# UNITED STATES MARITIME COMMISSION

No. 614

TERMINAL RATES AND CHARGES AT SEATTLE, WASHINGTON, OF ALASKA STEAMSHIP COMPANY

*Submitted February 18, 1942. Decided April 23, 1942*

Proposed increased terminal rates and charges at Seattle, Wash., of Alaska Steamship Company not shown unlawful. Order of suspension vacated, and proceeding discontinued.

*Albert E. Stephan* for respondent.

*Ralph L. Shepherd*, *Jay W. McCune*, *Omar O. Victor*, *Norman R. Vote*, *John Ambler*, and *Pendleton Miller*, for interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By schedules filed to become effective February 1, 1942, respondent Alaska Steamship Company, a common carrier by water in the Alaska trade, proposed to increase its terminal rates and charges at Seattle, Wash., on numerous articles moving to and from Alaska. Upon our own motion the operation of the schedules was suspended until June 1, 1942. At the hearing the Seattle Traffic Association, Tacoma Chamber of Commerce, United States Smelting Refining and Mining Company, and Alaska Transportation Company intervened. Rates will be stated in cents per ton of 2,000 pounds.

Wharfage charges are those made on freight for the use of respondent's wharves. Handling charges are made for moving freight between place of rest on the wharf and ship's sling. Loading and unloading charges apply only on railroad car traffic. Motor trucks are loaded and unloaded by shippers. One half wharfage charges are made on shipments delivered by barge alongside vessels and not handled over the wharf. No handling charges are made on this class of freight unless it is necessary to sort mixed cargo on the barge. Over 90 percent of Alaskan cargo moving over respondent's wharves is delivered by motor truck while less than 10 percent moves by

railroad. About 75 percent of all cargo handled is classed as general merchandise.

Respondent's terminal rates have been stable, except for a few minor adjustments, since June, 1922, when the general merchandise rates were, as they are now: 50 cents for wharfage, 55 cents for handling, and 55 cents for loading and unloading. It is proposed to increase these rates to 60 cents for wharfage; 80 cents for handling; and 80 cents for railroad carloading and unloading. Certain other increases in various amounts are proposed for application on specified commodities not included in the classification of general merchandise.

Respondent relies upon the need of additional revenue to meet advancing costs of operation due primarily to increased wages and working restrictions. In 1941 it handled a total of 220,141 tons over its wharf. The labor cost of handling amounted to $190,488 and that of checking was $72,818. These figures represent a total labor cost per ton of $1.195 which, when added to the cost of rent and overhead, amounted to a total cost per ton of $1.69. Since the sum of the wharfage charge of 50 cents and the handling charge of 55 cents equaled a total revenue of only $1.05 per ton on general merchandise, it is obvious that the terminal charges on the average ton of freight were not on a compensatory basis in 1941.

Effective February 4, 1942 a 10-percent increase in straight time and overtime wages for longshoremen has been granted. Witnesses representing other Puget Sound wharves testified that increased costs of operation were general and that the present trend of terminal charges in other trades is upward. The wharves serving respondent's competitors propose to increase their terminal charges in like amounts. An official of the Waterfront Employers of Washington traced at length the history of labor relations since 1920. In view of the conclusions reached, it will be unnecessary to review that testimony.

Interveners offered no evidence.

We find that the suspended schedules are not unlawful. An order will be entered vacating the order of suspension and discontinuing this proceeding.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 23rd day of April 1942

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No. 614

TERMINAL RATES AND CHARGES AT SEATTLE, WASHINGTON, OF ALASKA STEAMSHIP COMPANY

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*It appearing*, That by order dated January 24, 1942, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations and practices in the schedules enumerated and described in said order, and suspended the operation of said schedules until June 1, 1942;

*It further appearing*, That investigation of the matters and things involved has been had, and that the Commission on the date hereof, has made a final report containing its conclusions and findings therein, which report is hereby referred to and made a part hereof, and has found that the schedules under suspension have not been shown to be unlawful;

*It is ordered*, That the order heretofore entered in this proceeding, suspending the operation of said schedules be, and it is hereby, vacated and set aside, and that this proceeding be, and it is hereby, discontinued.

By the Commission.

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

# UNITED STATES MARITIME COMMISSION

No. 616

RATES AND PRACTICES OF MAURICE BENIN (SHIPPING) LTD. AND SIGMA TRADING CORPORATION

*Submitted August 10, 1942. Decided October 15, 1942*

Respondents, obtaining the allocation of cargo space for the transportation of cotton from Suez to the United States and then disposing of it to others on bases far exceeding the rate accorded them, not subject to the Shipping Act, 1916, as amended. Future course for shippers and consignees to follow suggested.

*Charles R. Hickox* for respondents.
*E. B. Hayes* for the Commission.
*George S. Elpern* and *Herman W. Feder* for Intervener.

## REPORT OF THE COMMISSION

BY THE COMMISSION:

Respondents filed exceptions to the report proposed by the examiner and requested oral argument. The request for oral argument is denied. Our conclusions are substantially in accord with those of the examiner.

This is a proceeding instituted on the Commission's own motion concerning the status of the respondents, Maurice Benin (Shipping) Ltd. and Sigma Trading Corporation, both having an office or place of business in New York, under the Shipping Act, 1916, as amended; and the lawfulness of their rates and practices in connection with the transportation of cotton from Suez, Egypt, to Boston, Mass. Reinhart Cotton Company, Inc., intervened.

The proceeding was instituted upon information that respondents, after receiving from the Emergency Shipping Division of the Maritime Commission an allocation of space for shipment of 6,000 bales of cotton from Egypt, disposed of the space to others at rates or other consideration greatly in excess of the established steamship rates.

Respondents contend that they were acting solely as traders in cotton and not as carriers, forwarders, or other persons subject to the Shipping Act, 1916, and that, therefore, the Commission has no jurisdiction. They offered numerous communications between themselves and a firm

in Egypt to show that when the space was allocated they were negotiating for the purchase of Egyptian cotton to fill the allocated space.

These negotiations began in May 1941. On June 9, Benin sought the aid of the Egyptian commercial counselor to obtain the necessary ship space, who, on June 17, advised Benin that the Emergency Shipping Division of the Maritime Commission would allow a large part, if not all, of the space for the cotton. On June 26, 1941, the Assistant Director of the Emergency Shipping Division advised the Egyptian commercial counselor that 3,000 bales would be lifted by each of two steamers operated by American Export Lines, Inc., and Isthmian Steamship Co., respectively, and suggested that Sigma or its representatives get in touch with the named carriers to complete the necessary arrangements. These arrangements were completed on June 30, 1941, when Benin was informed that the rate would be $50 per long ton.

Respondents say they had become extremely doubtful by this time of their ability to secure the 6,000 bales of cotton. Having heard that Reinhart had 3,000 bales at Suez they approached that company for the purpose of entering into an alleged joint venture, under which the respondents were to furnish space for 3,000 bales and marine insurance, and Reinhart was to pay Sigma 6 cents per pound, or $134.40 per long ton. Reinhart rejected this proposition and sought, itself, and through its broker to secure space. Informed that no space was available, Reinhart entered into further negotiations with Sigma, and finally agreed on July 3, 1941, to pay the latter 4.5 cents per pound, or $100.80 per long ton for the space alone. The respondents were to provide no insurance or furnish any other services.

Shortly thereafter respondents, through Simon Jaglom, entered into a preliminary agreement on July 14, 1941, with George H. McFadden & Bro., under which the respondents were to release space to McFadden for 1,000 bales. The final agreement between McFadden and Jaglom provided space for 1,200 bales, and McFadden was to pay the freight rate to the carrier and, in addition, agreed to turn over to Jaglom and respondents 50 percent of the profits accruing from the sale of the cotton, and to pay them 1.5 cents per pound, or $33.60 per long ton, on one-half of the 1,200 bales. There is no evidence in connection with this transaction that respondents or Jaglom performed any service for the shipper other than the furnishing of space on the ship.

Thus respondents and Jaglom, without paying any freight charges or performing any service other than supplying freight space for the transportation of cotton, which they had been able to secure through the efforts of the Egyptian commercial counselor, collected from Reinhart slightly more than $50,000, or 100 percent of the freight charges, and from McFadden 1.5 cents per pound on 600 bales of cotton and 50 percent of the net profits made by McFadden in the sale of

1,200 bales of cotton. In the McFadden case, the final settlement was not shown but it, also, must have been a substantial percentage of the freight charges.

Reinhart contends that Benin and Sigma, by procuring space and then disposing of it on bases far exceeding the rates accorded by the steamship lines to the public, violated the provisions of section 16 of the Shipping Act, 1916, which make it unlawful for "any common carrier by water, or other person subject to this act, either alone or in conjunction with any other person, directly or indirectly—

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

Reinhart's position is that respondents functioned as "other persons subject to this act." In section 1 of the Shipping Act, 1916, the term "other person subject to this act" is defined to mean "any person not included in the term 'common carrier by water,' carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water." Reinhart contends that Benin and Sigma engaged in forwarding. While the record shows that they did not receive and forward the cotton, it is pointed out that they did obtain the allocation of cargo space, and their engaging in this activity, it is claimed, was the conduct of a forwarder. However, the record shows only an isolated instance of procurement of cargo space, and, accordingly, even though the transaction might be said to bear some analogy to certain activities engaged in by forwarders, nevertheless it can hardly be said on the record that respondents were engaged in the "business" of forwarding. In this connection, it should be observed that a shipper, unable to use the space assigned to him, is not prohibited from reallocating such space at the cost thereof to him. But when such a shipper, on a number of occasions, trades in his space allocation at a profit, he runs the risk of being considered as abandoning his role as a shipper and being treated as assuming a role analogous to that of a forwarder.

Reinhart also contends that Benin is subject to the act for another reason. Benin is represented by its letterheads to be a steamship agent and charterer. The testimony shows that it has never chartered or operated ships, but it has acted as a steamship agent in the Near East. Reinhart asserts that steamship agents are the agents of common carriers and subject to the act and to our jurisdiction along with their principals. Since it was not as an agent of a common carrier that Benin acted in the matters under investigation, consideration of the question thus raised is deemed unnecessary.

On the record in this proceeding, we find that Benin & Sigma are not shown to be or to have been subject to the Shipping Act, 1916, as amended. It is possible, however, that they engaged in a transaction which, if it had been found to have been repeated with some frequency, might well have brought them within the scope of that statute, and that, furthermore, they acted in serious opposition to the efforts of the Government to keep freight rates within reasonable bounds. It is unfortunate that their activities were not brought to our attention sooner. If, when Reinhart was first offered space by Sigma, we had been notified thereof, there would have been time to reconsider the allocation made and to take steps toward Reinhart's receiving no less favorable rate than was accorded Sigma. In the future, if respondents or others should attempt to profit by disposing of cargo space in the manner herein disclosed, those approached should communicate such fact to us without delay.

An order discontinuing this proceeding will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 15th day of October A. D. 1942

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No. 616

RATES AND PRACTICES OF MAURICE BENIN (SHIPPING) LTD. AND SIGMA TRADING CORPORATION

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This case, which was 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.*

# UNITED STATES MARITIME COMMISSION

No. 622

IN RE M. S. VENCEDOR, INC.

*Submitted November 17, 1942. Decided December 1, 1942.*

Respondent a subject carrier engaged in interstate transportation between New York-Philadelphia and Puerto Rico, without rate schedule on file, in violation of section 2 of Intercoastal Shipping Act, 1933, as amended. Cease and desist order entered and violation referred to Department of Justice for prosecution.

Respondent's request for special permission to file rates on less than statutory notice denied.

*Harold D. Safir* and *Herbert Lebovici* for respondent.

*Allen B. Bassett* for Grevate Bros., Inc.; *M. Barquinero* for Barquinero Teijeiro; *A. W. Carle* for Orange-Crush Company; *Samuel Conrad Cohen* for Regent Shoe Corporation and Silvertex Mercantile Company; *M. Fernandez* and *H. Heyliger* for M. Fernandez & Company; *Murray C. Fuerst* for Ricardo Katz; *Arthur M. Gould* for McLain Carolina Line; *W. C. Planz, J. Mangels* and *M. Farber* for Neuss-Hesslein & Company, Inc.

*John Eisenhart, Jr.*, for Director of Economic Stabilization and the Office of Price Administration.

*Maurice A. Krisel* for the Commission.

## REPORT OF THE COMMISSION

BY THE COMMISSION:

This is a proceeding instituted by us into and concerning the lawfulness under the Intercoastal Shipping Act, 1933, as amended, of the engaging by respondent M. S. Vencedor, Inc. in transportation of freight between ports in the United States and ports in Puerto Rico; the lawfulness of respondent's rates, charges, classifications, rules and regulations for and in connection with such transportation; to determine whether permission requested by respondent on October

9, 1942, for filing of its rate schedules upon less than 30 days' notice should be granted, and to make such findings and order or orders, and to take such other action in the premises as may be warranted by the record. Hearing was held in Brooklyn, N. Y., on November 12, 13, and 17, 1942.

Respondent is a corporation organized in September 1942 under the laws of the State of New York. Prior to its organization and during August 1942 the incorporators held themselves out by offers to numerous firms and corporations as a carrier, under respondent's name, of freight from New York, N. Y., and Philadelphia, Pa., to San Juan, Puerto Rico, by barge from New York through the inland waterways to Norfolk and ports south thereof, including Miami, with transshipment at any of these ports to vessels of the respondent for transportation thence to Puerto Rico. From August 1942, to the date of the hearing, respondent had issued approximately 1,250 bills of lading to approximately 200 different shippers for through transportation as above described. The cargo offered and accepted was of various commodities ordinarily covered by the term "general cargo." The shippers prepaid the transportation charge on all commodities at a rate of $1.00 per cubic foot. The amount of cargo thus accepted was sufficient to fill several of the respondent's barges and the freights collected therefor represented substantial amounts. Evidence also disclosed that respondent had dispatched at least five loaded barges southward through the inland waterways. One of these, the *Liberty*, arrived at Norfolk where most of its cargo was transferred to respondent's sailing vessel, the *Gravenor*, otherwise known as the *Mayfair*. This vessel became a total loss at sea.

At the time of the hearing respondent had not filed a tariff schedule of rates covering the transportation above described with the Maritime Commission.

On October 9, 1942, respondent obtained a temporary Certificate of Public Convenience and Necessity from the Interstate Commerce Commission covering the state-to-state portion of the transportation. This certificate was effective until December 31, 1944, and was limited to the transportation of shipments to be transshipped beyond the ports of transshipment. The Interstate Commerce Commission also required respondent to file with it a proportional rate applicable to the transportation covered by the certificate.

Accordingly, respondent filed its Tariff I. C. C. No. 1, effective October 10, 1942, showing a "proportional" rate between New York-Philadelphia and Norfolk-Charleston-Jacksonville-Miami. This tariff specified a rate of 40 cents per cubic foot or $16.00 per net ton, whichever resulted in the greater revenue to respondent, applicable to any commodity south-bound and limited to sugar north-bound.

There is no evidence that this rate was charged on any shipment accepted by respondent for transportation to Puerto Rico.

Subsequent to the issuance of this Certificate of Public Convenience and Necessity and prior to the hearing, the United States Coast Guard inspected four of respondent's barges, and served notice upon it, dated November 12, 1942, that the barges were not seaworthy and would not be allowed to proceed through open waters necessary to enter the inland waterways. Although respondent had been accepting cargo and receiving the freight monies for this transportation for a period of at least two months, respondent in no instance delivered any cargo to Puerto Rico.

The above facts of record demonstrate that respondent has been, since August 1942, a common carrier by water in interstate commerce subject to the regulatory provisions of the Intercoastal Shipping Act, 1933, as amended. By section 2 of that act, all such carriers are prohibited from engaging in such transportation unless and until schedules of their rates, fares, and charges have been duly and properly posted and filed with this Commission. Notwithstanding the fact that respondent had secured a Certificate of Public Convenience and Necessity from the Interstate Commerce Commission, and had filed a "proportional" rate therewith respondent was not relieved from complying with the provisions of the above-mentioned act. The evidence shows that respondent was offering transportation service from New York or Philadelphia direct to Puerto Rico; that shippers were charged and paid the charges therefor, and that respondent was the only carrier involved in such transportation. Respondent therefore engaged in transportation in violation of the Intercoastal Shipping Act, 1933, as amended.

As stated, respondent charged all shippers, up to the date of the hearing, a flat rate of $1.00 per cubic foot. At the hearing, however, respondent's president testified that he intended to file a rate of $1.00 per cubic foot or $40.00 per net ton of 2,000 pounds, whichever resulted in the higher revenue to the respondent on all commodities southbound and on sugar northbound. Whether or not he intended to make adjustments with shippers, who had already paid freight at the $1.00 per cubic foot rate, on basis of the rate which he expected to file, does not appear.

Witness for the Office of Price Administration testified to the present unfortunate economic conditions in Puerto Rico and the efforts of that Administration, the War Shipping Administration, and other governmental agencies to alleviate such conditions. It is testified that the basic articles of diet available to most of the people of Puerto Rico are dried beans, rice, and codfish, and that even a slight increase in the retail prices on these commodities might well

determine the physical well-being of these American citizens. A comparison was made of respondent's rate of $2.00 per 100 pounds which would be applicable to dried beans if that resulted in the higher revenue to respondent, with a rate of 50 cents per 100 pounds, including the surcharge, maintained by four carriers operating from Gulf ports of the United States to Puerto Rico. Another comparison was made of the $2.00 per 100-pound rate of respondent with the rates, without the surcharge of 25 percent, of these same carriers on various food and essential commodities in part as follows:

| | Cents | | Cents |
|---|---|---|---|
| Box shooks | 55 | Flour, pkgs. | 55 |
| Canned goods | 55 | Meat, canned | 55 |
| Cans, empty | 40 | Meat, cured | 45 |
| Cereals, rolled oats | 55 | Milk, evaporated | 55 |
| Cheese | 55 | Milk, powdered | 55 |
| Cotton piece goods | 58 | Nails | 39 |
| Feed, animal | 36 | Rice | 40 |
| Fertilizer | 22½ | Seeds | 73 |
| Fish, dried | 35 | Soap, laundry | 30 |
| Flour, bbls. bags | 40 | Wool yarn | 46 |

Respondent pointed out that carriers now serving Puerto Rico are under governmental control and contended that their rates and surcharge thereon furnished no dependable basis as to what may be reasonably compensatory rates under existing abnormal conditions. Comparison was made by respondent of its rate of $1.00 per cubic foot with higher rates said to have been charged by small boats for transportation from Florida and Boston, the rate from Boston being referred to as $1.25 per cubic foot. Except that one of these small boats was named, respondent's witness was unable to furnish additional information in this connection. Similarly, reference was made by this witness to a rate of the schooner *Lucy Evelyn* of $1.75 per cubic foot for transportation from New York to Colombia. Respondent offered no evidence as to its expenses of operation which would justify the wide disparity between the rates which it proposed to charge and the existing rates of other carriers serving Puerto Rico. Respondent stated that it could not arrive at accurate costs of operation until further experience in the trade was had. In view of the lack of such data, and because no showing was made either by the Office of Price Administration or by respondent as to the comparability of the compared rates, no finding will be made as to the reasonableness of the rate in issue.

In the course of the hearing stipulation was entered into and placed upon the record between respondent and shippers which, among other things, requires respondent to consent to entry of a decree in admiralty or other court of record, allowing shippers to repossess their shipments

and liquidating all floating equipment and other facilities of respondent for the benefit of the shippers. Following the filing of this stipulation, introduction of additional evidence was discontinued on behalf of all parties.

The failure of respondent to comply with the provisions of the Intercoastal Shipping Act, 1933, as amended, with respect to the filing of rates pursuant to the requirements of that statute, prior to establishment and maintenance of this transportation is entirely unexplained and is without justification. In view of the fact that there is no assurance that this company or its officers will not engage in this or similar transportation in the future, a cease-and-desist order will be entered and the violation above determined will be referred to the Department of Justice for prosecution.

There is no evidence that the shippers made any inquiry as to whether or not respondent had complied with the law, which indicates that they were more interested in securing transportation than in the maintenance of the procedure which Congress provided for their protection. This procedure is most necessary at this particular time to assist the governmental agencies which are dealing with the problems of Puerto Rico. The experience of shippers in this instance will emphasize the necessity of investigating the responsibility of carriers entering a trade and of determining whether they have complied with the filing requirements of the law.

Should other carriers undertake to enter this trade at rates greatly exceeding the going level, they must be prepared to justify them with concrete evidence as to operating and overhead costs and total gross revenues to be derived from the rates.

In view of the stipulation which was introduced at the hearing the application for permission to file rates on less than 30 days' notice will be denied and the proceeding will be discontinued.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 1st day of December A. D. 1942

No. 622

IN RE M. S. VENCEDOR, INC.

This proceeding, instituted by the Commission on its own motion by order of November 5, 1942, having been heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

*It is ordered*, That respondent be, and it is hereby, notified and required to cease and desist and hereafter abstain from the violation of section 2 of the Intercoastal Shipping Act, 1933, as amended, found in said report to have been committed by said respondent, and that said violation be certified to the Department of Justice for prosecution; and

*It is further ordered*, That respondent's application for permission to file rates on less than thirty days' notice be, and it is hereby, denied; and

*It is further 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. 617

INTERCHANGE OF FREIGHT AT BOSTON TERMINALS

*Submitted October 14, 1942. Decided November 12, 1942*

Practice of Boston Tidewater Terminal, Inc., of charging wharfage at Army Base Terminal on freight when the movement is otherwise than by rail and making no charge on railroad freight found unreasonable

*H. D. Boynton, W. A. Cole, George H. Fernald, William L. MacIntosh, John V. de P. Phelan*, and *Lothrop Withington* for respondents.

*Lieutenant Colonel Elbert M. Barron, Major Randolph C. Shaw, Henry E. Foley, Frank S. Davis, B. F. Ott, A. A. Raphael*, and *J. W. Van Houten* for interveners.

*Edward B. Hayes* for the Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed to the report proposed by the examiner, and the case was orally argued. Our conclusions are substantially those of the examiner.

This is a proceeding on the Commission's own motion concerning the lawfulness under the provisions of the Shipping Act, 1916, as amended, of the rates, charges, rules, regulations, and practices of respondents The New York, New Haven and Hartford Railroad Company (Howard S. Palmer, James Lee Loomis, and Henry B. Sawyer, Trustees), Boston and Maine Railroad, The New York Central Railroad Company, Boston Tidewater Terminal, Inc.,, Department of Public Works of the Commonwealth of Massachusetts, Mystic Terminal Company, and Wiggin Terminals, Inc., applicable to the interchange of freight with water carriers at piers at Boston, Mass. The War Department, Boston Port Authority, Boston Chamber of Commerce, New England Paper and Pulp Traffic Association, American Writing Paper Corporation and New England Paper Service Association, Inc., intervened.

Under the provisions of section 8 of the Merchant Marine Act, 1920, the Commission entered into correspondence with the War Department regarding the refusal of the New Haven Railroad to absorb wharfage charges on rail shipments moving to and from Commonwealth Pier No. 5 and the Army Base pier while at the same time absorbing such charges at certain other piers at Boston. This correspondence culminated in a request by the Maritime Commission of the Interstate Commerce Commission to institute a proceeding of investigation to determine possible violations of the Interstate Commerce Act by the New Haven and other rail carriers serving Boston. At the same time the Maritime Commission expressed willingness to enter into a joint hearing with the Interstate Commerce Commission so that any phase of the matter which might not come under the jurisdiction of the Interstate Commerce Commission, but which might be subject to the jurisdiction of the Maritime Commission, could be considered at the same time. Accordingly, the Interstate Commerce Commission instituted a proceeding of investigation on March 2, 1942, under No. 28792. These proceedings were heard together.

The jurisdiction of the Maritime Commission over respondent railroads is limited to their activities as "other persons" subject to the act as defined in section 1, namely, the carrying on of the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

The New Haven owns two piers of wooden construction at South Boston known as piers Nos. 1 and 4 which are antiquated and in a dilapidated condition. Its engineering department has put a small floor load limitation of about 100 pounds per square foot on pier No. 1, making it difficult to handle an ordinary ship's cargo there. The water front end of No. 4 has been rented to a fish and ice company which occupies enough space to prevent proper discharging of a vessel. Very little ocean general cargo is handled at New Haven's piers.

Boston and Maine owns the Mystic Piers and Hoosac Docks located in the Charlestown section of Boston Harbor. These piers handle grain and general cargo in the foreign and domestic trades and are operated by respondent Mystic Terminal Company. The New York Central owns and operates certain piers at East Boston, handling miscellaneous cargo in foreign and domestic commerce.

The Commonwealth of Massachusetts owns and operates, through the Department of Public Works, pier No. 1 at East Boston and pier No. 5 at South Boston. The former is served by New York Central and the latter by New Haven. These piers handle miscellaneous cargo in foreign and domestic commerce. They have been leased by the Navy Department.

Respondent Boston Tidewater Terminal operates Army Base Terminal at South Boston. The terminal, which is owned by the United States, is controlled by the War Department. It is served by New Haven. It is testified that this terminal will be operated commercially so far as the war will permit.

The Wiggin Terminal Wharf is located in Charlestown, handles general merchandise, and is privately owned and operated by respondent Wiggin Terminals, Inc. It is served by Boston and Maine.

A large amount of freight is carried from and to the piers by motortrucks as well as by railroad. Through switching arrangements each pier involved herein is accessible to any of the railroads serving Boston. The New Haven loads and unloads railroad cars which it handles on the facilities of Army Base and Commonwealth piers. Wiggin, with respect to its pier, acts as agent for Boston and Maine in loading and unloading services, and is paid for so acting.

As used herein the term "wharfage" means a charge made by a pier owner or operator against shippers or consignees for cargo conveyed on, over, or through a terminal facility, or loaded or discharged while a vessel is on berth. It is a charge for use of the pier alone. Wharfage charges or rates quoted in this report will be those applicable on general merchandise package freight. It is unnecessary to consider special rates or services relating to such commodities as bulk grain, coal, coke, ore, lumber, shingles, ship's stores, or fuel oil.

The railroad respondents do not charge wharfage where they enjoy a line haul to or from the pier, but a charge of 70 cents per ton for loading or unloading and wharfage is made when the railroad owning the pier receives only switching revenue. When the line-haul railroad interchanges traffic with another railroad pier at Boston it pays the loading or unloading and wharfage charge to the latter and in addition pays the applicable switching charges. This practice as to wharfage is called absorbing wharfage. Thus no railroad line-haul traffic moving to or from a railroad-owned pier at Boston is charged wharfage irrespective of what railroad does the hauling or what railroad pier is used. On traffic brought to or from a railroad-owned pier by motortruck, railroad respondents make a wharfage charge of 55 cents per ton.

Commonwealth charges 50 cents per ton wharfage on all freight handled by rail or truck although the charge has been temporarily suspended for the duration of the lease to the Navy. It also collects 10 cents per ton from the New Haven for use of its railroad tracks on the pier. Army Base makes no wharfage charge on railroad freight, but collects 50 cents per ton wharfage when movement is otherwise than by rail, and it also charges New Haven 10 cents per ton for use of the railroad tracks there.

Wiggin is paid 70 cents per ton by Boston and Maine for car loading or unloading and wharfage. It states that it does not feel that it is receiving a fair amount for the services rendered. The railroad absorbs this sum on line-haul freight, but if only a switching movement is involved the freight stands the charge. Wiggin charges 55 cents wharfage on traffic moving otherwise than by rail.

