a complete investigation and hearing if the operator relies upon indirect competition.

*United States North Atlantic competition.*—As appears from table 1, applicant handled 95 percent of all southbound traffic

from United States North Atlantic ports to Mexico between 1947 and 1950. Northbound, according to table 2, applicant also is the predominant carrier, accounting for 95 percent of all cargo in that period. It can hardly be said that the 5-percent share of the foreign-flag lines in each direction, standing alone, would justify a subsidy, and applicant so agrees.

*Canadian competition.*—Commencing in 1947, service from eastern Canadian ports to Mexico has been furnished by three foreign-flag lines. From table 3 it appears that 82,916 tons of cargo were carried southbound by those lines between 1947 and 1950, representing about 15 percent of the total Canadian-United States North Atlantic southbound movement. It cannot be doubted that this is substantial competition, particularly when it is remembered that prior to World War II no cargo between eastern Canada and Mexico moved other than on applicant's vessels via New York. Northbound, a total of 15,796 tons moved by foreign-flag lines in the same period, or approximately 4 percent of the total Canadian-United States North Atlantic northbound movement. It admits of little doubt that the Canadian competition must be included in a proceeding based on section 602 of the Act.

*New Orleans competition.*—Table 4 shows that a total of 160,063 tons of cargo southbound and 60,722 tons northbound moved on foreign-flag vessels between New Orleans and Mexico from 1947 to 1950. This approximates 32 percent of applicant's southbound carryings and 17 percent of its northbound carryings from and to United States North Atlantic ports in the same period. Although it is impossible to ascertain with any degree of exactness what part of the total movement to and from New Orleans could have used applicant's North Atlantic service as well, the rail and barge rates are such that it is fairly inferable, considering the type of cargo involved, that a substantial part of the cargo using New Orleans could have used North Atlantic ports. This is especially true of the southbound traffic.

Counsel for the Board raises the question whether the natural advantages of New Orleans over New York in the Mexico trade—such as shorter time in transit and lower rates, rail as well as water—can be offset by a subsidy under the Act. In other words, is New York, within the purview of the Act, fairly competitive with New Orleans under the circumstances here developed? The legislative history of the Act affords no insight into the problem, but it would seem, from an over-all perspective,

that the Act is interested solely in competition and not what brings it about. The bald and inescapable fact is that New York and New Orleans (and hence applicant and the foreign-flag lines serving New Orleans) are in actual and intensive competition for Mexican traffic to and from many points in a large part of the mid-west area of the United States. This conclusion, however, should not be considered to include that part of the traffic which originates at or near New Orleans, for it is clear that on such traffic the shipper does not have a real choice of routes. As already noted, there is no evidence of record that would throw light on how much of the cargo out of New Orleans originates at or near that port, but again it is fairly inferable, under all the circumstances hereinbefore discussed, that it is a small volume.

*Transshipment competition.*—From table 5 it is clear that applicant, by transshipment, handled only a small portion of the total cargo moving between foreign countries and Mexico, approximating 11 percent to Mexico and 9 percent from Mexico during the four relevant years; the remainder moved via direct foreign-flag lines. As between transshipment cargo at New York and at New Orleans, table 6 shows that, southbound, applicant handled slightly more than twice as much cargo at New York as the foreign-flag lines did at New Orleans between 1948 and 1950, but that on northbound traffic during the same period the foreign-flag lines handled slightly more at New Orleans than applicant did at New York. Applicant thus encountered substantial competition from the direct lines serving the foreign countries as well as from foreign-flag lines transshipping at New Orleans. The only question, therefore, is whether the competition comes within the fair intendment of the Act. It seems fairly reasonable to conclude that applicant's transshipment business is foreign commerce of the United States, there being no logical reason to believe that traffic must originate in or be destined to the United States in order to make it foreign commerce of the United States. The term "foreign commerce" has broad significance; it cannot be confined to the cargo itself but necessarily must include the instrumentalities of transportation. See the general principles announced in *Carter v. Carter Coal Co.*, 298 U. S. 238, 298.

*United States North Atlantic/Mexico and Europe/Mexico competition.*—Table 7 demonstrates that during 1947, 1948, and 1949 applicant handled approximately two-thirds of the combined traffic moving direct from United States North Atlantic ports

to Mexico and direct from Europe to Mexico, but in 1950 the trend was reversed, applicant handling about 41 percent in that year. For the four years applicant handled about 57 percent. Competition has been spirited and substantial.

Doubt is raised by Board counsel as to the legal relevancy of the competition here being discussed. The legislative history of section 602 of the Act was presented *in extenso* by applicant's counsel, and from its mutations until finally enacted it is reasonably arguable that section 602 is broad enough to encompass the so-called "triangular competition" of the foreign-flag lines operating between Europe and Mexico direct. In the final analysis, to grant a subsidy for this type of competition is to stimulate exports from the United States as against those from Europe, which, if successful, must necessarily stimulate the American merchant marine, one of the avowed purposes of the Act. Prior to World War II the United States Maritime Commission, the Board's predecessor, granted a subsidy to Oceanic Steamship Company under circumstances similar to those here involved. Oceanic operated between California and Australia in competition with Canadian-Australasian Line operating between British Columbia, Canada, and Australia.

*Cuba competition.*—A certain hiatus exists in the record as to the Cuba portion of applicant's service. Although applicant's carryings to and from Havana as a part of its over-all Mexico service are set forth in table 8, there has been no showing of the competition, if any, encountered from foreign-flag lines in either direction. Furthermore, while table 9 graphically shows applicant's carryings as well as those of its foreign-flag competitors from United States North Atlantic ports to Cuba, where Havana is the terminal port, there are no statistics on applicant's northbound carryings on the same service or those of its foreign-flag competitors. It is impossible, therefore, to make a satisfactory finding as to foreign-flag competition on the Cuba segment of applicant's Mexico service. Nor can consideration be given to the competition encountered on applicant's strict Havana service because that service is not within the ambit of Trade Route No. 3 or within the scope of the present proceeding. Cuba traffic is relevant when and only when it forms part and parcel of the over-all Mexico traffic.

#### RECOMMENDATIONS

The Board should find:

1. That between 1947 and 1950 applicant encountered direct  
3 F. M. B.



competition, although not substantial, from foreign-flag lines operating between United States North Atlantic ports and Mexico; substantial direct competition from such lines between eastern Canadian ports and Mexico; substantial direct competition from such lines between New Orleans and Mexico; and substantial competition from such lines (1) direct between foreign countries and Mexico and (2) by transshipment via New Orleans;

2. That there is insufficient evidence upon which to make a finding as to whether applicant encountered competition from foreign-flag lines, from 1947 to 1950, on its Cuba service operated as a segment of its over-all Mexico service;

3. That competition encountered by applicant from foreign-flag lines on its strict Cuba service is not within the scope of the proceeding; and

4. That an operating subsidy to applicant on Trade Route No. 3 is necessary to meet competition from foreign-flag vessels.

3 F. M. B.

# FEDERAL MARITIME BOARD

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No. 710

GOVERNMENT OF THE VIRGIN ISLANDS

*v.*

LEEWARD AND WINDWARD ISLANDS AND GUIANAS CONFERENCE

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*Submitted August 8, 1951. Decided August 10, 1951*

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In considering a motion to its jurisdiction the Board is limited to the pleadings properly before it and cannot consider affidavits or statements of additional facts.

In the absence of all the facts, the Board cannot determine its jurisdiction over respondent's contract rates on a motion prior to the hearing. Motion denied without prejudice to the right of respondent to interpose objections at the hearing to the relevancy of any evidence pertaining to respondent's northbound operations, and without prejudice to the right of respondent to renew its motion before the Board on exceptions to the examiner's recommendations.

Case remanded to the examiner for further proceedings not inconsistent with this report.

*Irwin W. Silverman* for complainant.

*Parker McCollester* for respondent.

*Joseph L. Fitzmaurice* for Director of Price Stabilization, and  
*Joseph A. Klausner* for the Board, interveners.

## REPORT ON MOTION TO BOARD'S JURISDICTION

BY THE BOARD:

The complaint in this case, filed April 4, 1951, by the Government of the Virgin Islands against the Leeward and Windward Islands and Guianas Conference, alleges that the respondent conference is an association of common carriers by water and as such is subject to the provisions of the Shipping Act, 1916, as amended, and that on January 19, 1951, it filed with the Board Southbound Freight Tariff VS-4, increasing southbound rates to the Virgin Islands about 15 percent. The complaint also alleges that the proposed rates are unjust and unreasonable, in violation of section 18 of the Act, and, in paragraph 11, alleges that the

principal conference member serving the Virgin Islands is a common carrier outbound from the United States and a contract carrier returning to the United States; that by seeking to increase its common-carrier rates southbound, it aims to have the common carrier trade absorb costs which otherwise would be absorbed in its contract rates; that this is especially unfair because the carrier referred to is a wholly-owned subsidiary of a company for which bauxite, the bulk of its contract cargo, is carried; and that while "wages and prices have been going up, the contract rate for bauxite has actually been reduced." The prayer for relief asks that the Board find that the proposed increased southbound rates are unreasonable, investigate to determine whether the southbound rates are disproportionately high because the northbound rates are disproportionately low, issue a minimum rate order for bauxite and other contract commodities carried north by the conference members, and grant other miscellaneous relief.

The answer denied that the sole-named respondent, the Leeward and Windward Islands and Guianas Conference, is a common carrier or other person subject to the Shipping Act, 1916, as amended, and avers that Alcoa Steamship Company, Inc., and Furness Withy and Co., Ltd., two members of the conference, are common carriers subject to the Act, engaged in business between ports of the United States and the Virgin Islands. Respondent, by its answer, offers to have a general appearance entered for the two common carriers mentioned, and to agree that the proceeding may be deemed to be against the carriers as well as against the conference, and, if such offer is not accepted, respondent moves for dismissal of the complaint. The record now shows that respondent's offer has been accepted by complainant and no action is therefore needed on the first motion.

Respondent's answer, filed on its own behalf and on behalf of the carriers, alleges that certain matters included in the complaint and in the relief asked for are not within the Board's jurisdiction. With its answer it filed a second motion for an order of the Board to specify and define the issues properly before the Board for determination and to limit the evidence to such issues. After pretrial conference, held pursuant to section 201.59 of the Board's rules, the case was referred to the Board for oral argument on the question of jurisdiction over the carriers' contract rates northbound, referred to in paragraph 11 of the complaint. It is there alleged, as already noted, that the principal carrier

serving the Virgin Islands is a common carrier outbound from United States ports and a contract carrier returning to United States ports. Although not expressly so stated, the reasonable inference from the foregoing allegation is that the return voyage to United States ports is from the Virgin Islands.

At the hearing held before the Board on August 8, prior to argument, counsel for respondent offered an affidavit of Robert D. Weeks, vice president of Alcoa Steamship Company, Inc., covering the operations of that company, and, during the course of the argument, respondent's counsel averred that that carrier's northbound contract traffic moved not from the Virgin Islands but from foreign ports.

The Board, in considering respondent's motion, is limited to the record on the pleadings properly before the Board, and cannot consider affidavits or statements of additional facts.

Respondent, in support of its motion, argues that the Board has no jurisdiction to fix minimum rates for the carrier's northbound contract business (1) because, on the statement of counsel, the carrier, so far as its northbound business is concerned, is engaged in foreign commerce and not subject to rate regulation by the Board, (2) because in such business the carrier is a contract carrier and not subject to regulation by the Board under the Shipping Act, 1916, and (3) because the Board in any event lacks authority to prescribe minimum rates in foreign trade.

As already noted, there are not sufficient facts before us to permit of a determination as to whether respondent Alcoa in respect to its north-bound operation is engaged in foreign trade, domestic trade, or both, and whether such operation is as a contract or common carrier, or both. On the question of the Board's jurisdiction over respondent's northbound contract rates, while there is some doubt as to the Board's jurisdiction over contract rates as such, nevertheless it is our view that, where a common carrier operates also as a contract carrier on the same voyage or in the same traffic, the Board can inquire into such contract rates for the purpose of determining whether they create prejudicial or discriminatory impacts on the common carrier operations. See *Puerto Rican Rates*, 2 U. S. M. C. 117, 126, and *Agreements 6210 etc.*, 2 U. S. M. C. 166, 170. The Board must have all the available evidence in the matter and is entitled to know whether the characteristics of respondent's northbound service are such as to bring it within the commonly accepted definition of common carriage and the effect it might have upon respondent-

ent's southbound common carrier operations. The proper and orderly way to obtain the necessary evidence in matters such as are here before us is by open hearing before an examiner. The examiner is well qualified to pass upon all questions of evidence and we see no reason to limit or restrict his conduct of this case.

Respondent's second motion is denied, without prejudice to the right of respondent to interpose objections at the hearing to the relevancy of any evidence pertaining to respondent's northbound operations, and without prejudice to the right of respondent to renew its motion before the Board on exceptions to the examiner's recommendations. The matter will be remanded to the examiner for further proceedings not inconsistent with this report.

The Chairman, being absent, took no part in this report.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., on the 10th day of August A.D. 1951

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No. 710

GOVERNMENT OF THE VIRGIN ISLANDS

v.

LEEWARD AND WINDWARD ISLANDS AND GUIANAS CONFERENCE

Respondent Alcoa Steamship Company, Inc., having filed a motion to the Board's jurisdiction over said respondent's contract rates referred to in paragraph 11 of the complaint herein, and the motion having come on for oral argument before the Board, and the Board, on the date hereof, having made and entered of record a preliminary report containing its conclusions and decision as respects jurisdiction in the matter, which report is hereby referred to and made a part hereof:

*It is ordered,* That respondent's motion to the jurisdiction of the Board over respondent's contract rates herein be, and it is hereby denied, without prejudice to the right of respondent to interpose objections at the hearing to the relevancy of any evidence pertaining to respondent's northbound operations, and without prejudice to the right of respondent to renew its motion before the Board on exceptions to the examiner's recommendations;

*It is further ordered,* That the case be, and it is hereby, referred to the examiner for hearing and recommendations not inconsistent with this order.

By the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-48

AMERICAN EXPORT LINES, INC.—APPLICATION FOR BAREBOAT CHARTER OF TWO GOVERNMENT-OWNED, VICTORY-TYPE, WAR-BUILT, DRY-CARGO VESSELS FOR EMPLOYMENT IN THE SERVICE BETWEEN UNITED STATES NORTH ATLANTIC PORTS AND PORTS IN THE MEDITERRANEAN (TRADE ROUTE NO. 10)

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### REPORT OF THE BOARD

This proceeding was instituted pursuant to Public Law 591, 81st Congress, upon the application of American Export Lines, Inc., for the bareboat charter for an indefinite period of two Victory-type, Government-owned, war-built, dry-cargo vessels for employment in its berth service between United States North Atlantic ports and ports in the Mediterranean.

Hearing on the application was held before an examiner on January 16 and January 21, 1952, pursuant to notice in the Federal Register of January 10, 1952. Because of the urgency of the matter, the usual 15 days' notice was not given. There was no objection to the application. The examiner's recommended decision was served on January 28, 1952, in which he recommended that the Board should make the statutory findings. No exceptions were filed to the examiner's recommended decision.

Applicant's witness stated at the hearing before the examiner that the present application is intended to cover only Lines A, B, and C of Trade Route No. 10, as described in applicant's operating-differential subsidy agreement with the Board. Line A is applicant's North African service, serving primarily ports in North Africa from Casablanca to the western boundary of Egypt; Line B is applicant's Italian service, serving primarily ports on the West coast of Italy, on the Mediterranean coast of France, and Adriatic ports; Line C is applicant's eastern Mediterranean service, serving primarily ports from the northern entrance of the Suez Canal to and including Greece. Although applicant's operating-differential subsidy agreement gives it the privilege of using vessels interchangeably over Lines A, B, C,

and D, applicant's witness states that the company does not intend to use either of the vessels herein applied for on its Line D service.

Under its operating-differential subsidy agreement applicant also has the privilege of calling at Portugal, Spanish Atlantic ports south of Portugal, and ports in the Black Sea. We consider that the reference in the notice of hearing "to ports in the Mediterranean" is not sufficiently broad to cover these latter ports. See *Application of Prudential Steamship Corporation*, Docket No. M-34, 3 F.M.B. 627. Substantially all of applicant's evidence was directed toward a showing of inadequacy between United States North Atlantic ports and ports in the Mediterranean, and we consider that the application must be so limited.

We have no difficulty in finding that the services under consideration are in the public interest. See *Application of American Export Lines, Inc.*, Docket No. M-19, 3 F.M.B. 661, and *Application of Prudential Steamship Corporation*, Docket No. M-45, 3 F.M.B. 700.

Applicant's witness testified that the company has been operating on Trade Route No. 10 since 1925. Applicant presently maintains its service on Lines A, B, and C with 4 owned C-3 type vessels (which are unsubsidized), 12 owned C-2, C-3, and Victory-type vessels (which are subsidized), and 1 Victory-type vessel chartered to applicant pursuant to our findings in Docket No. M-19, *supra*.

The cargo movement over these services is predominantly outbound, and applicant bases its present application entirely on the outbound movement. Applicant admits that there is no inadequacy of service in so far as the inbound movement is concerned. Applicant's witness testified that this is primarily a cubic trade, and that applicant's outbound vessels have been sailing substantially full for the past year. Applicant's exhibit discloses that, for a total of 46 sailings in the first half of 1951, there was an average of 6 percent of measurement capacity unused on each vessel; for 52 sailings in the second half of 1951, there was an average of 16 percent of measurement capacity unused for each vessel. The somewhat lower percentage of vessel utilization for the last 6 months of 1951 was said to be due to the maritime strikes on the East coast of the United States during the months of June and November 1951.

Applicant's witness testified that outbound cargo offerings increased substantially in December 1951, compelling the company



to refuse considerable quantities of commercial and Government-controlled cargo, destined primarily to the Mediterranean area, because of lack of space. Applicant's witness testified that between December 1, 1951, and January 15, 1952, the company has declined 80,500 deadweight tons, including 12,000 deadweight tons of Government-controlled cargo, destined for ports on Lines A, B, and C. The witness testified that 50 percent of the declined cargo ultimately moved on foreign-flag vessels. Applicant's witness testified that the November longshoremen's strike did not contribute substantially to the present heavy volume of cargo offerings, and that such offerings promise to continue at their present volume for some time.

Counsel for the Board points out that "The inadequacy of service contemplated by the statute is inadequacy of all American-flag operations in the service, not merely the inadequacy of the service of a particular applicant or line." *Application of American President Lines, Ltd.*, Docket No. M-20. 3 F.M.B. 646. We believe that applicant has sustained its burden of proving inadequacy of all American-flag operation in this service. The evidence is undisputed that cargo offerings for Mediterranean ports on applicant's services at the time of the hearing far exceeded available space on American-flag vessels.

Applicant's witness testified that the company needs two fast Victory or other suitable type vessels, comparable with its owned fleet, operating at 16 knots, to satisfy traffic requirements of the trade. The witness also testified that the total amount of cargo being currently declined for lack of vessel space is more than enough to fill two Victory-type vessels. It appears from the evidence that no privately owned American-flag vessels suitable for operation in these services are available for charter upon reasonable conditions at reasonable rates.

Upon questioning of counsel for the Board, applicant's witness admitted that the *Elmira Victory*, chartered to applicant pursuant to our findings in Docket No. M-19, has been employed exclusively on the East coast of Italy segment of applicant's Line B service, which has proven to be the most unprofitable part of applicant's Trade Route No. 10 operations. Applicant explains that the greater profit resulting from the operation of its owned vessels is partly due to the fact that charter hire on chartered vessels is greater than the depreciation on owned vessels. The witness stated that if this application is granted, the two vessels will be integrated with applicant's entire Mediterranean opera-

tion on Lines A, B, and C, and will take their turn with the company's owned ships on each service. This is a matter which can be administratively controlled.

Applicant has expressed its willingness to operate any vessel chartered pursuant to this proceeding without subsidy and to incorporate any profits therefrom in its subsidized operation account.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced in the record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the services under consideration are required in the public interest;
2. That such services are not adequately served; and
3. That privately owned American-flag vessels are not available for charter from private operators on reasonable conditions and at reasonable rates for use in such services.

The Board recommends that any charter which may be granted pursuant to the findings in this case be for an indefinite period, subject to the usual right of cancellation by either party on 15 days' notice, and subject further to annual review of the charter as provided in Public Law 591. The Board also recommends that any such charter include provisions to protect the interests of the Government under its operating-differential subsidy agreement with applicant.

By the Board.

FEBRUARY 4, 1952.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

## FEDERAL MARITIME BOARD

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No. M-50

LUCKENBACH GULF STEAMSHIP CO., INC.—APPLICATION FOR  
BAREBOAT CHARTER OF A VICTORY-TYPE, GOVERNMENT-OWNED,  
WAR-BUILT, DRY-CARGO VESSEL FOR EMPLOYMENT IN THE  
GULF INTERCOASTAL SERVICE

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### REPORT OF THE BOARD

This proceeding was instituted, pursuant to Public Law 591, Eighty-first Congress, upon the application of Luckenbach Gulf Steamship Co., Inc., for the bareboat charter for an indefinite period of a Victory-type, Government-owned, war-built, dry-cargo vessel for employment in its Gulf intercoastal service.

Hearing on the application was held before an examiner on January 28, 1952, pursuant to notice in the Federal Register of January 19, 1952. Because of the urgency of the matter, the usual 15 days' notice was not given. There was no objection to the application. The examiner's recommended decision was served on February 1, 1952, in which he recommended that the Board should make the statutory findings. No exceptions were filed to the examiner's recommended decision.

Applicant and Isthmian Steamship Company are the only common carriers by water certified by the Interstate Commerce Commission to operate in the Gulf intercoastal service. Applicant's president states that in February 1951 his company was the only operator offering a regular service in the Gulf intercoastal trade, at which time applicant was operating therein with two owned C-2 type vessels and two Victory-type vessels chartered from the Government. In Docket No. M-14, *Am.-Haw. S.S. Co.—Charter of War-Built Vessels*, 3 F.M.B. 499, applicant sought to continue the charter on the two above-mentioned Victory-type vessels and to charter two additional Victory-type vessels from the Government, so that it could withdraw its privately-owned vessels for operation in the more lucrative foreign trades. In our report of March 1, 1951, we found that the Gulf intercoastal service was required in the public interest and that

adequate service in the trade required the continued operation of the four vessels then serving it, or their equivalent, but that there was not sufficient justification for substitution of Government-owned vessels for applicant's privately-owned vessels. The continued charter of only two Government-owned vessels was therefore recommended.

During the course of negotiations with the Maritime Administration over the terms of its charter agreement for the two above-mentioned Government-owned vessels, other intercoastal operators withdrew several ships from the Atlantic intercoastal service. Applicant thereupon agreed with the Board and the Administrator to place its two owned C-2 vessels, then being operated in the Gulf intercoastal service, in the Atlantic intercoastal service, and this was made a condition of applicant's charter agreement with the Maritime Administration. Applicant thereupon advised the Administration that an adequate Gulf intercoastal service would require at least a third Victory-type vessel, for which it requested a charter. Applicant withdrew this latter request upon the filing by Isthmian of an application for the bareboat charter of two Victory-type vessels for use in this service, and upon the assurance of Isthmian that the operation of such vessels would be synchronized with applicant's operation of the two vessels chartered to it. Such synchronized operation by applicant and Isthmian would have provided the adequacy of service contemplated by our report in Docket No. M-14, *supra*.

In our report of April 28, 1951, Docket No. M-25, *Isthmian S.S. Co.—Charter of War-Built Vessels*, 3 F.M.B. 528, we recommended the charter of two Victory-type vessels to Isthmian, and the vessels were subsequently delivered to that operator. The synchronized operation never materialized because Isthmian's vessels became strikebound and have only recently completed their first round voyage in the trade. Because of these labor difficulties, Isthmian has notified the Administration that it will immediately redeliver the two vessels under charter to it. The Gulf intercoastal service is presently served, therefore, with only the two Victory-type vessels being operated by applicant.

We have previously found in Docket Nos. M-14 and M-25 that the Gulf intercoastal service is in the public interest. There does not appear to have been any substantial change in traffic conditions with respect to this service since the time of those reports. Applicant's president testified that it is his understanding that the railway box-car shortage has been considerably eased,

but that he has been informed by defense authorities that this "is only a cycle and that shortly again there will be a shortage of box cars, more perhaps than there was before."

We have found in Docket Nos. M-14 and M-25 that four vessels are necessary to maintain an adequate Gulf intercoastal service. Although applicant's exhibit discloses that, since March 1951, applicant has operated at only 65 percent of capacity, applicant's president contends that two vessels operating on a 30- to 35-day frequency cannot compete successfully with the railroads for traffic. Counsel for the Board, in his argument before the examiner and in a memorandum filed after the examiner's recommended decision, questions whether a service can be determined inadequate solely because of a lack of frequency of the service. An adequate service must provide for the needs of the shippers, which for a berth operator normally means a frequent and regular service with adequate port coverage. As we have stated in Docket No. M-20, *American President Lines, Ltd.—Charter of War-Built Vessels*, 3 F.M.B. 504:

Adequacy of service cannot be measured in terms of spot availability of cargo alone. In the case of a berth service operator there must be taken into account regularity and frequency of the service, continuity of that service, its schedules, speed and other factors which give assurance to shippers to enable them to meet their commitments in a businesslike manner.

It is clear that the Gulf intercoastal service is inadequately served with only the two vessels now serving it. The present service does not offer shippers sufficient regularity, frequency, or certainty to attract the cargo which would normally move by water. An additional vessel will enable applicant to maintain an approximate sailing frequency of 21 days, which applicant contends will provide satisfactory port coverage.

It appears from the evidence that no privately owned American-flag vessels suitable for operation in this service are available for charter upon reasonable conditions and at reasonable rates.

#### FINDINGS, CERTIFICATION, AND RECOMMENDATIONS

On the basis of the facts adduced in the record, the Board finds and hereby certifies to the Secretary of Commerce:

1. That the service under consideration is required in the public interest;
  2. That such service is inadequately served; and
  3. That privately owned American-flag vessels are not avail-
- 3 F. M. B.

able for charter from private operators on reasonable conditions and at reasonable rates for use in such service.

The Board recommends that any charter which may be granted pursuant to the findings in this report be for an indefinite period, subject to the usual right of cancellation by either party of 15 days' notice, and subject to annual review of the charter as provided in Public Law 591, and that the basic charter hire for such vessel be at a rate of 15 percent per annum of the statutory sales price, of which 8½ percent is payable unconditionally and the remainder of 6½ percent payable if earned, under the same general conditions that now prevail.

By the Board.

FEBRUARY 4, 1952.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.

# FEDERAL MARITIME BOARD

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No. 701

BERNHARD ULMANN CO., INC.

v.

PORTO RICAN EXPRESS COMPANY

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*Submitted November 23, 1951. Decided February 11, 1952*

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Respondent found to be a common carrier by water, within the meaning of section 1, as amended, of the Shipping Act, 1916, in its operations between New York and Puerto Rico, and directed to file with the Board its rates, charges, classifications, rules, and regulations in accordance with section 2 of the Intercoastal Shipping Act, 1933.

The limitation of liability clause in respondent's contract of carriage found to be unreasonable in certain respects. Respondent directed to redraft its contract of carriage in accordance with the findings herein.

*Wilson E. Tipple* and *Ross W. Strait* for complainant.

*Frank L. Ippolito* and *Jules Steinbrenner* for respondent.

*Benjamin L. Tell* for Albert Ullman Marine Office, Inc., *James M. Hughes* and *Alfred Ogden* for Manhattan Shirt Company and Loomerica, Inc., and *Ignatz Reiner* for I. Shalmon & Company, Inc., interveners.

## REPORT OF THE BOARD

### BY THE BOARD:

The complaint in this case, filed August 4, 1950, alleges that complainant is a shipper of goods by water between New York and Puerto Rico, and that respondent is a common carrier by water between the same points within the purview of the Shipping Act, 1916 (herein called the "Shipping Act") and the Intercoastal Shipping Act, 1933 (herein called the "Intercoastal Act"), and that it issues through bills of lading and furnishes motor vehicle pick-up and delivery service in New York City and Puerto Rico in connection therewith. Complainant charges that respondent has failed to file schedules of rates as required by the two Acts and that respondent's receipt or bill of lading contains limitation of liability provisions which are unjust, unreasonable,

and discriminatory in violation of sections 16, 17, and 18 of the Shipping Act. The complaint further alleges that even if respondent is not a "common carrier by water in interstate commerce" within the definitions of the Shipping Act, it is an "other person subject to this Act" within the definitions, and that the provisions of respondent's bill of lading or receipt are unreasonable, unjust, and discriminatory in violation of sections 16 and 17 of the Shipping Act. Respondent, in its answer, denies that it is a common carrier by water and denies that it is engaged in the transportation of merchandise across the ocean or that it has any common control, management, or arrangement for continuous carriage of goods with any ocean carrier. Respondent denies that it comes within the purview of the shipping acts.

The examiner has recommended that the complaint should be dismissed, finding (1) that respondent is not a "common carrier by water in interstate commerce" and is, therefore, not required to file its tariffs, rates, and charges under section 2 of the Intercoastal Act, and (2) that respondent is an "other person" as defined in section 1 of the Shipping Act, and (3) that the clauses in respondent's receipt or bill of lading are not unreasonable or otherwise in violation of the Shipping Act. Exceptions were filed to the examiner's recommended decision by complainant, but oral argument was not requested. We disagree with the examiner's conclusions.

The evidence shows that respondent is a New York corporation engaged since 1906 in the business of transporting goods for the general public for hire both ways between New York and Puerto Rico. Respondent also operates as a freight forwarder in the foreign trade, but the inquiry in this case is limited to respondent's New York-Puerto Rico service.

Respondent solicits and advertises its business both in New York and Puerto Rico offering "through store-door service" between New York and Puerto Rico and "rail and truck service through Puerto Rico." Respondent has offices in New York City and at several points in Puerto Rico. Respondent's witness testified that respondent had no affiliation with any ocean carrier. Respondent operates truck, pick-up, and delivery service in both New York and Puerto Rico. It uses regular ocean carriers between New York and Puerto Rico, but also uses the railroads in Puerto Rico. Respondent assumes complete responsibility for the safe transportation and delivery of goods entrusted to it from the time of receipt from the shipper until arrival at ultimate



destination. It does not deny that it is a common carrier so far as shippers are concerned, but denies, as above stated, that it is a "common carrier by water in interstate commerce" as defined by section 1 of the Shipping Act so as to bring itself within the regulatory requirements of both Acts.

Shippers ordinarily telephone respondent's office in either New York or Puerto Rico for the pick-up. The shipment is called for by respondent's truck, accompanied by respondent's "wagon man" who examines the packages on the shipper's premises, inquires as to their value and whether the shipper wants insurance, and then fills in a set of shipping papers. The top sheet, signed by respondent's "wagon man," is delivered to the shipper and constitutes the contract of carriage. Some large shipments are carried directly from the shipper's premises to the pier of the ocean carrier, but generally shipments go to respondent's warehouse where they are unloaded, weighed, measured, and marked. At the warehouse the shipments are loaded into special containers furnished by the ocean carrier and thereafter delivery is made to the pier of the ocean carrier, which maintains weekly sailings to Puerto Rico. The ocean carrier issues to respondent an ocean bill of lading incorporating the Carriage of Goods by Sea Act upon which respondent appears as both consignor and consignee. Respondent pays the same ocean rate which the carrier charges to other shippers, and respondent testified that there was no understanding or agreement between respondent and the ocean carrier for through arrangement. Respondent's shipper has no contractual relations with the ocean carrier. Respondent's freight bill to the shipper shows total transportation charges, which include the ocean carrier's freight charges plus respondent's fee for pick-up and delivery and any insurance charges. Respondent's tariff of rates and charges are neither filed nor published but may be examined by interested shippers.

