UNITED STATES MARITIME COMMISSION

VOLUME 2

DECISIONS OF THE
UNITED STATES MARITIME COMMISSION

UNDER REGULATORY PROVISIONS OF THE
SHIPPING ACT, 1916, AND RELATED ACTS
DECEMBER 1938 TO JANUARY 1947

REPORTED BY THE COMMISSION

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UNITED STATES MARITIME COMMISSION

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CONTENTS

TABLE OF CASES REPORTED

DOCKET NUMBERS OF CASES REPORTED

TABLE OF CASES CITED

DECISIONS OF THE

UNITED STATES MARITIME COMMISSION

UNITED STATES MARITIME COMMISSION

No. 492

WYPENN OIL COMPANY, INC.

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

Submitted November 14, 1938. Decided December 6, 1938

Class rates on marine or animal oil spent catalyst from Tacoma, Wash., to New York, N. Y., found not unjust or unreasonable. Complaint dismissed.

Walter S. Bull for complainant.
M. G. de Quevedo and *William M. Carney* for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the examiner's proposed report, and his recommendations are adopted herein.

By complaint filed July 5, 1938, as amended, complainant alleges that the rates assessed by defendant on two shipments of animal oil or marine oil spent catalyst from Tacoma, Wash., to New York, N. Y., were unjust and unreasonable in violation of section 18 of the Shipping Act, 1916, as amended. Reparation and a reasonable rate for the future are requested. Rates will be stated in amounts per 100 pounds.

Spent catalyzer is recovered from a catalytic agent used in refining, bleaching, and hardening oils. Its value is said to be dependent upon the amount of nickel dross which may be obtained therefrom. The assailed rates were class rates of $1.85 assessed on the shipment of May 13, 1937, and $2.05 on the shipment moving July 15, 1937. The present rate, which was established prior to the hearing, is a commodity rate of 57 cents, and is the basis to which reparation is sought.

Complainant's contention that the rates involved were unreasonable is based mainly on two factors, first, that when the shipments moved

there was a commodity rate of 57 cents on vegetable oil spent catalyst, said to be similar to the commodity herein involved; and second, that the rates on animal or marine oil spent catalyst were subsequently reduced. Complainant offered no evidence with respect to the value, stowage, volume of movement, or any of the other transportation characteristics of either of the above-mentioned commodities.

Defendant's witness testified that the two shipments were the only ones that had moved over any of the intercoastal lines [1] between January 1, 1936, and July 15, 1938, and that during the same period there had been no shipments of vegetable oil spent catalyst. The rate on the latter commodity was established in 1936 to meet a rate established in 1934 on the same commodity by the transcontinental rail lines serving Chicago, which was also made effective via New Orleans by rail-water carriers. Being a mere paper rate, competitively depressed, its value from a comparative standpoint is negligible. Subsequent to the two shipments in this case, defendant voluntarily reduced the rate "in the hopes of getting a substantial amount of business thereby," but the business has not materialized. A reduction under such circumstances, without more, is not sufficient to justify a finding that the rate charged was unreasonable.

Marine oil spent catalyst, according to defendant's witness, is difficult to handle, generally badly packed, gives off a contaminating odor, and exudes oil. The dock inspector's report indicated that the contents of the second shipment, which moved in second-hand drums covered only by burlap, had sifted and stained several adjacent cartons of paper, for which damage the carrier had to pay. The fact that a commodity may cause contamination may properly be taken into consideration in fixing the rates thereon.

Class rates are generally appropriate when the movement is small or sporadic, and the assailed class rates are not shown to have been unreasonable nor is it evident that the commodity was improperly classified.

We find that the rates assailed have not been shown to have been unjust or unreasonable in violation of section 18 of the Shipping Act, 1916, as amended. Reparation is denied and the complaint dismissed. An appropriate order will be entered.

[1] Members of Intercoastal Steamship Freight Association.

UNITED STATES MARITIME COMMISSION

No. 419

NEUSS, HESSLEIN & CO., INC.

v.

GRACE LINE, INC., ET AL.

Submitted January 29, 1938. Decided January 24, 1939

Joint through rates on cotton piece goods from New York to west coast of Central American ports higher than a combination of local rates between the same points, plus transfer charges, not shown to have been violative of Shipping Act, 1916, as alleged. Complaint dismissed.

James P. Sullivan and *A. Hayne de Yampert* for complainant.

Waynes Johnson, *Thomas J. Maginnis*, *William M. Lloyd*, and *W. F. Cogswell* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner. Our conclusions differ in some respects from those recommended by him.

Complainant is a New York corporation engaged, among other things, in exporting merchandise. Defendants, Grace Line, Inc., and Panama Rail Road Company, are common carriers by water subject to the Shipping Act, 1916, as amended.

By complaint filed July 18, 1936, as amended, complainant alleges that joint through rates charged it by defendants for transportation of shipments of cotton piece goods from New York, N. Y., to points on the west coast of Central America during August and September 1934 were unjust and unreasonable in violation of section 18 of the Shipping Act, 1916, as amended, in that they were higher than a combination of local rates between the same points, plus Canal Zone unloading and loading charges, paid on similar shipments by the Baltic Shipping Company, Inc., complainant's competitor, and unjustly discriminatory between shippers in violation of section 17

thereof; that defendants thereby subjected complainant to payment of rates exacted in violation of section 14 and to undue prejudice in violation of section 16 of that act. Reparation is requested. Rates will be stated in cents per cubic foot.

As defendants did not transport the shipments involved between a port in the United States and other ports in the United States or possessions thereof within the meaning of the Shipping Act, 1916, section 18 of that act is without application in respect thereto. No evidence was offered under section 14. The allegations under these sections, therefore, will not be further considered.

Complainant's shipments were transported by defendants from New York to Cristobal, C. Z., and by Panama Mail Steamship Company, Pacific Steam Navigation Company, or Hamburg American Line from the Canal Zone to La Union and La Libertad, Salvador; Champerico, Guatemala; San Juan del Sur and Corinto, Nicaragua; and Amapala, Honduras. A joint through rate of 81 cents was charged on the shipments to La Union, La Libertad, and Champerico, and of 90 cents to San Juan del Sur, Corinto, and Amapalo. These rates were divided equally between the participating carriers, each absorbing one-half of the cost of canal transfer. The carriers participating in the transportation from the Canal Zone to destination are not made defendants.

Contemporaneously, a rate of 32 cents on local shipments of cotton piece goods was in effect over each of defendants' lines and over the United Fruit Company from New York to Cristobal; also a rate of 25 cents from the Canal Zone to the Central America destinations concerned applied over each of the on-carriers above named. The shipments of Baltic Shipping Company were three in number and moved during September and October 1934. They were billed locally over the United Fruit Company from New York to Cristobal and locally beyond. Transfer at the canal at a cost of 5 cents per cubic foot was arranged by the shipper's agent. The cost of transporting the Baltic shipments from New York to their Central American destinations was therefore 62 cents, as compared with complainant's cost of 81 and 90 cents. Defendants are not shown to have carried any local shipments of cotton piece goods from New York to Cristobal during the period covered by the complaint. United Fruit Company is not a defendant in this proceeding.

Defendants and United Fruit Company were members of the Atlantic and Gulf-West Coast of Central America and Mexico Conference. The joint through route via which complainant's shipments moved and the joint through rates paid by complainant were established by conference action. Subsequent to the movement of the Baltic shipments concerned, the 25-cent rate from the Canal Zone

was increased to 50 cents and the joint through rates were reduced to 67.5 and 75 cents, respectively. The conference did not govern local rates of its members from New York to Cristobal, nor the local rates of the on-carriers from the Canal Zone to Central America.

Concerning its allegations of undue prejudice and unjust discrimination, complainant directs our attention to the facts that through rates are ordinarly lower than a combination of local rates via the same route. The record is clear, however, that defendants did not control the rate of the carriers from the Canal Zone for local transportation to the Central America destinations. Neither the subsequent advance in such local rate nor the subsequent reduction of the through rates, relied upon by complainant, establishes such control. Complainant admitted at the hearing that the Baltic Shipping Company, Inc., was the forwarding agent of complainant's vendees, rather than complainant's competitor as stated in the complaint; further that the Baltic shipments were not competitive with its shipments, and that no sales were lost because of them. Complainant was unable to point to any adverse effect upon it due to the transportation of the Baltic shipments at the lower transportation charge.

We find that the rates assailed have not been shown to have subjected complainant to undue prejudice in violation of section 16 of the Shipping Act, 1916, as amended, or to have been unjustly discriminatory in violation of section 17 thereof, as alleged. 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., on the 24th day of January, A. D. 1939

No. 419

NEUSS, HESSLEIN & CO., INC.

v.

GRACE LINE, INC., ET AL.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the 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 be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 6th day of December A. D. 1938

No. 492

WYPENN OIL COMPANY, INC.

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the 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.) RUTH GREENE,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 421

B. M. ARTHUR LUMBER COMPANY, INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY

Submitted September 13, 1938. Decided January 26, 1939

Storage charges on shingles originating at Vancouver, B. C., transhipped at Seattle, Washington, and transported thence by defendant to Philadelphia, Pa., where such charges accrued, found not unduly prejudicial but unreasonable in violation of section 18 of the Shipping Act, 1916. Reparation ordered and reasonable charges prescribed for the future.

James F. Murphy for complainant.
R. T. Titus and *A. Lane Cricher* for interveners.
M. G. de Quevedo for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by complainant, defendant, and one intervener to the report proposed by the examiner, and the case was orally argued. Our conclusions differ in some respects from those of the examiner. American Warehousemen's Association intervened at the oral argument and was permitted to file a brief on the question of jurisdiction.

The complaint filed August 18, 1936, alleges that storage charges collected July 9, 1936, by defendant carrier at Philadelphia, Pa., on 900 bundles of western red cedar shingles transported from Vancouver, B. C., to Philadelphia, Pa., were unreasonable and unduly disadvantageous to complainant, in violation of sections 16 and 18 of the Shipping Act, 1916, respectively. Reparation and lawful storage charges for the future are sought. Intercoastal Lumber Distributors Association intervened in support of complainant.

Frank Waterhouse & Company, Ltd., of Canada, transported the shipment from Vancouver to Seattle, Washington, on a through bill of lading to Philadelphia, where the cargo cleared customs, and

moved from Seattle to Philadelphia on a bill of lading issued by defendant carrier at Seattle dated May 4, 1936. Defendant and Frank Waterhouse & Company had theretofore established a through route from Vancouver to Philadelphia, with transhipment at Seattle. This arrangement was filed with and approved by the Assistant Secretary of Commerce on March 20, 1936, as Agreement No. 4970. The agreement established a joint through route and a joint through rate and divisions thereof between the carriers. The joint through rate on wooden shingles under the agreement was made by adding 2.5 cents per hundred pounds to defendant's intercoastal rate from Seattle to Atlantic Coast ports published in Agent Thackara's tariff SB–I No. 7. That tariff contains a provision that five days' free time shall be granted at Philadelphia and thereafter the rate for storage on shingles shall be 1.5 cents per bundle per day. After due notice of the expiration of free time, defendant placed the shingles in storage on its piers at Philadelphia, and charged complainant $364.50, based on 27 days' storage at the above rate.

No evidence of undue prejudice or disadvantage under section 16 was offered, and that allegation will not be considered further.

Although the point was not raised by defendant at the hearing on this case, it is now contended that since the shipment originated in a foreign country section 17 of the Shipping Act, 1916, is applicable and we have no jurisdiction to determine the reasonableness of the charge and to require payment of reparation.

This contention is contrary to the provisions of the Shipping Act, 1916, and to the decisions of the Supreme Court of the United States. Section 1 of that Act defines a "common carrier by water in foreign commerce" as a "common carrier engaged in the transportation by water of passengers or property between the United States * * * and a foreign country." It also defines a "common carrier by water in interstate commerce" as a common carrier "engaged in the transportation by water of passengers or property * * * on regular routes from port to port between one State * * * and any other State * * * of the United States." Under the provisions of the Shipping Act, 1916, Congress conferred upon the Shipping Board jurisdiction to regulate all common carriers by water and prohibited certain practices by and placed certain obligations on them (Sections 14, 14 (a), 15, and 16). Section 17 applies to those carriers engaged in transportation between the United States and a foreign country. Section 18 applies to those carriers engaged in transportation from port to port between one State and any other State.

Defendant admits being a common carrier in interstate commerce as defined in the Shipping Act, 1916, and subject to the jurisdiction imposed upon that type of carrier.

The Supreme Court of the United States in the case of *United States Navigation Company* v. *Cunard Steamship Co.*, 284 U. S. 474, reviewed the regulatory powers of our predecessor, the Shipping Board. The court held that the Shipping Act, 1916, paralleled the Interstate Commerce Act and that "Congress intended that the two Acts, each in its own field, should have like interpretation, application and effect."

An examination of the provisions of the Interstate Commerce Act shows a marked similarity in the definition of the type of interstate carrier to be regulated in the respective acts.

Section 1 of the Interstate Commerce Act applies the provisions of the act to common carriers engaged in the transporation of passengers or property wholly by railroad, or partly by railroad and partly by water, but only in so far as such transportation takes place within the United States.

Section 18 of the Shipping Act, 1916, provided, at the time of this transaction, for the filing by every common carrier by water engaged in interstate commerce of maximum rates, fares and charges for or in connection with transportation *between points on its own route.* It further provides that when we find that any such rate, fare or charge is unjust or unreasonable, we may determine and order enforced a just and reasonable rate. Provision for the awarding of reparation is made in section 22 of the act.

It is thus seen that the Interstate Commerce Act applies the provisions thereof to transportation which takes place within the United States, while section 18 of the Shipping Act, 1916, applies to the transportation by a common carrier engaged in interstate commerce of property "between points on its own route," that is, "on regular routes from port to port between one State * * * and any other State * * * of the United States."

There is no fundamental difference in the meaning of these two provisions, the only difference being in the language used to express that meaning. In construing section 18, therefore, we must be guided by the construction given to the above mentioned provision of the Interstate Commerce Act. The decisions of the Supreme Court on this question are too clear to be ignored. It has held that the Interstate Commerce Commission has jurisdiction over the transportation in the United States of property originating in foreign countries, like Canada and Mexico, and transported on through bills of lading from points in those countries to interior points of the United States, initially over Canadian or Mexican railroads and finally over railroads of the United States, and that jurisdiction included the determination of "the reasonableness of the joint through international rate." *Lewis-Simas-Jones Co.* v. *Southern Pacific Co.*, 283 U. S. 654. See also *News*

Syndicate Co. v. *New York Central R. R. Co.*, 275 U. S. 179; *United States* v. *Erie R. R. Co.*, 280 U. S. 98. The present case is a stronger case with respect to jurisdiction than the *Southern Pacific case*, *supra*, in that the shipment of shingles in this case was forwarded after transshipment at Seattle on a bill of lading issued by the defendant and was not, as in the *Southern Pacific case*, a shipment that was continuous from its foreign place of origin to its destination in the United States without such transshipment.

The intention of Congress to place common carriers by water in interstate commerce under the jurisdiction of the regulatory agency irrespective of the foreign origin or destination of the cargo transported by them is further borne out by the fact that in section 18 such carriers are required to file rates, fares and charges for and in connection with the transportation not only between points on their own route, but also if such carriers establish through routes, they "shall file the rates, fares and charges for or in connection with transportation between points on its own route and points on the route *of any other carrier by water*." [Italics ours.] There is no limitation as to the character of traffic involved. Likewise, there is no exception as to the routes upon which this authority may be exercised, if the filing carrier is an interstate carrier, nor is there any indication in the section that Congress intended the power to be exercised only with respect to through routes established by the defendant with other interstate carriers.

Defendant refers to prior decisions of the United States Shipping Board in the cases of *Boston Wool Trade Association* v. *General Steamship Corporation, Oceanic Steamship Co. and Union Steamship Co.*, 1 U. S. S. B. 49, and *Boston Wool Trade Association* v. *Oceanic Steamship Co. and Luckenbach Steamship Co.*, 1 U. S. S. B. 87, finding that section 18 had no application to cargo which was moving in foreign commerce. There are statements contained in these decisions which support defendant's contention. The decisions of the Shipping Board, referred to, in so far as they limit our jurisdiction with respect to the reasonableness of rates for transportation between points on the route of a common carrier by water engaged in interstate commerce, are clearly in error, cannot be followed and are overruled.

There is ample authority to pass upon the reasonableness of the rates and charges made by defendant in connection with the transportation involved.

The shipment was originally consigned to B. M. Arthur Lumber Company, complainant, but consignee sold the shingles in transit to Currie Lumber & Millwork Co., and on May 13, 1936, instructed defendant as follows: "When these shingles arrive at Philadelphia,

kindly place same on your truck delivery docks and arrange to deliver same to Currie Lumber & Millwork Co., Frontenac and Rhawn Sts., Philadelphia, Pa., upon payment of all ocean freight and handling charges." Defendant, on May 28, 1936, mailed Currie an arrival notice and freight bill in advance of the arrival of the shipment on June 5, 1936. On June 6, defendant mailed Currie a final notice of arrival and a notice that free time would expire June 12 under the provisions of Note 1, Original Page 140, Thackara's tariff SB–I No. 7. Since delivery was not taken, the shingles went into storage June 13. On that date defendant notified Currie that the shingles were in storage at its Pier 78, at a rate of 1.5 cents per bundle per day as published in the aforementioned tariff. Several days later defendant's agent explained the situation to complainant by telephone, but the shingles were not removed from storage until July 9, 1936, when complainant paid the storage charges in the amount of $364.50 for 27 days in order to release the shipment, Currie refusing to pay the alleged excessive storage rate.

It was testified that Currie's failure to remove the shingles promptly was due to illness and that refusal to take delivery after the shipment was placed in storage was due to the fact that Currie expected to receive the shipment at a public pier where lumber and shingles are customarily discharged and where the storage charges are lower. It is common practice for lumber dealers at Philadelphia to allow shipments to go into storage at public piers for long periods of time. Defendant discharges lumber at public piers when there is sufficient cargo.

In support of its allegation of unreasonableness, complainant compares the assailed rate with rates charged by Ontario Land Company and Philadelphia Piers, Inc., commercial warehouses engaged in the storage and handling of lumber at Philadelphia. Their current tariffs, received in evidence, name rates of 1.5 and 2 cents per bundle per month for open and covered storage of shingles, respectively. While these comparisons may be considered, they are not conclusive.

Complainant contrasts the rate in question with the defendant's rate of 5 cents per 1,000 net board feet per day for the storage of lumber. It is testified that in the lumber industry, 40 bundles of shingles are considered to be the equivalent of 1,000 net board feet of lumber for the purpose of fixing handling, loading, and storage charges. On that basis, 900 bundles of shingles are the equivalent of 22,500 net board feet of lumber upon which defendant's storage charge would be $1.125 per day, whereas the shingles in question were charged at the rate of $13.50 per day. While the ratio of 40 bundles of shingles to 1,000 board feet of lumber is not uniformly

observed in the fixing of storage charges at other ports, it appears that generally there is a close approximation of such relation. For example, a witness for intervener states that Agent Thackara's above mentioned tariff names lumber storage rates at New York, N. Y., of 40 cents per 1,000 net board feet per month in shed, 35 cents per 1,000 net board feet per month in open storage, and a rate of 1.5 cents per bundle of shingles per month. It is further testified that at Newark, N. J., the Newark Tidewater Terminal charges a storage rate of 40 cents per 1,000 net board feet of lumber per month for shed storage, and 1 cent per bundle of shingles per month. Similar lumber and shingles storage rates appear to apply at the Connecticut Terminal, New London, Conn., and The Camden Marine Terminal, Camden, N. J., which are public terminals. However, at their own piers, the intercoastal lines maintain the same storage rates on lumber and shingles at Philadelphia, Camden, and other Delaware River ports; namely, 5 cents per 1,000 net board feet for lumber and 1.5 cents per bundle of shingles per day. The record fails to show, as to any port other than Delaware River ports, such a wide disparity as between the storage rates on shingles and lumber.

In defense of the assailed rate, defendant asserts that it is necessary to secure prompt removal of shingles to relieve congestion of its pier, which is covered, double decked, and shared with a railroad. It states that the charge is in the nature of a penalty rather than a source of revenue, designed to prevent abuse by shippers of the 5 day-free-time privilege, and that it is necessary at times to rent additional pier space at Philadelphia at considerable expense. Defendant has two scheduled arrivals each week. Diversified cargoes are discharged at its pier, including footstuffs such as dried fruit, flour, and sugar, which are susceptible to taint, making it necessary to allocate isolated pier space for lumber and lumber products, including shingles. Defendant's witness admits, however, that shingles are no more contaminating than lumber. Since October 3, 1935, the effective date of the storage rate, only 65 net tons of shingles went into storage at Pier 78, the instant shipment contributing slightly more than 21 net tons to that figure. Prior to that date, defendant's storage rate on shingles at Philadelphia was 2 cents per bundle for each 30 days or fraction thereof which, it states, was not high enough to compel prompt removal from its pier.

The record is clear that defendant gave consignee adequate notice of arrival and sufficient opportunity to remove the shingles before they were stored, and was not at fault in any particular with respect to the handling, storage, and delivery of the shipment. Nor can there be any doubt of the carrier's right to exact charges high enough to clear its piers. A charge which is no higher than is necessary to

accomplish this end is not unreasonable because of the mere fact that it is higher than would be just if the value of the storage service were the only element to be considered. The question is whether the charges in issue have been shown to exceed the bounds of reasonableness, taking into consideration the carrier's right to insist upon prompt clearance of its terminal facilities.

Complainant's contention that there should be a fair relation between storage charges on lumber and shingles appear to be sound, particularly since the record fails to show that dealers in shingles have abused free-time privilege more than lumber shippers, and since there is a general practice in the lumber business of observing a relation between the two commodities for the purpose of handling, loading, and storage. Defendant's storage rate on lumber at its Philadelphia Pier is 5 cents per 1,000 net board feet per day, and is apparently high enough to secure prompt removal. Using that rate as a base and the "40 to 1" ratio hereinabove mentioned, the storage rate on shingles would be ⅛ of 1 cent per bundle per day. The rate charged is about twelve times that amount. There is nothing of record to justify such a penalty on shingles.

There is no foundation for defendant's argument that the provisions of section 18 do not empower us to condemn or prescribe the amount of a storage charge or rate, and that we may only act and pass upon the lawfulness of regulations and practices relating to the storage of property. Paragraph 1 of section 18 reads as follows:

> 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 all other matters relatiug to or connected with the receiving, handling, transporting, storage, or delivery of property.

The language is comprehensive and includes rates, fares and charges which are not limited to the bare transportation or line haul, but include those "relating to or connected with the receiving, handling, transporting, *storing*, or delivery of property." [Italics supplied.] The language of section 18, quoted above, follows closely that of section 1 (6) of the Interstate Commerce Act which has been considered and applied for many years by the Interstate Commerce Commission in connection with a wide variety of storage cases. That Commission has consistently found that it has jurisdiction over the measure of storage and penalty charges, as well as over carrier regulations and practices relating to storage. *Dakota Monument Co.* v. *Director General*, 59 I. C. C. 101; *Star Co.* v. *N. Y. C. R. R. Co.*, 139 I. C. C. 41, 44.

We are of the view that the rule adopted by the Interstate Commerce Commission applies here.

We find that the storage rate assailed was, and for the future will be, unreasonable to the extent it exceeded, or may exceed, .5 cents per bundle of shingles per day; that it was not otherwise unlawful; that complainant paid and bore the storage charges assailed; that it was damaged thereby and is entitled to reparation. In its answer defendant states that at time of delivery the shipment was short 5 bundles and that complainant was overcharged to the extent of $2.03. Based upon 895 bundles, an order will be entered awarding reparation in the sum of $243.67, with interest.

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ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 26th day of January A. D. 1939

No. 421

B. M. ARTHUR LUMBER COMPANY, INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY

This case being at issue upon complaint and answer on file with the Department of Commerce of the United States, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had; and this Commission, pursuant to the authority vested in it by the Merchant Marine Act, 1936, having taken over the powers and functions theretofore exercised by the Department of Commerce as the successor to the powers and functions of the United States Shipping Board; and the Commission, on the date hereof, having made and entered of record a report stating its conclusions, decision, and findings therein, which report is hereby referred to and made a part hereof;

It is ordered, That the defendant, American-Hawaiian Steamship Company, be, and it is hereby, authorized and directed to pay unto complainant, B. M. Arthur Lumber Company, Inc., of Lansford, Pa., on or before thirty days from the date hereof, the sum of $243.67, with interest thereon at the rate of 6 percent per annum from the date the charges were paid, as reparation on account of unjust and unreasonable storage charges collected for the storage of 895 bundles of shingles between June 13 and July 9, 1936, at Philadelphia, Pa.;

It is further ordered, That the above-named defendant be, and it is hereby, notified and required to cease and desist, on or before March 13, 1939, and thereafter to abstain, from publishing, demanding, or collecting for the storage of shingles at Philadelphia a storage rate which exceeds that prescribed in the next succeeding paragraph;

It is further ordered, That the said defendant be, and it is hereby, notified and required to establish, on or before March 13, 1939, and thereafter to maintain and apply to the storage of shingles at Philadelphia, Pa., a rate which shall not exceed 0.5 cent per bundle of shingles per day;

By the Commission.

UNITED STATES MARITIME COMMISSION

No. 507

IN THE MATTER OF RATES, CHARGES, AND PRACTICES OF YAMASHITA KISEN KABUSHIKI KAISHA AND OSAKA SYOSEN KABUSIKI KAISYA

Submitted December 22, 1938. Decided January 26, 1939

Found that there is need for stability in the rates in the coffee trade between the East Coast of South America and the West Coast of the United States, and that practices of respondents of underquoting rates of other carriers primarily engaged in the trade create a special condition unfavorable to shipping in the foreign trade. Appropriate rules and regulations prescribed under section 19 of Merchant Marine Act, 1920.

Bon Geaslin and *Ralph H. Hallett* for the Commission.
Ira L. Ewers and *Chalmers Graham* for protestant carriers.
A. Lane Cricher and *George C. Sprague* for respondents.
Harry C. Maxwell and *J. W. Vaux* for protestant coffee receivers.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Upon protests of the coffee receivers, located on the Pacific Coast of the United States, and of the two active members of the Pacific Coast/River Plate Brazil Conference, namely, the Pacific Argentine Brazil Line, Inc., hereinafter called P. A. B., an American flag carrier, and Westfal-Larsen and Company A/S, hereinafter called Westfal, a Norwegian flag carrier, we instituted this investigation to determine whether the Yamashita Kisen Kabushiki Kaisha and Osaka Syosen Kabusiki Kaisya, hereinafter called Yamashita and O. S. K., respectively, common carriers by water in foreign commeree, subject to the various shipping acts, have made, are making, or are negotiating drastic and unwarranted reductions in rates on coffee and on other commodities under the rates established in the trade between the East Coast of South America and Pacific Coast ports of the United States and are otherwise resorting to unfair methods and practices designed to create chaotic and destructive conditions in said trade.

This investigation was instituted pursuant to the authority vested in us by section 19 of the Merchant Marine Act, 1920, and was for the purpose of determining whether the protested actions above mentioned warrant our making rules and regulations affecting shipping in foreign trade not in conflict with law, in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, on this particular route which might arise out of, or result from, the competitive methods or practices employed by the respondent carriers.

The order in this case was entered on December 9, 1938, and served on the above-mentioned carriers and their agents, Swayne & Hoyt, Ltd., and Williams, Dimond & Company, respectively, all of whom were named respondents. The matter was heard before the entire Commission on December 21 and 22, 1938.

At the conclusion of protestants' evidence, respondents entered into stipulations whereby each agreed to make application to become a member of the conference and to abide by the rates, rules, and regulations thereof without restriction, except that a few minor commitments of theirs, already made, were to be protected. Each respondent also agreed to the promulgation of rules and regulations and the entry of an order, covering the situation as developed of record.

Until 1925 the service in this trade had been more or less spasmodic, being rendered largely by chartered vessels, by the O. S. K. line, and by the United States Government, through its agent, Swayne & Hoyt, Ltd. In 1925 P. A. B. established regular service, with at least monthly sailings, which have been maintained to the present time, between all of the principal ports in the trade. The evidence showed that this regularity of service has been the principal factor in building up the coffee trade on the Pacific Coast, which has grown from some 979,588 bags in 1925 to 1,759,412 bags in 1937, with an expected total in 1938 of over 2,000,000 bags. Shortly after the institution of this regular service by P. A. B., Westfal established a similar service. These two carriers formed a conference under Agreement No. 77 and are now operating under an agreement known as Agreement No. 200. The stated purpose of this agreement was the promotion of commerce in the trade, for the common good of shippers and carriers, by providing just and economical cooperation between the steamship lines operating therein.

During this period O. S. K. carried coffee to Los Angeles, Calif., but did not serve any ports north thereof. It had adopted a policy of charging rates on this commodity approximately 20 percent below those of the conference lines, and on other commodities rates which were approximately 50 cents per ton less than those of the conference lines. O. S. K. only picked up coffee at Santos, and Rio de Janeiro,

Brazil, but en route to Los Angeles it diverted its ships to Gulf ports, with the result that even though its ships were some 7 or 8 knots faster than the conference ships, its total time in transit was two or three days longer. As a result of these lower rates of O. S. K., available only to Los Angeles, the northern ports and the receivers of cargo there, claimed they were unable to meet the competitive situation thus created. They protested to the conference lines against this discrimination, with the result that these lines succeeded in persuading O. S. K. to establish and observe conference rates, in return for which the conference lines guaranteed O. S. K. a minimum of 3,500 bags of coffee per sailing for twelve sailings annually. This agreement was filed and was known as No. 200–A, entered into December 10, 1935, to run for six months. When Agreement 200–A expired, a new agreement, No. 200–B, which expired May 31, 1937, was entered into on the same terms.

During the period of the first agreement, O. S. K. carried its share of coffee, and consequently no payments were made by the conference lines for undercarryings. However, during the period of the subsequent agreement, which ran for a year, this line did not carry its allotted share of the coffee, with the result that the conference had to pay it $17,669.76 for some 31,516 bags of coffee which it did not carry. Even though O. S. K. carried only a minor portion of its quota during the period of this agreement, it was not satified with the amount of its guarantee, but insisted that it be increased to 4,000 bags per sailing for fourteen sailings. This insistence on an increase in the guarantee was made even though at that particular time importation of coffee from Brazil was on the decline, a fact that was brought out by the respondents at the hearing. The conference lines refused to make any such concession with the result that the pooling agreement was not renewed and O. S. K. reverted to its former practice of underquoting the conference lines. By this time O. S. K. had changed its routing, eliminating the calls at the Gulf ports, which reduced its transit time to approximately ten days less than that of the conference carriers.

Thereupon the conference lines, in order to protect themselves against this practice, instituted the contract-rate system whereby they offered to all shippers, who would agree to ship over their lines exclusively, a rate of $1.00 a bag as against a noncontract rate of $1.50 a bag and O. S. K.'s rate of $0.80 a bag. They secured contracts from practically all coffee receivers, despite O. S. K.'s lower rate, because the receivers require the stability of rates and service assured by the conference lines. O. S. K.'s service from the East Coast of South America to Los Angeles was incidental to its regular service to the Far East and therefore at times lacked the desired stability. O. S. K.

had in at least one instance been forced to shut out coffee cargo which had been offered because of lack of space, and as late as October 1938 the New York Office of O. S. K. informed its agents in Los Angeles "we cannot guarantee space, will do best accommodate whatever they offer." Furthermore, its ships call at only two coffee ports in South America and at one port of destination.

In the latter part of 1937, Yamashita instituted a service, an incidental leg of which was between the East Coast of South America and Pacific Coast ports. Like O. S. K., it called at only two coffee ports and limited itself to discharging coffee at Los Angeles and San Francisco, although subsequently it did offer service by transshipment to the Northwest, as will be noted hereinafter.

Shortly after instituting its service, Yamashita became a member of the conference, thereby obligating itself to observe conference rates and practices, but within three months it became dissatisfied with the amount of cargo it was receiving and requested the other conference members to secure more cargo for it. By June 1938 it made further requests of the same nature and threatened, upon failure to receive additional cargo, to withdraw from the conference and operate at greatly reduced rates, making the specific statement that the reduction would not be 20 percent but at least 50 percent. Effective September 13, 1938, Yamashita resigned from the conference, and shortly thereafter announced a rate on coffee of 50 cents a bag to Los Angeles and San Francisco, and 75 cents a bag to northern ports, effective immediately and to continue throughout the year 1939. There also is evidence that Yamashita threatened to reduce the rate to 25 cents a bag if the conference lines met the 50-cent rate. The evidence disclosed that substantial losses would result to the conference lines from the application of a 50-cent rate on coffee. According to the record the effect of this reduction was demoralizing upon receivers of coffee on the Pacific coast, as there was now in effect some five different rates on coffee to these ports over the various lines serving them.

In order to assist the coffee merchants, the conference lines offered new contracts at a rate of 90 cents a bag, effective immediately, to continue throughout 1939, provided all importers would sign the contract. All signed except two importers located at Los Angeles who wished to avail themselves of the nonconference cut rates. It was evident, from the correspondence of O. S. K., that that Company was doing everything it could to prevent the signing of the contracts. Inasmuch as 100 percent of the signatures could not be obtained, the conference withdrew the offer. Because of the chaotic conditions brought about by the reduction of rates the conference began negotiations with Yamashita, and upon the insistence of the importers, with

O. S. K., with a view to having these lines either join the conference or observe conference rates.

Respondent carriers requested, however, that they be given a guarantee of 30 percent of all the coffee carried to the Pacific Coast, and in addition any carried for optional discharge north of ports they served. The request for 30 percent later was reduced to 20 percent. This, notwithstanding they had never at any time carried 30 percent, and only O. S. K., for a period of six months, had approached 20 percent. Respondents offered certain alleged disabilities confronting them in justification for this demand, namely, that they called at only two coffee ports, and discharged, in the case of O. S. K., at only Los Angeles, and in the case of Yamashita at only Los Angeles and San Francisco; and further that they were faced with other difficulties in securing traffic. As a matter of fact, their service was ten days faster than either of the conference lines, and it is fair to assume that more ports were not served and more space was not allotted to coffee shipments because of respondents' commitments for cargo destined to the Far East. Thus the conference lines were requested to pay for disabilities inherent in respondent carriers' own service over which the former had no control whatsoever. We would hesitate to approve an agreement based on such considerations. Inasmuch as granting the demand of respondent carriers would have resulted in a loss to the conference carriers far beyond that which they were able to bear, their efforts to assist the shippers were of no avail.

The evidence shows that the coffee business on the Pacific Coast is conducted upon a very small margin of profit, and that a fraction of a cent a pound often determines whether or not an order is secured. Further, it appears that the coffee receivers and roasters on the Pacific Coast are in active competition with those on the Atlantic and Gulf Coasts with respect to inland territory as far east as Chicago. It was shown that there was a definite relationship between the freight rates on coffee to the three coasts and that a spread of 25 to 30 cents a bag against the Pacific Coast would maintain a proper alignment of rates. Upon a per-ton mile basis, this differential results in approximately equal revenues to the carriers. While it is obvious that a 50-cent rate to the Pacific Coast temporarily would put receivers there in an advantageous position, they themselves requested that such a rate should not be permitted to become effective for the reason that rates to the other coasts would necessarily be reduced, and a rate war, which is not unknown to the trade, would inevitably follow. It was shown that a rate of 90 cents per bag represents a proper relation with rates to competing ports and would be reasonable for the future.

The testimony of the coffee receivers and roasters shows conclusively that stability of the rate structure is essential to them in successfully carrying out their business, and that wide fluctuations in rates would be detrimental, if not destructive of the business. This business had increased over 100 percent directly as a result of the regularity of service and stability of rates of the conference lines.

It is apparent that the 50-cent rate was arrived at without any consideration being given to the cost of service to the carriers in the trade or the value of the service to the shipper, and without consideration of the usual transportation factors upon which reasonable rates are based.

The threat of Yamashita to reduce the rate to 50 cents or lower obviously tended unreasonably to influence the conference carriers to agree to a distribution of the pooled revenue out of proportion to its actual carryings. This conclusion is supported by documentary evidence, secured by subpoena from the files of respondents, disclosing that the percentages of the carryings demanded would be in excess of those which the lines could handle during many months of the year, due to the fact that their ships, primarily engaged in trade to the Far East, were completely booked with cargo so destined. Rates made for this purpose are unfair and detrimental to shipping in the foreign trade.

The question of unlawful and destructive competitive practices of carriers has been considered heretofore on several occasions by our predecessors. In *Intercoastal Rates of Nelson Steamship Co.*, 1 U. S. S. B. B. 326 at 336 et seq. the Department of Commerce, after setting forth section 1 of the Merchant Marine Act of 1920, in discussing the intercoastal trade, which because of our coastwise laws does not require the protection required in our foreign commerce, stated:

* * *. Shippers need rate stability in order to conduct their business on sound principles. Destructive competition between carriers may afford a temporary benefit to some of the shippers, particularly interested, but this does not compensate for its far-reaching and serious adverse effect upon the maintenance of an efficient Merchant Marine with which this Department is charged by law. The Acts which this Department administers frown upon destructive carrier competition, and the greater the danger in this respect the greater is the need for unswerving fidelity to the policy and primary purpose declared by law.

The interest of the public demands that these carriers shall receive revenues which will enable them to keep their fleets in good repair and maintain efficient service. * * *

* * * This Department should exercise all the powers at its command to prevent rate wars of the character here evidenced, and the bad effects upon our commerce, and upon carriers and shippers alike, that inhere in such wars. * * *

See also in this connection *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400.