The record is clear that New Haven's facilities are not adequate and that it is dependent upon Army Base and Commonwealth. It has the use of two modern piers at a cost of only 10 cents per ton for trackage rights while allowing its own facilities to go to waste.

Army Base and Commonwealth have tried without success to have New Haven pay wharfage at their piers out of the line-haul revenue which covers wharfage service. *Wharfage Charges and Practices at Boston, Mass.*, 2 U. S. M. C. 245. They also seek the same treatment as to absorption of wharfage that prevails between the railroad piers.

Army Base receives no wharfage revenue at all on railroad traffic. It is giving free wharfage service to railroad cargo while charging wharfage on other classes of freight. No shipper complained at the hearing of this apparent discrimination. However, this practice in principle was condemned as unreasonable in *Practices, Etc., of San Francisco Bay Area Terminals*, 2 U. S. M. C. 588. However, where it appeared that railroads included compensation for use of terminal facilities in their freight rates, their practice of charging wharfage on truck freight, and not specifically on rail freight was found not unreasonable in *Philadelphia Ocean Traffic Bureau* v. *Phila. Piers, Inc.*, 1 U. S. M. C. 701, 704.

We find that the practice of respondent Boston Tidewater Terminal, Inc., of charging wharfage at Army Base on freight when the movement is otherwise than by rail and making no charge on railroad freight is unreasonable in violation of section 17 of the Shipping Act, 1916. Respondent will be allowed sixty days within which to establish a reasonable charge on railroad freight. No order will be issued at this time.

It is recognized that such a finding will result in double wharfage as to railroad shippers using Army Base if the railroads refuse to absorb the wharfage and at the same time retain out of their line-haul revenue an undisclosed factor representing wharfage. However, as in the case of Commonwealth stated above, the lawfulness of such a practice is for the Interstate Commerce Commission to consider. Wharf operators have a clear right to compensation for use of their facilities.

# UNITED STATES MARITIME COMMISSION

No. 620

## RESTRICTIONS ON TRANSSHIPMENTS AT CANAL ZONE UNDER AGREEMENT No. 3302

*Submitted December 12, 1942. Decided February 9, 1943.*

Agreement of Association of West Coast Steamship Companies, an association of common carriers engaged in transportation from Pacific ports of Colombia and Ecuador to United States and other ports, found to be unfair as between carriers, to operate to the detriment of the commerce of the United States, and to be disregarded by respondents in respect to the filing of tariffs. If the association should fail to take action indicated in the report within thirty days, the agreement will be disapproved and canceled.

*Burton H. White* for Royal Netherlands Steamship Company, *Roger Siddall* for Pacific Steam Navigation Company, and *James Kearney* for Grace Line, Inc.

*Maurice A. Krisel* for United State Maritime Commission.

### REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by respondent Pacific Steam Navigation Company to the report proposed by the examiner. Our conclusions agree with those of the examiner.

This is a proceeding instituted by us on our own motion to determine whether or not Agreement No. 3302, as amended, should be modified or canceled.

The agreement is the organic agreement of the Association of West Coast Steamship Companies,[1] whose purpose, it declares, is "to promote northbound commerce from Pacific ports of Colombia or Ecuador to (a) Cristobal or Balboa, (b) United States ports on the Atlantic Coast, Pacific Coast (including Alaska) or Gulf of Mexico, * * * by direct vessel or with transshipment at Cristobal or Balboa and/or at any other intermediate port," and to other ports. With respect

[1] The association is composed of respondents Compania Sud Americana de Vapores (Chilean Line), Elliot Shipping & Land Co., Inc., Grace Line, Inc., Pacific Steam Navigation Company, and Royal Netherlands Steamship Company.

to cargo transshipped at Cristobal or Balboa, the transshipment may be from and to vessels of members of the association or from a member's vessel to one of a cocarrier that is not a member. Under Article 20 of the agreement, the naming of cocarriers and the division of through rates on transshipped cargo are governed by unanimous vote of the association.

Pursuant to the terms of Article 20, above mentioned, of the agreement, agreements were entered into by the member lines with cocarriers covering cargo transported on through bills of lading from Pacific ports of Colombia and Ecuador to Atlantic and Gulf ports of the United States and providing for a division of 66 percent of the through rates to the originating carrier and 34 percent thereof to the delivering carrier on all commodities except balsa wood, on which the division of the rate was 50–50. The originating carrier absorbed the transshipping expense at the canal out of its division of the rate for all commodities except balsa wood, on which those expenses were divided equally between the carriers.

This 66–34 percent division was an outgrowth of an arrangement that had existed prior to the opening of the Panama Canal in 1914. At that time, the originating carrier received 38 percent of the through revenue, the railroad company operating across the isthmus 28 percent, and the delivering carrier 34 percent. After the opening of the canal, respondents carried the cargo through to Cristobal, receiving in addition to the 38 percent the 28 percent formerly obtained by the railroad company.

The cocarrier agreements referred to have since been canceled because the cocarriers operating from the canal zone to the United States were dissatisfied with their share of the through revenue and claimed that the above share was not enough to reimburse them for the costs of transportation. The experience of one cocarrier with respect to the transportation of coffee, one of the principal commodities carried in the trade, and of ivory-nut waste, another principal commodity was cited in proof of this contention. The contract rate on coffee from Colombia is $12 per short ton. Thirty-four percent of this amounted to $4.08. The cost of loading the coffee was 30 cents per ton and the cost of discharging and handling for delivery was $2.36 per ton, leaving $1.42 for the transportation from Cristobal to New York. The through rate on ivory-nut waste was $8, 34 percent of which is $2.72, which barely sufficed to pay the expenses of loading and discharging and left practically nothing for the transportation.

The cocarrier, above mentioned, sought minima of $5 per ton on coffee and $4 per ton on the ivory-nut waste and other cocarriers proposed to the association that 50 percent divisions be agreed upon

for all commodities. To the latter proposal, all of the member lines of the association, with the exception of the Pacific Steam Navigation Company, agreed. The latter company stipulated that it would agree under protest to the arrangement, but only for the duration of the war, and stipulated further that upon conclusion of the actual hostilities, the association must agree that on request of this carrier or on the request of any other member, the division of 66–34 percent would become effective. This proposal was not acceptable to the cocarriers. The association, however, agreed to put a 50–50 percent division into effect pending the determination of the question as to the adequacy of the divisions.

The combination of local rates of respondents and cocarriers which would become effective with the cancellation of the cocarrier agreements considerably exceeds the joint through rates established by the cocarrier agreements.

At the hearing, Royal Netherlands Steamship Company joined Pacific Steam Navigation Company in defending the 66–34 percent division.

All of respondents transship at the canal zone, although transshipment by direct lines, Chilean Line and Grace Line, Inc., is infrequent. The distance from the main port served in Colombia to the canal is approximately one-fifth of the distance from the canal to New York, and the voyage time of the first leg is slightly less than one-third of the voyage time of the second leg. The distance or voyage time from the main port served in Ecuador or the smaller ports to the canal or from there to the Gulf is not shown.

The Pacific Steam Navigation Company emphasizes the fact that the originating carrier pays the canal tolls, which fact, it contends, entitles it to the greater distribution, but these canal tolls are levied on southbound as well as northbound vessels. With respect to cargo southbound, Pacific Steam Navigation Company and Royal Netherlands Steamship Company are parties to similar cocarrier agreements except that the divisions of the through rates are on a 50–50 basis for transportation from the Atlantic and Gulf ports of the United States to Pacific ports of Colombia and Ecuador.

The association controls and the members thereof enter into cocarrier agreements relating to traffic from the same ports in Colombia and Ecuador to Pacific ports of the United States, and in those cocarrier agreements collect a 45 percent division and grant 55 percent of the through rate to the delivering carrier. The transshipping expenses at the canal are absorbed by the parties on the same basis. Counsel for Pacific Steam Navigation Company states that a canal transit is not necessary on cargo moved to United States Pacific ports. The record shows that that company's vessels transit the canal

on their way to Europe and the agreements provide for transshipment at either Balboa or Cristobal.

The facts clearly indicate that respondents' share of the revenue from the through rates on traffic to the Atlantic or Gulf transshipped at Cristobal or Balboa should not exceed 50 percent less one-half of the transfer charges at the port of transshipment.

Some of the respondents are now charging through rates and equally dividing the revenue therefrom without agreements with the cocarriers to do so having been approved or copies of memoranda of such agreements having been filed under section 15. This is true of Royal Netherlands Steamship Company, Grace Line, Inc., and Elliot Shipping & Land Co., Inc.

Pacific Steam Navigation Company and Royal Netherlands Steamship Company take the position that respondents did not agree with the cocarriers to the 50 percent divisions but were forced to accept them because the cocarriers insisted upon sharing in the revenue on an equal basis. The contention is actually an admission that the divisions were agreed to, with an explanation of the reason for the agreement. The reason does not justify the failure to file under section 15.

It is also contended that section 15 does not require filing of copies or memoranda of agreements by carriers operating from a foreign country such as Colombia or Ecuador to Cristobal. The basic agreement, No. 3302, was filed with and approved by us. It provides that the conference shall "have jurisdiction over and deal with the transportation of northbound cargo from Pacific ports of Colombia or Ecuador to destinations as defined" including United States ports. Furthermore, it provides that the conference shall, by unanimous vote, name the cocarriers and agree on the division of the through rates on such traffic. The original transshipping agreements with cocarriers covering this trade, which sprang from Agreement No. 3302, were found to be subject to section 15 in *Commonwealth of Massachusetts v. Colombian S. S. Co., Inc.*, 1 U. S. M. C. 711, 716. Thereupon, they were filed with and approved by the Commission. These administrative determinations, which have stood for years without challenge, rest upon sound reason.

Section 15 applies to every "common carrier by water." This term as defined in section 1 of the Shipping Act, 1916, includes a "common carrier by water in foreign commerce," which is defined as "a common carrier * * * engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade * * *." The transportation in question does not end at Cristobal. It is through transportation from Colombia

and Ecuador to United States ports on the Atlantic or Gulf. When the lines operating up to the Canal enter into the carriage of commerce of the United States by agreeing to receive the goods by virtue of through bills of lading, and to participate in through rates and charges, they thereby become part of a continuous line, not made by consolidation with the on-carrying lines, but made by an arrangement for the continuous carriage or shipment from a foreign country to the United States. *Cincinnati, N. O. & T. P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 184, 192. Clearly, therefore, the former, being part of the continuous line over which the through traffic moves, are "engaged in the transportation by water of * * * property between the United States * * * and a foreign country." *Norfolk & Western R. R. Co.* v. *Pennsylvania*, 136 U. S. 114, 119. Indeed, they are no less a factor in such transportation than the on-carrying lines.

The further contention is made that, inasmuch as the originating and delivering carriers do not compete with each other for the traffic moving over their route, copies or memoranda of agreements in respect to such traffic are not required to be filed. But the cocarriers do compete with members of the association operating direct services. A similar contention was over-ruled in *Commonwealth of Mass.* v. *Colombian S. S. Co., Inc., supra.*

We conclude that joint through rates are being charged and the revenue therefrom is being divided pursuant to agreements and that copies or memoranda of such agreements are required by section 15 of the Shipping Act, 1916, as amended, to be filed with us. That copies or memoranda of these agreements were not filed was a result of the position taken by Pacific Steam Navigation Company with respect to the division of the through rates. This position was made effective by virtue of the unanimous-vote provision of Article 20 of the organic agreement. The organic agreement, being a means for creating the situation caused by Pacific Steam Navigation Company, interferes with the lawful movement of cargo and is detrimental to the commerce of the United States.

Respondents also have been remiss in respect to the filing of tariffs. Schedules effective in May and August, 1942, and war surcharges which became effective in January and February of that year were not filed until the following October. Rates on balsa wood from Ecuador to Los Angeles and San Francisco, Calif., which were named on original page No. 16 of the association's freight tariff No. 3, expired on March 31, 1942, and rates in effect on this traffic since then were not filed with us until January 4, 1943.

We find (1) that respondents' share of the revenue from the joint through rates on traffic from Pacific ports of Colombia or Ecuador to United States ports on the Atlantic or Gulf of Mexico transshipped at Cristobal or Balboa should not exceed 50 percent less one-half of the transfer charges at the port of transshipment, and that, unless the law be violated as in the instances referred to, the organic agreement of the association results in respondents' receiving more than 50 percent of such revenue less one-half of such transfer charges and is, therefore, unfair as between carriers; (2) that the organic agreement interferes with the lawful movement of traffic from Pacific ports of Colombia and Ecuador to United States ports on the Atlantic and Gulf of Mexico and, therefore, operates to the detriment of the commerce of the United States, and (3) that respondents disregard the organic agreement in respect to the filing of tariffs.

Thirty days will be allowed the members of the association to agree, without reservation, upon divisions in accord with the findings herein and to file copies or memoranda of their cocarrier agreements. If they should fail to agree upon such divisions, the organic agreement will be disapproved and canceled. The obligation of filing copies or memoranda of cocarrier agreements rests upon the carrier operating from the canal zone as well as upon the members of the association. With respect to the filing of rate schedules, in the future, the association will be expected to file such schedules within thirty days from the date they become effective. No order will be entered at this time.

# UNITED STATES MARITIME COMMISSION

## No. 618

## RATES, CHARGES, AND PRACTICES OF GENERAL ATLANTIC STEAMSHIP CORPORATION

*Submitted November 3, 1942. Decided February 12, 1943*

Respondent, a subject carrier, knowingly and willfully violated rules and regulations prescribed in *Investigation—Section 19 of Merchant Marine Act, 1920*, 1 U. S. S. B. B., 470 in not filing tariff schedules.

Respondent unduly preferred certain shippers and unduly prejudiced other shippers in violation of section 16 "First" of the Shipping Act, 1916, as amended; unjustly discriminated between shippers, in violation of section 17 of that Act, and allowed persons to obtain transportation for property at less than its regular rates by unjust and unfair means, in violation of section 16 "Second" thereof.

*Frank J. Foley* and *Norman N. Fromm* for respondent.
*Edward B. Hayes* for the Commission.

### REPORT OF THE COMMISSION

BY THE COMMISSION:

Respondent filed exceptions to the report proposed by the examiner. Our conclusions agree substantially with those of the examiner.

This proceeding, instituted upon our own motion, is an investigation concerning respondent's nonobservance of rules and regulations [1]

[1] (1) Every common carrier by water in foreign commerce shall file with the Commission schedules showing all the rates and charges for or in connection with the transportation of property, except cargo loaded and carried in bulk without mark or count, from points in continental United States, not including Alaska or the Canal Zone, to foreign points on its own route; and, if a through route has been established with another carrier by water, all the rates and charges for or in connection with the transportation of property, except cargo loaded and carried in bulk without mark or count, from points in continental United States, not including Alaska or the Canal Zone, on its own route to foreign points on the route of such other carrier by water. 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.

(2) 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 October 1, 1935, 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.

prescribed in *Investigation—Section 19 of Merchant Marine Act, 1920*, 1 U. S. S. B. B., 470,[2] and concerning the lawfulness of respondent's rates, charges, and practices under sections 16[3] and 17[4] of the Shipping Act, 1916, as amended.

Respondent is a corporation organized under the laws of the State of New York in January 1941. Previous thereto it was a Delaware corporation of the same name organized in 1939. Prior to existing war conditions, vessels were obtained by respondent by charter from various vessel owners, and operated by it from United States ports to ports in England and Eire. Respondent rented a pier in Brooklyn, N. Y., and engaged, on a monthly arrangement, the services of a local stevedoring company. It continues to maintain its organization, and stands ready to resume active transportation whenever it may be able to charter vessels.

During the period July 18, 1940, to December 12, 1940, inclusive, respondent operated four vessels as follows:

*Siljan* from New York July 18, 1940, Baltimore, July 25, 1940, Norfolk, August 1, 1940, to Liverpool, Dublin, and Cork;

*Torfinn Jarl* from New York October 24, 1940, to Liverpool, Dublin, and Cork;

*Sesostris* from New York November 25, 1940, Norfolk November 29, 1940, to Liverpool and Dublin;

*Souliotis* from New York December 7, 1940, Norfolk and Newport News December 12, 1940, to Liverpool.

Publication by respondent of its sailings of these vessels and solicitation of freight for transportation therein were made by advertisements in shipping and trade papers, and by circulars and cards addressed to shippers by mail. Similar publication and solicitation were made for the *Kuressaar*, scheduled by respondent for sailing from New York, Baltimore, and Norfolk in July and August 1940 to

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[2] Section 806 (d) Merchant Marine Act, 1936, as amended, provides penalty for knowingly and willfully violating any rule or regulation of the United States Maritime Commission, as here concerned.

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

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

*Second:* To allow any person to obtain transportation for property at less than the regular rates or charges then established and enforced on the line of such carrier by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

[4] SEC. 17. That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors.

Liverpool, Dublin, and Cork. Respondent, however, did not sail this vessel. Rates charged by respondent for transportation in the vessels named were calculated primarily upon the basis of the charter hire paid by it for the particular vessel. On the *Siljan*, *Torfinn Jarl*, *Sesostris*, and *Souliotis* respondent issued a total of between 1,000 and 1,500 bills of lading.

Respondent contends that it is not subject to the Shipping Act, 1916, as amended, upon the alternative grounds, first, that its operations were those of a "tramp" within the exception in paragraph 1 of section 1 [6] of that act; and, second, that it is not a subject common carrier by water in foreign commerce because its operations were not regular as to time and therefore not "on regular routes" within the definition of "common carrier by water" contained in paragraph 3 of that section.

The Information Circular, dated January 21, 1941, and filed with the Commission by the respondent, which, by stipulation, has been made a part of the record in this matter, indicates that respondent considered its service between New York and other U. S. A. ports and Dublin, Liverpool, and other ports in Ireland and England, as being in the nature of liner service as distinguished from tramp service. This is shown by the fact that it adopted the trade name "General Atlantic Line" as applicable to this service, whereas it characterized the service to Egypt, Palestine, Turkey, Japan, Greece, and Canada as a "tramp freight service, partly actually performed, partly in preparation," and stated that no trade name was applicable to these last mentioned operations.

A "tramp" is, as stated in our Report on Tramp Shipping Service, 75th Congress, 3d Session, House Document No. 520, page 1 (1938), a "free lance" that has "earned its name from its gypsy-like existence," and that in addition to having no regular time of sailing has "no fixed route and is ever seeking those ports where profitable cargo is most likely to be found." From the above details of its operations, it is evident respondent was not a "tramp" carrier.

[6] The term "common carrier by water in foreign commerce" means a common carrier, except ferryboats running on regular routes, engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade: Provided, That a cargo boat commonly called an ocean tramp shall not be deemed such "common carrier by water in foreign commerce."

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

The term "common carrier by water" means a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on the high seas or the Great Lakes on regular routes from port to port.

The second contention is based upon a strained construction of the third paragraph of section 1 of the Shipping Act, 1916, which plainly is designed to define the term "common carrier by water" as used in the act to include both those in foreign commerce and those in interstate commerce. Each category of common carrier is defined previously in paragraphs 1 and 2, respectively, and in the paragraph defining common carrier by water in foreign commerce no mention of "regular routes" is found, except as applied to ferryboats; whereas that phrase is used in the paragraph defining common carrier by water engaged in interstate commerce. Nothing in the context of the third paragraph warrants the conclusion that it was intended to amend, restrict or affect in any way the preceding definitions.

Even under the construction of the Shipping Act, 1916, contended for by the respondent, its operations are not excluded under that construction unless irregularity in sailing schedules or variations as to port of call constitute *ipso facto* legal grounds for the finding that the operations were not "on regular routes from port to port." The Shipping Act, 1916, does not contemplate regularity of sailings in the trade or regularity of calls at ports as being the test of whether or not common carriers fall within or without the provisions relating to "regular routes." This construction of the statute is in accordance with our decision in *Alaskan Rates*, 2 U. S. M. C. 558, 580 in which we made a similar holding under section 2 of the Intercoastal Shipping Act, 1933.

We accordingly are of the opinion that respondent is a common carrier subject to the Shipping Act, 1916, as amended.

Following inquiry addressed to it by the Commission's Division of Regulation relative to compliance with the rules and regulations prescribed in *Investigation—Section 19 of Merchant Marine Act, 1920, supra*, respondent filed so-called schedules of rates for the *Siljan*, *Torfinn Jarl*, *Sesostris*, and *Souliotis* on January 9, 1942, or after a lapse of periods of from approximately twelve to seventeen months subsequent to the dates of sailings of the respective vessels. These filings are lists of numerous commodities and rates, in relation to which testimony of respondent's witness is that "one of our clerks took the manifest, took out the rates from the manifest, put them down on paper, and sent them to Washington." A comparison of the rates thus filed with the facts disclosed in a stipulation[6] entered into at the hearing between counsel for respondent and counsel for Commission discloses that the filed rates did not coincide in

[6] This stipulation is a portion of a report by a Commission investigator respecting his examination of 81 of the 1,000 to 1,500 bills of lading issued by respondent for transportation in the *Siljan, Torfinn Jarl, Sesostris,* and *Souliotis*.

many cases with the rates charged and that rates were charged which were not included in the rates filed. Furthermore, the filings contained no rules or regulations of respondent essential to certainty of application of the rates indicated therein, although the rates filed were shown by the evidence to have been controlled or varied by rules and regulations not shown in the filings.

Respondent's sole contention respecting its failure of compliance referred to is that section 19 of the Merchant Marine Act, 1920, provided no authority to require rate filings by carriers in foreign commerce. It asserts that "nowhere in the 1916 Act is there any requirement that a carrier in foreign commerce must submit tariffs," that "section 18 demands this of only carriers in interstate commerce," and that "in spite of the obvious Congressional desire to leave common carriers in foreign commerce free of the duty to file tariffs" this desire "has been frustrated" by the rules and regulations concerned. It asserts further that while "of course these rules were claimed as necessary to the enforcement of the Shipping Act," such claimed necessity can not excuse "a usurpation of legislative power." Respondent confuses rate filings before transportation, such as required of interstate carriers, with rate filings after transportation as required by the instant rules and regulations to be filed by carriers in foreign commerce. It also apparently overlooks the fact that this contention was originally and unsuccessfully argued in *Investigation—Section 19 of Merchant Marine Act, 1920, supra*, as reviewed therein at pages 500, 501.

Respondent seeks further to support the above contention by stating that the Commission's right to require the production of information by carriers was limited to the powers contained in sections 21, 22, and 27 of the Shipping Act, 1916, relating, as respondent claims, to the authority to "require any report of any facts appertaining to the business of a carrier subject to the Act," to "investigate any charged violation" and to "subpoena both witnesses and records," respectively. The exercise of the several powers specified by respondent would in no manner prevent or conflict with the authority exercised under section 19 of the Merchant Marine Act, 1920.

Respondent makes no contention that it lacked knowledge of the rules and regulations prescribed in *Investigation—Section 19 of Merchant Marine Act, 1920, supra.* On entering into the business, respondent was under a duty to inform itself of the governmental rules, regulations and orders which might apply thereto. These rules and regulations had been publicized in 1935 in the manner required by section 24 of the Shipping Act, 1916, for decisions

arrived at as a result of public hearings under that Act, namely, by printing and making available to the public. Later, on July 1, 1940, and before respondent began this venture, the rules and regulations were again published in Code of Federal Regulations and made available for public distribution pursuant to the provisions of section 11 of Federal Register Act, 49 Stat. 500. Respondent's failure to comply with the rules and regulations must be considered to have been with knowledge and willful.

The stipulation hereinbefore mentioned shows that in numerous instances respondent charged different rates for transportation of the same descriptions of commodities on the same vessel and voyage.

Respondent's attempts to justify these differences, except in a few instances, fail to remove the undue preferences or undue disadvantages or unfair discriminations resulting from respondent's practice and which are prohibited by the Shipping Act, 1916.

The fact that a shipper insists upon a measurement rate because of the nature of its contract of sale does not justify the carrier respondent giving him a lower measurement rate than the weight rate charged other shippers. The fact that respondent's competitors have raised their rates may be a justification for respondent to raise its rates, but, if it does so, it must make them applicable equally to all shippers, and the stipulation shows that it raised its rates only as to some shippers and not as to others. Respondent cannot juggle its rates to suit the whims of its shippers and on request charge a shipper a low rate on one shipment and a corresponding high rate on other shipments and thus maintain that it has followed its regular rate because the average of those charged would equal that regular rate.

These unjustified discriminations and preferences weaken respondent's explanation as to other differences as clerical errors and throw suspicion upon the differences which respondent could and did not explain.

Upon the record in the instant case we find that respondent is a common carrier subject to the Shipping Act, 1916, as amended; that it knowingly and willfully violated rules and regulations prescribed in *Investigation—Section 19 of Merchant Marine Act, 1920*, 1 U. S. S. B. B., 470; that it unduly preferred certain shippers and unduly prejudiced other shippers in violation of section 16 "First" of the Shipping Act, 1916, as amended; that it unjustly discriminated between shippers in violation of section 17 of that statute, and that it allowed persons to obtain transportation for property at less than its regular rates by unjust and unfair means in violation of section 16 "Second" of said statute.

An order will be entered requiring respondent to cease and desist from the aforesaid violations.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 12th day of February, A. D. 1943

No. 618

RATES, CHARGES, AND PRACTICES OF GENERAL ATLANTIC STEAMSHIP CORPORATION

By its order of May 29, 1942, the Commission having instituted a proceeding into nonobservance by General Atlantic Steamship Corporation of rules and regulations prescribed in *Investigation—Section 19 of Merchant Marine Act, 1920*, 1 U. S. S. B. B. 470, and concerning the lawfulness of said respondent carrier's rates, charges and practices under sections 16 and 17 of the Shipping Act, 1916, as amended, and full investigation of the matters and things involved in said proceeding having been conducted, and the Commission on the date hereof having 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 respondent General Atlantic Steamship Corporation be, and it is hereby, notified to cease and desist, and hereafter abstain, from the violations of the rules and regulations prescribed in *Investigation—Section 19, of Merchant Marine Act, 1920*, and from the violations of sections 16 and 17 of the Shipping Act, 1916, as amended, herein found.

By the Commission.

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

# UNITED STATES MARITIME COMMISSION

No. 619

HARRY REMIS, DOING BUSINESS AS H. REMIS & COMPANY

*v.*

MOORE-MCCORMACK LINES, INC., THOR ECKERT & COMPANY, INC., LAMPORT & HOLT LINE, LTD., and ADMINISTRACION NACIONAL DE PUERTOS

*Submitted June 19, 1943. Decided July 29, 1943*

Undue prejudice, unjust discrimination, and other alleged violations of Shipping Act, 1916, as amended, not shown. Shipments overcharged. Practice of compromising claims for overcharges without reference to carrier's tariffs condemned. Overcharges and undercharges found to exist adjusted re tariffs. Complaint dismissed.

*Manuel K. Berman* for complainant.

*J. M. Phillips* and *Edward N. Smith* for Moore-McCormack Lines, Inc.

*Joseph M. Locke*, *J. McGuinness* and *J. M. Phillips* for Lamport & Holt Line, Ltd.

*J. McGuinness* for Administracion Nacional de Puertos.

## REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner. Our conclusions agree with those which he recommended.

Complainant is engaged in the purchase and sale of raw materials used in the manufacture of leather, glue, and gelatin. By complaint filed August 21, 1942, he alleges that respondent subjected him to payments of rates for transportation which were in violation of sections 14, 16, 17 and 18 of the Shipping Act, 1916, as amended. Reparation is sought.