Upon the ocean carrier's arrival at discharging port respondent's employees take over the goods on the carrier's pier, and they are then delivered locally by truck, and in some cases in Puerto Rico forwarded to destination by railroad. Cargo forwarded by rail in Puerto Rico is loaded in cars and accompanied by respondent's own messengers who load, seal, and break the seal on the cars.

Respondent's receipt, which constitutes the contract of carriage with the shipper, shows the name of the shipper, the name and address of the consignee, a description and weight of the ship-

ment, and provides that the company undertakes to forward the goods to the nearest point to the named destination reached by it. The receipt is marked "non-negotiable," has the usual attributes of a non-negotiable bill of lading, and contains a number of terms and conditions and the following statement concerning value:

VALUE: Shipper accepts the limitation of value as set forth in Paragraph 1 hereof, unless a greater value is stated below.

Declared Value,

Dollars.

Paragraph 1 of the terms and conditions which complainant charges to be unreasonable, unjust, and discriminatory reads as follows:

In consideration of the rate charged for carrying said property, which is dependent on the value thereof and is based upon an agreed valuation of not more than twenty-five cents per pound, nor more than fifty dollars, unless a greater value is declared at the time of shipment and is stated herein, the shipper agrees that the Company shall not be liable in any event for more than the value so stated nor for more than twenty-five cents per pound, nor more than fifty dollars, unless a greater value is stated herein. No oral declaration, nor statement of value for governmental or customs purposes, nor the presentation of invoices for use in foreign customs, collection of C.O.D. or other purposes, nor the declaration of value for insurance, nor instructions to the Company to insure shall be deemed a declaration of value or shall supplement or amend this contract or alter in any way the liability of the Company for the value as stated or as limited herein and on which the charge for transportation is based. The Company, if liable, shall be liable for any partial loss or damage only in the proportion that the amount of its maximum liability for total loss bears to the total value of the shipment.

If the shipper declares a value the amount is written on the receipt. If the declared value exceeds \$50 and the shipper declines insurance respondent takes out insurance on the shipment for its own protection and charges the shipper 50 cents per \$100 of declared value in addition to its transportation charges. If the shipper requests insurance the receipt is so marked and respondent obtains insurance for the benefit of the shipper. The rate for this insurance may be more or less than the 50 cents per \$100 uninsured declared-value shipments, depending upon the insurance company's charge for the risk. It thus appears that respondent has one standard transportation rate for limited liability not over \$50, as set forth in paragraph 1, quoted above, and this rate is based upon the size, weight, and destination of shipment. If a value higher than \$50 is declared and the shipper does not request insurance a surcharge based on declared value

is paid; and if the shipper does request insurance a surcharge for the cost of the insurance is paid. Respondent testified that in case of loss it makes claim against the insurance company if insured and against the ocean carrier if uninsured for loss occurring during ocean transit, and that in other cases it settles claims in accordance with the limitation provisions of paragraph 1 quoted above.

We consider, first, whether respondent is a common carrier by water in interstate commerce so as to be subject to the requirement of filing and publishing its schedule of rates and charges pursuant to section 2 of the Intercoastal Act.

The following statutory definition appears in section 1 of the Shipping Act:

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

Respondent's president admits that it is a common carrier, at least for part of its operation, in so far as its own trucks carry shipments from points of origin to the ocean carrier's pier or from pier to destination, but claims that it is not a common carrier "engaged in transportation by water" because it owns nothing that floats and carries nothing across the water. We believe that respondent's status as a "common carrier" does not depend on its ownership or control or means of transportation, but, rather, on the nature of its undertaking with the public which it serves. A time charterer of a vessel undertaking to carry for the public generally is held to be a common carrier although it does not own the carrying vessel. *Pendleton v. Benner Line*, 246 U. S. 353 (1918). Carriers contracting for space in railroad cars or on vessels are also common carriers. *Bank of Kentucky v. Adams Express Co.*, 93 U. S. 174 (1876); *Agreements 6210, etc.*, 2 U.S.M.C. 166 (1939).

In *Agreement No. 7620*, 2 U.S.M.C. 749 (1947), the Maritime Commission dealt with a contention that under section 1 of the Shipping Act the vessel itself was the common carrier. The Commission rejected this contention, saying:

Such construction does not accord with the legislative history of the statute, which indicates that the person to be regulated is the common carrier at common law, namely, one who undertakes for hire to transport the goods of those who may choose to employ him.

The characteristics of a common law common carrier are given by Hutchinson on *Carriers*, 3d ed., vol. 1, sec. 48, as follows:

(1) He must be engaged in the business of carrying goods for others as a public employment, and must hold himself out as ready to engage in the transportation of goods for persons generally as a business, and not as a casual occupation. (2) He must undertake to carry goods of the kind to which his business is confined. (3) He must undertake to carry by the methods by which his business is conducted and over his established road. (4) The transportation must be for hire. (5) An action must lie against him, if he refuses without sufficient reason to carry such goods for those who are willing to comply with his terms.

With respect to ownership and control over means of transportation the same author continues (sec. 83):

The law, regardless of forms or names, will look at the real transaction, and if the contract be in fact one for the transportation and delivery of the goods to a consignee, no matter through what agencies it is to be effected, the undertaking will be construed as that of a common carrier.

In section 84 the author quotes from *J. H. Cownie Glove Co. v. Merchants' Dispatch Transportation Co.*, 130 Iowa 327 (1906), as follows:

To constitute a common carrier, it is not essential that the person or corporation undertaking such service own the means of transportation. If the contract is that the goods will be carried and delivered, it makes the one so contracting a common carrier, regardless of the name or the ownership of the line or lines over which the service extends.

Respondent claims that since it has the status of a shipper in relation to the ocean carrier and accepts the ocean carrier's usual bill of lading it cannot be a common carrier by water. Respondent expressly claims the status of a "forwarder"<sup>1</sup> in paragraph 4 of the terms and conditions of its receipt or bill of lading, which provides:

4. The Express Company shall not be liable for any loss or damage except as FORWARDERS ONLY \* \* \*.

But we deem that respondent's status depends upon the nature of the service offered to the public and not upon its own declara-

<sup>1</sup> Under our practise a forwarder is a dispatcher and is generally not a common carrier. As a dispatcher it is an "other person subject to this Act" within the definition of section 1 of the Shipping Act and is subject to regulation under General Order No. 72. It is to be noted, however, that in rail transportation two types of forwarders have long been recognized: (1) Those acting merely as shipper's agents to dispatch and (2) those undertaking to transport to destination. The latter, like Porto Rican Express Company, consolidate and ship their customer's goods under standard railroad bills of lading, paying the published tariff and relinquishing control over shipments during the period of the railroad haul. These have always been held, so far as their customers are concerned, to be common carriers. *Krender v. Woolcott*, 1 Hilt. (N. Y.) 223; *Chicago etc. Railroad Co. v. Acme Fast Freight, Inc.*, 336 U. S. 465. In 1942, by Chap. 4 of the Interstate Commerce Act, rail forwarders of the common carrier type were subjected to regulation by the Interstate Commerce Commission.

tions. *Bank of Kentucky v. Adams Express Co.*, *supra*, p. 180. Since it undertakes to transport from door to door it is a common carrier over the entire limits of its route, both the portion over land and the portion over sea. Express companies offering door to door service between points in continental United States and both Alaska and Hawaii have long been subject to regulation under the Shipping Act and the Intercoastal Act as common carriers by this Board and its predecessor. Unless respondent's transportation business from continental United States to Puerto Rico is substantially different from the express companies serving Alaska and Hawaii, it should likewise be subject to regulation.

It is suggested that because respondent has no control over the shipments made by it while in the custody of the ocean carrier and because respondent pays the regular published tariff, accepts the regular ocean bill of lading, and has no special contract or arrangement with the ocean carrier, respondent is not a common carrier by water. As already indicated in Note 1, the above elements exist in the case of rail forwarders undertaking to transport to destination, which have been held to be common carriers. As to this type of rail forwarder, the Supreme Court in 1949 said in *Chi., Milw., St. P. & Pac. R. Co. v. Acme Fast Freight Line, Inc.*, 336 U. S. 465, at page 485:

If, on the other hand, the shipment had been entrusted to a forwarder of the second type — i. e., one who contracted to deliver the goods to the consignee at rates set by itself — the forwarder was subjected to common carrier liability for loss or damage whether it or an underlying carrier had been at fault. The fact that the forwarder did not own the carriers whose services it utilized was held to be immaterial. Its undertaking was to deliver the shipment safely at the destination. Common carrier liability was the penalty for failure of fulfilment of that undertaking.

Reference must be made to the earlier decision of the Maritime Commission in *Alaskan Rates*, 2 U.S.M.C. 558, made in 1941, relied on by the examiner, where International Ocean Express System, Inc., operating in the manner in which respondent operates in this case, complained of prejudice and discrimination on the ground that Alaska Steamship Company, the ocean carrier, refused to make an arrangement for reserved space on its vessels with International like the arrangement then in existence between the ocean carrier and Railway Express Agency, Inc. Our predecessors noted that "Railway Express' activities are conducted in a manner substantially similar to those of International," except that International accepted the ocean carriers usual bill of lading and paid the published ocean freight rate,

whereas Railway Express had an arrangement or contract with the ocean carrier providing for the equal division of the Express Company's gross freight revenue between the Express Company and the ocean carrier, the ocean carrier issuing no bill of lading or freight bill of its own. The Commission held Railway Express Agency to be a common carrier, apparently on the ground of the special contract that it had with the steamship company, saying "through its contract with Alaska Steamship it has the status of a common carrier by water operating on regular routes from port to port," but held International not a common carrier and not entitled to the same treatment accorded to Express Agency because it did not have a contract with the steamship company. The determination of whether such other company is or is not a common carrier should not depend upon whether it has or has not such a special arrangement.

Although the examiner's recommended decision followed the *Alaskan Rates* case, *supra*, we are unable to agree with the reasoning of the decision in that case, believing, as already indicated, that the common carrier status depends on the nature of what the carrier undertakes or holds itself out to undertake to the general public rather than on the nature of the arrangements which it may make for the performance of its undertaken duty. The latter is, of course, of no interest or concern to the carrier's customer public. It may be said in passing that the portion of the decision in the *Alaskan Rates* case to which we refer was only a minor incident in an extensive general investigation of water transportation between United States West coast ports and Alaska.

We next consider whether respondent's receipt or bill of lading contains provisions which are unjust, unreasonable, or discriminatory so as to be in violation of sections 16, 17, or 18 of the Shipping Act.

The requirement that the form and substance of receipts and bills of lading of common carriers by water in interstate commerce shall be just and reasonable is contained in part of section 18 of the Shipping Act, as follows:

Sec. 18. That every common carrier by water in interstate commerce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto and to the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters

relating to or connected with the receiving, handling, transporting, storing, or delivering of property.

Complainant objects that the limitation of liability clause, already quoted, limiting respondent's liability to \$50 for each shipment or 25 cents per pound, whichever is less, is unreasonable on several grounds. It claims that the \$50 outside limit is unreasonable because the same dollar limit applies to small shipments as well as large shipments, but value limits in this type of clause need not vary with the size or shipment of the package. The Carriage of Goods by Sea Act, 46 U.S.C. 1304 (5), contains a limitation clause limiting liability to a fixed amount per package regardless of size.

Complainant next claims that the limitation clause is unreasonable because respondent offers no alternative rate for assuming full liability. It appears, however, that, except for the restrictive clauses criticized below, respondent does offer to assume liability for shipper's full declared value at a higher rate and for this reason the limitation of liability to a fixed sum coupled with the lower rate is not basically objectionable. *South-eastern Express Co. v. Pastime Amusement Co.*, 299 U. S. 28 (1936); *Union Pacific Railroad Company v. Burke*, 255 U. S. 317 (1921). Complainant further objects to that part of the limitation clause limiting liability for partial loss or damage to the shipment to a pro rata share of its maximum liability under the limited liability provision. It is true that under the Carriage of Goods by Sea Act the authorities hold that any clause reducing the carrier's limit of liability in case of partial loss below the statutory figure of \$500 per package is unlawful, *Pan-Am Trade & Credit Corporation et al. v. The Campfire et al.*, 156 F. 2d 603 (1946), but the same considerations do not apply here where the carrier is not subject to the provisions of that Act.

We feel, however, that the reduction of the carrier's limit of liability for the complete loss or destruction of a shipment below the figure of \$50, as set forth in the clause, is complicated, confusing, and works out to a limit so low when applied to small weight shipments as to be entirely illusory, particularly where it is coupled with the further provision that the maximum liability may be further reduced in case of partial loss. This feature of the limitation clause should, therefore, be eliminated.

We believe the entire receipt should be redrafted in the light of this opinion and in conformity with law, and called a "bill of lading." Besides modifications already indicated, we point

out that the last sentence of Paragraph 4 providing "and the Company shall not be liable for any loss, damage or detention of said property or any part thereof from any cause whatever, unless in every case the same be proved to have occurred from the fraud or gross negligence of said Company or its servants" is at variance with current rules of common carrier liability and those relating to the burden of proof in suits against common carriers. Similarly, Paragraph 8, providing that articles of glass are carried at owner's risk, is at variance with such rules.

#### FINDINGS

We find:

1. That respondent is a common carrier by water in interstate commerce within the meaning of section 1 of the Shipping Act, 1916, as amended.

2. That respondent's present form of contract of carriage issued to shippers contains provisions which are unreasonable, in violation of section 18 of the Shipping Act, 1916, as amended.

3. Respondent's rates, charges, classifications, rules, and regulations shall be published and filed in accordance with section 2 of the Intercoastal Shipping Act, 1933, and respondent shall in all respects comply with section 18 of the Shipping Act, 1916, as amended.

4. That respondent's contract of carriage shall be designated a bill of lading and redrafted in accordance with the findings in this report.

An order will be entered directing respondent to comply with Findings Nos. 3 and 4 set forth above, within 60 days from the date of this report, and upon receipt of notice of respondent's compliance the proceeding will be discontinued.

By the Board.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

WASHINGTON, D. C., *February 11, 1952.*



# FEDERAL MARITIME BOARD

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No. 691

UNITED NATIONS ET AL.

v.

HELLENIC LINES LIMITED ET AL.

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*Submitted January 23, 1952. Decided February 25, 1952*

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Rate on cotton from New York to Trieste not shown to be in violation of the Shipping Act, 1916, as amended. Complaint dismissed.

*Edward P. Troxell and Meyer A. Greene* for complainants.

*Elliot S. Bogart* for Hellenic Lines Limited.

*Herman Goldman, Elkan Turk, Elkan Turk, Jr., John Tilney Carpenter, Thomas W. Norton, and Paul Bauman* for States Marine Corporation and States Marine Corporation of Delaware.

## REPORT OF THE BOARD

### BY THE BOARD:

On July 28, 1947, complainant United Nations Relief and Rehabilitation Administration (hereinafter designated as "UNRRA") shipped 4,696 bales of raw cotton on the SS. *Wolverine State*, owned by respondent States Marine Corporation of Delaware, for transportation from New York to Trieste. Freight charges were paid August 18, 1947. On August 12, 1949, complaint was filed herein alleging that the rate charged was unreasonably prejudicial in violation of section 16 of the Shipping Act, 1916, as amended (hereinafter called "the Act"), and unjustly discriminatory in violation of section 17 of the Act. The complaint filed in the name of UNRRA and the United Nations, its assignee, demanded the issuance of a cease and desist order and reparation in the amount of \$8,730.49, with interest, being the amount of the alleged overcharge. At the hearing the complaint was dismissed against all respondents except the respondent vessel

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<sup>1</sup> United Nations Relief and Rehabilitation Administration.

<sup>2</sup> States Marine Corporation and States Marine Corporation of Delaware.

owner named above. The examiner has recommended that the complaint be dismissed. Exceptions were filed by complainant and the case argued on January 23, 1952. Our report supports the examiner.

According to respondent's tariff, high compression cotton weighing 32 pounds or more to the cubic foot carried a rate of \$1.75 per 100 pounds, and standard compression cotton weighing less than 32 pounds per cubic foot carried a rate of \$2.25 per 100 pounds. There is no dispute that the shipment weighed 1,940,107 pounds. Complainant alleges the shipment measured 49,090.17 cubic feet and averaged 39.5 pounds to the cubic foot and took the high density rate. It says it was wrongfully charged the standard rate, less a reduction of 10 per cent allowed on shipments by UNRRA, whereas the high density rate should have been charged, less a corresponding 10 per cent.

Respondent replies that the shipment measured 62,785.52 cubic feet and averaged 30.9 pounds to the cubic foot and was properly charged the standard compression rate.

The issues are (1) whether the cotton weighed 32 pounds or more to the cubic foot at New York, and (2) if so, whether complainant was subjected to unreasonable prejudice or unjust discrimination within the meaning of sections 16 or 17 of the Act. The cotton originated in Brazil and had been transported from Santos to New York on the SS. *Mormacowl* of Moore-McCormack Lines, Inc. Moore-McCormack's freight bills showed the weight and measurement in kilos and cubic meters equivalent to 1,940,105 pounds in weight and 49,091.55 cubic feet in measurement.

Complainant relies on the weight and measurement computation as set forth in the Moore-McCormack bills of lading. It called Moore-McCormack's revenue auditor, who showed that under the tariff used by that company not less than 20 percent of the bill of lading quantity should have been measured for the purpose of determining density, but testified he did not know whether the company weighed or measured the shipment or that the weights and measurements in the bills of lading were accurate. The transportation specialist of the Department of Agriculture, appearing for complainant, testified that Brazilians customarily measure cotton on the side where the bands have not cut into the cotton or "over the bulge." He testified that Brazilian cotton is usually compressed to about 40 pounds to the cubic foot and generally weighs about 400 pounds to the bale,

but varies in measurement depending on the pressure used, and that there is some variance even if the bales are from the same press unless the same kind of cotton is used and the same pressure applied. He said that on a direct ocean voyage from Brazil to New York a bale of cotton would not expand more than a twentieth or a fiftieth of an inch between bands, but this witness had no personal knowledge of this particular shipment. He said it was customary for shippers to supply weights and measurements for the bills of lading. Moore-McCormack's bills of lading showed that the bales in this shipment varied in weight from 394 to 425 pounds, and in density from 36.5 to 40.6 pounds per cubic foot. A printed provision in Moore-McCormack's bills of lading stated that unless otherwise indicated the description and particulars of the packages are furnished by the shipper.

Respondent's bills of lading issued in New York showed the weight to be 1,940,107 pounds and the measurement to be 62,613 cubic feet, resulting in an average density of 30.9 pounds per cubic foot. Respondent called two cargo checkers who testified they had examined the cotton at the time it was loaded onto the SS. *Wolverine State* from lighters, and these checkers produced their dock tally sheets which showed that all bales measured 3' x 10" in length, 2' x 1" in width, and 1' x 8" in thickness, giving the total cubic feet shown on respondent's bill of lading. These witnesses testified that they measured approximately one out of each fifteen bales in the shipment, using calipers. Almost every bale was fluffed out from the top. The checkers were instructed to get the largest measurements, and they, therefore, measured over the fluffed out places. They said the bales were pretty consistent in size, one checker finding the first 20 or 30 bales to be identical, and the other finding the first 5 or 6 identical in size. Thereafter, both checkers found minor variations, some being  $\frac{1}{2}$ " larger, others being 1" larger or 1" smaller. One of the checkers said there might be a play of 1" or 2" in measurements, but they recorded what they said was an over-all average. Some of the bales had broken bands, and while these were measured, their measurements were not recorded on the tally sheets.

A vice president of States Marine Corporation testified that he was in Brazil in 1947 at about the time this shipment was made from that country, and he had observed the operation of cotton compressors and the transportation of cotton from press to ship in Brazil. He stated that he had considerable experience with the measurement of cotton loaded onto his company's ships in

Brazil; that the measurements furnished by the shippers do not reflect actual measurements; and that a spot check which he made of one shipment showed the shipper's measurements to be 12 per cent understated, and that this situation applied generally in Brazil. The witness, however, had no knowledge respecting the measurements of this particular shipment in Brazil.

Complainant contended that if the Brazilian measurements were taken and 12 percent added to offset the shipper's understatement of cubic as testified to by respondent's vice president, and if further allowances were made for expansions due to weather, stowage, transportation, and handling, including expansion of bales with broken bands, the difference would be insufficient to reduce the cotton density below 32 pounds per cubic foot. Complainant argued that the bales as shipped could not have had the uniformity of measurement shown by the tally sheets because the undisputed weight of the bales ranged from 394 to 425 pounds.

Respondent's counsel claims that after giving the shipper the benefit of all variations in evidence with respect to fractions of an inch or full inches in the New York measurements, the cotton would still have been of density less than 32 pounds per cubic foot, and that if the measurements of bales with broken bands had been included, the average density would have been even lower. Respondent argues with some force that complainant's evidence as to the measurements of the shipments is insubstantial and that it was not based on the testimony of witnesses having personal knowledge of measurements at point of shipment, but on the contrary was based on bill of lading statements of another carrier. Complainant tried to take depositions of an officer of the company which was supposed to have measured the cotton in Brazil. The officer wrote to the United States consul in Brazil that he lacked personal knowledge and, therefore, declined to testify. Certificates of measurement previously issued by his company and referred to in his letter to the Consul were not included in the evidence. The record lacks details of the time or place of any measurement of the shipment in Brazil and even the identity of the measurers. Respondent claims that such evidence as there is of measurement is not sufficient to sustain the burden of proof resting on complainant to prove its case, and in any event is not evidence of such substance as to be entitled to consideration in opposition to direct testimony of respondent's checkers who made actual measurements at New York, on the

basis of whose examination the density was found by respondent to be less than 32 pounds per cubic foot and the freight rate determined. We are inclined to agree with respondent that its testimony on the disputed issue of fact is of greater weight and relevance than is the testimony of complainant, but, for reasons indicated below, we do not find it necessary to decide the case on the disputed issue of fact.

The second issue raises a question of law. Respondent argues that even if the cotton measurement were such as to make the shipment "high density" cotton, and even though the rate charged was not the filed rate for high density cotton, still the complaint must be dismissed because no violation of the Act has been shown.

Of course, complainant's right to file proceedings before this Board depends entirely upon section 22 of the Act, which permits the filing of a complaint only if it sets forth "a violation of the Act." Complainant, as already indicated, specifies that two sections of the Act are violated: (a) That respondent's charging of a rate greater than the filed rate subjects complainant "to undue and unreasonable prejudice and disadvantage" under section 16, and (b) that the charging of such rate is "unlawfully discriminatory between shippers" or "unjustly prejudicial to exporters as compared with their foreign competitors" under section 17. Complainant also urges that the charging of a rate higher than the filed rate is a violation of the order of the Secretary of Commerce in Docket No. 128, *Section 19 Investigation, 1935*, 1 U.S.S.B. 470, at p. 500, issued on July 12, 1935, and still in effect, which requires every common carrier by water in foreign commerce to file with the Board schedules showing all rates and charges within thirty days from the date on which they become effective. Complainant argues that the mere making of a charge greater than the filed tariff constitutes prejudice, discrimination, and a violation of the Act. Complainant's counsel, in the course of argument before the Board, admitted that there was no evidence in the case of a shipper of cotton comparable with complainant's, who was in a competitive position with it. Counsel argued that a legal violation of the Act and regulation exists quite apart from any showing of competition. Complainant relies on the similarity between the Interstate Commerce Act, section 6 (7), and the Shipping Act, 1916, as amended, sections 16 and 17, and urges that complainant's position is supported by authorities interpreting the Interstate Commerce Act. Section 6 (7) of the Interstate Commerce Act provides:

nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property \* \* \* than the rates, fares, and charges which are specified in the tariff filed and in effect at the time.

Complainant calls attention to the general similarity between the Interstate Commerce Act and the Shipping Act, 1916, referred to by the Supreme Court in *U. S. Navigation Company v. Cunard Steamship Company*, 284 U. S. 474, and particularly to the case of *Prince Line v. American Paper Exports*, 45 Fed. (2d) 242 (S.D. N.Y. 1930), affirmed 55 Fed. (2d) 1053 (C.C.A. 2, 1932).

In view of the reliance placed by complainant on the *Prince Line* case, it must be carefully considered. There the Prince Line had twelve classifications for different grades of paper, each with its appropriate rate, though not all different. These rates were filed with the Shipping Board. The carrier, with the connivance of the shipper, transported paper at a rate lower than the filed rate, due to improper classification, and thereafter recanted and sued the shipper to recover the difference to make up the full rate as filed, relying on section 16 (2) of the Shipping Act, which provides:

That it shall be unlawful for any common carrier by water \* \* \*

Second. To allow any person to obtain transportation for property at less than the regular rates or charges then established and enforced on the line of such carrier by means of false billing, false classification \* \* \* or by any other unjust or unfair device or means. (Emphasis supplied.)

The rate charged by the carrier was less than the regular rate, and, therefore, an express violation of the quoted section of the Act. The defense was raised that the carrier, having agreed to the lower rate and to a violation of the statute, could not base a cause of action against the shipper on its own wrongdoing. The District Court ruled that no contract of the carrier with the shipper could reduce the amount legally payable, that no act or omission of the carrier could estop or preclude it from enforcing payment of the full amount by a person liable therefor, and that though the rule might work a hardship in some cases, it embodied the policy which has been adopted by Congress in the regulation of interstate commerce in order to prevent unjust discrimination. The District Court cited certain Supreme Court cases where interstate carriers had made recoveries for undercharges made contrary to the provisions of the Interstate Commerce Act, section 6 (7), and said, page 242:

Every consideration referred to by the Supreme Court in these cases applies with equal force and effect to the provision of the Shipping Act that it

shall be unlawful for any common carrier by water directly or indirectly to allow any person to obtain transportation for property at *less* than the regular rates \* \* \*. (Emphasis supplied.)

Similarly the Circuit Court, considering the same argument that the carrier's violation of law prevented a recovery, said at page 1055:

Whether the line can take advantage of its own violation of the statute by recovering the amount of the preference is another matter. *Prima facie* it may not; *volenti non fit injuria*. But the situation is similar to that arising under the Interstate Commerce Act, section 6 (7) \* \* \*.

The court continued, page 1056:

We think that a shipper in foreign trade is equally charged, and that he becomes liable for the rates as filed and approved if he obtains cheaper transportation by any means unfair to his competitors. The statute overrides all such contracts, and imposes a liability upon him which the carrier may, and indeed, must enforce. *Within its own ambit*, the same remedies attend a violation of the Shipping Act, as have been accorded under the Interstate Commerce Act. (Emphasis supplied.)

It will be noted that the Act, sections 16 and 17, does not make it unlawful for the carrier to charge a greater amount than the regular or published rates, although section 18, applying to common carriers by water in interstate commerce, expressly makes such action unlawful. We have frequently pointed out the difference in treatment accorded under sections 16 and 17 of the Act to common carriers by water in foreign commerce, and that accorded under section 18 to common carriers by water in interstate commerce. The *Prince Line* case shows that in certain respects and "within certain ambits" there is a similarity between the Interstate Commerce Act and the Shipping Act, but it is not authority for the proposition, as urged by complainant, that the charging of a greater than published rate is, in the absence of a showing of competition, a violation of section 16 or 17 of the Shipping Act. Nor is there any requirement in the order in Docket No. 128 requiring the filing of rates thirty days *after* their effective date which expands the statutory definition of what is unlawful.

As we pointed out in *Afghan-American Trading Company, Inc. v. Isbrandtsen Company, Inc.*, 3 F.M.B. 622, the Supreme Court in *U. S. Navigation Co. v. Cunard Steamship Co.*, *supra*, recognized "that similarity of construction" of the Shipping Act and the Interstate Commerce Act could not apply where there was "dissimilarity in the terms" of the statutes.

In the *Afghan* case, a shipper filed complaint demanding reparation, claiming that it had been charged a rate of \$19.50 per ton and should have been charged a rate of only \$19 per ton, which was the tariff on file. In the *Afghan* case it was stipulated that no other shipper paid a lower rate than was charged to complainant, and we said for that reason that there was no showing of undue prejudice in violation of section 16 of the Act nor of unjust discrimination in violation of section 17 of the Act. In this case, as in the *Afghan* case, the record shows, and complainant's counsel concedes, that there is no evidence of a competitive shipper of cotton who received from respondent a different rate from that actually charged complainant. Under the circumstances, it must follow in this case, as in the *Afghan* case, that there has been no showing of any violation of the Act, and that, regardless of the actual measurement of the cotton, the complaint must be dismissed.

An order will be entered dismissing the complaint.

3 F. M. B.



ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., on the 27th day of March A. D. 1952

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No. 691

UNITED NATIONS ET AL.

v.

HELLENIC LINES LIMITED ET AL.

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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, on the 25th day of February 1952, having made and entered of record a report stating its conclusions, decision, and findings thereon, which report is hereby referred to and made a part hereof;

*It is ordered*, That the complaint be, and it is hereby, dismissed.

By the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

3 F. M. B.

# FEDERAL MARITIME BOARD

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No. 700

PENNSYLVANIA MOTOR TRUCK ASSOCIATION ET AL.<sup>1</sup>

v.

PHILADELPHIA PIERS, INC., ET AL.<sup>2</sup>

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*Submitted September 27, 1951. Decided February 25, 1952*

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Respondent railroad companies required to modify their tariff regulations so as to allow not less than 5 days' free time for inbound and outbound cargo handled over their Philadelphia piers by truck.

Any storage charges on truck cargo brought to respondents' piers at Philadelphia for shipment by water carrier, when delivered to the piers in accordance with instructions from the water carrier, shall be charged against the water carrier and not against the shipper of such cargo, unless unforeseen causes beyond the control of the water carrier delay the loading of such cargo, and the water carrier notifies the shipper to remove such cargo or be responsible for further storage charges.

*Robert H. Shertz* for complainants.

*Windsor F. Cousins* for respondents.

*George E. Miller* for S. S. White Dental Manufacturing Company and *S. H. Moerman* for The Port of New York Authority, interveners.

## REPORT OF THE BOARD

BY THE BOARD:

By complaint filed May 26, 1950, complainants allege that respondents, to the extent that they carry on the business of furnishing wharfage facilities in connection with common carriers by water, are "other persons" subject to the Shipping Act, 1916 (hereinafter referred to as "the Act"), as defined in section 1 thereof, and as such "other persons" respondents have (a) limited the free time applicable to all freight handled over their piers at Philadelphia moving by truck to 2 days while permitting

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<sup>1</sup> Pennsylvania Motor Truck Association, Shanahan Trucking Co., Harry F. Atkinson, C. P. Speitel Co., Inc., Harry B. Neihaus, Carl C. Lenz, John Sheahan, Jr., and New York & Brunswick Express.

<sup>2</sup> Philadelphia Piers, Inc., Pennsylvania Railroad Company, The Reading Company, The Baltimore and Ohio Railroad Company.

5 days or more for freight moving by railroad, and (b) imposed charges for storage for such truck traffic in excess of the charges applicable to traffic moving by railroad; and that such practices have subjected truck freight to undue prejudice and disadvantage and constitute unjust and unreasonable regulations and practices in violation of sections 16 and 17 of the Act.

Complainants are Philadelphia truck operators and a truck association; original respondents were a pier company and three railroad companies. On May 31, 1950, the pier company changed its practices and the complaint as to it was dismissed. The remaining three respondents (hereinafter called "respondents") moved to dismiss the complaint for want of jurisdiction on the ground that they were not "other persons" subject to the Act. We found the rail respondents to be "other persons subject to the Act", as defined in section 1, because of their operation of pier facilities, and denied the motion. After hearing the examiner recommended, in substance, that the Board find (1) that respondents are enforcing unreasonable regulations relating to the receiving, handling, storing, or delivering of property in violation of section 17 of the Act; (2) that the collection from shippers of storage charges on outbound cargo is unreasonable; (3) that free time on inbound cargo should not be less than five days; (4) that any difference in free time for inbound or outbound cargo between motor carrier and railroad traffic is unreasonable; and (5) that respondents' free time and storage provisions were not otherwise shown to be unlawful.