In *Section 19 Investigation, 1935*, 1 U. S. S. B. B. 470, wherein certain practices of carriers engaged in our foreign commerce were under investigation, including that of rate-cutting, the Department stated:

> The following practices are hereby specifically condemned as unfair and detrimental to the commerce of the United States and to the development of an adequate American Merchant Marine:
>
> (1) The solicitation or procurement of freight by officers to underquote any rate which another carrier or carriers may quote.
>
> (2) The use of rate cutting as a club to compel other carriers to adopt pooling agreements, rate differentials, spacing of sailing agreements, or other measures.
>
> It is evident from the report and the Department finds that foreign flag nonconference carriers, by open or secret solicitation of freight on basis of rates lower by specific percentages or amounts than the established rates of other carriers, American and foreign, or on basis of any rate that would attract business away from such other carriers, or by threatened rate reductions compel, or seek to compel, such other carriers to adopt pooling, rate differential, or spacing of sailing agreements on their own terms, and have thus created conditions unfavorable to such other lines, and to shipping in the foreign trade. These methods and practices of foreign flag nonconference carriers the Department condemns as unfair.

From the facts adduced in evidence in the instant proceeding, set forth hereinabove, it appears that the practices engaged in by the respondents come clearly within the scope of those heretofore condemned under the shipping acts, both in so far as foreign trade and other trades are concerned. The respondents consented at the hearing to the entering of an appropriate order and to the promulgation of rules and regulations in accordance with the facts found of record.

We find upon the evidence and the contentions made by the parties:

1. That there is need for stability in the rates in the coffee trade between the East Coast of South America and the West Coast of the United States.

2. That the respondents have engaged in the solicitation and procurement of freight by offers to underquote, and by actually underquoting, the rates of the other carriers regularly and primarily engaged in trade between the East Coast of South America and the West Coast of the United States, and that the rate of 90 cents per bag for coffee, quoted by such other carriers for 1939, has not been shown on this record to be unreasonable.

3. That the practice of respondents in underquoting the rates as described above in effect tended unreasonably to influence such other carriers to enter into an agreement guaranteeing to the respondents a distribution of a part of the revenue derived from the transportation of coffee in such trade, which part of such revenue is not based upon the actual carryings of the respondents.

4. That such practices create a special condition unfavorable to shipping in the foreign trade.

In view of these findings, and because of the necessity for stability in rates and shipping conditions in the trade herein involved, and for more adequate machinery to aid in enforcing the various regulatory provisions of the Shipping Act, 1916, and under authority conferred upon us by section 19 of the Merchant Marine Act, 1920, to further the policies enunciated in section 1 thereof, we further find that it is necessary to promulgate the following rules and regulations to meet conditions herein found to be unfavorable to shipping in the foreign trade:

1. No common carrier by water in foreign commerce operating between ports on the East Coast of South America and ports on the Pacific Coast of the United States, shall establish a rate or rates or engage in competitive methods or practices which unreasonably influence other carriers regularly engaged in the trade to adopt agreements, rate differentials, or other measures.

2. In order to aid in the enforcement of Rule 1 promulgated in this proceeding every common carrier by water in foreign commerce between ports on the East Coast of South America and ports on the Pacific Coast of the United States shall file with the United States Maritime Commission schedules showing all the rates and charges for or in connection with the transportation of property between the above-mentioned ports on its own route; and if a through route has been established with another common carrier by water, all the rates and charges for or in connection with the transportation of property between the above-mentioned ports on its own route and on the route of such other carrier by water, except that such filing need not be made with respect to cargo loaded and carried in bulk without mark or count. The schedules filed as aforesaid by any such common carrier by water in foreign commerce shall show the point from and to which each such rate or charge applies; and shall contain all the rules and regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates or charges.

3. Schedules containing the rates, charges, rules, and regulations in effect on the effective date of the order entered in this proceeding shall be filed as aforesaid on or before April 1, 1939, and thereafter any schedule required to be filed as aforesaid, and any change, modification, or cancellation of any rate, charge, rule, or regulation contained in any such schedule shall be filed as aforesaid within thirty (30) days from the date such schedule, change, modification, or cancellation becomes effective.

4. Any schedule, rate, charge, rule, or regulation, or any change, modification, or cancellation thereof, as aforesaid, when filed, shall be accompanied by a sworn statement by a duly authorized person that such schedule, rate, charge, rule, or regulation, change, modification, or cancellation is the schedule, rate, charge, rule, or regulation, change, modification, or cancellation in effect on the date indicated via the line of the carrier or in conjunction therewith.

An appropriate order will be entered promulgating the rules and regulations hereinabove set forth, and the record in this case will be kept open for sixty days in order to permit the respondents to comply with the stipulations made of record.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 26th day of January, A. D. 1939

No. 507

IN THE MATTER OF RATES, CHARGES, AND PRACTICES OF YAMASHITA KISEN KABUSHIKI KAISHA AND OSAKA SYOSEN KABUSHIKI KAISYA

This case, instituted by the Commission by order dated December 9, 1938, pursuant to section 19 of the Merchant Marine Act, 1920, having been duly heard, and full investigation of the matters and things involved having been had, and respondents having agreed at said hearing, to apply for membership in the Conference, to abide by its rules, regulations, and rates, and to the entry of a finding, and the issuance of an appropriate order, and the Commission on the date hereof having made and filed a report finding that conditions unfavorable to shipping in foreign trade between ports on the East coast of South America and Pacific Coast ports of the United States exist as a result of competitive methods and practices employed by owners, operators, agents, or masters of vessels of foreign countries, which said report is hereby referred to and made a part hereof:

It is ordered, That the following rules and regulations be, and they are hereby prescribed and ordered enforced, effective on and after April 1, 1939, except that as to the commitments referred to in the report herein the requirements of Rule 1 infra shall not apply:

1. No common carrier by water in foreign commerce operating between ports on the East coast of South America and ports on the Pacific coast of the United States, shall establish a rate or rates or engage in competitive methods or practices which unreasonably influence other carriers regularly engaged in the trade to adopt agreements, rate differentials, or other measures.

2. In order to aid in the enforcement of Rule 1 promulgated in this proceeding every common carrier by water in foreign commerce between ports on the East Coast of South America and ports on the Pacific Coast of the United States shall file with the United States Maritime Commission schedules showing all the rates and charges for or in connection with the transportation of property between the above-mentioned ports on its own route; and if a through route has been established with another common carrier by water, all the rates

and charges for or in connection with the transportation of property between the above-mentioned ports on its own route and the route of such other carrier by water, except that such filing need not be made with respect to cargo loaded and carried in bulk without mark or count. The schedules filed as aforesaid by any such common carrier by water in foreign commerce shall show the point from and to which each such rate or charge applies; and shall contain all the rules and regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates or charges.

3. Schedules containing the rates, charges, rules, and regulations in effect on the effective date of this order shall be filed as aforesaid on or before April 1, 1939, and thereafter any schedule required to be filed as aforesaid, and any change, modification or cancellation of any rate, charge, rule or regulation contained in any such schedule shall be filed as aforesaid within thirty (30) days from the date such schedule, change, modification, or cancellation becomes effective.

4. Any schedule, rate, charge, rule or regulation or any change, modification, or cancellation thereof, as aforesaid, when filed, shall be accompanied by a sworn statement by a duly authorized person that such schedule, rate, charge, rule or regulation, change, modification, or cancellation is the schedule, rate, charge, rule or regulation, change, modification, or cancellation in effect on the date indicated via the line of the carrier or in conjunction therewith.

It is further ordered, That in furtherance of the purposes of the rules and regulations prescribed by this order, copy hereof and of the report referred to herein shall be served by registered mail on every common carrier by water known to be engaged in the foreign trade of the United States between ports on the East Coast of South America and Pacific Coast ports of the United States.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 495

IN THE MATTER OF AGREEMENT NO. 6510

Submitted January 3, 1939. Decided January 31, 1939

Respondents having failed to file their true and complete agreement as required by section 15, Shipping Act 1916, Agreement No. 6510 disapproved. Proceeding discontinued.

M. G. deQuevedo for applicants, members of Intercoastal Steamship Freight Association and Luckenbach Gulf Steamship Co., Inc.

J. P. O'Kelley for applicants, Swayne & Hoyt, Ltd. (Gulf Pacific Line) and Gulf Pacific Mail Line, Ltd.

Harry C. Ames, for Mississippi Valley Barge Line Co. and *W. G. Oliphant*, for Inland Waterways Corporation, interveners.

SUPPLEMENTAL REPORT OF THE COMMISSION

BY THE COMMISSION:

In our original report in this proceeding, entered November 3, 1938, after full hearing (1 U. S. M. C. 775), we found that Agreement No. 6510 between members of the Intercoastal Steamship Freight Association, on the one hand, and members of the Gulf Intercoastal Conference, on the other, which established procedure designed to keep each group of carriers informed of the changes which the other proposed to make in its rates, rules, and regulations and allocated certain inland territory as territory tributary to either Atlantic or Gulf ports of the United States, as submitted by respondents, was incomplete and therefore one which could not be approved under section 15 of the Shipping Act 1916. Respondents were accorded an opportunity to file their true and complete agreement and intention as disclosed at the hearing, and for that purpose the record was held open until January 3, 1939. No further action having been taken by them in compliance with the statute an appropriate order disapproving Agreement No. 6510 will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 31st day of January, A. D. 1939

No. 495

IN THE MATTER OF AGREEMENT NO. 6510

The Commission having found in its report entered November 3, 1938, that Agreement No. 6510 as submitted for approval under section 15 of the Shipping Act, 1916, by members of the Intercoastal Steamship Freight Association, on the one hand, and members of the Gulf Intercoastal Conference, on the other, was incomplete; and approval thereof having been withheld unless and until supplemented or refiled within a period of 60 days in a manner which would record the true and complete agreement and intention of the parties as required by section 15 aforementioned; and respondents having taken no further action in the matter;

It is ordered, That Agreement No. 6510 be, and it is hereby, disapproved and the proceeding discontinued.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, JR.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 106

HARBOR COMMISSION OF THE CITY OF SAN DIEGO ET AL.

v.

AMERICAN MAIL LINE, LTD., ET AL.

Submitted August 24, 1938. Decided February 3, 1939

Upon further hearing, findings in original report herein, 1 U. S. M. C. 661, that rates on cargo from San Diego, Calif., higher by an arbitrary of $2.50 per ton than rates from Los Angeles Harbor, Calif., on like freight to destinations in the Orient were unduly prejudicial reversed as to transshipping service, but affirmed as to direct call service, except that minimum for calls increased to 800 tons.

C. A. Hodgman for complainants.

E. I. Young, J. J. Geary, and *H. R. Kelly* for defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

Exceptions were filed by defendants to the report on further hearing proposed by the examiner, and the case was orally argued. Our conclusions differ somewhat from those recommended by the examiner.

In the original report herein, 1 U. S. M. C. 661, we found that an arbitrary of $2.50 per ton on cargo from San Diego, Calif., over so-called terminal rates from Los Angeles Harbor, Calif., on like commodities to destinations in the Orient and defendants' rules, regulations, and practices with respect thereto were unduly prejudicial to complainants and unduly preferential of their competitors to the extent that they were less favorable to San Diego than to Los Angeles. Terminal rates from San Diego were permitted to be conditioned upon cargo offerings there in direct call service of not less than 500 tons in the aggregate. Defendants were ordered to cease and desist on or before November 23, 1937, from publishing, demanding, or collecting rates from San Diego to points in the Orient which

exceeded those on like traffic from Los Angeles to the same destinations, either in direct call or transshipping service, subject to the 500-ton minimum for direct call service. Upon petition of defendants the case was reopened for further hearing, which was held January 27, 1938, to bring the record down to date in view of the fact that the prior hearing was held in September 1933. The effective date of the cease and desist order was postponed until the further order of the Commission.

At the further hearing complainants offered no testimony.

Defendants submitted evidence showing subsequent changes in the coastwise service between San Diego and Los Angeles, changes in the rates and service of defendants, volume of cargo offering at San Diego, and the cost of deviating vessels from Los Angeles to San Diego.

As of December 1, 1933, San Diego had regular service of four coastwise lines all of which, with the exception of McCormick Steamship Company, have since gone out of business. McCormick calls at Puget Sound and Columbia River ports, San Francisco, San Francisco Bay ports, Los Angeles, and irregularly at San Diego, having made 15 calls at San Diego between January 1 and September 30, 1937. Hammond Shipping Company, Ltd., primarily a lumber carrier operating like McCormick, also makes occasional calls at San Diego. The only regular coastwise service available at San Diego is that of Los Angeles-San Francisco Navigation Company, Ltd., which, since December 1, 1937, has operated one vessel with a capacity of about 1,000 tons of freight between San Diego and San Francisco once a week, calling at Los Angeles, Long Beach, and occasionally at Santa Barbara. This vessel averaged 150 tons of San Diego cargo per week inbound and 25 tons per week outbound during its first six weeks of operation. It did not stop at Los Angeles northbound. Prior to December 1, 1937, this company operated two vessels between San Francisco and Los Angeles or Long Beach with irregular calls at San Diego.

Since 1933 the conference has eliminated Astoria as a terminal port because of insufficient cargo offering there. The rates from San Diego to the Orient have not been changed, except that the rate on marble was reduced $2.00 per ton at the request of a shipper who apparently shipped only 20 tons under the reduced rate.

Several witnesses for defendants testified that their lines have not called at San Diego since the original hearing because of the lack of cargo there for export to the Orient or for movement in other trades where the arbitrary does not apply, as for instance, the intercoastal and European trades. Defendants emphasized the fact that no cotton moved from San Diego to the Orient between July 1, 1933, and

June 30, 1937. While this may be attributed in some degree to the arbitrary, nevertheless, during the same period only 245 tons of cotton moved to Europe from San Diego at terminal rates as against 60,902 tons of cotton and cotton linters from Los Angeles. The total exportation from San Diego to Europe during the period stated was only 3,888 tons. Total exports from San Diego to the Orient during the same period amounted to 26,720 tons of which 25,277 consisted of scrap iron and steel on which the arbitrary was not applied. This cargo was carried by Oceanic & Oriental Navigation Company which made 23 direct calls at San Diego between July 1933 and July 1937. This is the only defendant which has called at San Diego since 1933 and its service to the Orient was discontinued in July 1937. Tonnage exported from Los Angeles to the Orient is shown to be many times that from San Diego. Although this evidence indicates a paucity of export tonnage from San Diego even as to commodities enjoying terminal rates, nevertheless, it affords no criterion of the volume of cargo that could be developed in direct call service if the arbitrary were removed.

The cost of deviating from Los Angeles to San Diego in 1933 is computed by defendants from actual costs incurred by Oceanic and Oriental. Based upon 500 long tons of cargo per vessel, one day's steaming time between Los Angeles and San Diego, and one day loading in San Diego, the cost of deviating from Los Angeles to San Diego in 1933 was estimated as follows: fixed operating cost for steaming time, $512.40; pilotage in and out of San Diego, $118.00; customs clearance and entry, $20.00; dockage, $15.00; fuel steaming down and back, $154.78; and cargo expense (covering stevedoring and clerk hire), $784.00; total expense, $1,604.18. At an average rate of $2.90 per long ton, 500 tons would produce a revenue of $1,450.00 which, it was stated, results in a net loss of $154.18 per call at San Diego. For an average of 855 short tons per vessel, the costs are calculated to be $2,330.98. Applying the rate of $2.90 per long ton (approximately $2.58 per short ton) to the average of 855 short tons, produces a revenue of $2,212.70 and results in an average net loss of $118.28 per call. Following the strike of 1934 stevedoring costs and wages increased. By 1935 the price of fuel had also increased. Employing a cargo unit of 500 tons and an average rate of $4.00 per ton, it was testified that, under these increased costs, the carrier lost $11.56 per call at San Diego in 1935. In this computation $1,103.20 represented cargo expense. However, the actual average tonnage during 1935 was 855 tons and, according to the testimony, yielded $90.71 revenue over expenses, even after cargo expense was deducted. No costs for 1936 and 1937 were shown, nor the average rate charged during those years.

It should be noted in connection with these cost figures that while properly chargeable against revenue, certain of the costs enumerated above such as dockage, stevedoring, and clerk hire, would be incurred at Los Angeles or other terminal ports and, strictly speaking, are not includible in the bare cost of deviating to San Diego. Furthermore, the prevailing rates on scrap iron in 1933 and 1935 were low and hardly represent a fair yardstick by which to measure the compensatory feature of the service from San Diego.

Upon the record on further hearing we conclude and decide that San Diego is entitled to terminal rates in direct call service without addition of the arbitrary of $2.50 per ton. However, the evidence is persuasive that to insure sufficient revenue for direct calls the minimum tonnage requirement for such calls should be increased from 500 to 800 tons.

As intimated throughout the record, it appears that the complaint would be substantially satisfied if the arbitrary were removed on cargo lifted at San Diego on direct calls when offerings are made in sufficient volume. However, under our prior findings, the arbitrary was condemned on shipments from San Diego transshipped at Los Angeles, without reference to the volume of cargo transported in order to place San Diego on an equality with terminal ports which, through an equalization provision of the tariffs, enjoyed joint transshipping rates through other terminal ports without extra transshipping costs. This finding will be reconsidered in the light of the additional facts which were presented at the further hearing.

The testimony shows that little resort is made to the equalization provision because defendants do not ordinarily need to, and cannot regularly afford to, solicit cargo from ports at which their vessels do not call at joint rates equal to the terminal rates. They do so because of the force of competition from other member lines, which does not obtain at San Diego since none of the conference lines call there. Equalization is limited generally to instances where a shipper has cargo at two ports for a vessel which calls at only one of such ports. The only alternatives for the carrier are to stand the transshipping expense, or to call the vessel direct at greater expense, or to sacrifice the business to a competing line.

There is no comparison of record contrasting the volume of movement actually transshipped between terminal ports with that which might be reasonably expected to move from San Diego in transshipping service. The record is equally deficient as to a comparison of the cost of transshipping from San Diego with the cost of such service between terminal ports. As stated, the transportation conditions existing between San Diego and Los Angeles have changed materially since the original decision herein. How the more or less

irregular and infrequent coastwise service between San Diego and Los Angeles compares with that between terminal ports is not ascertainable from the record.

Considering these circumstances and conditions we are forced to conclude and decide that removal of the arbitrary is not shown to be justified in transshipping service from San Diego to the Orient and our previous order will be amended accordingly.

Defendants make the point that our findings and order herein extend to carriers serving Siam, Straits Settlements, India, and the Hawaiian Islands, which are beyond the jurisdiction of the conference. It is sufficient to note that the order runs to the individual lines and such rates were in issue.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 3d day of February, A. D. 1939

No. 106

HARBOR COMMISSION OF THE CITY OF SAN DIEGO ET AL.

v.

AMERICAN MAIL LINE, LTD.; THE CHINA MUTUAL STEAM NAVIGATION COMPANY, LTD., AND THE OCEAN STEAM SHIP COMPANY (BLUE FUNNEL LINE); CANADIAN PACIFIC STEAMSHIPS, LTD.; DOLLAR STEAMSHIP LINES, INC., LTD.; GENERAL STEAMSHIP CORPORATION, LTD.; KERR STEAMSHIP COMPANY, INC.; KLAVENESS LINE (A. F. KLAVENESS & COMPANY, A/S); NIPPON YUSEN KABUSHIKI KAISHA (NIPPON YUSEN KAISHA); OCEANIC & ORIENTAL NAVIGATION COMPANY; OSAKA SHOSEN KABUSHIKI KAISHA (OSAKA SHOSEN KAISHA); PACIFIC-JAVA-BENGAL LINE (N. V. STOOMVAART MAATSCHAPPIJ AND N. V. ROTTERDAMSCHE LLOYD); STATES STEAMSHIP COMPANY; TACOMA ORIENTAL STEAMSHIP COMPANY; "K" LINE (KAWASAKI KISEN KAISHA); BANK LINE, LTD.; BARBER STEAMSHIP LINES, INC.; PRINCE LINE; LOS ANGELES STEAMSHIP COMPANY; MCCORMICK STEAMSHIP COMPANY; PACIFIC STEAMSHIP LINES, LTD.; AND SAN DIEGO-SAN FRANCISCO STEAMSHIP COMPANY

This case being at issue on further hearing for the purpose of bringing the record down to date, and having been duly heard, and full investigation of the matters and things having been had, and the Commission, on the date hereof, having made and entered of record a report on further hearing stating its findings of fact, conclusion, and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the order entered herein of September 23, 1937, which by its terms was to become effective November 23, 1937, and which, by order of December 15, 1937, was modified to the extent its effective date was postponed until the further order of the Commission, be, and it is hereby, further modified (1) to eliminate the

requirement that rates for the transportation of property from San Diego, Calif., to the destinations mentioned in said order of September 23, 1937, shall not exceed those on like traffic from Los Angeles, Calif., in transshipping service; (2) to provide that rates from San Diego may be made subject to a minimum of 800 tons in the aggregate for direct call service; and (3) to become effective on or before April 17, 1939.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 483

IN THE MATTER OF RATES, CHARGES, RULES, REGULATIONS, AND PRACTICES OF THE COMMON CARRIERS PARTIES TO THE PACIFIC COAST RIVER PLATE BRAZIL CONFERENCE AGREEMENT

Submitted August 17, 1938. Decided February 9, 1939

Action of respondents, members of Pacific Coast River Plate Brazil Conference, in allowing commodity rates on lumber from Pacific Coast ports of the United States to South America to expire and subsequently applying unreasonable cargo N. O. S. rate, found to be detrimental to the commerce of the United States.

Removal of lumber rates from conference jurisdiction and approval of Agreement No. 6370, makes further action with respect to Agreement No. 200 unnecessary. Proceeding discontinued.

Jos. B. McKeon for Pacific Argentine Brazil Line, Inc.
Edward J. Dobrin for Westfal-Larsen & Company, A/S.
David E. Scoll for United States Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner. Our conclusions differ somewhat from those recommended.

This is an investigation instituted May 3, 1938, upon our own motion concerning the lawfulness and propriety of the Pacific Coast River Plate Brazil Conference Agreement,[1] and the rates, charges, rules, regulations, and practices of the respondent carriers,[2] either individually or under or pursuant to said agreement. The order of investigation was based upon informal representations by lumber exporters that failure of the conference lines to agree upon rates for the transportation of lumber on and after April 1, 1938, had stopped the exportation of lumber to South America.

[1] Conference Agreement No. 200.

[2] Kawasaki Kisen Kaisha, Pacific Argentine Brazil Line, Inc., Westfal-Larsen & Company, A/S, and Yamashita Kisen Kabushiki Kaisha.

Prior to April 1, 1938, respondents published commodity rates on lumber from Pacific Coast ports of the United States to ports in Argentina, Uruguay, and Brazil which expired March 31, 1938. The base rate to Buenos Aires on Douglas fir, hemlock, and rough spruce was $16 per 1,000 feet board measure, in lots of 200,000 feet or over, with higher rates up to $19 to other East Coast of South America ports. Upon the expiration of these rates, respondents were unable to agree upon new rates for the future and the matter was submitted for arbitration in accordance with the provisions of the conference agreement. The arbitrator decided that as the lines could not agree upon and had not established rates to apply subsequent to April 1, 1938, the applicable rate was the "cargo not otherwise specified" rate of $20 per ton, weight or measure, the equivalent of about $43 per 1,000 feet board measure on lumber. "Cargo not otherwise specified" rates are published for application on items of cargo which do not move in sufficient volume to justify the establishment of specific commodity rates; they are not intended to apply on lumber, grain, and similar heavy moving commodities.

Upon being informed of this situation, we made informal representations to the conference with a view to securing the prompt reestablishment of reasonable commodity rates on lumber. Under date of May 2, 1938, the conference secretary advised that the lumber rates had been reestablished on the basis of $16 per 1,000 feet board measure for the months of April, May, June, and July.

At the hearing, representatives of lumber exporters testified that the lack of commodity rates on lumber for the period of approximately one month subsequent to March 31, 1938, made it practically impossible to accept any offers or to make quotations for shipments of lumber on a c. i. f. basis. One witness estimated that his company lost business to the extent of about 600,000 or 700,000 feet, and stated that they could have secured the business at the $16 rate. Respondents not only made no effort to justify the $43 rate but frankly admitted that the unfortunate situation under which this rate became effective should not be permitted to arise again. Under all the circumstances, there is no doubt that the rate of $43 was unreasonably high and that its substitution for the rate of $16 previously in effect created a definite barrier to the sale of Pacific Coast lumber in the East Coast of South America market, and, therefore, constituted an abuse of the rate-making power which the conference members are permitted to exercise under their approved conference agreement. In *Edmond Weil* v. *Italian Line*, 1 U. S. S. B. B. 395, at page 398, it was stated:

An unreasonably high rate is clearly detrimental to the commerce of the United States, and upon a showing that a conference rate in foreign commerce

is unreasonably high the Department will require its reduction to a proper level. If necessary, approval of the conference agreement will be withdrawn.

We find that respondents' action, under their conference agreement, in permitting the commodity rates on lumber to expire and thereafter, because of their failure to agree, permitting the application of the "cargo not otherwise specified" rate, resulted in the application of an unreasonably high rate detrimental to the commerce of the United States. We condemn the practice of any conference under which unreasonable rates are permitted to become effective because the conference members are unable to agree upon rates for the future.

Subsequent to the hearing the conference declared rates on lumber "open" and following this action the two members of the conference engaged in the transportation of lumber in this trade entered into a pooling agreement which also provides for the establishment and maintenance of specific lumber rates upon which the fixing of expiration dates is prohibited. This agreement was approved by us on January 19, 1939, as agreement No. 6370 and a base rate of $13.00 has been established thereunder. Under the circumstances there now is no reason for withdrawing approval of Conference Agreement No. 200.

An order will be entered discontinuing this proceeding.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 9th day of February, A. D. 1939

No. 483

IN THE MATTER OF RATES, CHARGES, RULES, REGULATIONS, AND PRACTICES OF THE COMMON CARRIERS, PARTIES TO THE PACIFIC COAST RIVER PLATE BRAZIL CONFERENCE AGREEMENT

It appearing, That by its order of May 3, 1938, the Commission instituted a proceeding of investigation into and concerning the lawfulness and propriety of the Pacific Coast River Plate Brazil Conference Agreement, and the rates, charges, rules, regulations, and practices of the respondent carriers, either individually or under or pursuant to said agreement;

It further appearing, That a full investigation of the matters and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions 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.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 460[1]

SUN-MAID RAISIN GROWERS ASSOCIATION AND SUNLAND SALES COOPERATIVE ASSOCIATION

v.

BLUE STAR LINE, LTD., ET AL.

Submitted November 30, 1938. Decided March 7, 1939.

Rates to United Kingdom and Continental European ports from Stockton, Calif., higher than those contemporaneously maintained on like traffic to such ports from ports on San Francisco Bay and other ports in the United States and Canada found to be unjustly discriminatory and unduly preferential and prejudicial.

Section 205 of the Merchant Marine Act, 1936, not shown to have been violated. Reparation denied.

J. Richard Townsend for complainants and interveners supporting complainants.

Chalmers G. Graham, Joseph J. Geary, Charles S. Belsterling, Thomas F. Lynch, Walter Shelton, Edwin G. Wilcox, T. G. Differding, Markell C. Baer, W. Reginald Jones, Carl R. Schulz, M. G. de Quevedo, John J. O'Toole, Dion R. Holm, Mark Gates, and *H. Albert George* for defendants and interveners supporting defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

These cases involve related issues, were heard together, and will be disposed of in one report.

Exceptions were filed to the report proposed by the examiner, and the cases were orally argued. Our conclusions agree with those recommended by the examiner.

[1] This report also embraces No. 461, *Stockton Port District* v. *Same,* and No. 464, *Stockton Traffic Bureau et al.* v. *Same.*

Complainant Sun-Maid Raisin Growers Association is a nonprofit cooperative association organized and existing under the laws of the State of Delaware and engaged in the processing, packing, and shipping of raisins. Its plant and principal place of business are located at Fresno, Calif. Complainant Sunland Sales Cooperative Association is its subsidiary and sales agency. Complainant Stockton Port District is a public corporation operating terminal facilities at the port of Stockton, Calif., the facilities being owned by the Stockton Port District and city of Stockton. Complainants in No. 464, besides Stockton Traffic Bureau, which is an unincorporated association composed of the city of Stockton, the Stockton Chamber of Commerce, the Stockton Port District, and the San Joaquin County Farm Bureau Federation, are forty-three individuals, copartnerships, and corporations engaged in shipping and distributing canned goods, dried fruit, cotton, pencil slats, and milk products, and in processing cotton. They are listed in the appendix hereto, which contains the names of all complainants, defendants, and interveners. Defendants are parties to the Pacific Coast European Conference Agreement, No. 5200, approved under Section 15 of the Shipping Act, 1916, as amended. At the time of hearing, defendant Isthmian Steamship Company was not a member of the conference but had agreed to maintain conference rates, rules, and regulations. It has since become a conference member.

It is declared to be the purpose of the conference agreement "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 following have been established by the conference as terminal loading ports: Vancouver, Victoria, and New Westminster, B. C.; Seattle, Tacoma, Everett, Bellingham, Olympia, Grays Harbor, and Longview, Wash.; Portland, St. John's Terminal, and Astoria, Oreg., and San Francisco, Oakland, Alameda, Los Angeles Harbor, and San Diego, Calif. Defendants have agreed to apply the same rates from each of these terminal ports to ports in the United Kingdom and Continental Europe. Uniform rates established are, on canned goods 70 cents,[2] on dried fruit 75 cents, on cotton 95 cents standard density and 85 cents high density, and on pencil slats 100 cents contract and 110 cents noncontract. From other Pacific Coast ports, defendants have agreed through conference action that rates may be established by mutual arrangement between the indi-

[2] Rates are stated in cents per 100 pounds unless otherwise specified.

vidual carriers and shippers but that such rates may not be lower than those in effect from terminal ports. From approximately August 16, 1936, to February 16, 1938, complainant Sun-Maid Raisin Growers Association shipped from Stockton, Calif., to ports in the United Kingdom and Continental Europe over the lines of defendants Blue Star Line, Ltd., Isthmian, and Compagnie Generale Transatlantique raisins and packing material, on which was assessed a rate 8 cents higher than the rate contemporaneously applicable on like traffic from each of defendants' terminal loading ports to such ports of discharge. Compagnie Generale Transatlantique and Blue Star stopped calling at Stockton December 31, 1937, and January 4, 1938, respectively, leaving Isthmian as the only defendant serving that port at the time of hearing. This carrier has established rates from Stockton to the United Kingdom and Continental Europe confined to canned goods, dried fruit, and pencil slats, which are 7 cents, 8 cents, and 8.5 cents higher, respectively, than those contemporaneously in effect on like traffic from defendants' terminal loading ports. Examination of tariffs filed with us reveals that since the hearing Blue Star has again established rates from Stockton to the United Kingdom on canned goods, dried fruit, and pencil slats, which are 7 cents, 8 cents, and 10 cents higher, respectively, than from the terminal loading ports.

Complainants in No. 464 allege that, in the case of any and all freight except commodities on which rates are declared open and on which rates are not published from terminal loading ports, the maintenance, demanding, charging, or collecting by defendants of a rate from Stockton to United Kingdom and Continental European ports higher than the corresponding rate contemporaneously maintained on the same commodity to the same United Kingdom and Continental European ports from their terminal loading ports has been, and for the future will be, unfair, unjustly discriminatory, unduly and unreasonably preferential and prejudicial, and detrimental to the commerce of the United States. A cease and desist order is sought. Complainants in No. 460 make substantially the same allegations as complainants in No. 464, except that they relate only to dried fruit. A cease and desist order and reparation are sought. Complainant in No. 461 presents issues substantially the same as those in No. 464, but makes no exception as to open rates, and alleges, upon information and belief, a violation of section 205 of the Merchant Marine Act, 1936. This complainant requests a cease and desist order and a modification of the conference agreement to require defendants to provide reasonably adequate service from Stockton to the United Kingdom and Continental Europe if they desire to continue to function in concert, or a notification to defendants that we

will watch the Stockton situation for a period of six months and that, if, during this period, defendants shall not have afforded such service, we will, at the end of the six-month period, cancel the conference agreement without further hearing.

The port of Stockton is on tidewater 75.7 nautical miles east of San Francisco. It is reached in approximately 9 hours by way of San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, New York Slough, San Joaquin River, and Stockton Channel. The port district comprises the city of Stockton and a strip one-half mile wide and approximately nine miles long on each side of the channel. Exclusive of expenses for maintenance, the development of the port has cost $9,175,238.98, of which sum $3,643,319.21 has been expended by the Federal Government, the remainder coming from State, port, city, and private funds.

In order to make Stockton available as a port, certain dredging operations were necessary, and, following an investigation by the Corps of Engineers under authority of Congress, the channel was made 100 feet wide on the bottom and 26 feet deep, this work being completed in January 1933. Since then the channel has been further deepened and widened. It is now maintained by the Federal Government at a depth of 32 feet below mean lower low water and at a minimum bottom width of 150 feet, the side slopes being 4 to 1, or four feet, horizontally, to one foot, vertically. Congress has authorized a further widening of the waterway, which, upon completion, will provide a minimum bottom width of 225 feet. It has also authorized the dredging of certain settling basins. This work, at the time of hearing, was expected to be under way in the fall of 1938.

Shortly after the enlargement of the channel to a depth of 26 feet and bottom width of 100 feet, the first ocean-going vessel called at Stockton on February 2, 1933. Since then it has been established as a regular port of call at terminal rates for vessels of Luckenbach Steamship Company, Quaker Line, and McCormick Steamship Company in the Pacific-Atlantic intercoastal trade; vessels in the Pacific coastwise trade have called there irregularly, but at what rates does not appear; vessels of carriers in the Pacific-Gulf of Mexico trade have called there at terminal rates to the extent of approximately every third vessel serving San Francisco Bay ports, and, as above disclosed, three of the defendants herein have called there on occasion at higher rates than apply from their terminal ports.

Traffic moving in various trades by water, rail, and truck, from and to Stockton, increased in volume from 309,546 net tons in 1933 to 614,030 net tons in 1937. In the European trade, the increase was from 7,193 net tons to 49,430 net tons. Of the latter figure 49,337 tons were destined for outbound movement, consisting of 37 tons of

canned goods, 8,069 tons of dried fruit, 19 tons of pencil slats, 2,728 tons of cotton, and 38,484 tons of barley.

Stockton is served by the Southern Pacific, Santa Fe, and Western Pacific railroads, whose main lines and feeders reach the various producing, canning, and packing points in the San Joaquin and Sacramento valleys. It also is served by motortruck lines operating from the valleys. From most of the valley points the rates to Stockton are lower than to San Francisco, Oakland, or Alameda, through which nearly all of the traffic there originating now moves to Europe. On the two principal commodities, canned goods and dried fruit, for instance, the difference in rates, carload or truckload, is generally 3 cents in favor of Stockton. It was in an effort ultimately to save this difference by showing the feasibility of using the port of Stockton for shipments to Europe that complainant Sun-Maid Raisin Growers Association routed through it the shipments of raisins referred to above. These shipments, made over lines of defendants in a period of about eighteen months, exceeded 12,000 gross tons. It is estimated that it could ship from Stockton to Europe, if terminal rates and adequate service were accorded Stockton, in the neighborhood of 15,000 or 18,000 tons of raisins per year. Using as a basis acreage planted in fruits, incense cedar, cotton, and barley in the San Joaquin and Sacramento valleys and claimed to be tributary to the port of Stockton, and the movement of canned fruits, dried fruits, pencil slats, cotton, and barley from San Francisco Bay ports to Europe in 1933, 1934, and 1935, complainants estimate that there are potential annual cargoes for movement from Stockton to Europe of 49,971 net tons of canned fruit, 64,915 net tons of dried fruit, 2,040 net tons of cotton, 2,903 net tons of pencil slats, and 157,066 net tons of barley. They conservatively estimate that there would be immediately available for such movement if terminal rates and adequate service were established from Stockton, 28,350 net tons of canned goods, 57,750 net tons of dried fruit, 2,040 net tons of cotton, 2,903 net tons of pencil slats, and 94,240 net tons of barley. It is further estimated that Stockton would receive in excess of $90,000 additional gross revenue per year if the tonnage immediately available moved through that port, and over $129,000 additional gross revenue per year from the potential tonnage movements. Tonnage figures on behalf of various shippers are recorded, but it is deemed unnecessary to set them down here. Instead, the following is quoted from the brief filed on behalf of the majority of defendants and interveners supporting them:

> It is undoubtedly a fact that if Stockton were granted base port rates a considerable volume of tonnage would flow through the port diverted from the Ports of San Francisco and Oakland, such a volume indeed, that following the practice of the intercoastal carriers, many, if not all, of the lines of de-

fendant carriers would be forced to either call there direct or accept cargo by transshipment * * *.

The record supports the conclusion that with terminal rates and adequate service the volume of traffic moving through the port of Stockton to Europe would substantially increase.

Isthmian contends that there is a fundamental difference between seaports and river ports such as Stockton, that the function of an ocean carrier is to skirt along the coast and pick up cargo gathered there from the interior, and that if, instead of the cargo being brought to the carrier at the seaport the carrier proceeds to a river port for the cargo, it is entitled to additional compensation for that service. The fundamental issue is whether defendants, having equalized rates from origin territory of the extent indicated, may, without being guilty of unlawful discrimination, refuse to extend similar rates to a port located within the general limits of the blanket territory.

As above disclosed, the terminal loading ports are eighteen in number. They are located on bodies of water of various descriptions—ocean, bay, sound, and river—from San Diego, on the South, to Vancouver, B. C., on the north. Excepting San Diego, Los Angeles, San Francisco, Oakland, and Alameda, all of them are farther from Europe than Stockton, the difference in distance ranging from 469 nautical miles to 758 nautical miles. Obviously, then, where the cargo offered on a particular voyage warrants a call, Stockton's location on a river and cost of service furnish no justification for the refusal, and the record is that such service as is accorded Stockton is not attended by unusual transportation difficulties. Indeed, Isthmian states that it "feels the waterway is reasonably safe or it would not send its vessels to Stockton."