Respondent Moore-McCormack Lines, Inc., is a common carrier. Respondent Thor Eckert & Company, Inc., although duly served with copy of complaint and notice of hearing, was not represented at the

hearing. Our records show that as to transportation in the *Brageland* hereinafter concerned, Rederi Aktiebolaget Disa (Brodin Line) was the carrier, and Thor Eckert & Company, Inc., that carrier's agent. Settlements were made with complainant by Thor Eckert & Company, Inc., as will hereinafter appear. Lamport & Holt Line, Ltd. was the discharging agent for Administracion Nacional de Puertos. This latter carrier authorized its participation in the proceeding through a representative of Lamport & Holt Line, Ltd., and upon complainant's motion was made an additional respondent.

The complaint involves the application and interpretation of respondents' tariffs in respect of the transportation of whole-hide pickled splits, pickled bellies and shoulders, and dry-limed splits. Moore-McCormack Lines, Inc. and Brodin Line applied to these commodities the leather rates in force at times of movement. Complainant claims that the green-salted hide rates should have applied to the pickled splits and to the pickled bellies and shoulders, and the gluestock rates should have applied to the dry-limed splits.

Complainant established the fact that the commodities shipped were actually pickled splits, pickled bellies and shoulders, and dry-limed splits irrespective of the fact that the commodities shipped November 27, 1941, from Santos, as shown below were described as "leather" on the bills of lading. Details of the shipments, together with contemporaneous tariff rates, are as follows:

MOORE-McCORMACK

*From Montevideo, Uruguay:*

September 23, 1941—20,793 kilos whole-hide pickled splits to New York, N. Y.

October 23, 1941—24,670 kilos whole-hide pickled splits to Boston, Mass.

*From Santos, Brazil:*

November 27, 1941—21,947 kilos pickled bellies and shoulders, 10,022 kilos dry-limed splits, to Boston, Mass.

*Rate charged:* $28 per 40 cubic feet (all shipments).

*Rates on file at time of shipments:*

From Montevideo:[1]

Leather, NOS, $28 per 2,240 pounds or 40 cubic feet;

Hides (Wet, Salted), $25 per 2,240 pounds;

Cargo, NOS, $25 per 2,240 pounds or 40 cubic feet.

[1] River Plate-United States Freight Conference Tariff No. 2.

From Santos:[2]
Leather and Cut Soles, $28 per 1000 kilos or 40 cubic feet;
Gluestock, NOS, in bags or bales, $12 per 1000 kilos or 40 cubic feet;
Cargo, NOS, $25 per 1000 kilos or 40 cubic feet.

## BRODIN LINE

*From Santos, Brazil:*
April 20, 1942—14,962 kilos dry-limed splits to New York.
*Rate charged:* $22.50 per 1000 kilos, plus 35% surcharge.
*Rate on file at time of shipment:*[3]
Leather and Cut Soles, $22.50 per 1000 kilos or 40 cubic feet, plus 35% surcharge.
Splits, Cattle, Dry-limed—See Gluestock.
Gluestock, NOS, in bags or bales, $10 per 1000 kilos or 40 cubic feet, plus 35% surcharge.

## ADMINISTRACION NACIONAL DE PUERTOS

*From Montevideo, Uruguay:*

December 15, 1941—3 shipments—37,367 kilos, 154,323 pounds, and 30, 369 kilos pickled splits to Boston, Mass.
*Rate charged:* $28 per 40 cubic feet.
*Rates on file at time of shipment:* No rate on file and no evidence as to its rates at that time.

A hide, or any part thereof, does not become leather until it goes through a tanning process which is begun by application of a bark or chrome tanning solution. None of the commodities here had been so treated.

As taken off the animal, the hide is placed in a limed solution to increase its thickness and to remove the hair. After such "liming" process is completed, a portion of the flesh is removed from the under side of the hide by a "fleshing machine." A "splitting machine" is then used to split the hide lengthwise into a top or "grain" portion and an under, "flesh," or "split" portion. If not intended for immediate tanning, the grain portion is wet-salted, in which state it is known as a green-salted or wet-salted hide. The split portion, if intended for shipment rather than for immediate tanning, is preserved

[2] Brazil-United States Freight Conference Tariff No. 5.
[3] Brazil-United States Freight Conference Tariff No. 6.

by "pickling" in a solution of salt, sulphuric acid, and water, in which state it is known as a whole-hide pickled split, or pickled split. There is a clearly recognized trade distinction between pickled splits and green-salted or wet-salted hides, and of the two a pickled split is much less valuable. Green salted hides weigh from 30 to 60 pounds each, and a bundle of four measures about 2 feet square. Dependent upon their varying sizes and thicknesses, a bundle of twenty pickled splits may be of about the same bulk and may weigh more than a bundle of four green-salted hides. Pickled splits, when tanned, are used for linings and in the manufacture of cheaper qualities of gloves and other leather goods.

Pickled bellies and shoulders are portions cut from the hide after the liming process and pickled similarly as are pickled splits. They differ from the pickled split in their size, and in that they are both the grain and the under or flesh portion of the hide. Pickled shoulders and pickled bellies, when tanned, are used, respectively, for sole leather, and for similar but better qualities of leather goods than can be manufactured from pickled splits.

Dry-limed splits are strips or pieces of the under or flesh portion of the hide which are limed and sun-dried. Unlike pickled splits, they can not be manufactured into leather, and are usable for the making of glue only.

It follows that complainant's shipments of pickled splits were not leather, nor green-salted hides; that the pickled bellies and shoulders were not leather, green-salted hides, nor gluestock, and that the dry-limed splits were not leather. The application of the rate on leather to these shipments was erroneous. The claimed application of the rate on green-salted hides to pickled splits and pickled bellies and shoulders would have been equally erroneous. None of the tariffs has any item specifically applicable to pickled splits or pickled bellies and shoulders and, therefore, the item covering Cargo, NOS, therein is the one which should have been applied. The tariffs, however, did contain an item for gluestock and this item should have been applied to dry-limed splits. In the absence of evidence as to the established rates of Administracion Nacional de Puertos at time of the three shipments of pickled splits, no conclusion can be made respecting the rate applicable thereto.

Subsequent to their transportation of the shipments here involved, respondent Moore-McCormack and Administracion Nacional de Puertos changed their tariff filings, effective February 11, 1942, to include an item "Splits, Whole-hide, Pickled: See Hides, Wet-Salted,"[4] making applicable thereafter to pickled splits from Montevideo the

[4] River Plate-United States Freight Conference Tariff No. 3, Correction Circular No. 2.

same rate as applied to wet-salted hides. Effective on the same date a similar tariff change was made by respondent Moore-McCormack as respects pickled splits from Santos.[5]

The record shows also that, following negotiations between complainant and respondents conducted after the filing of the complaint, Moore-McCormack on October 23, 1942, paid complainant $500 in agreed full settlement of complainant's asserted claim for $670.11 against it. This amount paid had no relationship to any rates on file. The nature of the shipments warranted claim against Moore-McCormack of approximately[6] $439.92, rather than for $670.11.[7] Accordingly, this respondent's settlement for $500 constituted an overpayment of approximately $60.08.[8] On November 6, 1942, Thor Eckert, apparently on behalf of Brodin Line, paid complainant $188.99, in agreed settlement of the claim for $251.98, which payment had no relationship to any rates on file. Later, on March 30, 1943, additional payment was made by Thor Eckert to complainant of $63.50 in agreed full settlement of an adjustment of the claim for $251.98. The total payment of $252.49 thus made by Thor Eckert accords with the finding herein that the commodity was gluestock to which Brodin's rate on file was applicable.

In order to avoid unlawful discriminations, carriers are under an obligation to apply their charges carefully in accordance with their established rates whether or not they are members of conferences. When members of conferences, they are under a contractual obligation with the other members to make their charges strictly in accordance with the rates agreed upon by the conference. The practice of compromising claims in a manner which ignores the rates which are applicable must be condemned. Such compromises may lead to violations of paragraphs "First" and "Second" of section 16, or of the first paragraph of that section; or of section 17 of the Shipping Act, 1916, as amended. Such compromises also result in violations of the terms of the conference agreements which should be closely policed by the conferences. Failure to do this will justify hearing to determine whether the conference agreements should not be disapproved.

No evidence is presented indicating that any different rates or treatment were accorded by any of respondents to others than to complainant. Complainant's testimony is that he knows of no other importer who paid lower rates than were charged him. There is,

[5] Brazil United States Freight Conference Tariff No. 6, Correction Circular No. 4.

[6] The tariffs contain no rules for disposition of rate fractions.

[7] Mormacyork and Mormacmoon, whole-hide pickled splits, charges $643.30 and $717.50, rather than as Cargo, NOS, $574.25 and $640.63; Deerlodge, pickled bellies and shoulders, and dry-limed splits, charge $1,106, rather than as Cargo, NOS, $650, and Gluestock, $162.

[8] Following issuance of the examiner's proposed report, complainant refunded this payment.

therefore, no showing of undue prejudice in violation of section 16 of the Shipping Act, 1916, as amended, nor of unjust discrimination in violation of section 17 of that act. The complainant's evidence of injury based upon the fact that he had sold the commodities at prices predicated upon his understanding that the lower rates were applicable is immaterial. Complainant's evidence refers to two shipments[9] of pickled splits from Buenos Aires (not involved herein) upon which a rate of $25 per 2,240 pounds was charged. These shipments may have been correctly rated, if the weight of the shipments exceeded the measurement basis. If, however, the measurement basis exceeded the weight basis, the carriers involved failed to follow their rates on file and made undercharges which were not authorized.

No evidence is presented with respect to a violation of section 14 of the Shipping Act, 1916, as amended. Complainant's contentions, upon brief, of unreasonableness in violation of section 18 of that act are untenable for the reason that this section is not applicable to carriers engaged in foreign commerce of the United States. Complainant's only showing is that he was overcharged on his shipments carried by Moore-McCormack and Brodin Line. These overcharges have been refunded to him.

We are of opinion and find that the violations of sections 14, 16, 17 and 18 of the Shipping Act, 1916, as amended, alleged by complainant have not been shown. Accordingly, the complaint will be dismissed.

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[9] Moore-McCormack Bill of Lading No. 4, Mormactide, November 7, 1941, 50,573 kilos pickled splits, $25 per 2,240 pounds: Sprague Steamship Agency, Inc., Bill of Lading No. 66, August 29, 1941, executed for master of MS East Indian, 51,879 kilos whole-hide pickled splits, $25 per 2,240 pounds.

ORDER

At a session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 29th day of July A. D. 1943

No. 619

HARRY REMIS, DOING BUSINESS AS H. REMIS & CO.

*v.*

MOORE-MCCORMACK LINES, 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 in this proceeding be, and it is hereby, dismissed.

By the Commission.

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

[SEAL]

# UNITED STATES MARITIME COMMISSION

No. 624

IN RE PAN-AMERICAN STEAMSHIP COMPANY, INC., AND TRANSPORT STEAMSHIP CORPORATION

*Submitted August 14, 1943. Decided November 4, 1943*

Respondents found to have engaged in the transportation of property from New York, N. Y., to Puerto Rico without schedules on file with the Commission, in violation of section 2 of the Intercoastal Shipping Act, 1933, as amended; to have carried out an agreement between them not filed with, and not approved by, the Commission, in violation of section 15 of the Shipping Act, 1916, and to have engaged in an unreasonable practice, in violation of section 18 of the Shipping Act, 1916. Undue preference or prejudice in violation of section 16 of the Shipping Act, 1916, not shown.

*Jacob Rassner* for Transport Steamship Corporation.
*Maurice A. Krisel* for United States Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by respondent Transport Steamship Corporation to the report proposed by the examiner. Our conclusions agree with those of the examiner.

The respondents, Pan-American Steamship Company and Transport, are New York corporations which were engaged in making arrangements with shippers for the transportation of property from New York, N. Y., to Puerto Rico. The issues in this proceeding, instituted upon our own motion, are whether respondents have engaged in such transportation without schedules on file with us, in violation of section 2 of the Intercoastal Shipping Act, 1933, as amended; observed or enforced unjust or unreasonable rates, regulations or practices, in violation of section 18 of the Shipping Act, 1916; observed or enforced unduly prejudicial or preferential rates, regulations or practices, in violation of section 16 of the latter act; or carried out agreements between them not filed with and not approved by us, in violation of section 15 of the Shipping Act, 1916. Pan-American did not appear on its own behalf. Transport contends that it was not a common

carrier, but was merely the agent of Pan-American; and that in any event, since there was no actual movement of the shipments by water, it was not engaged in transportation as alleged.

From the testimony in the case we make the following findings of material facts.

FINDINGS OF FACT

(1) In October 1942, Transport entered into contracts of affreightment with numerous shippers, providing for the transportation of various commodities from New York to Puerto Rico, representing itself as "agents of the steamer *Hochelaga* and other steamers or vessels that the company may operate." The cargo thus booked totaled 28,000 cubic feet, which was 1,960 more cubic feet than the carrying capacity of the *Hochelaga*. Transport requested the shippers to deliver their cargo to the designated pier in New York and issued delivery permits in its name. Approximately 21,000 cubic feet of shipments were delivered to the pier pursuant to the permits all before November 14, 1942. The port-to-port rate named in the contracts was $1.30 per cubic foot, which, however, was never collected.

At the time these contracts were entered into, the *Hochelaga* was owned by a Canadian company and was in Halifax, Nova Scotia, and in need of repairs. Transport had no option for the purchase or for the use of the vessel and never became its owner, operator, or agent. When the shipments were delivered to the pier, dock receipts were issued therefor, some in the name of Transport and many in the name of Pan-American.

Thomas C. Wilwerth had an option on the purchase of the vessel, and Pan-American was organized with Wilwerth as president in October 1942, but after the above-mentioned bookings had been made, for the purpose, among others, of taking up the option and obtaining title to the vessel. Transport had no financial interest in Pan-American. Pan-American was not financially able to take up the option on the purchase of the vessel, whereupon Wilwerth sought and secured financial backing from a distillery company in Puerto Rico. The vessel was purchased, title taken in the name of Wilwerth, and on November 14, 1942, transferred by him to H. L. Shipping Company, Inc., formed at the instance and for the protection of the distillery company. The vessel arrived at New York from Halifax on December 20, 1942. Its condition at that time was described as "terrible" and necessary repairs were not completed until June 8, 1943.

Pan-American shared offices with Transport at 76 Broad Street, New York, N. Y. Although there was some testimony that Transport was to act as agent for Pan-American when and if the latter

acquired the *Hochelaga*, the fact was that Transport did not intend to assign its contracts to Pan-American, and the latter entered into an agreement with a liquor distributing company on October 29, 1942, later modified on November 13, 1942, without regard to Transport or the contracts the latter had made or the rates it had quoted. Under this contract Pan-American agreed to allot to the distributing company, as shipper, subject to Governmental control, not exceeding 12,500 cubic feet of the vessel for the transportation of cartons of empty bottles southbound and of bottles of rum northbound at 75 cents per carton, averaging not more than 1.3 cubic feet. Pan-American agreed to have the vessel available in New York seaworthy and fit for service and registered in the name of Pan-American under the American flag, between November 5 and 20, 1942. Pan-American issued dock receipts covering shipments under the contracts of Transport in spite of the fact that Pan-American's contract with the liquor distributing company required 12,500 cubic feet of the total of 26,000 cubic feet—the capacity of the vessel.

On January 21, 1943, 2 months after purchase of vessel by H. L. Shipping Company, Pan-American notified Transport that it seemed doubtful if Transport's cargo could be handled. On January 28, 1943, Transport notified the shippers that the *Hochelaga* would be unable to perform the voyage scheduled and requested them to apply for a redelivery permit. Redelivery of the cargo was completed on February 20, 1943.

(2) Transport has never filed with us schedules of rates or charges for or in connection with the transportation of property from continental United States to Puerto Rico; nor did Pan-American do so until after cargo had been received at the pier, when it filed schedules effective January 15, 1943, some 2 months after deliveries had been completed.

(3) After Transport notified shippers to apply for a redelivery receipt, it informed them that "assessed average charges are $0.25 per cubic foot on the entire cargo received for this vessel as per the agreement under which shipment was accepted and refer you to our agreement and conditions of the Dock Receipt; under which you delivered the cargo." It requested that certified check be made payable to Marine Service Bureau Company, which had been employed by Transport and Pan-American to watch the cargo on the pier. The aggregate amount of the charges collected was $3,824.46. Shipments totaling 7,000 cubic feet in round numbers were redelivered without charge. The agreement and dock receipt referred to contained no provision subjecting any shipment to the payment of charges or expenses except under conditions not here present.

(4) As to the alleged agreement between respondents, Pan-American, on January 21, 1943, advised Transport "With reference to the *arrangement* made with you to transport cargo for Puerto Rico * * *, it now seems to be doubtful that your cargo can be handled;" [Italics supplied.] As stated, permits were issued by Transport and dock receipts by Pan-American and Transport for the same cargo. They employed Marine Service Bureau Company to watch the cargo, and *agreed* to collect 25 cents per cubic foot on the cargo on the pier.

CONCLUSIONS AND DECISION

From the foregoing recital of facts we conclude that both Pan-American and Transport held themselves out to furnish transportation to the public for hire. Originally, Transport contended that it was not a common carrier but was acting as agent for the *Hochelaga*. Abandoning this position, it now asserts that Pan-American was the owner of the vessel and that it was Pan-American's agent. Since Pan-American never acquired the *Hochelaga* and Transport was to keep for itself the contracts made by it, we conclude that Transport was not Pan-American's agent, but was acting on its own behalf.

Transport contends further that, inasmuch as there was no movement by water of the shipments agreed and received to be carried to Puerto Rico, it was not engaged in transportation by water on the high seas on regular routes from port to port between a State and a Territory or possession of the United States as contemplated by section 1 of the Shipping Act, 1916, and therefore it was not subject to the filing requirements of the Intercoastal Shipping Act, 1933. These requirements apply notwithstanding cargo agreed to be carried may not move from port. The latter act not only requires the filing of schedules by common carriers by water in interstate commerce, but prohibits any person from *engaging* in transportation as a common carrier unless and until schedules as provided in section 2 thereof have been duly and properly filed and posted. If actual movement of cargo by water were necessary for a carrier to come within the filing provisions of the act, it would have to violate the provisions in respect to engaging in transportation before the requirement to file attached.

The act contemplates that no part of the business of transportation shall be engaged in before schedules are filed. In support of its position, Transport cites *Coe* v. *Errol*, 116 U. S. 517, and *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498. But those cases hold that goods are in the course of transportation when a carrier receives them. Also, solicitation is a part of the business of transportation. *Davis* v. *Farmers Co-operative Co.*, 262 U. S. 312, 315. Before the receipt, booking, or solicitation of cargo, when there is

the first holding out as a common carrier undertaking to perform transportation within the purview of the act, schedules in respect to such transportation must be on file with us.

The contention that the transportation was not on the high seas from port to port on regular routes is untenable, for, under the act, the character of transportation is determined before a movement from port begins.

We conclude that Transport and Pan-American were common carriers engaged in the transportation by water of property on the high seas on regular routes from port to port between a State and a Territory or possession of the United States and were subject to the filing requirements of the act; and that, in not filing tariff schedules prior to the transportation in question, they violated section 2 of the Intercoastal Shipping Act, 1933, as amended.

Under the transportation contracts, there was no obligation upon the shippers to pay the charge of 25 cents per cubic foot which was incurred through the fault of respondents. Under the circumstances, we conclude that the exaction of the charge of 25 cents per cubic foot was an unreasonable practice in violation of section 18 of the Shipping Act, 1916.

There is no showing that any one was unduly prejudiced by the fact that certain of the shipments were redelivered without charge. Although the lower contract rate made by Pan-American to the liquor distributing company was potentially preferential to that company, the fact that neither the higher rate of $1.30 nor the lower contract rate was collected removes any grounds for a finding of undue preference or prejudice in violation of section 16 of the Shipping Act, 1916.

Pan-American's "arrangement" with Transport to transport the cargo, respondent's issuance of transportation documents on the same shipments, their agreement to employ Marine Service Bureau to watch the cargo, and their agreement to charge 25 cents per cubic foot on the cargo on the pier, evidence an agreement within the purview of section 15 of the Shipping Act, 1916. We conclude that there was such an agreement not filed with or approved by us, and that it has been carried out in violation of section 15 of the Shipping Act, 1916.

Although carriers by water engaged in coastwise and intercoastal traffic and subject to the Transportation Act, 1940, are required to secure certificates of convenience and necessity, unfortunately those carriers engaged in offshore interstate trade, subject to the filing requirements of the Intercoastal Shipping Act, 1933, are not required to secure such certificates. But, as pointed out in *In Re M. S. Vencedor, Inc.*, 2 U. S. M. C. 666, shippers, for their own protection, should at least investigate the responsibility of carriers and determine whether they have complied with the filing requirements of the law.

An order will be entered requiring Transport and Pan-American to abstain in the future from holding themselves out in any manner as common carriers undertaking to perform transportation within the purview of the Intercoastal Shipping Act, 1933, as amended, unless they shall have filed and posted schedules as required by section 2 of that act. No order regarding the violations of sections 15 and 18 of the Shipping Act, 1916, is necessary. Inasmuch as Pan-American has no vessels and is unable to fulfill engagements for the transportation of property after they are undertaken, its schedules now filed with us will be stricken from our files.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 4th day of November A. D. 1943

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No. 624

IN RE PAN-AMERICAN STEAMSHIP COMPANY, INC., AND TRANSPORT STEAMSHIP CORPORATION

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

*It is ordered*, That respondents, Pan-American Steamship Company, Inc., and Transport Steamship Corporation, be, and they are hereby, notified and required hereafter to abstain from holding themselves out in any manner as common carriers undertaking to perform transportation within the purview of the Intercoastal Shipping Act, 1933, as amended, unless they shall have filed and posted schedules as required by section 2 of said act, and

*It is further ordered*, That the schedules of respondent Pan-American Steamship Company, Inc., now filed with this Commission be, and they are hereby, stricken from the files, effective on the date hereof.

By the Commission.

[SEAL] (Sgd.) A. J. WILLIAMS,
*Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 573

PORT COMMISSION OF CITY OF BEAUMONT, TEXAS, ET AL.[1]

*v.*

SEATRAIN LINES, INC., ET AL.[2]

*Submitted December 2, 1942. Decided December 30, 1943*

On further hearing, finding in prior report, 2 U. S. M. C. 500—that respondent Seatrain's absorption practice in Texas-Cuban trade resulted in undue prejudice and discrimination against Houston and Galveston, Tex.—reversed. Order modified accordingly.

Modification of conference agreement, eliminating Texas ports from scope thereof, not approved.

Additional appearances:
*Fred Much* for Houston Port and Traffic Bureau.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

Exceptions filed to the examiner's proposed report were orally argued. Our conclusions agree with those recommended by the examiner.

In the original report herein, *Beaumont Port Commission* v. *Seatrain Lines, Inc.*, 2 U. S. M. C. 500, we found unlawful respondent Seatrain Lines' practice of absorbing the difference between the cost of delivering cargo, destined to Havana, Cuba, to shipside at Galveston, Houston, and Beaumont, Tex., and the cost of delivering it by rail to Seatrain at Texas City, Tex. Ocean rates from these ports to Havana are the same and the absorption enabled shippers at Galveston, Houston and Beaumont to ship via Seatrain at total transporta-

[1] Houston Port and Traffic Bureau; Galveston Chamber of Commerce; and Galveston Cotton Exchange and Board of Trade.

[2] Florida East Coast Car Ferry Company; Standard Fruit and Steamship Company; and United Fruit Company.

tion costs no higher than those applying over break-bulk lines [3] serving those ports.

Seatrain abandoned the service from Texas City shortly after the report was issued. But anticipating the possibility of reestablishing the service, Seatrain filed three successive petitions for reconsideration and modification of the order. The first two were denied and the third granted. After Seatrain canceled the condemned absorption provisions in compliance with our order, but prior to the filing of the third petition on March 19, 1942, the Gulf and South Atlantic Havana Steamship Conference, of which Seatrain is a member, filed for our approval a modification of U. S. M. C. Agreement No. 4188, the effect of which would remove the Texas ports involved herein from the scope of the agreement, leaving each member of the conference free to fix its own rates from those ports to Havana independently of conference action. Under the modified agreement, Seatrain states that it would, if necessary, shrink its rates from Texas City enough to equalize the rates via Galveston, Houston and Beaumont, and thus achieve the equalization condemned in the original report. We reopened the proceeding for further hearing for the purpose of bringing the record down to date and to develop all facts concerning the lawfulness and propriety of the proposed modification.

The previous report recognized Seatrain's superior service; pointed to the diversion of traffic from Galveston, Houston and Beaumont as a result of the absorption and the consequent crippling of essential carrier services performed by the break-bulk lines serving those ports; stated that the break-bulk lines could not overcome their resulting disadvantage without possibly precipitating a rate war, and found that the practice was unduly prejudicial and discriminatory in violation of sections 16 and 17, respectively, of the Shipping Act, 1916.

At the further hearing Seatrain endeavored to show, among other things, that its service is not substantially superior to break-bulk service; that fears of traffic diversion to its line are unfounded and the absorption practice will not result in injury to the complaining ports; and that the outstanding order herein places Seatrain at a disadvantage which it cannot overcome without possibly precipitating a rate war.

From the testimony in the case on further hearing we make the following findings of material facts:

## Findings of Fact

(1) Despite the advantages of Seatrain's service, pointed out in the previous report, it is not economically possible in normal times

[3] Lykes Bros. Steamship Company, Inc., and United Fruit Company.

for shippers to use Seatrain's service at charges higher than those of the break-bulk lines because of competitive conditions. Seatrain's experience in other trades is that higher rates are secured only where the shipper can save materially on packaging costs, as for instance, on lard shipped in tank cars. It is necessary during the milling season to get rice out of the mill and into storage. Seatrain lacks the advantage of storage facilities, either at origin or destination, which are available to rice shipped via the break-bulk lines. Although the evidence is conflicting on the point, apparently this disadvantage is offset to some extent by free time on cars shipped via Seatrain. Another disadvantage is added expense in loading cars with flour to capacity when transported in Seatrain's service.

(2) Further testimony was adduced by respondent to show the extent to which traffic has been diverted from the complaining ports as a consequence of the absorption practice. Seatrain's service between Texas City and Havana continued from about April 1, 1940, through December 1940. The previous report considered cargo movements only up to June 16, 1940. During that period, Seatrain's percentages of the carryings from the Texas ports involved to Havana were: Rice, 7.7 percent; flour, 15.2 percent; and total cargo, 15.8 percent. During the subsequent period, June to December, 1940, Seatrain's carryings of rice increased 5.4 percent, flour decreased 10.1 percent, and total cargo increased 6.7 percent. During the entire period of Seatrain's operations the carryings of rice, which is the most important traffic involved, were distributed as follows: Lykes 23,685 kilo tons or 53 percent; United Fruit 15,797 or 35 percent; and Seatrain 5,317 or 12 percent. Flour, next in importance, moved as follows: 2,860 kilo tons or 73 percent via Lykes; 712 or 18 percent via United Fruit; and 355 or 9 percent via Seatrain.

Most of the rice originates locally, but since no segregation is made in the exhibits between local rice originating at the ports and rice originating at interior mills and shipped through the ports, it is impossible to ascertain from the record the amount of local rice diverted to Seatrain. Most of the flour is shipped under transit privileges at export rail rates which are the same to the Texas ports involved. Therefore, Seatrain would have no occasion to make any absorptions on flour milled in transit. Hence, the absorption practice had little effect on this traffic.