Exceptions to the examiner's report were filed by respondents and the case was orally argued. The Port of New York Authority and S. S. White Dental Company intervened in support of the report. Our conclusions are in general agreement with the recommendations of the examiner.

Complainants haul goods to and from piers in Philadelphia, including respondents' piers. Of eighteen piers currently in use at Philadelphia, respondents operate thirteen. By tariffs and practices most recently revised in 1950, respondents restrict free time on inbound and outbound truck cargo to 2 days, whereas free time allowed to rail cargo using the piers is 5 to 7 days, except that cargo moving over the piers by rail to or from points within the Philadelphia port area is allowed 2 days. All other general merchandise piers in Philadelphia allow 5 days free time for both truck and rail cargo, whether inbound or outbound. In computing time, Saturdays, Sundays, and holidays are

excluded. Time on inbound cargo entering Philadelphia begins to run from 7 a. m. on the day following completion of discharge of all cargo by the vessel and continues until the cargo is removed from the pier, except that where the cargo owner gives instructions for further transportation by rail, time stops when such notice is given rather than when the cargo actually moves. Time on outbound cargo leaving Philadelphia by vessel begins when the shipment arrives at the pier and continues until the day when the vessel for which the cargo is destined begins loading.

After the lapse of the 2-day free time allowed to truck cargo and the longer time allowed rail cargo, a charge is made for storage. The storage charge made against truck cargo differs from that made against rail cargo, the truck cargo being charged 15 cents per cwt. for the first 15 days' storage while rail cargo is charged the same rate for the first 30 days. For additional periods of time the ratio likewise favors rail cargo.

Respondents' piers are, for the most part, old wooden structures of the finger type erected before the advent of large motor trucks and trailers. The piers were erected primarily for the interchange of cargo between vessels and railroad cars. Motor vehicles must be driven inside the pier sheds and load or unload freight on the floor of the piers. Some of the piers are double-decked, equipped with elevators or chutes. In some cases, although there are two lanes or driveways, crossbeams or columns prevent two vehicles from passing on the pier. Respondent railroads make a charge of 5 cents per cwt. for top wharfage on inbound and outbound truck cargo for the privilege of moving the freight over the piers. No top wharfage charge is made against rail cargo.

Normally the truck operators have no business relations with respondents' representatives on the pier. Respondents use the records kept by the water carriers as the bases for computing free time and storage charges, and there is some testimony that these records are not always accurate. Respondents usually bill the shippers or consignees for pier storage charges, but sometimes bill truck operators who pass the bills on to the cargo owners. The trucks are loaded and unloaded on the piers by truck employees who usually supply their own fork-lift equipment. On the other hand, rail cars are loaded and unloaded by respondents' employees or contractors. The piers are kept open by the railroad seven days a week, but since the motor carriers must deliver to

and receive from the water carrier's employees on the piers, the trucks can only do business while the vessel's agents are present, which is from 8 a. m. to 12 noon and from 1 p. m. to 4:45 p. m. on working days, excluding Saturdays, Sundays, and holidays.

*Import cargo.*—Testimony of complainants' witnesses was directed mainly to the free time and storage practices applicable to import cargo. They describe the procedures and difficulties incident to removing such cargo from the piers within the 2-day free time period. First, the truck operators receive a notice from the consignee several days before the vessel's arrival. The trucker contacts the water carrier to ascertain at what pier the vessel will discharge and when the discharge is completed so that cargo is removable. The trucker must obtain a pick-up order and delivery permit from the consignee's customs broker to obtain delivery at the pier. Each shipment must pass the customs inspectors on the pier and may be removed only when all charges are paid. Truck owners testified that permits are rarely available until the day after the vessel is completely discharged, which is the last of the two days of free time allowed, making it necessary in that event for all truck cargo to be sent for, cleared, and removed from the pier on that day if storage charges are to be avoided. Truck witnesses testified that delays and confusion result at respondents' piers due to the 48-hour free time limit in that various truck operators are required to send their equipment to the pier at the same time, causing serious congestion on the pier, and on the approaching streets while waiting to get to the pier. There is evidence that it is not unusual for trucks to wait two or three hours in traffic before getting onto respondents' piers. The water carriers, during periods of congestion, prohibit more than one truck for the same consignee on the pier at the same time. Sometimes trucks must move away from piles of freight they are servicing on the piers to accommodate railroad car loaders who have a preference. If such movement does not cause a stoppage of truck loading it delays it due to longer hand movement from the pile to the truck. Where cargo is discharged from vessel onto the second deck of a pier the truck must wait its turn to use the chute. Even when trucks are loaded and ready to go they may not be able to move off the pier because of pier congestion or blocking by other equipment. Sometimes commodities such as coffee in bags consigned to different receivers is mixed on the piers, and time is lost making separation according to different receivers. Complainants' estimates vary as to

the amount of inbound truck cargo that can be cleared from the piers within the 2-day free time, depending on the nature and volume of shipments. They indicate that small amounts of cargo up to 25,000 pounds not involved in customs delays can usually be removed on the same day that the pick-up order is received. As to some other types and quantities, the estimates indicate that only 40 percent can be moved in 2 days, and in the case of large lots of wool sometimes only 10 percent can be handled in that time.

There appears to be no difference in the handling of domestic inbound cargo from foreign inbound cargo, except that delays due to customs regulations or brokers are not involved.

Complainants offered evidence of a number of Philadelphia wool importers who frequently receive shipments from 100,000 to 500,000 pounds at a time. It is apparently impracticable at Philadelphia to remove the wool from the piers prior to inspection by customs and other Government officials. Wool must be examined, weighed, sampled, and otherwise checked by representatives of the Bureau of Customs and the Bureau of Animal Industry. A customs house broker testified that the Government processing alone requires usually from three to four days. Meat products, plants, straw, seeds, drugs, and foodstuffs also require special inspection by official agencies other than customs, although these articles do not arrive at Philadelphia in the same quantity as wool. Some of the wool importers have railroad sidings at their plants, but for the most part use trucks and not the railroads for transportation from piers to plants or warehouses. Some of the Philadelphia importers resell wool to New England customers and are considering the likelihood of seeking other ports of entry if the present two-day free time rule continues in Philadelphia.

*Export cargo.*—Shippers are notified by water carriers when cargo may be sent to the piers for export, and truck operators must make deliveries in accordance with such instructions to secure dock receipts from the water carriers' clerks on the pier. The truckers experience the same congestion difficulties and delays in delivering cargo to the pier within the 2-day period before ship's arrival as are experienced with inbound cargo.

Intervener S. S. White Dental Manufacturing Company, appearing in support of the complaint, manufactures at Philadelphia and Staten Island and exports from both Philadelphia and New York, depending on which affords the lowest over-all

transportation charges. It employs motor trucks from its plants to the piers, since it has no railroad facilities, and in 1950 shipped some 500 tons from Philadelphia. These shipments sometimes pass over respondents' piers where 2 days' free time is allowed, and sometimes over other Philadelphia piers where 5 days' free time is allowed, depending on what pier is selected by the ocean carrier. Ocean carriers do not always use the same Philadelphia piers. This intervener objects to being charged for storage by respondents, particularly since it is not notified of the charge until as long as two months after the charges accrue and is not then told of any reason for delay on the pier. This intervener sells its product for export f.o.b. plant, and collects its selling price, including all known shipping charges, by letter of credit draft against the buyer, with shipping documents attached. This draft is computed and negotiated as soon as the carrying vessel sails. Pier storage charges reaching intervener 2 months later are, therefore, not collectible from the buyer, and, so far, the intervener has declined to pay such charges to respondents.

Respondents claim that the delays to truck cargo on the piers are over-estimated, claiming some wool merchants are able to get from 50 percent to 60 percent of their consignments off the piers within two days, and that records indicate that 60 percent of truck freight is removed from the 'B. & O. piers, 66 percent from the Pennsylvania piers, and 80 percent from the Reading piers in the two days' free time allowed. Respondents' showing in this regard makes it clear that a substantial part of the truck cargo is regularly unable to be removed within the time allowed. Respondents' piers handle a very substantial amount of truck cargo, the ratio moving over Pennsylvania Railroad piers averaging about five tons of rail cargo to four tons of truck cargo. Respondents point out that 2 days' free time is customarily allowed for truck cargo moving over piers at Baltimore and conversely complainants point out that five days' free time is allowed in New York and Boston. In the absence of any showing that the conditions at the piers in Baltimore, New York, or Boston are substantially similar to the situation at the piers in Philadelphia, this evidence is of little weight either on the issue of discrimination or unreasonableness.

As already stated, respondents moved to dismiss the complaint on the ground that respondents are not "other persons subject to the Act", and this motion was dismissed by our prior order. The following authorities sustain that action. *Port of Philadel-*

*phia Ocean Traffic Bureau v. The Philadelphia Piers, Inc., et al.*, 1 U.S.M.C. 701 (1938); *California v. United States*, 320 U.S. 577 (1944).

Respondents, without waiving the jurisdictional point, take the position that they have no legal obligation to accord any free time on non-rail cargo passing over their piers. They say that the obligation to accord free time is incident to the ocean carrier's duty to deliver cargo and that respondents have no such duty with respect to truck freight which they do not handle. They argue that since they have no obligation at all, their present two-day rule is a voluntary concession and cannot be the basis of valid complaint by truck operators.

It is true the primary responsibility of furnishing reasonable free time to deliver outbound cargo on the pier and remove inbound cargo from the pier rests on the ocean carrier as part of its carrier responsibility. *Free Time and Demurrage Charges—New York*, 3 U.S.M.C. 89, at page 101 (1948). Nevertheless, for many years, respondents have permitted motor trucks to use their piers and in 1937 instituted a top wharfage charge of 2½ cents per cwt. (now increased to 5 cents per cwt.). This was a toll for the privilege of moving (non-rail) freight over the piers; the charge was upheld as not unreasonable or discriminatory by the Maritime Commission in *Port of Philadelphia Ocean Traffic Bureau v. The Philadelphia Piers, Inc., et al., supra*. Respondents have moreover solicited vessels to load and discharge freight at their piers in anticipation of movement of such freight by rail. A witness for the respondents testified that few vessels would use their piers unless they were furnished facilities for truck as well as rail shipment. Thus, it is obvious that respondents are engaged in the furnishing of pier facilities without restriction as to their use. Ocean carriers have arranged with respondents for the use of railroad piers for the discharge and intake of vessel cargo and for a place where shippers and consignees can expect to receive the necessary free time for pick-up and delivery. Respondents, as pier owners, are at liberty to restrict the use of their piers to rail cargo and deny it entirely to truck cargo, but they have not done so and have permitted the use of their piers for truck cargo. In so doing they must furnish the full reasonable use of their pier facilities or not permit their use at all. If respondents permit the use of their piers to the vessel owners for the receipt and delivery of truck cargo, they thereby assume responsibility to carry out the ocean carrier's full duty

3 F. M. B.



toward truck cargo. This includes furnishing non-discriminatory and reasonable pier service, and service which is in no other respect in violation of the Act.

The examiner made no recommendation for a finding of unjust discrimination on account of the difference in free time allowed to rail cargo and truck cargo, and on this record we agree that a case of unjust discrimination is not made out. Complainant truck operators service only customers in the Philadelphia area, and rail cargo to and from this area like truck cargo under present tariffs is allowed 2 days' free time. Rail cargo entitled to more than two days' free time is solely that shipped away from Philadelphia, and this is not competitive with the local truck cargo which complainants carry, and which is the only truck cargo mentioned in these proceedings.

The examiner, however, did find that the 2-day free time limit on truck cargo constituted an unjust or unreasonable regulation and practice, both as to inbound freight cargo and outbound freight cargo. We agree that quite apart from delays caused by customs and other governmental inspectors, the 2-day period now allowed for the ingress pick-up, and egress of such number of trucks as are necessary to pick up or deliver the very substantial amounts of truck cargo passing over respondents' piers is, in view of the pier construction, the congestion, and the other conditions referred to, too short a time to be reasonable and proper under the circumstances. We believe the record indicates that a reasonable free time allowance on respondents' piers for all inbound and outbound truck cargo should be not less than five days as allowed for line-haul rail cargo—and this is on the assumption that the calculation of time be continued in the manner now in force. Furthermore, if truck cargo is delivered on respondents' piers for vessel shipment in compliance with instructions from water carriers, and the vessel does not arrive at the pier to start loading within the allotted free time, any storage charges which respondents may impose in such cases should be for the account of the vessel owner and not for the account of the truck-cargo owner. It is not reasonable for respondents to look to the owner of truck cargo for storage charges incurred after he has lost all control over the shipment. It cannot be said that he is in any way responsible for the delay causing such charges, which would appear to result either from delay in the vessel's arrival, or from the vessel owner's miscalculation in ordering the cargo onto the pier too soon.

The remaining issue in the case is whether the storage charges assessed against truck cargo are unduly prejudicial or amount to an unreasonable regulation or practice. It is true that the storage charges made by respondents against truck and rail cargo are not identical, but neither are respondents' charges identical with respect to the imposition of top wharfage charges. There is nothing in the record to sustain a charge that the storage charges collected by respondents cast an undue burden upon the freight moving by truck so as to be an unjust or unreasonable regulation or practice within the meaning of section 17 of the Act. Furthermore, the different storage rate does not necessarily constitute undue prejudice against truck cargo, in the absence of a showing of some injurious effect on traffic prejudiced and advantage to the traffic preferred. No such showing is made on this record.

The examiner in his report points out that, in the course of the hearing, certain agreements were brought to his attention which were such as might require approval under section 15 of the Act, although not in fact so approved. These agreements are now a matter of special study and will be dealt with at a later time.

#### CONCLUSIONS

We conclude:

1. That respondent railroad companies should modify their tariff regulations so as to allow not less than five days' free time for inbound and outbound cargo handled over their Philadelphia piers by truck;
2. That any storage charges on truck cargo brought to respondents' piers at Philadelphia for shipment by water carrier, when delivered to the piers in accordance with instructions from the water carrier, should be charged against the water carrier and not against the shipper of such cargo, unless unforeseen causes beyond the control of the water carrier delay the loading of such cargo, and the water carrier notifies the shipper to remove such cargo or be responsible for further storage charges; and
3. That on this record respondents' tariff provisions relating to free time and storage on cargo shipped over respondents' Philadelphia piers have not been shown to be otherwise unlawful.

An order requiring respondents to promulgate and file with the Board new tariffs not inconsistent with this report will be entered.

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., on the 25th day of February A. D. 1952

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No. 700

PENNSYLVANIA MOTOR TRUCK ASSOCIATION ET AL.

v.

PHILADELPHIA PIERS, INC., ET AL.

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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, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof:

*It is ordered,* That respondents Pennsylvania Railroad Company, The Reading Company, and The Baltimore & Ohio Railroad Company be, and they are hereby, notified and required to promulgate and file with the Board within 60 days from the date hereof tariffs modifying their tariff regulations now in force so as to allow not less than 5 days' free time for inbound and outbound cargo handled over their Philadelphia piers by truck; and

*It is further ordered,* That any storage charges on truck cargo brought to respondents' piers at Philadelphia for shipment by water carrier, when delivered to the piers in accordance with instructions from the water carrier, shall be charged against the water carrier and not against the shipper of such cargo, unless unforeseen causes beyond the control of the water carrier delay the loading of such cargo, and the water carrier notifies the shipper to remove such cargo or be responsible for further storage charges.

By the Board.

(Sgd.) A. J. WILLIAMS,  
*Secretary.*

FEDERAL MARITIME BOARD

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No. 699

HECHT, LEVIS & KAHN, INC., AND NEW ENGLAND  
TRADING CORPORATION

v.

ISBRANDTSEN COMPANY, INC.

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*Submitted November 8, 1950. Decided November 15, 1950*

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Motion to dismiss the complaint for failure to state a cause of action within the Board's jurisdiction denied because the complaint alleges facts which might amount to a violation of specified sections of the Shipping Act, 1916. Matter referred to an examiner for hearing and recommendations.

*Harold B. Finn* for complainants.

*John R. Mahoney* for respondent.

REPORT OF THE BOARD ON JURISDICTION

BY THE BOARD:

This case came on for hearing before the Board on respondent's motion to dismiss the complaint for failure to state a cause of action within the jurisdiction of the Board. The complaint, filed May 25, 1950, claimed violation of sections 14 (4), 16 (1), and 17 of the Shipping Act, 1916, and prayed for reparation. The complaint alleged that complainant, Hecht, Levis & Kahn, Inc., of New York, entered into a booking agreement with Isbrandtsen Company, Inc., for the carriage of 1,600 tons of jute from Chittagong to New York. It alleged that on arrival of the vessel at the loading port there was a substantial delay in providing the cargo, and even then only about 1,200 tons were lifted instead of 1,600 tons as agreed. The vessel owner declined to give clean bills of lading, but instead noted the extent of the vessel's delay at the loading berth. On the vessel's arrival at New York its owner, claiming to exercise "its time honored carrier's lien," declined to deliver the shipment to the consignees unless they paid \$16,898 dead freight on the cargo booked but not carried and \$12,990.67 for damages due to the vessel's detention at load-

ing berth. Eventually the consignees, in order to obtain the cargo, paid the full amount of dead freight and part of the detention damages, or a total of \$23,357.34. The exaction of this sum by the carrier from the consignees is alleged to be in violation of the Act and to cause damages to complainants in that amount.

In considering a motion to dismiss a complaint the Board is necessarily limited to the facts set up in the complaint and cannot consider matters of defense raised in respondent's answer attached to the motion to dismiss.

Respondent urges as a ground for dismissal that many of the events giving rise to the action occurred outside the United States. We do not deem this a valid objection since the gist of the complaint hinges upon an alleged withholding of delivery of cargo in New York pending the payment of charges alleged to be unreasonable. Respondent's chief ground for urging dismissal of the complaint is that the cause of action is one between shipper and carrier and as such is determinable by the courts but not by this Board. If this were a case in which the common carrier were given an express contract lien for dead freight or detention damages, its justification for enforcing such lien would have more weight. This case does not involve a charter party or other agreement giving any such lien, and the booking contract between the parties is entirely silent on that point. Respondent's intimation that it was doing in this case only what it had a right to do, and, presumably, would do in other similar cases, leads to the belief that what was done here was a usual practice. It appears, therefore, that the complaint alleges facts which might amount (1) to unfair treatment of a shipper, who in this case was also a consignee, in the matter of the adjustment and settlement of claims, in violation of section 14 (4), and (2) to the establishment of an unreasonable practice relating to the receiving, handling, storing, or delivering of property, in violation of section 17 of the Act. It is not necessary to decide whether a violation of section 16 (1) is alleged.

For the reasons given, the motion to dismiss is denied, and the matter is referred to an examiner for the taking of testimony and for recommendations as to further action by the Board.

An appropriate order will be entered.

ORDER

At a Session of the FEDERAL MARITIME BOARD, held at its office in Washington, D. C., on the 15th day of November A.D. 1950

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No. 699

HECHT, LEVIS & KAHN, INC., AND NEW ENGLAND  
TRADING CORPORATION

v.

ISBRANDTSEN COMPANY, INC.

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Respondent having filed a motion to dismiss the complaint herein on the ground that the complaint failed to state a cause of action within the jurisdiction of the Board, and the motion having come on for oral argument before the Board, and the parties having filed briefs in the matter, and the Board, on the date hereof, having made and entered of record a preliminary report containing its conclusions and decision as respects jurisdiction in the matter, which report is hereby referred to and made a part hereof;

*It is ordered,* That respondent's motion to dismiss the complaint be, and it is hereby, denied; and

*It is further ordered,* That the matter be, and it is hereby, referred to an examiner for hearing and recommendations.

By the Board.

[SEAL]

(Sgd.) A. J. WILLIAMS,  
*Secretary.*  
3 F. M. B.

**DECISIONS OF THE  
U.S. MARITIME COMMISSION,  
FEDERAL MARITIME BOARD, AND  
MARITIME ADMINISTRATION  
DEPARTMENT OF COMMERCE**

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### **ABSORPTIONS.** See also Insurance; Port Equalization.

Failure to limit the amount of equalization which may be absorbed by a carrier does not render equalization rules and regulations unlawful, in the absence of any indication that the amount absorbed has been such as to place an undue burden on other traffic not subject to absorptions, or that the rule has been applied in a discriminatory manner with respect to different shippers. *Seatrain Lines, Inc. v. Gulf and South Atlantic Havana Steamship Conference*, 122 (125).

The practice of conference members absorbing out of their freight revenues the excess cargo insurance premiums charged by underwriters for the insurance of cargoes transported in vessels which have been placed on the underwriters' penalty list because of age, nationality or other reason or because cargoes have been stowed on deck for the vessel's convenience, did not result in any unfair or unjust discrimination against ports, carriers or shippers, did not operate to the detriment of the commerce of the United States, and did not violate any of the provisions of the Shipping Act, 1916. *Absorption of Insurance Premiums*, 201 (209).

Optional provisions in a conference agreement covering the adoption of practices as to absorption of excess cargo insurance premiums constitute an authorization that the conference may adopt such practices when conditions so warrant; such provisions do not permit member lines individually to exercise any option with respect to the use of such practices, nor do they permit a conference to place such practices into effect indiscriminately; such provisions are not violative of the Shipping Act, 1916. *Id.* (209, 210).

Provisions of conference members' tariffs relative to absorption of excess insurance premiums must set forth the procedure for making such absorption, including the character of proof to be required of the shipper before absorption will be made; conference members' tariffs may not contain language indicative of an option in the absorption of excess premiums. *Id.* (210).

Provision of conference agreement that "member lines may, when necessary, equalize actual insurance differentials on cargo caused by flag, over-age or undersize disability, and when large or bulky pieces, ordinarily susceptible to under deck storage, are stowed on deck for the convenience of the carrier," is approved. *Id.* (210).

### **ADVERTISEMENTS.** See Common Carriers.

### **ADMISSION TO CONFERENCES.** See Agreements under section 15.

**AGREEMENTS UNDER SECTION 15.** See also Absorptions; Brokerage; Contract Rates; Discrimination; Forwarders and Forwarding; Jurisdiction; Pooling Agreements; Preference and Prejudice; Tariffs.

**—In general**

Letter sent by applicant for conference membership to member of conference, in which letter applicant agreed not to serve certain ports within the conference range, was not an agreement contemplated by section 15 of the Shipping Act, 1916, but merely a confirmation of an original and continuing intention not to serve certain ports. *East Asiatic Co., Ltd. v. Swedish American Line*, 1 (2).

Conference decisions that proper rate was charged for transportation of lanolin and cocculus did not come within scope of order in section 19 Investigation, 1935, 1 U.S.S.B.B. 470, requiring filing of certain decisions. *Himala International v. Fern Line*, 53 (56).

**—Conference Membership**

Where a conference agreement contains no provision limiting member lines to any specific port or ports, the conference cannot either limit the service of its members to certain ports or insist upon its members serving all ports within the conference range. Therefore, even if a conference knew of a letter from a carrier seeking admittance to the conference, to a conference member, agreeing not to service certain ports, there would be no legal justification, in the absence of other factors, for the conference refusing to admit applicant. *East Asiatic Co., Ltd. v. Swedish American Line*, 1 (2).

Applicant for conference membership is not required to produce a contract of sale of a subsidiary to a conference member, for the purpose of determining whether there was any provision restricting the seller from thereafter operating on a trade route which the conference agreement involved covered, since any possible violation of the contract made about 1930 was a matter of concern solely to the buyer and not to the conference itself, and the buyer had never opposed the seller's bid for membership. *Id.* (3).

Applicant for conference membership has presented reasonable evidence of its intention and ability to engage in a regular service as required by the conference agreement where its vessels are sufficient for all of its services and additional vessels will be chartered if justified by increased traffic; it has an experienced staff and has leased a pier; its assets total \$50 million; it has made four sailings and more are scheduled; the fact that it did not solicit cargo for a certain period was because it considered it to be improper to solicit cargo until it was admitted to the conference; it had begun negotiations with one of the conference members with a view toward having the latter withdraw its objection to complainant's admission to the conference and advertising in trade papers and journals had begun when the negotiations were unsuccessful; it had become a member of two conferences and had agreed to maintain regular service between the ports in question and had moved its principal office to one of the ports. *Id.* (4, 5).

Absence of contract rates in a trade does not justify refusal to admit an applicant to membership in a conference since it is generally known that shippers ordinarily will not patronize nonconference lines because they desire stability in the trade, and applicant believes, therefore, that membership would increase its business. Thus applicant is being subjected to undue and unreasonable prejudice and disadvantage in violation of section 16 of the Shipping Act of 1916 by conference's refusal to admit it to membership. *Id.* (5).

Adequacy of existing service is not sufficient reason to justify refusal of admission to a conference, as otherwise existing lines could perpetuate a monopoly by continuing to maintain adequate service. Further, as applicant's operations are already established, admission to the conference will not increase the vessel tonnage in the trade. *Id.* (5).

Respondents allowed 30 days within which to admit complainant to full and equal membership in conference, failing which consideration will be given to issuance of order disapproving agreement. *Id.* (6).

Modification of conference agreement limiting admission to membership to those regularly engaged as common carriers in the trade covered by the agreement, so that those giving substantial and reliable evidence of intention of operating regularly in the trade may qualify for membership, eliminated that issue. Pacific Coast European Conference Agreement (Agreement Nos. 5200 and 5200-2), 11 (12).

Proposal to increase new member admission fee in conference from \$250 to \$5,000 was disapproved in the absence of any showing of necessity therefor as undue and unjust discrimination, and as a detriment to the commerce of the United States. *Id.* (14).

#### —Conference voting rules

Where an article of a conference agreement requires the conference to advise the Commission of the record vote where application for membership is denied, with a full statement of the reasons therefor, and this was not done and the secretary of the conference admitted that it is never done, there is a clear violation of the agreement and the conference will be expected to conform to the terms of the agreement in the future. *East Asiatic Co., Ltd., v. Swedish American Line*, 1 (6).

The lawfulness of conference voting rules, whether requiring unanimous, two-thirds, three-fourths, or majority approval must be determined on the basis of evidence introduced at a hearing as to their use in practice, and not on the basis of organizational procedure. Unanimous vote rule not shown to be unlawful. Pacific Coast European Conference Agreement (Agreement Nos. 5200 and 5200-2), 11 (19, 20).

#### —Rates

While the Board must approve *agreements* between common carriers and between "other persons subject to the Act" under section 15, there is no reason why rates established under such agreements may not become effective when filed without the prior approval of the Board. *Carloading at Southern California Ports*, 261 (266).

**AGREEMENTS WITH SHIPPERS.** See Contract Rates.

**ANTITRUST LAWS.** See Agreements under Section 15; Contract Rates; Monopoly; Pooling Agreements.

#### **BERTHAGE.**

Berthage may properly be charged irrespective of whether a vessel is loading or discharging cargo. Terminal Rate Increases—Puget Sound Ports, 21 (25).

To include "berthage" with other services "incidental to receiving and delivering of freight" adds to the general confusion in the use of terminal definitions. Berthage should be established as a separate item since it is purely a use charge for space occupied by the vessel and has no relation to a "service" as such. *Id.* (25).

**BILLS OF LADING.** See also Charters; Common Carriers; Free Time; Jurisdiction.

A bill of lading is both a receipt and a contract, and under certain circumstances it is also documentary evidence of title to the goods. Bills of Lading—Incorporation of Freight Charges, 111 (114).

Freight charges, when placed on a bill of lading, are not part of the receipt for the goods but are part of the contract of transportation. *Id.* (114).

Commission is without jurisdiction to promulgate rule in export trade requiring common carriers to incorporate in bills of lading their freight and other charges. *Id.* (115).

A limitation of liability clause in a receipt or bill of lading applying the same dollar limit to small shipments as to large shipments is not unreasonable under section 18 of the Shipping Act, 1916. The Carriage of Goods by Sea Act, 46 U.S.C. § 1304 (5), contains a limitation clause limiting liability to a fixed amount per package regardless of size. *Bernhard Ulmann Co., Inc. v. Porto Rican Express Co.*, 771 (779).

A limitation of liability clause in a receipt or bill of lading offering to assume liability for shipper's full declared value at a higher rate with a lower rate to apply to liability for a fixed sum is not basically objectionable under section 18 of the Shipping Act, 1916. *Id.* (779).

**BLAND FORWARDING ACT.** See Brokerage.

**BOOKING.** See also Discrimination.

The question of whether the mere description of a person as booking agent for a vessel is determinative of his status as a person not subject to the provisions of the Shipping Act, 1916, is not easily resolved. In the past the Commission has held persons describing themselves as agents to be carriers or other persons subject to the Act. The mere designation of a person as agent would not conclusively determine his status if in the record it appeared that in his actual course of business he assumed the responsibilities and performed the duties of the carrier or of the person subject to the Act. *Waterman v. Stockholms Kederik-aktiebolag*, 131 (132).

**BROKERAGE.** See also Forwarders and Forwarding; Detriment to Commerce.

Brokerage paid to a shipper on his own shipments constitutes a rebate in violation of section 16 of the Shipping Act, notwithstanding that the shipper may also be a forwarder and may purport to receive brokerage in the latter capacity. Similarly, a forwarder who has any beneficial interest in a shipment and accepts brokerage thereon, is guilty of accepting a rebate in violation of section 16. *Port of New York Freight Forwarder Investigation*, 157 (164).

Contention that ban on payment of brokerage results in discriminations in violation of sections 15 and 17 is not supported by the evidence. Payment of brokerage by the carrier is not payment to a shipper nor does the shipper in any way benefit from the payment. The Act does not mention forwarders or brokers as a group to be protected from undue or unjust discrimination. Mere fact that carrier may pay brokerage to forwarder in connection with transportation of commodity from Atlantic coast to Far East and not pay either another or same forwarder brokerage in connection with transportation of a like commodity from Pacific coast to the same destination is not unlawful discrimination under the Act. *Agreements and Practices Re Brokerage*, 170 (175).

Conference agreement provisions prohibiting the payment of brokerage to forwarders by water carriers engaged in foreign commerce are not inconsistent with the Bland Forwarding Act (56 Stat. 171) since that Act is a recognition of the value of the forwarding industry, and no mention is made in it of agree-

ments and practices for the payment of brokerage so that things done by carriers can hardly be construed as within the purview of the Act. Accordingly, the Commission modified the grounds of its disapproval of the agreement in Agreement No. 7790, 2 USMC 775. Id. (176).

Motions to dismiss an investigation of conference agreements and practices regarding brokerage payments, for lack of jurisdiction by the Commission, will be dismissed since such agreements are subject to review to determine whether their provisions result in detriment to the commerce of the United States, in any discriminations enumerated in section 15 of the Shipping Act, or in violations of the Act, and since, contrary to the contentions made in the motions, such payments are for services performed for carriers and the Commission is not undertaking to pass upon the reasonableness of any payment nor to establish any definite level of payment. Id. (176, 177).

Brokerage payments to forwarders may be made or not by individual carriers by water in foreign commerce as managerial discretion dictates, nor is there any limitation as to the amount that may be paid provided payments do not result in violations of applicable statutes; moreover, carriers acting under conference agreements may establish reasonable rules which will prevent payment of brokerage under circumstances which would violate the Shipping Act, and may place limitations upon the amounts which may be paid, provided that any limitation below  $1\frac{1}{4}$  percent of the freight involved, which is the amount generally paid in various trades over the years, may not be imposed since it would circumvent the Commission's finding that concerted prohibition against brokerage results in detriment to the commerce of the United States. Id. (177).

**BROKERS.** See Brokerage.

**BURDEN OF PROOF.** See also Charter of War-Built Vessels; Discrimination; Liability of Carriers.

The burden of proof is on the vessel owner to justify the imposition of a demurrage charge made for the vessel's detention by showing that the charterer failed in its duty to accept the cargo seasonably, and to show the extent of the vessel owner's resulting damages. *D. L. Piazza Co. v. West Coast Line, Inc.*, 608 (618).