Defendants state that it was necessary, in the beginning, to serve all of the ports in the blanket in order to obtain sufficient cargo to operate in the trade; that they would now gladly withdraw their services from some of the ports were it not for the fact that, unlike the situation in respect of Stockton, industries have been established in reliance upon the continuance of such services; and that, if Stockton should be made a terminal loading port, the increase in traffic that would move through that port would not be new tonnage but cargo such as defendants now lift at San Francisco Bay ports. On behalf of San Francisco, Oakland, and Alameda and their various interests, it is asserted that these ports have been developed with the thought in mind that ports such as Stockton, lying behind terminal ports, would not be served by ocean-going vessels, and the large investments of the former, it is urged, should not be jeopardized by disturbing the existing relationship. All of these considerations are matters of which defendants might take cognizance in deciding

whether to serve Stockton, but they are not sufficient to sustain an unduly discriminatory rate adjustment after service has been inaugurated. The amount of tonnage that would be diverted to Stockton would depend in large measure on the frequency and regularity of the service accorded it, and, in connection with the question of diversion of traffic from one port to another, it is to be noted that Oakland and Alameda, lying behind San Francisco, were developed after, and have caused the diversion of cargo from, the last-mentioned port. The Federal Government has seen fit to spend large sums of money in the development of the port of Stockton, and the port is entitled to the benefit of rates on the basis of transportation circumstances and conditions surrounding the movement of traffic.

Defendants and supporting interveners suggest that to grant Stockton the rate parity sought might result in a general increase in rates from all ports within the rate blanket, but this possibility does not warrant a discriminatory adjustment; nor does the fact, as claimed by Isthmian, that it has to meet lower rates from the terminal loading ports than apply from Stockton. No terminal rates are instanced which defendants do not control, and, if the disparity be removed, such force as the contention might have would be lost.

The prediction is made that service from Stockton by any defendant at the same rates as apply from the terminal loading ports will cause every other defendant, in order to meet the competition, to do likewise, either by calling at Stockton or by transshipment, and that there will be demands for like treatment from every other port in similar circumstances. But these are matters for consideration if and when they arise. Moreover, they relate primarily to the protection of revenue and do not justify undue discrimination.

As hereinbefore indicated, as between Stockton, Oakland, Alameda, and San Francisco, there is substantial competition. Various shippers competing with shippers using the terminal ports on San Francisco Bay are desirous of routing their traffic through the port of Stockton, but, due to the existing rate adjustment, they cannot do so except to their prejudice. It is testified that if the maintenance of existing rates on dried fruit should be found proper, Sun-Maid Raisin Growers Association will not continue to use the port of Stockton for its shipments to Europe because it would cost less to route them through a port on San Francisco Bay. Sun-Maid Raisin Growers Association competes in the European markets with California Packing Corporation, Rosenberg Bros. & Co., and others, all of which ship through defendants' terminal loading ports on San Francisco Bay.

Complainant in No. 461 asks that defendants be required to provide reasonably adequate service from Stockton if they desire to continue to function in concert. In the absence of a showing of undue prejudice we have no authority to require carriers to serve a port. *McCormick S. S. Co.* v. *United States*, 16 F. Supp. 45, and *Lucking* v. *Detroit & Cleveland Nav. Co.*, 265 U. S. 346.

The only testimony in respect of the alleged violation of section 205 of the Merchant Marine Act, 1936, consists of statements to the effect that the conference is preventing or attempting to prevent certain members from serving Stockton at the same rates charged at the nearest port already regularly served by the latter. Such statements are denied by defendants and are not supported by convincing evidence. The conference agreement contains no provision which would prevent, or which authorizes the conference to prevent, any carrier from serving Stockton or any other port which it desires to serve, and as heretofore stated, in the instant case, the conference has authorized individual carriers to establish rates from Stockton and other ports which have not been designated as terminal ports, subject to the condition that such rates must not be lower than those in effect from terminal ports. The record does not establish a violation of section 205.

Upon this record, therefore, we are of the opinion and find that defendants should not be required to serve Stockton; that the exaction by defendants of rates on cargo voluntarily lifted at Stockton higher than those contemporaneously maintained by them on like traffic from their terminal loading ports is unjustly discriminatory, in violation of section 17 of the Shipping Act, 1916, as amended, and unduly and unreasonably preferential and prejudicial, in violation of section 16 of said act; and that a violation of section 205 of the Merchant Marine Act, 1936, has not been shown.

Sun-Maid Raisin Growers Association asks for reparation but does not show that it was injured by the violations found to exist. In addition to competing in the European markets with shippers in this country, it must meet the competition offered by Australia, Turkey, Greece, Spain, and, to a lesser extent, South Africa, Persia, and Chile. It does not appear that any of its competitors in the United States controlled the prices in such markets or that their prices were any lower than the market prices generally throughout the entire field of competition. See *I. C. C.* v. *United States*, 289 U. S. 385. Reparation therefore is denied.

An appropriate order will be entered.

APPENDIX

Complainants in No. 460:

Sun-Maid Raisin Growers Association.

Sunland Sales Cooperative Association.

Complainant in No. 461: Stockton Port District.

Complainants in No. 464:

Stockton Traffic Bureau.

Allan Cutler, Inc.

G. H. Atkins, David Atkins, C. H. Kroll, and J. B. MacKinley, doing business under the name and style of Atkins, Kroll & Co.

Bercut-Richards Packing Co.

Boothe Fruit Company.

California Cotton Oil Corporation.

California Milk Products Co.

N. Chooljian, doing business under the name and style of Del Rey Packing Co.

Robt. W. Dickey.

John Diebert and George Snyder, doing business under the name and style of Diebert Bros. & Snyder.

A. Shapazian, doing business under the name and style of El Mar Packing Company.

Charles J. Enoch, doing business under the name and style of Enoch Packing Co.

R. Fair.

Foster and Wood Canning Company.

G. W. Hume Company.

Griffith Durney Company.

Gulf Red Cedar Company.

Walter Harcourt and L. C. Greene, Jr., doing business under the name and style of Harcourt Greene Co.

Harry Hall & Co., Inc.

Kings County Packing Company, Ltd.

Lincoln Packing Company.

Alex Lion and Alfred Lion, doing business under the name and style of Lion Packing Company.

Manteca Canning Co.

Memorie Fruit Co.

Mor-Pak Preserving Corp.

Norman L. Waggoner, Inc.

Pacific Grape Products Co.

Pacific Packing Company.

Geo. Santiken, doing business under the name and style of Pacific Raisin Company.

The Packwell Corporation.

Port Stockton Compress, Inc.

Pratt-Low Preserving Co.

Complainants in No. 464—Continued.
Producers Cotton Oil Company.
R. L. Puccinelli, A. J. Puccinelli, and Elena Puccinelli, doing business under the name and style of Puccinelli Packing Company.
Sacramento Valley Packing Co.
Stockton Food Products, Inc.
Tri-Valley Packing Association.
Turlock Co-operative Growers.
Turlock Dehydrating & Packing Co., Inc.
Carl Tusan and Dick Tusan, doing business under the name and style of Tusan Packing Co.
J. G. Vagim and Edward J. Vagim, doing business under the name and style of Vagim Packing Company.
Visalia Canning Company.
D. R. Hoak and A. R. Hoak, doing business under the name and style of West Coast Growers & Packers.
W. J. Withers, Inc.
Defendants in Nos. 460, 461, and 464:
Blue Star Line, Ltd.
Compagnie Generale Transatlantique (French Line).
The Donaldson Line, Ltd.
Aktieselskabet Det Østasiatiske Kompagni (The East Asiatic Company, Limited).
Fred. Olsen & Co. (Fred Olsen Line).
Fruit Express Line A/S.
Furness, Withy & Co., Limited.
Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft (Hamburg American Line).
Isthmian Steamship Company.
"Italia" Societa' Anonima di Navigazione.
Knut Knutsen O. A. S.
J. Lauritzen.
Norddeutscher Lloyd (North German Lloyd).
Nederlandsch Amerikaansche Stoomvaart Maatschappij Holland Amerika Lijn.
Rederiaktiebolaget Nordstjernan (Johnson Line).
Royal Mail Lines, Limited.
Westfal-Larsen & Co., A/S.
Interveners in support of complainants in Nos. 460, 461, and 464:
California Farm Bureau Federation.
Thomas D. Stevenson & Sons.
Continental Grain Company.
Port of Stockton Grain Terminal.
Interveners in support of defendants in Nos. 460, 461, and 464:
Board of State Harbor Commissioners for San Francisco Harbor.
City and County of San Francisco.
San Francisco Chamber of Commerce.
Board of Port Commissioners of the City of Oakland.
Oakland Chamber of Commerce.
City of Alameda.
Golden Gate Terminals.
State Terminal Co., Ltd.

Interveners in support of defendants in Nos. 460, 461, and 464—Continued.
Islais Creek Grain Terminal Corporation.
Howard Terminal.
Encinal Terminals.
Intercoastal Steamship Freight Association.
Edward L. Eyre & Co.
Kerr Gifford & Co.
Westrope Bros. Grain Co.
F. M. Ball & Company.
R. G. Hamilton & Company.
Calbear Canneries Company.
Schuckl & Co., Inc.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 7th day of March A. D. 1939

No. 460

SUN-MAID RAISIN GROWERS ASSOCIATION AND SUNLAND SALES COOPERATIVE ASSOCIATION

v.

BLUE STAR LINE, LTD., ET AL.

No. 461

STOCKTON PORT DISTRICT

v.

BLUE STAR LINE, LTD., ET AL.

No. 464

STOCKTON TRAFFIC BUREAU ET AL.

v.

BLUE STAR LINE, LTD., ET AL.

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 the defendants herein, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before April 30, 1939, and there-

after to abstain, from publishing, demanding, or collecting for the transportation of canned goods, dried fruit, cotton, pencil slats, and other commodities from Stockton, Calif., to United Kingdom and Continental European ports, rates which exceed those on like traffic to the same ports from San Francisco, Oakland, Alameda, Los Angeles Harbor, and San Diego, Calif.; Portland, St. John's Terminal, and Astoria, Oreg.; Seattle, Tacoma, Everett, Bellingham, Olympia, Grays Harbor, and Longview, Wash.; Vancouver, Victoria, and New Westminster, B. C.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 480

IN RE RATES, RULES, REGULATIONS, AND PRACTICES FOR OR IN CONNECTION WITH COTTON, BAGS AND BAGGING, AND GRAIN AND GRAIN PRODUCTS

Submitted June 14, 1938. Decided March 23, 1939

Port-to-port rates on bags and bagging, burlap and cotton, new; and on bags and bagging, old, found unjust and unreasonable and unduly and unreasonably preferential and prejudicial as between classes of traffic and shippers thereof. Rates on cotton, and grain and grain products not shown unlawful.

H. L. Walker, J. T. Green, F. M. McCarthy, J. W. Cohen, T. P. Bartle, R. A. Kearney, Jr., Harold Boihem, E. C. Karn, F. E. Jones, and *W. L. McDonald* for respondents.

F. G. Robinson, Frank A. Leffingwell, L. C. Estes, E. O. Jewell, E. E. Dullahan, D. E. Weil, J. M. Wood, I. E. Burka, Louis Wildstein, Francis L. Blissert, Charles M. Haskins, Nathan Goldberg, Thomas W. McGinn, and *William F. Ebner* for protestants.

Harry McCall for intervener.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This is a proceeding, instituted April 2, 1938, upon our own motion into the lawfulness of rates, charges, rules, regulations, and practices of respondents[1] covering transportation from Gulf ports of the United States to North Atlantic ports, of cotton, and grain and grain products, and the transportation between such ports of bags and bagging.

Principal respondents, except Newtex Steamship Corporation and The Bull Steamship Line, along with Southern Pacific Company

[1] Agwilines, Inc., Ben Franklin Transp. Co., Chile S. S. Co., Inc., The Colonial Nav. Co., Eastern S. S. Lines, Inc., Ericcson Line, Inc., The Hudson River Nav. Corp., The Middlesex Trans. Co., Mooremack Gulf Lines, Inc., Newark Terminal & Trans. Co., Pan Atlantic S. S. Corp., Southern S. S. Co., Thames River Line, Inc., Wilson Line, Inc., The Bull S. S. Line, Lykes Coastwise Line, Inc., Newtex S. S. Corp.

(Southern Pacific Steamship Line "Morgan Line"), intervener, are members of the North Atlantic Gulf Steamship Association. They adopt and maintain uniform rates and charges under authority of section 15, Agreement No. 5950, approved July 21, 1937. The Bull Steamship Line, while not a member, observes rates and charges fixed by the Association. Newtex Steamship Corporation maintains rates on a differential basis generally 10 percent below the rates of the other respondents.

In *Commodity Rates Between Atlantic and Gulf Ports*, 1 U. S. M. C. 642, decided June 26, 1937, because of increased costs then shown, we approved a general increase of rates in this trade effective July 10, 1937. Rates on bags and bagging were not involved in that proceeding, but on May 1, 1937, increases were made ranging from 10 to 27.7 percent on bags and bagging. Effective April 4, 1938, respondents established a further general increase including increases of 10 percent on bags and bagging, 5 percent on cotton, and 5 percent on grain and grain products. The latter increases are the subject of this proceeding. Rates will be stated in cents per 100 pounds.

Respondents again urge increases in operating cost to justify the 1938 increases. They point particularly to increased costs for stevedores and vessel personnel and for other operating expenses, including ship stores, subsistence and social security taxes. The evidence presented by respondents shows that since 1935 vessel costs have increased on the average 14.5 to 26.08 percent and handling costs for all the respondents except one have increased 12.9 to 21 percent. While the record does not show that costs since July 1937, have increased uniformly for all the lines, or that per ton costs have increased in every case since then, the conclusion is inescapable that respondents need additional revenue. Only one of them shows a profit for the first quarter of 1938. Others show deficits for the quarter which in some cases exceed deficits incurred during 1937.

In 1 U. S. M. C. 642, *supra*, we stated that rates in this trade have been fixed on the basis of competition, with little regard for scientific rate structures. It is apparent that the situation has not improved. Respondents were unable to furnish information on many of the factors which should determine the measure of rates.

Cotton shipped to North Atlantic ports from Texas ports and from New Orleans originates at interior points. Some moves from Memphis compress points to New Orleans via all-rail and rail-barge routes. Texas shipments consist principally of high density bales,

per bale. Stowage of high density and standard bales is 80 and 120 cubic feet, respectively, per ton of 2,000 pounds.

The principal destination of the port-to-port movement is New Bedford, Mass. After considerable fluctuation beginning in 1931, the rate on cotton from New Orleans to New England was stabilized at 25 cents in 1934. Thereafter it was gradually increased until on April 4, 1938, the present 35-cent rate from all Gulf ports was established.

New Orleans shippers argue that the 35-cent rate may close the New England market to them because such rate, plus the rail rate to the port and other costs, exceeds the all-rail rate of competitors from interior points to eastern markets. In the absence of a showing that the all-water rate is unlawful, the shipping statutes afford no remedy for this situation.

On shipments to New Bedford the respondents absorb 1.5 cents for wharfage and the cost of industry delivery, said to be 3 cents. To Boston the 35-cent rate applies on shipments delivered at the dock, with an additional charge for industry delivery, although the tariffs of record provide for industry delivery at the 35-cent rate on shipments of 70,000 pounds or more. There are absorptions of lighterage at New York and of switching or drayage charges at Philadelphia and Baltimore on shipments of similar quantities. There is also an absorption of 75 cents for tollage at New Orleans.

The increase in the rate on cotton since 1934 is slightly in excess of 20 percent. In view of increased cost heretofore noted, the present 35-cent rate does not appear unreasonable. This conclusion, however, is without prejudice to the right of shippers to prove in a subsequent proceeding, with a full showing of pertinent transportation factors, that on the basis of revenue-producing comparisons, the current rate is unreasonable.

Protestants are interested principally in the rate on flour, wheat bran, and bran shorts. The bulk of such shipments move on through bills of lading at joint through or combination rail-water or water-rail rates. However, some flour moves from Houston and Galveston at port-to-port rates. There is practically no movement of grain at rates subject to our jurisdiction. Flour moves in 140-, 98- and 6-pound bags. The larger bags stow in 35 and 42 cubic feet, respectively, per ton. Respondents admit that flour, especially in the larger bags, is desirable cargo. Current rates to North Atlantic ports, for dock delivery, on flour and other products, except bran and shorts, are 32 and 25 cents, minimum weight 10,000 and 40,000 pounds, respectively. The rate on bran and shorts is 22 cents, minimum weight 40,000 pounds. In August 1935 rates were 26.5 and 20 cents, respectively, on flour and other products, and 17 cents on

bran and shorts. On August 20, 1937, the flour rates were increased to 30.5 and 24 cents. The April 1938 increases on flour amount to approximately 5 percent, but the total percentage of increases since 1935 are 20.7 percent on flour and other products, minimum weight 10,000 pounds, 25 percent on a minimum weight of 40,000 pounds, and 29 percent on bran and shorts.

As in the case of cotton, shippers using respondents' service are required to pay the rail or rail-barge rate to the port, the port-to-port rate, and additional charges incident to delivery at the port of discharge. The aggregate of such rates and charges is said to exceed the cost via all-rail routes from inland points. Transit privileges accorded by rail carriers also operate to the advantage of the inland all-rail shippers. Other than a statement of various stowage factors and rates on these and other commodities believed comparable, which of themselves are of little value, neither protestants nor respondents furnished convincing testimony regarding transportation conditions respecting flour or relationships generally existing concerning it. In view of the increase in operating costs, the maximum increases since 1935 on flour of 25 percent and of 29 percent on bran and shorts do not appear excessive.

Carload rates southbound and northbound, now in effect on bags and bagging, the increases, and the percentage of increase since 1935, are shown below:

Article	Rates			
	1935	May 1937	April 1938	Percent of increase since 1935
Bagging and ties (cotton bale covering)	33	36	40	21.2
Bags and bagging, burlap and cotton, new	41.5	53	58	39.7
Bags and bagging, old	23	29	32	39.1
Bags and bagging, old, wet [1]	32.5	----	36	10
Bags and bagging, new and old [2]	61	59	65	6.5

[1] Rate applies southbound from Boston and Philadelphia.
[2] Less-than-carload rate.

Protestants' principal interest is in the 32-cent carload rate on old bags and bagging, and in the 65-cent less-than-carload rate on new and old material. Old material is accumulated at points along the Atlantic seaboard and moves southbound. New material moves northbound only, but in small volume. New and old material moves in machine-compressed bales, and stows from 85 to 90 cubic feet to the ton. Bags and bagging are easy to handle, are rarely damaged, and are generally considered desirable cargo. The movement of old material southbound is reasonably steady and large in volume, although there may be peak periods. Rates stated are for ware-

house delivery. An allowance of 3 cents is made if dock delivery is taken.

Old bags are purchased by southern dealers in "as rise" condition, i. e., just as they come from the emptying machines, or clean. They are then reconditioned and sold throughout southern states for use in baling cotton or for bagging grain and other products. All-rail rates are prohibitive.

The market price of old material is controlled by the market price of new bagging imported from Calcutta, India, which moves at the same rate both to the Gulf and North Atlantic ports. The present price of the new material depresses the price of the old, which is lower now than it was in 1937. The spread between the cost and selling price on some bags is as low as $1.00 per 100 pounds, which must pay the transportation cost to the Gulf ports and from these ports to ultimate destination, the cost of reconditioning, overhead, and a profit. Moreover, there is some trade in old bags and bagging originating in Europe. The foreign product which is inferior in quality is offered at lower prices, thereby tending to further reduce the spread between cost and selling price.

Dealers at New Orleans and Galveston compete with dealers located at Memphis, Tenn. Both in turn compete with St. Louis and Chicago dealers, who obtain their product from inland sources. Respondents publish and file with the Interstate Commerce Commission joint through rates between North Atlantic ports and Memphis, via New Orleans. In 1935 the through rate to Memphis via New Orleans on old bags and bagging from New York was 44 cents. From Philadelphia and Baltimore it was 42 cents. These rates were increased 10 percent to 48 and 46 cents, respectively, effective March 31, 1938, under authority of the decision by that Commission in *Ex-Parte 123*, 226 I. C. C. 41. Respondents did not state their division of the through rates. The port-to-port rate, on the other hand, has increased 39.1 percent since 1935. In May 1937 the rate was increased 26.1 percent, but no change was then made in the through rates. This enabled the inland dealer to reach further into southern and southwestern territory to the detriment of the dealers at Gulf ports. Increases should apply equitably to all classes of traffic. Since the 23-cent rate in effect in 1935 was not shown to have been depressed, to impose a 39.1 percent increase on port-to-port traffic, and only a 10 percent increase on through traffic, places an undue burden on the port-to-port traffic, and results in undue and unreasonable prejudice, in violation of section 16 of the Shipping Act, 1916.

The 32-cent rate is higher than the rate on scrap paper and rags which move southbound in large volume; also higher than the northbound rate on paper and paper articles, which move in considerable volume. Stowage on bags and bagging is also less than the stowage on the compared articles, and the per cubic foot revenue on the former is from 1.5 to 3 cents greater. While this indicates an abnormal rate relationship, proof of other factors, including the value of the compared articles, is lacking. However, we may compare the increase in the rate with respondents' showing of increased costs. Such comparison does not show that costs have increased sufficiently to justify a 39.1 percent increase on old bags and bagging or a 39.7 percent increase in the rate on new bags and bagging. Other increases do not appear excessive.

We find that to the extent the rates on bags and bagging, burlap and cotton, new; and on bags and bagging, old, exceed rates in effect prior to April 4, 1938, they are unjust and unreasonable, in violation of section 18 of the Shipping Act, 1916, and unduly and unreasonably prejudicial to local shipments and to shippers thereof, in violation of section 16 of that act. The assailed rates on cotton, and grain and grain products, have not been shown to be unlawful. 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 23d day of March, A. D. 1939

No. 480

IN RE RATES, RULES, REGULATIONS, AND PRACTICES FOR OR IN CONNECTION WITH COTTON, BAGS AND BAGGING, AND GRAIN AND GRAIN PRODUCTS

This case, instituted under section 22 of the Shipping Act, 1916, having been duly heard, 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 be, and they are hereby, notified and required to cease and desist, on or before April 27, 1939, and thereafter to abstain from publishing, demanding, or collecting for the transportation of bags and bagging, burlap and cotton, new; and bags and bagging, old, between North Atlantic ports and Gulf ports of the United States, of rates which exceed those prescribed in the next succeeding paragraph hereof;

It is further ordered, That said respondents be, and they are hereby, notified and required to establish, effective on or before April 27, 1939, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed by section 2 of the Intercoastal Shipping Act, 1933, as amended, and thereafter to maintain and apply for the transportation between such ports of the above-mentioned commodities in carloads, rates which do not exceed 53 and 29 cents per 100 pounds, respectively, in effect prior to April 4, 1938.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, JR.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 482

IN THE MATTER OF STORAGE CHARGES UNDER AGREEMENTS 6205 AND 6215

Submitted October 17, 1938. Decided March 23, 1939

Respondents' charges on coffee remaining on piers at the port of New York after the expiration of free time *found* to result in unlawful preference and prejudice and unreasonable practices. An order to cease and desist entered, and Agreements Nos. 6205 and 6215 disapproved.

Roger Siddall for various respondents.

Walter W. McCoubrey, *Samuel H. Williams*, *Charles R. Seal*, and *H. J. Wagner* for Boston Port Authority, Joint Executive Transportation Committee of Philadelphia Commercial Organizations, Philadelphia Chamber of Commerce, Baltimore Association of Commerce, and Norfolk Port-Traffic Commission, protestants.

Arthur L. Winn, Jr., and *W. L. Thornton, Jr.*, for Port of New York Authority, *A. Lane Cricher* for Merchandise Division of American Warehousemen's Association and Warehousemen's Association of the Port of New York, and *Charles J. Fagg* for Newark Chamber of Commerce.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This is a proceeding instituted upon our own motion concerning the lawfulness and propriety of two agreements,[1] and of the charges

[1] No. 6205 between respondents C. H. Sprague & Son, Inc., of Delaware as managing agent for the United States of America (American Republics Line), The Booth Steamship Co., Ltd., Rederi Aktiebolaget Disa (Essco-Brodin Line), International Freighting Corporation, Inc., Lamport & Holt Line, Ltd., Lloyd Brasileiro, Linea Sud-Americana, Inc., Mooremack Lines, Inc., Edward P. Farley and Morton L. Fearey, *Trustees*, Munson Steamship Line, Prince Line, Limited, and Wilh. Wilhelmsen, and No. 6215 between respondents Colombian Steamship Company, Inc., Grace Line, Inc., Panama Mail Steamship Company, J. Lauritzen, Edward P. Farley and Morton L. Fearey, Trustees, Munargo Steamship Corporation, New York and Cuba Mail Steamship Co., Panama Rail Road Co., Royal Netherlands Steamship Co., Standard Fruit and Steamship Co., United Fruit Company, and Wessel, Duval & Company, Inc.

which the parties thereto have agreed to apply on cargo remaining on piers at the port of New York after the expiration of free time. A proposed report was issued; exceptions thereto were filed by protestants and replied to by respondents and the Port of New York Authority, and oral argument was heard. Our conclusions differ from those recommended in the proposed report.

In *Storage of Import Property*, 1 U. S. M. C. 676, hereinafter referred to as the *Free Storage case*, which involved the lawfulness of the charges, regulations, and practices of common carriers by water in foreign commerce relating to storage of import property at the ports of New York, N. Y., Boston, Mass., Philadelphia, Pa., Baltimore, Md., and Norfolk, Va., we found that there was no showing of unlawful practices in connection with the storage or delivery of import property at the four ports last mentioned, but that there were unreasonable practices in connection with the free storage of import property at the port of New York in violation of section 17 of the Shipping Act, 1916. It was found further that the free time allowed on import property at the port of New York should not exceed ten days, exclusive of Sundays and legal holidays, and an order to that effect was issued effective January 21, 1938. Following the decision in that proceeding, respondents here, most of which were respondents in that case, agreed, as parties to agreement No. 6205 or agreement No. 6215, to the adoption of charges to be applied on cargo remaining on piers after the expiration of free time, and filed copies of those agreements with us for approval under section 15 of the Shipping Act, 1916. Copies of the tariffs naming the charges also were filed. Under agreement No. 6205, which deals with cargo loaded on vessels at ports in Argentina, Uruguay, Paraguay, and Brazil up to and including but not north of Victoria, the charges are as follows:

Cargo other than coffee:

First five calendar days or fraction thereof, 2.5 cents per 100 pounds or 1 cent per cubic foot, weight or measurement as freighted, minimum 50 cents;

Second five calendar days or fraction thereof, 5 cents per 100 pounds or 2 cents per cubic foot, weight or measurement as freighted, minimum $1;

Each succeeding five calendar days or fraction thereof, 10 cents per 100 pounds or 4 cents per cubic foot, weight or measurement as freighted, minimum $2 each period.

Coffee:

First five calendar days or fraction thereof, 1 cent per bag of not exceeding 60 kilos;

Second five calendar days or fraction thereof, 2 cents per bag of not exceeding 60 kilos. (If the goods shall not have been removed from piers at the end of the second five-day period, they will be placed in public storage at risk and expense of the goods.)

Under agreement No. 6215,[2] the charges, agreed to as minima, are as follows:

Cargo other than coffee:

First five calendar days or fraction thereof, 2 cents per 100 pounds or 1 cent per cubic foot, weight or measurement as freighted, minimum 50 cents.

Coffee:

First five calendar days or fraction thereof, 1 cent per bag.

(Upon the expiration of the one five-day period, all cargo in the custody of the carriers will be placed in public store or warehouse at the risk and expense of the goods.)

Upon protests in behalf of interests at the ports of Boston, Philadelphia, Baltimore, and Norfolk, alleging that the charges on coffee were so nominal as to amount to additional free time and contrary to the spirit of our decision in the *Free Storage case*, action on the agreements in question was held in abeyance and this proceeding was instituted.

The coffee to which agreement No. 6205 relates is chiefly Brazilian coffee, which weighs 60 kilos, or approximately 132 pounds, per bag. The coffee lifted by the parties to agreement No. 6215 is customarily referred to in the trade as "mild coffee," and is largely Colombian coffee weighing 70 kilos, or about 154 pounds, per bag.

Coffee is sold largely on the basis of samples drawn from the bags on the piers after discharge from vessel. Upon such discharge, a public or private sampler goes to the dock and samples as many bags of coffee as is thought necessary for a proper average sample to be distributed to customers. Samples are sent to brokers and roasters throughout the country for testing as to desirability. Pending the samples being taken from the bags on the piers, distributed to the trade, roasted, ground, thoroughly tested and approved, the importer of the green coffee cannot dispose of it. Due to the greater volume of Brazilian coffee and its larger number of grades or variations in quality, more time is needed for its disposal than for other coffee. The testimony is that any less time than twenty days for the removal of Brazilian coffee and fifteen days for the removal of mild coffee would work a hardship on the coffee merchants in New York. If, upon the expiration of free time and pending approval of the samples and receipt of shipping instructions, the coffee should be placed in a warehouse, the importer would lose the benefit of import rail rates to many points in the interior when the coffee is

[2] This agreement, unlike No. 6205, is not restricted in terms to cargo loaded at particular ports. It is intended to apply to all import property discharged at the port of New York by the parties thereto, whose combined operations extend to ports in Venezuela, Colombia, Ecuador, Peru, and Chile, S. A., Central America, Mexico, Canal Zone, and the West Indies.

shipped. In addition, he would incur charges of 4 cents per bag for transfer from pier to warehouse, 5 cents for the first month of storage, and 10 cents for labor in and out of warehouse, which about equal the profit on a bag of low-grade coffee.

In a period of approximately six months prior to the effective date of the order in the *Free Storage case*, or as respects arrivals between June 30, 1937, and January 16, 1938, an average of 29 percent, or 8,613 bags per ship, of Brazilian coffee remained on piers at New York after ten days following complete discharge of vessel. The average subsequent thereto, or for arrivals between January 20 and April 3, 1938, inclusive, though lower, was 11.4 percent, or 3,623 bags per ship, this percentage being reduced to 4.5 percent, or 1,446 bags per ship, after fifteen days. As to mild coffee, an average of 48 percent, or 1,680 bags per ship, remained on piers at New York after ten days following complete discharge of vessel in the six-month period preceding the effective date of the order in the case cited, as against a subsequent average, according to respondents, of 8.8 percent, or 399 bags per ship. The record indicates, however, that between the effective date of the order in the *Free Storage case* and February 7, 1938, mild coffee was required to be removed from piers upon expiration of free time and that the percentage of 8.8 would be nearer 15 or 20 if a few ships arriving before the establishment of the five-day penalty period were excluded. This is the only instance disclosed of record where the practices or charges of respondents since the decision cited have differed from those concertedly proposed to be observed under the agreements here considered. Respondents contend that the charges on coffee are adequate for their purpose, and the record does not show that the amount of coffee remaining on piers after the expiration of free time causes congestion. The evidence indicates, however, that the percentage of cargo remaining on piers after free time is lower for other commodities than for coffee and that any absence of congestion should be attributed, not to the effectiveness of the lower charges on coffee, but to the less use made of the piers for the storage of the other commodities on which the higher charges are applicable. Certainly, excepting coffee from the assessment of the charges applicable on all other commodities was not a measure to discourage pier congestion. It was a step in the opposite direction. Unless there is some special justification for the exception, it should be canceled.

Respondents express the fear that increased charges on coffee at New York would cause a diversion thereof through the port of New Orleans. This feeling is shared by the Port of New York Authority, which shows that for the first quarter of 1938 the movement of coffee through the port of New York was 25,896 tons less than during the

first quarter of 1937; whereas New Orleans coffee imports in the first quarter of 1938 were 2,223 tons higher than in the corresponding period of 1937.

At New Orleans, import cargoes of coffee discharged at the Poydras and Girod Street sheds are allowed twenty consecutive days from the day vessel begins to discharge cargo without incurring demurrage charges, and mild coffee discharged at wharves other than the Poydras and Girod Street wharves is allowed five days, exclusive of Sundays and legal holidays, after the final discharge of vessel without incurring demurrage charges. These free periods are provided for in a tariff issued by the Board of Commissioners of the Port of New Orleans, which also provides that, in the event freight remains on wharves after free time, it shall incur a demurrage charge of 10 cents per 2,000 pounds per day or fraction thereof straight running time from the time of final discharge of vessel. Respondents call attention to a provision in the tariff that where it is impracticable to handle cargoes within the free-time periods stated and where the public requirements will permit, special arrangements may be made with the superintendent of docks in advance of the expiration of the free-time period for further time. Though they contend that the competitive situation as between New Orleans and New York is "the one most important consideration in the matter," they presented no witness who was certain of the manner in which the tariff at New Orleans was construed and enforced. The record is not persuasive that by increasing the charges on coffee to the level of those applicable on the other commodities coffee would be diverted through the port of New Orleans.

Delivery is a necessary part of transportation and is accomplished on piers where consignees accept delivery and take possession of the shipments. In the *Free Storage case* it was shown that extensive free time caused congestion on the piers at times, interference with the expeditious loading and discharging of cargo, and additional expense to carriers. Storage charges in effect are penalty charges assessed for the purpose of clearing the piers. All receivers of cargo must use the piers, and any preferred treatment, by charges or otherwise, of certain classes of cargo results in discrimination against other cargo. It is clear that coffee because of the lower storage charges assessed here does not share the burden properly resting upon that traffic of preventing pier congestion.

Respondents were admonished in the *Free Storage case* that the imposition of merely nominal storage charges would plainly violate the spirit of the regulation prescribed therein. This is true for the reason that such charges really have the effect of extending the period of free time. They must, therefore, be deemed to be a constituent

part of a practice pertaining to the handling, storing or delivery of property. We not only have the authority under section 17 to prescribe just and reasonable regulations and practices, but also the power to order them enforced. Clearly, therefore, any means or device tending to nullify or interfere with the enforcement of such regulations and practices must be subject to our condemnation.

We find that respondents' charges on coffee remaining on piers at the port of New York after the expiration of free time result in unlawful preference and prejudice, in violation of section 16 of the Shipping Act, 1916. We further find that respondents are engaged in unreasonable practices in connection with the storage of import coffee at the port of New York in violation of section 17 of the Shipping Act, 1916, to the extent that such charges after free time are lower than their storage charges maintained on other import property at the port of New York.

Some of the parties to the agreements involved have discontinued their services, and in the copy of agreement No. 6215 on file there is no restriction of its application to property imported at New York although it was agreed by the parties that its scope should be so limited. The agreements will be disapproved, without prejudice to the filing, upon readjustment of the charges in question, of new agreements showing the parties thereto and true scope.

An appropriate order will be entered.

Commissioner Truitt dissents. Commissioner Wiley did not participate in the disposition of this case.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 23d day of March, A. D. 1939

No. 482

IN THE MATTER OF STORAGE CHARGES UNDER AGREEMENTS 6205 AND 6215

This proceeding, instituted by the Commission on its own motion, having been duly heard, 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 respondent be, and they are hereby, notified and required to cease and desist, on or before May 11, 1939, and thereafter to abstain from publishing, demanding, or collecting for the storage on piers at the port of New York after the expiration of free time of coffee transported from their ports of loading herein involved charges which are lower than their storage charges contemporaneously in effect at the port of New York on other commodities transported from their said ports of loading;

It is further ordered, That Agreements Nos. 6205 and 6215 be, and they are hereby, disapproved.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 467

PACIFIC FOREST INDUSTRIES

v.

BLUE STAR LINE, LIMITED, ET AL.

Submitted August 20, 1938. Decided April 4, 1939

Rates on plywood from United States Pacific ports to Europe, Asia, and Africa not shown to be unduly prejudicial, unjustly discriminatory, or detrimental to the commerce of the United States. Complaint dismissed.

F. D. Metzger, *W. C. Culbertson*, and *Howard S. LeRoy* for complainant.

Chalmers G. Graham for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the examiner's report, the findings of which are adopted herein. Complainant, Pacific Forest Industries, a corporation exporting Douglas fir plywood, alleges that the rates charged by defendants[1] for the transportation of plywood from United States Pacific ports to destinations in Europe, Asia, and Africa, and defendants' practices with respect thereto are unduly prejudicial and unjustly discriminatory as compared with foreign competitors, in violation of sections 16 and 17 of the Shipping Act, 1916. It is further alleged that the Pacific Coast-European Conference Agreement, filed with and approved by us as Agreement No. 5200, is unjustly discriminatory and unfair, and operates to the

[1] Blue Star Line, Limited, The Donaldson Line, Limited, Compagnie Generale Transatlantique (French Line), The East Asiatic Company, Limited (A/S Det Ostasiatiske Kompagni), Fred Olsen and Co. (Fred Olsen Line), Fruit Express Line A/S, Furness Withy & Co., Ltd. (Furness Line), Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft, "Italia" Societa' Anonima di Navigazione (Italian Line), Knut Knutsen O. A. S. (Knutsen Line), J. Lauritzen (Lauritzen Line), Norddeutscher Lloyd (North German Lloyd), N. V. Nederlandsch-Amerikaansche Stoomvart-Maatschappij, Rederiaktiebolaget Nordstjernan (Johnson Line), Royal Mail Lines, Ltd., Westfal-Larsen & Co. A/S (Interocean Line), Anglo Canadian Shipping Coy., Ltd., Canadian Transport Company, Ltd., Isthmian Steamship Company, Seaboard Shipping Company, Ltd., Nippon Yusen Kabushiki Kaisha.

detriment of the commerce of the United States, in violation of section 15 of the act. Lawful rates and practices, and disapproval, modification or cancellation of the conference agreement are asked. Unless otherwise stated, rates will be stated in cents per 100 pounds.