(3) The geographical relationship of the ports involved, together with the peculiar characteristics of Seatrain's operation, were emphasized at the further hearing. Texas City and Galveston are situated on Galveston Bay which is also the approach to Houston. Entrance to the Bay from the Gulf is through Galveston Harbor which is connected by ship channels with Texas City and Houston. In a geo-

graphical sense, the three ports may be described as Galveston Bay ports. Rail distances from Texas City to Galveston and Houston are 14.2 and 42.2 miles, respectively. Rail rates on long haul export traffic are the same to the three ports which, in *Rate Structure Investigation Part 3, Cotton,* 165 I. C. C. 595, 660, were described as "one terminal district or port." Beaumont is an inland port situated on the Neches River and having access to the Gulf several miles east of the Galveston Bay ports. It is approximately 126 miles by rail from Texas City.

Seatrain cannot receive freight in railroad cars from the ordinary pier. There must be railroad tracks to its pier, a supporting yard for sorting and holding cars, and car-lifting facilities for transferring cars from the pier track to its vessels. The crane alone at Texas City cost over $125,000. Rather than construct expensive facilities at all of the ports and to economize on the use of ships, Seatrain selected Texas City, which originates little traffic, as a central point with a view to extending its service to Galveston and Houston primarily, and incidentally to Beaumont. This is similar to Seatrain's method of serving New York Harbor with facilities at Hoboken, N. J., and New Orleans with facilities at Belle Chasse, La. Seatrain found it more economical to extend its service from Texas City by rail, absorbing the rail rates, than by establishing freight stations at the other Texas ports and transporting the cargo to Texas City by means of car floats or lighters. The method selected provides a faster service and assures to shippers the primary advantage of Seatrain's service, namely, the through non-break-bulk movement of their freight in cars from plant to destination.

(4) No shipper complained of the absorption practice. To the contrary, those who testified desired the additional service, as provided by Seatrain, because it afforded them additional business opportunities. The practice has had no effect on the movement of grain into Houston and Galveston for milling-in-transit. Inauguration of Seatrain's service opened up a market for Texas lumber for a Cuban concern. However, this concern had to discontinue the business when the service was withdrawn because of the high rate of damage to the lumber when handled by break-bulk lines.

## Conclusions and Decision

From the foregoing recital of facts we conclude that Seatrain's service will not attract traffic at rates higher than those of competitive break-bulk services. Therefore, Seatrain cannot reenter the trade upon a competitive basis unless it can equalize charges with the break-bulk lines, either through absorption of costs of delivering the cargo to its terminal at Texas City, which is prevented by the

order, or in the alternative, by shrinking its ocean rate. Unless the proposed modification of the conference agreement is approved, Seatrain would have to resign from the conference to reduce its rates. Intervener Lykes states that if the condemned equalization plan is approved, it may have to adopt a similar equalization plan, restricting the operation of its boats to fewer ports or to a single port. Lykes also insists that it would be compelled to meet any rate reductions in order to protect its competitive position. We cannot determine the lawfulness of such action on this record.

The fear that Seatrain would monopolize the traffic apparently was grounded upon the contention that it afforded superior services which in time would be augmented by more ships placed in the trade. However that may be, the record, as amplified on further hearing, warrants the conclusion that Seatrain's operations have not disrupted or seriously affected the services of the break-bulk lines.

Our decision in the previous report condemned practices which permit a carrier to attract to its line traffic which is not naturally tributary to the port it serves, thus depriving other ports of their local tributary traffic. The testimony and argument on further hearing emphasize the question, which we think is decisive in this case, whether the traffic in question can be considered as tributary to Seatrain as well as to the break-bulk lines involved. Upon the facts stated in (3) above, we conclude that the area comprising the ports of Galveston and Houston and the surrounding territory are centrally, economically and naturally served by Seatrain's facilities at Texas City. No reason appears therefore why that carrier may not effectively compete for the traffic through such ports. Beaumont is not within the Galveston Bay group and the traffic through such port is not naturally tributary to Texas City.

Complainants' contention that Seatrain's practice unjustly discriminates against Galveston and Houston will not bear analysis. The port-to-port rates to Havana from these ports and Texas City are the same. The shippers served by Seatrain pay the same through transportation charges, whether they ship from Galveston, Houston or Texas City. There is no complaint of, or evidence to show, discrimination against shippers by Seatrain. Other interests located at Galveston or Houston were not shown to be discriminated against or injured by the practice. The owners of wharf facilities at these ports will lose revenue as a result of the use of Seatrain's facilities, but that loss would be suffered even if Seatrain operated from Galveston and Houston, because none of the wharfingers there provides the peculiar facilities required by Seatrain's operations.

Upon the record as amplified at the further hearing, we conclude and decide that the practice of Seatrain Lines, Inc., of absorbing the

difference between the costs of delivering cargo to its vessels at Texas City and the costs of delivering local tonnage to shipside at Houston and Galveston, and the action of the other conference members in authorizing such practice, are not shown to be in violation of sections 16 and 17 of the Shipping Act, 1916, as amended. The applicability of these findings to any specific absorption is subject to the proviso that in the future there shall be published in the tariff the amounts actually to be absorbed after the Commission shall have determined, upon hearing, the propriety of such amounts. The order entered herein on February 7, 1941, will be modified in accordance with the findings herein and affirmed in all other respects.

These findings render unnecessary any action regarding the proposed modification of Agreement No. 4188, which we understand will be withdrawn.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 30th day of December A. D. 1943

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No. 573

PORT COMMISSION OF CITY OF BEAUMONT, TEXAS, ET AL.

*v.*

SEATRAIN LINES, INC., ET AL.

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This case being at issue on further hearing, 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 conclusion and decision thereon which report is hereby referred to and made a part hereof;

*It is ordered*, That the order entered herein, dated February 7, 1941, be, and it is hereby, modified to eliminate the provision of said order requiring respondent Seatrain Lines, Inc. to cease and desist and to thereafter abstain from absorbing the difference between the costs of delivering cargo to its vessels at Texas City and the costs of delivering local tonnage to shipside at Houston and Galveston and affirmed in all other respects.

By the Commission.

[SEAL] (Sgd.) A. J. WILLIAMS,
*Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 625

WEIS-FRICKER MAHOGANY COMPANY

*v.*

M/V "F. V. HILL" AND/OR PETER PAUL, INC.

*Submitted November 17, 1943. Decided January 20, 1944*

Request to withdraw complaint denied. Complaint dismissed with prejudice.

*John W. Twomey* for complainant.

*Tom Whitaker* for respondents.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By complaint filed September 10, 1943, as amended October 1, 1943, it is alleged that for transportation by respondents in March 1943, of log wagon parts and tractor repair parts from Tampa, Fla., to Belize, British Honduras, respondents exacted higher rates from complainant than from other shippers of consignments of similar nature, origin and destination, in violation of sections 16 and 17 of the Shipping Act, 1916, as amended. Reparation in the sum of the difference between rates charged complainant and lower rates alleged to have been charged other shippers is requested. Answer to the complaint was duly filed and served.

At the hearing held in Tampa on November 17, 1943, due notice of which had been given, complainant requested withdrawal of its complaint, stating that it was unable to produce evidence in proof of any lower rates accorded by respondents to other shippers and of the alleged undue prejudice and unjust discrimination. Under these circumstances, complainant's failure to request withdrawal of the complaint prior to the hearing date constitutes an abuse of the complaint and hearing procedure provided for shippers by the Shipping Act, 1916, as amended.

Complainant's request for withdrawal is denied, and the complaint will be dismissed with prejudice. 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 20th day of January A. D. 1944

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No. 625

WEIS-FRICKER MAHOGANY COMPANY

*v.*

M/V "F. V. HILL" AND/OR PETER PAUL, INC.

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This case, at issue upon complaint and answer on file, and complainant, at the hearing, having requested withdrawal of the complaint, and the Commission, on the date hereof, having entered of record a report, which report is hereby referred to and made a part hereof;

*It is ordered*, That complainant's request for withdrawal be, and it is hereby, denied, and that the complaint be, and it is hereby, dismissed with prejudice.

By the Commission.

[SEAL] (Sgd.) A. J. WILLIAMS,
*Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 628

RATES, CHARGES, AND PRACTICES OF AMERICAN FRUIT & STEAMSHIP COMPANY, INC.

*Submitted May 1, 1944. Decided June 1, 1944*

Respondent found not to have knowingly and wilfully violated the rules and regulations prescribed in *Section 19 Investigation, 1935*, 1 U. S. S. B. B. 470, and should not have the penalty provisions of section 806 (d) of the Merchant Marine Act, 1936, as amended, invoked against it. An order discontinuing the proceeding will be entered.

*G. H. Bunkley* for respondent.
*Francis B. Goertner* for the Commission.

## REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner. Our conclusions agree with those which he recommended.

This is a proceeding instituted on information[1] before us to determine whether the respondent, American Fruit & Steamship Company, Inc., had knowingly and wilfully violated the rules and regulations prescribed in *Section 19 Investigation, 1935*, 1 U. S. S. B. B. 470,[2] and

[1] Information contained in communications from Comision Maritima Cubana, Havana, Cuba, acting on behalf of various consignees.

[2] (1) Every common carrier by water in foreign commerce shall file with the Commission schedules showing all the rates and charges for or in connection with the transportation of property, except cargo loaded and carried in bulk without mark or count, from points in continental United States, not including Alaska or the Canal Zone, to foreign points on its own route; and, if a through route has been established with another carrier by water, all the rates and charges for or in connection with the transportation of property, except cargo loaded and carried in bulk without mark or count, from points in continental United States, not including Alaska or the Canal Zone, on its own route to foreign points on the route of such other carrier by water. 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.

(2) 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 October 1, 1935, and thereafter any schedule required to be filed as aforesaid, and any change, modification, or cancelation 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 cancelation becomes effective.

should have the penalty provisions of section 806 (d) of the Merchant Marine Act, 1936, as amended,[3] invoked against it.

Respondent is a Florida corporation engaged in the transportation of property between Tampa, Fla., and ports in Cuba. Approximately 90 percent of its stock is owned by the principal stockholders of N. Geraci & Company, Inc., hereinafter called Geraci, which operates a wholesale fruit and produce business. Geraci supplies the main part of its cargo. Except an occasional package which it carries for someone else as a favor, Geraci's fruits are its only cargo north-bound. South-bound, it transports produce for Geraci to Havana or Baracoa, and about twice a year small shipments of fruit to its agent at the latter port. The Tampa-to-Havana service, however, is available to the general public, and, admittedly, this was so at the times hereinafter mentioned.

In November and December 1942, and January 1943, respondent transported from Tampa to Havana 12 shipments of glassware. Its rates were named in Gulf and South Atlantic Havana Steamship Conference Freight Tariff G–4, which provided a rate on shipments of the particular character here involved of 63.5 cents per 100 pounds. Comision Maritima Cubana, Havana, Cuba, alleged that on 9 of the 12 shipments respondent had assessed a rate of 66.242 cents per 100 pounds. No such rate appears to have been applied. According to the record, the rate of 63.5 cents was charged on all 12 shipments.

Comision Maritima Cubana also complained that, on the 9 shipments, respondent had not absorbed wharfage and handling charges at Havana, which it contended the latter should have absorbed under item 220 of the tariff. The evidence shows that the absorption was not made on any of the 12 shipments. Respondent takes the position that under the exception note in item 220 it was not required to absorb the charges. The item provides as follows:

> Rates published in tariff, or as amended, will include Wharfage and Handling * * * at Havana. * * *
>
> Exception Note: Wharfage, as above refered to, applies only at the respective wharves or warehouses of the carriers. When by reason of congestion of such respective wharves or warehouses or due to other circumstances, delivery is arranged through other wharves or warehouses, no absorption of the cost of wharfage will be made by the carrier.

Respondent had no wharf of its own at Havana but arranged from time to time, through its agent, to discharge at the wharves of others. In view of this fact, it claims that it acted in accordance with the ex-

[3] Whoever knowingly and willfully violates any order, rule, or regulation of the United States Maritime Commission made or issued in the exercise of the powers, duties, or functions transferred to it or vested in it by this Act, as amended, for which no penalty is otherwise expressly provided, shall upon conviction thereof be subject to a fine of not more than $500. If such violation is a continuing one, each day of such violation shall constitute a separate offense.

ception note to the rule and was under no obligation to absorb the charges in question. Although handling is not expressly included in the nonabsorption provisions of the note, the phrase "Wharfage, as above referred to," according to respondent's contention, means wharfage and handling as mentioned in the preceding paragraph. Testimony of the Tampa assistant freight traffic manager of United Fruit Company, a member of the conference since its organization, agrees with respondent's position. Comision Maritima Cubana was not represented at the hearing.

If, by item 220, respondent were required to absorb the wharfage and handling charges, it would violate the rules and regulations prescribed in *Section 19 Investigation, 1935, supra*, by not absorbing them since this item filed with us would not reflect what it actually had done. The question here is whether it knowingly and wilfully committed such a violation. To decide that question, it is unnecessary to determine the meaning of the item. Whatever construction might be placed thereon, the most that could be said against respondent would be that it failed unwittingly to follow the correct interpretation. That would not be enough to hold affirmatively on the ultimate question for decision. Accordingly, it is concluded that respondent did not knowingly and wilfully violate the rules and regulations prescribed in *Section 19 Investigation, 1935, supra*, by not absorbing the wharfage and handling charges.

The tariff containing item 220 and the rate of 63.5 cents was not filed with us on behalf of respondent until more than 30 days after two of the shipments moved. This appears to have been due to a misunderstanding on the part of respondent that the War Shipping Administration had full jurisdiction in respect to its rates. While such justification is accepted, it is pointed out, for the benefit of respondent and others that our regulatory jurisdiction is the same now as it was before the War Shipping Administration was created and that in no respect have the activities of the latter affected the tariff-filing requirements of this Commission. Moreover, common carriers by water in foreign commerce are under the obligation of informing themselves of the rules and regulations prescribed in *Section 19 Investigation, 1935, supra*, and they should understand that they are expected to comply therewith without being notified individually of their requirements.

We find that respondent did not knowingly and wilfully violate the rules and regulations prescribed in *Section 19 Investigation, 1935, supra*, and that the penalty provisions of section 806 (d) of the Merchant Marine Act, 1936, as amended, should not be invoked against it. 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 1st day of June, A. D. 1944

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No. 628

RATES, CHARGES, AND PRACTICES OF AMERICAN FRUIT & STEAMSHIP COMPANY, INC.

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This case, 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.) A. J. WILLIAMS,
*Secretary.*

# UNITED STATES MARITIME COMMISSION

## No. 555

## PRACTICES, ETC. OF SAN FRANCISCO BAY AREA TERMINALS

*Submitted May 15, 1944. Decided June 1, 1944*

On further hearing, findings and order in prior report, 2 U. S. M. C. 588, modified to permit respondents to establish substitute basis of rates and regulations concerning free time, wharf demurrage, and storage. Said basis found to yield more revenue than rates prescribed as minima in prior report.

Additional appearances:

*John B. Jago* and *G. M. Carlon* for United States Maritime Commission.

*Allan P. Matthew* for Howard Terminal.

*Thomas S. Louttit* and *J. C. Sommers* for Stockton Port District.

*Robert W. Kenny* for State of California and Board of State Harbor Commissioners for San Francisco Harbor.

*M. G. Ross* for Board of Harbor Commissioners, City of Los Angeles.

*Charles A. Bland* for Board of Harbor Commissioners, City of Long Beach.

*R. F. Ahern* for Rosenberg Bros. & Co.

*F. P. Kensinger* for M. J. B. Company and Western Can Company.

*J. G. Breslin* for California & Hawaiian Sugar Refining Corporation.

*N. E. Keller* for Pacific Portland Cement Company.

*James L. Roney* for S. & W. Fine Foods, Inc.

*W. G. Higgins* for Santa Cruz Portland Cement Company.

### REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

In the original report herein we prescribed minimum rates and regulations respecting free time allowances and wharf demurrage and storage services at respondents'[1] terminals in the San Francisco Bay

[1] Albers Brothers Milling Company; Board of Port Commissioners of the City of Oakland; Board of State Harbor Commissioners for San Francisco Harbor; Eldorado Oil Works; Eldorado Terminal; Encinal Terminals; Golden Gate Terminals; Grangers Terminal Company; Howard Terminal; Interstate Terminal, Ltd.; Islais Creek Grain Terminal Corporation; Parr-Richmond Terminal Corporation; Port of Redwood City; Port of Sacramento; Stockton Port District; Standard Coal Company of California; South San Francisco Terminal Company; State of California; State Terminal Company, Ltd.; The River Lines; West Coast Wharf and Storage Company.

area, 2 U. S. M. C. 588. Two respondents sought to enjoin our order of September 11, 1941, requiring establishment of these rates and regulations. The order was sustained by the Supreme Court on January 3, 1944, in *California and Oakland* v. *U. S.* 320 U. S. 577.

Upon petition of Oakland, dated February 1, 1944, for modification of the order to permit respondents to establish a substitute basis of rates and regulations, as set forth in proposed tariff schedules attached to said petition, we reopened the proceeding on February 22, 1944, for further hearing to enable respondents to justify the proposed schedules. Hearing was had on March 1, 1944, after which briefs were filed.

The substitute basis was evolved by the principal respondents in collaboration with other members of California Association of Port Authorities[2] under U. S. M. C. Agreement No. 7345, the object of which is to achieve uniformity of rates and practices at California ports insofar as practicable. The Association formula was originated, and is based upon conditions existing, before the present emergency. It represents a practical compromise of the many conflicting and divergent interests among respondents, none of whom considered the prescribed basis entirely acceptable. No opposition was registered by shippers against the proposals.

In the original report we prescribed and ordered enforced as a reasonable regulation respecting wharf demurrage and wharf storage the following:

"(1) A penalty charge of 5 cents per ton per day upon cargo remaining beyond the free-time period and not declared for storage; when cargo is not declared upon the expiration of the fifth day, it shall automatically go into storage and the rates and charges hereinafter prescribed shall thereafter apply; (2) the handling charges appearing in column 4 of the Appendix to be charged when cargo goes into storage; and (3) the rates for 15-day periods or fractions thereof appearing in column 5 of the Appendix, to be charged while cargo is in storage after it has been declared for storage or after it automatically goes into storge upon the expiration of the fifth day after the end of the free time period."

The rates prescribed were minima, and the finding was without prejudice to establishment of higher rates wherever justified. Moreover, the finding did not require the reduction of existing rates where they are higher than the prescribed level, which is generally the case beyond the 60th day.

[2] Board of State Harbor Commissioners for San Francisco Harbor, Board of Harbor Commissioners of the City of Los Angeles, Board of Port Commissioners of the City of Oakland, Board of Harbor Commissioners of Long Beach, Harbor Commission of the City of San Diego, Stockton Port District, Howard Terminal, Encinal Terminals, Parr-Richmond Terminal Corporation, and Outer Harbor Dock and Wharf Company.

The Association formula provides a daily wharf demurrage rate for *individual items*, unless and until cargo is declared for monthly storage. A minimum of 5 days' wharf demurrage accrues at the daily rate on cargo remaining for less than 5 days. Period storage is also provided at a monthly rate instead of for 15-day periods as prescribed, and a receiving and delivery charge, in lieu of the prescribed handling charge, is to be assessed with the first month's storage. In general, the Association rates are higher than the prescribed rates for the first 2 or 3 days after free time, and as to most commodities after the 28th day. The proposed daily rates are about double the present daily rates. Monthly storage rates approximate the present cost of 30 days' storage at the existing daily rates. Generally, the proposed receiving and delivery charge is double the proposed monthly storage rate. The daily basis produces lower charges during the first 60 days; thereafter the monthly basis is lower.

The following table reflects the comparative revenue results on 1 ton of cargo under the lowest rates obtainable under the prescribed and proposed basis and present rates at East Bay terminals applied to selected commodities moving in heavy volume:

| Commodity | Rate basis | Number of days after expiration of free time | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 | 6 | 15 | 30 | 45 | 60 | 120 |
| Merchandise, N. O. S. | (a) | 5 | 10 | 15 | 20 | 25 | 60 | 60 | 80 | 100 | 120 | 200 |
| | (b) | 20 | 20 | 20 | 20 | 20 | 24 | 60 | 120 | 180 | 240 | 360 |
| | (c) | 2 | 4 | 6 | 8 | 10 | 12 | 30 | 60 | ------- | 120 | 240 |
| Canned goods, N. O. S. | (a) | 5 | 10 | 15 | 20 | 25 | 37½ | 37½ | 50 | 62½ | 75 | 150 |
| | (b) | 12½ | 12½ | 12½ | 12½ | 12½ | 15 | 37½ | 75 | 112½ | 150 | 225 |
| | (c) | 1¼ | 2½ | 3¾ | 5 | 6¼ | 7½ | 18¾ | 37½ | ------- | 75 | 150 |
| Fertilizers | (a) | 5 | 10 | 15 | 20 | 25 | 45 | 45 | 60 | 75 | 90 | 150 |
| | (b) | 12½ | 12½ | 12½ | 12½ | 12½ | 15 | 37½ | 75 | 112½ | 150 | 225 |
| | (c) | 1½ | 3 | 4½ | 6 | 7½ | 9 | 22½ | 45 | ------- | 90 | 180 |

(a) Prescribed.
(b) Proposed daily rates are applied for first 60 days; thereafter monthly rate plus receiving and delivery charge is used.
(c) Present.

This table reveals that the outstanding differences between the proposed and prescribed bases are the higher charges proposed for the first 2 or 3 days, and the gradual upward grade of the Association scale, which would eliminate the sharp increase due to inclusion of the prescribed handling charge on the sixth day. The high daily rate proposed for the first 5 days or part thereof is designed as a penalty to cause prompt removal of small lots, which are not intended to be stored. Shippers who intend to store are provided with a monthly rate which, as stated, is more economical than the daily rate after the sixtieth day. Patrons in this category store for short as well as long terms. However, in some circumstances the shipper is uncertain whether he will have to store, and if so, for how long. Ordinarily,

such storage would be for a relatively short period. Respondents regard the assessment, under these circumstances, of a handling charge on the sixth day as an undue penalty, and have thus proposed daily rates as a more equitable demurrage basis.

The purpose of requiring cargo to go into storage automatically on the sixth day, and of requiring that the cost of handling be charged then, was to prevent removal of cargo before it has been on storage long enough to pay for all fixed costs. Assuming that only part of the goods stored for short periods are actually handled, respondents demonstrated that the Association rates, where less than those prescribed, will cover all fixed charges for storage and handling. The proposed rates as a whole should yield more revenue at East Bay terminals than the prescribed basis, inasmuch as past experience at those terminals is that the major portion of the cargo is removed during periods when the Association rates would be materially higher than the prescribed rates. Evidence as to increased revenue which would be earned on typical short and long-term storage accounts handled by Encinal, Howard and Stockton from 1938 to 1941, involving commodities representing the bulk of their business, bears out the opinion expressed by witnesses for respondents that, except at San Francisco, the Association basis would yield from 50 to 60 percent more revenue than existing rates.

The Harbor Board performs no handling and provides emergency "bulkhead" storage only at San Francisco. Its primary concern is to clear the piers for intransit cargo and its high penalty rates are designed for that purpose. Therefore, the Board does not consider that the prescribed basis with handling charge and the automatic storage provision, or the proposed monthly period basis with receiving and delivery charge, is suited to its operations. Accordingly, it proposes to adopt, with minor deviations, the proposed daily basis, but only in those instances where it is higher than the present penalty and bulkhead storage rates. Applied on demurrage cargo handled during September 1939, the Association rates would increase revenues 104 percent over revenue under present bulkhead rates. The prescribed basis would produce an increase of 244 percent. These results are due to the fact that practically all cargo in storage is removed during the first 30 days.

Although the proposed basis would produce considerably less revenue at San Francisco than the prescribed rates, the Board submitted a cost study showing that under the Edwards-Differding formula,[3] the Association rates on 14 commodities taking Merchandise, N. O. S. rates would be compensatory. The study excludes cost of services which are not performed, and includes only floor space and overhead

[3] Rates prescribed in the original report were based upon this formula.

costs. The proposed rates on these commodities, stored from 1 to 20 days, would yield revenue exceeding cost by 7 percent to 118 percent.

From the foregoing facts, we find that the proposed rates as a whole should yield more revenue at East Bay terminals than the minimum basis prescribed in the original report; and that at San Francisco, they should yield compensatory revenues.

In the original report, free-time periods found to be reasonable for cargo in the various trades were as follows: Five days for coastwise and inland waterway, in-bound and out-bound, and intercoastal in-bound; 7 days for intercoastal out-bound and foreign in-bound and out-bound, and 10 days for transshipment, both in-bound and out-bound. Respondents propose to grant 10 days for intercoastal, foreign, and offshore out-bound, which is the present basis applying at San Francisco, and to establish a rule providing that where a long and short free-time period is provided for cargo transshipped, the longer of the two periods will be granted, but not the aggregate thereof. Respondents testified that the proposed ten-day period was necessary, not only for the assembling of cargo, but was requisite also from a competitive standpoint, inasmuch as Los Angeles grants similar free-time periods.

Upon the record on further hearing we conclude and decide that the prior findings should be, and they are hereby, modified to permit the publication of the proposed basis of wharf demurrage and storage rates and the proposed free-time periods as described herein, and the rules and regulations relating thereto.

We do not reject the Edwards-Differding formula, which we think is fundamentally sound. However, if respondents can agree upon a workable substitute, free from discrimination, which will yield as much revenue as the prescribed minima, there is no reason why such basis should not be established. The order of September 11, 1941, will be modified accordingly. Inasmuch as the proposed basis is to supplant rates prescribed as minima, the order as modified will not affect existing rates which are higher than the proposed rates. It should not be construed as requiring the establishment of rates by any respondent for handling or period storage where those service are not offered or performed by such respondent. The order is also without prejudice to establishment of reasonable and proper rates on additional commodities and for other demurrage services.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 1st day of June A. D. 1944

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No. 555

PRACTICES, ETC. OF SAN FRANCISCO BAY AREA TERMINALS

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

*It is ordered*, That the order entered herein, dated September 11, 1941, be, and it is hereby, modified to permit respondents to establish, on or before June 15, 1944, proposed rates, rules and regulations, as described in the report herein, relating to free time, wharf demurrage and storage as a substitute basis in lieu of corresponding rates, rules and regulations prescribed in the prior report herein, 2 U. S. M. C. 588, without prejudice to the right of respondents to publish rates only for services offered or performed, and to establish reasonable rates on additional commodities and for other demurrage or storage services.

*It is further ordered*, That said order of September 11, 1941, be, and it is hereby, affirmed in all other respects.

By the Commission.

[SEAL] (Sgd.) A. J. WILLIAMS,
*Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 627

RAPOREL BANANA & FRUIT IMPORTING COMPANY, INC.

*v.*

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE)

*Submitted May 21, 1944. Decided June 15, 1944*

Unfair treatment in violation of section 14, Fourth (c), of Shipping Act, 1916, as amended, not shown. Complaint dismissed.

*Edward M. Raphel* for complainant.
*Frank J. Foley* for respondent.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the report proposed by the examiner were filed by complainant. Our conclusions on the merits agree with those of the examiner.