### **CANAL ZONE.**

In view of finding that demurrage rule and charges are not unreasonable or otherwise unlawful, it is unnecessary to make any findings as to whether section 18 of the Shipping Act, 1916, is applicable to commerce from the continental United States to the Canal Zone. *Olsen v. W. S. A. and Grace Line, Inc.*, 143 (149).

The Canal Zone is not a possession of the United States within the meaning of the definition of "common carrier by water in interstate commerce" in section 1 of the Shipping Act of 1916. To hold otherwise would seem counter to previous court holdings, and create administrative confusion in view of the long continued practices of the Board in treating commerce between the United States and the Canal Zone as foreign commerce. *Olsen v. W. S. A. and Grace Line, Inc.*, 254 (259).

**CARLOADING AND UNLOADING.** See also Compensatory Rates; Cost of Service; Discrimination; Practices; Reparation; Tariffs.

Respondents are not performing under the new Tariff any services not performed under the old, although an apparent new service has been added covered by the service charge. Respondents eliminated checking from items formerly covered under "handling" and carloading, but they placed it in the service charge. Each of the handling and carloading charges was increased by 20

percent of the basic rates in spite of deletion of the checking service. It was of paramount importance that cost studies be presented showing the expense of performing each service so that any question as to the measure of the charge, with the attendant cost, and as to the existence of duplicate charges for the same service, could be resolved. As cost is the very basis of the contention that the charges are justified, the record leaves in doubt the correctness of respondents' position. Studies must be made and records kept so that respondents may report within 3 months, with supporting data, the financial results of their operations over a test period for each service for which they publish rates or charges. Terminal Rate Increases—Puget Sound Ports, 21 (30, 31).

"Car service" means the loading or unloading of railroad cars on steamship piers. "Indirect" car service means unloading of freight from the car to a place of rest in the pier or loading freight from the place of rest into a car. "Direct" car service means the loading or unloading of an open top car under ship's tackle. "Continuous" car service means the unloading from a car spotted on the low line of the pier to ship's tackle or the loading of a car on the low line from the ship's tackle. Status of Carloaders and Unloaders, 116 (118); *Id.* at 270; Carloading at Southern California Ports, 261 (262).

Proposed rate increase based on studies of experience of both privately owned and publicly owned wharfingers is not justified where (1) none of respondents, most of whom are contracting stevedores and independent carloaders and unloaders, were included in studies of wharfingers who were engaged in many other terminal services and had substantial investments in terminal property; (2) there is no proof that the overhead burden of the public wharfingers is comparable to that of respondents, with relatively smaller organizations and investments in property; (3) there is no showing that the volume of tonnage and relative costs of direct labor to overhead are comparable; and (4) claim for an overhead of a certain percentage of the direct labor cost, based on factors inapplicable to present situations cannot be reconciled with former claim of an overhead of a lower percentage based on actual costs of loading. Case is held open to allow respondents to present full and complete evidence concerning direct labor costs of handling various commodities, and the costs of overhead over a substantial period. *Id.* (120, 121).

"Car Service" means the loading or unloading of railroad cars on steamship piers. Carloading at Southern California Ports, 137 (139).

"Indirect" car service involves the use of a place of rest on the pier at which the commodity is piled and generally assorted pending further movement as an intermediate stop in its movement between the vessel and the rail car. *Id.* (139).

"Direct" car service is the loading or unloading of a flatcar immediately under ship's tackle. *Id.* (139).

"Continuous" car service is the transportation of a commodity directly between the car and the ship's tackle without any stop at the point of rest. *Id.* (139).

Inasmuch as carloaders are advertising two services, one to place of rest on docks and the other to ship's tackle, and undertaking to perform them for a charge assessed against the shipper, carloaders should not attempt to collect from the vessel or others a part of the cost of the service. It may be that the increased cost for continuous movement will result in a higher rate therefor, but carloaders must justify the same. Failure to charge a remunerative rate for the respective services will result in discriminations. *Id.* (141).

Carloaders have obligation to Maritime Commission to keep records in such manner that the Shipping Act of 1916 may be administered just as they have obligation to shippers to keep accounts so that shippers may be assured they are not paying for service rendered to others. *Id.* (141).

**CARRIAGE OF GOODS BY SEA ACT.** See Bills of Lading.

**CHARTER OF WAR-BUILT VESSELS—P. L. 591, 81st CONG.**

*—In general*

Public Law 591 authorizing charters of Government-owned vessels under specific conditions, is sufficiently broad to meet such emergencies as were created by the Korean war. *American-Hawaiian S.S. Co.*, 446 (448).

Public Law 591 imposes no requirement to purchase vessels (and thus terminate the competition of charter Government-owned vessels with privately owned vessels). Failure to purchase, even refusal to do so, while entitled to consideration, should not be determinative of whether applicants have met the conditions of Public Law 591. *Id.* (448).

Insofar as the burden of proof is concerned, the law is clear that the applicant must affirmatively show that the service in which the ships are desired to be chartered under Public Law 591 is in the public interest; that such service is not otherwise adequately served; and that privately owned vessels are not available on reasonable conditions and at reasonable rates for use in such service. *Lykes Bros. S.S. Co., Inc.*, 510 (511).

Where applicant for charter of Government-owned vessels proposes to use them interchangeably on two routes for a limited period, and has authority from the Board in its contracts to use its owned, subsidized vessels interchangeably on the routes, Public Law 591, in using the term "service," does not prohibit such interchangeability, nor, in view of the limited period of use contemplated is there any reason for the Board imposing any such restriction. *Id.* (511).

Whether the cargo required to be moved on the trade routes involved could or should be moved by vessels operated by the Government through general agents rather than by charter of Government-owned vessels to a subsidized operator is not an issue under Public Law 591, but a matter of policy within the discretion of the Administrator. *Id.* (511).

An applicant for charter of Government-owned vessels under Public Law 591 does not have to show that the vessels are necessary to meet a specific emergency. *Id.* (511).

Although favorable findings with respect to public interest, inadequacy of service, and reasonable rates and conditions, are justified, application for bareboat charter of Government-owned vessels for use in a service presents a question of policy where the applicant proposes their use exclusively whereas applicant's competitor uses its owned or privately chartered vessels. Since applicant owns a vessel which is scheduled to be used in the service, but which it desires to use in another service, the applicant should be required to continue to maintain in the service one of its owned ships. *Pacific Far East Line*, 535 (537).

Public Law 591, for purposes of determining such factual conditions as adequacy of service or availability of vessels under charter from private operators, requires consideration of current conditions. In the absence of definite statistics, testimony as to applicant's present cargo operations as well as those of the past 9 months, which was uncontradicted, is sufficient to serve as a basis for projecting cargo volume, available space, and generally, the market conditions under which applicant will operate in the immediate future.

There is adequate provision in the statute and adequate provision will be included in any Government charter to applicant to protect competitors in case of materially changed conditions in the future. Prudential S.S. Corp., 627 (628, 629).

Public Law 591 does not foreclose all possibility of substitution for privately owned vessels of Government-owned vessels in a particular service, but such substitution would require a showing of unusual circumstances. Such circumstances are not present where the applicant considered that its partially owned converted Liberty-type vessel was not as well suited for the service as a Victory-type vessel which it proposed to charter. *Id.* (630).

Although the Board has indicated its opposition to the grant of applications under Public Law 591 where it would amount to the substitution of a Government-owned vessel for a privately-owned vessel "intended for use in the intercoastal trade," this principle does not apply where it appears that the privately owned vessel allegedly "intended for use in the intercoastal trade," presently chartered to MSTs, in effect will be required by the Maritime Administration for other employment in the Pacific upon its availability from MSTs. Pacific-Atlantic S.S. Co., 650 (653).

#### *—Charter conditions*

The following conditions were recommended to be included in charters to be granted under Public Law 591 in view of the Korean emergency: that the use of the vessels be restricted to charters to MSTs for transportation of military and other Government-controlled cargoes; and that the term of the charters be limited to such time as the vessels remain chartered during the period of military necessity. American Mail Line, Ltd., 409 (410); Actium Shipping Corp., 415 (416); 418 (420); 421 (423); Department of the Navy, MSTs, 507 (508).

Review of stipulation entered into between counsel for the Board and counsel for the applicant satisfies the Board that no restrictions or conditions need be included in the standard form of charter at this time. South Atlantic S.S. Line, Inc., 606.

Evidence clearly shows that the Board can make the three statutory findings necessary to permit charter of war-built vessels for use on Line "D" of Trade Route No. 22. Since applicant has found it necessary to decline substantial amount of cargo and situation is growing more acute, it was not appropriate to recommend restrictions on the charter as to time or number of voyages. The standard form of bareboat charter contains a 15-day termination clause, which can be exercised any time changed conditions warrant. Lykes Bros. S.S. Co., Inc., 640 (641).

#### *—Charter hire*

Recommendation is made that charter hire payable shall not be less than 15 percent of the statutory sales price of the vessels chartered as provided by section 5(b) of the Ship Sales Act of 1946. Pacific-Atlantic S.S. Co., 489 (491); *Id.* at 526.

Merchant Ship Sales Act of 1946 may be sufficiently broad to permit a proposed charter rate of 5 percent or 100 percent of earnings, whichever is higher; however, the legality of the proposed rate is of no concern at this time since such rate is not warranted under present circumstances. American-Hawaiian S.S. Co., 499 (501, 502).

Recommendation is made that basic charter rate be fixed at 15 percent of the statutory sales price of the vessel or of the floor price, whichever is higher, of which 8½ percent is payable unconditionally and the remainder



payable if earned. American-Hawaiian S.S. Co., 499 (502); Isthmian S.S. Co., 528 (529); Luckenbach Gulf S.S. Co., Inc., 767 (770).

**—Charters to subsidized operators**

Other statutory requirements being met, charter was recommended where applicant expressed its willingness to operate the chartered vessel without subsidy, and to incorporate any profits therefrom in its subsidized operation account so that such profits will, to the extent provided by the Merchant Marine Act 1936, and by its operating-differential contract, be available for the repayment to the Government of any operating-differential subsidy received in connection with the operation of its other vessels. American Export Lines, Inc., 455.

While it was clear that the Gulf intercoastal trade (a required service) would not be adequately served without the four vessels now serving it, or their equivalent, the Board would not recommend the substitution of two chartered Government-owned vessels for two vessels owned by the applicant who was applying for continuation of two such charters and for two additional charters. Need for the service is not sufficient justification for substitution of Government-owned vessels for privately owned vessels and the record was bare of the probable financial outcome of operating four vessels, either all owned, all chartered, or a combination of owned and chartered, on a revised schedule, eliminating minor ports and concentrating on major sources of traffic. American-Hawaiian S.S. Co., 499 (500-502).

While certain limitations may well be imposed to prevent chartered Government-owned vessels from competing with the applicant's subsidized vessels—both to be used on the same routes—since the subsidized operation is controlled by terms of the subsidy contract, the Administration under Reorganization Plan 21 of 1950 is fully clothed with authority to impose such conditions as may be necessary under the subsidy agreement. Lykes Bros. S.S. Co., Inc., 510 (512).

Section 805(a) permission will be granted to subsidized operator to call at Adak, Alaska, in connection with charter of two Government-owned vessels for unsubsidized use in the transpacific trade, since there was no evidence that unfair competition would result to any exclusively domestic operator or that there would be prejudice to the objectives and policy of the 1936 Act. American President Lines, Ltd., 597 (599).

**—Inadequacy of service**

(a) *In general*

Adequacy of service cannot be measured in terms of spot availability of cargo alone. In the case of a berth service operation there must be taken into account regularity and frequency of the service, continuity of that service, its schedules, speed, and other factors which give assurances to shippers to enable them to meet their commitments in a businesslike manner. Where, without another vessel, applicant's schedule for a reasonable berth service cannot now or in the immediate future be maintained, and applicant is not in a position to adjust its round-the-world service or transpacific service to make available another owned vessel for the C-2 service of Trade Route 17 without serious dislocations, applicant has met the requirement of Public Law 591 as to adequacy of service. American President Lines, Ltd., 504 (506).

Application filed pursuant to the provisions of Public Law 591 for bareboat charter was not found to be supported by evidence that the service was inadequately served, where the applicant's own vessel was apparently able to lift 130,000 to 150,000 tons of its own cement out of a total of 200,000 tons and applicant had failed to use small craft and common carrier services calling

at Puerto Rico to handle the balance of its export cement. Ponce Cement Corp., 550 (551).

(b) *Foreign trade*

Services out of Philadelphia and Baltimore in connection with applicant's Trade Route 11 service were not shown to be inadequate. Intervenor produced evidence to show that those services are adequate. South Atlantic S.S. Line, Inc., 600 (604).

Application for charter of Government-owned vessel is granted where the record discloses the space available is not sufficient for the cargo offerings to applicant and it has been necessary for applicant to refuse cargo offerings and to limit its freight solicitations. Prudential S.S. Co., 627 (628).

There is not an inadequacy of service within the meaning of Public Law 591, where there is not an inadequacy of all American-flag operations in the service. The adequacy or inadequacy of the service of a particular applicant or line does not control. Clear showing by applicant that its U.S.-flag vessels are unable to provide adequate service is some evidence that all U.S.-flag vessels are unable to do so, and in the absence of evidence to the contrary from competitive or other sources may be sufficient to support the statutory finding. American President Lines, Ltd., 646 (648).

Where applicant for charter of war-built vessels, for use on Service C-2 of Trade Route No. 17, shows that its vessels on sailing from Atlantic ports carry approximately 40 percent of capacity for the Indonesia-Malaya area and approximately 40 percent for other transpacific ports, leaving some space to be filled at California ports, the testimony does not show that applicant's vessels are concentrating on Indonesia-Malaya cargo, or that there is more of such cargo than the vessels can carry if they exclude shipments to ports which are secondary in the service. A similar situation exists with respect to cargo originating in the Indonesia-Malaya area on home-bound voyages. Thus the record does not support a finding that there has been in the recent past an inadequacy of service on the C-2 service and the Board is unable to make the third finding (required by Public Law 591) of inadequacy of service. *Id.* (649).

Findings that the service for which application is made is not now adequately served, are based on the general requirements of the trade rather than on the operator's desire to develop its long-range program. American Export Lines, Inc., 661 (662).

Service on Trade Route 20 will not be adequately served without addition of another vessel where there is considerable cargo without available space; although applicant's vessels have not always sailed full northbound, coffee is sold in the United States in a position basis and the vessel that is in position gets the business; and foreign-flag vessels are sailing substantially full. Mississippi Shipping Co., Inc., 669 (666).

Application for extension of bareboat charter of Government-owned vessels granted where the volume of traffic (on Routes 13 and 21) is heavy and expected to increase; all sailings are fully booked; and applicant has refused cargo including considerable cargo offered by the military and proposed Government aid should substantially increase the traffic in the future. Lykes Bros. S.S. Co., Inc., 668 (669-671).

Application for charter of Government-owned vessels granted where cargo offerings have increased substantially for applicant's vessels at the time of the application, with more cargo being offered for the future than it could handle; applicant has turned down substantial cargo offerings; commodities carrier hauls are essential for the economic well-being and development of the area

serviced and are needed in American industry and for the defense effort; and foreign-flag service is to be curtailed. Lykes Bros. S.S. Co., Inc., 672 (673, 674).

Application for bareboat charter of Government-owned vessels granted where volume of freight offered has been increasing, applicant's vessels have sailed with capacity cargoes, and applicant has had to decline cargo. Moore-McCormack Lines, Inc., 680 (681, 682).

Application for bareboat charter of Government-owned vessel is granted where one of applicant's vessels which was badly damaged, will not be in sailing position until a later date than previously expected; even with the return of that vessel, another vessel will be needed to handle increased cargo offerings; traffic condition on the route involved (Route 20) has been aggravated by serious port congestion, resulting in increased estimated turnaround time; and the situation is not likely to improve in the foreseeable future. Mississippi Shipping Co., Inc., 686 (687, 688).

Service is inadequate where the tonnage offering far exceeds available vessel space; all of applicant's vessels are sailing substantially full outbound from the Gulf, and 65 to 75 percent full inbound; and backlog of cargo destined outbound is piling up. Mississippi Shipping Co., Inc., 690 (691).

Service is inadequate where applicant's vessels have sailed substantially full; cargo offerings had to be refused; some military cargo could not be accepted, and demand was expected to increase because of the efforts of shippers to secure space for cargo that failed to move during a longshoremen's strike. Prudential S.S. Corp., 700 (701).

Permission for Alaska Steamship Co. to time charter vessels to Grace for the winter was granted where the service for which Grace intended the vessels was not adequately served. During the winter the tonnage movement is particularly heavy. The period includes seasonal movements of fresh fruits to Central American ports and coffee movements from Central American ports and Mexican ports northbound. The vessels involved have refrigeration facilities which are particularly important during this season. Grace has sufficient cargo offerings to fill substantially the first voyages of the two vessels which it proposes to charter from Alaska. Grace Line, Inc., 710 (711, 712).

Application for charter of Government-owned vessel granted where all American-flag vessels are sailing fully laden and cargoes are booked for future voyages, thereby proving that the service would not be adequately served without the vessel. Isbrandtsen Co., Inc., 724 (725).

Facts that applicant's vessels have sailed without free space, some cargo has had to be declined, and forward bookings of applicant are large, verify a finding that the service would be inadequate without the vessel to be chartered. American President Lines, Ltd., 726 (727, 728).

Application for charter of Government-owned vessels for use in applicant's round-the-world service will be denied insofar as it includes Indonesia as a privilege call, as there was insufficient showing of inadequacy of service for this segment, applicant not being certain it would make such calls even if permission were granted; applicant has not served Indonesia for at least 2 years; and applicant has pending before the Board an application which, if granted, would provide an additional vessel for another service which includes, as one of its principal objectives, service between ports on the east and west coasts of the United States and Indonesia. American President Lines, Ltd., 726 (729).

Application for charter of Government-owned vessels granted where evidence that applicant's outbound vessels have been sailing substantially full for the past year and that applicant had to refuse considerable quantities of commercial

and Government-controlled cargo because of lack of space sustain the burden of proving inadequacy of all American-flag operation in this service. American Export Lines, Inc., 763 (764, 765).

(c) *Intercoastal trade*

Intercoastal service is not adequately served where there are not enough vessels or rail cars to handle eastbound movement of lumber, for which there is an urgent and critical need. Efforts of individual lines to build up intercoastal trade should be encouraged. Pope & Talbot, Inc., 411 (412).

Applications for charter of vessels for operation in the intercoastal trade are denied, though the service in question is in the public interest, and the record shows that no privately owned American-flag vessels are available for charter by private operators on reasonable conditions and at reasonable rates for use in the service, where one applicant assures the Board that the trade will be adequately served after the present charters expire, because it will replace all of the chartered tonnage now in the trade with privately owned vessels, and supply more tonnage if necessary. American-Hawaiian S.S. Co., 476 (477, 487, 488).

Inadequacy of existing service within the meaning of Public Law 591 is shown, where applicant's ships are running full and, at times, have been overbooked, and indications are that the vessels will be booked full if application for additional service is granted. Pacific-Atlantic S.S. Co., 489 (494).

Gulf intercoastal service will not be adequately served without the use of two additional Government-owned, war-built vessels. Isthmian S.S. Co., 528 (529).

Objections by intervenor in proceedings under Public Law 591, on ground that Government-owned vessels should not be used in intercoastal service in competition with privately owned vessels, will not be sustained where intervenor failed to offer evidence to controvert testimony of applicant on inadequacy of service. Pacific-Atlantic S.S. Co., 650 (659).

Application for charter of Government-owned vessels to replace vessels which will be chartered by the military, is granted where applicant's vessels are running substantially full in both directions; some cargo has been declined; traffic has increased since time of previous report finding that the service would be inadequately served without the use of applicant's vessels; and situation is aggravated by shortage of rail cars. American-Hawaiian S.S. Co., 693 (694, 695).

Application for bareboat charter of Government-owned vessels granted on findings that applicant's vessels are sailing substantially full; cargo is accumulating in substantial volume, and the market continues strong; and because of the shortage of rail cars, cargo must move by water. Pacific-Atlantic S.S. Co., 705 (706).

Application for charter of Government-owned vessel granted as the intercoastal service is inadequately served. It does not offer shippers sufficient regularity, frequency, or certainty to attract the cargo which would normally move by water. Luckenbach Gulf S.S. Co., Inc., 767 (768, 769).

(d) *Government—military—national defense requirements*

Evidence clearly shows that, in view of the present Korean situation, 15 victory-type ships in addition to vessels presently operating are needed immediately for the transportation to Korea of Government-owned or controlled cargo for the military services. American Mail Line, Ltd., 409 (410).

In connection with application to charter vessels to transport military cargoes to Korea, the testimony was clear that regular berth services would not suffice for logistic support of American troops in the Far East as all movements are

unit movements, and any vessel carrying cargo for such movements must be under direct orders of MSTIS. Id. (410).

Service was inadequate where private tonnage suitable to handle the cargo movement was not available by the deadline fixed by military authority. Coastwise Line, 413 (414).

Charter of vessels from Government's reserve fleet will be granted where the service in question is not adequately served; there is an urgent need for vessels to handle Government-owned and controlled cargo; there are no privately owned vessels to meet the military's time requirements; operation by the military itself is necessary to meet logistic requirements; coast liner services are presently being extensively utilized by the military; and no suitable vessels are available within the time requirements. Actium Shipping Corp., 418 (419); 421 (422).

Extension of charter of vessels will be granted where the service in question would not be adequately served without such extension; without applicant's vessels' capacity there would be a serious inadequacy of reefer space in the areas served; vessels sailed substantially full; only competitor has been utilizing its reefer space; applicant has been able to provide its service to the military at approximately half of the conference rates; there are no privately owned refrigerated cargo vessels under American flag suitable for operation other than a fleet which is obviously not available; and any reduction of the fleet at this time would be extremely detrimental to national defense interests. Pacific Far East Line, 428 (431-432).

Charter of Government-owned vessels will be granted where services in question are not adequately served; applicant gave two vessels, which are not expected to be returned immediately, to the military; schedule has been reduced by military deferred redeliveries; fleet is being called upon to handle a greatly enlarged volume of traffic and is unable to accommodate cargo offered for shipment; and situation is especially acute with respect to products which are, in the main, Economic Cooperation Administration—financed. Lykes Bros. S.S. Co., Inc., 453 (454).

Charter of Government-owned vessels should be granted, where the service is not adequately served; Government witnesses testified that the grant is needed for the national defense and the economy and that commodities will move in the trade in greater quantities; and a principal shipper testified that there was an urgent need for additional coastwise transportation facility. Spot condition of cargo offerings and space utilization on particular voyages are not the only factors to be considered in measuring adequacy or inadequacy of service. Coastwise Line, 515 (516).

Applications for charter of Government-owned vessels should be granted, where the service in question would not be adequately served without the use therein of such vessels; vessels are for use primarily to provide military requirements in the Far East and the applications are predicated upon and supported by military necessity. American President Lines, Ltd., 518 (524).

Where a substantial increase in the volume of Alaska traffic connected with the national defense effort was indicated; there has been a substantial increase in southbound movement of lumber and other products; and due to the rail car shortage, there is urgent need for additional vessels to carry this traffic, the service is not adequately served. Coastwise Line, Alaska S.S. Co., 545 (546).

#### **—Notice and hearing**

Usual 15 days' notice of application was not given because of urgency of the matter and although counsel for the Committee for the Promotion of Tramp Shipping under the American Flag in Foreign Commerce contended he had not

had sufficient time to secure the desired number of witnesses, he was permitted wide latitude in the presentation of his case and it appears reasonably certain from his statements that the testimony of any additional witnesses would have been merely cumulative. Pope and Talbot, Inc., 411.

Application filed pursuant to the provisions of Public Law 591 for bareboat charter recommended to the Maritime Administration for dismissal with prejudice, where the applicant twice failed to appear at scheduled hearings, and its only excuse was that the matter had been forgotten. Isbrandtsen Co., Inc., 543 (544).

Where the notice of hearing indicated that charter application was to be considered under section 3 of Public Law 591, and the notice stated that the purpose was to receive evidence on the issue of public interest, adequacy of service, and availability of privately owned American-flag vessels, the Examiner would have been technically correct in excluding evidence relating to possible charter restrictions and conditions if the evidence were to be strictly limited to the issues. However, in the past, and in cases heard directly by the Board, such evidence has been admitted to guide the Board in its recommendations to the Secretary. Since the notice indicated that the hearing was to be held pursuant to section 3, the hearing should have been conducted in a manner so as to place upon the record material evidence on all matters pertinent to the Board's statutory functions. Future notices should indicate that such evidence will be received and this case will be remanded to the Examiner to receive the excluded evidence. South Atlantic S.S. Line, Inc., 600 (601).

Notice of hearing in Public Law 591 proceeding referring to "ports in the Mediterranean" was sufficient to cover Mediterranean ports in Spain and Yugoslavia, but not Lisbon which is not such a port. Prudential S.S. Corp., 627.

An application for charter of Government-owned vessels for use in applicant's intercoastal service is not broad enough to cover privilege calls at Puerto Rico. However, applicant's right to apply for inclusion of such calls under all the conditions of Public Law 591 is not prejudiced by its failure to do so in the instant application. Pope and Talbot, Inc., 697 (699).

A notice of hearing in a proceeding concerning an application for charter of a Government-owned vessel is broad enough to include privilege port calls (Indonesia) even though such ports have not been regularly served in the period immediately preceding the application, since the requirement of Public Law 591 is "due notice to all interested parties" and the application was for "employment in (applicant's) round-the-world service" and applicant's operating subsidy agreement includes Indonesia as a privilege call in such service. American President Lines, Ltd., 726 (729).

Notice of hearing in Public Law 591 proceeding referring to "ports in the Mediterranean" is not sufficient to cover "Portugal, Spanish Atlantic ports south of Portugal, and ports in the Black Sea." Under its operating subsidy agreement applicant has the privilege of calling at these ports. Substantially all of the evidence offered was directed toward a showing of inadequacy between U.S. North Atlantic ports and ports in the Mediterranean and the application must be so limited. American Export Lines, Inc., 763 (764).

#### **—Service required in the public interest**

##### **(a) In general**

Extension of charter, and time charter of certain of the vessels involved to another steamship company, was found by the Board to have advantages accruing to all parties, where, otherwise, certain of the vessels would be laid up for

a 6-month period, uninterrupted employment would be afforded to the officers and crew of the vessels to be time chartered, and the Government would benefit from an increase in basic charter hire rates. Alaska S.S. Co., 435 (436); Grace Line, Inc., 710 (711).

Application for charter of two Government-owned vessels to move 47,000 tons of iron or steel pipe from California to Venezuela ports between December 21, 1951, and May 1952, for use in increasing the production of the Maracaibo Lake district oil fields, will be denied as not in the public interest. The intended service is the haulage of a single commodity from a single shipper to one consignee, from one port to substantially one port. While such concentration may be warranted under exceptional circumstances as a matter of sound operating practice, the purpose here has not been shown to be in the public interest by any strong or convincing evidence. Grace Line, Inc., 703 (704).

(b) *Foreign trade*

Indefinite extension of applicant's charter of war-built vessels for continued use in conjunction with service between U.S. Pacific coast ports and the west coast of Central and South America is required in the public interest. Applicant's principal competitor is a foreign-flag line. Grace Line, Inc., 424 (427); Alaska S.S. Co., 435 (436).

Services, being for the carriage of coal and grain from the United States to Europe, are required in the public interest. American Export Lines, Inc., 451 (452).

Service between U.S. Atlantic ports and Mediterranean ports is required in the public interest. American Export Lines, Inc., 455 (456); 763 (764); Prudential S.S. Corp., 627 (629); 700.

World shipping conditions having become more acute original findings are broadened to include carriage of sulphur, coal, coke, pitch, lumber, and grain from the United States to Europe, as required in the public interest. American Mail Line, Ltd., 497 (498).

Predicated upon prior decision of Board and Administrator that applicant's Atlantic/Straits service is inadequately served with U.S.-flag services, and upon testimony offered herein, the Board has no difficulty in finding that the service is required in the public interest. American President Lines, Ltd., 504 (505).

Service to Mediterranean countries is in the public interest. These countries are now more dependent than before World War II upon a number of Pacific coast products, Israel being a particularly important destination. Pacific Far East Line, 535 (536).

Service operated by applicant within Trade Route 11 between South Atlantic ports and ports in the United Kingdom and Atlantic Europe, is required in the public interest. South Atlantic S.S. Line, Inc., 606 (607).

The burden of proof is upon an applicant for charter of Government-owned vessels to establish that the service in which the vessels are to be used is required in the public interest. Public Law 591 does not provide that the use of the vessels shall be in the public interest. While there was no direct evidence in the record that the service contemplated was in the public interest, the Board will take judicial notice that such is the case in view of its recent consideration of services from this country to the Mediterranean area, which is the service proposed by the applicant. Prudential S.S. Corp., 627 (629).

Application for charter of war-built vessel granted where the route involved (Trade Route 20) has been determined by the Maritime Commission to be an

essential trade route and the continuance of the service is in the public interest. Mississippi Shipping Co., Inc., 664 (665, 666).

Trade Route 15-B is an essential trade route. Applicant is the only U.S.-flag operator serving the route. It is the only carrier operating over the entire route and providing a regular service from South and East Africa to the Gulf of Mexico. The service is required in the public interest. Lykes Bros. S.S. Co., Inc., 672.

Freight service from United States Atlantic ports to the east coast of South America is required in the public interest. Moore-McCormack Lines, Inc., 680 (682).

Service between the Gulf coast and the east coast of South America is required in the public interest. Mississippi Shipping Co., 686 (688).

Application for charter of Government-owned vessel is granted where the route involved (Route 14) has been determined to be an essential foreign trade route; applicant is the only U.S.-flag operator on the route; and cargo moving over the route is important to the defense effort and economy of the United States and the economy and development of the area serviced. The service is in the public interest. Mississippi Shipping Co., Inc., 690 (691).

Since American President Lines round-the-world service has been determined essential to the foreign commerce of the United States, and applicant carries military and commercial cargo which is essential to the national defense effort and the economy of the areas served, the service under consideration is in the public interest. American President Lines, Ltd., 726 (727).

(c) *Intercoastal trade*

Alaskan service was one of the reasons for extending the authority of the Secretary of Commerce to charter vessels. Alaska S.S. Co., 435 (439).

The intercoastal service is required in the public interest. American-Hawaiian S.S. Co., 446 (447); 476 (487); 693 (694); Pacific-Atlantic S.S. Co., 525 (526); 650 (659); 705 (706); Pope & Talbot, Inc., 697 (698); Luckenbach Gulf S.S. Co., Inc., 767 (768).

Applications under Public Law 591 for use of vessels in the intercoastal trade are in the public interest since the importance of the intercoastal trade has been recognized by Congress, the Interstate Commerce Commission, and the Maritime Administration. Pacific-Atlantic S.S. Co., 489 (494).

Gulf intercoastal service is required in the public interest. American-Hawaiian S.S. Co., 499 (502); Isthmian S.S. Co., 528 (529); Luckenbach Gulf S.S. Co., Inc., 767 (768).

Alaska service is required in the public interest. Coastwise Line, 515 (517); 545 (546).

(d) *Government—military—national defense requirements*

Grant of an application filed pursuant to the provisions of Public Law 591 for charter, for one round voyage, to transport Government contract materials from Seattle to Alaska, and return with commercial cargo was found by the Board to be required in the public interest. Coastwise Line, 413 (414).

Applications for charter of a total of 20 vessels under Public Law 591 were granted where it was shown by MSTs that on account of the Korean situation there was urgent need for such vessels to handle Government-owned and controlled cargo; operation by MSTs itself was necessary to meet logistic requirements; Pacific coast liner services were being utilized by MSTs at their full capacity; and there were no available privately owned vessels. Actium Shipping Corp., 415 (416).