Complainant is a corporation under the Webb-Pomerene Act, embracing all the Douglas fir plywood mills in Washington and Oregon. It was organized in 1935 to improve and stabilize the marketing of plywood in foreign countries, exclusive of the Dominion of Canada. Its headquarters are in Tacoma, Washington, where it concentrates all shipments. Its chief competitors are located in British Columbia, Scandinavia, Finland, the Baltic countries, Poland, Germany, and Japan.

Defendants are members or associate members of the Pacific Coast-European Conference. They offer the only common carrier service from the United States and Canadian Pacific coast ports to Great Britain, Northern Ireland, Irish Free State, Continental Europe, Baltic, and Scandinavian ports. All are foreign flag carriers except the Isthmian Line, which is an associate member of the conference.

Douglas fir plywood is a high-grade soft wood building material manufactured in the Pacific Northwest and is used largely in the manufacture of doors and as paneling. It is desirable cargo, and moves exclusively in liner service in a steady though not a large volume. About 7.5 percent of the United States production is exported, principally to the United Kingdom and northern European countries.

Complainant's shipments of plywood move under contract rates. During the years 1934 and 1935 the rate from Pacific ports to Europe was 50 cents. Effective January 1, 1936, it was increased to 55 cents. During the fall of 1936 the conference announced that the rate would be increased to 60 cents. Complainant protested, but this increase became effective April 1, 1937. In October 1937 the conference notified complainant that the rate would be further increased to 75 cents, effective January 1, 1938. That increase was protested by complainant and led to the instant complaint. On January 1, 1938, the conference adopted a rate of 70 cents instead of 75 cents. The question of the duties of members of a conference and of what constitutes proper relationship between them and shippers patronizing their lines is discussed in our report in *Docket No. 477, Rates and Practices of Pacific Coast European Carriers, et al.*, decided concurrently with this case.

Complainant points out that it is wholly dependent upon defendants for the movement of plywood to the destinations involved. It asserts that its rates are higher to the same market than rates from foreign competitive points; that European industries are increasing

their purchases of American Douglas fir logs which may be manufactured into competitive plywood abroad; that one or more defendants either own or are affiliated with competitive foreign plywood mills; that the conference is controlled by foreign flag carriers; and that some of defendants are either owned or controlled by foreign governments which are not sympathetic to the growth of American commerce. None of these statements in themselves warrants a finding that defendants' rates are unfair, unjustly discriminatory, or unduly prejudicial to complainant and preferential to foreign competitors, or that defendants are engaged in acts or practices detrimental to the commerce of the United States within the meaning of section 15.

Complainant introduced exhibits showing lower freight rates on lumber moving in defendants' vessels between the same ports. These lumber rates, on a long ton basis, compare with rates on plywood as follows: in 1934 and 1935, the lumber rate was $8.00, while the rate on plywood was $11.20; in 1936, the lumber rate was $9.60, while the rate on plywood was $12.32; and in 1937, the lumber rate of $10.85 and $17.50 was compared with a rate of $16.80 on plywood. Plywood can be stowed in any part of the ship suitable for stowing lumber. Both commodities are carried under deck by defendants, and the stowage factors are comparable. However, in the absence of information as to comparative average loadings, comparative values, volume of movement, loss and damage claims, and conditions under which the compared rates were established, these comparisons are of little value.

Complainant urges that the conference rates are unreasonably high, and therefore detrimental to the commerce of the United States. *Edmund Weil* v. *Italian Line* "*Italia*," 1 U. S. S. B. 395, 398. In addition to the rate increases referred to, it is obliged to pay other charges formerly absorbed by the defendants. For example, before complainant was organized, it was customary for defendants to pay for brokerage at a cost approximately 1¼ percent of the gross freight. The payment of brokerage has since been abandoned, and complainant now is obliged to maintain a traffic department to handle this function at its own expense. It asserts that by the establishment of its warehouse and concentration of all plywood for export there, defendants' cost of service has been reduced by the elimination of scattered calls, a saving which it argues should be reflected by lower rather than higher rates. For more efficient handling and stowing of its product, complainant has improved the plywood package from time to time. A witness for complainant states that claims for damage against defendants have diminished to practically nothing since complainant devised its present method of packaging. Improve-

ments in packaging undoubtedly facilitate handling of the cargo, but the fact that complainant voluntarily instituted this improvement does not of itself establish unreasonableness of the transportation rate.

Complainant introduced exhibits showing a decline in sales following the rate increases. British import statistics show that the United States was the only country except Germany whose plywood sales to Great Britain declined during the first eight months of 1937. These exhibits, however, do not prove that the increased freight rates have been a controlling factor in curtailing exports. Upwards of 30 million square feet of plywood were transported in defendants' vessels in 1935, 45 million in 1936, and 34 million in 1937. Thus, more plywood was transported at rates of 55 cents in 1936 and at 55 and 60 cents in 1937 than at the 50-cent rate in 1935. Although complainant makes extensive studies of market conditions in Europe and maintains agents in various countries, nothing was offered for the record as a basis for comparing complainant's production costs and c. i. f. prices with those of its foreign competitors.

Eleven letters from foreign buyers of plywood addressed to complainant were offered to show that the 70-cent rate caused a decline in sales. These letters reveal that, in addition to the rate, foreign government import restrictions and customs duties, preference for cheaper European woods, and unfavorable economic conditions are also responsible for declining inquiries. Germany, France, Denmark, Norway, and Switzerland have import restrictions on plywood.

Defendants take the position that complainant's loss of business is not due to the rates, and produce figures taken from steamship manifests showing that while complainant's exports are on the decline its competitors in British Columbia are enjoying a rapid increase in exports at the same rates paid by complainant. Between 1935 and 1937, shipments of plywood from New Westminster, B. C., increased from 27 tons to 6,027 tons. During the same period, shipments from Vancouver, B. C., increased from 160 to 2,434 tons.

There is testimony to the effect that the conference threatened to deny complainant space unless it agreed to the increased rates. This is denied by conference witnesses. Such retaliation would be a misdemeanor under the act for which a severe penalty is provided.

Upon this record, we find that defendants' assailed rates and practices with respect to plywood have not been shown to be unduly prejudicial or unjustly discriminatory in violation of sections 16 and 17 of the Shipping Act, 1916, respectively, and that Agreement No. 5200 has not been shown to be unjustly discriminatory or unfair or to operate to the detriment of the commerce of the United States.

An order will be entered dismissing the complaint.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 4th day of April, A. D. 1939

No. 467

PACIFIC FOREST INDUSTRIES

v.

BLUE STAR LINE, LIMITED, ET AL.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the 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.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 477

IN THE MATTER OF RATES, CHARGES, RULES, REGULATIONS, AND PRACTICES OF PACIFIC COAST EUROPEAN CONFERENCE CARRIERS ET AL.

Submitted September 28, 1938. Decided April 4, 1939

Rates, charges, rules, regulations, and practices of respondent carriers, either individually or under and pursuant to their conference relationship, not shown to be unlawful. Proceeding discontinued.

Chalmers G. Graham for respondents.
Robert C. Neill for California Fruit Growers Exchange.
K. C. Batchelder for West Coast Lumbermen's Association.
M. G. deQuevedo for Intercoastal Steamship Freight Association.
David E. Scoll for United States Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner. The findings recommended by that report are adopted herein.

This is an investigation by the Commission concerning the lawfulness and propriety of the Pacific Coast European Conference agreements,[1] and the rates, charges, rules, regulations, and practices of the respondent carriers,[2] either individually or under and pursuant to their conference relationship. The order of investigation, dated

[1] Agreements Nos. 5200, 5200-A, 5200-B, 5200-C, and 5200-D.

[2] Blue Star Line, Limited; Compagnie Generale Transatlantique (French Line); The Donaldson Line Limited; The East Asiatic Company Limited (A/S Det Ostasiatiske Kompagni); Fred. Olsen & Co. (Fred. Olsen Line); Fruit Express Line A/S; Furness, Withy & Co., Ltd. (Furness Line); Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft (Hamburg-American Line); "Italia" Societa' Anonima di Navigazione (Italian Line); Knut Knutsen O. A. S. (Knutsen Line); J. Lauritzen (Lauritzen Line); Nippon Yusen Kaisha; Norddeutscher Lloyd (North German Lloyd); N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij (Holland-America Line); Rederiaktiebolaget Nordstjernan (Johnson Line); Royal Mail Lines, Ltd.; Westfal-Larsen & Co. A/S (Interocean Line); Anglo Canadian Shipping Coy., Ltd.; Canadian Transport Co., Ltd.; Isthmian Steamship Company; Seaboard Shipping Co., Limited.

March 4, 1938, was based upon informal representations by exporters and others.

Witnesses testified concerning the exporting of apples, pears, and lumber via the vessels of respondent steamship lines. Respondents offered no testimony, and motion of counsel for respondents that the case be "kept open for a period of sixty days, within which the lines and the conference may determine their position as to whether they desire to offer evidence or not" was denied by the presiding examiner. The parties filed no briefs.

The testimony dealing with apples and pears may be summarized under the following general allegations: (a) the lines have not reduced their charges in line with returns to shippers and exporters; (b) the pear rate is out of line with the apple rate; (c) the requirement that pears for export must move to the port in iced rail cars is unreasonable; (d) shippers have not been given fair consideration in presenting their problems to the carriers, and do not receive sufficient notice of rate changes.

In connection with the first allegation there is some testimony concerning the movement of apples and pears in the export trade, the poor financial condition of fruit growers, and the necessity for a readjustment of rates to reflect changed conditions in the fruit industry, but the record contains nothing of substance dealing with traffic and transportation conditions to support a finding that the conference rates are unreasonable or otherwise unlawful. The allegation that the pear rate is out of line with the apple rate because it exceeds the apple rate by 10 cents a box, is likewise unsupported by proper evidence to justify a finding that the pear rate is unduly prejudicial or otherwise unlawful.

The requirement that pears for export must move to the port in iced rail cars is shown to be the act of individual lines. Rule 8 of Pacific Coast European Conference Tariff 1-F provides:

> Shipments of fresh pears must be precooled, strapped and marked prior to delivery to vessel. Delivery of fresh pears by truck is not permissible except from cold storage warehouses within port of loading at the option of the carrier.

One witness testified he believed the icing requirement had been in effect for about two or three years, and it was stated generally that the water carriers will not accept pears unless they have been iced. There is some opinion that icing of pears is unnecessary for short hauls, especially at certain times of the year, but it is admitted that the requirement might be necessary in some districts and not in others. Although it may be true, as alleged, that in certain districts and at certain times of the year, it is not necessary to ice the

cars to keep pears precooled between point of loading and the port from which they move by water, the record indicates that there is sufficient necessity for the icing of pears to preclude any finding here that the requirement by individual lines is unreasonable. There is apparently no objection to the conference rule requiring precooling.

The principal subject of complaint seems to be that shippers have not been given proper consideration in presenting their problems to the carriers, and do not receive sufficient notice of rate changes. No showing is made of failure or refusal on the part of the conference or respondent carriers to consider matters presented to them, but shippers request that they be given advance notice of contemplated rate changes and full opportunity to present any objections before the changes become effective.

The complaints of lumber shippers deal primarily with difficulties encountered in obtaining space to fill their requirements, and the disadvantages resulting from rate fluctuations. The matter of space allocations is not subject to conference control but is left to the individual carriers. One witness testified at length as to difficulties experienced from time to time in obtaining space from certain lines to fulfill shipper's requirements at Grays Harbor, Wash., and the record indicates that at times the conference lines have failed or refused to allocate space for lumber at said port because, as stated by the witness, the lines have been able to get their lumber requirements in other districts, including British Columbia. There is also some testimony that when there has been a difference between the rates to United Kingdom and Continental destinations certain lines have stated they were not interested in lumber to the lower rated points, and that during periods of peak rates the lines have required firm bookings instead of giving the usual options varying from ten days to two weeks. It is stated that exporters of lumber must have these space options in order to work on inquiries already received or to enable them to solicit business. Although there is no definite showing that respondent carriers have refused to accept shipments of lumber actually tendered to them when space was available to accommodate such shipments, there is, nevertheless, some evidence that there have been occasions when service for American shippers and ports has been subordinated to the promotion of carriers' interests.

At the time of hearing the conference fixed minimum rates on lumber and the individual lines were given freedom of action in fixing their rates subject only to the conference minimums. It was testified that this practice had worked to the disadvantage of lumber exporters, as the feeling of uncertainty caused by frequent rate fluctuations made it difficult to do business in a highly competitive Euro-

pean market. These fluctuations in the liner rates are largely influenced by fluctuations or changes in the charter market, and though nearly all witnesses interested in the exportation of lumber indicated a preference for actual rates to be fixed by the conference for a definite period, they were somewhat doubtful as to whether the period should be thirty, sixty, or ninety days, and it was generally recognized that the question of charter competition required careful consideration. One witness admitted that with fixed rates for a period of sixty days for liner service, fluctuations or changes in the charter market would seriously affect the ability of his company to sell in competition with dealers using chartered vessels. Since the hearing the conference has eliminated provision for minimum rates on lumber from United States ports and has substituted therefor agreed rates for fixed periods of time to be charged by all conference members.

On the record in this proceeding, we find that the rates, charges, rules, regulations, and practices of the respondents, either individually or under and pursuant to their conference relationship, have not been shown to be unlawful. However, the record discloses that the practices of respondents under and pursuant to their conference relationship have not at all times been such as to promote commerce from the Pacific Coast of the United States to United Kingdom and Continental ports as provided in their Conference Agreement No. 5200. While there is no detailed description of the duties imposed upon conference members by Section 15 of the Shipping Act, 1916, it seems appropriate to state that the advantages of group action in rate matters and exemption from the antitrust laws with the subsequent elimination of competition, flowing to carriers by approval of a conference agreement, are not gratuitous grants. They are intended, in furtherance of the policies of the Shipping Act, to develop and encourage the maintenance of a merchant marine and to build up the commerce of the United States, and they, therefore, place upon conference members the duty to consider shippers' needs and problems, and to provide for the orderly receipt and careful consideration of shippers' requests with full opportunity for exchange of views.

As to the extent of shipper cooperation that may be required of carriers operating under Section 15 agreements, the Commission is conducting a study of the procedure of conferences generally with a view to taking such action as the facts developed may warrant. Therefore, no finding is made requiring a change in procedure by the parties to Agreement No. 5200 with respect to matters involved in the present proceeding.

An order discontinuing the proceeding will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 4th day of April A. D. 1939

No. 477

IN THE MATTER OF RATES, CHARGES, RULES, REGULATIONS, AND PRACTICES OF PACIFIC COAST EUROPEAN CONFERENCE CARRIERS ET AL.

It appearing, That by its order of March 4, 1938, and supplemental order of March 22, 1938, the Commission instituted a proceeding of investigation into and concerning the lawfulness and propriety of the Pacific Coast European Conference agreements, and the rates, charges, rules, regulations, and practices of the respondent carriers, either individually or under and pursuant to their conference relationship;

It further appearing, That a full investigation of the matters and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing 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.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 215

ROBERTO HERNANDEZ, INC.

v.

ARNOLD BERNSTEIN SCHIFFAHRTSGESELLSCHAFT, M. B. H., ET AL.

Submitted January 18, 1939. Decided May 25, 1939

On further hearing complainant found injured to extent of $25,050.00 and reparation in that amount awarded, with interest.

Joseph K. Inness and *Herbert J. Williams* for complainant.
Joseph A. Barrett for defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

In our prior report (1 U. S. M. C. 686) we found that defendants[1] unfairly treated and unjustly discriminated against complainant in the matter of cargo-space accommodations for automobile shipments to Spain, due regard being had for the proper loading of their vessels and the available tonnage, in violation of paragraph "Fourth" of section 14 of the Shipping Act, 1916, and that complainant was injured by such violation. Complainant requested reparation in the amount of $25,050.00, but there was no showing that all the cars upon which reparation was based could have been carried by defendants, nor of the amount of space which was available and value of the cars which could have been carried in such available space. We found that complainant failed to establish the extent of its injury and assigned the case for further hearing solely with respect to the measure of complainant's injury.

Defendants filed exceptions to the examiner's proposed report on further hearing, and the case was orally argued. The recommendations of the examiner, with certain exceptions, are adopted herein.

[1] Arnold Bernstein Schiffahrtsgesellschaft, M. B. H., Compania Espanola de Navegacion Maritima, S. A., and Compagnie Generale de Navigation a Vapeur Cyprian Fabre, hereinafter called Bernstein Line, Gardiaz Line, and Fabre Line, respectively.

The first question to determine is: How many cars were required to fulfill the contract? At the further hearing complainant, by an analysis of 1934 General Motors and Chrysler products, showed the types of cars, net prices, and the number of each that would be required to fulfill its contract. Witnesses for complainant and defendants testified that the preponderance of movement of automobiles to Spain was of small cars, such as Fords, Chevrolets, Pontiacs, and Chryslers. The following figures from complainant's analysis show the type of cars of which the greatest number would be required to aggregate the contract amount, $167,000;

Car	Type	Net price
Chevrolet	1½-ton chassis	$400.12
Do	5-passenger Master six	528.00
Pontiac	5-passenger 4-door sedan	664.12
Dodge	1-ton truck chassis	424.88
Plymouth	5-passenger town sedan	540.38

At $400.12, the lowest net price appearing in the analysis, 417 units would be necessary to fulfill the contract. At $511.50, the average net price of these models, 327 units would be required.

The next inquiry is to ascertain the amount of space defendants had available for automobile shipments. We previously found that defendant Bernstein Line had unoccupied space for from 15 to 25 unboxed automobiles on its vessel sailing September 12, 1934, for probably 30 to 40 on October 23d sailing, and for 160 on the November 27th sailing (1 U. S. M. C. 688). Testimony at the further hearing was that defendant Gardiaz Line's vessel sailing July 10, 1934, had accommodations for 75 small cars and carried 62; its M. S. *Nordkap* sailing on August 10, October 11, and December 13, 1934, with accommodations for 90 cars, carried on the respective voyages 54, 63, and 25 unboxed automobiles. Fabre Line's vessel sailing September 7th, with accommodations for 75 small cars, carried 34; the vessel sailing October 18th, with accommodations for 85 cars carried 51; the vessel sailing November 5th, with accommodations for 125 cars carried only 14, and the vessel sailing December 10, 1934, with accommodations for 75 cars, carried 22. Thus it is shown that on the several voyages, defendant Bernstein Line could have carried from 205 to 225 more automobiles than were transported; defendant Gardiaz Line could have carried 141 more cars and defendant Fabre Line could have carried 239 more cars. The record shows that, despite complainant's requests for bookings, and subsequent thereto, defendants Gardiaz Line and Fabre Line booked (and, pursuant to such bookings, accepted and stowed) such cargo as bagged sugar, tobacco, provisions, boxed trucks, refrigerators, drums of oil, copper,

and machinery and rags, in the spaces on their vessels usually used for unboxed automobiles.

A further question occurs as to complainant's ability to obtain cars for shipment. At page 691 of the original report we said: "Complainant's evidence establishes the fact of its agreement with de Bareno, and the fact of complainant's ability to obtain cars for shipment in the quantities and under the terms of such agreement." Defendants disputed this and at the further hearing complainant declined to reveal the names of the persons from whom cars could be purchased but did specify certain cities including Pontiac, Michigan and Windsor, Canada, where cars could be obtained. Defendants sought time within which to examine and take the testimony of the various dealers and distributors in such places and requested a further hearing, which was granted. At that hearing defendants developed on cross-examination that complainant had no direct contacts with dealers in Pontiac and Windsor. They introduced no evidence. Complainant, however, produced witnesses representing a number of Ohio, Michigan, and New Jersey dealers in General Motors and Chrysler products, who testified to having sold automobiles to complainant for export before, during and after June–December 1934, the period covered by the agreement. According to these witnesses, experienced in the selling of automobiles, domestic sales were very poor in 1934, but the export business was good. One witness could have gotten for complainant at any one time 300 to 500 automobiles, trucks and chassis of General Motors and Chrysler manufacture at a discount of 17½ percent or more off factory retail prices. He stated that "if you took in all the models shown in complainant's analysis of these companies' products, it would be very easy to double that, or triple the amount." This witness also testified he could have obtained 500 to 700, and possibly more, units of both makes in December 1934 at a discount of at least 17½ percent. Another representative of dealers testified to his ability to have obtained for complainant "easily a thousand" General Motors and Chrysler pleasure automobiles, trucks and chassis between June and December 1934, and "in some instances you would be able to get a thousand of each kind" such as "the cheaper standard models." He had been told by complainant's president of the agreement to ship a large amount of cars each month to de Bareno in Spain, and that he, the witness, would probably get the major portion of the orders. But no cars were ever ordered for Spain. According to their testimony, neither of these witnesses ever had any difficulty in filling within 72 hours any order for General Motors and Chrysler products during 1934. None of the testimony as to availability of cars was refuted. Before service of the proposed report on further hearing, defendants requested a fur-

ther hearing for the purpose of showing the contracts, if any, between the aforesaid dealers and distributors and manufacturers. In view of the numerous hearings held in this proceeding, and the fact that such contracts, if they existed, would not be controlling in this further proceeding, the request is denied.

The record shows that complainant could and would have obtained and shipped $167,000 worth of automobiles in compliance with its contract, in accordance with the bookings requested; that all charges in connection with the furnishing of the automobiles were to be absorbed by de Bareno (and included in the $167,000);[2] and that complainant's net profit therefrom would have been 15 percent of $167,000 or $25,050.

There remains for determination the degree of liability of each defendant which in turn depends upon the question whether they acted in concert. In the prior report we said that complainant's applications for bookings were continuous from early July to practically the end of the agreement period, and were in fact standing importunities upon defendants to furnish transportation for any number of cars up to the limits of the requirements of such agreement. We also said that an undetermined number of cars was not carried solely because of defendants' subservience to manufacturers and distributors with whom complainant was in competition. Defendants, in their exceptions and argument, assert there is no evidence in the record showing that they acted in concert, that they entered into any scheme or that they acted together. They also except to the recommended conclusion of joint and several liability, contending that at most each defendant could only be held for the number of automobiles which each refused to accept. Defendants and Compania Trasatlantica comprised the membership of the North Atlantic Spanish Conference during the period covered by the complaint (1 U. S. M. C. 686, 689). At page 690 of that report there is a discussion of the conference action with respect to certain cablegrams to it from an automobile distributor in Spain, acknowledged by Gardiaz Line's witness to have related to complainant shipping automobiles to Spain in competition with such distributor. As reported in the minutes of the conference meeting held July 14, 1934, copy of which minutes is in evidence, the conference replied to the distributor's cablegram of June 9, 1934, as follows:

REFERRING CABLES TO ALL MEMBER LINES CONFERENCE MEMBERS SYMPATHIZE FULLY YOUR DIFFICULTY AND WISH COOPERATE HOWEVER MUST ADVISE YOU SHIPPING BOARD HAS RULED CONFER-

[2] Witness Hernandez testified Sept. 15, 1938:

Q. "And any additional charges, such as freight or brokerage commissions, or anything like that—who was to absorb those?"

A. "For account of de Bareno" (p. 345—Transcript).

ENCE LINES CANNOT REFUSE CONTRACTS OR SHIPMENTS STOP UP TO PRESENT NO CARS SHIPPED.

Participation by all defendants in any scheme to thwart complainant from shipping General Motors and Chrysler products to Spain was necessary to assure its success, and the conference relationship and activities of members heretofore described not only refute defendants' objections but evidence the inception of such a scheme. The cabled wish to cooperate with the distributor in Spain shows the common intent and purpose of defendants and their subsequent denials of complainant's applications for bookings established their cooperation in accomplishing the plan to which all agreed.

The law on concert of action is thus stated in 62 Corpus Juris, "Torts," page 1135:

> The rule is well settled that joint liability exists where the wrong is done by concert of action and common intent and purpose (see *Little* v. *Giles*, 118 U. S. 596; *Pirie* v. *Tvedt*, 115 U. S. 41; *Bunker Hill & Sullivan Mining, Etc., Co.* v. *Polak*, 7 Fed. (2d) 583; *Clay* v. *Waters*, 161 Fed. 815) provided that the act of each person was an efficient cause contributing to the injury. Proof of a conspiracy is not necessary.

When several persons unite in an act which constitutes a wrong to another, intending at the time to commit the act under circumstances which fairly charge them with intending the consequences which follow, they are all jointly and severally liable for the wrong done, regardless of their individual participation in its accomplishment or their individual gain or profit resulting therefrom. See *Clay* v. *Waters*, 161 Fed. 815. To constitute "joint tort-feasors" there must have been community of action, *The Ross Coddington*, 6 Fed. (2d) 191. Under common law administered in the United States, an innocent person damaged by wrongs of joint tort-feasors is entitled to entire compensation from any one of the wrongdoers. *The Mandu*, 15 F. Supp. 627. Where right of action arises out of acts of several persons, or several persons are related to the same act, or several persons are joint tort-feasors, plaintiff has choice of determining which of joint actors or joint tort-feasors he shall sue, and he can sue all, some or one only. *Jenkins* v. *Southern Pac. Co.*, 17 F. Supp. 820.

We find that by the refusals of the defendants, pursuant to their concerted plan, to furnish complainant available space in their vessels, the defendants prevented complainant from shipping $167,000 worth of automobiles to Spain in the period from June 1 to December 31, 1934, which complainant otherwise would have done; that complainant was thereby precluded from earning a commission of 15 percent of the purchase price of the cars; that complainant's net

profit therefrom would have been $25,050, the full amount of such commission; that complainant was injured to the extent of $25,050; that complainant is entitled to reparation in the sum of $25,050, with interest; and that defendants Arnold Bernstein Schiffahrtsgesellschaft, M. B. H., Compania Espanola de Navigacion Maritima S. A. and Compagnie Generale de Navigation a Vapeur Cyprian Fabre are jointly and severally liable to complainant for the full amount of the injury caused by defendants.

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 25th day of May A. D. 1939

No. 215

ROBERTO HERNANDEZ, INC.

v.

ARNOLD BERNSTEIN SCHIFFAHRTSGESELLSCHAFT, M. B. H., COMPANIA ESPANOLA DE NAVIGACION MARITIMA S. A., AND COMPAGNIE GENERALE DE NAVIGATION A VAPEUR CYPRIAN FABRE

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

It is ordered, That defendants Arnold Bernstein Schiffahrtsgesellschaft, M. B. H., Compania Espanola de Navigacion Maritima S. A., and Compagnie Generale de Navigation a Vapeur Cyprian Fabre, jointly and severally, be, and they are hereby, notified and directed to pay unto complainant Roberto Hernandez, Inc., of New York, N. Y., on or before 60 days from the date hereof the sum of $25,050.00 with interest thereon at the rate of six percent per annum from December 31, 1934, as reparation for the injury caused by defendants' unfair treatment of and unjust discrimination against said complainant in the matter of cargo space accommodations.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, JR.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 502

MARTIN L. CLOSE

v.

SWAYNE & HOYT, LTD., MANAGING OWNERS (GULF PACIFIC LINE)

Submitted March 7, 1939. Decided May 25, 1939

Complaint alleging segregation charges on shipments of canned goods and dried fruit from Pacific coast ports to Lake Charles, La., are unjust and unreasonable dismissed for lack of prosecution.

No appearance for complainant.

Joseph J. Geary, for defendant.

E. H. Thornton, *Louis A. Schwartz* and *E. B. McKinney* for intervener.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Complainant alleges that on certain shipments of canned goods and dried fruit from Pacific coast ports to Lake Charles, La., defendant assessed a charge for segregation amounting to $1.00 per net ton, which was paid and borne by complainant, and that the assessment of this charge was unjust and unreasonable in violation of section 18 of the Shipping Act, 1916.

Answer was duly filed and served, and the case was assigned for hearing. Complainant did not appear. The presiding examiner adjourned the hearing and communicated with the complainant, who advised that he would not appear.

A petition of intervention was filed at the hearing by the New Orleans Joint Traffic Bureau and was granted. No evidence was introduced by any of the parties and the defendant moved that the complaint be dismissed.

As the statute gives the right to a full hearing which includes the right to cross-examine witnesses and at the same time imposes the duty of deciding in accordance with the facts established by proper evidence, this complaint will be dismissed for lack of prosecution. See *The Tagit Co.*, v. *Luckenbach Steamship Co., et al.*, 1 U. S. S. B. B. 519.

An order will be entered dismissing the complaint.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 25th day of May A. D. 1939

No. 502

MARTIN L. CLOSE

v.

SWAYNE & HOYT, LTD., MANAGING OWNERS (GULF PACIFIC LINE)

This case being at issue upon complaint and answer on file, and the Commission having on the date hereof made and entered of record a report containing 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.) W. C. PEET, Jr.
Secretary.

UNITED STATES MARITIME COMMISSION

No. 501

S. H. KRESS & Co.

v.

NEDERLANDSCH AMERIKAANSCHE STOOMVAART MAATSCHAPPIJ "HOLLAND-AMERIKA LIJN" AND PACIFIC-ATLANTIC STEAMSHIP COMPANY "QUAKER LINE"

Submitted May 2, 1939. Decided June 30, 1939

Combination rates on school slates and Christmas tree ornaments from Rotterdam, Holland, to Pacific coast ports via Baltimore, Md., not shown to be unlawful. Complaint dismissed.

A. H. Nelson and *Albert J. Freese* for complainant.
Cornelis de Wilde and *M. G. de Quevedo* for defendants.
Harry S. Brown for Intercoastal Steamship Freight Association.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Complainant filed exceptions to the examiner's proposed report. No reply was filed. The recommendations of the examiner are adopted herein.

By complaint filed September 28, 1938, complainant alleges that the combination local port-to-port rates assessed by defendants on shipments of school slates and Christmas tree ornaments from Rotterdam, Holland, to Pacific coast ports, transshipped at Baltimore, Md., were higher than the through rates via other lines in the trade, and were unjust, unreasonable, and unduly prejudicial and discriminatory. It is further alleged that the failure to have through rates was also unlawful. Reparation as well as lawful rates for the future are requested.

Complainant instructed its broker of long standing at Rotterdam to forward the merchandise by the first available vessel for the holiday trade. A special order of the Secretary of the Treasury

increasing the import duty, to become effective at about the time the goods should arrive, also made speed desirable. In accordance with local bills of lading issued at Rotterdam on June 17, 1936, defendant Holland America Line transported the shipments to Baltimore at port-to-port rates, the bills of lading providing that the merchandise was "To Be Reforwarded From Philadelphia or Baltimore by the Quaker Line." There being no through rates on such traffic, defendant Quaker Line issued local bills of lading and performed the transportation from Baltimore to the Pacific coast at its regularly established port-to-port rates. There is no indication that defendants failed to comply with complainant's routing instructions.

Holland America Line has a weekly service from Rotterdam to New York, a fortnightly service to Boston, Philadelphia, Baltimore, Hampton Roads, and the Gulf, and a direct service every ten days to the Pacific coast. The direct service produces greater revenue than the transshipment service. Sometimes better time is made via New York than via the direct service. This defendant's current intercoastal agreements, as did those in effect during the period referred to in the complaint, restrict transshipment to New York. About 90 percent of intercoastal transshipment business was handled at New York when the involved shipments moved, and about 75 percent is handled there at the present time.

On behalf of Quaker Line it was testified that transshipment agreements are not attractive because generally they do not yield a satisfactory division of revenue, the trend being to cancel existing ones and to refrain from entering new ones. There is no evidence that Quaker Line has refused Holland America Line's request to participate in a through rate from Rotterdam to Pacific coast ports via Baltimore, or that Holland America Line has ever made such a request. Under the circumstances, therefore, no valid complaint exists against Quaker Line. Upon this record we find that the assailed rates of Holland America Line are not unduly prejudicial or discriminatory in violation of section 16 or section 17 of the Shipping Act, 1916, and that the port-to-port rates of Quaker Line are not unreasonable in violation of section 18 of the Act. The complaint will be dismissed.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 30th day of June A. D. 1939.

No. 501

S. H. KRESS & Co.

v.

NEDERLANDSCH AMERIKAANSCHE STOOMVAART MAATSCHAPPIJ "HOLLAND-AMERIKA LIJN" AND PACIFIC-ATLANTIC STEAMSHIP COMPANY "QUAKER LINE"

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its findings of fact, 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.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 515

SPRAGUE STEAMSHIP AGENCY, INC.

v.

A/S IVARANS REDERI ET AL.

Submitted April 14, 1939. Decided July 11, 1939

Defendants' conference agreement and contracts with shippers entered into pursuant thereto found to result in unjust discrimination and to be unfair as between complainant and defendants, and to subject complainant to undue and unreasonable prejudice and disadvantage.

If defendants do not admit complainant to full and equal membership in the conferences, consideration will be given to the question of issuing an order disapproving the conference agreement.

If defendants do not submit for approval modification of conference agreement limiting decisions thereunder to members whose services have not been suspended or discontinued in the trades covered by the agreement, consideration will be given to issuance of an order modifying agreement in this respect.

Ira L. Ewers and *Parker McCollester* for complainant.

Roger Siddall, *W. P. Lage*, and *George F. Foley* for defendants jointly.

Melville J. France and *A. Francis Chrystal* for Moore-McCormack Lines, Inc.

George H. Terriberry and *N. O. Pedrick* for defendant Mississippi Shipping Company, Inc.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Complainant is a Maine corporation engaged in the transportation of property in foreign commerce of the United States. Defendants[1]

[1] A/S Ivarans Rederi, The Booth Steamship Company, Ltd., *Houston* Line (London) Ltd., International Freighting Corporation, Inc., Kawasaki Kisen Kaisha, Ltd. ("K" Line), Lamport & Holt Line, Ltd., *Linea* Sud Americana, Inc., Lloyd Brasileiro, Mississippi Shipping Company, Inc., Moore-McCormack Lines, Inc., Munson Line, Inc., Norddeutscher Lloyd (North German Lloyd), Norton, Lilly & Company (Norton Line), Prince Line, Ltd., Rederi Aktiebolaget Disa (Brodin Line), Wilh. Wilhelmsen (Wilhelmsen Steamship Line), Yamashita Kisen Kabushiki Kaisha (Yamashita Line).

are common carriers by water in foreign commerce and are members of the United States/River Plate and Brazil Conferences.

Complainant alleges that defendants' refusal to admit it to membership in those conferences creates an undue and unreasonable preference or advantage to certain shippers, subjects complainant to undue and unreasonable prejudice and disadvantage, and is in retaliation against shippers for patronizing other carriers, in violation of sections 14, 15, 16, 17, and 18 of the Shipping Act, 1916, as amended. We are asked to require defendants to admit complainant to membership in the conferences or, in the event of their failure to do so, to withdraw the approval heretofore given the agreement of the conferences under section 15 of the Shipping Act, 1916. Complainant offered no evidence of violations of sections 14, 17, and 18 of the statute, and those allegations will not be further considered.

The agreement of the conferences in question was approved by the United States Shipping Board August 21, 1923. Its purpose is "to promote commerce (except shipments of refrigerated cargo) from ports of the United States of America and Canada (except Pacific coast ports of the United States and Canada), to ports in Uruguay, Argentina, and Paraguay and to ports in Brazil, for the common good of shippers and carriers, by providing just and economic cooperation between steamship lines operating in the respective trades." Article 24 provides that "any person, firm, or corporation may hereafter become a party to this agreement by the consent of two-thirds (⅔) of the members of the conference concerned by affixing his or its signature hereto, and by depositing the sum of twenty thousand ($20,000) dollars, in bonds or in cash, with the designated bank or trust company, and by complying with the provisions of article 9 hereof." Article 9 provides in detail for the posting of the trust deposit.

From 1927 until October 1938, C. H. Sprague & Son, Inc., operated the American Republics Line, for the United States Shipping Board and its successors, in the trade between North and South Atlantic coast ports of the United States and ports in Brazil, Uruguay, and Argentina. In connection with these operations C. H. Sprague & Son, Inc., represented the American Republics Line in the United States/River Plate and Brazil Conferences. Since the termination of that agency relationship by virtue of the vessels being chartered to Mooremack South American Line, Inc., for operation in the American Republics Line, complainant Sprague Steamship Agency, Inc., has operated a general cargo service with semimonthly sailings from ports in Brazil, Uruguay, and Argentina to ports in the Baltimore/Boston range with chartered Norwegian and British flag vessels. Its first vessel sailed from Buenos Aires November 9, 1938. It is testi-

fied that Sprague Steamship Agency, Inc., is the successor to the business formerly carried on by C. H. Sprague & Son, Inc.; the stock of the agency, except for qualifying shares of the directors, is owned by C. H. Sprague & Son, Inc., and the personnel is substantially the same.

Complainant applied for admission to the conferences under date of October 5, 1938, agreeing to abide by all the rules and regulations thereof. Subsequently, it informed the conferences in detail of its corporate organization; that its proposed service was to be maintained by it for its own account with chartered general cargo vessels; the specific ports between which service was to be operated, and the frequency of sailings. The application was denied at a meeting of the conferences on November 28, 1938, "on the grounds that the trade is adequately served at present and any additional tonnage would tend to demoralize the situation, that the members of the conferences have more than adequate tonnage available to meet the needs of the trade, and that the granting of your application would be contrary to the best interests of the trade in many respects." At complainant's request the application was reconsidered at a meeting held December 21, 1938, and was denied for the reasons given before and for the additional one "that the method by which you propose to acquire vessels for use in the trade does not give promise of stability of service."