By complaint filed November 5, 1943, as amended, the complainant New York corporation alleges that respondent unfairly refuses to settle a claim in connection with unloading charges, in violation of section 14, Fourth (c), of the Shipping Act, 1916, as amended.[1] Reparation for alleged injury to complainant in the sum of $834.08 is requested.

The unloading charges concerned are in relation to two consignments of bananas from Groupement d'Exportation de Bananes, of Guadeloupe F. W. I., shipped via Motorship *Guadeloupe* to complainant at New York, N. Y. Transportation charges to shipside New York were prepaid by the shipper. The bills of lading provided for payment of unloading charges at New York by the complainant consignee.

[1] The provision relied upon by complainant provides that no carrier by water shall, directly or indirectly, in respect to the transportation by water of property between a port of a state of the United States and a port of a foreign country, unfairly treat any shipper in the matter of the adjustment and settlement of claims.

Complainant agreed with the shipper to sell the bananas at auction and to account to the shipper for the proceeds, less complainant's commission and expenses, including the unloading charges. Respondent's bill for the unloading charge of $1,505.53 was paid by complainant in full on December 24, 1941, upon the shipper's specific instruction to complainant to do so, after complainant had informed the shipper of the alleged excessive charge. Complainant's president testifies that with respect to the particular banana auction transaction the shipper owes complainant an amount "under $50," which complainant has made no "strenuous" effort to collect, because it "expects to do business with the shipper again." There is no showing that this amount of less than $50 is attributable to the unloading charge involved rather than to other of complainant's expenses or to its commission. At no time has complainant consulted with or informed the shipper of the filing of the complaint in the instant proceeding.

The *Guadeloupe* arrived at New York before 9:30 a. m. November 13, 1941, on which day discharge of complainant's consignments was begun; respondent furnishing unloading supervision, unloading gear, and, through contract between it and stevedores, the stevedore labor to accomplish the unloading.

The bill for $1,505.53 in controversy is a "pro rata" bill; that is, for complainant's share of the total expense of unloading the bananas of complainant and of 2 other consignees which comprised the cargo of the ship. Complainant's position that the unloading charge for its 2 consignments should have been $671.45 instead of $1,505.53 is predicated upon personal observations of its president during much of the unloading operations. Its contentions are, first, that, according to its calculations, respondent must have charged for the employment of from 51 to 60 men, whereas complainant's president counted only from 23 to 30 men at work; and, second, that respondent's inclusion of wages of checkers, clerks, and other expenses was improper because, complainant argues, the freight rate prepaid by the shipper embraced all such expenses as incidental to the transportation. The aggregate number of hours during which complainant's bananas were actually being unloaded is agreed by the parties to have been 14.

Complainant's 2 consignments were unloaded from the vessel into autotrucks, 100 stems per truck, 2 trucks at a time, for auctioning per truck load on the pier as and at times complainant directed, which was governed by presence of prospective buyers and auctioneer. Before designation of time by complainant for unloading to begin, it was necessary for respondent to assemble or rearrange its unloading gear. To suit complainant's convenience and because of lack of buyers of bananas at times, the 14 hours consumed in the actual unloading of

complainant's 2 consignments were spread over 5 working days, and during these 5 days respondent's services for unloading were at complainant's call. This is shown to have involved substantial wage-hour and other expenses incurred by respondent during the 5-day period when actual unloading of complainant's consignments was not being performed, but which expenses were requisite to the accomplishment of the unloading at the times complainant dictated and accounted for the items challenged by complainant. As to no item of respondent's bill is there any showing of fact by complainant that respondent charged more than it expended. There is also no showing of fact or any contention on the part of the complainant that there was any inequality of treatment as between it and other consignees or shippers of bananas with respect to settlement of claims. The other consignees of the cargo on this vessel also paid their pro rata shares.

Respondent contends that it is not a common carrier. Its testimony in this regard is that the Motorship *Guadeloupe* was under requisition by the French Government, and that respondent was merely that Government's managing agent.[2] Respondent further contends that complainant is not a real party in interest because it paid the unloading charge at the specific direction of the shipper as the shipper's agent and was reimbursed therefor. In view of our conclusions on the merits, these two contentions of respondent need not be considered.

We conclude and decide that no unfair treatment in violation of section 14, Fourth (c), of the Shipping Act, 1916, as amended, as alleged, is shown. The complaint will be dismissed.

[2] Bills of lading issued to complainant are stamped "The French Line (C. G. T.), acts only as a managing agent of the French Government and takes no personal responsibility for the carriage of goods."

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 15th day of June A. D. 1944

No. 627

RAPOREL BANANA & FRUIT IMPORTING COMPANY, INC.

*v.*

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH 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 conclusions and decision thereon, which report is hereby referred to and made a part hereof;

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

By the Commission.

[SEAL] (Sgd.) A. J. WILLIAMS,
*Secretary.*

918579 O—51——53J

# UNITED STATES MARITIME COMMISSION

No. 626

TRANSPORTATION BY MENDEZ & COMPANY, INC., BETWEEN CONTINENTAL UNITED STATES AND PUERTO RICO

*Submitted May 29, 1944. Decided October 10, 1944*

Respondent a common and contract carrier. Failure to file schedule for common-carrier transportation Miami to San Juan, sailing of March 10, 1943, was in violation of section 2 of Intercoastal Shipping Act, 1933, as amended. Violation removed. Proceeding discontinued.

*Francis B. Goertner* for the Commission.
*Haskell Donoho* and *M. Earl Baum* for respondent.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the report proposed by the examiner were filed and the case was orally argued. Our conclusions agree with those of the examiner.

Our initial order of October 19, 1943, instituting this investigation was to determine whether, prior to September 30, 1943, respondent engaged in transportation of property between continental United States and Puerto Rico without having filed rates therefor as required by section 2 of the Intercoastal Shipping Act, 1933, as amended. Our supplemental order of December 21, 1943, was to determine whether, in relation to transportation of freight subsequent to September 30, 1943, from San Juan, P. R., to Miami, Fla., in the Motorship *Pedro Murias*, respondent exacted rates different in amounts than its rates specified in its schedule filed with our Division of Regulation effective September 30, 1943, and whether respondent absorbed terminal and other charges contrary to rules set forth in said schedule, in violation of said section 2. Our supplemental order was, further, to determine whether subsequent to September 30, 1943, respondent engaged in transportation of freight between Mayaguez, P. R., and Miami, Fla.,

in the Motorship *Minna* without compliance with the rate-filling requirement of said section 2.

Respondent is a corporation of Puerto Rico, with headquarter offices in San Juan. It is principally engaged as an importer and exporter of varied merchandise to and from that island. It also engages in San Juan as a commission merchant, an insurance agent, and in real estate business. Prior to the existing world war, its activities also occasionally included those of a steamship agent in the Port of San Juan. All of its transportation operations here concerned were conducted by it in vessels which it chartered.

Pursuant to section 2 of the Intercoastal Shipping Act, 1933, as amended, rate schedules were filed by respondent with our Division of Regulation on August 31, 1943. They are M. C. Nos. 3 and 4, for and in connection with transportation by respondent of freight from San Juan to Miami and from Miami to San Juan, respectively. These schedules became effective September 30, 1943. Both schedules provide for rates of $1 per cubic foot or $2 per 100 pounds, customary measurement-weight carrier option basis.[1]

Respondent sailed the *Grimsoy* from Miami on March 10, 1943, for San Juan, with cargo consisting of 86,368 pounds of general merchandise belonging to respondent and 46,750 pounds of general merchandise belonging to others. After the San Juan unloading the vessel was operated by respondent from San Juan to Miami in the latter part of March 1943 with a full cargo of bottled rum in cartons for Ronrico Co. of Puerto Rico. A second north-bound [2] voyage from San Juan to Miami was made with this vessel with a second cargo of rum for the same cargo owner under similar circumstances and conditions in late April 1943.

During April 1943 respondent operated the *Tropical*, transporting a full cargo of bottles for Ronrico from Miami to San Juan, and, on a return or north-bound voyage, a full cargo of bottled rum in cartons for Ronrico from San Juan to Miami.

On October 25, 1943, respondent sailed the *Pedro Murias* from San Juan, transporting therein a full cargo of 4,000 cartons of bottled rum for National Liquor Co. and 300 sacks of cocoanuts for A. H. Biascoechea, consigned to 2 Miami receivers. Respecting these 2 consignments the facts show and respondent stipulates that the transportation charges collected were less than would have accrued had the

[1] These rates are applicable to all commodities except bulk cargo, foodstuffs, and explosives. These excepted commodities are stated by the schedules not to be acceptable by respondent for transportation.

[2] Respondent operated the *Grimsoy* on a second south-bound voyage Miami to San Juan, sailing from Miami in early April 1943. As in the case of the first south-bound voyage of this vessel, it was loaded with merchandise of which respondent was the owner and with merchandise of numerous others on bills of lading issued by respondent. Respondent's filed rates were charged. Respondent's operation in the case of this voyage is not in issue.

rates specified in its filed schedule M. C. No. 3 been applied. Exhibits show also that loading charges at San Juan and unloading charges at Miami, and port charges, were absorbed by respondent, whereas under said filed schedule as for common carrier transportation by respondent these charges were provided for account of cargo.

During November and December 1943, respondent operated the *Minna* as follows:

Sailing from Mayaguez November 22 with full cargo consisting of 4,000 cartons of bottled rum for Licoreria Marin, Inc., and 300 sacks of cocoanuts for A. H. Biascoechea consigned to 2 Miami receivers; sailing from Miami December 6 with full cargo consisting of 3,957 cases of bottles for Puerto Rico Alcohol Co., Inc., and 47 cases of bottle caps for Licoreria Marin, Inc., consigned to 1 Mayaguez receiver; sailing from Mayaguez December 17 with full cargo comprised of 4,015 cartons of bottled rum for Licoreria Marin, Inc., and 130 steel drums of alcohol for Distilleries V. M. Ramirez Cia., consigned to 2 Miami receivers.

Respondent's position is that its operations detailed above did not constitute it a common carrier subject to the filing requirement of section 2 of the Intercoastal Shipping Act, 1933, as amended.

Regarding the first of such operations—the March 10 sailing of the *Grimsoy*—respondent's testimony is that the transportation of the shipments of others on this vessel and voyage was due entirely to importunities of the consignees and shippers, and that there was no solicitation by it to the public to transport. On brief, it presents that, as to the particular voyage, it was not on "regular route"[4]—that is, even though it might have been a common carrier, it was not, according to respondent's definition of "regular route," a common carrier "established" in the trade.

The 46,750 pounds of general merchandise carried by respondent for others on this March 10 voyage of the *Grimsoy* consisted of 23 separate shipments of 17 different consignors and 9 different San Juan consignees. Bill of lading was issued by respondent for each of these 23 shipments, and charges for transporting them were collected by it from the San Juan consignees. At Miami respondent's representative, Albury & Co., arranged for dockage of the vessel, receipt of the shipments and stevedoring, for which services respondent paid Albury.

[3] During October 1943 respondent operated the *Althia* and the *Nirvana* between Miami and Mayaguez. Each vessel made one round trip, carrying, respectively, a full cargo of bottles for one Miami owner southbound and a full cargo of bottled rum in cartons for one Mayaguez owner northbound. Respondent's operations in the matter of these voyages are not in issue.

[4] Under the Intercoastal Shipping Act, 1933, as amended, here concerned, only common carriers "on regular routes" from port to port are subject to that statute's filing requirement.

At the direction of the various inland consignors, most of said shipments were moved to the Albury dock from their then location in the custody of a Miami forwarding company, namely, Saunders & Mader. At San Juan deliveries were made at a berth of a public harbor pier, which respondent had rented for the purpose of making such deliveries.

The absence of solicitation does not determine that a carrier is not a common carrier. The record as provided by respondent's president is emphatic that respondent carried for others to the extent of its available space in the *Grimsoy* on the March 10 sailing concerned, and that it would have carried for others without limit had space been available. In view of the then prevailing shipper-distressed transportation condition in the Miami to San Juan trade, detailed by respondent's president upon the record, it is abundantly clear that no solicitation was necessary. Respondent became known generally throughout the trade as planning to transport merchandise, and did transport merchandise of others on the particular voyage to the extent of its capacity. Respondent's course of conduct fixed or "established" it, for the voyage concerned, as a carrier ready and willing to transport for all, space permitting.[5] The fact that respondent did not solicit contributes nothing which advantages its position that it was not a common carrier, or, alternatively, that if it were a common carrier it was not "established" in the trade. It was, as respects this March 10 operation, a subject carrier to which the filing requirement of the statute attached.

The other operations of respondent here in issue are shown to present facts and circumstances essentially different from the above.

The operation of the *Grimsoy* from San Juan to Miami in the latter part of March 1943, and again in late April 1943; and of the *Tropical* from Miami to San Juan in April 1943, and from San Juan to Miami in that month, involved a full cargo as to each voyage and for the same shipper. There is no evidence that respondent did other than to contract for the full use of these vessels on these voyages by this one shipper, and no common-carrier status is indicated.

As respects the operations of the *Pedro Murias* and *Minna*, whether respondent's status was that of a common carrier is not free from doubt. The fact that there were two shippers on each voyage tends to create presumption that respondent had placed these vessels upon the market for transportation and that common-carrier engagements were fairly to be attributed to such voyages. However, other evidence as to the

[5] Some of the shipments originally intended for carriage on this March 10 sailing were transported by respondent on the April sailing of the same vessel. The facts and circumstances of the later operation were in all detail identical with those of the March 10 operation. For this later operation respondent filed a schedule, in compliance with section 2 of the Intercoastal Shipping Act, 1933, as amended, effecting full acknowledgment by it of its status for the April operation as a common carrier on regular route.

nature and purposes of this transportation, including that relating to the activities of local Puerto Rican and Federal authorities at San Juan in connection with this, rebuts the presumption of common-carrier engagement.

A carrier may be both a common and a contract carrier, not, however, on one vessel on the same voyage. *Puerto Rican Rates*, 2 U. S. M. C., 117, 126; *In the Matter of Agreements 6210, et al.*, 2 U. S. M. C., 166, 170; *New York Marine Company* v. *Buffalo Barge Towing Corp., et al.*, 2 U. S. M. C., 216, 217, 219. Upon the facts above detailed it appears that respondent was a carrier of this dual capacity. This is not to say that a carrier may so contrive its operations in such dual capacity as to work unwarranted discrimination against the shipper patrons of its common-carrier service, *Westbound Intercoastal Rates to Vancouver*, 1 U. S. M. C., 770, 774; *In the Matter of Agreements 6210, et al.*, 2 U. S. M. C., 166, 170; or to evade control over it as a common carrier, *New York Marine Co.* v. *Buffalo Barge Towing Corp. et al.*, 2 U. S. M. C., 216, 219. In the instant case there is no indication of any such discrimination or attempt at evasion.

We conclude and decide that for transportation performed by respondent in the *Grimsoy* from Miami to San Juan, sailing from Miami March 10, 1943, respondent was a subject carrier which failed to file schedule with the Commission, and that said failure by respondent was a violation of section 2 of the Intercoastal Shipping Act, 1933, as amended. As respects all other of respondent's operations in issue in this proceeding we conclude and decide that respondent was not a carrier subject to the said statutory-filing requirement. Inasmuch as the violation found has been removed, 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 10th day of October A. D. 1944

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No. 626

TRANSPORTATION BY MENDEZ & COMPANY, INC., BETWEEN CONTINENTAL UNITED STATES AND PUERTO RICO

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This proceeding, instituted by the Commission on its own motion by orders of October 19, 1943, and December 21, 1943, having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

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

By the Commission.

[SEAL] (Sgd.) A. J. WILLIAMS,
*Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 633

LYKES BROS. STEAMSHIP CO., INC.

*v.*

FLORIDA EAST COAST CAR FERRY COMPANY, ET AL.[1]

*Submitted November 30, 1944. Decided February 20, 1945*

Complaint satisfied and proceeding discontinued.

*Robert E. Quirk* for complainant.

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

*F. G. Robinson, O. G. Richard, S. P. Gaillard, Jr., Thomas E. Twitty*, and *E. H. Thornton* for interveners.

REPORT OF THE COMMISSION[2]

BY THE COMMISSION:

By complaint filed July 13, 1944, complainant alleged that respondents, as members of Gulf and South Atlantic Havana Steamship Conference, refused to admit it to full membership in the conference in violation of sections 15 and 16 of the Shipping Act, 1916. An order was sought commanding respondents to admit complainant to full membership, failing which the Commission was requested to withdraw its approval to the agreement. Board of Commissioners, Lake Charles Harbor & Terminal District, Houston Port and Traffic Bureau, Galveston Chamber of Commerce, and The Port Commission of the Port of Beaumont intervened on behalf of complainant. City of Mobile, Mobile Chamber of Commerce, State of Alabama, and New Orleans Joint Traffic Bureau intervened generally.

The conference was formed in 1935 to promote commerce from United States Gulf and South Atlantic ports to Havana, Cuba, and was approved by the Commission pursuant to the provisions of section 15 of the Shipping Act, 1916. Since 1936 Lykes has been an associate

[1] Seatrain Lines, Inc., Standard Fruit & Steamship Company, United Fruit Company, and Gulf and South Atlantic Havana Steamship Conference.

[2] The parties have waived a proposed report because the complaint was satisfied.

member of the conference with right to participate in conference contracts with shippers, but with no voting rights. One of the basic conditions of the associate agreement was that neither Lykes nor the conference members would equalize rates from specified territory via ports served by Lykes or via New Orleans or Belle Chasse, La., served by conference members.

During a period of two years, beginning in May 1942, Lykes made various applications for full membership, some on condition that certain equalization principles be observed and others unconditioned. Membership was denied, either because of the conditions attached or because of suspension of the provision for admission of new members, and—as to the last application—for no good reason of record. Lykes finally filed a formal complaint, and an examiner was sent to New Orleans to conduct the hearing.

Complainant's testimony was concluded at the morning session of the hearing. During the noon recess the conference held a meeting and voted to admit Lykes to full membership. This action by the conference was not conveyed to the presiding examiner, however, until respondents' testimony was concluded late in the afternoon. The record was held open until the necessary changes in the organic and ancillary agreements could be submitted to us for approval. These changes have been approved and Lykes is now a regular member of the conference. The issues raised by the complaint thus have become moot.

No excuse was offered for the failure of respondents to advise the examiner of the action taken to admit Lykes to full membership, thereby resulting in an unwarranted continuance of the hearing. We do not look with favor upon the practice of denying membership in conferences until a complaint has been filed with us and a hearing has started. There appears to have been an abuse of statutory procedure and a lack of the cooperative spirit which should govern the operation of conferences.

An order will be entered discontinuing the proceeding.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 20th day of February A. D. 1945

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No. 633

LYKES BROS. STEAMSHIP CO., INC.

*v.*

FLORIDA EAST COAST CAR FERRY COMPANY, ET AL.

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This case being at issue upon complaint and answer on file, and having been duly heard, and the issues having become moot because the complaint has been satisfied, and the Commission, on the date hereof, having made and filed a report 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.) A. J. WILLIAMS,
*Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 634

CONTINENTAL DISTRIBUTING CO., INC.

*v.*

COMPANHIA NACIONAL DE NAVEGACAO AND B. H. SOBELMAN & CO.

No. 636

CONTINENTAL DISTRIBUTING CO., INC.

*v.*

COMPANHIA COLONIAL DE NAVEGACAO AND JAMES W. ELWELL & CO., INC.

*Submitted May 2, 1945. Decided August 17, 1945*

Respondents' collection of charge on cargo remaining on piers after expiration of free time as expenses, failure to give ample notice of restriction of free time, and failure to amend tariffs promptly to state free time rules and charges after free time, found to be unreasonable practices. Reparation awarded.

*Maurice W. Fillius* for complainant and intervener.

*P. A. Beck* for respondents in No. 634, and *Norman M. Barron* and *Herbert M. Lord* for respondents in No. 636.

REPORT OF THE COMMISSION

BY THE COMMISSION:

These cases involve related issues, were heard together, and will be disposed of in one report. Oral argument was heard on exceptions to the examiner's report. Our conclusions differ somewhat from those of the examiner.

By complaints and amendments thereof seasonably filed, Continental Distributing Co., Inc., alleges, in substance, that respondents subjected it to unjust discrimination, undue prejudice and unreason-

able practices by assessing charges for leaving cargo on piers at Philadelphia, Pa., after the expiration of free time, in violation, respectively, of paragraph Fourth of section 14, paragraph First of section 16, and the second paragraph of section 17, of the Shipping Act, 1916, as amended. The Jos. Garneau Co., Inc., intervener in No. 636, makes a similar allegation. Lawful charges and practices for the future and reparation are sought.

Companhia Nacional De Navegacao, respondent in No. 634, owning the *S. Thome*, and Companhia Colonial De Navegacao, respondent in No. 636, owning the *Malange* and *Luango*, are subject to the act as common carriers by water in foreign commerce. Respondents B. H. Sobelman & Company and James W. Elwell & Co., Inc., are, respectively, their agents and, as such, are not subject to the act.

Complainant and intervener were notified by respondents that unless the shipments of brandy and wine[1] were removed within the "free time" period of five (5) days (Sundays and holidays excepted) daily expenses would be charged thereafter until cargo was removed. Instead of charging actual expenses, respondents charged $2.00 per 1,000 kilos[2] for each five-day period or fraction thereof. The main issue is whether this practice was unreasonable.

Complainant paid $410.20 and $208.74, respectively, on the shipments ex the *Malange* and *S. Thome*, and intervener paid $38.40 on shipment on the *Luango*. Included in these sums were charges for three days against each consignee which represented unused fractions of five-day periods.

Respondents contend that by and large the $2.00 charge does not cover expenses. However, this charge, applied on all cargo ex the *Malange*, some of which remained on the pier 50 days, yielded 28 percent more revenue than the expenses incurred. As the volume of cargo on demurrage diminishes in the later periods the cost per ton increases; conversely, the cost is less per ton in the earlier periods. The shipments here remained on the pier for periods of only 2, 13, and 24 days.

Respondents, by making the charge in question, departed from their previous practice of allowing unlimited free time. Their tariffs, although providing that all expenses at the port shall be for account of consignees, were not specifically amended to limit free time or to

[1] The *S. Thome* delivered 994 cases of brandy weighing 20,874 kilos for complainant, completing discharge on April 7, 1944. The *Malange* delivered 491 cases of brandy weighing 10,311 kilos and 200 pipes of wine weighing 124,000 kilos for complainant, completing discharge on June 12, 1944. The *Luango* delivered 800 cases of wine weighing 19,200 kilos for intervener, completing discharge on July 25, 1944.

[2] For watchmen, tally clerks, etc. Respondents estimated that an average of 800 tons remains on the pier after free time. Estimated expenses of $320.00 per day on 800 tons multiplied by five (days) divided by 800 equals $2.00 per ton for each five-day period.

name the charge after free time. Respondent in No. 634 failed to notify complainant of the five-day limit until after free time on the *S. Thome's* cargo had begun. That respondent relies on its extension of free time for seven (7) days—due to congestion on the pier—in mitigation of this delinquency, but information of the extension was not given until complainant was billed for the charge after the cargo had been removed.

Intervener asserts but fails to prove that its cargo was inaccessible during the free time period.

The examiner found unreasonable respondents' practice of issuing arrival notices which give no indication that goods are ready for delivery and which make the commencement of free time depend on the time of completion of vessels' discharge and not upon availability of goods for delivery. We think determination of this question should be made in a more comprehensive proceeding, in which all interested parties may be heard.

We find to be an unreasonable practice in violation of section 17 of the Shipping Act, 1916, as amended: (1) the practice of both respondents of collecting, in the past, present, or future, the $2.00 charge as "expenses"; (2) the practice of respondent in No. 634 of failing to give ample notice of restriction of free time; and (3) the practice of both respondents in not promptly amending their tariffs to reflect their rules and regulations pertaining to free time and the charges applicable to cargo after expiration of free time. Respondents will be expected to conform their practices with the findings made herein, which are without prejudice to their right to establish a proper scale of wharf demurrage charges.

We further find that complainant and intervener paid the charges assailed on the shipments in question and were injured thereby; that complainant in No. 634 is entitled to reparation in the sum of $208.74, with interest; and that complainant and intervener in No. 636 are entitled to reparation, with interest, to the extent the respective payments made by each exceed the actual expenses incurred by respondent in connection with the respective shipments involved.

In order to avoid further hearing for determining the amount of reparation due in No. 636, the parties therein may prepare, certify, and file with the Commission a reparation statement in accordance with Section 12.02 and Appendix II (4) of the Commission's Rules of Procedure. No order will be entered at this time.

# UNITED STATES MARITIME COMMISSION

No. 629

CONTRACT RATES—PORT OF REDWOOD CITY

*Submitted June 5, 1945. Decided September 25, 1945*

Respondent terminal's services and facilities accorded bulk cement, loaded through pipeline, subject to Shipping Act, 1916, as amended.

Lease agreement whereby respondent leased land, and accords contract rates on cement to lessee found not for lessee's exclusive benefit; *therefore contract* rates may be extended to all similarly circumstanced.

Contract rates found compensatory and not burdensome upon other services and rate payers. They are legally applicable on all bulk cement (through pipeline) regardless of ownership thereof, or ownership, control or operation of vessels carrying cement.

Establishment by respondent of higher "non-contract" rates on cement found unduly prejudicial; and respondent's failure to establish and maintain legal rates only, found to be an unreasonable practice, in violation of sections 16 and 17, respectively, of Shipping Act, 1916, as amended.

Findings without prejudice to respondent's right to depart from lease agreement upon proper showing, and to establish rates for services and facilities not in contravention of lease agreement.

*Joseph J. Geary* and *Paul A. McCarthy* for respondent. *Reginald Jones* for Board of Port Commissioners of City of Oakland, and *Robert W. Kenney* and *Lucas E. Kilkenny* for State of California and Board of State Harbor Commissioners for San Francisco Harbor, *amici curiae.*

*James L. Adams, Fielding Kimball* and *G. M. Carlon*, for War Shipping Administration. *John B. Jago* for the Commission. *Thomas K. McCarthy* for Permanente Cement Company, *Henry G. Hayes* for Standard Oil Company of California, and *N. E. Keller* for Pacific Portland Cement Company, interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed to the proposed report of the examiner by respondent and *amici curiae.* Oral argument was waived.



918579 O—51——53K

This investigation was instituted primarily to determine whether a contract, whereby respondent Port of Redwood City (California) accords Permanente Cement Company contract rates, is in contravention of the Shipping Act, 1916, as amended.

The rate in question is a "Service Charge"—per ton of bulk cement loaded—made against the ship for "use of terminal facilities" and/or for performing one or more of the following services: Arranging berth for vessel; arranging for cargo space on pier; preparing over, short and damage reports; giving information to shippers and consignees regarding cargo, sailing and arrival dates of vessels; lighting piers; and other services, such as checking and delivering cargo, which are not involved here.[1]

The cement is pumped to vessel (by Permanente from its silos at the Port) through pipelines which extend under a finger wharf and are connected with hose to the vessel docked there. Vessels load from 7,000 to 8,000 tons in 24 to 48 hours, but may remain a day or so longer to complete vessel repairs which require use of the finger wharf. The Port performs no service in connection with the loading operation; but it arranges for tugs to dock ships, the tug hire being paid by the ship; prepares—for its own purposes—record of cement loaded, from information obtained from Permanente; furnishes three small pier lights, but no working lights; arranges for handling lines at a special charge, and gives information to shippers.