Applications filed pursuant to the provisions of Public Law 591 for charters were found by the Board to be required in the public interest, where the current and potential programs for the movement of Economic Cooperation Administration-financed and non-ECA financed cargo were in excess of the capacity of available privately owned American and foreign vessels, failure to make additional vessels available promptly would result in further aggravation of the conditions prevailing and compel the ECA to pay even greater premiums for vessels, and participating countries would be prevented from or delayed in receiving vitally needed cargoes. American Export Lines, Inc., 451 (452).

In proceedings under Public Law 591 the Board found the required services to be in the public interest, where it was shown by MSTTS that, due to the loss of privately-owned ships plus several highly classified moves which involve trade routes in different areas of the world, vessels in question were needed by the MSTTS for the support of its military forces world-wide. Department of the Navy, Military Sea Transportation Service, 507.

Application for charter of Government-owned vessels for use in the trans-pacific trade will be granted where the service involved is required in the public interest to carry military cargo for MSTTS. American President Lines, Ltd., 597 (598).

Application for extension of charter of war-built vessels granted where the service (North Atlantic-Mediterranean) continues to be in the public interest, not only because of its general importance, but also as the result of world-wide conditions which influence and augment the flow of military and related supplies. American Export Lines, Inc., 661.

In the light of present world conditions and the defense measures being taken by the United States, Great Britain, and Western Europe, service from North Atlantic ports to ports in the United Kingdom and continental Europe is required in the public interest. Isbrandtsen Co., Inc., 724.

**—Unavailability of privately-owned vessels**

Privately-owned vessels were not available for charter on reasonable conditions and at reasonable rates. American Mail Lines, Ltd., 409 (410); Actium Shipping Corp., 415 (416); 418 (419); 421 (422); Grace Line, Inc., 424 (427); 710 (712); Pacific Far East Line, Inc., 428 (434); 535 (537); Alaska S.S. Co., 435 (436); American Export Lines, Inc., 451 (452); 455 (456); 661; 763 (765); Lykes Bros. S.S. Co., Inc., 453 (454); 510 (512); 668 (670); 672 (674); American-Hawaiian S.S. Co., 476 (487); American President Lines, Ltd., 504 (506); 518 (524); 597 (598); 726 (729); Coastwise Line, 515 (517); 545 (546); Pacific-Atlantic S.S. Co., 525 (526); 705 (706); South Atlantic S.S. Line, Inc., 606 (607); Prudential S.S. Corp., 627 (630); 700 (701); Mississippi Shipping Co., Inc., 664 (666); 686 (688); 690 (691); Moore-McCormack Lines, Inc., 680 (682); Pope & Talbot, Inc., 697 (698); Isbrandtsen Co., Inc., 724 (725).

Privately-owned vessels are not available on reasonable conditions and at reasonable rates where such a vessel could have arrived in the Pacific coast but not on time to meet the schedule for applicant's first sailing. Not only is the time factor important, but the vessels would have had to move westward in ballast at an estimated cost of \$41,000 per vessel. This, added to charter hire, constitutes an unreasonable rate for one round voyage. Pope & Talbot, Inc., 411 (412); Coastwise Line, 413 (414); American-Hawaiian S.S. Co., 446 (448).

While it was clear that privately-owned vessels have been available since the last hearing, and that applicant could have chartered them had it so wished, the conditions attendant upon their charter have not been reasonable. Such vessels are still not available on the Pacific coast, where applicant's voyages commence,

and taking such vessels in ballast from the Atlantic coast or the Gulf coast would cost in excess of \$40,000. Counsel for the Committee for the Promotion of Tramp Shipping contends, however, that the Maritime Administration could permit redelivery of the two bareboat-chartered vessels on the Atlantic coast and that applicant could then charter privately-owned vessels in such area, thus eliminating the taking of the latter vessels to the Pacific coast in ballast. Redelivery, however, of the Government-owned vessels on the Atlantic coast would necessitate repatriation of the crew at applicant's expense pursuant to its labor contract. Although applicant might possibly integrate its operations in the manner described, timing is such an important factor that the Board does not feel such procedure can be insisted on. *Pope & Talbot, Inc.*, 444(445); *American-Hawaiian S.S. Co.*, 446(448).

The Board will find that no privately-owned vessels are available in the intercoastal trade at reasonable rates, within the meaning of Public Law 591, where available Liberty-type vessels, due to the Korean emergency, are absorbed by the foreign trade and command rates as high as \$60,000 per month, whereas applicants, due to railroad competition with intercoastal trade, are prevented from increasing pre-Korean rates of \$40,000 to \$42,000. *Pacific-Atlantic S.S. Co.*, 489(495).

**CHARTERS.** See also Demurrage. For Charter of War-Built Vessels under Public Law 591, 81st Congress, see Charter of War-Built Vessels.

A charterer may be a common carrier whether the charter is a bareboat or demise charter, by the terms of which the charterer assumes exclusive possession, command, and navigation of a vessel, or an affreightment contract under which such possession, command, and navigation are retained by the general owners. *Transportation Between Pacific Coast Ports of the United States and Hawaii*, 190(197).

One who charters a barge and a tug under an affreightment contract, and ships the cargo of a number of shippers from San Francisco to Honolulu, is a common carrier by water, not a tramp, in interstate commerce and must file a schedule of rates in accordance with the requirements of section 2 of the Intercoastal Shipping Act, 1933. *Id.* (198, 199).

Where a charter gives to the charterer the full capacity of the ship and the charterer is the only shipper, the carrier is not a common carrier, but where there were various shippers, whose order bills of lading made no reference to the charter, their rights were determined by their respective bills of lading, and the ship was, therefore, a common carrier. *D. L. Piazza Co. v. West Coast Line, Inc.*, 608(612).

Where there were various shippers whose order bills of lading made no reference to a charter, their rights were determined by their respective bills of lading and the ship was a common carrier within the definition and requirement of sections 1 and 22 of the Shipping Act of 1916 on which the Board's jurisdiction is based. *Id.* (612).

Where complainant chartered a vessel, agreeing to ship a definite amount of apples or their equivalent in other fruit, and actually delivered a less amount for shipment, the shipowner was authorized to fill the space which complainant had agreed to take, and in fact was required to make reasonable effort to do so to minimize the damages which complainant's breach of contract might occasion. Thus the vessel owner was entitled to carry fruit belonging to other persons and to discharge such shipments at a port along the route. The failure of the shipowner to give complainant exclusive use of the ship created no unjust discrimination or unreasonable prejudice or disadvantage. *Id.* (613-615).

**CLASSIFICATIONS.**

A tariff rate charge for cargo N.O.S., rather than for dried fruit, was properly applied to cocculus which is a fruit of the vine in the language of botany but is not a fruit in the ordinary sense; thus no violation of the Shipping Act of 1916 was involved. *Himala International v. Fern Line*, 53(55).

Although the tariff item, "Grease, Animal," rather than "General Cargo, N.O.S.," should have been applied to lanolin which is animal grease, no violation of the Shipping Act of 1916 was shown where there was no movement of lanolin other than that shipped by the complainant and there was no evidence that the rate actually assessed resulted in undue preference or disadvantage or unjust discrimination. *Id.* (55, 56).

Lanolin is a generic or descriptive term, not a trade name, and therefore may be used as a commodity designation in a tariff. *Himala International v. Greek Line*, 187(189).

**COMMON CARRIERS.** See also Charters; Findings in Former Cases; Forwarders and Forwarding; Free Time.

**—Who is common carrier**

A person who uses lighters to transport commodities for the general public on regular routes between ship and shore, makes his own contracts of charges or rates which are separate from control by the ocean carrier, and assumes liability to shippers for loss or damage to cargo is a common carrier under section 1 of the Shipping Act of 1916. Merely because such carrier furnishes wharfage, dock, warehouse, or other terminal facilities does not preclude it from being a common carrier; the Intercoastal Shipping Act of 1933 contemplates such services by common carriers and requires them, in filing their schedules to "state separately each terminal or other charge, privilege, or facility granted or allowed." *Rates Between Places in Alaska*, 7(9).

Where transportation between Seattle and Alaskan ports is accomplished jointly by an ocean carrier and by a ship-to-shore service which does not participate in the line haul of the ocean carrier, each is common law carriage, and the latter is regular and on the high seas within the meaning of section 1 of the Shipping Act of 1916. *Id.* (10).

Carrier which repeatedly refused to take refrigerated cargo for anyone, but thereafter accepted such cargo from one shipper on special terms to the exclusion of other shipper who had applied for space, was a common carrier subject to the Shipping Act, 1916, with respect to the refrigerated space on its vessel. *Waterman v. Stockholms Rederiaktiebolag Svea*, 131 (136).

Common carriers are such by virtue of their occupation, not by virtue of the responsibilities under which they rest. Absence of evidence that a person held himself out as a common carrier, that a sailing schedule was ever published, that cargo was solicited, or that there was no advertisement that the cargo of anyone or everyone would be taken, is not decisive on the common carrier issue. That printed terms and conditions of the common carrier form of the bill of lading were crossed out and shipments covered by separate contract, does not negative a holding out as a common carrier. *Transportation Between Pacific Coasts Ports of the United States and Hawaii*, 190 (196).

A common carrier is one who undertakes for hire to transport goods for such as choose to employ him. One transporting goods from place to place for hire, for such as see fit to employ him, whether usually or occasionally, whether as a principal or an incidental occupation, is a common carrier. *Id.* (197).

A charterer may be a common carrier whether the charter is a bareboat or demise charter, by the terms of which the charterer assumes exclusive possession,

command, and navigation of a vessel, or an affreightment contract under which such possession, command, and navigation are retained by the general owners. *Id.* (197).

One who charters a barge and a tug under an affreightment contract, and ships the cargo of a number of shippers from San Francisco to Honolulu, is a common carrier by water in interstate commerce and must file with the Maritime Commission a schedule of rates in accordance with the requirements of section 2 of the Intercoastal Shipping Act, 1933. *Id.* (198, 199).

Where a charter gives to the charterer the full capacity of the ship and the charterer is the only shipper, the carrier is not a common carrier, but where there were various shippers, whose order bills of lading made no reference to the charter, their rights were determined by their respective bills of lading, and the ship was, therefore, a common carrier. *D.L. Piazza Co. v. West Coast Line, Inc.*, 608 (612).

Where there were various shippers whose order bills of lading made no reference to a charter, their rights were determined by their respective bills of lading and the ship was a common carrier within the definition and requirement of sections 1 and 22 of the Shipping Act of 1916 on which the Board's jurisdiction is based. *Id.* (612).

Carriers contracting for space in railroad cars or on vessels are common carriers. *Bernhard Ulmann Co., Inc. v. Porto Rican Express Co.*, 771 (775).

Status as a common carrier does not depend on ownership or control or means of transportation, but, rather on the nature of the undertaking with the public served. *Id.* (775).

Status as a common carrier depends upon the nature of the service offered to the public and not upon the party's own declaration. *Id.* (776).

Express companies offering door-to-door service between points in continental United States and both Alaska and Hawaii have long been subject to regulation under the Shipping Act and the Intercoastal Act as common carriers by the Board and its predecessor. *Id.* (777).

A company which undertakes to transport goods door-to-door from New York to Puerto Rico is a common carrier by water although it has no control over the shipments made by it while in the custody of the ocean carrier, it pays the regular published tariff, it accepts the regular ocean bill of lading, and it has no special contract or arrangement with the ocean carrier. *Id.* (777, 780).

#### *—Duties of common carrier*

Carriers have obligation to furnish safe and convenient place to receive cargo from shipper and deliver cargo to consignee. If this cannot be done at end of ship's tackle, carrier must arrange to move cargo to place of rest but it may separate its rates to cover the actual transportation and the handling between tackle and place of rest. Furthermore, carrier must receive and receipt cargo, deliver it to those entitled to it, and handle all necessary papers. *Terminal Rate Increases—Puget Sound Ports*, 21 (23, 24).

Duty of ocean common carrier in transporting cargo such as borax, potash, soda ash, and cement in bags or package lots is to pick it up from some place on the docks where the shipper places it and move it to ship's tackle, load it on board and carry it to destination. *Los Angeles Traffic Managers' Conference, Inc. v. Southern California Carloading Tariff Bureau*, 569 (578).

**COMPENSATORY RATES.** See also *Detriment to Commerce; Free Time; Rate Structure.*

Carloaders' evidence concerning labor costs and costs of overhead approved and found sufficient to determine compensatory rates. *Status of Carloaders and Unloaders*, 268 (271).

**CONSTRUCTION COST.** See Subsidies, Construction-Differential.

**CONSTRUCTION-DIFFERENTIAL SUBSIDIES.** See Subsidies, Construction-Differential.

**CONSTRUCTION RESERVE FUND.**

Authority of the Commission to grant extensions of time for the obligation of deposits in the Construction Reserve Fund is permissive rather than mandatory, and is not retroactive as to deposits withdrawn or deposits as to which the time for extension has lapsed. American-Hawaiian S.S. Co.—Construction Reserve Fund Deposits, 389 (390).

Time within which deposit in applicant's Construction Reserve Fund shall be expended or obligated for construction or acquisition of new vessels as defined in section 511 of the Merchant Marine Act of 1936 should be extended pursuant to P.L. 50 (81st Cong.) where every effort is being made to reduce costs, it would not be prudent for applicant either to plan for the construction of new vessels under prevailing circumstances, or to purchase vessels at prevailing prices; if requested extension were not granted, applicant would have no alternative but to withdraw the deposits in its fund and pay a substantial portion thereof in taxes, and that this would remove this amount from possible future investment in the American merchant marine; in the face of demands from some stockholders to liquidate, the board of directors has taken affirmative action to stay in business although losing money; and applicant states that if it receives extension, it is confident something can be worked out. Id. (392, 393).

Time within which deposits in applicant's Construction Reserve Fund shall be expended or obligated for construction or acquisition of new vessels as defined in section 511 of the Merchant Marine Act of 1936 should be extended where applicant has developed several plans for modern vessels and, by conducting tests, has eliminated all but two hull patterns from consideration, applicant states that it hesitates to build vessels because of uncertainties as to what quantities of what cargoes will be carried; and applicant believes that the present uncertainty will be resolved in 2 years and there will be no delay in construction simply because the requested extension was granted. Id. (394, 395).

**CONTRACT RATES.** See also Agreements under section 15; Damages; Discrimination; Monopoly.

*Menacho v. Ward*, holding the contract rate system illegal per se, is not controlling precedent in view of subsequent enactment of Shipping Act and, specific provisions of section 15 removing from application of antitrust statutes all agreements approved by Commission as well as all activities of the parties thereunder. Pacific Coast European Conference Agreement (Agreement Nos. 5200 and 5200-2), 11 (16).

If Congress had intended to prohibit the contract rate system when it passed the Shipping Act, 1916, it would have done so with the same force as it prohibited the deferred rebate system. The system is not unlawful per se. Id. (16).

Where the trade is highly competitive and of a seasonal nature the contract rate system is necessary to secure the continuance of the conference; the frequency, dependability and stability of service; and the uniformity and stability of freight rates. Id. (17).

Penalty clause of exclusive patronage contract giving carriers option as to whether they will assess damages is objectionable, since it opens the door to possible discrimination and removes uniformity of treatment sought to be accomplished by conference agreement. Id. (18).

Penalty clause of exclusive patronage contract which, in effect, prevents a violating shipper from securing a contract in the future is objectionable. *Id.* (18).

A violation of an exclusive patronage contract by a shipper may not be penalized by a retroactive method of establishing damages which may result in discrimination. The large volume or frequent shipper would, in effect, be compelled to use conference carriers permanently, whereas the small or infrequent shipper would not be deterred. Fixing of damages at the amount of the freight involved, or at a certain number of times thereof, would establish a definite formula by which the penalty could be calculated and would have no retroactive feature. *Id.* (18, 19).

Exclusive patronage contract rate system of conference is not in violation of the Shipping Act, 1916. *Himala International v. American Export Lines, Inc.*, 232 (233).

Exclusive patronage provision of conference contract with shipper, giving carrier an option to terminate the contract and collect damages if the shipper violates it by shipping via a nonconference vessel is unreasonable. *Id.* (234).

The exclusive patronage contract dual rate system does not violate section 14-Third of the Shipping Act which provides that no carrier shall retaliate against a shipper or discriminate against him because he has patronized another carrier for three reasons: (1) such an interpretation would be contrary to those uniformly given since adoption of the Act in 1916; (2) such an interpretation would make impossible any harmonious administration of the Act since any agreement between carriers found to contain no unjust or unreasonable discrimination under sections 15, 16 and 17 of the Act might require an opposite finding under section 14-Third, and since section 15 expressly refers to agreements giving "special rates" which is the effect of the dual rate system; and (3) the language of section 14-Third is not to be considered as a standard for judging all carrier agreements, but establishes a prohibition against retaliation, and the dual rate system is not retaliatory against a shipper who voluntarily declines to give his exclusive patronage to a carrier. *Isbrandtsen Co. v. North Atlantic Continental Freight Conference*, 235 (240, 142).

The dual rate system is not contrary to section 15 of the Shipping Act since it permits regularity of service by the carriers, regular availability of cargo from the shippers, stability of rates, better estimation of the volume of traffic to be expected, better arrangement of sailings, and, as to both small and large shippers, encourages operation in "forward trading" which is so necessary for foreign commerce. *Id.* (245).

The enforceability or nonenforceability of exclusive patronage contracts does not enter into a determination by the Board as to whether agreements by conference carriers to use such contracts are to be approved under section 15 of the Shipping Act, as in fact, such contracts are observed without resort to court action. *Id.* (245).

**COST OF SERVICE.** See also Carloading and Unloading; Compensatory Rates; Rate Structure.

Although the Board has the power to fix minimum charges so as to reflect actual costs of car service rendered and so as to prevent undue burdens on other services performed by the same contractors, it has determined not to do so in this case. It has required carloaders themselves to establish rates that will meet statutory requirements. *Carloading at Southern California Ports*, 261 (266).

**DAMAGES.** See also Burden of Proof; Contract Rates; Discrimination.

Exclusive patronage contract, providing for liquidated damages in case of violation, equal to twice the amount of freight that would have been payable under the contract in respect to the shipment constituting the violation, is reasonable, since the harm caused is almost impossible to accurately estimate, some member of the conference whose ship has sailed has lost the freight involved, and the conference as a whole has been weakened. The fact that the conference collects the damages instead of an individual carrier, does not militate against reasonableness, since there will be damage to an individual though unascertained member of the conference as well as to the conference as a whole. The collection of damages by the conference appears to be a practicable measure to make the contracts effective for the benefit of the conference members. The result is in substance a pooling of damages analogous to the pooling of earnings or profits which the Shipping Act of 1916, section 15, expressly authorizes. *Isbrandtsen Co. v. North Atlantic Continental Freight Conference*, 235 (246).

Damages must be the proximate result of violations of the statute in question; there is no presumption of damage; and the violation in and of itself without proof of pecuniary loss resulting from the unlawful act does not afford a basis for reparation. *Waterman v. Stockholms Rederiaktiebolag Svea*, 248 (249).

Proof of damages, resulting from failure of carrier to provide shippers with equal opportunity with competitor to secure space to ship fresh fruit from New York to Rio de Janeiro, found wanting; to award damages there must be that degree of certainty and satisfactory conviction in the mind and judgment of the Board as would be deemed necessary under the well-established principles of law in such cases as a basis for a judgment in court. *Id.* (253).

**DEFERRED REBATES.** See Brokerage; Contract Rates.

**DELIVERY.** See Common Carriers; Free Time; Practices.

**DEMURRAGE.** See also Burden of Proof; Canal Zone; Charters; Free Time; Jurisdiction; Practices; Preference and Prejudice.

In the absence of proof, Commission cannot assume that demurrage penalties are sustained with excessive frequency or in unwarranted amounts. A record which does not support a finding that demurrage is unduly burdensome, cannot and does not require or authorize a conclusion that existing free time is inadequate, since demurrage is, in at least a general way, a measure of the inadequacy of free time. *Free Time and Demurrage Charges at New York*, 89 (102).

The cases which call for a departure from penal scales of demurrage are those in which community-wide disturbances, of which trucking strikes are a good example, render it impossible for consignees as a class to take possession of their cargoes; an individual consignee is liable for demurrage when his disability to remove his cargo results from a strike of his own personnel. *Id.* (107).

Where carriers and consignees are jointly affected by conditions beyond their control, such as by a truck driver's strike preventing consignees from removing their shipments, neither should be subjected to an avoidable penalty and neither should be permitted to profit from the other's disability. Under such circumstances, the penal element of demurrage charges—assessed to induce removal of property—is useless, and consequently an unjust burden on consignees, and a source of unearned revenue to carriers. *Id.* (107).

Where consignees are unable to remove cargo, through reasons beyond their control, levying of charges for demurrage to the extent they are penal, i.e., in excess of compensatory, constitutes an unjust and unreasonable practice in connection with the storing and delivery of property, but the carrier is entitled

to fair compensation for sheltering and protecting a consignee's property during period of involuntary bailment after expiration of free time. *Id.* (107, 108).

The Interstate Commerce Commission has consistently held, in relation to car demurrage, that where a locality is paralyzed by a strike against transport facilities, cars detained at or en route to that facility, in consequence of strike conditions, are not subject to demurrage at rates in excess of compensatory levels. *Id.* (108).

Demurrage charges at penal levels are not justified by reference to a carrier's need for revenue in circumstances where consignees are unable to take possession of their cargoes for reasons beyond their control. *Id.* (108).

Where a consignee is prevented from removing his cargo by factors beyond his control, such as, but not limited to, trucking strikes or weather conditions, which affect an entire port area or a substantial portion thereof, carriers shall, after expiration of free time, assess demurrage against imports at the rate applicable to the first demurrage period, for such time as the inability to remove the cargo shall continue. Every departure from the regular demurrage charges shall be reported to the Commission. If first-period charges are not compensatory, the tariffs should be amended. *Id.* (109).

Demurrage charge established at Balboa, in connection with cargo from Pacific coast ports of the United States, was not unreasonable or otherwise unlawful, in view of admitted congestion at Balboa. Lack of similar charge on lumber from the Atlantic coast was not discriminatory since there were no delays at Cristobal or elsewhere in the Canal Zone similar to those at Balboa. Failure to establish demurrage charge against general cargo was not discriminatory since there was no showing of any competitive situation as between classes of cargo or that a comparatively infinitesimal amount of general cargo was the occasion of any appreciable amount of delay. The measure of the demurrage did not exceed the costs occasioned by the delay to the ships. Fact that the charge was established to urge consignees to secure speedy discharge of ships, and that the shipper or consignee had little if any control over the discharge, does not render the demurrage unreasonable or otherwise unlawful. *Olsen v. W. S. A. and Grace Line, Inc.*, 143 (148, 149).

Demurrage charges were unjust and unreasonable regulations and practices with respect to the delivery of property in violation of section 17 of the Shipping Act of 1916 where, though complainant's duty was to take the goods from the end of ship's tackle, demurrage was charged against shipper before discharging operations had commenced, while the ship was in stream, or while idle because of port regulations, or while unloading cargo of other shippers who might or might not be subject to demurrage charges; and charges were assessed for delays which the shippers and receivers did not cause, and had neither the power nor the duty to prevent. *Olsen v. W.S.A. & Grace Line, Inc.*, 254 (258).

Where an oral agreement for the charter of a vessel for carrying commodities made no reference to demurrage, demurrage as such is not collectible. However, the charterer is under an implied obligation to receive cargo at such time as is reasonable in view of existing facts and circumstances. *D. L. Piazza Co. v. West Coast Line, Inc.*, 608 (618).

**DEPARTMENT OF AGRICULTURE.** See *Discrimination*; *Free Time*.

**DETRIMENT TO COMMERCE.** See also *Absorptions*; *Agreements under Section 15*; *Brokerage*; *Pooling Agreements*; *Port Equalization*; *Rate Structure*; *Special Rates*.

Rate structure for carloading which is noncompensatory, and rates which produce revenue less than the direct cost of service are detrimental to com-



merce under section 15 of the Shipping Act, 1916. Carloading at Southern California Ports, 137 (142).

Concerted prohibition against the payment of brokerage results in detriment to the commerce of the United States in that it has had and will have a serious effect upon the forwarding industry. Agreements and Practices Re Brokerage, 170 (177).

**DEVICES TO DEFEAT APPLICABLE RATES.** See also Equalization.

Carrier had no obligation to quote charter per diem rates, or to charge such rates, rather than unit weight rates for shipment of surplus road building equipment from Okinawa and Guam to the Pacific coast in the absence of any information available at the time of agreement and loading calling for a quotation of the lower per diem rates. Substitution of the per diem rates, under such circumstance, would violate section 16 of the Shipping Act, 1916, which forbids a shipper to accept and a carrier to grant transportation at less than regularly established rates. *Ken Royce, Inc. v. Pacific Transport Lines, Inc.*, 183 (186).

**DIFFERENTIALS.** See also Absorptions.

Increased rates due to respondent's failure to maintain the percentage differentials between ports which existed in prior tariffs and resulting in ton-mile rate higher from the port in question than from more distant ports are not shown to be unduly prejudicial in violation of section 16 of the Shipping Act of 1916 where the absolute money differential between ports is almost the same by the new rates as the old rates; matter of distance is not controlling as a factor in rates; lessening of percentage differential in rates caused no loss of business; and various considerations other than price govern the port at which the commodity (fish) is delivered. Increased Rates—Alaska S.S. Co., 632 (637).

**DISCRIMINATION.** See also Absorptions; Agreements under Section 15; Brokerage; Carloading and Unloading; Charters; Classifications; Contract Rates; Demurrage; Forwarders and Forwarding; Free Time; Jurisdiction; Pooling Agreements; Port Equalization; Preference and Prejudice; Rate and Commodity Comparisons; Special Rates; Tariffs; Terminal Facilities.

Where carloading conference represented on its behalf and on behalf of respondent member that a rate for loading woodpulp, contained in a tariff on file with the California Railroad Commission, was reasonable as increased by 33½ percent (which increase was approved by the Maritime Commission), the higher rate assessed by respondent (merchandise, N.O.S.) because the conference tariff failed to contain a rate for loading woodpulp, was unjustly discriminatory, and subjected woodpulp to undue and unreasonable prejudice, in violation of sections 16 and 17, and the rate was unreasonable and thus contrary to the express provisions of the agreement approved by the Maritime Commission. *Fibreboard Products, Inc. v. W. R. Grace & Co.*, 128 (130).

Complainants were entitled to rely upon booking agent's repeated statements that a vessel would not carry fruit. When respondent thereafter decided to carry fruit complainants should have been given the opportunity to avail themselves of the same terms (guarantee to hold vessel owner harmless for damage to the fruit) that were offered to another exporter who had applied for space after complainants applied. The special contract between respondent and the party given the space affected the legal relations of those parties only and did not alter respondent's obligations to shippers in general under the Shipping Act, 1916. Respondent's failure to accord complainants the opportunity to ship on the same terms resulted in violation of section 14-Fourth, and section 16. *Waterman v. Stockholms Rederiaktiebolag Svea*, 131 (136).

Granting of lower contract rate without obtaining signature of shipper to contract, would have amounted to an unreasonable discrimination by the carrier. *Himala International v. American Export Lines, Inc.*, 232 (234).

Option in an exclusive patronage contract whereby carrier can declare the agreement terminated if the shipper makes shipments in violation thereof makes it possible for the carrier to discriminate between shippers; therefore, the contract must be modified so as to eliminate the option feature and substitute therefor the specific treatment which will be accorded shippers in all cases of violation. *Isbrandtsen Co. v. North Atlantic Continental Freight Conference*, 235 (245).

Clause of an exclusive patronage contract which requires all the shipper's cargo originating out of North Atlantic ports to be tendered to carriers at seven American ports and several Canadian ports is not discriminatory against a shipper who has cargo located at an intermediate, unnamed port, or discriminatory as between the named and unnamed ports, since the shipper is given a broad selection of ports from which to choose and the carrier cannot be required to serve ports beyond his choosing. *Id.* (246, 247).

Special treatment accorded to the Department of Agriculture by carriers on Government-owned or -controlled cargo, in granting the lower contract rate without requiring the signing of an exclusive patronage contract, is a reasonable exception in the public interest and is not a discriminatory practice in violation of the Shipping Act. *Id.* (247).

Charge of discrimination and prejudice based upon imposition of separate handling and carloading charges at southern California ports, whereas no separate handling charges were imposed at Atlantic or Gulf ports, can apply only to common carriers operating from both ports to the same foreign destinations for only in such cases is the carrier the common source of the alleged discrimination. *Los Angeles Traffic Managers' Conference, Inc. v. Southern California Carloading Tariff Bureau*, 569 (575).

To support a charge of unjust discrimination and unreasonable prejudice, there must be evidence of actual loss of business due to discriminatory rate situation. Proof was not satisfactory that loss or damage or prejudice to exporters resulted from collection of handling charge at southern California ports. *Id.* (576).

Determination of whether discrimination exists requires a comparison of like charges and like services. Failure of carrier to charge separately for handling of cargo on the east coast and Gulf when compared with imposition of a separate charge on the west coast is not discriminatory, for on the east coast and and Gulf the ocean rate includes handling across the dock whereas on the west coast the ocean rate excludes handling. *Id.* (579).

While the total rate to destination from a California port is greater than the total rate to the same destination from an Atlantic or Gulf port, this difference does not constitute an unreasonable discrimination, since there is no showing that the general conditions of transportation are so similar as to make any difference in overall rates an unjust discrimination. *Id.* (579, 580).

Charge of discrimination in that rates charged (under charter) were higher than the advertised rates of the regular lines in the trade is not sustained, where there was no refrigerated space available at time of shipment on any of the regular liners, and the vessel involved was sent specially in ballast for complainant's cargo so that the services are not comparable. In any event, respondents had no responsibility for the lower advertised rate of the regular liners, and legal discrimination cannot be charged against respondents on

such showing since they were not the common source of the alleged discrimination or prejudice. *D. L. Piazza Co. v. West Coast Line*, 608 (615).

Fact that vessel owner charged only the liner rate on nonrefrigerated cargo carried for other persons, whereas it charged more than the liner rate on complainant's refrigerated cargo, does not mean that a difference in the refrigerated cargo rate constituted unjust discrimination. The services are not comparable. The vessel involved was primarily a refrigerated vessel with a small amount of nonrefrigerated space. The liner vessels were the reverse, and, moreover, no liner refrigerated space was available at the time. *Id.* (615).

Rate on cotton not shown to be unjustly discriminatory in violation of section 17 of the Act, where there is no evidence of a competitive shipper who received from respondent a different rate from that actually charged complainant. The charging of a greater than published rate is not, in the absence of a showing of competition, a violation of section 16 or 17 of the Shipping Act. *United Nations v. Hellenic Lines Limited*, 781 (788).

A case of unjust discrimination is not made out where Philadelphia pier operators allowed 2 days' free time for truck cargo, and rail cargo entitled to more free time is solely that shipped away from Philadelphia, while truck operators service only customers in the Philadelphia area and rail cargo to and from this area is allowed 2 days' free time. Rail cargo entitled to more than 2 days' free time is not competitive with the local truck cargo. *Pennsylvania Motor Truck Assn. v. Philadelphia Piers, Inc.*, 789 (796).

#### DISMISSAL OF COMPLAINTS.

Complaint alleging unjust discrimination in booking cargo space was dismissed as to respondent general agent of the vessel owner, since the general agent did not commit the act of discrimination complained of. *Waterman v. Stockholms Rederiaktiebolag Svea*, 131 (132).

A complaint will be dismissed without prejudice to the filing of another complaint in the event of resumption of operation of service with any equalization practice charged to be in violation of law; proceeding will not be held in abeyance to consider possible future violations of law. *Beaumont Port Commission v. Seatrains Lines, Inc.*, 581 (582).