The complaint alleges and the answers admit that defendants maintain a system of exclusive patronage contracts requiring shippers to confine all their shipments to the conference lines and providing substantial penalties if shippers break the contracts by patronizing nonconference lines. Contracts have been entered into with shippers covering such a percentage of cargo that it is impossible for any steamship line not a member of the conference to engage in the trade without reducing rates to such a point as ultimately might lead to demoralization of the rate structure. Complainant intends to operate a southbound service but failure to be admitted to the conferences prevents it from obtaining southbound cargo except at very low rates, because of the contract rate system. Thus far complainant has been unwilling to disturb the rate level, although feeling assured of patronage when southbound operations begin.

Concerning its operation with chartered vessels, ascribed by the conferences as an obstacle to membership, complainant showed that prior to an undisclosed date in 1927, the American Republics Line was operated by Moore & McCormack Co., Inc., for account of the United States Shipping Board. When that agency was terminated, Moore & McCormack Co., Inc., continued in the trade with Norwegian flag steamers, applied for membership in and was admitted

to the conferences now debarring complainant. Undisputed testimony of complainant is that three members of the conferences, viz, International Freighting Corporation, Inc., Linea Sud Americana, Inc., and Norton, Lilly & Company, operate with chartered vessels and that defendants Booth Steamship Company, Ltd., Lamport & Holt Line, Ltd., and Moore-McCormack Lines, Inc., operate chartered vessels in conjunction with owned tonnage.

C. H. Sprague & Son, Inc., or its affiliates have been continuously in the South American trade since 1927. The established reputation, complainant asserts, is not that of an agent of the Maritime Commission but is that of the Sprague interests as such. Notwithstanding the Maritime Commission continued to have a service in the trade, complainant has maintained semimonthly sailings north-bound charging conference rates where applicable and states that it had full cargo for every sailing. Further showing is made that complainant's Buenos Aires office acts as agent for the Mississippi Shipping Company, one of the defendants, and for the Ford Motor Company. Defendants submitted charts "to show the general situation in this trade with relation to traffic." They afford no assistance, however, in determining whether defendants' actions in denying membership to complainant were lawful or unlawful. Seven member lines replied to a questionnaire of the conference with respect to the used and unused space in their ships and exhibits designed to show that the trade is overtonnaged were prepared from the answers. The parties submitting the figures were not available for examination at the hearing, the statements admittedly did not present a correct picture of the entire trade insofar as the conferences were concerned, and as counsel was not prepared to name the lines furnishing the figures, the exhibits were not received in evidence. There was no offer of any other proof in support of the conferences' denials of complainant's application on the ground that additional tonnage would tend to demoralize the situation; none that the conference members had more than adequate tonnage available to meet the needs of the trades; none that granting the application would be contrary to the best interests of the trade in many respects; and none that complainant's method of acquiring vessels did not give promise of stability of service.

The chairman of the conferences testified that after service of the formal complaint, the members again voted on the application of complainant. At that time, March 3, 1939, the affirmative vote of 12 of the 17 members was necessary for admission. After ten lines voted to accept and five to deny the application, the question was put to two inactive lines, i. e., lines not then maintaining sailings in the trade. One voted with the majority and the other withheld its

vote. The final result thus was 11 in favor of admission, 5 opposed with 1 member withholding its vote. The latter, according to the chairman, has not operated any vessels in this trade for approximately seven years.

This case presents a situation in which companies not active nevertheless continue to be regarded as regular carriers in the trades enjoying full and equal membership in the conferences, which complainant is denied. This is patently unjustly discriminatory and unfair as between carriers, particularly when we consider the long period one member has been inactive.

We find on the record in this case that complainant Sprague Steamship Agency, Inc., is entitled to membership in the United States/River Plate & Brazil Conferences on equal terms with each of the defendants. We further find that the failure to admit complainant to conference membership, including participation in shippers' contracts entered into pursuant to said agreement, resulted in the agreement and contracts being unjustly discriminatory and unfair as between complainant and defendants, thus subjecting the agreement to disapproval or modification under section 15 of the Shipping Act, 1916, as amended; and in the complainant being subjected to undue and unreasonable prejudice and disadvantage in violation of section 16. Defendants will be allowed ten days within which to admit complainant to full anl equal membership in the conferences, failing which consideration will be given to the issuance of an order disapproving the conference agreement. Thirty days will be allowed defendants within which to submit for section 15 approval a modification of the conference agreement, limiting decisions thereunder to members whose services have not been suspended or discontinued in the trades covered by the agreement, and if this is not done, consideration will be given to the issuance of an order modifying the conference agreement in this respect.

By the United States Maritime Commission:

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

WASHINGTON, D. C., *July 11, 1939.*

UNITED STATES MARITIME COMMISSION

No. 517

IN THE MATTER OF APPLICATION OF GUSTAF B. THORDEN FOR MEMBERSHIP IN THE NORTH ATLANTIC BALTIC FREIGHT CONFERENCE

Submitted May 1, 1939. Decided July 11, 1939.

Thorden Lines not shown to be eligible for equal membership in the North Atlantic Baltic Freight Conference, and disapproval of conference agreement not justified. Proceeding discontinued.

Harold S. Deming and *L. N. Stockard* for Gustaf B. Thorden.

James Sinclair, *Roger Siddall*, *Albert F. Chrystal*, and *W. A. Salzmann* for respondents.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This is a proceeding instituted by the Commission on its own motion concerning an application of Gustaf B. Thorden, Managing Owner, Thorden Lines (Finnish North American Line), for membership in the North Atlantic Baltic Freight Conference, which is composed of respondents.[1]

According to the conference agreement (No. 147), approved under section 15 of the Shipping Act, 1916, the conference embraces the trade "from North Atlantic ports of the United States and Canada, either direct or via transshipment, to all ports in Danzig Free State,

[1] Aktiebolaget Svenska Amerika Linien (Swedish American Line), Aktiebolaget Svenska Amerika Mexiko Linien (Swedish America Mexico Line), Black Diamond Lines, Inc. (Black Diamond Lines), Arnold Bernstein Schiffahrtsgesellschaft m. b. H. (Arnold Bernstein Line), Compagnie Maritime Belge (Lloyd Royal) S. A., Den Norske Amerikalinje A/S, Oslo (Norwegian America Line), Det Forenede Dampskibs-Selskab A/S (The United Steamship Company, Ltd.) (Scandinavian American Line), Ellerman's Wilson Line, Limited (Ellerman's Wilson Line), Gdynia America Shipping Lines, Ltd. (Gdynia-America Line), Hamburg-Amerikanische Packetfahrt Actien Gesellschaft (Hamburg-American Line), Norddeutscher Lloyd (North German Lloyd), N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn" (Holland-America Line), Osaka Syosen Kaisya, Reederiaktiebolaget Transatlantic (Transatlantic Steamship Company), Red Star Linie G. m. b. H. (Red Star Line), United States Lines Company (United States Lines), United States of America—United States Maritime Commission (American Hampton Roads—Yankee Line), Moore-McCormack Lines, Inc. (American Scantic Line).

Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway, Poland, Sweden, and to Continental and Russian ports served via the Baltic." Among other things, the agreement provides that "All owners operating vessels regularly in this trade, also agents of foreign owners having no establishment in the United States or Canada, who have full authority to act for the foreign owners, may be admitted to membership in the Conference upon agreeing to conform to this agreement and such rules and regulations as may be adopted by the Conference: *Provided*, That no common carrier shall he denied admission except for just and reasonable cause."

On December 12, 1938, Gustaf B. Thorden, Managing Owner, Thorden Lines, made application for membership in the conference. He informed the conference that it was the intention of the Thorden Lines to operate a regular service between North Atlantic ports and Scandinavian and Baltic ports; that their schedule contemplated loading at Baltimore and New York for Gothenburg, Copenhagen, Stockholm, and Helsingfors, with sailings every three weeks, and that they reserved the right to call at other North Atlantic ports as cargo might offer, to discharge at other Scandinavian and Baltic ports served directly by the conference lines, and to increase the frequency of their service. The conference agreed to approve the application if revised to provide that the Scandinavian and Baltic service of the Thorden Lines would be confined to Finland, with the understanding that Thorden Lines would be privileged until October 31, 1939, to call at Swedish ports in order to carry out the terms of a certain contract, which will be discussed later. The conference agreement does not undertake to allot ports. On behalf of Thorden Lines it was contended that the conditions under which the conference agreed to approve their application were unfair and discriminatory. Thorden Lines request disapproval of the conference agreement unless they are admitted to the conference on equal terms with each of the conference members.

Thorden Lines have been operated as a common carrier in the North Atlantic service since November 1938 with sailings every three or four weeks to Gothenburg, Stockholm, and Helsingfors, occasional calls at Malmo, and transshipments to Copenhagen. At the time of hearing two motor vessels were employed in the service, the *Carolina Thorden* and the *Mathilda Thorden*. The *Astrid Thorden* was expected to be added in the near future. Each of these vessels is owned by a separate Finnish corporation, and the respective corporations are understood to be controlled by Gustaf B. Thorden, who is the managing operator of the ships. The names of the corporations are not disclosed of record. "Thorden Lines" is apparently a trade name for the group. It is testified that they desire admission to the

conference because the conference contracts exclude them from a considerable amount of business.

Eleven of the 18 members of the conference do not operate direct services to ports within the scope of the conference agreement but transship to local on-carriers at Continental European or United Kingdom ports. Of the seven members operating direct, or primary, services in the trade covered by the agreement, one operates to ports not served directly or indirectly by Thorden Lines and does not oppose their admission, four operate to ports of direct call of the Thorden Lines and unanimously oppose admission, while two call at Copenhagen, to which port Thorden transships cargo. One of the latter two carriers opposes the application, and the other does not. Thus, it will be seen that the four carriers calling at ports of direct call of Thorden Lines and one carrier calling at Copenhagen oppose the application, while of the thirteen conference members not opposed to the application, twelve do not call at any port served by Thorden Lines, either directly or by transshipment. The carrier operating to Copenhagen which opposes admission, and which has been operating for a great many years to that port, indicated it would not object to Thorden Lines' admission to the conference, provided additional tonnage is not placed on that berth. It is stated on its behalf that cargoes have become less and less attractive, that they are now thinly distributed, and that it has been forced to withdraw some of the ships previously employed in the trade. As stated above, however, there is no provision in the conference agreement restricting any member's service, and to impose such a restriction on Thorden Lines alone, if they were admitted to membership, would be unwarranted. Others of the five lines opposing admission contend that Thorden Lines, by entering into contracts with shippers, have created a situation that cannot be remedied by granting the application for conference membership.

On June 20, 1938, a contract was made between Philipsons Automobil Aktiebolag and Adolf Palmquist Aktiebolag, both of Stockholm, and hereinafter called Philipsons and Palmquist, respectively, whereby Philipsons "except for what has already been chartered, hereby undertakes to send all unboxed and boxed automobiles and trucks as well as boxed automobile material, consigned to Messrs. Philipsons Automobil A. B. Stockholm, A. B. Svenska Bilfabriken, Stockholm, and Lindblads Motoraktiebolag, Stockholm, or any other concern owned or controlled by the Merchant (Philipsons), to the extent as hereinafter set forth during 1938 and 1939 via U. S. North Atlantic ports/New York-Baltimore range/and Canada/St. John-Montreal range/to Sweden/Gothenburg-Stockholm range/by vessels put at the Merchant's service by the carrier (Palmquist). Shipments

moving direct from Lake ports on direct steamers are not included under this agreement." Palmquist undertakes to put at Philipsons' service first-class vessels of approximately 300 unboxed-automobiles capacity about once a month for full cargoes for shipments under and on deck; to furnish additional sailings during the anticipated "rush season" of January–April, if required, so as to handle an average of about 500 units per month during the period; and, should more tonnage be required, to make the best endeavors to supply it within a certain time, after which Philipsons shall be at liberty to make its own disposal as far as concerns the shipment involved. A form of contract constituting part of an exhibit introduced at the hearing did not contain the rates on the commodities mentioned; nor did it disclose the period of the contract. Rates averred to be charged under the contract were set forth in another part of the exhibit, which stated that they would expire October 31, 1939. The contract period through 1939 is shown in a copy of the contract which, pursuant to agreement, was furnished for the record after the hearing. The rates named therein are as follows: Unboxed automobiles, $65 per unit; unboxed truck chassis, $1.50 per 100 pounds, minimum $45 per unit; boxed automobiles and trucks and knocked-down automobile material in boxes or crates, 10 cents per cubic foot. In submitting the copy of contract, it was explained that, following the execution of the contract, Palmquist became agent for the Thorden Lines and guaranteed them the shipments made thereunder, Thorden Lines' rates apparently to be the same as those stated in the contract. It also was stated that, in addition to the commodities and rates mentioned in the contract, the following had been included: Tires, 10 cents per cubic foot; boxed spare parts, 15 cents per cubic foot; accessories, motorcycles, and marine engines, 25 cents per cubic foot.

While the Philipsons' contract was referred to at the hearing as Thorden Lines' one and only special contract, it appears from a copy of a letter subsequently submitted for inclusion in the record on Thorden Lines' behalf that they have contracted to transport for Northern Auto Import A/B and Diamond Auto A/B, both of Oslo, unboxed trucks at $2 per 100 pounds and unboxed automobiles at $67.50 per unit from New York and Baltimore to Gothenburg (ultimate destination Bergen/Oslo), the contract to expire February 15, 1940.

Minutes of conference meetings, furnished by consent for the record after the hearing, disclose that in order to enable its members to meet the competition of Thorden Lines, the conference opened the rates to Finland, Sweden, and Denmark, effective April 19, 1939, on commodities not in the conference contract list, through October 31,

1939, except where a longer period is specified in conference tariffs. The rate on automobiles to Sweden, Finland, and Denmark was likewise made open through April 19, 1940. Upon this action being taken, three members who previously had submitted their resignations withdrew them with the understanding that the Thorden Lines would not be admitted to the conference.

By the terms of the conference agreement it is provided that the members of the conference will charge and collect all freight and other charges for the transportation of merchandise carried by any vessels owned, chartered, or operated by them or for which they may act as agents between conference ports on actual gross weight or measurement of the cargo "strictly in accordance with the rates, regulations, and charges which may be adopted by the conference." By their assumption of the Philipsons' contract and the making of the additional contracts referred to herein, Thorden Lines have placed themselves in the position of being unable to conform fully and unreservedly to the agreement of the conference to which they seek admission. This is borne out by correspondence admitted to the record subsequent to the hearing in which Thorden Lines informed the conference that they had obtained the consent of Philipsons to increase the rate on tires from 10 cents to 25 cents per cubic foot, Philipsons' consent being conditioned upon Thorden Lines being admitted to the conference and the conference continuing its present membership intact.

The record in this case discloses a situation relating to Thorden Lines' dealings with the conference and with this Commission which merits condemnation. Prior to the hearing, the president of Thorden Lines' agency in this country filed with the Commission a sworn statement, in which he said that their contract rate on unboxed automobiles was $67.50 per unit, and at the hearing he testified "I filed with the Maritime Commission the rates that were given to me by Mr. Thorden when he was here, as being the correct rates against that contract, and the rates that we used in manifesting the Philipson cargo, and which have been confirmed since as being correct." When a photostat of the Philipsons' contract was received for the record after hearing, it showed that the rate was $65 per unit, and that the contract period covered the entire year 1939. This witness and Mr. Thorden had advised the conference that "This contract cannot be terminated prior to November 1st, 1939." Furthermore, this witness read into the record an extract from a cablegram from Thorden Lines, as to which he testified "Now I take it from that telegram that, aside from what you might call current forward commitments, there have been no long-term contracts." He testified further that "we have been working on the basis of quoting rates,

say, thirty, forty, forty-five days ahead." Yet, a copy of a letter which he submitted for inclusion in the record after the hearing discloses the existence of a contract with Northern Auto Import A/B which does not expire until February 15, 1940.

The information furnished after the hearing also disclosed that other items, such as tires, engines, and motorcycles, were undoubtedly covered by the Philipsons' contract and their rates fixed by supplementary agreement.

These facts were known to be material and important in a determination by the conference lines of the applicant's request for admission to the conference and in a determination of the issues in this proceeding. The withholding of the true facts and the presentation of inaccurate statements to the conference and to the Commission was inexcusable.

We find, in view of the contract situation in which Thorden Lines are involved, that they are not shown to be eligible for equal membership in the conference and that the record does not justify disapproval of the conference agreement. An order discontinuing the proceeding will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 11th day of July A. D. 1939

No. 517

IN THE MATTER OF APPLICATION OF GUSTAF B. THORDEN FOR MEMBERSHIP IN THE NORTH ATLANTIC BALTIC FREIGHT CONFERENCE

This proceeding, instituted by the Commission on its own motion, having been duly heard, 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.) W. C. PEET, Jr.,
Secretary.

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ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 13th day of July A. D. 1939.

No. 516

NORTH CAROLINA LINE—RATES TO AND FROM CHARLESTON, S. C.

It appearing, That by order entered March 7, 1939, the Commission entered upon a hearing concerning the lawfulness of rates, charges, rules, regulations, and practices published in schedules described in said order, and suspended the operation of said schedules until July 9, 1939;

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

It is ordered, That Tariff U. S. M. C. No. 3 be amended, effective on or before August 20, 1939, in compliance with our findings upon notice to this Commission and the general public by not less than one day's filing and posting in the manner prescribed in section 2 of the Intercoastal Shipping Act, 1933;

It is further ordered, That in respect to Tariffs U. S. M. C. Nos. 5 and 6 the order heretofore entered suspending the operation thereof be, and it is hereby, vacated and set aside as of this date, and that this proceeding be discontinued.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, JR.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 516

North Carolina Line—Rates to and From Charleston, S. C.

Submitted May 12, 1939. Decided July 13, 1939

Proposed rates between Charleston, S. C., and Baltimore, Md., Camden, N. J., and Chester and Philadelphia, Pa., found not unlawful.

Tariff provisions in respect to pick-up and delivery service, loading and unloading of cars, and split delivery at intermediate ports of carload shipments found in violation of section 16 of the Shipping Act, 1916. Distribution service under Item 50-A in violation of section 18.

Ernest L. Wilkinson and *Edwin C. Blanchard*, for respondent.

Robert E. Quirk and *E. B. Wright* for protestant.

W. P. Levis for Clyde-Mallory Lines; *Alexander Gawlis* for Merchants and Miners Transportation Company; *L. H. Hogshire* for Norfolk-Baltimore and Carolina Line; and *E. H. Jahnz* for South Atlantic Inland Waterway Association, interveners.

Report of the Commission

By the Commission:

This case involves local and joint, and proportional tariffs[1] and terminal rules, regulations, practices, and charges[2] applicable on traffic between Charleston, S. C., and Baltimore, Md., Camden, N. J., and Chester and Philadelphia, Pa. (via Baltimore), filed by respondent effective March 9, 1939, the operation of which was suspended until July 9, 1939, pending investigation of their lawfulness, upon protest of The Bull Steamship Line. Clyde-Mallory Lines, Merchants and Miners Transportation Co., Norfolk-Baltimore and Carolina Line, and South Atlantic Inland Waterway Association intervened, the latter on behalf of respondent.

Since March 1932 respondent has operated a common-carrier service between Wilmington, N. C., and the northern points men-

[1] U. S. M. C. Nos. 5 and 6.

[2] Supplement 3 to U. S. M. C. No. 3.

tioned. Two diesel vessels, *Stateport*[3] and *Lillian Anne*,[4] the latter under charter, are operated on Chesapeake Bay north of Norfolk, Va. Operation between Norfolk and Wilmington is on the Intracoastal Canal. Each vessel makes one round trip per week. Respondent proposes to extend its service, via the canal, from Wilmington to Charleston, also serving intermediate points en route. At Wilmington cargo will be transshipped to and from the M. S. *Seminole*[5] which vessel, also under charter, will make one round trip each week. Respondent states time in transit between Baltimore and Charleston will be four days.

Respondent, on brief, resubmits a motion, denied by the examiner at the hearing, to vacate our order of suspension, contending that under section 1 of the Shipping Act, 1916, we have no jurisdiction over common carriers operating on Chesapeake Bay. In *American Peanut Corp.* v. *Merchants and Miners Transp. Co., et al.*, 1 U. S. S. B. 90, the United States Shipping Board overruled a similar contention. We do not regard additional authorities which respondent submits sufficiently convincing to warrant a contrary decision. Respondent also contends that in a proceeding involving "initial" rates for application in its proposed "new" service the burden of proof is upon protestants. Our decision on the merits renders consideration of the latter contention unnecessary.

Bull Line operates the only competitive all-water service between Baltimore and Charleston via the Chesapeake Bay-Ocean route. Its sailings southbound are weekly, with transit time from two to three days. Time in transit northbound, except during four or five months, is nine or ten days, cargo being loaded at Charleston on south-bound vessels which call at other South Atlantic ports before discharging at Baltimore. Norfolk-Baltimore and Carolina Line operates on Chesapeake Bay and the Intracoastal Canal between Baltimore and Wilmington at the same rates and with vessels similar to those of respondent and maintains joint through rates with Bull Line on traffic between Norfolk and Charleston, via Baltimore. It also competes between Baltimore and Norfolk with the Baltimore Steam Packet Co. and Chesapeake Steamship Co. at rates approximately 10 percent lower than rates maintained by those lines. Such differential rate is claimed to be necessary to offset the competition of combination passenger and cargo vessels, but in this proceeding Norfolk-Baltimore and Carolina Line supports the position of protestant and other interveners that respondent's rates between the ports involved should be no lower than those of ocean carriers.

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[3] 143.4-ft. length, 28-ft. beam; cargo capacity from 425 to 450 tons on an 11-foot draft.
[4] 141.5-ft. length, 27.5-ft. beam; cargo capacity of 350 tons on an 11-foot draft.
[5] 105-ft. length, 27.1-ft. beam; cargo capacity of 250 tons on an 8-foot draft.

A comparison of local class rates shows that, except sixth class, which is 1 cent higher, respondent's rates from and to Charleston average 4.1 percent below those of Bull. Generally, local commodity carload rates reflect differentials of 4.1 to 6 percent under Bull. However, on iron and steel articles, south-bound canned goods in shipments of 60,000 pounds, and petroleum products in 50,000-pound shipments, the differentials are 11.7, 17.6, and 20 percent, respectively.

Bull Line maintains joint through rates with rail carriers on traffic from and to Trunk Line territory. On petroleum products from St. Mary's, W. Va., iron and steel articles, and boots and shoes, these rates range from 4.9 to 20 percent under combinations from and to the same origins produced by respondent's proportional rates. Rail lines will not enter into joint through rates with respondent. Respondent's proportional rates on canned goods from Illinois and Wisconsin, and petroleum products and roofing from New Jersey and Pennsylvania produce combinations from 3.8 to 16.2 percent under rates via Bull. Also, from points within approximately 50 miles of Baltimore, combinations via respondent's line will be lower than its local class rates from Baltimore. Respondent stipulates that it will publish a tariff rule providing that in all such instances local class rates will apply. But even with this adjustment, on first class traffic there will be an 8.3 percent differential under Bull.

It is expected that canned goods from Baltimore and nearby Maryland points, petroleum products, roofing, and iron and steel articles will move southbound in volume. A merchandise broker at Charleston stated he could handle 100,000 pound shipments of canned goods. Respondent's local rates on canned goods and petroleum products based on minima higher than is published by Bull; also its proportional rates on some through traffic, may attract shipments. Whatever advantages may accrue to respondent probably will be offset somewhat by the lower rates of Bull on through traffic. Based on experience with its Wilmington service, respondent expects that only 10 percent of the total traffic handled between Baltimore and Charleston will move at proportional rates.

The distance from Baltimore to Wilmington is 426 miles and to Charleston 589 miles. Local class rates proposed for the Charleston service range from 6 to 10 percent higher than are charged between Baltimore and Wilmington. Local carload commodity rates, except on sugar, range from 4.4 to 50 percent higher. Proportional class rates range from 11 to 23 percent higher than those charged on Wilmington traffic. Proportional commodity rates range from 13.6 to 55 percent higher.

During 1938 respondent transported 43,487 tons of cargo between Baltimore and Wilmington. Gross revenue thereon was $180,639.36,

or $4.15 per ton. Total expenses, including claim adjustments, were $168,626.36, or $3.83 per ton. Net profit from such operations, based on facts of record, was approximately 18 percent on the company's depreciated capital investment. Respondent estimates that 21,060 tons of cargo will be transported in the extended service and that there will be an additional expense of $56,140 exclusive of pick-up and delivery costs, stevedoring at Baltimore, and transshipment at Wilmington. Based on costs incurred in 1938 in the Baltimore-Wilmington service in respect to the items excluded, total additional expense will be approximately $78,737 or $3.72 per ton. The evidence indicates that there should be little, if any, increase in vessel cost north of Wilmington. Respondent estimates that proposed rates will produce an average gross revenue of $5 per ton. Even anticipating reductions in respondent's estimate of available traffic, nothing of record indicates that net revenue resulting from the extended service will be materially lower than that earned in 1938. Consequently we do not find on this record that the proposed rates are unremunerative.

Protestant and supporting interveners insist that respondent should observe rates established by ocean carriers. The lawfulness of the rate level observed by such carriers has not been determined. Bull Line was not prepared to state its average gross revenue or per ton cost and its general statements regarding its operations are not of great evidenciary value. Respondent emphasizes its lower cost for fuel, wages for vessel crews and stevedores, cargo handling, and terminal operations.

Shippers and other interests at Charleston register dissatisfaction with Bull's present north-bound service. They state that woodpulp and chemicals manufactured locally and pulpboard and paper from Georgetown, not now transported by Bull, are available for northern destinations. Floor covering from Kearny, N. J., now moving south by truck may also be routed via respondent's service. Iron and steel articles, with a lower level of rates, may also move from Bethlehem's plant at Sparrows Point. There are other factors which indicate that Bull may still secure substantial cargo. Respondent's transshipment service is an experiment with which shippers are unfamiliar. Possibilities of greater damage because of additional handling may render the service unsuitable for various types of cargo. The estimated four-day service on one sailing from Baltimore may be realized, dependent upon the connection at Wilmington. But with only one sailing each week beyond Wilmington, cargo transported on the next sailing from Baltimore may not reach its destination until the following week. Transit time north-bound on Charleston cargo may also be affected by the availability of space beyond Wilmington. Protestant is not particularly concerned with the proposed

north-bound service. North-bound cargo transported by it has averaged approximately 50 tons each week. South-bound, its cargo has averaged 450 tons per trip. It claims that if proposed rates become applicable south-bound there will be a decrease in its traffic; and that, notwithstanding alleged unsatisfactory operating results from present rates, it will be compelled to meet the competition by rate reductions or to discontinue Charleston as a port of call. However, our obligation under Title I of the Merchant Marine Act, 1936, in respect to the maintenance of an American merchant marine will not permit disregard of the public interest generally in respect to transportation advantages via inland routes made available by congressional appropriations. With proper safeguards within existing law, economic influences should permit the use of all available transportation routes between all points or ports.

Protestant, also Clyde-Mallory Lines operating to and from New York, and Merchants and Miners Transportation Company maintaining service between Philadelphia and Baltimore on the one hand and Savannah and ports south on the other, join in a plea for disapproval of proposed schedules based solely upon the possible adverse effect upon the existing coastwise rate structure. Developments may warrant rates revisions based on transportation conditions which actually result from the competitive operations, but to condemn rates proposed on mere supposition would be arbitrary and unwarranted.

Respondent proposes to accord pick-up and delivery service [6] within corporate city limits on shipments moving at less-than-carload and any quantity rates where the aggregate freight charges equal or exceed charges computed at 45 cents or more at Baltimore, and 20 cents or more at Charleston. Shipments at rates lower than those mentioned will also be accorded the service upon the payment of additional charges. Pick-up service will be given at Baltimore on less-than-carload shipments originating at warehouses and industries located alongside tracks of designated railroads within switching limits where the rate is 22 cents or more, and on carload shipments charged a rate of 17 cents or more, when destined to similarly designated warehouses and industries within switching limits. When the carrier does not perform the service, an allowance of 5 cents is made only on less-than-carload and any quantity shipments picked up and delivered within corporate limits. The extension of service beyond terminals located at shipside may not be required of common carriers but when voluntarily established in connection with trans-

[6] Item 135 of U. S. M. C. No. 3 restricts pick-up and delivery service at Baltimore to shipments from and to points in North Carolina. Respondent states this is in error, that it should apply to all shipments and that the tariff will be amended accordingly.

portation, it must be on a basis of equality to all. Restrictions based on the amount of the rate and location within Baltimore, failure to accord delivery service on less-than-carload traffic within switching limits, and to make allowances in all instances when the carrier does not perform the service results in inequality and in undue preference and prejudice. Question also arises under section 2 of the Intercoastal Shipping Act, 1933, concerning the lawfulness of single factor rates which include service beyond shipside terminals. Bull Line, however, publishes rates on a similar basis on traffic moving via Jacksonville and Charleston between Baltimore and interior points in 11 States. The record also shows that rail carriers publish single factor rates which include such service. In view of this, we will require at this time only the removal of inequalities of treatment between shippers and classes of traffic herein discussed.

Respondent will also perform harbor pick-up and delivery (so-called lighterage) with its vessels on all carload traffic at Charleston, and at Baltimore when the rate is 17 cents or more. It states such service can be performed at less cost than would accrue in handling traffic through its own terminal, that its vessels are easily moved under their own power from pier to pier at slight additional fuel cost, with less handling, and without use of warehouse space. Bull Line objects because it does not shift its vessels. There are few, if any, carload rates less than 17 cents. No reason, therefore, exists for the rate limitation. Ordinarily carriers apply reasonable quantity restrictions as conditions precedent to the shifting of their vessels.

Respondent will also load and unload rail cars at Charleston without additional charge when it participates in the line-haul rate. When such service is performed by Bull at Charleston, an additional charge applies. Respondent states that its cost when such service is performed is less than would be incurred in the handling of traffic through its warehouse. Shipments may also be delivered to or received from trucks, in which event respondent could not, under its tariff, load or unload. Shippers performing this service themselves pay the same rate as those who do not. Equality of treatment contemplates the same service for the same charge. And when a carrier performs a service in connection with transportation for one shipper without charge and denies it to another, undue preference and prejudice results. At Wilmington when respondent performs carloading or car unloading operations there is an additional charge of 2 cents. No adequate reason appears why a charge should be published for application at Wilmington and not at Charleston.

Under section 30 of U. S. M. C. No. 3 portions of carload shipments from one consignor will be discharged for delivery to a single consignee at intermediate points or ports of call at a charge of $2.75

for each such delivery not exceeding three in addition to the applicable carload rate. In *Associated Jobbers & Mfrs.* v. *American-Hawaiian Steamship Co., et al.*, 1 U. S. S. B. 161, 198, which involved split delivery of carload shipments at various ports at the carload rate, the practice was found unduly preferential and prejudicial as between shippers at different ports, and respondents were ordered to adjust their rates and charges to reflect adequately the substantial additional service and expense as compared with carload shipments delivered solid at one port; and finally an additional charge not less than 10 cents per 100 pounds higher than the carload rate on the entire weight of the shipment was ordered. While respondent herein makes a charge for the extra service, the aggregate thereof is the same whether the portion discharged is 1,000 or 10,000 pounds. Respondent's practice and charge in this instance also are unlawful since the extra cost is not equitably applied to all receivers of less-than-carload shipments at one port. The removal of such unlawfulness will be required.

Under Item 45 of the same tariff, 10 days' free time to effect delivery to consignee at Charleston is allowed, with storage charges thereafter—1 cent per 100 pounds per day or fraction thereof on less-than-carload shipments and $2 per car per day on carload shipments. Under Item 50–A, however, a distribution service will be accorded on shipments of 30,000 pounds or more at 4.5 cents per 100 pounds, which includes necessary warehousing and storage beginning at 7:00 a. m., next after arrival for any period of time; also handling and clerical service in the keeping of records and making reports. On similar service at Wilmington complete delivery is usually effected within 30 days. The distribution service obviously involves greater cost than warehousing or storage, but on a shipment requiring 10 days' storage, including distribution service, the charge would be less than would be paid for mere storage. This would result in an unjust and unreasonable practice in the handling, storage, or delivery of property under section 18 of the Shipping Act, 1916. It also fosters inequality of treatment prohibited by section 16. In *Intercoastal Segregation Rules*, 1 U. S. M. C. 725, involving warehousing and special-delivery service in connection with canned goods of a character similar to that here contemplated, we said:

> A carrier may not be required to perform extra handling on the pier or extraordinary delivery of one shipment to numerous persons in parcel lots, but it may engage therein upon proper tariff authority and for reasonable compensation.

And we required the publication of a separately established uniform charge for deliveries either during or after free time to one or more than one person in single or parcel lots by designations other than

general shipping mark and number of packages or other unit. If respondent desires to afford such service its tariff should contain somewhat similar provisions. There is some suggestion that the tariff now authorizes delivery of canned goods by brands, makes, sizes, or other description of package without an additional charge, but Item 50–A is now sufficiently broad to require the assessment of a 4.5-cent charge. We are unable to prescribe a reasonable charge on this record.

There are also differences in tariffs of competitive carriers in respect to transfer and handling charges on through traffic, absorption thereof, free time provisions and storage charges which in some instances will increase the spread between rates and charges of competitors, but unless violations of statutory requirements are apparent such differences do not prove unlawfulness.

We find, in respect to Tariff U. S. M. C. No. 3, that—

1. Restrictions on pick-up and delivery service based on the amount of the rate and upon the location of the pick-up or delivery point within a port, failure to accord similar service to all classes of shipments, consignors or consignees thereof, and failure to make allowances on all shipments when pick-up and/or delivery is not performed by the carrier are in violation of section 16 of the Shipping Act, 1916;

2. Loading and unloading cars at Charleston for some shippers without charge and denial of such service to others is in violation of section 16 of the Shipping Act, 1916;

3. Split delivery at intermediate ports of shipments of 30,000 pounds or more at an extra charge of $2.75 for each separate delivery irrespective of the quantity of cargo discharged will be unduly preferential and prejudicial as between receivers of less-than-carload shipments at one port in violation of section 16 of the Shipping Act, 1916; and

4. Respondent's distribution service will result in an unjust and unreasonable practice in violation of section 18 of the Shipping Act, 1916.

No unlawfulness is found on this record concerning tariffs U. S. M. C. Nos. 5 and 6. Necessary amendments therein, in compliance with stipulations of record, and to U. S. M. C. No. 3, in compliance with our findings, may be made on not less than one day's notice to the public and to the Commission by a reference in the tariffs to this decision. An appropriate order will be entered.

UNITED STATES MARITIME COMMISSION

No. 498

SHARP PAPER & SPECIALTY CO., INC.

v.

DOLLAR STEAMSHIP LINES, INC., LTD., ET AL.[1]

Submitted July 10, 1939. Decided July 20, 1939

Rates on paper and paper specialties from Atlantic and Gulf ports to Hawaii not shown to be unlawful. Complaint dismissed.

Leonard R. Hanower for complainant.

Charles S. Belsterling, Thomas F. Lynch, A. E. King, A. A. Alexander, Samuel H. Richter, and *George F. Murphy* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Defendants filed exceptions to the proposed report and oral argument was had. Our conclusions differ from those of the examiner.

Complainant, an exporter of paper and paper specialties, alleges that the rates on those commodities from Atlantic and Gulf ports to Hawaii, published by defendants who are members of Atlantic and Gulf/Hawaii Conference, are higher than those on the same commodities from Pacific coast ports to the same destination; that Atlantic and Gulf shippers are practically shut out of the Hawaiian trade; and that the rates are unreasonable and unduly or unreasonably preferential, prejudicial, and disadvantageous to the commerce of the United States. An allegation that the conference agreement is unjustly discriminatory or unfair as between carriers was withdrawn. Lawful rates for the future are requested.

Complainant seeks to demonstrate the unlawfulness of the assailed rates by comparing them with rates from the Pacific coast to Hawaii. The record affords a comparison of rates on commodities comprising

[1] Isthmian Steamship Company, Lykes Bros.-Ripley Steamship Co., Inc., and United States of America—United States Maritime Commission (American Pioneer Line).

about 65 percent of the paper business. It is shown that the rates from Atlantic and Gulf ports to Hawaii are substantially higher than those from Pacific ports to Hawaii; that the sailing time from New York to Hawaii is approximately 29 days, and from the Pacific coast to Hawaii 9 days; and that Atlantic and Gulf carriers are subject to substantial Panama Canal tolls. It is therefore evident that complainant's primary difficulty in its competition with Pacific coast shippers is due to geographical disadvantages, from which the law affords no relief. *The Paraffine Companies, Inc.* v. *American-Hawaiian Steamship Company et al.*, 1 U. S. M. C. 628, 629. There is no evidence of undue or unreasonable preference, prejudice, or disadvantage on the part of Dollar (American President Lines), which is the only defendant serving Hawaii from Atlantic, Gulf, and Pacific ports.

To show the alleged unreasonableness of the rates, evidence was offered showing that the rates on some of the commodities involved are lower from Atlantic and Gulf ports to Manila, Philippine Islands, than to Hawaii, notwithstanding the fact that the distances from New York to Honolulu and to Manila are approximately 6,700 miles and 11,000 miles, respectively. Defendants point out, however, that the Hawaiian and the Philippine trades are dissimilar in that the former is protected whereas the latter is not, and that in the latter trade there is nonconference competition. It is further contended as a general proposition that rates in the domestic trade are not comparable with those in the foreign trade. This contention is tenable only when circumstances and conditions surrounding the transportation in the respective trades are dissimilar. In the present case there is no showing of similarity of conditions in the Hawaiian and the Philippine trades, hence there is no adequate basis for a comparison of the rates in those trades.

Upon this record we find that the assailed rates are not shown to be unreasonable or unduly preferential or prejudicial.

An order will be issued dismissing the complaint.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 20th day of July A. D. 1939.

No. 498

SHARP PAPER & SPECIALTY CO., INC.

v.