The contract in question is a lease agreement executed in June, 1940, whereby the Port leased for 20 years approximately four acres of land to Permanente for erection of silos. Permanente was to pay charges incurred by it at specified toll (wharfage) rates and service charges on sacked cement, and a toll rate of 5 cents a ton on bulk cement. There was to be no Service Charge as defined in the tariff on bulk cement unless services were performed, the rate to be mutually agreed upon. Except as to service charges, if any, on bulk cement, the rates were subject to revision every five years, disputes to be settled by arbitration.[2] The contract rates were immediately published in the Port's tariff and were applied equally to all shippers of, and vessels carrying, cement for approximately two years. No service charge was made against the vessels.

[1] The purpose of arranging berth is to get vessel close to freight to be loaded. In arranging for cargo space, cargo is consolidated to save stevedoring time. Lighting piers means furnishing working lights for ship at night.

[2] In addition to provisions hereinafter discussed, the agreement also provided that Permanente would ship through the Port without additional expense all its waterborne materials, commodities etc., provided that the terminals shall be operated efficiently as public terminals for shipping general cargo and package freight by rail and that the charges shall be reasonable and non-discriminatory. The lease is subject to the limitations, conditions etc., contained in the laws of California. It is subject to forfeiture if the rents or other sums shall be unpaid, or should the gross revenue to lessor amount to less than $4000 per year.

The underlying cause of this investigation is the fact that in July, 1942 the Port, considering that the contract rates were reserved exclusively to Permanente, established a parallel set of higher non-contract rates—including a service charge of 20 cents a ton on bulk cement. These higher rates were to be applied when the cement was not owned, or the vessels not operated, by Permanente. The lower lease agreement rates were continued as "contract" rates, the service charge on bulk cement being published as "contracted free".

Later, the Commission's Division of Regulation, unaware that a pipeline operation was involved, and assuming that the Port was rendering free services for Permanente, advised the Port to cancel the apparently discriminatory item "contracted free". This the Port did, causing the 20-cent service charge on bulk cement to apply against all vessels. Permanente vigorously protested, alleging that no service was actually performed by the Port in connection with bulk cement, and no use of the wharf was made by the vessel—hence no service charge was warranted. Permanente's interest in the 20-cent charge is that it amounts to an increased cost of 4 cents a barrel in selling cement, while sales may be lost by a fraction of a cent per barrel. That is, even though the ship pays the charge directly, it is reflected in the delivered price of cement and allegedly is back-charged to Permanente. The issues thus created led to this investigation.

Counsel for the Port contend that services and facilities named in its "Service Charge" tariff provision are actually accorded vessels loading bulk cement; that failure to charge therefor would be an unreasonable practice in violation of section 17 of the Shipping Act 1916; that the lease agreement is unduly preferential in violation of section 16 of that Act because it grants rates exclusively to Permanente and continues for a term of years. Counsel for the Commission and Permanente deny that the lease agreement is exclusive; maintain that the contract rates, i. e. 5 cents toll and no service charge, are compensatory and hence cast no discriminatory burden on other services; and contend therefore that they are the legal rates and must be extended equally to all.

*Port services and facilities devoted to bulk cement.*—The only service rendered as named in tariff, "giving information", consists of making about 30 telephone calls per ship. Colonel Leslie M. Rudy, Port Manager until 1942, who conducted the operation for respondent about two years, testified there was no substantial service rendered in connection with bulk cement. The evidence is that cost of labor in checking cargo—a service not performed as to bulk cement—is the largest element of cost in a service charge, and that in pipeline operations the facility charge is the major part of the rate.

The only use the ship makes of the finger wharf is in making repairs, when it pays full dockage, which is a charge for berthing at the facility. The testimony is that the service charge was not designed to cover such use. The "use of terminal facilities" which the Service Charge definition refers to is use of pier space by the ship in handling cargo to and from point of rest on dock. The contested service charge of 20 cents results in an average cost of around $1,600 per vessel.

*Negotiation of the lease agreement.*—Colonel Rudy, who negotiated the agreement for the Port, testified that the waiver of the service charge was made—to offset potential savings by Permanente in constructing its own facilities—because no service was to be rendered by the Port and—because of the expectation of a large movement of Permanente's cement for Shasta Dam and Navy defense projects in the Pacific. He testified further that no service charge was intended to be applied to any ship regardless of who owned or operated it—that the matter was not discussed; that the anti-assignment clause in the lease, hereinafter discussed, referred to property, not rates; that in fact, he was negotiating also with Pacific Portland Cement Company, to use the port facilities at the contract rates. He informed Permanente it would have no preference in rates, and states he advised the Port Commissioners that the rates would be generally applicable.

Testimony of witnesses Morton and Lindbergh, negotiators for Permanente, is corroborative of witness Rudy's—that the contract rates were not intended to be exclusive, and that all ships were to be exempted from the service charge. Witness Lindbergh stated that Permanente owned no vessels then and was considering using ships owned and operated by others.

On the other hand, Port Commissioners John McCarthy and Henry A. Beeger testified their understanding was that the rates were for Permanente's benefit only. However, Mr. McCarthy admitted that his main interest was to have cement shipped through the Port and that the terms of Permanente's sales were not brought before the Commissioners and did not figure in the deal. They emphasized that they intended to make the agreement with Permanente only, and had no dealings with other cement companies.

Counsel for the Port contend that two deletions from the preliminary draft of the agreement indicate a clear intent to make the rates exclusive: First. Paragraph 5 of the agreement originally provided that in addition to rental payments, Permanente was to pay port charges incurred by it or under its direction. The words underscored were eliminated. Second. Paragraph 15 prohibits the assignment of the agreement or any interest therein, except to affiliates or Pacific Bridge Company et al., without the Port's consent. A provision was elimi-

nated from the original draft of this paragraph conferring upon Permanente's sublessee (Pacific Bridge, et al.,) all rights and obligations of Permanente under the agreement.

According to the deposition of witness Morton, the first elimination was made at Permanente's instance because it objected—to assuming charges properly chargeable against the ship—and to incurring the risk of forfeiting the lease because of the failure of a third party to pay such charges. He testified that the second provision was inserted to give Pacific Bridge access to a storage silo it planned to, and did, construct—on land subleased from Permanente—to load cement purchased from Permanente. The provision was eliminated upon the objection of Pacific Bridge to assuming Permanente's liabilities; also because Permanente desired to reserve its rights as to the remainder of the land not subleased. The Port's attorney had approved the lease agreement as to form prior to these deletions.

Final agreement was reached on May 21, 1940, and the contract was executed by both parties on June 15, 1940. On the latter date, after giving 30 days notice, and as Colonel Rudy testified, with the intent of making them available to the public, the Port published and made effective the contract rates in its Tariff No. 1.[3]

*Action of the parties subsequent to execution of lease agreement.*—The Port proceeded to construct the finger wharf, and Permanente contracted with Pacific Bridge Company (July 1940) and later with Contractors, Pacific Naval Air Bases (October 1941)—joint venturers under Navy contracts—for sale of large amounts of cement for delivery at Pacific destinations. Contractors constructed on the leased land six concrete silos with pumping equipment which were later acquired by Permanente. The four vessels carrying the cement were requisitioned between May and July 1942, and were continued in the trade, by the War Shipping Administration which thereafter assumed port charges.

During the period of approximately two years after execution of the contract, ships making 22 calls loaded 170,798 tons of bulk cement at the Port, and no service charge was made. At no time was any vessel operated by Permanente or for its account. Mr. Rudy knew

[3] See the following table:

| Off shore | Service charge | Tolls |
|---|---|---|
| Cement NOS | 30¢ | 12½¢ |
| Cement, in bulk | | 5 |

This tariff did not specifically provide that there would be no service charge on bulk cement. The only service charge item inserted for offshore trade was 30 cents on "Cement NOS". Admitting that he was not a tariff expert, witness Rudy testified this charge was intended to apply only to sacked cement, pointing out that the same designation—"Cement NOS"—was used in the toll item to describe sacked cement as distinguished from bulk cement.

that before requisition one of the ships was operated by Matson Navigation Company, and he billed dockage against and collected it from Matson—but no service charge. The contract rates were applied on cement variously owned and shipped by Pacific Bridge, Permanente and Contractors—and on sacked cement shipped by Pacific Portland. Toward the end of the period (March 17, 1942) the Port Commissioners approved the tariff changes made by Mr. Rudy in connection with the execution of the lease.

*Tariff changes establishing "non-contract" rates* (July *1942*).—Witness Andrew A. Moran testified that when he became Port Manager in July, 1942, after Mr. Rudy left on military leave, he accidentally discovered (1) that a change in freighting of cement had been made in January 1942, whereby Contractors displaced Permanente as shipper and (2), that the ships were not operated by or for Permanente. He concluded that the rates for terminal facilities were not "incurred" by, or the services "performed" for, Permanente as provided by the lease agreement. Thereupon, at his advice the Commissioners, without notice, amended Tariff No. 1 by establishing the higher non-contract rates mentioned, including the service charge of 20 cents on bulk cement, to become effective July 29, 1942. Later, the 20-cent rate was made effective on all bulk cement through pipeline when the "free" service charge was cancelled on June 16, 1943.

The service charges billed against the War Shipping Administration were $62,486 up to May 1, 1944, of which $1,543 has been paid. That agency refused to make settlement until the legality of the charge is established. The disparity between the contract and non-contract rates was called to the Division's attention during negotiations for the settlement of this bill.

During the pendency of this proceeding, the Federal Government on April 29, 1944, took possession of the Port by condemnation proceedings for a period ending June 30, 1945, reserving to the respective parties, however, the right to continue the bulk cement and gasoline operations.

The contested service charge was compared by the parties with other rates in the San Francisco Bay area, but in view of the conclusions reached herein, such comparisons will not be detailed. It should be noted however, that where full dockage is applied on pipeline commodities there is no service charge. In most instances where a service charge is made, it is considerably less than the toll charge. Practically all of the compared rates on bulk commodities through pipeline are fixed by contract, are published in the terminal's tariff, and are open to all.

*Return yielded by contract rates on bulk cement.*—Evidence was presented showing allocations of the Port's revenues, expenditures

and investment to the bulk cement operation to determine whether the contract rates yield a compensatory return. Mr. Edward L. Kilbourne, a cost accountant of many years experience with railroads and private business, testified for the Commission. Mr. Harry G. Butler, a valuation engineer of wide experience and formerly on the engineering and transportation staff of the California Railroad Commission, testified by deposition for Permanente. Mr. Moran, experienced in port management and steamship operation, testified for the Port.

Mr. Kilbourne's revised schedules—covering the last two fiscal years closed, and excluding Federal contributions, show that bulk cement traffic produced a return of 25.7 percent after interest. Mr. Butler's study covering the last fiscal year closed, 1942–43, shows returns from 10.4 to 15.7 percent, depending upon alternative methods of treating municipal and Federal contributions. Mr. Moran—using Mr. Kilbourne's unrevised revenue and cost allocations, but his own allocation of capital, and including both Federal and municipal contributions, arrived at a return of only 2.7 percent after interest. The interest rate on outstanding bonds of the Port—now selling above par—is 2½ percent.

(a) *Revenues and expenditures allocated to bulk cement operation.*—Witness Kilbourne's analysis of revenues and revised expenditures—including those allocable to bulk cement—is summarized in the following table:

TABLE I

| | 1941–1942 | | 1942–1943 | | 2-year average |
|---|---|---|---|---|---|
| | Total | Bulk cement | Total | Bulk cement | Bulk cement |
| | (1) | (2) | (3) | (4) | (5) |
| Revenue | $64,476.99 | $6,971.73 | $220,584.95 | $52,390.07 | $29,680.90 |
| Expenditures [1] | 49,767.25 | 3,345.95 | 127,430.66 | 7,536.16 | 5,441.06 |
| | 15,709.74 | 3,625.78 | 93,154.29 | 44,853.91 | 24,239.84 |
| Less net adjustments [2] | 4,628.23 | | 43,926.81 | 37,274.25 | 18,637.12 |
| Net income after interest | 11,081.51 | 3,625.78 | 49,227.48 | 7,579.66 | 5,602.72 |
| Adding interest back | 6,093.25 | 453.00 | 5,800.00 | 469.00 | 461.00 |
| Net Income | 17,174.76 | 4,078.78 | 55,027.48 | 8,048.66 | 6,063.72 |

[1] Expenditures in Columns 1 and 3 reflect 50-year basis for depreciation and include interest. Columns 2, 4, and 5 reflect increased depreciation. Columns 4 and 5 reflect Kilbourne's revised allocation of labor payroll.

[2] Represents increased allowance for depreciation, elimination of contested service charge revenue, and restoration of full dockage, inasmuch as only half dockage was charged when service charge was levied.

His allocation of revenue was not questioned. Most of his allocations of expenses were made on a gross revenue basis as there were practically no direct expenses allocable to bulk cement except possibly depreciation.

Mr. Butler selected the fiscal year 1942–43 because prior to that period the finger wharf was not used and allocations covering a period prior to 1942–43 would not be representative of present or future operations. His studies cover the entire costs allocable to bulk cement—attributable to both cargo and vessel—including any services covered by the tariff definition of service charge. He allocated to dockage all expenses chargeable to vessel, including any costs allocable to service charge; and to tolls, expenses pertaining to wharfage facilities. The resulting net income was $7930, excluding revenue accruing from the contested service charge.

Depreciation as recorded by the Port is on a 50-year basis, and the witnesses, considering this too low, adjusted the rate upward to conform with their estimates of the service life of the various units of property.

(b) *Capital investment allocated to bulk cement operation.*—The allocations of capital investment to bulk cement as of June 30, 1943, on various bases are set forth in the following table. Those of witnesses Kilbourne and Butler are either on a revenue or a use-and-occupancy basis, while those of witness Moran are on a tonnage and judgment basis.

TABLE II

| | Total | Allocated to bulk cement | | |
|---|---|---|---|---|
| | | Butler | Moran | Kilbourne |
| | (1) | (2) | (3) | (4) |
| 1. Recorded investment (including municipal and Federal contributions) | $475,539 | $75,152 | [1] $173,736 | $79,588 |
| 2. Line 1 less municipal contribution | 394,970 | [1] 62,419 | | 67,513 |
| 3. Line 1 less Federal contributions | 312,237 | 49,345 | | [1] 21,800 |
| Working capital | | 677 | None | None |
| Adjustment (maintenance transferred to capital) | | 325 | | |

[1] Base considered proper by respective witnesses.

The municipal contribution of $80,569 was paid by Redwood City to the Federal Government to meet 50 percent of the cost of further deepening of the two-mile channel from the Port to San Francisco Bay, and dredging of a turning basin. In selecting $62,419 as the proper investment to be used in the rate base, Mr. Butler excluded the municipal contribution because the Port has no proprietary interest in, and cannot charge for the use of the waterways involved. However, he testified that if this contribution is included, it should be considered as a general development expense allocable over the entire port investment in proportion to the capital investment in each facility.

The Federal contribution amounts to $163,301, consisting of Public Works Administration and Federal Works Agency grants. It was excluded by Mr. Kilbourne—from the base he considered proper

($21,800)—on the theory that the taxpayers should not be required to pay a return on gifts of tax money. However, both Kilbourne and Butler allowed full depreciation for the eventual replacement of the facilities created by the grants. Mr. Moran included both Federal and municipal contributions in his base of $173,736.

As stated, witness Moran's allocations were made largely on a cargo tonnage basis, although some were based on judgment. Whereas witness Kilbourne allocated the investment in channel and turning basin on use and occupancy by the total number of vessels using the port facilities, Mr. Moran allocated this investment on the basis of cargo tonnage handled by ocean-going vessels only. He did not consider that shallow draft barges and tugs received any benefit from deepening of the channel and basin. Mr. Moran allocated 50 percent of the cost of the public weighing scale to bulk cement, while the other witnesses charged this item against the income derived from the separate charges made for weighing services. He allocated 41 percent of the investment in roadways and parking area to bulk cement although that traffic, according to witness Butler, uses only 3 percent of the improved portion of the area in question. He allocated 31.6 percent of the cost of the water supply system to bulk cement notwithstanding a separate charge is made against the vessel and Permanente for water used. Witness Butler allocated only 10 percent of this item to bulk cement for fire protection.

(c) *Summary of results, computing return on various rate bases proposed.*—Percentages of return on the various bases of record are set forth in the following table:

TABLE III

| Rate base | Total | Capital allocated to bulk cement | Net income from bulk cement | Return on bulk cement | | |
|---|---|---|---|---|---|---|
| | | | | Total | Dockage | Tolls |
| | (1) | (2) | (3) | (4) | (5) | (6) |
| *Butler:* | | | | *Percent* | *Percent* | *Percent* |
| Basis I [1] | $394,970 | [2] $63,421 | $7,930 | 12.5 | 5.6 | 19.8 |
| Basis II [1] | 475,539 | [2] 76,154 | 7,930 | 10.4 | 4.6 | 16.5 |
| Basis III [1] | 312,237 | [2] 50,347 | 7,930 | 15.7 | 7.0 | 25.0 |
| Kilbourne: Basis III | 312,237 | 21,800 | 5,603 | [3] 25.7 | ..... | ..... |
| Moran: Basis II | 475,539 | 137,736 | 4,730 | [3] 2.7 | ..... | ..... |

[1] Basis I, investment less municipal contribution. Basis II, investment including Federal and municipal contributions. Basis III, investment less Federal contribution.
[2] Includes $677 for working capital and adjustment shown in Table II.
[3] Two-year average.

Actual net income before interest from bulk cement was $7,930 in 1942–43, and for the two fiscal years it averaged $6,064.[4] The latter

[4] This figure represents net income used by Kilbourne ($5603—Table III, col. 3) plus $461 interest (Table I, col. 5). For treating interest as return on investment see *Union Pacific Railroad Co. v. United States, (1878) 99 U. S. 700.*

figure applied to witness Moran's base increases his return to 3.5 percent; applied to his base less Federal contributions—prorated over the entire investment—it yields 4.1 per cent. If revenue from the contested service charge is included, Butler's returns would be increased approximately to 50–75 percent.

The port incurred net operating losses, recouped through taxation, in its entire operation during the fiscal years 1939–40 and 1940–41. On basis of total recorded investment in 1941–42 and 1942–43, net income before taxes from all sources except the contested service charge, as computed by witness Kilbourne, produced returns of 4.5 percent and 11.5 percent respectively, averaging 8 percent. Of the total revenue from dockage, tolls and service charge, except service charge on bulk cement, the cement traffic contributed 40 percent in 1941–1942 and 16 percent in 1942–1943.

CONCLUSIONS

Subject to the observance of reasonable practices and the prohibition against discrimination, a marine terminal subject to the Shipping Act, 1916, may fix rates by contract. *Interstate Commerce Commission* v. *B & O Railroad* (1890) 43 F. 37; aff'd 145 U. S. 263; *Femmer* v. *City of Juneau* (1938) 97 F. (2d) 649. Restrictions on such right are imposed by that Act which by legal implication is imported into the contract. *Compagnie Generale Transatlantique* v. *American Tobacco Co.* (1929) 31 F. 2d 663, 280 U. S. 555. The contract here in terms also is subject to the limitations and conditions contained in the laws of California which prohibit a municipally operated utility, such as the Port of Redwood City, from discriminating. *Nourse* v. *Los Angeles*, (1914) 25 Cal.App. 384, 143 P. 801. Therefore the rates must be extended to all and may not cast a discriminatory burden upon rates for other services.

*Are the contract rates generally applicable or are they reserved exclusively to Permanente?* The answer to this question lies in a fair interpretation of the contract to ascertain its intent. What is its meaning, taken as a whole? What were the circumstances surrounding the parties at the time they contracted, and the object, nature and subject matter of the agreement? What were the preliminary negotiations? And significantly, what was the practical interpretation given by the parties by their subsequent actions? Unless a contrary intent appears, the construction must make the contract effective, nondiscriminatory, reasonable, conformable to usage and capable of being carried out. (Civil Code of California—Sections 1643, 1655, 1656 and 3541.)

The circumstances surrounding the parties, and their objectives during the negotiations were these: Permanente started the negoti-

ations with a large prospective movement of cement in hand—to be shipped at minimum transportation costs—but it had no ships or shipping facilities. The Port wanted the revenue from this business. Permanente was aware that transportation costs are the determining factor in the sale of cement. It was understood before the end of the negotiations that no service was to be performed by the Port in connection with bulk cement.

If Permanente had to bear indirectly the cost of a service charge, it would have every reason to see that the exemption from such charge should run to all Permanente bulk cement and all vessels carrying such cement. Since Permanente had no ships (and it did not operate those it acquired later) there is no reason to suppose it intended to contract just with reference to cement carried in ships operated by it. The Port, being under no obligation to perform services, would have no good reason to confine the so-called "free" charge to Permanente.

These circumstances explain and lend credence to the testimony that the question of ship operation never came up during the negotiations; that no service charge was intended regardless of ship operator; that Mr. Rudy was negotiating at the same time to extend the contract rates to Pacific Portland; that he informed Permanente it would have no preference; that the anti-assignment clause referred to property, not rates; and finally, that the contract rates were inserted in the tariff for the purpose of making them available to all.

Mr. Rudy's failure to provide for no service charge on bulk cement automatically made the 30-cent rate for "Cement NOS" applicable instead of the "free" contract rate—as a matter of ordinary tariff interpretation. But we are not concerned here with the interpretation of the tariff, but of the contract. He used the "Cement NOS" designation in the toll item solely to describe packaged cement and apparently thought he was using it (with the 30-cent rate) in the service charge item solely to apply to packaged cement. The fact remains, however, that he testified he intended to—and for two years did—make the contract rates available to everyone. The contemporaneous act of publishing the contract rates is significant. If the intention was to make them exclusive, they probably would not have been published at all in view of the statement of Port witness that they did not then consider the Port's operations to be subject to the Shipping Act, 1916.

The only testimony indicating a contrary intent is that of Commissioners McCarthy and Beeger, who stated that as far as they knew the rates were made solely for Permanente's benefit. This conclusion apparently is based upon their repeated statements that they had no dealings with any other cement companies. The discrimination in question here does not involve the remote situation of the Port refusing

to lease land or extend the contract rates to other cement companies. The immediate question is whether the contract rates should apply on Permanente-owned or manufactured cement shipped in vessels not operated by Permanente. Furthermore, the intent not to discriminate, which is implicit in the lease agreement, cannot be contradicted by parol evidence. *Southern Pac. Milling Co.* v. *Billiwhack Stock Farm* (1942) 50 Cal. App. (2d) 79, 22 P. (2d) 650.

As indicative of an intent that the lease agreement was to be exclusive, counsel for the Port rely strongly upon the omission therefrom of preliminary provisions, (1) purporting to extend the rates to others when incurred under Permanente's direction, and (2) extending the rights and obligations of Permanente to its sublessee, Pacific Bridge. It is noteworthy that these deletions were made at the instance either of Permanente or Pacific Bridge—not the Port, whose attorney approved the draft prior to the deletions. Therefore, if it be argued that retention of these provisions would have extended the contract rates to others, it cannot be said that either the Port Attorney or the Port Manager—who were chiefly responsible for the form and substance of the contract—had any reservations as to who might enjoy the contract rates.

Counsel say that Witness Morton's explanation of the deletions is pointless because the tariff definitions incorporated in the contract specifically indicate the charges against the vessel—and would have safeguarded Permanente against any charges payable by the vessel. Moreover, they observe that had Pacific Bridge desired merely to avoid underwriting the obligations of Permanente, it could have required appropriate provisions to that effect in the sub-lease. Perhaps so, but in the absence of any refutation of witness Morton's deposition, his testimony is acceptable in aid of a construction which makes the contract lawful. This leads to the conclusion that the anti-assignment provisions were not intended to relate to rates, but only to the demised property. The question therefore is not whether the rates are made available to others by assignment, but by operation of law.

So much for the negotiations. We come now to the contract itself.

This whole controversy resulted from respondent's present interpretation of the words underlined below, appearing in paragraph 5 of the lease agreement.

> In addition to the rental payments . . . Lessee shall pay . . . charges *incurred by it* . . . at the following rates, etc. [Italics supplied.]

The Port takes the position that when Permanente does not operate the ship, it does not incur the service charge, hence the "free" service charge provided in the contract does not apply. Therefore, the Port is free to set a higher service charge when it is incurred by others—which it did in July 1942. But the paragraph contains merely prom-

ises by the lessee to pay—for rent, services and facilities. Failure to keep either promise may result in forfeiture of the lease. Nothing in the paragraph prohibits the Port from extending the same rates to everyone. Such paragraph therefore is not within the condemnation of the law prohibiting discrimination. *Laurel Cotton Mills* v. *Gulf & Ship Island Railroad Co.* (1904) 84 Miss. 339, 37 S. 134. Neither does the paragraph grant Permanente the right to enforce exclusive application of the rates. Therefore, we conclude that the words "incurred by it" do not signify that the contract rates were reserved solely for Permanente's benefit.

The lease agreement is subject to the anti-discrimination provisions of the laws of California, both statutory and judicial. It is not sufficient, therefore, for respondent to allege that a discriminatory contract was entered into innocently because its representatives were unaware of the fact that a municipally operated port was subject to the Shipping Act, 1916. Even without the covenant in the agreement that the Port would not discriminate, such covenant would be implied, as everyone is presumed to know the law, and where the law authorizes the regulation of service rendered the public, such law becomes a part of and controls contracts providing for the public service. 6 Cal. Juris. 310; 31 Corpus Juris Secundum 782, 783, 784.

Turning now to the practical construction given to the contract by the parties themselves, we find that Mr. Rudy knew that Matson was operating one of the ships because he billed and collected dockage from Matson—but he never made a service charge on bulk cement against Matson or any other ship operator. Twenty-one months after Mr. Rudy made the tariff changes in connection with the execution of the contract, the Port Commissioners approved them. Counsel for respondent maintain that the contemporaneous construction given by the Port is meaningless, since its representatives had no knowledge of Permanente's contractual arrangements governing the sale and transportation of cement. Mr. Rudy knew, but was not interested in, the fact that Matson was the vessel operator, or how Permanente sold its cement. And the Commissioners admitted such factors did not enter into the deal. Thus the conclusion is warranted that the indiscriminate application of the "free" service charge and other contract rates for a period of approximately two years represents a practical construction of the contract. As to such construction the Supreme Court, in *Cavazos* v. *Trevino* (1867) 6 Wall. 773, said:

> The practical interpretation which the parties, by their conduct, have given to a written instrument in cases like this, is always admitted, and is entitled to weight. There is no better test of the intention of the instrument. None are less likely to be mistaken. There is no danger of too large an admission. Safer testimony can hardly be presented in relation to any transaction occurring in human affairs.

(See also *Kendis* v. *Cohn* (1928) 90 Cal. App. 41, 265 P. 844; and *Lemm* v. *Stillwater Land and Cattle Co.*, (1933) 217 Cal. 474, 19 P. (2d) 785.)

For the foregoing reasons we find that the contract rates are not reserved exclusively for Permanente's benefit.

*Are the contract rates on bulk cement so low as to cast a discriminatory burden upon other users of services and facilities?* This depends upon whether the rates cover their full share of costs. And since this is the only question, we are not concerned with other considerations pertinent to conventional rate-making proceedings, such as fair rate of return, proper elements composing a rate base, uniformity of rates and so on. Rates initiated by respondent by contract are presumed to be reasonable. *In Re Searsport Water Co.*, (1919) 118 Me. 382, 108 A. 452. There is no presumption that a rate voluntarily initiated is unreasonably low. *Chicago, M., St. P. & P. R. Co.* v. *United States*, (1934) 8 F. Supp. 970. There is the presumption that it is in fact reasonable. Same case, 294 U. S. 499; *Interstate Commerce Commission* v. *Chicago G. W. Ry. Co.*, (1908) 209 U. S. 108.