Where the gist of a complaint, alleging violations of sections 14-Fourth, 16-First and 17 of the Shipping Act, hinges upon an alleged withholding of delivery of cargo in New York pending the payment of dead freight and detention charges alleged to be unreasonable, the Board will not dismiss the complaint as failing to state a cause of action merely because many of the events giving rise to the action occurred outside the United States, or on the ground that the cause of action is one between shipper and carrier to be determined by the courts. The case does not involve an agreement giving a lien to the carrier for dead freight or detention charges but, on the contrary, the carrier intimated that what was done was a usual practice. Therefore, the complaint alleges facts which might amount to unfair treatment of a shipper, who was also a consignee, in the matter of adjustment and settlement of claims, in violation of section 14-Fourth, and to the establishment of an unreasonable practice relating to the handling, receiving, storing, or delivering of property, in violation of section 17. *Hecht, Lewis & Kahn, Inc. v. Isbrandtsen Co., Inc.*, 798 (799).

**DUAL COMMON AND CONTRACT CARRIERS.** See Jurisdiction.

**DUAL RATE SYSTEM.** See Contract Rates.

#### DUAL OR MULTIPLE SUBSIDIES.

Section 605(c) of the Merchant Marine Act of 1936 expressly authorizes the Maritime Commission to grant dual and multiple subsidies, subject only to

the limitations therein stated. Exercise of such power rests in sound discretion of Commission upon findings of warrantable facts. American South African Line, Inc., Seas Shipping Co., Inc., 277 (283).

The Merchant Marine Act, 1936, does not invest subsidy contract with the legal effect of an exclusive franchise although under section 605(c) services created after the passage of the law cannot be subsidized so long as the existing service or services are found to be adequate. Id. (284).

Where an exclusive operating-differential subsidy, if granted to one existing service would result in the discontinuance of another existing service, and in direct benefit to foreign-flag operators to the detriment of the interests of the American merchant marine, such subsidy will be denied, and subsidies will be granted to both of the existing services on a nonexclusive basis. Id. (287).

Maritime Commission in awarding two subsidy contracts for operation in the same trade route, mindful of problems presented by such dual subsidies, limited awards to 6-month experimental period, directed contractors (1) to exert efforts to merge or consolidate, or make satisfactory arrangements covering sailing dates, rates, and pooling of homebound cargo so as to eliminate competition between themselves and further competition against foreign lines, (2) to complete plans and specifications for replacements, secure bids thereon, and prove willingness to proceed in accordance therewith, and provided that, during experimental dual subsidy period, each contractor would have right to apply for reopening of proceeding to introduce evidence in support of or in opposition to continuance of subsidy to the other company. Id. (287-289).

**EDWARDS-DIFFERDING FORMULA.** See Freas Formula.

**ESSENTIAL TRADE ROUTES.** See also Subsidies.

The route from North Atlantic ports to ports in South and East Africa, is an essential trade route of foreign commerce of the United States. American South African Line, Inc., Seas Shipping Co., Inc., 277 (287).

Operations from U.S. Atlantic and Gulf ports to West Africa (Trade Route 14) should be separated in view of foreign-flag competition and to provide better service to the Gulf. American South African Line, Inc.—Subsidy, Route 14, 314 (319, 320).

Trade Route 11 should be extended in scope to include service from and to ports in the Hampton Roads area, and South Atlantic Steamship's application for subsidy should be approved. Arnold Bernstein S.S. Corp.—Subsidy, Routes 7, 8, 11, 351 (352).

Trade Routes 7 and 8 should be considered as separate essential foreign trade routes, and applications of Arnold Bernstein, Black Diamond and U.S. Lines for subsidy should be denied. Id. (352).

**ESTOPPEL.**

Where carloading conference and a respondent member submitted agreement for approval and agreement was accompanied by a proposed tariff designed to increase charges in a tariff on file with California Railroad Commission, which tariff contained a rate per ton for carloading of woodpulp, respondent was estopped from denying that the proposed tariff charges were noncompensatory. The representations made in connection with the tariff, coupled with the fact that, as a result of a request by complainant, the conference tariff which failed to contain a rate for woodpulp was revised to reinstate the rate, precluded any consideration that the costs of loading woodpulp were other than represented. Fibreboard Products, Inc. v. W. R. Grace & Co., 128 (129, 130).

**EQUALIZATION.** See also Absorptions; Port Equalization; Profit to Shippers.

Carrier's equalization practice is not a regulation or practice connected with the receiving, handling, storing or delivering of property within the meaning of section 17(2) of the Shipping Act of 1916. Though rates include charges for services at the receiving and at the delivering end of the voyage as is true generally of freight rates of water carriers, this incidental element in the rates does not give the Board full jurisdiction to enforce reasonable rates for carriers in foreign commerce. To rule otherwise would disregard the difference of Board's authority over such carrier under sections 16 and 17 of the Act from its jurisdiction over certain offshore carriers in interstate commerce under section 18 of the Act. *Beaumont Port Commission v. Seatrain Lines, Inc.*, 556 (561).

Equalization rates are "regular rates" within the meaning of section 16—Second of the Shipping Act of 1916. The term means any rate duly established and published or determined by a specific method published in the tariff and an equalization rate, therefore, is just as "regular" as a local rate, each being applicable to a separate type of traffic and inapplicable to any other type. Moreover, the equalization practice of carrier does not come within the meaning of "other unjust or unfair device or means" described in section 16—Second of the Act, as that term must be construed as limited to practices of the same general class of dishonest practices specifically mentioned. *Id.* (562, 563).

**EXCLUSIVE PATRONAGE CONTRACTS.** See Contract Rates.

**FAIR RETURN.** See also Freas Formula; Rate Structure.

To the extent that carrier's rates, fares, and charges yield net income in excess of a fair rate of return, they are, and for the future will be unjust and unreasonable in violation of section 18 of the Shipping Act of 1916. No risks were indicated by carrier to warrant higher rate of return than 7 percent. *Rates Between Places in Alaska*, 33 (39, 40).

**FINDINGS IN FORMER CASES.** See also Booking; Brokerage; Canal Zone.

Board is unable to agree with reasoning in decision in *Alaskan Rates*, 2 USMC 558, that express company which undertook to transport door-to-door, accepted the ocean carrier's usual bill of lading and paid the published ocean freight rate, was not a common carrier. Common carrier status depends on the nature of what the carrier undertakes or holds itself out to undertake to the general public rather than on the nature of the arrangements which it may make for the performance of its undertaken duty. *Bernhard Ulmann Co., Inc. v. Porto Rican Express Co.*, 771 (777, 778).

As the Board pointed out in *Afghan—American Trading Co., Inc. v. Isbrandtsen, Co., Inc.*, 3 FMB 622, the Supreme Court in *U.S. Navigation Co. v. Cunard Steamship Co.* recognized "similarity of construction" of the Shipping Act and the Interstate Commerce Act could not apply where there was "dissimilarity in the terms" of the statutes. *United Nations v. Hellenic Lines Limited*, 781 (787).

The Prince Line case is not authority for the proposition that the charging of a greater than published rate is, in the absence of a showing of competition, a violation of section 16 or 17 of the Shipping Act. Nor is there any requirement in the order in section 19 Investigation, 1935, 1 USSB 470, requiring the filing of rates 30 days after their effective date which expands the statutory definition of what is unlawful. *Id.* (787).

**FOOD AND DRUG ADMINISTRATION.** See Free Time.

**FORWARDERS AND FORWARDING.** See also Brokerage.

Some exporters and shippers maintain their own exporting department and perform all steps necessary to secure transportation by water and delivery of the goods in the foreign country. These are not forwarders, because it is only when such activities are for and on behalf of the shipper or consignee in return for a consideration, money or otherwise that they constitute forwarding subject to Commission jurisdiction. *New York Freight Forwarder Investigation*, 157 (160).

The Commission has power to prescribe reasonable regulations to remedy any unreasonable practices of freight forwarders. Forwarders are in a position to enter into agreements with carriers which may be contrary to the policy of section 15 of the Shipping Act of 1916 and to induce or commit discriminations forbidden by section 16. They are intimately connected with the receiving, handling, storing, and delivering of property, practices as to which must be just and reasonable under section 17; and they have access to confidential shipping information the disclosure of which is forbidden by section 20. *Id.* (162).

Any person carrying on the business of dispatching shipments by ocean-going vessels in foreign or domestic commerce, and handling the formalities incident thereto, is a forwarder within provisions of the Shipping Act. The definition includes manufacturers, exporters, export traders, manufacturers' agents, resident buyers, and commission merchants if they do not ship in their own name and if they charge a fee for forwarding services. The test is whether a person is "carrying on the business" of forwarding, so that persons who merely perform forwarding on their own behalf, even though the cost is passed on to the buyer, cannot be regarded as carrying on a forwarding business. Moreover, such a shipper needs no protection, whereas shippers who rely through choice or necessity on professional forwarders need a measure of protection. *Id.* (163).

Practice of forwarders in failing to specify clearly and state separately all service charges, and to segregate them from out-of-pocket costs for accessorial services, appears to arise out of the highly competitive nature of the business, and affords more leeway in bidding—contrary to their allegations that the reason is that foreign consignees would be upset and our foreign trade would be injured. Certain service charges can be made to appear nominal while the profit is concealed in such items as trucking, insurance, and warehousing. This practice is unjust and unreasonable. An appropriately detailed invoice must be presented before or after shipment itemizing charges and disclosing exactly outlays for which reimbursement is sought. *Id.* (163, 164).

For regulatory purposes it is immaterial whether forwarders act as agents of shippers or are independent contractors. What they do determines their status and resultant obligations under law, and in either case they are precluded by the equality provision of section 16, of the Shipping Act from unduly or unreasonably preferring, or discriminating against, any person for whom they perform forwarding service. *Id.* (164).

Commission finds that there is need for the registration of all forwarders as a means of controlling abuses in the trade. *Id.* (164).

In the absence of legislation providing a licensing system similar to that applied to custom brokers, the Commission must require all forwarders to register with it, since a program of regulation undertaken without means of identifying members of the industry would be largely ineffective. *Id.* (164).

The term "forwarder" as used in report means any person employed by shippers or consignees to dispatch shipments by ocean steamships and to take care of formalities incident thereto. *Agreements and Practices Re Brokerage*, 170 (172).

Under Board's practice a forwarder is a dispatcher and is generally not a common carrier. As a dispatcher it is an "other person subject to this Act" within the definition of section 1 of the Shipping Act and is subject to regulation under General Order No. 72. In rail transportation dispatchers undertaking to transport to destination, consolidate and ship their customer's goods under standard railroad bills of lading, paying the published tariff and relinquishing control over shipments during the railroad haul period. These have always been held, so far as their customers are concerned, to be common carriers. *Bernhard Ulmann Co., Inc. v. Porto Rican Express Co.*, 771 (776).

### FREAS FORMULA

Purpose of the Freas study is to determine cost of performing services from which wharfingers receive their revenue. Expenditures were determined, separated and apportioned among the various tariff services after wholly non-wharfinger expenses were eliminated. Two primary groupings were adopted: (a) carrying charges and (b) operating charges. Carrying charges embrace all expenses resulting from the maintenance of the bare plant whether it is in operation or not. Operating costs, which result from operation of the facilities, are divided further between dock operating costs and general and administrative expenses. *Terminal Rate Structure—California Ports*, 57 (59).

Carrying charges include return on investment, taxes and rentals on land, structures and facilities, insurance on structures, and depreciation and maintenance. *Id.* (60).

Dock operating charges embrace cost of superintendence, clerking, direct dock labor, and such miscellaneous items as watchmen, claims, and cleaning sheds. *Id.* (60).

General and administrative costs include all remaining items such as salaries and expenses of general officers and clerks, accounting, legal, and traffic and solicitation expense. *Id.* (60).

Vessel costs are those incurred in providing dockage facilities, in rendering services to vessel embraced in "service charge," in furnishing facilities rented to vessel under preferential or temporary assignments, in assembling cargo for account of vessel, and in handling lines or furnishing any other labor for the benefit of the vessel. *Id.* (60).

Cargo costs are those incurred in providing (1) wharfage, the charge for passing cargo over the wharf, or from vessel to vessel at wharf, and holding cargo during free time; (2) wharf demurrage, the charge for storage or holding cargo beyond free time; (3) car loading and unloading; (4) trucking facilities; and (5) accessorial services. *Id.* (60, 61).

Nonwharfinger costs, so interwoven with wharfinger expenditures as to make their initial separation impracticable, are eventually deleted. *Id.* (61).

As a general principle expenditures were assigned to the activities in whose furtherance they have been incurred. Contributions of both labor and facilities were measured by the proportionate use made thereof. The apportionment is as follows: A. Costs allocated to the vessel—(1) Waterways, (2) Fifty percent of open wharves and of land on which they are located, (3) Aprons, (4) One hundred percent of the land supporting aprons without tracks, and 50 percent with tracks, (5) Aisle space within the shed used by the vessel, (6) Services covered by the so-called service charge, and (7) Office and other space used by

vessel's clerical forces. B. Costs allocated to the cargo—(1) All land not covered by (1), (2), (4), and (5) above, (2) All trackage and supporting substructure, (3) Fifty percent of open wharves (exclusive of trackage and its supporting substructure, (4) Aisle space not included in (5) above, (5) All cargo areas within sheds, (6) All other trackage, roadways, etc., and (7) Any services rendered for the benefit of the cargo. Id. (61, 62).

Determination of an adequate return on "invested capital" is based upon a consideration of: (a) fair value of the property employed for the convenience of the public, (b) the financial needs of respondents, (c) the returns secured at the time from other similar enterprises in the general territory involved, and (d) the relative risk to which the capital is subjected. Id. (62, 63).

Fair value consists of present market value of land, values assigned to buildings, structures, other facilities and equipment, depreciated, and working capital. Id. (63).

Rate of return was fixed after considering several factors. The industry is highly competitive. Respondent's business may be seriously affected by a shift of tonnage between water and rail carriers. The business fluctuates with seasonal peaks and valleys and during periods of prosperity and depression. Developed costs for privately operated terminals are generally less than for those publicly owned; therefore the return was determined for the former and extended to the latter. A return of 7 percent for the private operators was determined to be adequate and fair to the terminals, as well as to the carriers and the shipping public. Id. (64).

Depreciation included in the carrying charges is the amount actually chargeable to operating expenses to reflect a loss in service value of the facilities used. The straight-line reserve method was employed. Id. (65).

Maintenance includes the amount actually spent for that purpose regardless of any reserve. Id. (65).

Rented property was evaluated and included in the rate base as though owned by the terminals. Therefore, the rentals paid were disregarded as an operating cost, inasmuch as the rate base and resulting return thereon was increased. Id. (65).

The term, "gift property," means property acquired without money cost, or at a price well below recognized commercial value. Regardless of the source of such property, it is reflected in the rate base—land through inclusion of present market value, and structures through consideration of reproduction cost in the same manner as allowances for intangibles. Inasmuch as there are not great amounts of depreciable gift property involved, it was depreciated in the same manner as other property. Id. (66).

Comparison of the results of the Freas formula with those of the Edwards-Differding formula shows that as to dockage the former develops 11.07 cents per ton for all respondents and the latter 10 cents for Howard and Encinal. In the case of service charges, the former develops direct costs amounting to 48 percent of the cost where as the latter develops 44 percent. As to wharfage the former develops 28 cents at Howard and Encinal and the latter 21 cents. The Freas formula develops carloading rates substantially higher than the Edwards-Differding formula—the former range from 51.47 cents to \$1.51, the latter 45 to 47 cents. These differences are explained by changes in the costs and efficiency of labor, volume of cargo handled, and the fact that witness Freas included an additional charge representing cost of the portion of the structure or facility denied to carloading use. Id. (68).



Commission approves the Freas formula as a proper method of segregating terminal costs and carrying charges, and of apportioning such costs and charges to various wharfinger services. *Id.* (69).

**FREE TIME.** See also Demurrage; Discrimination; Intercoastal Shipping Act of 1933.

Wharfage charge has no reference to "free time." Free time means that the cargo once lawfully on the pier may remain on and during the period established at no extra expense, or without the enforcement of any of the rights reserved by the carrier or the terminal operator to remove the cargo to a warehouse at the expense of the cargo, or to charge demurrage beyond the free time period. *Terminal Rate Increases—Puget Sound Ports*, 21 (24).

Section 17 of the Shipping Act of 1916 provides that whenever the Commission finds certain regulations or practices are unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice. This constitutes an unlimited grant to the Commission of the power to stop effectively all unjust and unreasonable practices in receiving, handling, storing or delivering property. Minimum free time, and demurrage practices, as well as maximum free time regulations, over which the Supreme Court has upheld the jurisdiction of the Commission, come within the broad scope of the Court's decision. *Free Time and Demurrage Charges at New York*, 89 (93).

The determination of whether regulations and practices with respect to free time and demurrage are just and reasonable is not an exercise of rate-making power. Carriers must impose compensatory demurrage charges after the expiration of reasonable free time; if current tariff rates of demurrage are not compensatory, new rates should be published which are. *Id.* (93).

Discrimination in free time in favor of coffee and cocoa beans would violate decision in *Storage Charges Under Agreements 6205 and 6215* (2 U.S.M.C. 48). *Id.* (95).

The fact that the necessity for weighing precludes the removal of cargo from piers within the free time does not mean that free-time periods are unlawful. The weighing is not done for any reason that concerns the carriers but is an operation connected with a transaction between the importer and customs. *Id.* (96).

Carriers cannot be required to accommodate cargo in their piers free of charge because it may fail to conform to the standard applicable to it. The Food and Drug Administration does not require goods to be left on the piers pending sampling by it. *Id.* (97).

Requirements of Department of Agriculture respecting plant quarantine do not cause goods to remain on piers after the expiration of free time. *Id.* (98).

If carriers are responsible for the condition of certain goods before they go to a warehouse and must rebrine goods such as olives, the carriers may be warranted in considering whether free time periods should not voluntarily be lengthened, but the Commission would not be justified in requiring that more free time be allowed. *Id.* (99).

Sampling of coffee and cocoa beans, required by the trade before shipment to plants, is not an operation necessary in connection with delivery by the carriers and thus can provide no valid ground for contention that free time allowed is unjust or unreasonable. *Id.* (99).

The unavailability of lighters to remove coffee and cocoa beans from piers, which lighters are furnished by others than the water carriers, affords no warrant for holding that the free time which the carriers allow is unjust or un-

reasonable. Importers may reasonably be assumed to have, or be able to obtain, equipment needed to receive the goods. *Id.* (100).

Free time allowed for removal of wood pulp from piers is not unjust or unreasonable where the delay is caused by the inability of the consumer mills to receive the wood as fast as it could be shipped. *Id.* (100).

Carriers, in determining the duration of free time, are not obliged to take account of delays in the removal of cargo which result from Government procedures and trade practices. *Id.* (100, 101).

Free time is granted by the carriers not as a gratuity, but solely as an incident to their obligation to make delivery. This is an obligation which the carrier is bound to discharge as a part of its transportation service and consignees must be afforded fair opportunity to accept delivery of cargo without incurring liability for penalties. Free time must be long enough to facilitate this result—but need not be longer. *Id.* (101).

The best index to the adequacy of free time is evidence relative to the frequency and amount of demurrage assessments. *Id.* (101).

The burden of proof is upon importers who seek relief from carriers' free time regulations. They must show that demurrage penalties are sustained with excessive frequency or in unwarranted amounts. *Id.* (102).

The Commission may not order an extension of free time merely because importers claim that such extension would reduce or eliminate congestion at piers. Free time is not a gratuity to consignees but is allowed solely to permit carriers to fulfill their obligation to deliver goods. It need not exceed a reasonable time allowed for their removal and a reasonable time is determined with due regard for the rights of all parties, including carriers and importers, and especially for the public interest which requires that congestion of ports be minimized in the interest of efficient water transportation. *Id.* (103).

While free time of 5 or 6 days imposes substantial burdens on importers, transfer of those burdens to carriers by extending free time is not justified where the record shows that 5 or 6 day deadlines are being met with considerable success, import traffic is moving across the piers more rapidly than it did under a 10-day rule, and a greater percentage of cargo is delivered with 6 days at present than was delivered within 6 days when the free time was 10 days. Requiring a general enlargement of free time would risk disorganization of pier operations. *Id.* (103).

Under present conditions at the port of New York, 5 days free time is the shortest that affords consignees reasonable opportunity to take delivery of imports. A tariff which fails to assure consignees a minimum of 5 days free time, and which authorizes public storage at the risk and expense of the cargo prior to expiration of such free time (exclusive of Saturdays, Sundays, and legal holidays) is an unjust and unreasonable regulation under conditions prevailing at the port of New York. *Id.* (104).

A tariff which reserves provisions of bills of lading including those whereby removal of cargo may be required within a shorter period than 6 days, deprives consignees of the right to insist upon any allowance of free time except at a carrier's election. This follows from the fact that bills of lading almost universally provide for transportation only to the end of ship's tackle, and a provision for ship's tackle delivery is obviously one whereby removal of cargo may be required within a shorter time than 6 days. *Id.* (104).

Where delivery can seldom, if ever, be made at the end of ship's tackle, a provision in a bill of lading purporting to require the receipt of cargo at ship's tackle is inconsistent with the common-law requirement of due and reasonable

notice to the consignee so as to afford him a fair opportunity to remove the goods. Moreover, regardless of the actual ability or inability of carriers to deliver at ship's tackle, it is the established custom of the port to make delivery to the dock and such custom supersedes all contrary provisions of bills of lading. *Id.* (104).

Carrier's practice of allowing some cargo to be removed by consignees while the vessel is discharging and before tariff free time officially begins is proper because it speeds delivery. However, Commission does not require that free time be defined in the tariffs to include any part of the period of discharge since such definition might imply a right in consignees to enter the pier and demand their cargoes as soon as landed. To confer that right would be impracticable because the carriers, in order to operate efficiently, must retain the power to exclude the public, except as admittance may conveniently be granted, until a vessel's entire cargo has been landed, sorted, and laid out in accessible position. *Id.* (105).

Free time cannot be extended to take account of the waiting time of trucks and lighters, as this rule would result in less efficient operation to the detriment of all concerned. Carriers could also prefer favored shippers. *Id.* (105).

A notice of availability of cargo should not be required in order to start the running of free time, as this requirement would merely postpone the removal of cargo by as long a time as the notice took to reach the consignee, and would serve no discernible need. Consignees are universally apprised of the arrival of vessels and routinely inform themselves by telephone, messenger, or reference to shipping publications as to the availability of their cargoes and the commencement and expiration of free time. Insisting upon a notice of availability would subject the carriers to extra work and expense that would be largely futile, and which appears quite unjustifiable. *Id.* (106).

Free time must be extended by carriers to cover periods of time when cargo cannot be removed by reason of strikes by employees of carriers. Tariff provisions which set forth that free time commences when shipments are available for delivery to consignees, or that free time shall be extended for a period equal to that during which the cargo is unavailable, afford adequate protection to consignees against assessment of demurrage where due to strikes of carrier personnel, or other impediments, cargo cannot be tendered for delivery. *Id.* (106, 107).

Where a carrier is for any reason unable, or refuses, to tender cargo for delivery, free time must be extended for a period equal to the duration of the carrier's disability or refusal. *Id.* (109).

Primary responsibility of furnishing reasonable free time to deliver outbound cargo on the pier and remove inbound cargo from the pier rests on the ocean carrier as part of its carrier responsibility. *Pennsylvania Motor Truck Assn. v. Philadelphia Piers, Inc.*, 789 (795).

Two-day free time period allowed for the ingress pick up, and egress of such number of trucks as are necessary to pick up or deliver the very substantial amounts of truck cargo passing over respondents' piers is, in view of the pier construction, the congestion, and other conditions, too short a time to be reasonable and proper. Five days would be proper. *Id.* (796).

**GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES.** See Port Equalization.

**HANDLING.** See also Carloading and Unloading; Common Carriers; Discrimination; Practices; Rate and Commodity Comparisons; Tariffs.

Handling takes place after freight has been received and before it is delivered on behalf of the carrier. It is a service performed for the ship. Tariff definitions of handling which are ambiguous as to whether handling charge is applied

against ship or the freight are unjust and unreasonable regulations relating to the handling of property, in violation of section 17. Terminal Rate Increases—Puget Sound Ports, 21 (27).

Maritime Commission cannot issue order against carriers not parties to proceeding, where shippers intervening in rate proceeding raise question as to whether they should be charged by carriers for handling cargo when such cargo was not moved between place of rest on pier and ship's tackle, as in the case in continuous movement. Carloading at Southern California Ports, 137 (141).

### **HIGH SEAS.**

Ship-to-shore service from anchorages adjacent to Nome, in connection with the line haul of ocean carrier is regular and on the high seas within the meaning of section 1 of the Shipping Act, 1916. Rates between Places in Alaska, 7 (10).

Where transportation is accomplished jointly by an ocean carrier and by a ship-to-shore service which does not participate in the line haul of the ocean carrier, each is common law carriage, and the latter is regular and on the high seas within the meaning of section 1 of the Shipping Act of 1916. *Id.* (10).

**INFORMATION ILLEGALLY DISCLOSED.** See Forwarders and Forwarding.

**INSURANCE.** See also Absorptions.

A tariff insurance rule, providing that the cargo rates do not include marine insurance and that no premium for the account of the shipper may be absorbed by the carrier, does not violate the Shipping Act of 1916 when the rule is interpreted by the carrier as not requiring prior notice to a shipper of a higher premium on cargo shipped on vessels of a certain age, and the shipper may not be compensated for the extra cost since the rule forbids any absorption of premiums. *Himala International v. Fern Line*, 53 (56).

### **INTERCOASTAL OPERATIONS (SEC. 805(a)).**

#### *—In general*

Steamship service between ports of the United States mainland and ports in the islands of Guam, Midway, and Wake is not "domestic intercoastal or coastwise service" within the meaning of section 805(a) of the Merchant Marine Act, 1936. This interpretation is limited to Guam, Midway, and Wake and does not signify that a similar interpretation is or would be applicable to Hawaii, Puerto Rico, or Alaska. *American President Lines, Ltd.*, (450).

In adopting the Merchant Marine Act, 1936, Congress manifested a special concern for the protection of coastwise and intercoastal operators, who are not eligible for subsidy, against the competition of subsidized lines (secs. 506, 605(a), 805(a)). The great importance to our merchant marine of its domestic fleet, and the serious difficulties that have attended the reestablishment of domestic shipping in the period since World War II, should prompt us to resolve all doubts against activities of subsidized companies whose operations might tend to impede the development of domestic transportation by sea. *American President Lines, Ltd.*, 457 (470).

#### *—Charter terms*

Charters contemplated under certain section 805(a) applications for the use of vessels in the intercoastal trade, must be approved as to their actual terms where the United States has a pecuniary interest in the successful operation of two of the applicants by reason of the fact that they are subsidized operators. *Baltimore Mail S.S. Co.*, 294 (297, 298).

*—Competition to domestic operators*

Application of carrier for permission to enter the intercoastal trade is approved where the service which applicant's proposed operation will afford will not be competitive with that of existing operators as to refrigerated and passenger service; loss of cargo is result of existing business conditions and overtonnaging in trade is temporary; there is no substantial volume of new vessel construction likely and, therefore, the transfer of applicant's vessels may be the only means of insuring adequate long term service; and proposed readjustment of indebtedness does not introduce any element of unfair competition. Therefore, there will be no unfair competition within the purview of the 1936 Merchant Marine Act to existing carriers or prejudice to the policy and objects of the Act from the operation of applicant's vessels in the intercoastal trade. *Baltimore Mail S.S. Co.*, 272 (275, 276).

An amendment to an order issued under section 805(a) of the Merchant Marine Act of 1936, authorizing the use of five vessels in intercoastal trade, to provide for the use of additional vessels, owned or chartered, is not too broad where the amendment also restricts the extent of the authorization to not more than one sailing per week or utilization of any vessel not having a carrying capacity similar to the five vessels then operating, and competitors will know that no greater or different competition can be offered and that they will have the protection of section 805(a) in its requirement of a hearing on any proposal to use a vessel owned by a subsidized operator or an affiliate of such operator. *Baltimore Mail S.S. Co.*, 294 (297).

Under section 805(a) the continued operation by a subsidized line of non-subsidized vessels westbound from the Pacific to the Atlantic, in intercoastal trade, will result in unfair competition to an exclusively domestic operator where the domestic operator, during the most recent period of record, had an average of 10 percent unused space and claimed that had it filled such space its losses would have been eliminated; and it was required to sail two extra ships eastbound to handle a peak canned-goods movement and one of these proceeded to the Pacific in ballast. *American President Lines, Ltd.*, 457 (470).

Complaint of intercoastal carriers that section 805(a) permission, for subsidized operator to provide reefer service on intercoastal leg of its nonsubsidized foreign trade route should be denied because the rates are noncompensatory carries little weight in view of the fact that such rates are fixed by the intercoastal conference, of which all the principal intercoastal operators are members. Intercoastal rates are subject to ICC regulation and the logical remedy lies in conference action or appropriate ICC proceedings rather than in an attempt to destroy the service. *Id.* (471).

*Grandfather Clause*

Applicant for resumption of subsidized operations in round-the-world service was in bona fide operation as a common carrier by water in the domestic intercoastal trade in 1935 and ever since within the meaning of section 805(a) where previous reductions in service were caused by a strike over which it had no control; during another reduction, caused by the strengthening of applicant's financial position and management by extensive repairs and improvement of vessels, there was at least one vessel in operation on the route; and applicant maintained its various intercoastal staff functions, continued to solicit intercoastal business, maintained its membership in the Intercoastal Steamship Freight Association and remained party to intercoastal rate schedules. *American President Lines, Ltd. Round-The-World Subsidy, Intercoastal Operations*, 553 (554, 555).

—*Single voyages; unopposed applications*

Application for permission under section 805(a) of the Merchant Marine Act of 1936 to charter a vessel from a subsidized operator for one round trip from New York to the Pacific coast was granted where the primary purpose of the trip was to advertise the transatlantic service of the owner of the vessel, the owner had offices on the Pacific coast for the solicitation of business, the cargo to be carried was only half the amount the regular steamer would carry, the regular steamer would replace the chartered vessel on the transatlantic route for one voyage, without subsidy, and there was no serious objection to the application. Baltimore Mail S.S. Co., 294 (296).

Application for permission under section 805(a) of the Merchant Marine Act of 1936 to operate two intercoastal voyages while returning from abroad on regular scheduled voyages, is granted where shipper requested applicant to move the shipments because of the urgent and critical need of the commodities for manufacturing purposes before a certain date; all certificated intercoastal carriers were offered this cargo, but none were able to furnish the necessary space in time; those carriers have waived objections to applicant performing the transportation in question; and applicant intends to apply to the Interstate Commerce Commission for the requisite permit to engage in this transportation, at the rates and subject to conditions stipulated in the current tariff of the Intercoastal Steamship Freight Association on file with said Commission. Lykes Bros. S.S. Co., Inc., 349 (350).

Application under section 805(a) of the Merchant Marine Act of 1936 for permission for parent company of subsidized operator to engage in the coastwise trade carrying automobiles granted where there has been a growth in trade in the area involved; present operators do not handle a sufficient quantity to meet the demand; traffic which applicant plans to handle will not be diverted from other carriers, but will represent added traffic by water which would otherwise move by other methods of transportation; money which applicant can gross will be an important contribution to the rehabilitation of its intercoastal service; no objection has been raised to the proposed operation; all of the certificated water carriers have instead furnished the Commission their written waivers and consent; and applicant has a certificate from the Interstate Commerce Commission permitting operation in both the intercoastal and coastwise trades, including transportation between all the ports in question. Pacific Argentine Brazil Line, Ltd., 407 (408).

**INTERCOASTAL SHIPPING ACT, 1933.** See also Charters; Common Carriers.

Carrier did not file with the Commission schedules "showing all of its rates," in violation of section 2 of the Intercoastal Shipping Act of 1933, where it charged for services according to percentages of rates of another carrier and not in terms of cents or in dollars and cents per cubic foot per 100 pounds or other unit or basis. Rates Between Places in Alaska, 33 (40).