DOLLAR STEAMSHIP LINES, INC., LTD., ET AL.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the 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.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 526

KERR STEAMSHIP COMPANY, INC.

v.

ISTHMIAN STEAMSHIP COMPANY ET AL.

Submitted June 2, 1939. Decided July 25, 1939

Issues rendered moot by dissolution of U. S. Atlantic and Gulf/India and Ceylon Conference. Complaint dismissed.

Herman Goldman, *Elkan Turk*, and *Leo E. Wolf* for complainant.
Roger Siddall and *W. P. Lage* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Complainant alleged that defendants'[1] refusal to admit it to membership in the U. S. Atlantic and Gulf/India and Ceylon Conference and the practices of conference members in connection with an exclusive patronage contract rate system, created undue and unreasonable preference and advantage to shippers who patronized defendants exclusively and subjected complainant to undue and unreasonable prejudice and disadvantage, were unjustly discriminatory and unfair as between defendants and complainant and as between shippers and exporters from the United States, and operated to the detriment of the commerce of the United States, all in violation of sections 14, 15, 16, and 17 of the Shipping Act, 1916. Complainant prayed for an order disapproving the conference agreement and the exclusive patronage contract rate system and practices thereunder as being in violation of the Shipping Act, 1916, unless within a reasonable time fixed by the Commission defendants admitted complainant to full and equal membership in the conference.

[1] Isthmian Steamship Company (Isthmian Line), Ellerman & Bucknall Steamship Co., Ltd. (American & Indian Line) and United States of America acting by and through United States Maritime Commission (American Pioneer Line).

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Defendants were associated in a conference under the terms of United States Maritime Commission Agreement No. 4654 approved December 9, 1935.

At the hearing defendants' counsel stated that a disturbed condition caused by the entry of complainant into the trade had been aggravated by complainant's efforts to join the U. S. Atlantic and Gulf/India and Ceylon Conference. As a result the conference members unanimously concluded that further efforts on their parts to work cooperatively in conference would be futile, and they determined that the conference should be disbanded. Therefore, in accordance with the terms of the conference agreement, each member gave notice to the others on May 31, 1939, that, effective immediately, it would pursue an independent course of action on all rates. On the same date the members entered into an agreement canceling the conference agreement in all respects and submitted such agreement of cancelation to us for filing and approval pursuant to section 15 of the Shipping Act, 1916. The contract rate system employed by the conference was abolished effective June 1, 1939.

The agreement canceling the conference agreement was approved by us on June 30, 1939. Dissolution of the conference and abolition of the contract rate system formerly employed by the conference members afford the alternative relief sought by complainant and the issues in this proceeding are therefore moot. An order will be entered dismissing the complaint.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 25th day of July A. D. 1939.

No. 526

KERR STEAMSHIP COMPANY, INC.

v.

ISTHMIAN STEAMSHIP COMPANY, ET AL.

This case being at issue upon complaint and answer on file, 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 the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, JR.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 184 AND RELATED CASES [1]

J. G. BOSWELL COMPANY ET AL.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

Submitted January 23, 1939. Decided July 27, 1939

Collection of separate charges for handling intercoastal general cargo beyond ship's tackle at Los Angeles Harbor, Long Beach, and San Diego, Calif., found not to have been unreasonable. Reparation denied.

F. W. Turcotte, B. H. Carmichael, H. M. Avey, Charles A. Bland, B. F. Bolling, C. L. Cooper, R. E. Crandall, H. L. Dunigan, Melvin A. Falk, E. J. Forman, Arthur H. Glanz, Gordon A. Goodwin, H. J. Griley, F. B. Hartung, L. R. Keith, H. A. Lincoln, T. A. L. Loretz, G. A. Olson, R. E. Randall, F. J. Rebhan, C. F. Reynolds, Frederick Simpson, R. F. Staib, A. Terkel, L. G. Wilson, J. W. Witherspoon, L. C. Wolfe, Thomas Wood, Jr., Carl W. Bridger, J. I. Houston, A. J. Marks, Charles Shackell, W. E. Aebischer, J. C. Albert, K. L. R. Baird, J. P. Breen, William W. Collin, Jr., Charles E. Cotterill, R. A. Eldridge, J. B. Elkins, W. J. Findlay, J. A. Gerlin, John W. Gilius, R. Hamilton, J. K. Hiltner, A. M. Howland, C. C. Lewis, R. M. Little, W. J. McCauley, Frank G. Moore, V. F. Moran, A. H. Nelson, W. G. Patton, A. D. Phillips, R. B. Phillips, F. L. Pomeroy, Gorden E. Riley, W. H. Shenk, Walter A. Smith, Oscar Swiedler, F. J. Taylert, L. L. Weber, W. H. Welsh, H. E. Wiggin, George W. Witney, N. A. Wright for various complainants and interveners.

H. R. Kelly and *J. L. Adams* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Oral argument on exceptions to the examiner's proposed report was had. Our conclusions differ from those recommended by the examiner.

[1] Dockets Nos. 189–192, incl.; 195–200, incl.; 203–208, incl.; 210–213, incl.; 216–220, incl.; 222–293, incl.; 295–321, incl.; 324–337, incl.; 339–343, incl.; 345, 347–368, incl.; 371–373, incl.; 375–385, incl.; 387–406, incl.; 427.

On February 1, 1933, the United States Shipping Board approved an agreement[1] for the establishment of an assembling and distributing charge upon all intercoastal general cargo loaded into or discharged from vessels owned, operated, represented, or controlled by certain common carriers by water in interstate commerce and other persons subject to the Shipping Act, 1916, at the ports of Los Angeles and Long Beach, Calif., except bulk cargo handled directly between ship and cars placed on the "high line," that is, railroad tracks for cars placed alongside the ship. As a result of this agreement, the following tariff was published on February 10, 1933, to become effective March 10, 1933, by the Los Angeles Steamship Association in which the parties to the agreement held membership:

Los Angeles Steamship Association Terminal Tariff

No. 2–AD

Assembling and Distributing Charge Applying at Los Angeles and Long Beach, Calif., on Intercoastal Commerce

Except on cargo handled direct to or from open railroad car with ship's tackle, on bulk oil moving direct between ship and railroad tank car or pipe line and on bulk grain moving direct from ship to railroad car by gravity or otherwise through hopper built into car door, a charge of 30¢ per ton of 2,000 lbs. will be assessed against cargo for use of terminal facilities, equipment, and labor incident to handling between ship's tackle and pile on dock, including ordinary sorting, piling, and breaking down.

The minimum charge for any single shipment will be once cent (1¢).

This tariff was not filed with the Shipping Board, but on March 6, 1933, the Los Angeles Steamship Association filed with that Board its Terminal Tariff No. X, naming a maximum assembling and distributing charge of 60 cents per ton to apply at Los Angeles and Long Beach on intercoastal commerce to become effective March 10, 1933. Because of defects in this tariff, notably the omission of the names of the carriers by whom or on whose behalf it was filed, the association was notified that its tariff was insufficient to constitute a filing under section 18 of the Shipping Act, 1916, and the tariff regulations of the Board. Thereafter, a tariff naming the same maximum assembling and distributing charge at Los Angeles and Long Beach and complying with the requirements was filed by Agent H. C. Cantelow. This tariff, SB No. 1, effective April 3, 1933, was filed on behalf of all parties to the agreement except Calmar Steamship Corporation, whose separate Maximum Terminal Tariff No. 1, SB No. 5, effective March 24, 1933, had already been filed, naming a maximum assembling and distributing charge of 60 cents per ton at Los Angeles and Long Beach.

[1] Bureau of Regulation and Traffic Agreement No. 2224.

Upon petition of Los Angeles Traffic Managers Conference, an association of freight traffic managers representing industrial and manufacturing concerns of Los Angeles and vicinity, an investigation was instituted by the Shipping Board for the purpose of determining the lawfulness of the 30-cent charge and whether approval of Agreement No. 2224 should be withdrawn. See *Assembling and Distributing Charge*, 1 U. S. S. B. B. 380. In that proceeding, by decision of the Department of Commerce dated May 13, 1935, the assessment of the charge was found to be unjust and unreasonable, to give undue and unreasonable preference and advantage to San Francisco and to shippers and receivers of intercoastal cargo through that port, and to subject Los Angeles and Long Beach and shippers and receivers of intercoastal cargo through those ports to undue and unreasonable prejudice and disadvantage, in violation of sections 18 and 16 of the Shipping Act, 1916. Collection of the charge during certain specified periods in which the carriers' tariffs failed to name such charge was also found to be in violation of section 18 of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933. Approval of Agreement No. 2224 was withdrawn and the charge was ordered canceled. In compliance with the order of the Department of Commerce, the assembling and distributing charge was canceled, effective June 17, 1935.

Prior to publication of the report and order in that case, and thereafter, numerous complaints were filed on behalf of shippers and receivers of intercoastal cargo praying for reparation because of the assessment and collection by defendants[3] of the assembling and distributing charge at Los Angeles Harbor and Long Beach and of handling charges at San Diego, California, alleged to be in violation of section 18 of the Shipping Act, 1916, and of the provisions of the Intercoastal Shipping Act, 1933.

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[3] American-Hawaiian Steamship Company; Argonaut Line, Inc., Argonaut Steamship Line, Inc.; Arrow Line (Sudden & Christenson, Managing Agents); Arrow Line (Sudden & Christenson and Los Angeles Steamship Company); California Steamship Company; Calmar Steamship Corporation; Christenson-Hammond Line (Hammond Shipping Company, Ltd., Managing Agents); Dollar Steamship Lines, Inc., Ltd.; Grace Steamship Co., Inc.; Gulf Pacific Line (Swayne & Hoyt, Ltd., Managing Owners); Gulf Pacific Mail Line, Ldt., Inc.; International Mercantile Marine Co.; Isthmian Steamship Company; Los Angeles Steamship Company; Los Angeles-Long Beach Dispatch Line; Luckenbach Gulf Steamship Company, Inc.; Luckenbach Steamship Company, Inc.; McCormick Steamship Company; Nelson Steamship Company; The Charles Nelson Company; Pacific Coast Direct Line, Inc. (Weyerhaeuser Steamship Company); Pacific-Atlantic Steamship Company (Quaker Line); Pacific Steamship Lines, Ltd. (Admiral Line); American Line Steamship Corporation and Atlantic Transport Company of West Virginia (Panama Pacific Line); Panama Mail Steamship Company (Grace Line); San Diego-San Francisco Steamship Company; Shepard Steamship Company; States Steamship Company (California-Eastern Line); Sudden & Christenson; Weyerhaeuser Steamship Company; Williams Steamship Corporation; Christenson Steamship Company; Oceanic & Oriental Navigation Company; Inter Ocean Steamship Company.

Complainants in Dockets 372 and 392, in addition to assailing the assembling and distributing charge at Los Angeles Harbor and Long Beach, alleged that the assessment and collection by defendants of charges for the use of terminal facilities, equipment, and labor incident to handling between ship's tackle and pile on dock, including ordinary sorting, piling, and breaking down, on intercoastal commerce at the port of San Diego, during the period January 1, 1934, to October 3, 1935, was unjust and unreasonable; that complainants had been subjected to the payment of charges which were without tariff provision or authority; and that the charges were inapplicable and in violation of section 18 of the Shipping Act, 1916, and of section 2 of the Intercoastal Shipping Act, 1933. These handling charges at San Diego were not included in defendants' tariffs of tackle-to-tackle rates for intercoastal transportation filed in compliance with the Intercoastal Shipping Act, 1933, but were provided by "San Diego Steamship Association Terminal Tariff No. 2, Wharfage and Handling Charges at San Diego, California," effective September 1, 1931. This tariff was not filed with the Board or its successor. The San Diego handling charges appear to have been eliminated in October 1935, but the exact date is not disclosed by the record.

Rule 4 of San Diego Steamship Association Terminal Tariff No. 2 provided:

> The within loading rates will be assessed as handling charges between ship's tackle and point of rest on dock in those certain trades where the ships make or require delivery at ship's tackle in accordance with the rates, terms, and conditions of the bills of lading.

Rule 10 of the same tariff provided:

> Handling charges named in column 1 of the Rate Section are for services of loading or unloading cars and handling service in connection with deliveries to or from trucks, barges, or vessels.

Handling charges in this tariff, except on bulk cargo handled to or from open cars, ranged from 40 cents per 2,000 pounds on asphalt in barrels to $1.66 per 2,000 pounds on baskets in packages. On merchandise, N. O. S., the charge was 60 cents per 2,000 pounds. The minimum handling charge for a single shipment was 19 cents. The service covered by the handling charges included in this San Diego tariff, exclusive of any carloading or car unloading, was the same as that performed at Los Angeles Harbor for which the assembling and distributing charge was collected.

Complainants' counsel stated it was "the intent of the complainants in this proceeding to assail only the handling charge for the service in handling, sorting, and segregating between ship's tackle

and pile on dock, and not in any instance where a carloading service was performed." The record indicates that the carloading service at San Diego was negligible.

A number of the complaints alleged that in addition to being unjust and unreasonable, assessment of the assembling and distributing charge at Los Angeles Harbor and Long Beach violated the provisions of section 16 of the Shipping Act, 1916. The record contains no evidence to support this allegation, and there is no proof of damage suffered by complainants because of any alleged undue or unreasonable preference or advantage or of any alleged undue or unreasonable prejudice or disadvantage. Therefore, the allegation of violation of section 16 will not be considered further in this report.

These complaint cases were consolidated; "cases in chief" dealing with the basic facts were presented at Los Angeles and San Diego, and individual complainants testified in support of their respective claims for reparation at hearings in Los Angeles, San Diego, New Orleans, and New York.

The assembling and distributing and handling charges were assessed and collected in addition to the defendants' tackle-to-tackle rates for the service involved in handling general cargo between ship's tackle and place of rest on dock or wharf or between ship's tackle and door of railroad car, including ordinary sorting, piling, and breaking down. Similar charges were collected at Los Angeles in the early days of the intercoastal trade by the terminal operators or by the carriers except when competition forced their removal. It appears that competition forced the withdrawal of the charge by the carriers in 1922 and it was not reestablished as a direct charge until 1933. But the record indicates that during the intervening period the carloading and car unloading charges assessed against cargo moving by rail included a concealed factor of approximately 30 cents a ton to cover the handling service. On or about December 1, 1932, after vigorous protests by the railroads, the carloading and car unloading rates were reduced by the steamship lines approximately 50 percent.

During the periods covered by these complaints, and prior thereto, defendants' intercoastal tariffs provided that the rates named therein applied from and to ship's tackle, and there is no showing that the tackle-to-tackle rates included any compensation for services beyond ship's tackle. When the handling charge was not assessed the cost of performing the service involved in handling the cargo beyond ship's tackle was absorbed by the defendant carriers. After the passage of the Intercoastal Shipping Act, 1933, the practice of absorbing charges for handling shipments between ship's hook and point of rest without proper tariff provision by certain intercoastal carriers

at other Pacific coast ports, was condemned in *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, 435, in following language:

> The failure of respondents to comply with the obligation imposed upon them by section 2 of the Intercoastal Shipping Act, 1933, to publish every charge and absorption of the character mentioned materially affects the integrity of the published rates for transportation.

Most of the wharves at Los Angeles Harbor are owned by the city and operated by the Los Angeles Board of Harbor Commissioners. Reasons given by defendants for establishing the separate handling charge in 1933 were increased charges against the ships for the use of these wharves, increased cost of loading, unloading, and handling cargo, and decreased efficiency of labor performing these services, and the desire to return to proper operating practices. In the period from 1929 to 1933 there was a sharp decline in the volume of intercoastal cargo moving through Los Angeles due primarily to the economic depression. Also the method of transporting cargo between the port and the interior had changed. During the early period cargo moved to and from the port principally by rail, but later there was a substantial drift of cargo from rail to truck, adversely affecting the revenue obtained by defendants from loading and unloading railroad cars. Defendants testified that rather than increase the tackle-to-tackle or line-haul rates, which would have increased the costs to all shippers or consignees regardless of the method by which cargo was received or delivered, the separate charge for handling beyond ship's tackle was applied so that only the cargo receiving the more costly service would bear the cost thereof.

Certain types of cargo such as bulk commodities and heavy lifts were sometimes received and delivered at ship's tackle without assessment of the handling charge, as provided by defendants' tariffs. It is clearly established by the record in these cases that it was physically and economically impracticable to receive and deliver general cargo direct at ship's tackle, and that such practice would have resulted in undue delay and inconvenience, increased risk of injury and damage, and increased cost to all concerned. As a general rule, shippers and receivers of general cargo did not request or desire ship's tackle receipt or delivery and were not in position to have their cargo received or delivered at ship's tackle. It was customary, therefore, to receive and deliver general cargo at place of rest on the wharf or in the transit shed, where it was placed after unloading from or before loading to rail cars or trucks. The rail cars were spotted on the "low-line" tracks on the land side of the wharf. These "low-line" tracks at most of the terminals are depressed below the level of the wharf floor to facilitate the loading and unloading of the cars and the handling of the cargo between car door and

place of rest. The loading and unloading of the rail cars was generally performed by the stevedores employed by the defendant carriers, and a separate charge was assessed against the shippers or consignees for this service. Trucks were usually loaded and unloaded from and to place of rest by the employees of the trucking companies.

The handling service for which the charges complained of were assessed was performed by stevedoring companies under contracts with defendant carriers which provided for an all-inclusive service covering the movement of cargo between ship's hold and the place where it was actually received and delivered. In view of the all-inclusive service thus provided for, complainants contend that defendants' costs were not increased by the service involved in receiving and delivering cargo beyond ship's tackle and that, as a matter of fact, this method of receipt and delivery was more efficient and less expensive than receipt and delivery at ship's tackle.

The record shows that the over-all rates in the lump-sum stevedoring contracts were fixed after careful consideration of all services which past experience indicated would be required, and the fact that defendant carriers consistently handled a greater percentage of cargo received and delivered beyond ship's tackle which required the use of additional labor and equipment, was necessarily an important factor to be considered in constructing the rates. After the strike in 1934, most of the stevedoring was performed on a cost-plus basis, and the service actually rendered was the basis of the charge against the carrier under this arrangement. In view of the expense actually assumed by the carriers, represented in part by the items of additional labor and equipment considered in fixing the over-all stevedoring rates paid by the carriers, there is no merit in complainants' objection to the separate charge for handling beyond ship's tackle based on the theory that an impracticable method of receipt and delivery (at ship's tackle) that was not desired by the great majority of shippers and receivers, would have been more expensive and less efficient. 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.

Complainants contend that as transportation includes delivery, defendants' line-haul or tackle-to-tackle rates must be presumed to

have included compensation for all services necessary properly to receive and deliver general cargo, that the line-haul rate must provide for a complete transportation service, and that the separate handling charge was a duplicate charge and, therefore, unlawful. In view of the foregoing facts this argument must rest on the sole question whether, as complainants assert, separation of the transportation charge is prohibited as matter of law. In addition to *Re Assembling and Distributing Charge*, *supra*, complainants cite in support of their position on this question numerous decisions of the Interstate Commerce Commission and the federal courts dealing with railroad transportation and practices pertaining thereto. Reliance upon such decisions as controlling in connection with water transportation without full consideration of the fundamental differences between the two methods of transportation was condemned by the United States Shipping Board in *The Atlantic Refining Company* v. *Ellerman and Bucknall Steamship Co., Ltd., et al.*, 1 U. S. S. B. 242, 253. The "American method of stating railroad rates," referred to in some of the cited decisions of the Interstate Commerce Commission, is not necessarily applicable to or binding upon carriers by water. *U. S. Navigation Co.* v. *Cunard Steamship Company*, 284 U. S. 474, does not justify a contrary interpretation.

When shippers pay for transportation from ship's tackle at port of loading to ship's tackle at port of destination, the fact that it is physically and economically impracticable to receive and deliver their property at ship's tackle, thus rendering an additional service necessary, does not obligate the carrier to furnish the additional service without charge and does not, of itself, make the extra charge for such service unreasonable or unlawful. The method adopted by defendants of publishing "tackle-to-tackle" rates and separate charges for handling beyond ship's tackle was not prohibited by law and on the record in these proceedings is not shown to have been an unreasonable practice. Complainants have not attempted to show that the charges for handling were excessive. On the contrary, there is ample evidence of record to support the reasonableness of the charges for the services rendered.

The decision in *Re Assembling and Distributing Charge*, *supra*, was based upon the finding that transportation includes delivery and that the carriers could not make a contract changing the general obligations imposed upon them by law; consequently, they could not publish in their tariffs a charge for delivery separate from their line-haul rates. The cases of *Brittan* v. *Barnaby*, 62 U. S. 527, and *Covington Stock Yards Company* v. *Keith*, 139 U. S. 128, were relied upon to support the proposition that delivery, being an integral part of transportation, must be made by the carrier without a separate charge. The *Barnaby*

case merely held that freight is not due until the merchandise is in readiness to be delivered to the consignee, when there is no different stipulation by the parties. The *Covington* case involved the obligation of a railroad company to furnish suitable and necessary facilities for receiving livestock offered to it for shipment over its road and connections, as well as for discharging such stock after it reached the place to which it was consigned. The right of a carrier to separate the charge for transportation was not in issue in that case, but the question decided was that the railroad company was compelled to receive and deliver the livestock free from any charge other than the customary one for transportation. The court said it could not give assent to the contention "that the carrier may, without a special contract for that purpose, require the shipper or consignee, in addition to the customary and legitimate charges for transportation, to compensate it for supplying the means and facilities that must be provided by it in order to meet its obligation to the public." There was no showing that "customary and legitimate charges for transportation" did not include the furnishing of facilities for properly receiving, transporting and delivering livestock, and apparently there was no special contract limiting the application of the line-haul rate. The principles announced in the *Covington* case are not conclusive of the issue in these proceedings, that is, whether the carriers have the right to divide the total charge for transportation. See *Walker* v. *Keenan*, 73 Fed. 755, 761 (certiorari denied 164 U. S. 706) where it was held:

> To any assumed rule of law that a carrier could not divide into two or more items his freight charge for carrying livestock, so that the instrumentalities for unloading and delivery need not be paid for by the consignees who are themselves prepared to receive their cattle directly from the cars, the decision in the *Covington* case cannot be referred. The opinion states no such rule; nor can any such rule be evolved therefrom consistently with the judgment of the court.

The case of *Adams* v. *Mills*, et al., 286 U. S. 397, cited by complainants in support of the argument that since the handling service is part of the transportation, the collection of a separate charge for this service is an unlawful practice, is not in point. In that case the Union Stock Yards Company at Chicago assessed against shippers an extra charge of 25 cents a car for unloading livestock received at the yards. It was shown that the carriers' tariffs undertook the complete transportation of livestock to the yards for a through rate, including the unloading, and actually provided that the "Carriers as shown will pay the Union Stock Yards and Transit Company's charges as follows: Unloading (in cents per car) 25." The Supreme Court upheld the finding of the Interstate Commerce Commission that the extra charge had been exacted under an unlawful practice. The question decided was not whether the carriers had a right to divide the transportation charge,

but whether the Stock Yards Company had a right to assess a further charge against shippers for the unloading service in addition to the carriers' through rate which specifically included the service. In reversing the decision of the lower court the Supreme Court said:

> Whether the unloading in the yards was a part of transportation was not a pure question of law to be determined by merely reading the tariffs. Compare *Great Northern Ry. Co.* v. *Merchant Elevator Co.*, 259 U. S. 285–294. The decision of the question was dependent upon the determination of certain facts including the history of the Stock Yards and their relation to the line-haul carriers; the history of the unloading charge at these yards; and the action of the parties in relation thereto. If there was evidence to sustain the Commission's findings on these matters its conclusion that the collection of the extra charge from the shippers was an unreasonable and unlawful practice must be sustained (pp. 409–410).

The right of a carrier to make a separate charge for terminal services incident to delivery has been recognized by the Supreme Court. In *I. C. C.* v. *C. B. & Q. R. R. Co.*, 186 U. S. 320, 335, the court said:

> As the right of the defendant carriers to divide their rates and thus to make a distinct charge from the point of shipment to Chicago and a separate terminal charge for delivery to the stockyards, a point beyond the lines of the respective carriers, was conceded by the Commission and was upheld by the Circuit Court of Appeals, no contention on this subject arises. If, despite this concurrence of opinion, controversy was presented on the subject, we see no reason to doubt, under the facts of this case, the correctness of the rule as to the right to divide the rate, admitted by the Commission and announced by the court below.

In *I. C. C.* v. *Stickney*, 215 U. S. 98, involving the same stockyards as the *C. B. & Q. case*, *supra*, and the same question, namely, the right of the carrier to divide the total charge for transportation, the court said:

> For services that it (the railroad) may render or procure to be rendered off its own line, or outside the mere matter of transportation over its line, it may charge and receive compensation (p. 105).

In both of those cases the services referred to were necessary to make delivery of livestock at the place provided by the carriers, and were an integral part of the transportation service. The fact that the place of delivery was off the carriers' own lines did not change the nature of the service and did not change the carriers' obligation to deliver under the transportation contract.

Upon consideration of all facts and argument of record, we find that the assembling and distributing charge at Los Angeles Harbor and Long Beach and the handling charges at San Diego, California, and the defendants' practices in assessing and collecting such charges, were not unjust and unreasonable. Although it has been shown that during certain periods these charges were assessed by some defendants without proper tariff authority, in violation of the Shipping Act, 1916, and

the Intercoastal Shipping Act, 1933, complainants are not entitled to reparation unless the sum paid by complainants amounted to an unjust or unreasonable exaction for the service rendered. There has been no such showing in these cases. The petition for reparation is therefore denied. To the extent that these findings conflict with the decision of this Commission's predecessor in *Re Assembling and Distributing Charge*, *supra*, the decision in that case is hereby overruled. An order will be entered dismissing the complaints.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 27th day of July A. D. 1939.

No. 184

J. G. BOSWELL COMPANY ET AL.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL. AND RELATED CASES

Nos. 189–192, incl.; 195–200, incl.; 203–208, incl.; 210–213, incl.; 216–220, incl.; 222–293, incl.; 295–321, incl.; 324–337, incl.; 339–343, incl.; 345, 347–368, incl.; 371–373, incl.; 375–385, incl.; 387–406, incl.; 427

These cases being at issue upon complaints and answers filed with the Department of Commerce of the United States and with the Commission, 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, pursuant to the authority vested in it by the Merchant Marine Act, 1936, having taken over the powers and functions theretofore exercised by the Department of Commerce as the successor to the powers and functions of the United States Shipping Board; 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 complaints be, and they are hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.
Secretary.

UNITED STATES MARITIME COMMISSION

No. 369[1]

LOS ANGELES BY-PRODUCTS CO. ET AL.

v.

BARBER STEAMSHIP LINES, INC., ET AL.

No. 425

CANNERS' LEAGUE OF CALIFORNIA

v.

A. F. KLAVENESS & CO. A/S ET AL.

No. 450

CALIFORNIA PACKING CORPORATION

v.

A. F. KLAVENESS & CO. A/S ET AL.

No. 454

SUN-MAID RAISIN GROWERS ASSOCIATION AND SUNLAND SALES COOPERATIVE ASSOCIATION

v.

A. F. KLAVENESS & CO. A/S ET AL.

Submitted January 25, 1939. Decided July 27, 1939

Collection of separate charges for handling general cargo beyond ship's tackle at California ports, in connection with shipments moving in foreign commerce, found not to be an unreasonable practice in violation of section 17 of the Shipping Act, 1916.

Establishment and collection of separate handling charge by agreement found not to be in violation of section 15 of said act.

Complaints dismissed.

[1] This report also embraces No. 410, *Aggeler & Musser Seed Co. et al. v. A. F. Klaveness & Co. A/S et al.*; No. 411, *James Clarke et al. v. Barber Steamship Lines, Inc., et al.*; No. 417, *Blue Diamond Corporation, Ltd., et al. v. A. F. Klaveness & Co. A/S et al.*; No. 443, *Los Angeles Traffic Managers' Conference v. Same*; No. 445, *Globe Grain & Milling Co. v. American-Hawaiian Steamship Co. et al.*; No. 452, *Pioneer Division, The Flintkote Company v. United Fruit Co. et al.*; No. 456, *E. B. Ackerman Co., Inc., et al. v. Barber-Wilhelmsen Line et al.*

F. W. Turcotte, L. G. Wilson, Arthur H. Glanz, T. A. L. Loretz, Emuel J. Forman for complainants and certain interveners in No. 369 and related cases.

Charles A. Bland for Board of Harbor Commissioners of the City of Long Beach, California, intervener.

C. F. Reynolds for Port of San Diego, California, intervener.

Walter W. McCoubrey for Boston Port Authority, intervener.

H. R. Kelly for certain defendants in No. 369 and related cases.

James W. Ryan and *John Mellen* for Isbrandtsen-Moller Co., Inc., defendant in Nos. 369, 410, 417, and 445.

Hugh Fullerton for complainants in Nos. 425 and 450 and certain interveners in Nos. 450 and 454.

J. Richard Townsend and *H. R. Bolander, Jr.*, for complainants in No. 454.

F. W. Turcotte for certain interveners in Nos. 450 and 454.

H. R. Kelly and *J. J. Geary* for all defendants in Nos. 425, 450, and 454.

Report of the Commission

By the Commission:

Exceptions to the examiner's proposed report were filed by complainants and interveners, and the cases were orally argued. Our findings are in substance those recommended by the examiner in that report.

These cases involve similar issues and will be disposed of in one report. Nos. 369 and related cases, heard at Los Angeles and San Francisco, California, on a consolidated record, involve the lawfulness of handling charges collected by the defendant steamship lines at the ports of Los Angeles Harbor, Long Beach, and San Diego, California. Nos. 425, 450, and 454, heard at San Francisco, California, involve the lawfulness of similar charges at the ports of San Francisco [2] and Stockton, California. By stipulation all of the evidence in Nos. 425, 450, and 454, and certain evidence in No. 184 [3] and related cases and Nos. 372 and 392 was made a part of the record in No. 369 and related cases.

Complainants are shippers and receivers, or associations representing shippers and receivers, of many different commodities, which for the purpose of these proceedings may be classed as general cargo, moving in foreign commerce from and to the ports hereinbefore mentioned. Defendants [4] are, with few exceptions, common carriers by water in foreign commerce subject to the Shipping Act, 1916.

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[2] Includes East Bay ports of Oakland and Alameda.

[3] These cases and Nos. 372 and 392 involve handling charges in the intercoastal trade.

[4] For list of defendants see Appendix.

Complainants allege that defendants' regulations and practices in collecting a separate charge for the use of terminal facilities, equipment, and labor incident to handling cargo between ship's tackle and pile on dock or car door in connection with shipments in foreign commerce made or received by complainants, were, are, and will be unjust and unreasonable in violation of section 17 of the Shipping Act, 1916, and that said charge was and is made pursuant to agreements between defendants without approval as required by section 15 of said act, or, as alleged in Nos. 410, 411, 417, and 456, even if said agreements have been approved, in respect of said charge they are unjust, unreasonable, and unfair as between defendants and shippers and receivers of cargo, in violation of section 15. In No. 443 the complainant, in addition to the allegations of violation of sections 15 and 17, also alleges that the imposition and collection of the handling charge at the ports of Los Angeles Harbor and Long Beach, California, constitutes rates, charges, and practices which were and are unjust and unreasonable in violation of section 18 of the Shipping Act, 1916. As there is no allegation or proof in this case that defendants transported any of the shipments involved between a port in the United States and other ports in the United States or possessions thereof within the meaning of the Shipping Act, 1916, section 18 of that act is not applicable. The allegation under this section, therefore, will not be further considered. In Nos. 425 and 450 counsel for complainants announced at the hearing that he was abandoning the allegation of violation of section 15 and did not propose to introduce any proof in regard thereto.

Complainants and interveners in all cases except Nos. 425 and 443 seek reparation in the total amount of the handling charges paid and/or borne during the statutory period and during the pendency of these proceedings.

The charge complained of was first made effective at Los Angeles Harbor and Long Beach April 1, 1933, under the designation, "Assembling and Distributing Charge" on foreign-offshore commerce, as provided by Los Angeles Steamship Association Terminal Tariff No. 3-AD, issued March 1, 1933, on behalf of many of the defendant steamship lines. Some of the defendant lines, including Isbrandtsen-Moller Company, Inc., were not parties to this tariff, and there is no specific showing as to when such lines or their agents began to assess and collect the assembling and distributing charge. The tariff referred to provided:

> Except on cargo handled direct to or from open railroad car with ship's tackle, bulk oil moved direct between ship and railroad tank car or pipe line and on cargo moved direct from ship to railroad car by gravity through hopper built into car door, a charge of 30¢ per ton of 2,000 lbs., or 40 cubic feet, as

manifested (regardless of whether the manifest basis is other than a ton of 2,000 lbs. or 40 cubic feet), will be assessed at all Los Angeles and Long Beach wharves for use of facilities, equipment, and labor incident to handling between ship's tackle and pile on dock or across dock, including ordinary sorting, piling and breaking down; subject to a maximum of $1.00 per ton of 2,000 lbs.

The minimum charge for any single shipment will be one cent (1¢).

This tariff was not filed with the United States Shipping Board or United States Shipping Board Bureau, Department of Commerce, predecessors of this Commission, but it was stipulated at the Los Angeles hearing that the steamship lines on whose behalf the tariff was issued made the charge either in accordance with that tariff or under individual or conference tariffs containing substantially the same provisions, until the handling charge of 40 cents per ton was established for application at all California ports, as hereinafter set forth.

Prior to the establishment of the handling charge of 40 cents per ton, defendants serving San Diego collected a charge for handling the cargo between ship's tackle and point of rest on the dock at said port, apparently in accordance with a terminal tariff printed by the San Diego Harbor Department. This charge varied in amount according to the commodity handled but was generally higher than the assembling and distributing charge at Los Angeles Harbor. The record indicates, however, that the charge at San Diego included loading or unloading railroad cars as well as handling between ship's tackle and point of rest on the dock.

There is little evidence that these charges at Los Angeles Harbor and San Diego were originally established by agreement between individual steamship lines or by the action of conferences. The tariffs of the conferences generally provided that rates applied to or from ship's tackle, or from ship's tackle or pile on dock according to the custom of the loading port. Some tariffs also provided that "State toll, handling, wharfage and all other terminal expense will be for the account of shipper, consignee, or owner of the goods," and, in some instances, that carrier or vessel "may absorb handling charges between ship's sling and shed at regular Pacific Coast terminal docks within terminal ports."

Typical bills of lading covering shipments from and to Los Angeles Harbor during the period covered by the assembling and distributing charge of 30 cents, indicate that it was the practice to provide for transportation from ship's tackle at loading port to end of ship's tackle at destination, or that carrier's responsibility began or ended at ship's tackle, and in some instances the bills of lading specifically provided that all charges beyond ship's tackle were for the account of the cargo.

During the latter part of 1935, various conferences, comprising in their membership practically all of defendant lines, by individual action in each conference, established handling charges at all ports of the Pacific Coast. Announcement of this action was made by joint notice dated October 31, 1935, issued on behalf of the following conferences: Pacific Coast/River Plate Brazil Conference, Pacific/West Coast of South America Conference, Pacific/West Coast of Central America Southbound Conference, Pacific/Panama Canal Zone, Colon and Panama City Conference, Pacific Coast/Cuban Freight Conference, Pacific Coast/Caribbean Sea Ports Conference, West Coast Central America, Mexico-North Pacific Northbound Conference, Association of West Coast Steamship Companies, East Coast Colombia-North Pacific Conference, Pacific Coast Australasian Conference Pacific Coast European Conference, Pacific Westbound Conference, Pacific/Dutch East Indies Conference, and Pacific/Straits Conference. The joint notice was as follows:

All of the foregoing Foreign Trades Steamship Conferences have decided to discontinue, at all ports of the Pacific Coast of the United States and British Columbia, the practice, where applied, of absorbing in their freight rates the cost of handling export and import cargo between ship's tackle and place of rest on terminals. Handling charges are to be assessed and will be for the account of cargo.

At Oregon, Washington, and British Columbia ports the Handling Charges named in current Terminal Tariffs published by the respective Port Authorities, or by the terminals over which individual lines operate, will govern.

At California ports where handling charges are not now assessed, the Handling Charge will be 40¢ per ton and at California ports where the present handling or A & D charge is less than that amount, same will be increased to 40¢ per ton.

The Pacific Westbound Conference subscribes to this announcement as to California ports. A separate announcement will be made by that Conference as to Northern ports.

The tariffs of the various Conferences are being amended accordingly to become effective January 1, 1936, except those of the Pacific Westbound Conference, the Pacific Dutch East Indies Conference, and the Pacific-Straits Conference, which are to become effective February 1, 1936.

Some of the conferences issued separate notices concerning the handling charge, and considerable correspondence was exchanged between the Pacific Coast European Conference and the Canners League of California and Dried Fruit Association of California concerning various phases of the announced handling charge and the rules and regulations governing the application of the charge and performance of the handling service.

Conference tariffs and individual tariffs of certain lines were duly amended or supplemented to provide for the application of the handling charge at all Pacific Coast ports, substantially as provided

in the joint notice hereinbefore referred to. Such amendments and supplements were duly filed with this Commission or its predecessor. With some variations, the following are typical of the tariff provisions referred to:

(*a*) Carrier, its agent, or stevedore, shall perform at the expense of consignor or consignee, the handling service at all Pacific Coast ports, (*a*) on terminal direct from place where unloaded from railroad car or other vehicle to ship's tackle, (*b*) from place of rest on terminal, barge, or lighter, to ship's tackle, including ordinary breaking down, sorting, and trucking.