Counsel for the Port challenged the allocation of expenditures and capital on basis of gross revenue. But where indirect expenses cannot be allocated on the basis of direct expenditures, the gross revenue method—as used by witness Kilbourne—is acceptable. *Cary* v. *Corporation Commission of Oklahoma* (1936) 17 F. Supp. 772; aff'd. 296 U. S. 452; *Groesbeck* v. *Duluth, S. S. & A. Ry. Co.* (1919) 250 U. S. 607. Capital may properly be allocated on the same basis. *Wabash Valley Electric Co.* v. *Young* (1933) 287 U. S. 488; *United Fuel Gas Co.* v. *Railroad Commission* 13 F. (2d) 510; aff'd. 278 U. S. 300.

There are no plainly evident inconsistencies in the allocations made by witness Butler—certainly none which would affect the results materially. The same may be said of witness Kilbourne's schedules, except that he excluded Federal contributions, as they were actually expended, thereby eliminating virtually all of the investment in the bulk cement finger wharf. If the contribution is properly excludible, a more equitable method would exclude it ratably and proportionately from all of the terminal investment—as witness Butler did—inasmuch as the Federal contribution was made to benefit the Port as a whole.

The port was not justified in allocating any part of the investment in the weighing scale to bulk cement, because the separate charges made provide a return on that activity. This may be said also for about 20 percent excess allocation of the water supply system. The allocation of investment in roadway and parking appears excessive in view of the limited use thereof attributable to bulk cement. Witness Moran's allocations based on tonnage ignore the fact that the cost of

operation and use of facilities is greater in the case of general cargo operations than as to pipeline operations. Furthermore, capital is not used on a tonnage basis. Moreover, the allocation of investment in channel and turning basin on the basis of cargo tonnage handled by ocean-going vessels only, is open to question. These waterways cannot be used by both shallow and deep draft vessels at the same time without some interference, one with the other. This investment benefits each port activity and it should be allocated ratably over all the port facilities. *West Palm Beach Water Co.* v. *West Palm Beach* (U. S. D. C., S. D. Fla.) P. U. R. 1930 A. 177.

Without admitting the propriety thereof, let us include both Federal and municipal contributions and give equal weight to the results produced by witness Moran and witnesses Kilbourne or Butler. Averaging the bases of witnesses Moran and Kilbourne, i. e. $173,736 and $79,588 respectively,—which cover the two fiscal years, and include all contributions—we have $126,662. Applying the average net income for two years ($6,064) gives a return of 4.8 percent. If Mr. Moran had allocated capital for 1942–43 only, we may assume that the result would have been less than for the two-year period he used, because less property was devoted to bulk cement that year. Nevertheless, averaging his base of $173,736 with Mr. Butler's base of $76,154—which also includes all contributions—we have $124,945. Applying the net income for 1942–43 of $7,930 gives a return of 6.3 percent.

Excluding Federal contributions allocable to bulk cement ($25,807), the returns of 4.8 and 6.3 percent would be increased to 6 and 8 percent respectively. Due consideration of all the facts would justify a finding that the actual returns were substantially higher than these averages. Also, the individual rates for dockage and tolls are shown to be compensatory whether the contributions are included or excluded. (Table III, columns 5 and 6).

Thus the contract rates, collectively or individually, are shown to be compensatory without a service charge, whether the contributions are included in, or excluded from, the rate base. Hence it becomes unnecessary to go into the question whether public donations should be included, as urged by respondent and *amici curiae*, or whether the Federal contribution should be excluded as urged by counsel for the Commission, or whether the municipal contribution should be excluded as urged by Permanente.

*What is the legal rate on bulk cement?*—At the outset it is apparent that the informal opinion of the Division that the "free" service charge was *prima facie* discriminatory was based on a misconception of the facts. Since the contract rates are non-exclusive and nondiscriminatory—i. e. not in violation with the Shipping Act, 1916—whether they are the legal rates is purely a matter of law and not a

question left to the discretion of the regulatory authority. This principle is well stated in *In Re Searsport Water Co.* supra, which holds that such contracts remain valid and binding until the regulatary power finds that the rates are in violation of the regulatory statute. Since the Port is forbidden to discriminate, it cannot charge other shippers a greater rate than the contract rate for a like or similar service. *Sultan Railway and Timber Co.* v. *Great Northern Railway Co.*, (1910) 50 Wash. 604, 109 P. 320; *Alabama & Vicksburg Railway Company* v. *Mississippi Railroad Commission* (1906) 203 U. S. 496. The contract cannot be abrogated at will by filing new schedules. *Attleboro Steam & E. Co.* v. *Narragansett E. Light Co.* (1924) 295 F. 895.

The lowest rate voluntarily established automatically becomes the lawful rate. *Salisbury & Spencer Railway Co.* v. *Southern Power Co.* (1919) 180 N. C. 422, 105 S. E. 28. The court therein said that by the application of this doctrine, "the court does not fix defendant's rates, but simply adopts the lowest rates which the defendant power company itself has fixed for the same, or substantially similar service." This doctrine was recently applied by the Federal Power Commission in *Re Otter Tail Power Co.* (1940) 33 P. U. R. (NS) 257.

Since the contract rates become the legal rates by operation of law, we are not empowered to relieve respondent by impairment of the contract, even assuming that the Port was mistakenly advised in making the contract or because the undertaking has proved improvident. By the same token, we could not relieve Permanente if the rates were too high. *Arkansas Gas Co.* v. *Railroad Commission* 261 U. S. 379; *Wichita Railroad & Light Co.* v. *Court of Industrial Relations*, (1923) 113 Kan. 217, 214 P. 797.

The departure from the legal rate by the Port when it established the 20-cent service charge in July 1942 did not create or continue a preference in favor of Permanente, but it created a discrimination against other users. Hence the long line of cases cited by counsel for the Port, beginning with *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission* (1911) 219 U. S. 498, condemning special concessions to shippers, are not in point. Counsel cite *Armour Packing Co.* v. *United States* (1908) 209 U. S. 56 in this general connection; also apparently for the proposition that a contract rate not published and therefore not available to all is not the legally established rate and may be superseded by a higher published rate. Reference is made apparently to Mr. Rudy's failure to insert a free service charge provision in the tariff in June 1940. The *Armour case* arose under the Elkins Act and involved the legality of a secret contract rate as against a higher rate filed pursuant to the Interstate Commerce Act. The court struck down the contract rate because under both acts involved

the only legal rate was that filed pursuant to the statute. Respondent is under no similar statutory filing requirement. Moreover, it cannot rely upon its own tariffing practices to create a situation which would invalidate the contract. *Dougherty* v. *Cross* (1944)—Cal. App.—, 151 P. 2d 654.

The foregoing discussion and cases cited therein should eliminate any question of whether the Commission is specifically enforcing private contracts, or whether respondent should be accorded an option either to adhere to the contract rates or to establish the non-contract rates for the purpose of removing discrimination.

*Is it an unreasonable practice not to charge separately for service actually rendered?*—As previously pointed out, the only service, or use of facilities involved which come squarely within the tariff definition is "giving information to shippers." Counsel for the Port contend that failure to make a charge for services rendered is an unreasonable practice. *Practices of San Francisco Bay Area Terminals* (1941) 2 U. S. M. C. 588; aff'd *California* v. *United States* (1944) 320 U. S. 577. Opposing counsel urge, however, that since dockage adequately covers all expenses chargeable against the ship—including cost of service rendered the vessel—it would be an unreasonable practice to make a double charge through the device of a service charge. *Covington Stock-yards Co.* v. *Keith* (1891) 139 U. S. 128; *Wharfage Charges and Practices at Boston, Mass.* (1940) 2 U. S. M. C. 245.

As to the first contention: Where, as here, the contract rates cover all the expenses incurred by the Port in rendering service and facilities to ship and cargo and cast no discriminatory burden upon other users, it cannot be said that failure to charge directly for "giving information" is an unreasonable practice. Witness Rudy said this service was "plush lining" and "is not worth any money to me if I am getting sufficient revenue out of the movement otherwise." It may well be assumed, therefore, that the intent of the contract was that this cost was to be absorbed in the dockage charge. As stated by the Supreme Court in *Interstate Commerce Commission* v. *Stickney* (1909) 215 U. S. 98, in reference to switching charges:

> The carrier is under no obligation to charge for terminal services. Business interest may justify it in waiving any such charge, and it will be considered to have waived it unless it makes plain to both shipper and Commission that it is insisting upon it.

As to the second contention, it is doubtful whether we can say that the service in question shall be compensated by dockage which is a charge made for an entirely different accommodation, namely, the furnishing of facilities for berthing the vessel. We cannot place a ceiling on the service charge. However it is unnecessary to decide the question here because the Port has voluntarily placed a ceiling, on all

services contracted for, in the lease agreement. Unless it be assumed that dockage was intended to cover the service in question, we are forced to accept the literal interpretation of the contract and say that the Port is not obligated to give information at all. Then such service may not be required, according to paragraph 5 of the agreement, "unless Lessee shall pay to Lessor such Service Charge as may be mutually agreed upon."

As a matter of custom in the Bay area, neither the service of arranging for tugs or the furnishing of pier space for ship repairs is considered to be a service charge item. As a matter of fact, no "use of terminal facilities", as defined in the Service Charge definition, is made by bulk cement carriers—as that phrase is ordinarily understood in the Bay area. Stipulations necessary to make the lease agreement conformable to usage are implied in the absence of a contrary intention. (Civil Code of California, Section 1655); *Body-Steffner Co.* v. *Flotill Products, Inc.* (1944) 63 Cal. App. Adv. Dec. 712, 147 P. 2d 84. We are not called upon to decide whether the provision of the agreement for efficient port operation and rates "consistent with standard practice of terminal operation", obligates the Port to render these services without charge, or whether they are includible in dockage and if so, whether the dockage rate is reasonable, and if not includible, whether it is proper to make a separate charge therefor.

To summarize: A marine terminal subject to the Act may enter into rate-fixing contracts; the rates thus established, including any terms affecting such rates or the value of the service rendered, must be published in the terminal's tariff and be made known and available to all patrons; such contracts are binding upon the parties thereto until the Commission finds that the rates contained therein are unduly preferential or prejudicial or result in unreasonable practices in violation of sections 16 and 17, respectively, of the Shipping Act, 1916 as amended.

On October 24, 1944, we issued a notice to terminal operators requesting them to file with us their tariff schedules and all contracts or understandings which accord rates differing from those provided in such schedules. Compliance as to tariff filing was practically complete. While we have no reason to doubt that the same holds true as to contracts, nevertheless we desire to emphasize the importance of the requirements stated in the preceding paragraph, because the failure to comply therewith will subject terminals to penalties provided by the Act.

## FINDINGS

We find:

1. That respondent is an "other person" as defined in the Shipping Act, 1916, as amended; and that its rates, charges, practices and serv-

ices in connection with the handling and shipment of bulk cement through pipeline are subject to said act.

2. That the lease agreement dated June 15, 1940 between respondent and Permanente is non-exclusive, and that the execution of said agreement does not constitute an unreasonable practice in violation of section 17 of said act.

3. That the rates contained in said lease agreement, individually and collectively are, and since June 15, 1940 have been, compensatory and have not resulted and do not result in casting a burden upon other services and rate payers in violation of section 16 of said act.

4. That the aforesaid rates since June 15, 1940 have been, are now, and for the duration of said lease agreement, will be, the legally applicable rates on all bulk cement handled through pipeline at respondent's terminal, irrespective of ownership of the cement and irrespective of the ownership, control, or operation of vessels carrying cement.

5. That the rates established by respondent on July 29, 1942, which are different from the aforesaid legal rates, have been since that date, are, and will be unduly prejudicial in violation of section 16 of said act.

6. That respondent's failure to incorporate in its tariffs all of the rates legally applicable on bulk cement since June 15, 1940, and respondent's insertion in its tariffs of rates on cement which are different than the legally applicable rates constitutes an unreasonable practice in violation of section 17 of that act.

An order will be issued requiring respondent to cease and desist from the violations of the Act herein found to exist.

The findings and order made herein are without prejudice to respondent's right to change its rates on cement should they be shown, in a proper proceeding, to be so low as to cast a discriminatory burden upon other services and rate payers during the term of said lease agreement; also without prejudice to respondent's right to establish proper charges for other services and facilities rendered in connection with cement traffic not in contravention of the lease agreement dated June 15, 1940.

Chairman Land did not participate in the disposition of this proceeding.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 25th day of September A. D., 1945.

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No. 629

CONTRACT RATES—PORT OF REDWOOD CITY

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This case having been instituted by the Commission on its own motion and without formal pleading, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

*It is ordered*, That respondent Port of Redwood City Board of Port Commissioners, City of Redwood City, California be, and it is hereby, notified and required to cease and desist, and hereafter abstain from the violations of the Shipping Act, 1916, as amended, herein found in findings No. 5 and No. 6, without prejudice to respondent's right to change its contract rates on cement should they be shown, in a proper proceeding, to be so low as to cast a discriminatory burden upon other services and rate payers during the term of the least agreement of June 15, 1940; and without prejudice to respondent's right to establish proper charges for services and facilities, other than dockage, tolls (wharfage) and service charge, rendered in connection with cement traffic, provided such action is not in contravention of said lease agreement.

*It is further ordered*, That as to all other matters not specifically covered by this order, this proceeding be, and it is hereby, dismissed.

By the Commission.

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

# UNITED STATES MARITIME COMMISSION

## No. 637

RUBBER DEVELOPMENT CORPORATION

*v.*

BOOTH STEAMSHIP COMPANY, LTD. AND LAMPORT & HOLT LINE, LTD.

*Submitted June 25, 1945. Decided September 28, 1945*

Shipments of metal basins from New York, N. Y. to Belem (Para), Brazil, overcharged. Stipulation between parties at hearing provides any overcharges found to exist will be refunded. Rates not found to be prejudicial, discriminatory, nor detrimental to commerce, as alleged. Complaint dismissed.

*J. Bowers Campbell* for complainant.
*Roger Siddall* for respondents.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the report of the examiner were filed by complainant. Oral argument was heard. Our conclusion with reference to the question of tariff interpretation differs from the examiner's conclusion.

By complaint filed December 29, 1944, it is alleged that for transportation during a period beginning in November 1942 and ending in June 1944 of metal basins from New York, N. Y. to Belem (Para), Brazil, respondents [1] subjected complainant to payment of a rate which was unduly prejudicial in violation of section 16 of the Shipping Act, 1916, as amended, unjustly discriminatory in violation of section 17 thereof, and detrimental to commerce of the United States in violation of section 15 thereof. Reparation [2] and a cease and desist order are prayed.

No evidence was presented sustaining the allegation of violation of section 16 or 17, or that the rate charged was unreasonable and therefore detrimental to commerce of the United States.

[1] Booth, 7 shipments; Lamport & Holt, 20 shipments.
[2] Calculated to be $273.78 from Booth, and $21,998.94 from Lamport & Holt.

Complainant's allegation that the alleged overcharge resulted in a tariff departure in detriment to commerce of the United States, was abandoned through stipulation entered into by the parties during the hearing. This stipulation agrees, among other things, that the instant case presents solely a matter of tariff interpretation; and that the parties will be bound by our determination of the question.

Complainant contends for a $16.50 measurement rate provided by the tariff under the heading "Plumbing Supplies," and respondents contend that a measurement rate of $30.50 was applicable.

The several pertinent items of the tariff [3] are as follows:

| | |
|---|---|
| Basins, Metal—See Plumbing Supplies. | |
| Plumbing Supplies, when declared as listed below: | |
| Basins, Metal | $16.50 |
| Closets | 16.50 |
| Laundry Chutes, Enamel, Iron or Steel | 16.50 |
| Laundry Trays | 16.50 |
| Sinks and accompanying Pipe Fittings to complete | 16.50 |
| (And 8 other articles accompanied with pipe fittings to complete) | 16.50 |
| Cargo, N. O. S. (Not otherwise specified) | 30.50 |
| Metalware, N. O. S. | 30.50 |

The basins in question are made of galvanized sheet metal, round, in three sizes of 36, 30 and 24 inches top diameter, and 10½, 9½ and 7⅛ inches in depth, respectively.[4] For shipment they are nested in wooden crates.[5] They are designed for and used by complainant in its Brazilian rubber development project as containers of latex, and from them the latex is alternately "dipped" with a wooden paddle and "paddled" over a fire to form balls of crude rubber. Complainant affirms that the basins are special articles particularly manufactured for it, and admits that they are not in any sense plumbing supplies.

Complainant contends that the statement in the tariff referring the shipper of "Basins, Metal" to Plumbing Supplies, made applicable to metal basins the plumbing supplies rate; and that the tariff description did not necessarily mean that the article was a plumbing supply or that only basins which were plumbing supplies were referred to. Complainant shows that over the period covered by its complaint the respondents applied three different rates to its shipments, including the rate sought, and that respondents referred to their conference the question whether the Plumbing Supplies rate of $16.50 or an N. O. S. rate of $30.50 was applicable. Complainant asserts that laundry chutes and laundry trays, which are also included under the item Plumbing

[3] River Plate and Brazil Conference Tariff No. 9.
[4] The manufactured cost to complainant, per basin, is $4.20, $2.75, and $0.93, respectively.
[5] Approximate per-basin packed weight 27 pounds, 19 pounds, and 5 pounds, respectively. There is no dispute that the measurement rate applied on complainant's shipments.

Supplies, are not plumbing supplies, and argues that respondents made the use to which the basins are put the criterion as to the rate applicable.

Carriers' tariffs are submitted to the rule of interpretation applicable to written instruments generally. This rule is that the tariff, having been written by the carrier, is vulnerable against the carrier if the tariff's meaning is ambiguous. *Gelfand Mfg. Co.* v. *Bull S. S. Line, Inc.*, 1 U. S. S. B. 169. Ambiguity of the tariff is demonstrated by the fact that respondents themselves applied three different rates to the article in question. At all events, neither of the N. O. S. rates was applicable because the cargo or metalware is specified as "Basins, Metal". That item is unrestricted as to use of the basin, and refers the shipper directly to the rate on Plumbing Supplies. He should have to go no further.

We find that the applicable rate was $16.50. Under the stipulation entered into by the parties, this finding will effect refunds to complainant.

An order of dismissal will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 28th day of September, A. D. 1945

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No. 637

RUBBER DEVELOPMENT CORPORATION

*v.*

BOOTH STEAMSHIP COMPANY, LTD. AND LAMPORT & HOLT LINE, LTD.

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

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

By the Commission.

[SEAL]

(Sgd.) JOHN R. TANKARD,
*Acting Assistant Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 635

UNITED STATES GULF-ATLANTIC AND INDIA, CEYLON AND BURMA CONFERENCE (AGREEMENT NO. 7620)

*Submitted April 11, 1945. Decided October 23, 1945*

Kerr Steamship Company, Inc., found not to be a common carrier and therefore not proper party to proposed agreement submitted for approval under section 15 of Shipping Act, 1916, as amended.

*Elkan Turk*, *Raymond S. Baron*, and *Herman Goldman* for respondents American Export Lines, Inc., and Kerr Steamship Company, Inc.

*Cletus Keating* for respondent Ellerman & Bucknall Steamship Co., Ltd.

*Thomas F. Lynch*, *Nathan L. Miller*, and *Charles S. Belsterling* for respondent Isthmian Steamship Company.

*John B. Jago* for United States Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed to the examiner's proposed report and the case was orally argued. Our conclusions differ from those recommended by the examiner.

This is a proceeding to consider protests against our approval of a proposed conference agreement between American Export Lines, Inc., and Kerr Steamship Co., Inc., under section 15 of the Shipping Act, 1916, as amended. The proposed agreement (No. 7620) covers the establishment of transportation rates and practices in the trade from United States Gulf-Atlantic ports to India, Ceylon, and Burma. Protestants Isthmian Steamship Company and Ellerman & Bucknall Steamship Company, Ltd., which expect to resume operations in this trade after the war, refused to become members of the proposed conference. In fact, after the proposed report was issued herein, they filed for approval their own proposed agreement setting up another

conference in the same trade to function as successor to their previous conference which was disbanded prior to the war.

Protestants allege that Agreement No. 7620 is premature since all carriers involved are now operating as wartime agents of various governments and there is no immediate prospect of private operation; that Kerr is an agent; and, not being a common carrier, Kerr is not a proper party to the agreement; and that the agreement would be detrimental to the commerce of the United States.

Kerr has operated sporadically in the India trade as a non-conference line, admittedly as an agent originally and later as a so-called "berth owner."[1] Its postwar operation in this trade will be as a "berth owner" and the fundamental question here is whether its status as such will be that of a common carrier or as an agent of the shipowner.

The berth was defined by Kerr's Vice President as "the connection with the trade, the contact with the shippers as merchants over the years. It is the amount of money that has been expended in working up those contacts and general good will." Kerr owns a subsidiary, Northern Dock Company, which handles its terminal operations in New York, and a refrigerating warehouse at Calcutta.

Kerr has not been a shipowner since 1936, has chartered only occasionally, and does not propose to supply its berth in the India trade with ships which it might purchase or charter, although its Vice President "did not want to preclude either of those possibilities." Kerr expects to provide its berth with vessels through outstanding agreements with two shipowners—Silver Line, Ltd. (Stanley and John Thompson, Ltd., Managers) of London, in which Kerr is a major stockholder, and Lief Hoegh & Co., A/S, of Oslo.

Under the Kerr-Silver agreement, executed in 1937, Silver is to furnish vessels for which Kerr is to act as loading brokers at a certain percentage of gross freights as a loading and discharging commission. Kerr may not abandon or suspend service without Silver's consent and may not transfer control of the berth except subject to Silver's preferential rights. But if Silver is unable to provide sufficient tonnage, Kerr may secure outside tonnage and as to such, if used along with Silver tonnage, Silver may require Kerr to enter into reasonable pooling arrangements. Kerr is to have membership in conference and pools which are subject to the Maritime Commission and forward to Silver all minutes of conference meetings as well as information concerning tariffs, vessels, and accounts. Silver's managers (who are listed as Kerr's London agents) are to attend all meetings of such

[1] The last conference in this trade, composed of protestants and American Pioneer Line, disbanded as the result of Kerr's application for membership therein. *Kerr Steamship Co., Inc. v. Isthmian Steamship Company, et al.* (1939), 2 U. S. M. C. 93.

conferences held in the United Kingdom and, as far as possible, they will consult with Kerr before making decisions as to freight, cargo conditions, business of vessels, and matters of policy. As to concerted action among British lines, Silver may act at its discretion and notify Kerr of such action insofar as it deems desirable or necessary. No major change in vessel itineraries may be made by Kerr without Silver's consent. Brokerage on cargo procured by brokers other than Kerr is to be paid by Silver to such other brokers. The employment and authority contracted for is irrevocable, subject to the fact that it is coupled with the ownership and control—by Kerr of its berth and by Silver of its vessels. Three of Hoegh's ships may be used under the Kerr-Silver arrangement, but apparently they are earmarked for the Silver-Java-Pacific service.

Kerr likewise acts as loading broker for Hoegh under an arrangement made in 1939, somewhat similar to that with Silver, which covers the Silver-Java-Pacific trade. Silver and Hoegh attend to all matters connected with the physical operation of the vessels, including provision of insurance.

So far as the record shows, Kerr's past operations in the India trade as a berth owner have been conducted with Silver vessels only, and not with ships Kerr owned or chartered. It has established and filed tariffs of rates in its own name and has exercised control over competitive practices, and over vessel itineraries except as to major changes therein. It solicits and books freight in its own name, assuming liability for failure to procure transportation. However, the dock receipt is signed by Kerr as agent for Silver or Hoegh, as is the bill of lading which by its terms supersedes the forward freight contract made by Kerr with the shipper. Kerr bears, out of its commissions, the expenses of maintaining its home office in New York and its branch offices in the United States and various foreign countries; the compensation of its agents here and abroad, and the expense of solicitation of cargo.

In the past Kerr has signed agreements in other trades as agent for Silver and has advertised in various trade journals as such, as well as "loading brokers" and "general agent." Since 1939, however, when Kerr's status was questioned in one of our formal proceedings, it has omitted all such designations in those trades where it operates berth services. In such trades, except the one in question, Kerr enjoys conference membership in its own name. However, where Kerr operates admittedly as an agent, its principal has the membership. This is the first case in which the Commission has considered Kerr's common carrier status in the light of the Silver and Hoegh agreements.

Protestants' allegation that the agreement would be detrimental is based on two contentions: (1) that Kerr is merely an agent without

any financial interest in the trade except agency commissions, and (2) that Kerr could therefore subject the membership to unfair competition by bringing in a multiplicity of undisclosed shipowning principals to "skim the cream off the trade", the latter having no concern for providing a regular service for the public, and being subject to no control either by the conference or by the Commission. They doubt whether our approval of the agreement would confer immunity from the anti-trust laws on any of the members in view of the questionable common carrier status of Kerr.

Counsel for Kerr contend that under section 1 of the Shipping Act,[2] the vessel itself is the common carrier, and that the regulatory provisions of the Act apply to the person responsible for the rates and competitive practices governing the operation of the vessel, even though such person bears no particular relationship to the vessel or the shippers.[3] Such construction does not accord with the legislative history of the statute, which indicates that the person to be regulated is the common carrier at common law, namely, one who undertakes for hire to transport the goods of those who may choose to employ him. *The Niagara* v. *Cordes*, 21 How. 7; Cf. *Columbia Transportation Co. Contract Carrier Application*, 250 I. C. C. 653, 665; 260 I. C. C. 135, 139.

It is argued that Kerr meets the test of a common carrier because (1), it undertakes for hire to transport (*Niagara case, supra*) since it books cargo in its own name and would be liable for breach of the booking engagement (*The Ecuador*, 1925 A. M. C. 1261; *Cyprus Palestine Plantations* v. *Olivier & Co.*, 78 Ll. Rep. 5); because (2), like a time-charterer, whom we have held to have common carrier status (*Sprague Steamship Agency Inc.* v. *A/S Ivarans Rederi*, 2 U. S. M. C. 72), Kerr controls—and not as an agent but as the independent holder of a power coupled with an interest—the cargo that goes into the vessel, the itinerary of the vessel, and the rates and competitive practices affecting the transportation; and because (3), Kerr actually engages in performing limited transportation services by receiving the cargo and loading it aboard through a subsidiary dock company. *Union Stock Yard & Transit Co.* v. *United States*, 308 U. S. 213; *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196.

As to the first argument, the undertaking to carry must continue, for a certain period of time at least, subsequent to the receipt of the

[2] Paragraph one of section 1 reads: "The term 'common carrier by water in foreign commerce' means a common carrier, except ferryboats running on regular routes, engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade; *Provided*, That a cargo boat commonly called an ocean tramp shall not be deemed such 'common carrier by water in foreign commerce.'"

[3] Counsel point out that the exceptions to the definition of "common carrier" are vessels, such as "ferryboats" and "ocean tramps".

goods for the purpose of transportation. Kerr admittedly books cargo for transportation, however its undertaking is superseded by the shipowner's undertaking of carriage at the time when the latter issues to the shipper dock receipts and bills of lading. Thus Kerr's undertaking ceases before the act of water transportation commences and before common carrier liability attaches. It is true that a common carrier is such by virtue of its occupation and not its responsibility (*Liverpool & Great Western Steam Co.* v. *Phenix Insurance Co.*, 129 U. S. 397), but common carriage arises out of a contract or undertaking, express or implied, which exists during some stage of the process of transportation.