Carrier, by allowing a longer period of free time for storage of shipments than is permitted by the rule in its tariff, violates section 2 of the Intercoastal Shipping Act of 1933. Id. (40).

By charging rates different from those named in its tariff on file with the Commission, carrier violated section 2 of the Intercoastal Shipping Act of 1933. Id. (41).

Charter per diem rates established for transportation of certain equipment from Okinawa to Pacific coast ports of the United States cannot be made to apply to Guam shipments because they were not published and filed as required by the Intercoastal Shipping Act, 1933, as amended, and were less than the rate

on file with the Maritime Commission. A carrier cannot charge other than its established rate. *Ken Royce, Inc. v. Pacific Transport Lines, Inc.*, 183 (186).

**INTERSTATE COMMERCE ACT.** See Findings in Former Cases; Jurisdiction.

**INVOICES.** See Forwarders and Forwarding.

**JURISDICTION.** See also Brokerage; Charters; Equalization; Forwarders and Forwarding; Free Time; War Shipping Administration.

Although Congress did not intend to give the Commission jurisdiction over those who perform the separate and distinct service of lighterage for or on behalf of common carriers or in connection with common carriers, the Commission's jurisdiction over common carriers is plenary irrespective of whether accessorial services, such as terminal handling, ordinarily rendered by an "other person subject to this act" may be performed by the common carrier. Thus the deliberate exclusion of lighterage from the definition of "other person" in section 1 of the Shipping Act of 1916 does not affect the Commission's jurisdiction over a person who is a common carrier even if facilities called lighters are used. *Rates Between Places in Alaska*, 7 (9).

Though not between ports, transportation between ship and shore from anchorages in Alaska by a common carrier is subject to the jurisdiction of the Commission since Congress, in distinguishing between transportation between States and other States, Territories, districts, and possessions on the one hand, and intraterritorial transportation, on the other hand, and in providing that the former must be between "ports" and the latter between "places," intentionally used an all inclusive term for the latter. *Id.* (10).

The Commission's jurisdiction in a rule-making proceeding instituted pursuant to provisions of the Shipping Act of 1916 is not affected by failure to charge a violation of the act in the notice of hearing. The proceeding is for the purpose of making findings and conclusions on the record after consideration of the evidence, to enable the Commission to prescribe reasonable regulations and practices for the future. *Free Time and Demurrage Charges at New York*, 89 (91).

The Board at this time does not claim general jurisdiction to inquire into or pass on regulations and practices in foreign ports relating to or connected with the receiving, handling, storing, or delivery of property. In this case, a demurrage regulation was imposed upon the shipper as a condition to shipment at an American port and was a part of a tariff under a conference agreement approved pursuant to section 15 of the Shipping Act. Thus, there are peculiar characteristics of the demurrage regulation which are the basis of jurisdiction here. *Olsen v. W. S. A. & Grace Line, Inc.*, 254 (259).

On motion to its jurisdiction the Board is limited to the pleadings properly before it and cannot consider affidavits or statements of additional facts. *Government of the Virgin Islands v. Leeward and Windward Islands and Guianas Conference*, 759 (761).

While there is some doubt as to the Board's jurisdiction over contract rates as such, nevertheless where a common carrier operates also as a contract carrier on the same voyage or in the same traffic, the Board can inquire into such contract rates for the purpose of determining whether they create prejudice or discriminatory impacts on the common carrier operations.

**LIABILITY OF CARRIERS.** See also Bills of Lading; Booking; Common Carriers; Discrimination.

Reduction of a carrier's limit of liability for the complete loss or destruction of a shipment below the figure of \$50 is complicated, confusing, and works out to

a limit so low when applied to small weight shipments as to be entirely illusory, particularly where it is coupled with the further provision that the maximum liability may be further reduced in case of partial loss. This feature of the limitation of liability clause in the carrier's contract is unreasonable in violation of section 18 of the Shipping Act, 1916. *Bernhard Ulmann Co., Inc. v. Porto Rican Express Co.*, 771 (779).

The rules of common carrier liability and those relating to the burden of proof in suits against common carriers require the redrafting of provisions of a common carrier contract which provides no liability for loss, damage or detention of property from any cause whatever, unless proven to have occurred from the fraud or gross negligence of the carrier or its servants. *Id.* (780).

**LIGHTERAGE.** See Common Carriers; Free Time; Jurisdiction.

**LIQUIDATED DAMAGES.** See Damages.

**LOADING AND UNLOADING.** See Carloading and Unloading.

**MERCHANT MARINE ACT, 1936.** See Subsidies.

**MERCHANT SHIP SALES ACT OF 1946.** See Charter of War-Built Vessels; Subsidies, Construction-Differential

**MISQUOTATION OF RATES.**

Misquotations or misrepresentations as to the correct tariff rate by the carrier's agent, upon which the shipper acts, do not establish a contractual basis between the shipper and the carrier; otherwise some shippers would enjoy rates not open to all. *Ken Royce, Inc. v. Pacific Transport Lines, Inc.*, 183 (186).

**MONOPOLY.** See also Agreements under Section 15; Contract Rates; Pooling Agreements.

Contention that a construction of section 14-Third of the Shipping Act of 1916 which approves the dual rate system, violates several sections of the Constitution and the 5th Amendment in that it is equivalent to granting to conferences the power to exclude independents from the trade and that such power to exclude is equivalent to a power to grant certificates of convenience and necessity such as Congress sometimes gives to regulatory bodies, but has not given to the Board with respect to foreign trade, is far-fetched, as there is no evidence that the system has in the past, or will in the future, effectively cause the exclusion of an independent carrier from any trade route on which he wishes to operate, and, in fact, independents may join the conference at any time. *Isbrandtsen Co. v. North Atlantic Continental Freight Conference*, 235 (243, 244).

**MULTIPLE SUBSIDIES.** See Dual or Multiple Subsidies.

**NON-COMPENSATORY RATES.** See also Rate Structure.

Even though Matson's financial position was such as to enable it to stand substantial losses, the law does not compel it to operate under such conditions. Matson's financial standing is of no evidentiary value in determining the lawful level of the rates. *Matson Navigation Co.—Rate Structure*, 82 (85).

**ON-CARRIAGE.**

Provisions of dual rate contract requiring tender of American shipments to conference lines, regardless of whether the cargo is to be transported on a through vessel or subject to transshipment, is valid since both types of carriers must be deemed to serve the ultimate destination, whether directly or through an on-carrier. *Himala International v. American Export Lines, Inc.*, 232 (233).

**OPERATING-DIFFERENTIAL SUBSIDIES.** See Subsidies, Operating-Differential.



**POOLING AGREEMENTS.** See also Damages.

Pooling agreements are not shown to be unjustly discriminatory or unfair or to subject complainants to undue or unreasonable prejudice or disadvantage or to operate to the detriment of the commerce of the United States, or to be in violation of the Shipping Act of 1916, as amended, where the agreements were not entered into for the purpose of eliminating carriers from the trade but were motivated by a foreign country's import regulations; and they did not result in reducing the participation of complainants in the trade. *West Coast Line, Inc. v. Grace Line, Inc.*, 586 (594).

A finding by the Board that operations of pooling agreements do not today result in unfair discrimination does not close the door to a re-examination of the same pooling agreements at a future date if changed conditions bring about changed results. Section 15 of the Shipping Act of 1916 expressly provides that the Board may "disapprove, cancel, or modify any agreement . . . whether or not previously approved by it that it finds unjustly discriminatory or unfair." *Id.* (595).

Agreement to pool earnings by two or more carriers in a particular trade is not per se unlawfully discriminatory or a violation of the Shipping Act, 1916. Nor does refusal by the members of a pool to admit an additional applicant necessarily render the continued operation of the pool unjustly discriminatory or a violation of the Act. The division of earnings, losses, or traffic by members of a pool contemplates close relations and exchanges of confidential information between them which may well be voluntarily assumed by competitors, but which should hardly be imposed upon them from the outside. *Id.* (596).

**PORT EQUALIZATION.**

Port equalization rules containing a prohibition of equalization with respect to certain traffic are not unjustly discriminatory or unfair as between carriers or ports or detrimental to the commerce of the United States in violation of section 15 of the Shipping Act, 1916, where (1) a possible resultant diversion of traffic from Texas and Louisiana ports to New Orleans might cause the discontinuance or serious curtailment of existing service at the former ports; (2) large local and Federal expenditures had been made for the development of harbors and facilities; (3) rail rates had been prescribed by the Interstate Commerce Commission which rates would be disrupted by equalization; and (4) there were no complaints as to the adequacy of service provided at the ports involved. *Seatrain Lines, Inc. v. Gulf and South Atlantic Havana Steamship Conference*, 122 (125).

Where by equalization practices of a carrier, traffic is drawn away from certain ports and the area around them to which they are entitled by reason of their geographical location, there is undue prejudice under section 16-First of the Shipping Act of 1916. It does not matter that the equalizing carrier does not serve both the preferred and the prejudiced ports, as the prejudice is created by its action in drawing away of traffic inherently and geographically belonging to the latter ports. Moreover, under section 16-First the drawing away of traffic does not have to be due to the equalization plan directly; the diversion can be due indirectly to the method of proportional rates and absorption practices. Since the carrier can correct the unjust discrimination without reference to the conduct of any other person, a complaint by the prejudiced ports states a cause of action. *Id.* (564-566).

Record is inadequate to make determinations on issues under sections 16-First and 17(1) of the Shipping Act of 1916 as to lawfulness of port equalization

rules, where a detailed analysis of shipment of other commodities besides that in question is lacking; and there is no statement of comparative figures from complainant ports broken down into relevant periods for comparative analysis. Record, therefore, should be remanded to the examiner for further hearing and report on issues under sections 16-First and 17(1) of the Act. *Id.* (567, 568).

**PORTS.** See Agreements under Section 15; Differentials; Discrimination; Port Equalization.

**PRACTICES.** See also Demurrage; Dismissal of Complaints; Forwarders and Forwarding; Free Time; Rate and Commodity Comparisons; Terminal Facilities.

Practice of ocean carrier to divide its total charges against shippers so as to specify separately the charge for handling from railroad cars at point of rest to ship's tackle, and the charge for ocean carriage from ship's tackle at loading port to destination, is not unreasonable or in violation of the second paragraph of section 17. *Los Angeles Traffic Managers' Conference, Inc. v. Southern California Carloading Tariff Bureau*, 569 (573).

Practice of making separate charges for handling of cargo in continuous movement and for carloading is not improper or unreasonable or a violation of sections 15 or 17 of the Shipping Act of 1916, as cargo handling in connection with "indirect" or "continuous" service is a separate and distinct service from the loading or unloading of cars. *Id.* (572, 573).

Acceptance by carrier of the agreed freight rate without furnishing the exclusive use of the ship was not an unreasonable practice under section 17 of the Shipping Act of 1916, as the taking of shipments of outsiders was justified by shipper's failure to ship the maximum of goods it had agreed to ship. Further, the carrier's action was not a practice connected with the handling, storing, or delivering of property within the statutory language of section 17. *D. L. Piazza Co. v. West Coast Line, Inc.*, 608 (616).

Where the gist of a complaint, alleging violations of sections 14-Fourth, 16-First and 17 of the Shipping Act, hinges upon an alleged withholding of delivery of cargo in New York pending the payment of dead freight and detention charges alleged to be unreasonable, the Board will not dismiss the complaint as failing to state a cause of action merely because many of the events giving rise to the action occurred outside the United States, or on the ground that the cause of action is one between shipper and carrier to be determined by the courts. The case does not involve an agreement giving a lien to the carrier for dead freight or detention charges but, on the contrary, the carrier intimated that what was done was a usual practice. Therefore, the complaint alleges facts which might amount to unfair treatment of a shipper, who was also a consignee, in the matter of adjustment and settlement of claims, in violations of section 14-Fourth, and to the establishment of an unreasonable practice relating to the handling, receiving, storing, or delivering of property, in violation of section 17. *Hecht, Levis & Kahn, Inc. v. Isbrandtsen Co., Inc.*, 798 (799).

**PREFERENCE AND PREJUDICE.** See also Agreements under Section 15; Charters; Classifications; Differentials; Discrimination; Free Time; Jurisdiction; Pooling Agreements; Port Equalization; Rate and Commodity Comparisons; Tariffs.

Tariff rates specifically applicable to lanolin and cocculus and of the level of rates applied to general cargo, N.O.S., do not violate sections 16 or 17 of the Shipping Act of 1916 or a conference agreement, where there is no persuasive evidence that the products are entitled to a lower rate, no showing of undue

prejudice or disadvantage or unjust discrimination, and, in fact, no substantial movement of the items. *Himala International v. Greek Line*, 187 (189).

Demurrage charges did not create undue and unreasonable prejudice and unjust discrimination in violation of sections 16 and 17 of the Shipping Act of 1916. The fact that similar charges were not made against the commodity in question from other ports to the same destination is not evidence of unlawful discrimination where there was no testimony that similar delays occurred in the latter trade, or that complainant was injured as a result of competition encountered on shipments in the latter trade. The contention that demurrage was not charged against general cargo and that a discrimination resulted therefrom is not supported by the evidence. There is no showing of any competitive situation as between the classes of cargo. *Olsen v. W.S.A. & Grace Line, Inc.*, 254 (258).

Charging of lower rates for "continuous" car service than for "indirect" car service violates section 16 of the Shipping Act of 1916 as the result is the same for either method; the terminal operator and not the carloader or shipper decides which method shall be used; changing conditions determine which method shall be used, therefore making it impossible for a terminal operator to arrange long in advance for any particular kind of car service; and the situation opens the door to the possibility of carriers "arranging" for preferred shippers the servicing of their cargo at the lower rate. *Carloading at Southern California Ports*, 261 (264, 265).

Since it is stipulated that no other shipper paid lower rates than charged complainant for sugar from New York to Karachi, Pakistan, there is no showing of undue prejudice in violation of section 16 or of unjust discrimination in violation of section 17. *Afghan—American Trading Co., Inc. v. Isbrandtsen Co., Inc.*, 622 (623).

#### **PROFIT TO SHIPPERS.**

Facts that the frozen-fish business has proved unprofitable since 1947, and one of the complainants has recently been losing money; and that there has been a tremendous influx of foreign frozen fish into the United States in competition with the Alaskan product, are not proof of unreasonableness of newly increased rates. The law does not contemplate the equalization of natural advantages and disadvantages through adjustment of freight rates. *Increased Rates—Alaska S.S. Co.*, 632 (638).

**PROPORTIONAL RATES.** See Port Equalization.

**PUBLIC LAW 591, 81ST CONGRESS.** See Charter of War-Built Vessels.

#### **RATE AND COMMODITY COMPARISONS.**

Attempts to compare the rates in the Alaskan trade with rates to Hawaii and Puerto Rico have no significance by reason of lack of similarity in the trades. *Alaskan Rate Investigation No. 3*, 43 (45).

Each carrier in Alaskan trade must scrutinize continually and with great care the operation of its passenger vessels to be sure that it does not result in such loss as will seriously affect the level of its freight rates. *Id.* (47).

Tariff rates on fishery products southbound from Alaska and on some fishing supplies northbound from Puget Sound which are lower than other rates, are not unduly discriminatory or preferential and do not result in the fishery traffic bearing less than its fair share of the transportation burden where the volume of cannery traffic is greatly in excess of the town freight, southbound cannery cargo is cheaper to handle, much of the handling at the canneries is done by cannery

personnel, and the vessels get full loads and thereby make quicker and more direct voyages without calling at way-ports. *Id.* (49).

Carriers' rates, fares, charges, regulations, and practices have not been shown to be unlawful after examination of the following general characteristics of the trade; lack of similarity with other trades; traffic pattern; passenger traffic; operating costs; operating results; differences in rates; competition; allocation of costs; relation of freight rates to cost of living; joint rates; and consolidation of carriers to decrease expenses. However, record is held open for submission of additional evidence reflecting operations. *Id.* (46-52).

Collection of separate handling charges for transportation of freight from southern California terminals to world ports by common carriers transporting like cargoes from Atlantic and Gulf ports without separate handling charges to the same destinations is not a practice unduly prejudicial to southern California shippers, is not unduly preferential to Atlantic or Gulf shippers, and does not constitute unjust discrimination in violation of sections 15 and 17 of the Shipping Act, 1916. *Los Angeles Traffic Managers' Conference, Inc. v. Southern California Carloading Tariff Bureau*, 569 (580).

**RATES.** See also Agreements under Section 15; Compensatory Rates; Contract Rates; Cost of Service; Detriment to Commerce; Discrimination; Fair Return; Freas Formula; Misquotation of Rates; Non-Compensatory Rates; Preference and Prejudice; Rate and Commodity Comparisons; Rate Structure; Special Rates; Tariffs; Volume; Weight or Measurement.

Where carrier's contract rate is not sufficient to cover costs, and as a result, an undue burden is cast upon traffic not embraced within the contract in question, the rate is unjust and unreasonably low in violation of section 18 of the Shipping Act of 1916. *Rates Between Places in Alaska*, 33 (41).

Tariff rates for the transportation of commodities to and from points in Alaska are not shown to be unlawful where net income was less than a fair return; deficiency of net income does not warrant conclusion that each and every rate in force is below a reasonable maximum. Suspended increased rates on certain items are not justified in the absence of evidence showing whether present rates are lower than maximum reasonable rates. *Increased Rates-Ship's Anchorage to Shore-Nome, Alaska*, 229 (230, 231).

Where carrier charged a northbound rate on refrigerated cargo of salmon for a southbound shipment in accordance with its published tariff, and this rate varied so greatly from other southbound rates for refrigerated transportation of fish from nearby points as to be clearly unreasonable, the carrier charged an unlawful rate in violation of section 18 of the Shipping Act of 1916. *Oxenberg Bros., Inc. v. United States, W.S.A.*, 583 (584).

Where a carrier's old rate provided for a change without notice, and the Board's rules permitted the filing of a changed rate within 30 days thereafter, carrier's charge of a changed rate agreed to at the time by the shipper, was not contrary to law or regulation. The Board's regulation with respect to carriers in foreign commerce is different from provisions of law affecting rail carriers and coastwise and intercoastal water carriers, which require filing of rates before they become effective. *Afghan-American Trading Co., Inc. v. Isbrandtsen Co., Inc.*, 622 (624).

Charge that new rates are unreasonable because they single out frozen fish, was rejected where it was shown that rates on frozen fish were increased only slightly when several years previously, respondent's other rates were generally increased. *Increased Rates—Alaska S.S. Co.*, 632 (638).

**RATE STRUCTURE.** See also Detriment to Commerce; Freas Formula; Non-Compensatory Rates.

Reasonable rate increases are not to be denied for the simple reason that merchants use such increases as an excuse to inflate their prices. *Matson Navigation Co.—Rate Structure*, 82 (85).

In revenue case, increased rates proposed by the rate making line are not unlawful where recent past operations have been conducted at a loss, though such loss provides no reliable basis upon which to predicate a reasonable and stable rate structure for the future because recent operations were conducted with old ships and under unusual traffic and shipping conditions; and where immediate future operations will yield only a modest rate of return. The rate structure in the Hawaiian trade must be judged by the development from the old to the new operation with development costs spread out over the future, and by the fact that the ratemaking line has accumulated large reserves after enjoying a long and successful operation so that during the present transition stage the highest permissible return on investment is not warranted. *Id.* (87).

Present rate structure was noncompensatory as a whole, and those rates which produce revenue less than the direct cost of service as revealed by cost studies of record are detrimental to commerce within the meaning of section 15. *Status of Carloaders and Unloaders*, 116 (121).

**REASONABLENESS.** See Brokerage; Contract Rates; Damages; Demurrage; Discrimination; Fair Return; Forwarders and Forwarding; Free Time; Handling; Liability of Carriers; Practices; Profit to Shippers; Rates; Tariffs.

**REBATES.** See Brokerage; Contract Rates.

**RECEIPTS.** See Bills of Lading.

**REPARATION.** See also Charters; Damages.

Where carloader charged merchandise N.O.S. rate for loading woodpulp rather than rate represented to Commission as reasonable, complainant was entitled to reparation in the amount of the difference with interest. *Fibreboard Products, Inc. v. W. R. Grace & Co.*, 128 (130).

Complainants were injured by their inability to secure refrigerated space on vessel. As they failed to establish extent of injury, the matter will be assigned for further hearing unless the parties within 30 days, prepare, certify, and file with the Commission a reparation statement in accordance with the Commissioner's Rules. *Waterman v. Stockholms Rederiaktiebolag Svea*, 131 (136).

Complainant has been reimbursed by his customers for the full amount of the freight charges with respect to which he complains. This fact alone, however, would not be considered as a basis for refusing reparation if complainant were otherwise entitled to it, since complainant would be under obligation to hold the amount of any recovery for the benefit of the party justly entitled thereto. Complainant is not entitled to reparation. He paid the noncontract published rate, and because he had not signed the conference contract he was not entitled to the contract rate. *Himala International v. American Export Lines, Inc.*, 232 (234).

As between vessel owner and charterer the agreement of carriage is not modified by the bill of lading. A complaint filed on May 5, 1948, is within the 2-year statutory period under section 22 of the Shipping Act where statutory violations are claimed to have arisen from payment of freight and demurrage on May 21, 1946, and May 24, 1946. *D. L. Piazza Co. v. West Coast Line, Inc.*, 608 (612).

Where no undue prejudice or unjust discrimination is shown and where there is no showing that the failure to file new rate caused the shipper to change its position, a shipper who agreed to a new rate is not entitled to a refund because the carrier through oversight or error failed to post the new rate within the 30-day period required by the Board's rules. *Afghan-American Trading Co., Inc. v. Isbrandtsen Co., Inc.*, 622 (624, 625).

### REGULAR ROUTES.

The phrase "on regular routes" found in section 1 of the Shipping Act, 1916, was intended to exclude from the coverage of the term "common carrier by water in interstate commerce" only tramp operations. *Transportation Between Pacific Coast Ports of the United States and Hawaii*, 190 (198, 200).

### RETALIATION. See also Contract Rates.

Establishment by a conference of tariff rates specifically applicable to lanolin and cocculus and of the level of rates applied to general cargo, N.O.S., which rates were so established during pendency of a Shipping Act violation proceeding involving the two products, and which were the same as the rates charged prior thereto under the classification, general cargo, N.O.S., provides no basis for assertions by the complainant shipper in the present and prior proceedings that the purpose of the conference was to catch his shipments by surprise thus subjecting him to serious loss if he should make shipments of the products during the pendency of the prior proceeding, and to retaliate against him because he had filed a complaint. *Himala International v. Greek Line*, 187 (188).

Section 14(3) was a codification of the common law on illegality of retaliation as appearing in the case of *Menacho v. Ward*, 27 Fed. 529. The distinction between retaliation and the dual rate system was recognized in *Lough v. Outerbridge*, 143 N.Y. 271, decided well before the 1916 Act. *Isbrandtsen Co. v. North Atlantic Continental Freight Conference*, 235 (243).

**SALE OF VESSELS.** See Subsidies, Construction-Differential.

**SERVICE CHARGE.** See Carloading and Unloading; Forwarders and Forwarding; Tariffs; Terminal Facilities.

**SHIPPING ACT, 1916.** See also Absorptions; Common Carriers; Jurisdiction; Statutory Interpretation.

Congress in enacting the Shipping Act of 1916 intended to regulate small operators as well as scheduled liner service of larger steamship lines operating regularly between two ports. *Transportation Between Pacific Coast Ports of the United States and Hawaii*, 190 (199).

**SOLICITATION.** See Agreements under Section 15; Common Carriers.

**SPECIAL RATES.** See also Contract Rates; Discrimination.

Agreements, insofar as they authorize special rates to oil companies on supplies and equipment to Netherlands West Indies and Venezuela, do not result in unjust discrimination or unfairness as between shippers or exporters. No other shipper has asked for a similar contract and been refused, and shippers similarly circumstanced, irrespective of whether they are oil companies, would be accorded the same rights and privileges. Agreement No. 6870—Practices with Respect to Rates Granted Oil Companies, 227 (App. iii).

Granting of special rates to oil companies on supplies and equipment for their own use in Netherlands West Indies and Venezuela, is not detrimental to the commerce of the United States. To show detriment there must be at least a plausible possibility that the action complained of will affect commerce adversely.

Here the special rates enable American exporters to compete in foreign markets, a most desirable end. Furthermore, the traffic might be lost to tramps or foreign-flag vessels. *Id.* (App. iv).

Section 14(4) of the Act forbids unfair or unjust discrimination based on volume of freight offered. While carriers' contracts with oil companies to transport supplies and equipment for the companies' own use in South America at special rates are based on volume, for 25 percent of respondents' entire south-bound traffic in the trade is a substantial figure, the contracts are not unfair or unjustly discriminatory in view of the circumstances. The commodities are such as to remove them from the realm of ordinary commercial competition, and no shipper or consignee has been shown to be hurt by the contracts. Section 16(1) is basically the same as 14(4) with respect to this matter and neither section has been violated. *Id.* (App. iv).

### STATUTORY INTERPRETATION.

The Intercoastal Shipping Act of 1933 contemplates services by common carriers such as wharfage, dock, warehouse, or other terminal facilities, and requires the carriers, in filing their schedules, to "state separately each terminal or other charge, privilege, or facility granted or allowed." *Rates Between Places in Alaska*, 7 (9).

In defining a "common carrier by water in interstate commerce," Congress made a distinction between transportation between states and other states, territories, districts, and possessions, on the one hand, and intraterritorial transportation, on the other hand. As to the former the transportation must be between "ports," whereas in the latter it is between "places." This distinction must be given its full meaning. Congress was aware of the lack of ports and of the different kind of transportation to be encountered in the territories and possessions, and intentionally used a term which would be all inclusive. It was realized that there would be transshipment at places with destinations at ports or other places. *Rates Between Places in Alaska*, 7 (10).

Commission is without jurisdiction to order carriers in the export trade to incorporate their freight and other charges in their bills of lading. Such authority would have to be derived from an interpretation that "receiving" of property covers bills of lading under section 17 of the Shipping Act of 1916. However, section 18 relating to domestic commerce makes a clear distinction between the processes of transportation and those applicable to activities which precede and follow the actual transportation; no other law relating to transportation and issuance of bills of lading makes it mandatory that freight and other charges connected with transportation be placed on bills of lading; the courts have held that freight charges, when placed on a bill of lading, are not a part of the receipt of goods but a part of the contract of transportation; and it has been held that the ICC had no power to draw carriers' bills of lading, notwithstanding that the Interstate Commerce Act contained a provision giving the Commission authority similar to that conferred by section 18 on the Maritime Commission. *Bills of Lading—Incorporation of Freight Charges*, 111 (113, 114).

The Canal Zone is not a possession of the United States within the meaning of the definition of "common carrier by water in interstate commerce" in section 1 of the Shipping Act of 1916. To hold otherwise would seem counter to previous court holdings, and create administrative confusion in view of the long continued practices of the Board in treating commerce between the United States and the Canal Zone as foreign commerce. *Olsen v. W.S.A. & Grace Line, Inc.*, 254 (259).

Steamship service between ports of the United States mainland and ports in the islands of Guam, Midway, and Wake is not "domestic intercoastal or coastwise service" within the meaning of section 805(a) of the Merchant Marine Act, 1936. This interpretation is limited to Guam, Midway, and Wake and does not signify that a similar interpretation is or would be applicable to Hawaii, Puerto Rico, or Alaska. *American President Lines, Ltd.*, 450.

The Supreme Court in *U.S. Navigation Co. v. Cunard S.S. Co.*, 284 U.S. 474, recognized that "similarity of construction" could not apply where there was "dissimilarity in the terms" of the Shipping Act, 1916 and the Interstate Commerce Act. *Afghan—American Trading Co., Inc. v. Isbrandtsen Co., Inc.*, 622 (625).

### STORAGE.

If truck cargo is delivered on respondents' piers for vessel shipment in compliance with instructions from water carriers, and the vessel does not arrive at the pier to start loading within the allotted free time, any storage charges which pier operators may impose in such cases should be for the account of the vessel owner and not for the account of the truck-cargo owner. *Pennsylvania Motor Truck Assn. v. Philadelphia Piers, Inc.*, 789 (796).

**STRIKES.** See *Demurrage*.

### SUBSIDIES, CONSTRUCTION-DIFFERENTIAL.

The Maritime Commission, having agreed to enter into reconstruction subsidy contracts, certain aspects of which would be governed by specific statutes (1936 Merchant Marine Act and 1946 Merchant Ship Sales Act) was without authority to insist that the formal contracts resulting from the agreement contain clauses not covered in such specific statutes. *American President Lines, Ltd.*, 675 (678).

Where the Maritime Commission agreed with an applicant for a reconstruction subsidy on vessels sold to the applicant under the Merchant Ship Sales Act of 1946 that section 802 of the 1936 Act would be applied, through a clause in the final subsidy contracts, "with such revision of the standard provisions as may be necessary for consistency with the pertinent provisions of" the 1946 Act, the Commission could not use the words "depreciated acquisition cost" in the contracts rather than "depreciated construction cost" (the term in section 802), in connection with valuation of the vessels for requisition by the Government. The Ship Sales Act of 1946 includes no provision regarding the price for which vessels purchased under the Act may be reacquired by the Government, although early drafts of the Act included such a provision. Thus no change from the terms of section 802 would be required to make the contracts "consistent" with the 1946 Act, and the applicant could not reasonably be expected to have gathered from the agreement that any such change was contemplated by the Commission. *Id.* (679).

**SUBSIDIES, OPERATING-DIFFERENTIAL.** See also *Charter of War-Built Vessels; Construction Reserve Fund; Dual or Multiple Subsidies; Essential Trade Routes; Intercoastal Operations (Sec. 805(a))*.

#### —In general

Legislative history of section 605(c) of 1936 Act. *American South African Line, Inc., Seas Shipping Co., Inc.*, 277 (App.).

Subsidy contract will be awarded where the freight services involved are essential within the meaning of section 211 of the Merchant Marine Act of 1936; there is no established American-flag operator in the freight service, under the provisions of section 605(c) of the Act; applicant possesses the ability and experience, financial resources, and other qualifications necessary to conduct



the proposed operation so as to meet competitive conditions and promote foreign commerce; and the granting of the aid as applied for under Title VI of the Act is necessary to place the proposed operation on a parity with foreign competitors and will carry out the purposes and policies of the Act. Oceanic S.S. Co.—Trade Route 27, 309 (313).

Cargo moving between the Gulf and West Africa will support only one applicant for subsidy aid; likewise, cargo moving between U.S. Atlantic ports and West Africa should support only one applicant. American South African Line, Inc.—Subsidy, Route 14, 314 (320).

While a subsidy applicant is not entitled to preference as such, by reason of its proposed plan to meet special needs of the services which it seeks to enter, as opposed to applicants which propose only what the Commission has suggested for the services, the Commission will consider the scope of the proposed plan in selecting an operator where there are several applicants. *Id.* (322).

The type of operation, with feeder service for West African ports, proposed by American South African is superior to that proposed by other applicants and should receive financial aid in the operation of the U.S. Atlantic-West Africa service. *Id.* (323).

Mississippi Shipping Company is the only applicant who prefers to confine its operation to a service from U.S. Gulf ports only. It has the support, financial and otherwise, of the domestic communities primarily interested, which gives it a preference under the 1936 Act. It should receive financial aid in the operation of the U.S. Gulf-West Africa service. *Id.* (323).

Based on Commission report with respect to the need for U.S.-flag service on trade routes, the Commission granted subsidy aid to applicant otherwise qualified under Title VI of the Merchant Marine Act of 1936, but limited its service to the scope of the trade route involved. United States Lines Co., 325 (330).