(*b*) *At California Ports* the uniform charge for such handling service, and the application thereof, shall be as follows:

Except on cargo handled direct from open-top railroad car with ship's tackle, on bulk oil or other bulk liquid cargo moving direct from railroad car or pipe line, on cargo moving direct to vessel's hold by gravity or by mechanical conveyor, which cargo vessel or vessel's agent or stevedore has not handled beyond ship's tackle, a handling charge of forty (40) cents per 2,000 lbs. or 40 cubic feet or 1,000 feet BM, as manifested (regardless of whether the manifest basis for computing transportation charges is other than 2,000 lbs. or 40 cubic feet or 1,000 feet BM) will be assessed against cargo, subject to a maximum charge of $1.00 per 2,000 lbs. and a minimum charge of one (1¢) cent for any single shipment.

All cargo ex cars or automobile trucks spotted at ship's side or elsewhere on terminal shall be subject to the above handling charge, except as otherwise provided above. All cargo loaded to vessel at an industrial terminal which is owned or operated by the owner of such cargo shall not be subject to the handling charge unless the vessel, its agent, or stevedore, performs the handling service from place of rest on terminal to ship's tackle.

(*c*) *At all other Pacific Coast Ports* the handling charges and rules applicable shall be those named in the current Terminal Tariffs published by the respective Port Authorities and shall be for the account of shipper, consignee, or owner of the goods.

Some tariffs were also amended or supplemented to add the following or substantially similar provisions:

Application of Rates.—Rates named in this Tariff apply from ship's tackle at loading port and include only the on-shore or on-lighter cost of hooking sling load to ship's gear.

Terminal Charges.—State toll, wharfage, truck tonnage charge, handling charges, and all other terminal charges shall be for the account of shipper, consignee, or owner of the goods.

Bills of Lading.—All bills of lading shall be clauses as follows: Any provisions herein to the contrary notwithstanding, goods may be received by carrier at ship's tackle, and receipt beyond ship's tackle shall be entirely at the option of the carrier and solely at the expense of the shipper.

All the foregoing provisions are taken from export tariffs, but similar provisions, with necessary changes to apply to inbound cargo delivered at Pacific coast ports, also appear in the import tariffs of the following conferences: West Coast South America/North Pacific Coast Conference, United Kingdom/United States Pacific Freight

Association, Associated Steamship Lines (Manila), Trans-Pacific Freight Bureau of North China, Trans-Pacific Freight Bureau (Hong Kong), Mediterranean/Pacific Coast U. S. A. Freight Conference, Outward Continental North Pacific Freight Conference, and Trans-Pacific Freight Conference of Japan.

Typical bills of lading covering shipments from and to Los Angeles Harbor and San Francisco after the inauguration of the handling charge of 40 cents per ton, indicate that, in addition to providing for transportation from ship's tackle at loading port to end of ship's tackle at destination, it has been the usual practice to provide for handling at the expense of shipper or consignee when cargo is received or delivered beyond ship's tackle, by a printed or stamped clause generally in the following language:

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.

The handling service in connection with the receipt and delivery of general cargo is substantially the same at all ports involved in these proceedings, and is performed by stevedores or longshoremen employed direct by some of the carriers, or by stevedoring companies with whom most of the carriers have lump-sum or cost-plus contracts which provide for an all-inclusive service covering the movement of cargo between ship's hold and the place where it is actually received and delivered. The lump sum or fixed rates for stevedoring are based upon the entire service which past experience indicates may be required, and the fact that all but a small portion of the cargo carried by defendant steamship lines requires the handling service beyond ship's tackle is necessarily an important consideration in constructing these rates. Under the cost-plus contracts the service actually rendered is the basis of the charge in every case. The service beyond ship's tackle requires the use of considerable equipment such as tractors or jitneys, four-wheel trucks or trailers, hand trucks, and loading boards, and the expense incident to furnishing this equipment is also reflected in the stevedoring rates.

The terminals used by defendants are in most cases equipped with railroad tracks at shipside, known as the "high line," where certain types of cargo such as bulk commodities, heavy machinery, boxed automobiles, tractors, and steel pipe are sometimes received and delivered direct at ship's tackle without assessment of the handling charge when they move in open-top cars or when, in the case of some bulk commodities, they are handled between car and ship by elevator, or by hopper or chute. General cargo moves to and from the termi-

nals in closed railroad cars or motor trucks, and also at some ports in river vessels or barges. It is clearly established by the record in these cases that it is impracticable to spot such equipment at shipside and receive and deliver the cargo direct at ship's tackle. It is conceded that such practice would result in undue delay and inconvenience, increased risk of injury and damage, and increased cost to all concerned, including the ship operator, the terminal operator, and the shipper or consignee. It is customary, therefore, to receive and deliver general cargo at place of rest on the wharf or in the transit shed, where it is placed after unloading from or before loading to rail cars, trucks, or river vessels or barges. The rail cars are usually spotted on the low-line tracks which are on the land side of the wharf, or at the finger-type piers, on the apron outside of the shed with the shed between the low-line tracks and the ship. At some of the terminals these low-line tracks are depressed below the level of the wharf floor to facilitate the loading and unloading of the cars and the handling of the cargo between car door and place of rest. The loading and unloading of the rail cars is performed by the stevedores, or by independent companies, at all terminals except those at Stockton and the East Bay ports of Oakland and Alameda where this service is performed by the terminal employees. A separate charge is assessed against the shipper or consignee for this service. In some instances cargo is handled direct between car door and ship's tackle and in such cases both the car loading or car unloading charge and the handling charge are assessed. Trucks are usually loaded and unloaded in the transit shed by the employees of the trucking companies.

All requests for ship's tackle receipt and delivery of general cargo from and to closed railroad cars and motortrucks have been refused by defendants, except in certain instances at Los Angeles Harbor it appears that some shippers have at times been accommodated by having their shipments handled from closed cars on the high line when it was necessary to complete a shipment or to make a particular sailing. Under the tariff rules the handling charge would be applicable in such cases, and the record indicates that it was assessed against the shipments referred to.

There is no allegation or proof of unjust discrimination between shippers or ports as provided by the first paragraph of section 17 of the Shipping Act, 1916. Complainants allege that the collection of a separate charge for the handling service is an unreasonable practice in violation of section 17, evidently referring to the second paragraph of the section, which provides:

> Every such carrier (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. 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.

This paragraph relates to services performed at the terminal as distinguished from the carrying or transporting by the vessel. Neither this nor other sections relating to foreign commerce require carriers to publish their charges in single amounts or prohibit them from dividing their rates and making specific charges for the different services performed. 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. & 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.

The allegation that defendants' agreements in respect of said handling charge have not been filed as required by section 15 is not sustained by the record in these cases. As heretofore noted, the action taken by defendant carriers in their respective conferences concerning the establishment of said charge has been evidenced by amendments and supplements to conference tariffs filed in connection with and forming a part of their approved conference agreements on file with this Commission. The issuance of the joint notice on behalf of a number of conferences, of itself, does not justify a finding that the action was taken pursuant to agreement between the conferences.

The fact that the imposition of the separate handling charge may have operated to increase the total charges assessed against shippers and consignees by the amount of the handling charge does not make the agreements in respect of such charge unreasonable or unjust. The measure of the total transportation charge is not in issue in these proceedings, and there has been no contention or proof that the total charges are so unreasonably high as to be detrimental to the commerce of the United States.

The decision of the Department of Commerce, predecessor of this Commission, in *In Re Assembling and Distributing Charge*, 1 U. S. S. B. B. 380, is cited by complainants as conclusive of the issues in these proceedings. In that case the assembling and distributing charge on intercoastal shipments at the ports of Los Angeles Harbor and Long Beach was found to be "unjust and unreasonable in violation of section 18 of the Shipping Act, 1916." Section 18 relates to common carriers by water in interstate commerce and a decision under that section in regard to the reasonableness of charges of carriers in the intercoastal trade does not require a finding of unreason-

ableness as to practices of carriers in connection with similar charges in foreign trade under a different provision of law. Decision as to the reasonableness of carriers' practices must be based on the facts of record in each case, and previous findings in connection with similar practices do not have the force of law in subsequent proceedings involving different carriers, different trades, different competitive conditions, and different statutory provisions.

We find that (1) collection of separate charges for handling general cargo beyond ship's tackle at California ports, in connection with shipments moving in foreign commerce, has not been shown to be an unreasonable practice in violation of section 17 of the Shipping Act, 1916; and (2) the establishment and collection of the separate handling charge by agreement has not been shown to be in violation of section 15 of the act. An order will be entered dismissing the complaints.

APPENDIX

LIST OF DEFENDANTS

Aktieselskabet Det Ostasiatiske Kompagni (The East Asiatic Company, Ltd.).
American-Hawaiian Steamship Company.
The American & Manchurian Line.
Argonaut Line, Inc.
(Arrow Line) Sudden & Christenson.
Barber Steamship Lines, Inc.
Barber-Wilhelmsen Line.
The Bank Line, Limited.
Banning Company.
Blue Star Line, Ltd.
(Blue Funnel Line) The China Mutual Steam Navigation Co., Ltd. and The Ocean Steam Ship Co., Ltd.
California Steamship Company.
Calmar Steamship Corporation.
Carriso, Inc.
The Charente Steamship Company, Limited.
Christenson-Hammond Line (Hammond Shipping Co. Ltd., Managing Agents).
Cia Naviera Del Pacifico, S. A.
Compagnie Generale Transatlantique.
Compania Trasatlantica de Barcelona.
Daido Kaiun Kabushiki Kaisha.
Dollar Steamship Lines, Inc., Ltd.
The Robert Dollar Co.
The Donaldson Line, Limited.
Donaldson Brothers, Limited (Donaldson Line).
Ellerman & Bucknell Steamship Co., Ltd.
Flood Lines, Inc.
Fred. Olsen & Co.
Fruit Express Line.
Furness, Withy & Co., Limited.
Furness, Withy & Co., Ltd. (Furness Line).
(Furness-Prince Line) Prince Line, Ltd. and Furness, Withy & Co., Ltd.
Furness (Pacific) Limited.
General Steamship Corporation, Ltd.
Grace Line, Inc.
(Grace Line) Panama Mail Steamship Company.
Gulf Pacific Line, Swayne & Hoyt, Ltd., Managing Owners.
Gulf Pacific Mail Line, Ltd.
Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft,
Interocean Steamship Corporation.
Isbrandtsen-Moller Company, Inc.
Isbrandtsen-Moller Company, Inc. (Maersk Line).
Isthmian Steamship Company.
Italia Societa Anonima Di Navigazione (Italian Line).

Kawasaki Kisen Kabushiki Kaisha.
Kerr Steamship Company, Inc.
A. F. Klaveness & Co., A/S.
Knut Knutsen O.A.S.
Kokusai Kisen Kabushiki Kaisha.
Lauritzen Line (J. Lauritzen, Copenhagen).
Los Angeles-Long Beach Dispatch Line.
Los Angeles Steamship Company.
Luckenbach Steamship Company, Inc.
Luckenbach Gulf Steamship Company, Inc.
Maersk Line.
Matson Navigation Company.
McCormick Steamship Company.
Mitsui Bussan Kaisha, Ltd.
Mitsui & Company, Ltd.
Navigazione Libera Triestina, S. A.
Nelson Steamship Company.
The Charles Nelson Company.
Nippon Yusen Kabushiki Kaisha.
Norddeutscher Lloyd.
North Pacific Coast Line.
N. V. Nederlandsche Amerikaansche Stoomvaart Maatschappij.
N. V. Nederlandsche Amerikaansche Stoomvaart Maatschappij, "Holland-Amerika Lijn" Rotterdam.
N. V. Koninklijke Paketvaart Maatschappij (Royal Packet Navigation Co. of Batavia and Amsterdam).
Norton, Lilly & Company.
The Oceanic Steamship Co.
Oceanic and Oriental Navigation Company.
Osaka Shosen Kabushiki Kaisha.
Pacific Argentine Brazil Line, Inc.
(Pacific Coast Direct Line, Inc.) Weyerhaeuser Steamship Co.
(Pacific-Java-Bengal Line) N. V. Stoomvaart Maatschappij "Nederland" and N. V. Rotterdamsche Lloyd.
Pacific Steamship Lines, Ltd. (The Admiral Line).
(Panama Pacific Line) American Line Steamship Corporation and The Atlantic Transport Company of West Virginia.
Port of Los Angeles Stevedoring & Ballast Company, Inc.
Prince Line, Ltd.
(Quaker Line) Pacific-Atlantic Steamship Co.
Reardon Smith Line, Ltd.
Rederiaktiebolaget Nordstjernan (Johnson Line).
Rederiaktiebolaget Transatlantic.
Royal Mail Lines, Ltd.
San Diego-San Francisco Steamship Company.
Shepard Steamship Company.
Silver Line, Ltd.
Silver-Java-Pacific Line-N. V. Stoomvaart Maatschappij "Nederland," N. V. Rotterdamsche Lloyd and Silver Line, Ltd.
P. F. Soto Shipping Company, Ltd.
South African Dispatch Line.
States Steamship Company (California-Eastern Line).
Sudden & Christenson.
Swayne & Hoyt, Ltd., Managing Owners.
Tacoma Oriental Steamship Company.
Union Steamship Co. of New Zealand, Limited.
United Fruit Company.
The United Ocean Transport Co., Ltd., Kobe.
Vapores Correos Mexicanos, S. A.
Westfal-Larsen & Co., A/S.
Weyerbaeuser Steamship Company.
Wilh. Wilhelmsen.
Wilhelm Wilhelmsen, Oslo Og Orsnaes Pr. Tonsberg.
Williams, Dimond & Co.
Williams Steamship Corporation.
Yamashita Kisen Kabushiki Kaisha.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 27th day of July A. D. 1939.

No. 369

LOS ANGELES BY-PRODUCTS CO. ET AL.

v.

BARBER STEAMSHIP LINES, INC., ET AL.

(And Related Dockets Nos. 410, 411, 417, 443, 445, 452, and 456)

No. 425

CANNERS' LEAGUE OF CALIFORNIA

v.

A. F. KLAVENESS & CO. A/S ET AL.

No. 450

CALIFORNIA PACKING CORPORATION

v.

A. F. KLAVENESS & CO. A/S ET AL.

No. 454

SUN-MAID RAISIN GROWERS ASSOCIATION AND SUNLAND SALES COOPERATIVE ASSOCIATION

v.

A. F. KLAVENESS & CO. A/S ET AL.

These cases being at issue upon complaints and answers filed with the Department of Commerce of the United States and with the Commision, 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, pursuant to the authority vested in it by the Merchant Marine Act, 1936, having taken over the powers and functions theretofore exercised by the Department of Commerce as the successor to the powers and functions of the United States Shipping Board; 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 complaints be, and they are hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, JR.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 500

PUERTO RICAN RATES

Submitted May 6, 1939. Decided July 27, 1939.

Rates on automobles, flour, rice, fish, hardware, iron and steel sheets, lubricating oil, and paint from United States Atlantic and Gulf ports to Puerto Rico to the extent they exceed respondents' rates on the same commodities transported on the same vessels to foreign ports of call found unjust and unreasonable. Increases in rates on commodities not mentioned found not justified. Schedules ordered canceled and respondents permitted to establish new schedules by filing and posting on not less than one day's notice.

Discontinuance of service from Gulf ports to Fajardo, Humacao, Yabacoa, and Guayanilla found unduly preferential and prejudicial.

Certain rates found unduly preferential and unduly prejudicial. Rates on raw sugar based on market price not in compliance with statute and unlawful.

Practice of charging weight rates on southbound traffic and measurement rate in reverse direction on same commodity found unjust and unreasonable.

Absorption practices, precooling service and charges therefor, not authorized by proper tariff publication; storage charges not published as required by statute.

Certain tariff provisions found unlawful; others found incomplete, conflicting, misleading, and ambiguous.

R. H. Hupper, *B. H. White*, *J. R. Fort*, *Jas. R. Beverley*, and *George H. Terriberry* for respondents.

William C. Rigby, *Enrique Campos del Toro*, *Jaime Sipre, Jr.*, *Joaquin Velilla*, *Guillermo Roderick Rodriguez*, *James P. Klein*, *C. S. Whall*, *Salvador Antonetti*, *Jose M. Gatell*, *Eduardo C. Saldana*, *J. M. Mendez*, *T. C. Gonzales Cuyar*, *Gabriel de la Haba*, *Filipo L. de Hostos*, *P. J. Rosaly*, *Rafael A. Veve*, *J. B. Johnson*, *W. M. Perry*, *J. W. Hiltner*, *N. E. Hughes*, *William H. Stanton*, *William T. McArthur*, *Jos. V. Torres*, *Andrew F. Heyden*, *David A. Buckley, Jr.*, *O. B. Frazer*, *T. A. Smith*, *J. H. Rauhman, Jr.*, *H. H. Gibson*, *Rene A. Stiegler*, *Frank J. Kurka*, *E. H. Thornton*, *C. A. Mitchell*, *L. A. Schwartz*, and *Carl Giessow* for protestants.

Report of the Commission

By the Commission:

Pursuant to the Intercoastal Shipping Act, 1933, as amended, Agent T. J. Lennon, acting for respondents,[1] published and filed with us tariffs[2] effective September 21, 1938, naming rates, charges, rules, regulations, and practices applicable to traffic between United States Atlantic-Gulf ports and Puerto Rico. Upon protests the operation of the schedules was suspended until January 21, 1939. On January 20, 1939, in response to respondents' motion, a proposed report was issued. The tariffs became effective the next day. Exceptions filed to the proposed report have been orally argued. In some respects our conclusions differ from findings therein recommended. Except as otherwise noted, rates will be stated in cents per 100 pounds.

It is generally alleged that rates on important commodities charged prior to September 21, 1938, were unreasonable; that increases published to become effective on that date are excessive and unwarranted; that unlawfulness results from improper rate relationships; and that the elimination of service between Gulf ports and Fajardo, Humacao, Yabaca, and Guayanilla by Porto Rico Line, Lykes, and Waterman results in undue and unreasonable preference and prejudice.

For 10 years prior to February 1, 1937, no substantial changes were made in south-bound rates, but on that date a general rate increase became effective. The suspended schedule reflects a 10-percent increase above the 1937 level in approximately 80 percent of the rates named. Reductions in a few rates were made, and on others there were no changes. Increases in excess of 10 percent were made on dried beans, flour, rice, packing-house products, passenger automobiles, and some vegetables. (See Appendix I.) Since 1936 increases on numerous commodities range from 25 to 60 percent. South-bound rates are exclusive of landing charges[3] at San Juan, Mayaguez, and Ponce designed to cover handling costs from end of ship's tackle until delivery is made. After 10 days' free time storage charges published in a schedule of the Puerto Rican Public Service Commission also apply. The landing charges mentioned reflect

[1] New York and Porto Rico Steamship Co. (Porto Rico Line), Bull Insular Line, Inc., and Baltimore Insular Line, Inc., operating from and to Atlantic ports; and New York and Porto Rico Steamship Co., Lykes Bros. Steamship Co., Inc., and Waterman Steamship Corporation, operating from and to Gulf ports.

[2] U. S. M. C. No. 1 applicable south-bound; U. S. M. C. No. 2 applicable north-bound.

[3] When rate is assessed on a measurement basis, 2.5 cents per cubic foot; when a weight rate is assessed, 5 cents per 100 pounds; specific charges on lumber, piling, and wooden poles.

a 50-percent increase made in 1937 to cover the cost of free storage then accorded.

Approximately one-third of the north-bound rates were increased, but there is established for the first time a separate wharfage charge [4] at San Juan on all cargo except sugar. On some traffic the percentage of increase is less than on south-bound traffic, but on fruit, vegetables, and other commodities it exceeds the percentage of increase applied south-bound. (See Appendix II.)

Puerto Rico obtains its principal food products, clothing, lumber, and other building material, machinery, agricultural implements, and other manufactured articles from the United States. The United States is the principal market for Puerto Rican products, raw sugar, molasses, rum, tobacco, citrus fruit, pineapple, and other fruits and vegetables. Respondents comprise the entire membership of the Atlantic and Gulf-Puerto Rico Conference, and they operate at uniform rates, charges, rules, and regulations established pursuant to section 15, Agreement No. 6120, approved February 14, 1938. The Island is dependent upon respondents' service, since the operation of foreign-flag vessels is not permitted in domestic trade and there are no nonconference lines.

Extensive evidence was introduced by the Puerto Rican Government and other interests concerning the economic condition of Puerto Rico and its people, plans for building projects, new industries, the rehabilitation of enterprises to increase employment, and the effect of increases in rates and charges upon these plans, and upon living costs in general. Such evidence illustrates the need for reasonable rates, but it is of little assistance in determining whether the rates under consideration are proper because it ignores the character of the traffic, its volume and regularity of movement, the cost of service to the carriers, and other basic factors considered in rate making.

It is the position of some shippers that the existence of lower rates on their commodities when transported greater distances in other trades indicate that rates charged them are unreasonable. Existence of different rates on analogous commodities moving in this trade or a showing that respondents' rates on the same commodity are higher than those of other carriers in other trades is of itself insufficient. Evidence as to volume and regularity of movement, value, loss and damage claims, handling costs, and the type of vessels operated both as to the trade involved and in compared trades, should also have been submitted.

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[4] When rate is assessed on a measurement basis, 1 cent per cubic foot; when a weight rate is assessed 2.5 cents per 100 pounds; specific charges on fruits and vegetables range from 1 to 5 cents per package.

Shippers of fruits and vegetables compare the rate on raw sugar, which yields 5.3 cents per cubic foot, with rates on fruits and vegetables yielding earnings ranging generally from 15.7 to 20 cents per cubic foot. Shippers contend that, with increases in the cost of production and in packing materials, lower market prices caused by intense competition with Texas and Florida on grapefruit and with Cuba on pineapples, rates charged are excessive. Respondents state the average cost of receiving, loading, and delivering raw sugar is $1.15 per ton of 2,240 pounds, whereas similar cost incurred in handling fruits and vegetables is $5.20 per long ton. Gross revenue on raw sugar is $3.47 and on grapefruit and pineapples it approximates $11.22 and $13.72, respectively. Deducting handling costs stated the revenue remaining to cover actual transportation, overhead and profit is $2.32 on sugar and $6.02 and $8.52 on the fruits, respectively. Revenue on vegetables, after deducting handling costs, ranges from $8.10 to $23.47. Fruit and vegetables are subject to spoilage or other damage, their values per cubic foot is greater, and earnings thereon should probably be higher than on raw sugar. While sugar moves principally under contract in full cargoes, it moves at times on Porto Rico Line vessels along with fruit, vegetables, and other cargo. Respondents' sole reason for increasing rates is increased operating costs. Under similar circumstances, in *In re Bags and Bagging between Atlantic and Gulf ports*, decided March 23, 1939, we concluded that each class of traffic should bear its proper share of increased cost. In *Sugar from Virgin Islands*, 1 U. S. M. C. 695, we prescribed a 23-cent rate as a maximum reasonable rate on raw sugar, stating that the small volume of cargo from the Virgin Islands, the cost of making calls there, and longer time in loading than at Puerto Rican ports warranted a higher rate than the 15.5-cent noncontract rate from Puerto Rican ports. The 15.5-cent rate was not increased, and while we recognize special reasons may exist for not increasing rates which carriers believe to be noncompensatory, no reason was here shown. Since the latter rate was not increased and is a voluntary one, it must be assumed that the yield therefrom is compensatory and is so regarded by respondents. The materially greater yield on fruit and vegetables, even prior to recent rate increases thereon, is persuasive that such increases are not warranted. We are of the opinion that the wide spread in revenue yielded by the respective rates is disproportionate and that a downward revision of rates on fruits and vegetables should be made.

The Puerto Rico Paper Bag Company, of San Juan, manufactures paper bags from wrapping paper transported south-bound at a rate of 35 cents, exclusive of landing charge. The same rate applies on

south-bound shipments of paper bags, in bundles, which compete with protestant's product. The rate on bags yields approximately 9.2 cents per cubic foot and on wrapping paper about 13 cents per cubic foot. The value of bags, the volume of movement, and cost of unloading are greater than in respect to paper. Respondents offered no evidence. Ordinarily rates on manufactured articles exceed rates on material used in their manufacture. Respondents have recognized this principle in the past. We conclude that the 35-cent rate on bags is unduly preferential to shippers thereof and unduly prejudicial to protestant.

Gas Industries, Inc., manufactures oxygen and acetylene gas, obtaining its cylinders in the United States. The south-bound rate is 55 cents, although a measurement rate of 21 cents is also published. The measurement rate on empty cylinders north-bound, not recently increased, is 18 cents, which produces less revenue than the south-bound rate. There is no weight rate north-bound. Volume of movement and other factors are not shown to be materially different in respect to the two movements. We conclude that the south-bound rates are unduly prejudicial. The practice of applying a weight rate south-bound and a cubic-foot rate on the same commodity north-bound as the only rate is also unjust and unreasonable.

A manufacturer of soap protests a 10-percent increase is south-bound rates on caustic soda, soda ash, silicate of soda, palm oil, and cocoanut oil, used in his business. No increase was made on laundry soap southbound. The rates of 30 cents on soap and 44 cents on caustic soda yield 15.2 and 30.8 cents per cubic foot, respectively. The rate on soap powder is the same as on caustic soda and the revenue yield is only 9.1 cents. The yield on caustic soda is disproportionate to the yield on soap and soap powder. Ordinarily caustic soda is classified on a lower basis than soap and soap powder. Rate adjustments which require a commodity to bear more than its proper share of transportation cost result in substantial injury to shippers and are unduly prejudicial to them.

The rate on manganese and barite ores on shipments up to 149 tons is $5; on shipments of 150 tons or more the rate is $3.50 per ton. It is claimed that the higher rate on the smaller quantities unduly prefers large shippers. There have been no shipments of barite ore. The record shows that manganese ore has not moved in 150-ton lots, but it indicates some such shipments are expected. Respondents did not present any evidence to justify the difference in rates between shipments up to 149 tons and shipments of 150 tons or more. In *Intercoastal Rates of American-Hawaiian S. S. Co. et al.*, 1 U. S. S. B. B. 349, 351, a rate concession to one shipper of caustic soda in

1,500-ton shipments was found unduly preferential to such shipper and unduly prejudicial to others not in a position to ship the larger quantity. The lower rate on the larger quantities here involved must be condemned for a similar reason.

Respondents rely upon increased costs to justify their increases in rates. Terminal costs in Puerto Rico have increased approximately 41 percent, due to the award in May 1938 of an Arbitration Board appointed to consider demands for increased compensation.[5] This evidence would be of greater value if such additional expense had been converted to a per ton cost figure based on cargo actually handled over a reasonable period; however, respondents publish separate landing charges on south-bound cargo, designed to cover terminal costs incident to handling cargo from end of ship's tackle until delivery is effected. While not increased in September 1938, such charges were advanced 50 percent in 1937 to cover expense of storage beyond free time then permitted, which expense is now covered by separately established storage charges. They have also published for the first time wharfage charges at San Juan applicable on all north-bound cargo, except raw and refined sugar. When separate charges are established for particular services each such charge will be considered sufficient compensation for the service for which it is established. Deficiencies in revenue obtained therefrom cannot be accepted in justification for basic rate increases.

Each respondent testified in most general terms regarding increases in cost of vessel operation and in stevedoring and terminal operations at United States ports. However, no detailed showing of such increases in cost was made. In fact, witnesses stated there was no study of revenue needs based on cost. A committee of the lines merely selected the commodities which in their judgment could best produce more revenue. When requested to specify wherein costs had advanced, such witnesses were either unable or unwilling to do so. Subsequently subpoenas duces tecum were issued requiring respondents to appear with books and records necessary or convenient to enable them to testify fully concerning specified subjects, including revenue and expense data for a three-year period, which testimony we believed relevant and essential to a proper determination of the issues. A hearing was held to receive such evidence at which respondents' counsel appeared "specially." A motion to quash the subpoenas, then submitted, has been denied.

Respondents contend our order of investigation and suspension was unauthorized by the statute because the tariffs were "initial"

[5] It is shown that at San Juan this award plus increased premiums paid to the State Insurance Fund will amount to at least $493,922.10.

filings of actual rates, and that such action strictly construed would have precluded operation of their vessels because of the restriction in section 2 of the Intercoastal Shipping Act that "no person shall engage in transportation * * * unless and until its schedules * * * have been duly and properly filed and posted." We are authorized to suspend "any" schedule stating a "new" rate.

They also contend our power extends only to particular rates, rules, regulations and practices; that no burden of proceeding or of proof rests upon them; that they are required to meet allegations of unlawfulness only in particular instances when in their judgment unlawfulness has been shown; that revenue and expense data is of no assistance in determining the lawfulness of individual rates and therefore irrelevant; and that consequently we have no authority to require them to justify increases in rates generally. Acceptance of respondents' position would be a recogntion that under section 4 of the Intercoastal Shipping Act a just and reasonable tariff can be prescribed only after numerous complaint proceedings against particular rates. Respondents' position is untenable. With increases in 80 percent of southbound rates and on all northbound traffic from San Juan, except sugar, the reasonableness of the tariffs as a whole is the primary question before us, and a proper determination thereof depends upon whether total revenue collected thereunder yields a fair return to the carrier. With knowledge of total revenue and the cost of the service there exists a possibility of decision with more or less certainty. *Interstate Commerce Commission* v. *Union Pacific Ry. Co.*, 222 U. S. 541. Without such data an issue of so broad a scope cannot be properly determined. *Chicago, Milwaukee etc. Ry.* v. *Tompkins*, 176 U. S. 167; hence there can be no question as to its relevancy. *Dayton Goose Creek Ry. Co.* v. *United States*, 263 U. S. 456; *Interstate Commerce Commission* v. *Baird*, 194 U. S. 25. Revenue prior to September 21, 1939, is claimed to have been insufficient, but the extent of the deficiency which must be met hy increases in rates is not shown. Without such data, and data relating to increases in costs of operation, no basis exists for judging the increases in rates on the merits. Respondents' counsel states that revenue and expense data of the nature requested in our subpoenas would have been submitted if the request had been issued under authority of section 21 of the Shipping Act, 1916. This position is difficult to understand unless it is also their contention that full right of cross examination does not attach to data submitted pursuant to that section. However, there can be nothing private or confidential in the operations of a carrier engaged in interstate commerce. *Smith* v. *Interstate Commerce Commission*, 245 U. S. 33.

They rely upon the inherent right to initiate rates and, notwithstanding protests and the suspension of their tariffs, claim that a prima facie presumption of reasonableness attaching to their rates has not been overcome. The presumption is that rates which have been in effect for some time are reasonable and that a proposed change requires justification. This is emphasized by the provisions of section 3 of the Intercoastal Shipping Act which authorizes the Commission to enter upon a hearing concerning the lawfulness of any "new" rate filed and pending such hearing and decision thereon, to suspend the operation of the rate under investigation. Therefore, the presumption of reasonableness attaches to the rates in effect prior to September 21, 1938, and not to the "changes" in those rates. Our rule requiring respondents to proceed first to offer evidence recognizes the foregoing principle and also the disabilities in shippers to produce all necessary evidence in revenue cases. Financial data relating to operations and reasons which impelled increases in rates are in respondents' sole possession and in a proceeding which is not adversary in nature there should be no hesitation to make full disclosure. Respondents also argue that the absence from the statute we administer of a provision set forth in the Interstate Commerce Act, as amended by the Mann-Elkins Act of June 18, 1910, which requires carriers to justify increases in rates, operates as a declaration by Congress that in respect to ocean rates the burden in all instances rests upon persons attacking a rate or tariff. That argument is offset by the practice of the Interstate Commerce Commission in requiring respondents in suspension proceedings to justify reductions as well as increases.

Notwithstanding respondents' technical position, they placed in evidence certain rate comparisons in an attempt to show that their rates to Puerto Rico are not excessive because rates of other carriers to other points in the West Indies, Leeward, and Windward Island groups, ports on the northern coast of South America, and in Central America exceed the rates which they charge. On northbound traffic their rates are compared with rates from Havana. In many instances rates to or from foreign ports are higher but on some commodities rates of other carriers are lower. However, the existence of rates to or from foreign ports, whether higher or lower than rates of respondents to or from Puerto Rico, of itself, means little. The reasonableness of such foreign rates has not been determined. The southbound comparison indicates that on their own vessels to Santo Domingo and to Haiti rates on some commodities are lower than to Puerto Rico, as follows:

Commodity	Rates			
	Puerto Rico		Santo Domingo	Haiti
	Prior to Sept. 21, 1938	After Sept. 21, 1938		
Antos, unboxed	[1] 17	[1] 19	[1] 17	----
Flour	35	40	----	35
Fish, dried, pickled or salt	35	35	33	30
Hardware	66	73	66	----
Iron and steel sheets	35	39	33	----
Lubricating oil	58	64	56	----
Paint	66	73	48	70
Rice	35	40	35	35

[1] Per cubic foot.

Respondents herein, except Waterman, comprise the entire membership of the U. S. Atlantic and Gulf-Santo Domingo Conference and they control the rates to the Dominican Republic. Respondent Lykes is also a member of the U. S. Atlantic and Gulf Haiti Conference which names rates to Haiti. Tariffs of record show that since early 1937 neither of these conferences has increased the rates on the commodities mentioned; yet cargo to Santo Domingo and to Haiti is transported on vessels which also serve Puerto Rico. Santo Domingo is approximately 200 miles more distant than is San Juan, and Lykes serves Puerto Rico on return voyages to the Gulf. Rates to the foreign destinations prior to September 21, 1938, were either the same or lower than to Puerto Rico, and if costs involved in transportation do not necessitate increases in rates thereto, there appears little justification for increases to Puerto Rico. Counsel states on exceptions that competition with a German automobile requires the maintenance of the lower rates on automobiles to Santo Domingo but such statement is not based on evidence. Rates on flour from the Gulf to United Kingdom and Continental European ports, trades in which Lykes and Waterman engage, do not exceed 27 cents, and on lubricating oil rates to such foreign destinations from Texas ports do not exceed 49 cents. While the latter rates of themselves do not prove rates in issue to be unreasonable, in view of the greater cost in transatlantic trades because of the greater distances, and the same or similar port and terminal costs in the United States for both transatlantic and West Indies trades the comparison, along with other data, is persuasive that a 40-cent rate on flour and a 64-cent rate on lubricating oil are excessive. On this record we conclude that the higher rates to Puerto Rico will operate to unduly burden domestic traffic and unduly prefer foreign traffic and that under circumstances shown rates on automobiles, flour, rice, fish, hard-

ware, iron and steel sheets, lubricating oil, and paint, to the extent the rates thereon exceed respondents' rates on the same commodities to foreign ports of call, are unjust and unreasonable in violation of section 18 of the Shipping Act, 1916. In making such finding we adhere to the statement in *Sugar from Virgin Islands, supra*, to the effect that—

> It must be recognized that operation costs have advanced and that increased revenues to meet such costs are perhaps necessary. But all cargo carried should contribute its proper share, and the burden imposed upon interstate transportation should not be greater than that imposed on traffic moving in foreign trade.

Rates on raw sugar in bags weighing 200 pounds each or more are based on the price obtained for the sugar, as follows:

When the price is below $3.50 the rate is 15.5,
When the price is from $3.50 to $3.99 the rate is 16,
When the price is from $4.00 to $4.49 the rate is 16.5,
When the price is from $4.50 to $4.99 the rate is 17,

and for each further 50-cent increase in selling price the rate is increased 0.5 cent. On sugar in bags weighing less than 200 pounds the rates are 10 percent higher. The sole reason for naming rates in this manner was the belief that the price basis would be beneficial to Puerto Rico. But requests for the same rate basis on other traffic have been refused. For years the price has not exceeded $3.50, and no reason appears why the interests of all would not be served as well by naming but one rate, subject to change, should occasion arise, in the manner provided by law. The price basis here used places too great emphasis upon value. The quantum of the rate should rest upon all the transportation conditions involved.

The record shows that respondents Bull Insular and Baltimore Insular Lines transport large quantities of raw sugar from Puerto Rico under contracts with sugar producers at rates lower than the 15.5-cent tariff rate; also that sugar transported under such contracts moves in vessels which do not operate in their regular berth service. Porto Rico Line also transports raw sugar under similar contracts with vessels operated in its Gulf service. Counsel for the Government of Puerto Rico and The Department of the Interior contends that respondents' practice in this respect is unlawful. Respondents contend that when transporting sugar their operation is that of a contract carrier not subject to our jurisdiction. Admitting that contract-carrier operations may lawfully exist, it should be recognized that such operations by a carrier, who also operates a common-carrier service, may result in injury to shippers patronizing the com-

mon-carrier service. However, in view of the importance of the subject, and the limited evidence of record concerning it, we believe a determination of the lawfulness of the dual operation as herein presented should be deferred until presented upon a record which deals more comprehensively with the subject.

ELIMINATION OF OUTPORT SERVICE

Prior to September 21, 1938, respondents named rates to apply on south-bound steamers calling direct at San Juan, Mayaguez, Ponce, Aguadilla, Arecibo, Arroyo, Fajardo, Guanica, Jobos, and Humacao. To other ports a 10-percent arbitrary was published, but when the amount of cargo for any port did not warrant a direct call, shipments were transshipped and the cost was absorbed.

Under the suspended schedule rates do not apply to Fajardo, Humacao, Yabacoa, or Guayanilla from the Gulf. Service to Arroyo was also eliminated, but subsequently restored. The Bull Lines and Porto Rico Line continue their services from Atlantic ports to the ports discontinued by Gulf carriers, and all respondents will continue to absorb on-carrying charges when cargo is transshipped to suit their own convenience.