An application for operating-differential subsidy will be granted, subject to eligibility under section 601 of the Merchant Marine Act of 1936, where the applicant has met the requirements of section 605(c), is supported by local interests within the meaning of section 809, the presently subsidized carrier was unable to handle cargo offerings on the trade route involved, the frequency and regularity of the subsidized carrier's service failed to meet the needs of many shippers, the subsidized carrier's services were subject to delays in sailing schedules of serious consequences to shippers, the subsidized carrier provided no service to certain Pacific coast ports, and trade on the route is increasing rapidly. Pacific Argentine Brazil Line, Inc., 357 (359-361).

**—Absence of U.S.-flag operation on route**

No American-flag operator is now operating on Trade Route 14. Now is the time to extend aid in view of the advantages accruing to the Government and to the operator in the development of this service through the operation of the recapture and trust fund provisions of the 1936 Act. Therefore, in furtherance of the long-range program enunciated in the Act, the Commission finds that subsidy contracts should be awarded to U.S.-flag operators in the development and operation of the Route on a permanent basis. American South African Line, Inc.—Subsidy, Route 14, 314 (321).

**—Accomplishment of the purposes and policy of the Act—Section 605(c)**

The addition of a new service on a trade route, pursuant to section 605(c) of the Merchant Marine Act of 1936, will aid in the accomplishment of the purposes and policy of the Act where the Commission has previously determined

that the service should be maintained as an essential part of American Merchant Marine operations; there are no combination vessels presently in operation, and the existing service is inadequate with respect to passenger service, even though the particular vessels proposed for use may not be suitable to meet the passenger requirements of the route since that question is not relevant under section 605(c). Arnold Bernstein Line, Inc., 362 (364).

—*Adequacy of service*

Service of American South African Line, Inc., on route from North Atlantic ports to ports in South and East Africa is not adequate within the purview of section 605(c), and that line alone cannot provide adequate service. American South African Line, Inc., Seas Shipping Co., Inc., 277 (287).

Under the provisions of section 605(c) of the Merchant Marine Act of 1936 Commission is precluded from granting financial aid to a carrier where there is no evidence that the service of a carrier already operating in the trade is inadequate. Bloomfield S.S. Co., 299 (305).

Carrier's statement in its brief that it is "ready, willing and able" to serve ports in the Straits Settlement and Netherlands East Indies is not an important factor in evaluating the adequacy of existing service. United States Lines Co., 325 (337).

Application of carrier for financial aid under Title VI of the Merchant Marine Act of 1936 must be denied where present operator provides adequate service to meet the requirements of section 605(c) of the Act, since it makes more sailings on the route than recommended in the Commission's "Report." Id. (342).

Existing service is adequate under section 605(c) of the Merchant Marine Act of 1936, where the operator proposes 12 regular sailings per year instead of the 48 sailings recommended in the Commission's "Report," since the Commission recognizes the uncertain nature of trade and that a less number of sailings than mentioned in the "Report" may be sufficient. Moreover, the operator has promised to increase its proposed sailings to meet the requirements of the trade. Id. (347).

Existing service on a trade route is inadequate under section 605(c) of the Merchant Marine Act of 1936 where only one regular passenger service to Rotterdam is provided, the only service to Antwerp is provided by freight vessels, the level of passenger traffic to both ports will be sufficiently high to support the service envisaged, and the German vessels which, due to German national pressure, sustained the rather artificial use of Hamburg and Bremen, have been lost. Arnold Bernstein Line, Inc.—Subsidy, Route 8, 362 (363, 364).

Existing passenger service, whether considered in terms of Trade Route 8 alone, or in conjunction with Trade Route 5, is inadequate. This meets the statutory requirements as to a determination of inadequacy, making unnecessary a discussion of cargo aspects. Id. (364).

If a subsidy applicant is found to be an existing operator under the first part of section 605(c) of the Merchant Marine Act of 1936, it need not prove that the service of another operator on the route is inadequate. Shepard S.S. Co., 366 (367, 368).

U.S.-flag services between U.S. Atlantic and California ports and Malaya-Indonesia are inadequate, since such services (including applicant's C-2 Service) are carrying, outbound and inbound, substantially less than 50 percent of the traffic in that trade. American President Lines, Ltd., 457 (472).

While the record showed that applicant's and some of the intervenors' vessels had substantial unused deadweight and cubic capacity, and while unused space is an element of "adequate service" under section 605(c), the question of ade-

quacy of service need not be determined where the Board has found in favor of the applicant on the issue of undue advantage and undue prejudice. United States Lines Co., 713 (722).

**—Diversion of revenue from subsidized operations**

Where the Commission granted permission to a company for operation of a service with unsubsidized vessels on condition that an agreement be entered into providing for protection of the company's subsidized operations from diversion of cargo and revenue by the nonsubsidized operations, and because of the intersecting and overlapping pattern of the several routes involved, some measure of diversion is possible, the condition will be modified since the aim is the prevention of undue diversion, having regard for practical problems encountered in such operations as the services of the company embrace. American President Lines, Ltd., 457 (467).

The practice of a subsidized operator in allocating chartered vessels to its subsidized services while at the same time operating owned ships in an unsubsidized service, results in reduction of the net earnings of the subsidized services (charges for the hire of chartered ships being generally in excess of capital charges on owned ships) to the prejudice of the Board's position relative to recapturable profits of the subsidized services. It is also inconsistent with the Board's and the Administrator's view of sound operating practice which calls for employment of the operator's own ships in its subsidized services. An operator's subsidized, rather than unsubsidized services must be accorded first claim on its owned vessels suitable for use in its subsidized operations. *Id.* (469).

**—Essential service**

Often services do not show commensurate returns for each portion of the round voyage, and it is not improper to consider the round voyage in its entirety as a standard for the needs of the service. American South African Line, Inc., Seas Shipping Co., Inc., 277 (285).

Section 211 of the Merchant Marine Act, 1936, requires the Commission to give due weight to "facts and conditions that a prudent businessman would consider in dealing with his own business." Thus, in determining what services are essential to the promotion of the commerce of the United States, the Commission will take account not only of the immediate competitive situation, but also of the reasonable probability of future competition. Moore-McCormack Lines, Inc., 396 (403).

**—Existing service**

The word "existing," in the first clause of section 605(c) of the Merchant Marine Act, 1936, cannot be impliedly restricted to an existing "subsidized" service or services. American South African Line, Inc., 277 (284).

Since section 605(c) of the Merchant Marine Act does not define "existing service" and the legislative history of the section is silent, the Commission will examine the construction of analogous statutes by the courts and administrative agencies. Bloomfield S.S. Co., 299 (304).

Where permission of the Commission was required only for return via North Atlantic ports and for operation of certain vessels, but not for the right of steamship company to operate in the past on a trade route, the company's status as an "existing" operator depends on section 605(c) of the Merchant Marine Act of 1936, and is not affected by the permissive nature of the aforesaid phases of the operation. *Id.* (304).

Court decision, under grandfather clause of section 206(a) of the Motor Carrier Act of 1935, that proof of actual operations as a common carrier to and from termini and some intermediate points on a regular route, with evidence of willingness to serve all points when shipments are offered, justifies finding of bona fide operation to and between all points on the route; and Interstate Commerce Commission holding that operations are bona fide when openly conducted and in such manner as to indicate a real intent to maintain the business, are pertinent to a determination of what constitutes "existing service" within the meaning of section 605(c) of the Merchant Marine Act of 1936. *Id.* (304, 305).

A service is an existing one under section 605(c) of the Merchant Marine Act of 1936 where the steamship company made 35 sailings in a service before requisition by the Government of its vessels in 1942; four sailings were made after termination of requisition and before the present hearing; 295,000 tons of cargo were carried by the company for its own account; no cargo was ever refused for which the company had space; and the company stated at least twice to the trade that its service was permanent and that it intended to place new vessels therein as soon as possible. *Bloomfield S. S. Co., Id.* (305).

Applicant is an existing operator within the meaning of section 605(c) of the Merchant Marine Act of 1936, as amended, where, because its own vessels were taken by the Government during the war, applicant has chartered and purchased vessels and has made numerous voyages to provide needed freight service; and applicant advertised sailings in the service and clearly views it as a permanent operation. *United States Lines, Co., 325* (342).

Under section 605(c) of the Merchant Marine Act of 1936 an applicant for operating-differential subsidy aid is an existing operator where its predecessor pioneered on a trade route between 1926 and 1940 and applicant resumed service in 1947 and maintained regular service thereafter. *Pacific Argentine Brazil Line, Inc., 357* (359, 360).

Applicant for an operating-differential subsidy is providing an existing service on Route 1 under section 605(c) of the Merchant Marine Act of 1936 where it has rendered continuous and regular service since May 1947; employed 6 vessels; handled 89,000 tons of cargo on 18 sailings in the last 6 months of 1947 and 89,000 tons on 19 sailings in the first 6 months of 1948; and has no intention of withdrawing from the trade even though its application be denied. *Shepard S.S. Co., 366* (368).

Applicant for operating-differential subsidy is an existing operator within the meaning of section 605(c) of the Merchant Marine Act of 1936 where it has engaged in operations in the trade for over 6 years, first as a berth agent for the War Shipping Administration and as an independent operator of chartered vessels making numerous chartered sailings carrying general cargo; and then operating on the route with a fleet of vessels purchased from the Maritime Commission and making weekly sailings between certain ports and making other calls when cargo warrants. *United States Lines Co., 713* (716).

Applicant is an existing operator within the meaning of section 605(c) of the Merchant Marine Act of 1936 where the services for which applicant is seeking a subsidy contract have been in existence for many years and are not new services so as to be "in addition" to existing United States-flag services now serving the route. *Grace Line, Inc., 731* (737).

#### *—Foreign-flag competition*

Financial aid under Title VI of the Merchant Marine Act of 1936 should be granted where although present service is adequate, severe foreign-flag competition is encountered on the route in question, and adequate American-flag

freight service cannot be maintained on a permanent long range basis without subsidy. The freight and passenger services on the route are so interrelated that it would not further the purposes of the Act to have one of the services operated on a subsidized basis and the other on a nonsubsidized basis. United States Lines Co., 325 (342).

Substantial foreign-flag competition is encountered on Trade Route 1 and an operating-differential subsidy for the Good Neighbor Fleet is necessary to meet such competition and to promote the commerce of the United States in furtherance of the policy and purposes of the Act. Moore-McCormack Lines, Inc.—Good Neighbor Fleet, 396 (400).

An operating-differential subsidy is not intended as a guaranty of profitable operation, but the losses of a steamship operator are relevant to the extent that they enable the Maritime Commission to appraise the importance of foreign competition which contributes to such losses. *Id.* (401).

Discontinuance of service compelled by losses sustained in consequence of foreign competition would be significant as indicating that foreign competition was substantial, and should be met by way of an operating-differential subsidy to insure continuance of an essential service on an essential trade route. *Id.* (401).

The substantiality of foreign competition should be evaluated on the basis of the critical importance to a steamship company of the number of passengers diverted to foreign-flag ships, rather than on the basis of minimizing the small percentages of foreign-flag traffic. *Id.* (401).

Competition to be met within the contemplation of the Merchant Marine Act, 1936, is competition of foreign-flag passenger space for the same passengers sought by United States-flag carriers. The Act does not require the Commission to insist that United States-flag operators provide accommodations or vessels identical with those of foreign competitors. To do so would be to permit foreign competitors to dictate the character and composition of the United States Merchant Marine. *Id.* (402).

Cruise to South America of foreign-flag vessel carrying 607 passengers who paid \$2,700,000, alone must be considered as providing substantial competition with the Good Neighbor Fleet. The effect of cruise competition on Mormac's regularly scheduled service on essential Trade Route 1 cannot be ignored. *Id.* (403).

Where no claim is made or evidence offered that subsidy applicant is subject to foreign competition other than direct foreign-flag competition, it is not necessary for the Board to make any determination as to competition other than direct, and section 602 creates no obstacle to the making of an operating subsidy award. Grace Line, Inc., 731 (736).

Where direct foreign-flag competition clearly exists on a route as a whole, a separate finding of competition on a privilege-call segment, constituting 13 percent of the traffic, on the route is not necessary. New York & Cuba Mail S.S. Co., 739 (741).

#### ***—Hearings and determinations***

Issues presented by section 605(c) of the Merchant Marine Act of 1936 are separate and distinct from those involved in section 601(a) which contains no hearing requirement for Commission determinations thereunder. Thus the scope of 605(c) hearing will not be enlarged to cover 601(a) issues. Arnold Bernstein Line, Inc., 362 (364).

While other sections of the Merchant Marine Act of 1936 are involved in a subsidy application, issues arising under them will not be considered in a hearing called to determine whether section 605(c) is a bar to the grant of subsidy; such issues will, of course, be passed upon before the application is disposed of on the merits. *Shepard S.S. Co.—Subsidy, Route 1, 366(367)*.

For the purposes of a section 605(c) hearing the Board will consider subsidy applicant's proposed service including calls at a port not included in the Maritime Commission's description of the trade route involved; the final determination as to such calls will be made by the Administrator. *United States Lines Co., 713 (715)*.

While it is necessary that the Administrator determine that the services are essential in the foreign commerce of the United States, a decision on section 602 or 605(c) issues need not be delayed pending the Administrator's decision under section 211. *Grace Line, Inc., 731 (732)*.

The record presented in sections 602 and 605(c) proceedings, with such other evidence as the parties may desire to introduce, may form the basis of the Board's determination of issues under sections 601(a) and 603(b), or other provisions of the Act, but they need not be determined at this time. *Id. (736)*.

Section 601 and other sections of Title VI of the Merchant Marine Act of 1936 permit determinations of direct foreign-flag competition without the requirement of a hearing. The investigation and hearing provided for under the Act is required only to determine competition other than direct foreign-flag competition. *New York & Cuba Mail S.S. Co., 739 (740, 741)*.

#### ***—Purpose of subsidy***

Financial aid under Title VI of the Merchant Marine Act of 1936 is not necessary to promote the foreign commerce of the United States where the record discloses that the only foreign-flag operator on the route in question carried approximately the same tonnage as the United States-flag operator; American-flag participation in export tonnage in this route has showed a decided improvement; applicant is prepared to continue to operate the service without a subsidy if Commission does not grant financial aid; and Commission has authorized sale of vessels to applicants under the Merchant Ship Sales Act of 1946 and such vessels will be equal to, if not superior to, those employed by the foreign-flag competitor. *Bloomfield S.S. Co., 299 (306, 307)*.

The purpose of an operating-differential subsidy is to equalize certain operating expense items of the U.S.-flag operator with the corresponding expense items of its foreign competitor or competitors, and the necessity therefor is not determined on a profit basis. The Commission would not pay a subsidy, irrespective to disparity to costs, if an essential foreign service could and would be adequately maintained on a long-range basis without subsidy. *American South African Line, Inc.—Subsidy, Route 14, 314 (321)*.

#### ***—Undue advantage or prejudice as between citizens***

Grant of an application for operating differential subsidy will not give undue advantage or be unduly prejudicial as between citizens of the United States in the operation of vessels in competitive services, routes, or lines under section 605(c) of the Merchant Marine Act of 1936, where the presently subsidized carrier on the route involved was unable to handle cargo offerings due in part to the absence of competition, the needs of shippers have not been met, the subsidized carrier's services were subject to delay in sailing schedules of serious consequences to shippers, the subsidized carrier provided no service to certain Pacific coast ports, and trade on the route was increasing rapidly. *Pacific Argentine Brazil Line, Inc.—Subsidy, Trade Route 24, 357 (359, 360)*.

The second clause of section 605(c) of the Merchant Marine Act of 1936—providing that no subsidy contract shall be made with respect to operation on a service served by two or more U.S. citizens, if the Commission shall determine that such operation would be unduly advantageous or unduly prejudicial as between U.S. citizens, unless certain requirements are met following a hearing—applies only where the applicant is an existing line furnishing services on the trade route with respect to which it asks Government aid. *Arnold Bernstein Line, Inc.—Subsidy, Route 8, 362 (363)*.

The requirement of section 605(c) of the Merchant Marine Act of 1936 that no operating-differential subsidy contract shall be made with respect to a vessel to be operated on a route served by two or more citizens of the United States, if the Commission determines the result would be unduly advantageous or unduly prejudicial, as between citizens, in the operation of vessels in competitive routes, does not apply where the applicant for subsidy aid proposes the addition of a new service to existing service provided by a number of United States citizens. *Id. (363)*.

Granting of an operating-differential subsidy would not give undue advantage or be unduly prejudicial under section 605(c) of the Merchant Marine Act of 1936, where the present slump on the route in question is temporary and may be eased in the not too distant future; development plans of countries on the route will probably create a strong demand for goods for some time; though another operator has ample facilities to handle all cargo now moving by American vessels, the figures indicate that this operator has been holding its own reasonably well since applicant entered the trade; applicant has already made inroads on cargo formerly carried by foreign lines; and shippers have testified that they have used foreign lines when a second American line was not available and that they prefer to ship by American lines when possible. *Shepard S.S. Co., 366 (375, 377)*.

Carriage of military and Government-financed cargo is not subsidized within the meaning of the 1936 Act, so that an award of subsidy to an applicant carrying such cargo would not amount to a double subsidy. The carriage of such cargo has no bearing upon the issue of undue advantage or undue prejudice under section 605(c). *United States Lines Co., 713 (721)*.

Effect of a subsidy contract would not be to give undue advantage or be unduly prejudicial as between citizens of the United States in the operations of vessels in competitive services, routes, or lines within the meaning of section 605(c) of the Merchant Marine Act of 1936, where there is no indication that applicant will schedule and provide more sailings than are justified under present conditions; fact that applicant would intensify its solicitation and advertising, if true, would not support a charge of undue prejudice; carriage of military and Government-financed cargo has no bearing upon the issue; applicant will be restricted to a certain route while competitors will be free to service other routes and seek higher revenues; the route in question is important to the foreign commerce of the United States; and there has been a steady deterioration of relative carryings of American-flag vessels in recent years. *Id. (720-722)*.

Granting of subsidy application would not be unduly advantageous or unduly prejudicial, within the meaning of section 605(c), where the applicant has concentrated on direct runs on the trade route, resulting in a financial loss but in a relative increase of its share of the trade; intervenors have been financially successful when the results of their service on the route are combined with service on another route; the financial gain of intervenors has been at the expense of completeness and directness of their services to ports on the route

in question; and, if subsidy is awarded, applicant will be required to agree to continue to operate exclusively on the route involved and thus its subsidy would be no more than a fair allowance for the restriction, as the intervenors will remain free to seek higher revenues because of freedom from such restriction. *Id.* (721).

Where under section 605(c) a subsidy applicant does not propose a service in addition to existing service, and the Board, therefore, is required to determine the issue of undue advantage or undue prejudice, the burden of proof is upon the parties claiming undue prejudice and, in the absence of such complaint or evidence, the Board cannot find that award of subsidy would be unduly advantageous or unduly prejudicial, and is, therefore, not required to make any further findings as a condition to entering into a subsidy contract. *Grace Line, Inc.*, 731 (737).

—*Unsubsidized operations*

An operator serving Trade Route 15 B (Gulf/South and East Africa) does not compete to any greater extent with an operator serving the same foreign ports from the Atlantic coast than an operator serving the east coast of South America from the Gulf competes with an operator serving the east coast of South America from the Atlantic. Thus the Commission is not required to exercise special jurisdiction over sailings, rates, charges, etc. of an unsubsidized operation in Trade Route 15 B by an operator subsidized in other trades and alleged to be in direct competition with subsidized operations on Trade Route 15 A (Atlantic Coast/South and East Africa). *Bloomfield S.S. Co. and Lykes Bros. S.S. Co.—Trade Route 15 B*, 299 (307).

Objection of Isthmian to permitting subsidized vessels of Oceanic to serve the Hawaiian Islands on the ground that this is domestic transportation served for many years by Isthmian and Matson without subsidy, is met by provision of section 605(a) for reduction of subsidy for that part of voyage between ports of the United States and its possessions. *Oceanic S.S. Co.—Trade Route 57*, 309 (312).

It would not further the purposes of the 1936 Act to require that one leg of a subsidized voyage be operated without subsidy. *United States Line Co.*, 325 (337).

It is inconsistent with the purposes and policies of the Merchant Marine Act of 1936 to permit a subsidized operator, with respect to other foreign services, to operate vessels with or without subsidy in a service adequately served by another subsidized operator. Application was necessary because the subsidized operator was prohibited by provisions of its operating-differential contract from operating any unsubsidized vessels in the foreign commerce in competition with any other service receiving subsidy. *Id.* (342, 343).

In a proceeding to determine whether an applicant should be permitted to continue operation in a service (Trade Route 17, Freight Service C-2) with unsubsidized vessels—permission being necessary under its subsidy contract for operation on another route—an intervener who does not serve the area in question will not be heard in protest on the issue of unfair competition or undue prejudice in foreign trade, and its contention that nine other lines will be subjected to unfair competition will be rejected, as six of those nine were not represented at the hearing, one other took no position, and the remaining two objected only to applicant's intercoastal activities. *American President Lines, Ltd.*, 457 (466).



American President Lines' application to operate on C-2 service of Trade Route No. 17, without subsidy, is approved with conditions. American President Lines, Ltd.—Unsubsidized Operation, 354 (355).

—*Vessels, Suitability of*

Whether particular vessels a subsidy applicant proposes are suitable to meet the passenger requirements of a trade route is not a question relevant under section 605(c) of the Merchant Marine Act of 1936. Arnold Bernstein Line, Inc., 362 (364).

**SURCHARGES.** See **Tariffs.**

**TARIFFS.** See also Absorptions; Agreements under Section 15; Classifications; Common Carriers; Discrimination; Findings in Former Cases; Free Time; Handling; Insurance; Intercoastal Shipping Act, 1933; Jurisdiction; Misquotation of Rates; Preference and Prejudice; Rate and Commodity Comparisons.

Tariff definitions of various terminal services should be uniform and clear, and a clear and inclusive list of the specific activities contained in each definition to enable the operators, shippers, carriers, and the Commission to determine whether each service is bearing its fair share of the cost load. Such uniformity should be sought in all ports; however, this does not mean necessarily a uniformity of charges. The industry will be healthier and there will be fewer noncompensatory charges if uniformity of definitions is required. Terminal Rate Increases—Puget Sound Ports, 21 (23).

Definitions of "service charge," "handling," "handling charge," and "carloading and unloading" contained in tariff are unjust and unreasonable regulations in violation of section 17 of the Shipping Act of 1916 in view of their inadequacy and ambiguity. Respondents directed to make necessary changes. *Id.* (26-28).

Definitions in a tariff of "handling" and "handling charge" are unjust and unreasonable regulations relating to the handling of property, in violation of section 17 of the Shipping Act of 1916, where they are ambiguous as to whether the charge is applied against the ship, which it should be, or the freight. *Id.* (27).

Definitions of "handling" and "handling charge" in tariff which do not provide that ordinary sorting, breaking down, and stacking on wharf are included in handling, are unjust and unreasonable regulations relating to the handling of property, in violation of section 17 of the Shipping Act of 1916, since such sorting, breaking down, and stacking are so related to handling of freight that they are properly to be covered by the handling charge. *Id.* (27).

Tariff definitions of carloading and unloading must indicate that the charge is against the cargo, and in not providing that ordinary sorting, breaking down, and stacking are included they are unjust and unreasonable regulations relating to the receiving and delivering of property in violation of section 17 of the Shipping Act of 1916. *Id.* (28).

Man-hour rates for loading or unloading trucks at pier lack the definiteness of per-ton charges and must be cancelled when the circumstances requiring their use as a stop-gap measure no longer exist. *Id.* (28).

When in dispute, a tariff of a common carrier is construed as any other document. *Himala International v. Fern Line*, 53 (54).

Every effort should be made by carriers, particularly those that are members of conferences and therefore parties to the same tariff, to so draw their tariffs as to remove all uncertainties; otherwise there is a possibility of preferences and discriminations in violation of sections 16 and 17. *Id.* (55).

Where Commission-approved conference agreement, to which respondent carriers are parties, provides that charges will be collected in accordance with tariff filed with the Commission, Commission can determine applicable charges under its authority with respect to the agreement. *P. A. Dana, Inc. v. Moore-McCormack Lines, Inc.*, 79 (80).

A rate item for quartz crystal which included a 2 percent ad valorem is consistent with a tariff rule providing that "unless otherwise specifically provided in individual rate items" the shipper must pay an additional 2 percent of total declared value if he desires liability coverage in excess of \$500, but the rule should be clarified to evidence that it is not intended to give the carrier the right to charge another 2 percent on top of the 2 percent specifically provided in the individual rate item. *Id.* (80, 81).

An individual tariff rate charge which specifically included a 2 percent ad valorem tax was not in violation of the Shipping Act of 1916 where the shipper did not request the carrier to assume a liability higher than that allowed by the carrier's bill of lading form, in which event, according to a further tariff provision, and additional 2 percent charge was to be made unless otherwise provided in an individual rate item; however, such further tariff provision should be changed to make it clear that a second 2 percent charge is not intended where the individual rate item already includes such a charge. *Id.* (80, 81).

Where carloading conference and a respondent member submitted agreement for approval and agreement was accompanied by a proposed tariff designed to increase charges in a tariff on file with California Railroad Commission, which tariff contained a rate per ton for carloading of woodpulp, respondent was estopped from denying that the proposed tariff charges were noncompensatory. The representations made in connection with the tariff, coupled with the fact that, as a result of a request by complainant, the conference tariff which failed to contain a rate for woodpulp was revised to reinstate the rate, precluded any consideration that the costs of loading woodpulp were other than represented. *Fibreboard Products, Inc. v. W. R. Grace & Co.*, 128 (129, 130).

Rule requiring the filing of new rates within 30 days after they become effective does not mean a rate charged but not filed within the time limit is unlawful under sections 16 or 17 of the Shipping Act where no undue prejudice or unjust discrimination is shown. The purpose of the rule was to correct certain methods and practices of foreign-flag nonconference carriers who were openly or secretly soliciting freight at cut rates and creating conditions unfavorable to shipping in the foreign trade. Sections 16 and 17 place an obligation on every common carrier in foreign commerce to make its rates public in order to prevent undue prejudice and unjust discrimination between shippers. *Afghan American Trading Co., Inc. v. Isbrandtsen Co., Inc.*, 622 (624).

**TERMINAL FACILITIES.** See also Berthage; Demurrage; Discrimination; Freas Formula; Free Time; Preference and Prejudice; Tariffs.

Service charge "for use of terminal facilities" is broad enough to comprehend the use of terminal facilities for which compensation is included in other charges, such as wharfage, and quoted phrase should be eliminated. *Terminal Rate Increases—Puget Sound Ports*, 21 (26).

Phrase, "administrative expense in serving the carrier," as part of terminal's "service charge" should be deleted. Each service presumably bears its proper share of the administrative expense in the charge established for the service, and to exact payment for such expense in the service charge would be duplication of charges. *Id.* (26).

Checking (which involves the counting and measuring of packages, recording any identifying marks, and making notations as to the apparent condition of the packages) performed for the ship should be covered by the service charges whether it is done at place of rest or not. Thus words, "at place of rest on dock, to or from vessel" should be eliminated from terminal's service charge for checking cargo. *Id.* (26).

Maritime Board suggested review by interested parties of the problem of separate billings for carloading and other miscellaneous terminal charges received by certain west coast shippers, whereas at certain east coast and Gulf ports, where identical service is provided, car service charges are included either in the line haul of the land carrier to or from the ocean terminal or the water-haul of the ocean carrier, so that a satisfactory solution may be voluntarily adopted to eliminate practices which might be unfair as between ports in different sections of the United States. Carloading at Southern California Ports, 261 (266, 267).

Respondents, as pier owners, are at liberty to restrict the use of their piers to rail cargo and deny it entirely to truck cargo, but they have not done so. Thus they must furnish the full reasonable use of their pier facilities or not permit their use at all. If respondents permit the use of their piers to the vessel owners for the receipt and delivery of truck cargo, they thereby assume responsibility to carry out the ocean carrier's full duty toward truck cargo. This includes nondiscriminatory and reasonable pier service, and service which is in no other respect in violation of the Act. *Pennsylvania Motor Truck Assn. v. Philadelphia Piers, Inc.*, 789 (795).

**THROUGH ROUTES AND RATES.** See Equalization; Port Equalization.

**TRADE ROUTES.** See Essential Trade Routes; Subsidies.

**TRANSSHIPMENT.** See On-Carriage.

**UNJUST OR UNFAIR DEVICES.** See Devices to Defeat Applicable Rates; Equalization.

## VOLUME.

Lawfulness of per diem rates as violative of section 14 as being based upon volume and available to large shippers only, would not be passed upon in view of lack of evidence of the existence of other shippers in the trade. *Ken Royce, Inc. v. Pacific Transport Lines, Inc.*, 183 (186).

## WAR SHIPPING ADMINISTRATION.

The Maritime Commission does not have jurisdiction over a claim by a shipper against its predecessor, the War Shipping Administration, and Grace Line, seeking waiver of unpaid demurrage charges and cancellation of bonds held by Grace Line to secure payment, on the ground that sections 15, 16, 17, and 18 of the Shipping Act were violated, since the proceeding is in reality a suit against the United States; the vessels involved were owned by or chartered to the United States; the transportation involved was performed by the United States through W.S.A.; Grace was a berth agent for W.S.A.; use of conference machinery to publish the tariff rule relating to the demurrage in question, of which conference Grace was a member but the United States was not, was merely a handy means of making it public; the judgment sought would not only expend itself on the public treasury but would seriously interfere with the activities of the United States as a common carrier in wartime; and the only section of the Shipping Act which might make the United States subject thereto, namely section 9, is inapplicable here because the vessels in question were not chartered

or leased by the United States to others but were maintained by agents of the United States, the actual operator, the cargo space was used by more than one shipper, and bills of lading, not charters, were used. *Olsen v. W.S.A. and Grace Line, Inc.*, 143 (145-147).

The Maritime Commission, as an administrative agency, may pass upon the propriety of acts of its predecessor, the War Shipping Administration, although its quasi-judicial authority does not extend to the determination of claims against the United States; and evidence of possible violations of the Shipping Act will be received to determine whether such violations could have been condemned and corrected had the vessels been owned and operated by private interests rather than by the United States. *Id.* (147).

War Shipping Administration comes within the literal definition of a "common carrier by water" as set forth in section 1 of the Shipping Act of 1916, and is subject to Board jurisdiction where it voluntarily adopts conference rates and practices through its agent. *Olsen v. W.S.A. & Grace Line, Inc.*, 254 (256).

War Shipping Administration, an agency of the United States Government, while operating merchant vessels as common carriers, is subject to the requirements of the Shipping Act, 1916. Congress has expressly declared in favor of equal treatment as between Government-owned and privately-owned merchant vessels. See MMA 1920, section 19(4). *Oxenbergs Bros. Inc. v. W.S.A. and Northland Transp. Co.*, 583 (584).

#### **WEIGHT OR MEASUREMENT.**

Where carrier's new rates for shipment of fish were computed on a weight basis, rather than on a cubic basis, in order to bring about uniformity between local ship rates and through ship and rail rates, and cubic rates were difficult to assess because the standard fish boxes bulged when packed, carrier's new rates will not be set aside by reason of the change alone. *Increased Rates—Alaska S.S. Co.*, 632 (635, 636).

**WHARFAGE.** See also *Free Time; Terminal Facilities.*

Wharfage, which is a charge against the cargo for use of the wharf, is justified only on the principle that the carrier, or terminal operator on its behalf, does not take possession or deliver up possession of the cargo other than at the place of rest on the pier rather than from the end of ship's tackle. Between place of rest and the entrance to or exit from the pier the cargo is using the pier to get into position to utilize the carrier's facilities or has finished the use thereof. Establishment of the charge against the cargo for this use has been widespread under various names, viz: "wharfage," "top wharfage," "tollage," "wharf tollage." *Terminal Rate Increases—Puget Sound Ports*, 21 (24, 25).