The volume of cargo transported by each respondent during 1937 to Puerto Rican ports other than San Juan, Mayaguez, and Ponce, in tons, is as follows:

	N. Y. & P. R. S. S. Co.		Bull Ins. Line		Baltimore Ins. Line		Waterman S. S. Corp.		Lykes Bros. S. S. Co.		Totals	
	N. A.	Gulf	N. A.	Gulf	N. A.	Gulf	N. A.	Gulf	N. A.	Gulf	N. A.	Gulf
Aguadilla	1,452	3,950	------	------	------	------	------	4,204	------	6,731	1,452	14,885
Arecibo	2,544	3,879	------	------	------	------	------	8,158	------	7,665	2,544	19,702
Guanica	5,409	665	------	------	------	------	------	23	------	166	5,409	854
Jobos	4,261	2,550	------	------	------	------	------	1,390	------	529	4,261	4,469
Arroyo	611	6,228	------	------	------	------	------	2,152	------	2,805	611	11,185
Fajardo	535	1,893	5,467	------	6,292	------	------	732	------	650	12,294	3,275
Humacao	575	946	3,951	------	10,526	------	------	447	------	1,528	15,052	2,921
Yabacoa	135	163	292	------	247	------	------	3,557	------	487	674	4,207
Guayanilla	69	------	479	------	10	------	------	------	------	448	558	448

Respondents contend the amount of cargo moving to the discontinued ports does not warrant continued service. The foregoing table shows, however, that cargo of Lykes and Waterman to Guanica was less than to any discontinued port; that Waterman's shipments to Jobos and Arroyo were less than to Yabacoa, and that Lykes carried less cargo to Jobos than to Humacao. Porto Rico Line cargo from the Gulf to Guanica is also shown to be less than to Fajardo and Humacao. Yet respondents continue their absorption practices in respect to

Guanica, Jobos, and Arroyo but persist in their refusal to serve the discontinued ports.

Manufacturers of sugar mill machinery, bearings, bushings, refractories, and feed located at St. Louis and other points in Missouri and neighboring States are subjected to competition in eastern territory by manufacturers who ship through Atlantic ports. Inland rates from St. Louis and other ports to New Orleans are materially lower than from such points to Atlantic ports, and rates of eastern competitors to Atlantic ports are lower than are the rates from St. Louis and other Missouri points to New Orleans. Sugar mills in Puerto Rico purchase large quantities of such goods. Heretofore shipments routed through the Gulf were transported to destination at the same ocean rate charged on shipments via Atlantic ports. At the present time shipments via the Gulf to Fajardo, Humacao, and Yabacoa must be discharged at San Juan. Shipments to Guayanilla, approximately 15 miles from Ponce, would doubtless be discharged at Ponce. On firebrick, packed or on skids, from St. Louis to Fajardo, via New Orleans, shippers pay an aggregate of 69 cents. The rates on shipments through New Orleans from Mexico, Vandalia, and Wellsville, Missouri, aggregate 70 cents. On shipments from competitive manufacturers to Fajardo routed through Baltimore the aggregate would be 56.7 cents. Thus the assailed schedule will result in a differential exceeding 12 cents in favor of the eastern manufacturer. Prior to September 21, 1938, there existed a 4.3-cent differential in the inland rates to the respective loading ports but under a general equalization rule then in effect such difference was absorbed by Gulf carriers. Missouri manufacturers, of course, may route shipments through Baltimore, and thus obtain the benefit of direct-line rates. On such routing, however, there would be a differential of 20.3 cents in favor of the Pennsylvania manufacturer. One manufacturer of brass and bronze castings, babbit metal, and bearing metal, located in the southwest, has a number of competitors located close to the North Atlantic Seaboard. A shipper of animal feed at St. Louis, with competition at Buffalo, N. Y., has attempted to negotiate sales with Central Fajardo without success because of the lower delivered cost on shipments from Buffalo. A number of the sugar mills purchase their supplies through agents located in the United States. Such agents it is said buy f. a. s. port of shipment or f. o. b. plant in the United States, and mills receiving their supplies through any of the discontinued outports will not consider purchasing from a Mississippi Valley manufacturer if the delivered cost of goods from an eastern manufacturer is lower. Protestants are fearful this will result in their elimination when agents request bids, with a consequent decline in their business not only to the outports

but to all ports. If the market for sugar-mill equipment is shifted to eastern territory, the port of New Orleans will naturally lose traffic formerly passing through that gateway. Other Island protestants located at or near the discontinued ports fear the result of this loss of service because of the increased cost to shippers, consignees, or ultimate purchasers of essential food products.

While no formal vote was taken at any conference meeting regarding the elimination of service, the matter was freely discussed at meetings attended by all interested lines and it seems clear that there was an understanding and an agreement relating thereto. The practice of absorbing on-carrying charges on cargo destined to ports to which they publish direct-line service, but at which, for their own convenience, their vessels do not call, while at the same time refusing to serve either direct or by transshipment the ports of Fajardo, Humacao, Yabacoa, or Guayanilla is unduly prejudicial to the latter ports, and to shippers using such ports, and unduly preferential to other ports served and to shippers using them in violation of section 16 of the Shipping Act, 1916. It is also unduly prejudicial to manufacturers of the United States located in the St. Louis area, and unduly preferential to eastern manufacturers. *Commonwealth of Massachusetts and Boston Port Authority* v. *Colombian Steamship Company, Inc., et al.*, 1 U. S. M. C. 711.

In the south-bound tariff, service is held out to Yabacoa and Guayanilla by respondents serving Atlantic ports, but such service is restricted by a notation, "subject to prior arrangement." All provisions of this nature are objectionable because of indefiniteness, and their susceptibility to unduly preferential agreements or understandings with certain shippers. The tariff should fully and clearly state the conditions under which service will be accorded.

On page 6 of the south-bound tariff entitled "Terminals" it is stated that vessels will load at carriers' terminals or docks, or at any terminal or dock designated by the carrier within the limits of the port being served. The statute, however, requires that schedules plainly show the "places between which * * * freight will be carried." The word "places" does not mean merely "ports" but specific terminals at ports. Consequently, the list of ports from and to which rates apply on page 5 requires amendments to show such data. The north-bound schedule requires similar amendment.

On shipments to minor ports to which rates are published respondents reserve an option to call there direct or to transship cargo, and when the option is exercised the expense of on-carriage is absorbed. Differentials between all-rail and barge or barge-rail rates from inland points in the United States to the seaboard when such routes

terminate at the same port have also been absorbed. Such absorptions are not authorized by the tariff. Some respondents maintain precooling plants in Puerto Rico in which fruits are cooled to required temperatures before loading. A separate charge for that service is made. Neither the practice nor the charge is published. There are also storage charges applicable after expiration of free time at Puerto Rican ports at which cargo is discharged on docks. Rule 10 of the south-bound tariff provides that charges will be "according to the storage tariff authorized by the Puerto Rican Public Service Commission." Consignees should be able to ascertain the amount of all the foregoing charges from a tariff publication filed and posted in accordance with section 2 of the Intercoastal Shipping Act, 1933, as amended.

Certain rice millers, whose mills are located at New Orleans, and who compete with rice mills located at interior points in Louisiana, complained that on shipments of rice from such interior points to Puerto Rico the through rate via either New Orleans or Lake Charles was equalized by an absorption of the difference in the through rate via New Orleans on the one hand, and the through rate via Lake Charles on the other, whereas on shipments from New Orleans mills, which obtain their rough rice for processing from the same areas in which the interior mills operate, the full ocean rate is charged. In *Board of Commissioners of the Lake Charles Harbor and Terminal District* v. *The New York and Porto Rico Steamship Co.*, 1 U. S. S. B. 154, decided in 1929, the absorption by Porto Rico Line of the differential in through rates via the ports named was upheld. At that time on shipments from New Orleans mills reductions were made equal to the absorptions which were made from interior points pursuant to the published equalization rule; but in 1933 such reductions were discontinued, and at the present time shippers of clean rice originating at interior points pay less for ocean transportation from New Orleans than is charged on shipments of clean rice originating at that port. The New Orleans mills request that an equitable portion of their inland rate on rough rice also be absorbed. There is no tariff authority for such an absorption. The continued absorption on shipments from interior mills under conditions here shown is open to question, but because of the importance of the issue thus raised no decision will be made on this record. If protestants believe the absorption practice complained of is unduly prejudicial to them, they may avail themselves of the opportunity under section 22 of the Shipping Act, 1916, to secure a determination upon a more comprehensive record.

RULES, REGULATIONS, AND PRACTICES

Rule 1 of the south-bound and north-bound tariffs declares that the rates therein named are based upon the terms and conditions of the carrier's bill of lading in use by it at the time of shipment. Paragraph 7 of the bills of lading of all respondents states that the carrier does not undertake that the vessel is equipped to transport perishable goods and declares that such goods are carried at the sole risk of the owner. However, rates for refrigerated transportation are named in the north-bound tariff. This provision conflicts with respondents' holding out of service to the public under the tariff. Attempted exemptions of like character have been found in violation of the Harter Act. *The Southwark*, 191 U. S. 1; *The Samland*, 7 Fed. (2d) 155. However, irrespective of this conflict, shippers should not be required to look beyond the tariff for any provision affecting the application of the rates. Whenever a tariff refers to a bill of lading and states that the rates therein published are dependent upon conditions in that bill of lading, such conditions should be published in the tariff. On exceptions respondents indicate the tariff may be amended to eliminate all reference to bill of lading. If that is done, obviously the bill of lading provisions will also require revision to effect full compliance with our findings. The statute requires the publication in tariffs of any rules or regulations which in anywise change, affect, or determine any part or the aggregate of the rates, fares, charges, or the value of the service.

Respondents' tariff rule No. 2 entitled "Port Equalization" provides that the rates shown in the tariff will be "modified," not to exceed a maximum of 30 percent of the basic ocean rate, so as to make the through charges in the aggregate on all cargo, except certain commodities, originating at interior points of the United States to port of destination via any U. S. Atlantic or Gulf port from which a service is maintained, equal to the through charges in the aggregate from the same interior point to the same destination via any other U. S. Atlantic or Gulf port from which a service is maintained.

The rate which the shipper is required to pay under this rule is dependent upon the rail or other carrier's rate from the interior United States point of origin to the particular United States port where the shipment is delivered to a respondent. The rates of such inland carriers are not published in respondents' tariff and are not on file with us. The inclusion of any provision in a tariff which makes the amount of the transportation charge depend upon the measure of a rate published in tariffs of some other carrier or not filed with us is violative of section 2 of the Intercoastal Shipping Act,

1933, as amended. *Intercoastal Rates of Nelson S. S. Co.*, 1 U. S. S. B. B. 326, 338–339; *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, 446–447.

Rule 20 of the south-bound tariff concerns the diversion of cargo. According to the second, third, and fourth paragraphs of the rule, cargo destined to, and diverted from, San Juan, Ponce, and Mayaguez remains subject to certain landing charges at those ports although such services are not performed. The service performed is the diversion of the cargo, incidental to which are such operations as the shifting of cargo; not, for example, landing. It is testified that the landing charges are approximately equivalent to $1.00 per net ton, which is the diversion charge named in the fifth paragraph of the rule. However, the rule is such as to make it appear that, under the second, third, and fourth paragraphs, no charge is made for the service actually rendered, namely, diversion, but that a charge is exacted for other services not involved. The sixth paragraph of the rule, which provides for an additional charge when the diverted cargo is carried by other than the original carrying vessel, also is objectionable. To what the charge of $2 is "additional" is not clear. Consequently, Rule 20 should be amended so that it shall clearly state what special additional services will be rendered and the specific sum that will be charged therefor when cargo is diverted.

Rule 1 provides that the rates named in the tariff "are based upon the prepayment of freight charges," and, under Rule 5, all freight is "prepayable" by the shipper. It is testified that all freight must be prepaid by the shipper and that no freight is taken on a collect basis to Puerto Rico, but the tariff does not definitely state the practice. It is objectionable for this reason.

Rule 14 of the southbound tariff requires shippers to prepare bills of lading in sextuplicate. They must be submitted to the carrier or its agent not later than 24 hours prior to the appointed sailing time. Under Rule 13 shipping receipts must be tendered in triplicate by shippers with the goods on carriers' form. Rules 12 and 13 of the northbound tariff are substantially similar. Rule 15 of the southbound tariff provides that at the request of shippers the carrier will prepare bills of lading, export declarations and so on, the fee for which is $1.00 per set of bills of lading. If, however, shippers prepare their own bills of lading, and so on, the carrier will make necessary entries thereon and the $1.00 fee will be waived. These rules are patently conflicting. Furthermore, submission prior to the 24-hour period may well be impossible in many instances since inland shippers frequently have no knowledge of the sailing time.

Shipments of flour to Puerto Rico move from interior points in the United States on bills of lading issued by the rail carrier at point of origin. Copies of the bill, in addition to other commercial papers prepared by the shipper, are sent to the ocean carrier at the port and the through bill is either exchanged for or supplemented by an ocean bill. The ocean bill is endorsed on behalf of the shipper, attached to the other documents and mailed by the ocean carrier to the bank for presentation to consignee. When a shipper prepares his own ocean bill and forwards it to the ocean carrier, along with other papers, that carrier then examines and signs it, performs the other services mentioned, and makes no charge for the latter. The principal charge by the ocean carrier therefore seems to be for preparation of the ocean bill.

Requests that respondents prepare shipping documents emanate principally from shippers located at interior points, who merely forward shipping instructions to the ocean carrier and request the preparation of the required documents. Respondents claim that if they did not perform the service the employment of a forwarder or broker would be necessary, in which event the cost to the shipper would be greater. When in lieu of the employment of such an agency shippers request a carrier to perform certain acts which are clearly beyond the latter's duty to perform, reasonable compensation therefore is proper. It is necessary, however, to differentiate between preparing and issuing bills of lading and preparing and issuing other documents of the character mentioned in Rule 15.

Section 4 of the Harter Act (46 U. S. C., Sec. 193) requires carriers to issue bills of lading or shipping documents "stating, among other things, the marks necesasry for identification, number of packages, or quantity, stating whether it be carrier's weight, and apparent order or condition of such merchandise * * *." Section 20 of the Bills of Lading Act (49 U. S. C., sec. 100) requires that, when goods are loaded by a carrier, it shall count the packages, if package freight, and ascertain the kind and quantity, if bulk freight. Respondents contend that all statutory requirements are fulfilled when they sign bills of lading presented by shippers. With this we cannot agree. Carriers must tender a duly executed bill of lading for goods offered for transportation.

In *In re Gulf Brokerage and Forwarding Agreements*, 1 U. S. S. B. B. 533, it was stated that agreements relating to forwarding services should not include charges of carriers for issuing ocean bills of lading. We see no reason to depart from that ruling. Rules 14 and 15 of the southbound tariff, also similar provisions of the northbound tariff, are unreasonable and unlawful and should be modified.

We find:

1. That, upon the record presented in this proceeding and in the absence of any affirmative showing of justification by the respondent carriers, who are engaged in both foreign and domestic commerce with the same facilities, the rates in the south-bound tariff, on automobiles, flour, rice, fish, hardware, iron and steel sheets, lubricating oil, and paint, to the extent the rates thereon exceed respondents' rates to foreign ports of call on the same commodities, are unjust and unreasonable in violation of section 18 of the Shipping Act, 1916; and that increases on other commodities, not specifically mentioned above, from the level of rates observed prior to September 21, 1938, have not been justified;

2. That the discontinuance of service between Gulf ports and Fajardo, Humacao, Yabacoa, and Guayanilla, and the continuance of absorption practices in respect to shipments transshipped to other ports, results in undue and unreasonable preference and prejudice in violation of section 16 of the Shipping Act, 1916;

3. That rates on manganese and barite ores, based on quantity, wrapping paper, paper bags, empty cylinders, soap, and caustic soda are unduly and unreasonably preferential and prejudicial as between shippers, in violation of that section;

4. That rates on raw sugar based on market price are not in compliance with the Intercoastal Shipping Act, 1933, as amended, and are therefore unlawful;

5. That the practice of charging weight rates on south-bound traffic and measurement rates on the same commodity north-bound is unjust and unreasonable;

6. That practices observed whereby charges of on-carriers from transshipment ports in Puerto Rico to bill-of-lading destinations are absorbed, and also practices in respect to the absorption of differentials between rates over competitive inland routes within the United States terminating at the same port, are illegal because not filed as required by section 2 of the Intercoastal Shipping Act, 1933; that precooling service, charges therefor, and specific storage charges after free time at docks in Puerto Rico are also illegal because not filed;

7. That Rules 1, 2, 5, and 20 of the south-bound tariff and Rule 1 of the north-bound tariff and specification of places from and to which rates apply are incomplete, conflicting, misleading, and ambiguous, and therefore not published as required by section 2 above mentioned; and

8. That Rule 15 of the south-bound tariff assessing a charge for preparing and issuing bills of lading, and Rules 13 and 14 of that tariff, also Rules 12 and 13 of the north-bound tariff relating to preparation by shippers of bills of lading and receipts on carriers' forms, making such preparation mandatory, are unlawful.

Findings in No. 1 above are without prejudice, if subsequently upon a more comprehensive record, which includes revenue, expense, and other data, rates on a different level than those charged to foreign ports or in effect prior to September 21, 1938, appear warranted. An order will be entered requiring respondents to cease and desist from charging rates and observing practices, rules, and regulations herein found unlawful and requiring them to cancel schedules naming rates, charges, rules, regulations, and practices found not justified or unlawful. New schedules establishing rates in conformance with the views expressed herein may be filed and posted effective on not less than one day's notice by noting a reference in such schedules to this decision. Issues arising out of our order of February 23, 1939, which involve, among other things, the lawfulness of the rates charged by respondents dur-

ing the period of suspension, and a determination of what further action will be taken to compel compliance with subpoenas duces tecum, hereinbefore discussed, are still under consideration.

APPENDIX I.—*Rates*[1] *and percent of increases therein on principal commodities from the United States to Puerto Rico*

[For authority see note 1 at end of table]

Commodity	Rates						Percent of increases		
	1936		Prior to Sept. 21, 1938		Effective Sept. 21, 1938		Since 1936		
	Cubic feet	100 pounds	Cubic feet	100 pounds	Cubic feet	100 pounds	Sept. 21, 1938	Cubic feet	100 pounds
Agricultural implements	22	58	25	63	28	69	10	27	19
Asphalt:									
Pulverized		35		40					14
Road, in barrels		22.5		30					33.33
Rock		30		35					16.67
Auto supplies and parts	20	52	22	58	24	64	10	25	23
Bags, cotton, jute, or paper lined		35				40			14
Barrels, wood, empty	Each	50	Each	65	Each	80	23		60
Beans, dried		30		35		40	14		33.33
Beer		44		50		50			13.5
Brick:									
Bath:									
Packed		60		66		73	10		21.6
Loose		72		80		88	10		22.2
Calcined		40		45		50	11		25
Common or fire, packed		21		30		33	10		57
Canned or bottled goods (foods)		44		50		55	10		25
Calcium, carbide				70		77	10		
Castings, N. O. S			26	66	29	73	10		
Chloride, liquid (N. O. S. rate)				66		73	10		
Copper sulphate			26	66	29	73	10		
Cylinders, empty			19	50	21	55	10		
Drums, metal, empty, N. O. S. (not exceeding 12 cubic feet)	Each	50	Each	65	Each	65			30
Dry goods		20	21		23		10		15
Fertilizer, N. O. S. in bags		15		17.5		17.5			16.7
Acid phosphate:									
In bags		15		17.5		17.5			16.7
In bulk		Open		Open	See footnote 2				
Ammonia, sulphate of:									
In bags		15		17.5		17.5			16.7
In bulk		Open		Open	See footnote 3				
Feedstuffs, in bags or barrels		28		33		36	10		28
Flour, in bags or barrels		30		35		40	14		33.33
Furniture, N. O. S	20	52	20	52	22	57	10		10
Groceries, N. O. S	17	44	19	50	21	55	10	23.5	25
Iron and steel articles					See footnote 4				
Liquors and wines	29	72	32	80					10
Locomotives and accessories	22	58	25	63	28	69	10	27	19
Macaroni	17	44	19	50				10	14
Machinery:									
Agricultural, N. O. S.	22	58	25	63	28	69	10	27	19
Electrical	25	63	28	70	31	77	10	24	22
Magnesium:									
Chloride of			32	80	35	88	10		
Oxide of			26	66	29	73	10		
Oil:									
Lubricating	20	52	22	58	24	64	10	25	23
Palm and cocoanut			22	58	24	64	10		
Packing house products		35		40		45	12.5		28.5

[1] Rates named are in cents per 100 pounds except as noted.

[2] $4 per ton of 2,000 pounds. An allowance of 50 cents per ton is made when shipper loads at shipper's plant.

[3] $3.85 per ton of 2,000 pounds.

[4] Increases of Sept. 21, 1938, are approximately 10 percent. Total percentage of increase since 1936 ranges from 20 to 30 percent.

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APPENDIX I.—*Rates and percent of increases therein on principal commodities from the United States to Puerto Rico*—Continued

Commodity	Rates						Percent of increases		
	1936		Prior to Sept. 21, 1938		Effective Sept. 21, 1938		Since 1936		
	Cubic feet	100 pounds	Cubic feet	100 pounds	Cubic feet	100 pounds	Sept. 21, 1938	Cubic feet	100 pounds
Paper:									
Bags	------	30	------	35	------	------	------	------	16.67
Wrapping, in rolls	------	30	------	35	------	------	------	------	16.67
Rice	------	30	------	35	------	40	14	------	33.33
Roofing	------	40	------	45	------	50	11	------	25
Shoes, N. O. S.	20	------	22	------	24	------	10	------	25
Soap chips and flakes	------	30	------	40	------	44	10	------	46.67
Soap, laundry	------	20	------	30	------	------	------	------	50
Soap stock	------	35	------	40	------	44	10	------	25.7
Soda:									
Ash	------	------	------	40	------	44	10	------	------
Caustic	------	------	------	40	------	44	10	------	------
Silicate of	------	------	------	40	------	44	10	------	------
Sugar, refined, in bags or bbls	------	------	------	25	------	28	12	------	------
Tobacco:									
N. O. S	20	52	22	58	24	64	10	25	23
Leaf	15	38	17	42	19	46	10	26	21
Tractors	22	58	25	63	28	69	10	27	19
Vehicles, autos unboxed:									
Commercial units and chassis	------	150	------	185	------	200	2.7	------	33.33
Passenger cars	14	------	17	------	19	------	11.7	35.7	------
Vegetables, viz.:									
Cabbage	------	------	------	70	------	75	7.1	------	------
Onions and potatoes	------	------	------	43	------	45	4.6	------	------
Other, in packages	------	------	17	------	19	------	11.7	------	------

NOTE 1.—Rate data taken from southbound tariff under suspension, New York Exhibit No. 7 furnished by respondents to show actual rates charged prior to Sept. 21, 1938, and respondents' New Orleans exhibit showing rate history.

APPENDIX II.—*Rates and charges,*[1] *and percent of increase on principal commodities from San Juan to United States ports*

[For authority seet note 1 at end of table]

Commodity	Prior to Sept. 21, 1938		Effective Sept. 21, 1938		Wharfage at San Juan		Total rate and charge		Percent of increases	
	Cubic feet	100 pounds	Cubic feet	100 pounds	Cubic feet	100 pounds	Cubic feet	100 pounds	Cubic feet	100 pounds
Alcohol, denatured:										
In barrels or drums	10	------	10	------	1	------	11	------	10	------
In tins, packed	12	------	12	------	1	------	13	------	8.33	------
In drums not exceeding 5 gallons	17	------	17	------	1	------	18	------	5.8	------
Alcoholado	17	------	17	------	1	------	18	------	5.8	------
Acetone	26	66	29	73	1	2.5	30	77.5	15	17.3
Bottles, beer, empty	----	30	----	60	----	2.5	----	62.5	----	108
Cylinders, empty: Oxygen and carbonic acid gas	18	------	18	------	1	------	19	------	5.5	------
Cigars and cigarettes, in cases	16	------	16	------	1	------	17	------	6.25	------
Cocoanuts:										
In bags not exceeding 8 cubic feet	----	[2]50	----	[2]50	----	2.5	----	------	------	------
In bags not exceeding 4 cubic feet	----	[2]27.5	----	[2]27.5	----	2.5	----	------	------	------
Coffee:										
Green, in beans, in bags	----	30	----	30	----	2.5	----	------	------	8.33
Green, in husks, in bags	----	50	----	50	----	2.5	----	------	------	5
Roasted, in tins, in cartons	----	50	----	50	----	2.5	----	------	------	5

[1] Rates and charges are stated in cents per 100 pounds except as noted.
[2] Each.

APPENDIX II.—*Rates and charges, and percent of increase on principal commodities from San Juan to United States ports*—Continued

Commodity	Prior to Sept. 21, 1938		Effective Sept. 21, 1938		Wharfage at San Juan		Total rate and charge		Percent of increases	
	Cubic feet	100 pounds	Cubic feet	100 pounds	Cubic feet	100 pounds	Cubic feet	100 pounds	Cubic feet	100 pounds
Drums, empty, iron or steel	6	------	6	------	1	------	7	------	16.67	------
Fruit:										
Canned or bottled	------	30	------	30	----	2.5	----	------	------	8.33
Fresh in barrels:										
Ref	------	23	------	28	----	2.5	----	------	------	24
Nonref	------	16	------	21	----	2.5	----	------	------	46
N. O. S	------	18	------	21	----	2.5	----	------	------	30
Hats, straw, cases, bales, cartons	10	------	10	------	1	------	11	------	10	------
Hides:										
Dry, loose	------	[2]18	------	[2]18	----	2.5	----	------	------	------
Wet	------	55	------	55	----	2.5	----	------	------	4.5
Marble	------	25	------	69	----	2.5	----	------	------	186
Molasses:										
In barrels	------	20	------	20	----	2.5	----	------	------	12.5
Canned	------	30	------	30	----	2.5	----	------	------	6.33
Rum	29	72	29	73	1	------	----	------	3.4	------
Rugs, hooked	15	------	18	------	1	------	19	------	26	------
Sugar:										
Refined or washed	------	16.75	------	16.75	----	None	----	------	------	------
Raw, in bags of 200 pounds or more:										
Contract	------	14.5	------	15.5	}	None	----	------	------	------
Noncontract	------	15.5	------	15.5	}		----	------	------	------
Tobacco:										
Leaf in crates or cases	14	------	14	------	1	------	15	------	7	------
In standard barrels	------	[1]$1.65	------	[1]$1.65	----	------	----	------	------	------
In bales up to 155 pounds	------	[1]$1.03	------	[1]$1.03	----	------	----	------	------	------
In bales 155–180 pounds	------	[1]$1.10	------	[1]$1.10	----	------	----	------	------	------
Vegetables, canned	------	30	------	30	----	2.5	----	32.5	------	8.33
Vegetables, viz:		*Nonref.*		*Nonref.*	*Per pkg.*			*Nonref.*		*Nonref.*
Cucumbers, in crates 1 cubic foot 8 inches	*Ref.* 38	[2]27	*Ref.* 43	[2]32	----	[1]2	*Ref.* 45	34	*Ref.* 18.9	26
Cubumbers, in crates 2 cubic feet 6 inches	57	[2]40	65	[2]47	----	[1]3	69	50	19	25
Eggplant, in crates 2 cubic feet 6 inches	57	[2]40	65	[2]47	----	[1]3	69	50	19	25
Peppers, in crates 1 cubic foot 8 inches	------	------	43	[2]32	----	[1]2	45	34	------	------
Peppers, in crates 2 cubic feet 6 inches	57	[2]40	65	[2]47	----	[1]3	69	50	19	25
Tomatoes, in crates 1 cubic foot 10 inches	41	[2]29	46	[2]35	----	[1]2	48	37	17	27
Tomatoes, in lugs 1 cubic foot	23	[2]16	26	[2]19	----	[1]1	27	20	17	25
Beans, string	23	[2]16	26	[2]21	1	------	----	------	17	37.5
N. O. S	23	[2]16	26	[2]21	1	------	----	------	17	37.5
Grapefruit, in boxes over 2 cubic feet 10 inches	[1]57	[1]42	[1]59	[1]44	----	[1]3	62	47	[1]8.7	[2]11.9
Limes Oranges, ½ boxes Lemons	[1]33	[1]26	[1]35	[1]28	----	[1]1	36	29	[1]10	[2]11.6
Pineapples:										
In boxes not over 3 cubic feet	[1]63	[1]47	[1]65	[1]49	----	[1]3	69	52	7	[2]10
In ½ boxes	[1]33	[1]26	[1]34	[1]27	----	[1]2	36	29	10	[2]11.5

[1] Each.
[2] Cubic feet.

NOTE 1.—Rate data taken from northbound tariff under suspension and New York Exhibit No. 8 furnished by respondents to show actual rates charged prior to Sept. 21, 1938.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 27th day of July A. D. 1939

No. 500

PUERTO RICAN RATES

It appearing, That pursuant to order dated September 20, 1938, this Commission entered upon hearings concerning the lawfulness of the rates, charges, rules, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until January 21, 1939;

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

It is ordered, That respondents be, and they are hereby, notified and required to cease and desist, on or before September 10, 1939, from the observance of rates, charges, rules, regulations, and practices herein found unlawful; and

It is further ordered, That respondents be, and they are hereby, notified and required to cancel, effective on or before September 10, 1939, the schedules found unlawful herein upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed by section 2 of the Intercoastal Shipping Act, 1933, as amended.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 503 [1]

HIND, ROLPH & COMPANY, INC., ET AL.

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE) ET AL.

Submitted May 11, 1939. Decided July 27, 1939

Defendants' refusal to admit Brodin Line to conference membership while maintaining contracts with shippers not shown to be unjustly discriminatory, unfair, detrimental to commerce of United States, unduly prejudicial, or otherwise unlawful. Complaints dismissed.

Farnham P. Griffiths and *Joseph B. McKeon* for complainants.
J. Richard Townsend for intervener.
Chalmers G. Graham for defendants.
John J. Burns for American Merchant Marine Institute, Inc., *amicus curiae.*

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by defendants to the report proposed by the examiner, and complainants replied. The cases were orally argued. Our conclusions differ from those recommended by the examiner.

The cases involve similar issues, were heard together, and will be disposed of in one report.

Complainant Hind, Rolph & Company, Inc., a California corporation, is the Pacific coast agent for complainant Rederiaktiebolaget Disa-Kare, a Swedish corporation, hereinafter called Brodin Line. Defendants [2] are members of one or more of the following confer-

[1] This report also embraces No. 504, *Same* v. *Same* and No. 505, *Same* v. *Same.*

[2] Compagnie Generale Transatlantique (French Line), Hamburg-Amerikanische Packetfahrt Aktien Gesellschaft (Hamburg-American Line), "Italia" Societa Anonima de Navigazione (Italian Line), Norddeutscher Lloyd (North German Lloyd), N. V. Nederlandsch Amerikaansche Stoomvaart Maatschappij (Holland-America Line), Royal Mail Lines,

ences; Capca Freight Conference, West Coast Central America, Mexico-North Pacific Northbound Conference, hereinafter called the Coffee Conference, and Pacific/West Coast of South America Conference (United States Maritime Commission Agreement Nos. 6170, 3591, and 4630, respectively).

By informal complaint filed September 9, 1938, and formal complaints filed November 12, 1938, as amended, complainants allege that defendants' refusal to admit complainant Brodin Line to membership in the above-mentioned conferences and defendants' exclusive patronage contracts with shippers of cargo in the respective trades are unjustly discriminatory and unfair as between complainants and defendants, subject complainants to undue and unreasonable prejudice and disadvantage, create an undue and unreasonable preference or advantage to certain shippers, and operate to the detriment of the commerce of the United States, in violation of sections 15, 16, and 17 of the Shipping Act, 1916. We are asked to enter an order fixing a time for defendants to admit complainant Brodin Line to the conferences and to disapprove the conference agreements if they fail to comply with such an order. Stockton Port District intervened on behalf of complainants. The American Merchant Marine Institute, Inc., was permitted to file a brief after oral argument as *amicus curiae*. Complainants offered no evidence of undue preference or advantage to certain shippers, and that allegation will not be further considered.

Capoa Freight Conference agreement was approved by the Commission July 8, 1938. Its purpose is to promote commerce from Pacific coast ports of the United States and Canada to Pacific coast ports of Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, and to Colon, Panama City, Balboa, and Cristobal, by direct vessel or by transshipment, and to determine rates to be charged by member lines for transportation, between ports covered by the agreement, of through shipments from ports in the Orient and Australasia. The agreement provides that any person, firm, or corporation regularly engaged as a common carrier by water in the trade covered by the agreement may become a party to the agreement upon unanimous consent of all parties thereto, and that no one will be denied admission except for just and reasonable cause.

Limited, Rederiaktiebolaget Nordstjernan (Johnson Line), Grace Line, Inc., Kerr Steamship Company, Inc., Kawasaki Kisen Kabushiki Kaisha (K. Line), The Baltimore Mail Steamship Company (Panama Pacific Line), N. V. Stoomvaart Maatschappij "Nederland" and N. V. Rotterdamsche Lloyd (Pacific Java Bengal Line), Aktieselskabet Det Østasiatiske Kompagni (The East Asiatic Company), Westfal-Larsen & Co., A/S (Westfal-Larsen Company Line), Pacific Argentine Brazil Line, Inc., McCormick Steamship Company, Fred Olsen & Company, Nippon Yusen Kabushiki Kaisha, Knut Knutsen O. A. S. (Knutsen Line), and Latin American Line.

The Coffee Conference Agreement was approved October 25, 1934. Its purpose is to promote commerce from west coast ports of Central America and Mexico to ports in California, Oregon, Washington, and British Columbia. The agreement "covers the establishment and maintenance of agreed rates and charges for or in connection with the transportation of green coffee in vessels owned, controlled, chartered, and/or operated by the parties hereto in the trade covered by this agreement, and it is further agreed that rates on green coffee from west coast ports of Central America and Mexico to Pacific coast ports of the United States and Canada shall be covered by separate contracts executed by this conference and that the rates specified therein shall be charged during the period covered by such contracts, which shall provide that receivers will confine all green coffee movements to vessels of the within mentioned carriers in order to secure protection of the contract rates." Admission to membership may be had upon a vote of two-thirds majority of all members.

The Pacific/West Coast of South America Conference agreement was approved December 18, 1935. Its purpose is to promote commerce from Pacific coast ports of the United States and Canada to Pacific coast ports in Colombia, Ecuador, Peru, and Chile. The agreement covers the establishment and maintenance of agreed rates and charges for or in connection with the transportation, either direct or with transshipment at Cristobal, of all cargo from United States or Canadian Pacific coast ports in vessels owned, controlled, chartered, and/or operated by the parties to the agreement. It provides that any carrier operating in the trade may become a member of the conference by the consent of three-fourths of the parties thereto and that no carrier will be denied admission except for just and reasonable cause.

Defendants are the only carriers engaging in the respective trades. In August 1938 complainants announced their intention to operate a regular monthly service for the carriage of general cargo between Balboa, Canal Zone, and Pacific coast ports of the United States and Canada. Their vessels were to call both northbound and southbound at all Pacific coast ports of Central America and Mexico and to accept cargo for west coast ports of South America in direct call or transshipment service at Balboa. Upon soliciting business, complainants found that practically all of the shippers and receivers of freight in the respective trades were bound by exclusive patronage contracts with defendants to use only conference carriers. On November 30, 1938, the coffee contracts expired, but, according to a stipulation made between complainants and defendants after the hearing, those contracts are to be renewed and made retroactive to August 31, 1938. Complainants

applied to the above-named conferences for membership. Each application was denied in September 1938 on the ground that the respective trades were overtonnaged.

Witnesses for complainants testify that there is need for additional carrier service in the trades involved, and letters to this effect are of record. Defendants' evidence is that no such need exists. They show that the respective trades are now amply supplied by vessels and that there is no need for additional service. Shipper witnesses testify to the same effect. Defendants submit figures showing tonnage moved during the past several years, sailing schedules, and number of calls made by their vessels. They assert that where direct calls at Central American ports are not warranted, transshipment at the Panama Canal is accomplished by vessels on regular schedules. They also admit that practically all shippers in each trade are bound by exclusive patronage contracts and defend them on the grounds that such contracts are common in the offshore trades and have been approved by us. Complainants admit that they will avail themselves of the same contracts if admitted to the conferences. On brief defendants urge that complainants should not be considered qualified to become members of the conferences since Brodin Line is not regularly engaged as a common carrier by water in any of the trades, having made no sailings whatever. The secretary of the conferences testifies that none of them has received requests from the shipping public for additional vessel service.

The American Merchant Marine Institute, Inc., an association of American-flag steamship owners, urges us "to consider the effect of a decision requiring the admission of these complainants to the conferences as establishing a principle that all other conferences from or to American ports must be thrown open to membership by any fly-by-night foreign operator who has never operated in the trade, with the necessary result of decreasing the revenues of the American lines in such trades and operating to the detriment of the American merchant marine."

Brodin Line is an old, established firm of Stockholm, Sweden. It operates a service between the east coast of the United States and the east coast of South America. It has never been in the Pacific coast trade. Its purpose is to enter the trades here involved with two vessels removed from the Baltic and west coast of South America-United Kingdom trades. It has a right to enter the trades herein involved, and our decision in this case does not limit that right. Since the line is not in regular common-carrier operation in the trades, refusal of admission to the conferences does not violate any of their rights. Admission of Brodin Line to the conferences is not necessary to meet

the needs of the trade, and the record is convincing that refusal to admit them as members of the conferences will not result in detriment to the commerce of the United States.

We find that defendants' refusal to admit complainant Brodin Line to membership in the conferences will not result in unjust discrimination, unfairness, detriment to the commerce of the United States, undue prejudice, or violation of the shipping laws, as alleged. An order dismissing the complaints will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 27th day of July, A. D. 1939.

No. 503

HIND, ROLPH & COMPANY, INC., ET AL.

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE) ET AL.

No. 504

HIND, ROLPH & COMPANY, INC., ET AL.

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE) ET AL.

No. 505

HIND, ROLPH & COMPANY, INC., ET AL.

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE) ET AL.

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 the complaints in these proceedings be, and they are hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, JR.,
Secretary.