As for the second argument, Kerr's position is not comparable to that of a time charterer. In our opinion, Kerr's relationship to the type of transportation described in the record is that of an agent, and not that of a holder of a power coupled with an interest. The holder of such a power, in order to remove himself from the field of agency, must possess a proprietary interest in the subject matter over which the power is exercised. *Hunt* v. *Rousmanier's Administrators*, 8 Wheaton 174. Ownership of the berth by Kerr is not such proprietary interest. The case of *Kerr Steamship Co.* v. *Kerr Navigation Corp.*, 184 N. Y. S. 646, relied upon by Kerr in this connection, merely held that the agency there in issue would have to be terminated in the manner provided for in the agreement between the principal and the agent; and there was no finding as to the existence of a power coupled with an interest.

The third argument, that Kerr is a common carrier by water because it performs limited transportation functions, is also untenable. We have been cited to no authority in this connection which, in the absence of statutory direction to the contrary, holds that one performing only the limited transportation functions of receiving and delivering—no transportation haul being involved—is a common carrier.[4] Moreover, there is no satisfactory evidence in the record that Kerr, either by itself or through a controlled subsidiary, loads or unloads cargo.

Our attention has been directed to our decision in *Matter of Agreements 6210 etc.*, 2 U. S. M. C. 166; but we do not believe that the holding in that case involves anything contrary to the views here expressed. Suffice it to say that there Consolidated Olympic Line, as distinguished from the company whose vessels Consolidated used, undertook towards shippers the obligations of common carriage and

[4] The *Union Stock Yard* case arose under the Interstate Commerce Act, which makes loading of livestock a part of transportation. For that reason, the railroad's agent, the stockyard, was held to be a common carrier also. In *Covington Stockyards* v. *Keith*, 139 U. S. 128, it was held that unloading and delivery constituted an integral part of transportation, but in that and similar cases cited to us, the carrier performed line haul or water haul transportation.

was therefore a carrier. The time charter cases which are offered as authorities for the proposition that Kerr is a common carrier are not helpful. In the leading case of *Pendleton* v. *Benner Line*, 246 U. S. 353, while the facilities of another carrier were utilized in order to effectuate transportation, there was an undertaking of carriage by the charterer which lasted during the process of transportation.

The manner in which Kerr has conducted its business reflects a course of dealing which avoids all the obligations of a common carrier, and is consistent only with the theory of agency—however wide the authority and discretion granted. It is true that an agent acting for another has been held to be a common carrier, but in such cases there has either been actual physical transportation on the part of the agent or else a personal undertaking to transport which endures for some portion, at least, of the process of land or water transportation. Since Kerr fulfills neither of these conditions, we conclude that it is not a common carrier by water.

In view of the above conclusion as to the common carrier status of Kerr, it must be held that the proposed agreement is not the kind of agreement contemplated by section 15 of the Shipping Act, 1916. Consequently the agreement is not approved, and an order will be issued discontinuing the proceeding.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 23rd day of October A. D., 1945.

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No. 635

U. S. GULF-ATLANTIC AND INDIA, CEYLON AND BURMA CONFERENCE (AGREEMENT No. 7620)

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*It appearing*, That by order of August 24, 1944, the Commission instituted a proceeding of investigation to determine whether it should approve proposed Agreement No. 7620; and

*It further appearing*, That 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.) A. J. WILLIAMS,
*Secretary.*

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# UNITED STATES MARITIME COMMISSION

No. 642

BLACK DIAMOND STEAMSHIP CORP.

*v.*

COMPAGNIE MARITIME BELGE (LLOYD ROYAL) S. A., ET AL.[1]

No. 643

BLACK DIAMOND STEAMSHIP CORP.

*v.*

A/S J. LUDWIG MOWINCKELS REDERI (COSMOPOLITAN LINE), ET AL.[2]

*Submitted April 4, 1946. Decided May 28, 1946*

Provisions of conference agreements limiting admission to persons, firms, or corporations engaged in operating vessels regularly in the trade, found to be unjustly discriminatory and unfair as between carriers.

The delay of respondents in No. 643 in acting upon complainant's application for admission was unjustified, and reasons for the denial of the application should have been given.

Respondents' refusal to admit complainant to conference membership found to be unjustly discriminatory and unfair as between complainant and respondents, and subjected complainant to undue prejudice and disadvantage.

If complainant be not admitted to full and equal membership in the conferences, and if respondents do not modify the conference agreements to remove the restriction found to be unlawful, consideration will be given to disapproval of the conference agreements.

*M. G. de Quevedo* for complainant in both proceedings.

*Roscoe H. Hupper* and *Norman M. Barron* for respondent N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij (Holland

[1] Lykes Bros. Steamship Co., Inc., N. V. Nederlandisch-Amerikaansche Stoomvaart-Maatschappij, United States Lines Company, and Antwerp Rotterdam North Atlantic Westbound Freight Conference.

[2] Compagnie Maritime Belge (Lloyd Royal) S. A., County Line, Ltd. (County Line), Ellerman's Wilson Line, Ltd. (Wilson Line), N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij (Holland America Line), United States Lines Co. (United States Lines), Waterman Steamship Corporation, and North Atlantic Continental Freight Conference.

America Line) in No. 642 and for all respondent carriers in No. 643 except United States Lines Co. (United States Lines).

REPORT OF THE COMMISSION

BY THE COMMISSION:

These cases involve related issues, were heard together, and will be disposed of in one report. Oral argument was heard on exceptions to the examiner's report. Our conclusions agree with those of the examiner.

In No. 642 complainant alleged that it has been refused admittance to Continental North Atlantic Westbound Freight Conference (U. S. Maritime Commission Agreement No. 7000),[3] which governs the parties thereto in the transportation of cargo from or via ports in Germany, Belgium, and the Netherlands to United States North Atlantic ports. No answer was filed in this proceeding, and Holland-America Line was the only carrier opposing the application. In No. 643 complainant was refused admittance to North Atlantic Continental Freight Conference (U. S. Maritime Commission Agreement No. 4490), which governs the parties thereto in the transportation of cargo from North Atlantic ports of the United States and Canada to ports in Belgium, Holland, and Germany. It was alleged in both cases that complainant has been subjected to unfair treatment, unjust discrimination, and undue prejudice, in violation of sections 14, 15, 16, and 17 of the Shipping Act, 1916. We are asked to order respondents to admit complainant to the conferences, and if respondents fail to comply with such order, we are requested to withdraw our approval of the agreements.

Black Diamond Steamship Corp., organized under the laws of Delaware in October 1919, was the first of a series of companies using the word "Diamond" as a part of its name. In 1920 the company started operating vessels for the United States Shipping Board between U. S. North Atlantic ports and ports in Holland and Belgium. Another company, American Diamond Lines, Inc., was formed in August 1931 and purchased ten vessels from the United States Shipping Board, the Delaware corporation becoming a wholly-owned subsidiary. Black Diamond Lines, Inc., formed in October 1937, took over American Diamond Lines, Inc., and Black Diamond Steamship Corp. American Diamond Lines, Inc., was liquidated in February 1938 and Black Diamond Steamship Corp. was liquidated in April 1938. Black Diamond Lines, Inc., continued to operate vessels to Holland and Belgium until those countries were invaded by Germany in May 1940. Inas-

[3] At the time the complaint was filed this was known as Antwerp Rotterdam North Atlantic Westbound Freight Conference.

much as Black Diamond Lines, Inc., served no other trade, its common carrier operations ceased at that time.

In September 1940 a partnership composed of the four officers of Black Diamond Lines, Inc., and owning all the stock of that corporation, was formed under the name of Black Diamond Steamship Company. The partnership acquired all the assets of Black Diamond Lines, Inc., as dividends. The last of the vessels was sold in October 1941 and the liquidation of Black Diamond Lines, Inc., was completed in September 1943. The present company, the entire outstanding stock of which is owned by the partnership formed in 1940, was incorporated in Maryland in 1942 to operate as an agent for War Shipping Administration in the Holland/Belgium trade. With few exceptions, the key men in the successive companies have been the same.

A somewhat similar situation was involved in *Phelps Bros. & Co., Inc.*, v. *Cosulich-Societa, Etc.*, 1 U. S. M. C. 634, wherein it appeared that Phelps Brothers and Company was a New York copartnership established in 1830; that the copartnership, as merchants, common carrier, and agent of common carriers, had pioneered in developing the trade and commerce of the United States with Adriatic and Levant countries; that the copartnership was a party to the conference agreement covering that trade, approved by the United States Shipping Board on June 26, 1923, and which was in effect until superseded by the agreement then under consideration; that the copartnership became inactive on January 1, 1930, and resigned from the conference; that the good will of the business and the right to use the trade name of the company were transferred to a corporation formed in November 1935; and that one of the partners of the dissolved company acquired a financial interest in the corporation and another became its president. We found in that case that complainant was entitled to membership in the conference.

Respondents contend, however, that the present Black Diamond organization has not operated as a common carrier, and cannot do so under the powers granted in its certificate of incorporation. In *United States* v. *California*, 297 U. S. 175, 181, the Supreme Court said that "whether a transportation agency is a common carrier depends not upon its corporate character or declared purposes, but upon what it does." Again, in *Terminal Taxicab* v. *Dist. of Col.*, 241 U. S. 252, 254, the court said that "the important thing is what it does, not what its charter says." See also *United States* v. *Brooklyn Terminal*, 249 U. S. 296. The application of our regulatory powers under the Shipping Act, 1916, cannot be limited or expanded by the provisions of a carrier's charter. *Colorado* v. *United States*, 271 U. S.

153. Furthermore, any doubts as to complainant's corporate authority to operate as a common carrier must be determined by the courts in a direct proceeding, for in performing our regulatory duties we do not have the power to decide whether the actions of a carrier are *ultra vires*. *Propriety of Operating Practices—New York Warehousing*, 198 I. C. C. 134.

Complainant's vice president testified that it was always the intention of the Black Diamond organization to resume operations as a common carrier after the conclusion of the war, and that its European agencies were maintained throughout the war period even though they could not be contacted. It was further testified that Black Diamond deemed it advisable to sell its vessels because they were over twenty years old and it looked as if the war would last for some time. New and faster vessels were to be purchased after the war. A manifestation of the intention to resume common carrier activities was the application filed by complainant with the Commission on May 7, 1945, for an operating-differential subsidy under Title VI of the Merchant Marine Act, 1936, whereby complainant offered to purchase seven vessels with an initial payment of $3,000,000 thereon. Although the application was denied, in no sense can this detract from complainant's avowed purpose to operate as a common carrier.

Respondents urge that a finding that complainant is a common carrier would be contrary to our ruling in *Agreement No. 7620*, 2 U. S. M. C. 749, wherein it was determined that Kerr Steamship Co., Inc., was not a common carrier in the United States Gulf-Atlantic/India, Ceylon, and Burma trade. That case, however, primarily concerned the question of Kerr's method of operation in its relation to the public, not whether Kerr was authorized to operate as a common carrier under its corporate powers. The testimony in that proceeding was to the effect that after the return of shipping to private operation at the conclusion of the war, Kerr was to operate as it had in the past, namely, as an agent and not as a common carrier. In the present case, however, complainant's predecessors were common carriers from 1931 until 1940, when war conditions effectively stopped such operation. Complainant merely seeks to take up where its predecessors left off.

At the time of the hearing in the present proceedings complainant was acting as agent of its Government, a situation common to all operators of the United Nations. It was not until the Government commenced to return vessels to their owners upon the termination of the United Maritime Authority pool on March 2, 1946, that complainant would have been in a position to engage in common carrier

activities. From the records it is clear that complainant has the background, the experience, the personnel, and the financial ability, to engage in common carrier activities. The conferences do not challenge complainant's good faith in its statements that it intends to so operate. Respondents contend that complainant is not eligible for admission to membership, however, because Article 7 of Agreement No. 7000 and Article 9 of Agreement No. 4490 restrict admission to persons, firms, or corporations engaged in operating vessels regularly in the trade. Under such a provision applicant's ability and proven intention to serve the trade are insufficient. In the past fifteen months we have not approved any agreement which restricted admission to carriers operating regularly in the trade. Such a provision would require an applicant who is willing and able to operate as a common carrier to do so for an appreciable period of time, probably at a loss, before qualifying for admission. We conclude that the provision under consideration is unjustly discriminatory and unfair as between carriers and operates to the detriment of the commerce of the United States. A proper clause for the admission of new members, in line with the clause insisted upon by us in new agreements submitted for our approval, would be somewhat as follows:

> Any common carrier by water as defined in section 1 of the Shipping Act, 1916, as amended, who has been regularly engaged as such common carrier in the trade covered by this agreement, or who furnishes evidence of ability and intention in good faith to institute and maintain a regular service between ports within the scope of this agreement, may hereafter become a party to this agreement by * * *

Respondents maintain that we have no power to order a change in the conference agreements because they have been approved by us and action has been taken under them by the conferences. The same argument was advanced in the *Phelps* case, above, but we said:

> Defendants' position now, as at the time the application was declined, is that complainant is not engaged in operating a regular service. They state that they dealt with the question of regular service in good faith; that this question was one for their sole determination under the conference agreement; and that, there being no lack of good faith, their decision, notwithstanding that complainant or anybody else might think it incorrect, is not subject to third party reversal or revision. This contention may be answered by pointing out that the conference agreement may continue in effect only so long as it has the approval of this Commission. If, because of defendants' interpretation or application of its terms or for any other reason, it is found to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters, or to operate to the detriment of the commerce of the United States, or to be in violation of the Shipping Act, 1916, we may disapprove, cancel, or modify it.

Application for admission to North Atlantic Continental Freight Conference was made by letter dated August 28, 1945, but no information as to the conference's action thereon was received until the letter of November 30, 1945, which advised merely that the application "was not approved." As respondents produced no witnesses at the hearing, no reason appears for the length of time taken to notify complainant. In respondents' exceptions it was suggested that the delay was incident to the war. Prompt action on the application was important to complainant and failure of the conference to act more expeditiously in the matter was inexcusable. Furthermore, since Agreement No. 4490 provides that admission shall not be denied except for just and reasonable cause, complainant was entitled to know the reason or reasons for the denial of the application. *Seas Shipping Co. v. American South African Line, Inc., et al.*, 1 U. S. S. B. B. 568.

Upon the records in these proceedings we find: (1) that the provisions of the conference agreements limiting admission to persons, firms, or corporations engaged in operating vessels regularly in the respective trades, are unjustly discriminatory and unfair as between carriers, and are detrimental to the commerce of the United States, in contravention of section 15 of the Shipping Act, 1916; (2) that the delay of respondents in No. 643 in acting upon complainant's application for admission was unjustified, and that reasons for the denial of the application should have been given; (3) that complainant is entitled to full and equal membership in the conferences, and that respondents' refusal to admit complainant to conference membership was unjustly discriminatory and unfair as between complainant and respondents, and subjected complainant to undue prejudice and disadvantage, in violation of section 16 of the Act and in contravention of section 15 thereof. No violation of section 14 or of section 17 of the Act has been shown.

Respondents will be allowed 30 days within which to admit complainant to full and equal membership in the respective conferences, and within which to modify Article 7 of Agreement No. 7000 and Article 9 of Agreement No. 4490 to remove the restriction therein which we have found to be unlawful, failing either of which consideration will be given to the issuance of an order disapproving the respective agreements.

By the United States Maritime Commission.

[SEAL] (Sgd.) A. J. WILLIAMS,
*Secretary.*

Washington, D. C., May 28, 1946.

# UNITED STATES MARITIME COMMISSION

No. 639

STATUS OF CARLOADERS AND UNLOADERS

*Submitted April 16, 1946. Decided May 31, 1946*

Stevedoring companies, terminal operators, and other contractors engaged in carloading and unloading of water-borne traffic at San Francisco piers are "other persons" subject to Shipping Act, 1916.

Approval of agreement among such "other persons" and common carriers by water to fix and regulate rates, etc., pursuant to section 15 of Shipping Act, withheld pending certain revisions.

Basis of rates proposed by respondents as interim adjustment under such agreement approved upon condition that they refund charges subsequently found by Commission to be unfair or unreasonable.

Present rates and any basis lower than interim adjustment found noncompensatory, burdensome upon other services, and detrimental to commerce.

Certain water carrier respondents are subject exclusively to Interstate Commerce Act, and therefore are not proper parties to agreement under section 33 of Shipping Act.

Appoval by Commission of an agreement pursuant to section 15 of Shipping Act, constitutes complete occupancy by Federal government of field of regulation of snbject water carriers and "other persons" parties to such agreement.

*Joseph J. Geary* for respondents.

*Herbert Cameron* for American Potash and Chemical Corporation, Johns-Manville Corporation, and Chilean Nitrate Sales Corporation, *Charles A. Rummel* and *Edson Abel* for California Farm Bureau Federation, *Irving F. Lyons* for Canners League of California, *John B. Harman*, *Eugene T. Rendler*, and *C. O. Burgin* for Director of Office of War Mobilization and Reconversion and Administrator of Office of Price Administration, *R. F. Ahern* and *H. C. Dunlap* for Dried Fruit Association of California, *Elinor Kahn* and *T. C. Kreps* for International Longshoremen's and Warehousemen's Union, *Eugene A. Read* for Oakland Chamber of Commerce, *James A. Keller* for Pacific Coast Cement Institute, *Thomas K. McCarthy* for Permanente Cement Company, *Walter A. Rohde* for San Francisco Chamber of Commerce, *Charles W. Bucy*, *James K. Knudson*, and *Harry C. Burnett* for United States Department of Agriculture, *R. F. Ahern* for Rosenberg Bros. & Company, and *F. P. Kensinger* for Western Can Company and Pacific Coast Coffee Association, interveners.

*R. K. Hunter* for Board of State Harbor Commissioners for San Francisco Harbor, *L. H. Stewart* for California Cotton Oil Corporation, *Robert C. Neill* for California Fruit Growers Exchange, *John G. Breslin* for California & Hawaiian Sugar Refining Corporation, *Everett C. McKeage* and *John M. Gregory* for California Railroad Commission, *S. T. Dickey* for Castle & Cooke, Ltd., *H. A. Lincoln* and *Joseph E. Collins* for Fibreboard Products, Inc., *George S. Beach* for Libby, McNeill & Libby, *R. D. Sangster* for Los Angeles Chamber of Commerce, *Thomas R. Speakman* for Owens-Illinois Glass Company, *H. L. Burdick* for Pacific Chemical & Fertilizer Company, *L. P. Matthews* for Poultry Producers, and *James L. Roney* for S & W Fine Foods, Inc.

*John B. Jago* for the Commission.

## Report of the Commission

By the Commission:

Exceptions were filed to the examiner's report by certain interveners, but oral argument was not requested. The findings recommended by the examiner are adopted herein.

This investigation was ordered to determine whether approval should be given to a rate-fixing agreement submitted by respondents, who are members of San Francisco Bay Carloading Conference. The central issue is whether respondents are within the coverage of the Shipping Act, 1916, as amended.[1] If so, are their proposed rates fair, nondiscriminatory, and otherwise acceptable under section 15 of that Act?[2]

The car service involved is accorded water-borne traffic at piers of the Board of State Harbor Commissioners for San Francisco Harbor. These piers, which are served by the Board's belt railroad, are assigned on a month-to-month basis to steamship companies or terminal operators who act as their agents.

[1] The main question is wether the non-common carrier respondents are within the definition of "other persons" contained in section 1 of the Act, which reads: "The term 'other person subject to this act' means any person not included in the term 'common carrier by water', carrying on the business of forwarding or furnishing wharfage, *dock*, warehouse, or *other terminal facilities in connection with* a common carrier by water". (Emphasis added.)

[2] Section 15 requires the filing, among other things, of every agreement between common carriers by water and "other persons" fixing rates, controlling competition, etc. The Commission "may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations."

Four of respondents are common carriers by water;[3] two,[4] which are affiliated with common carriers by water, and three others[5] are terminal operators. All of the foregoing except W. R. Grace & Company have pier assignments. Of the remaining respondents, who hold no pier assignments, twelve are contracting stevedores[6] and seven are so-called "independent" carloaders and unloaders.[7] Representatives of government, shipper, and labor interests intervened at the hearing.[8]

These are found to be the facts concerning the question whether respondents furnish "terminal facilities in connection with a common carrier by water":

Before carload freight moves to the piers, it must be booked for shipment with the steamship company. After cars arrive at the railroad "break up" yard at the port, the steamship company or terminal operator orders them placed on the belt railroad, thence spotted as needed on the pier tracks for unloading.[9] As the car is unloaded a representative of the steamship company or terminal operator records the broken car seal, checks and pile-tags the cargo, designates where it is to be placed on dock, and receipts for the cargo to the railroad. The cargo is transferred from car to "place of rest" on dock by a gang of eight to ten car unloaders, using two-wheel hand trucks—sometimes four-wheel trucks—or in the case of palletized cargo, by powered lift trucks. Occasionally, cargo is transferred across the dock to ship for immediate loading. The foregoing operation constitutes indirect car unloading.

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[3] Grace Line, Inc., Luckenbach *Steamship Company, Inc.*, Pope & Talbot, Inc. (McCormick *Steamship Co. Division*), J. C. Strittmatter, doing business as Consolidated Steamship Companies. No rate change can be made without consent of 75 percent of water carrier members.

[4] W. R. Grace & Co., Matson Terminals, Inc.

[5] Ocean *Terminals*, Pacific-Oriental Terminal Company. Pacific Ports Service Corporation.

[6] *Arrow* Stevedore Company, Associated Banning Company, California Stevedore & Ballast Co., Flood Brothers, Inc., H. Gerland, doing business as General Stevedore & *Ballast* Company, Jones Stevedoring Company, Marine Terminals *Corporation*, Mitchell Stevedoring Company, Chas. deB. Haseltine, *doing business* as Pacific Stevedoring & Ballasting Company, *San Francisco* Stevedoring Company, Schirmer Stevedoring Company, Ltd., Seaboard Stevedoring Corporation.

[7] Bear & Garrigues, Burton, Partland & Company, A. Fox, *doing business as* Distributors' Warehouse Company, Paul Hartman, *doing business as* Paul Hartman Company, Haslett Warehouse *Company*, *MacNichol* & Company, Western Terminal Company.

[8] American Potash and Chemical Corporation, Johns-Manville Corporation, Chilean Nitrate Sales Corporation, California Farm Bureau Federation, *Canners League of* California, Director of Office of War Mobilization and Reconversion, Administrator of Office of Price Administration, Dried Fruit Association of California, International Longshoremen's and Warehousemen's Union, Oakland Chamber of Commerce, Pacific Coast Cement Institute, Permanente Cement Company, San Francisco Chamber *of Commerce*, United States Department of Agriculture, Rosenberg Bros. & *Company*, Western Can Company, Pacific Coast Coffee *Association*.

[9] *Cars may* be ordered by the car unloader, but subject to approval and control of the steamship company or terminal operator. In certain instances, the carloader also checks the cargo and prepares bills of lading.

Direct car unloading is accomplished by spotting an open-top car alongside ship and using ship's gear to hoist the cargo directly from car into the hold. (This, as well as the transfer of cargo from "place of rest" to ship, is a stevedoring operation.) Carloading is essentially the reverse of the above-described direct and indirect car-unloading operation. Most of respondents perform stevedoring, and direct and indirect work. However, the "independents" perform only indirect work and accessorial services such as weighing and strapping.

The shifting of cars back and forth interferes with the loading and unloading of ship and car and consequently necessitates close and continuous cooperation between respondents and steamship representatives to expedite ship's sailing and to prevent chaos on the dock. Any car demurrage, track storage charges, or extra switching charges for respotting or setting car back is for account of the steamship company or terminal operator. The steamship company also assumes cost of the difference between overtime and straight-time wage rates when overtime is worked for its convenience. However, the transportation rates of water carriers, except those in the coastwise trade, include no allowance for car-servicing work.

The railroads perform no car-servicing work on carload freight at the piers. Ordinarily, the obligation to load or unload carload freight is upon the shipper. *Pennsylvania Railroad Co.* v. *Kittanning Iron & Steel Mfg. Co.* (1920), 253 U. S. 319, 323. However, the railroads, for competitive reasons, absorb all or a part of car-servicing costs—on traffic originating east of the Rocky Mountains for shipment on through export bill of lading, and on certain local traffic originating west thereof.

Respondents observe uniform car-servicing rates contained in tariffs filed with the California Railroad Commission. Matson files separately, Luckenbach files for information purposes only, and W. R. Grace & Co. has no tariff on file. The others, except Grace Line, which performs no car service, are parties to a tariff filed initially in 1933 by the San Francisco Bay Carloading Conference.[10] However, after submittal of the proposed agreement (No. 7544) to the Maritime Commission, the conference attempted to amend, by supplement, its California Railroad Commission tariff to apply only to intrastate commerce. This supplement was rejected by the California Commission on the ground that in the absence of effective Federal control of car-service rates, the State has power to regulate respondents' rates on commodities handled in interstate, foreign, and off-shore commerce.

*The jurisdictional question.* The first obstacle to the jurisdiction of the Maritime Commission over respondents is section 33 of the Ship-

[10] C. R. C. No., 4 J. P. Williams, Agent. A tariff covering accessorial services, such as weighing, etc., is also filed with the California Commission by the "independent" carloaders.

ping Act. It provides that the Maritime Commission cannot exercise concurrent jurisdiction over any matter within the power and jurisdiction of the Interstate Commerce Commission.

Car-servicing work is within such power and jurisdiction (1) when performed by a rail or water carrier subject to the Interstate Commerce Act because "transportation" as defined in that Act embraces carloading (*Railroad Retirement Board* v. *Duquesne Warehouse Co.* (1946) 66 S. Ct. 238); and (2) when livestock is loaded or unloaded by public stockyards, by virtue of section 15 (5) of that Act. *Union Stock Yard and Transit Company* v. *United States* (1939), 308 U. S. 213. Also within such control is the matter of absorptions or allowances of carloading charges made by subject carriers. Under no other circumstances does the Interstate Commerce Act appear to apply to the business of car servicing. Indeen, the Interstate Commerce Commission has repeatedly refused to assert further jurisdiction. Cf. *Wharfage Handling and Storage Charges at Municipal Terminals* (1920), 59 I. C. C. 488; *Handling Charges at Louisiana Ports* (1921), 61 I. C. C. 379; *Livestock Loaded and Unloaded at Chicago* (1935), 213 I. C. C. 330; *Jacksonville Port Association* v. *Alabama etc. Railroad*, 263 I. C. C. 111.[11]

The line-haul rail carriers serving San Francisco do not perform any car-servicing work; nor do they own or control the piers or respondents. Clearly, respondents are not "common carriers * * * wholly by railroad" as defined in the Interstate Commerce Act. The next question is whether respondents are "common carriers by water" subject to the Interstate Commerce Act. Luckenbach and Strittmatter, as will appear below, are such carriers. Grace Line and Pope & Talbot operate vessels in foreign commerce and to Puerto Rico, respectively, and are not subject to the Interstate Commerce Act as to such operations. The remaining respondents, if they are "other persons", are not "common carriers by water" subject to the Interstate Commerce Act because the repealing provisions of the Transportation Act of 1940[12] preserved the jurisdiction of the Maritime Commission over "other persons". *Status of Wharfingers* (1941), 251 I. C. C. 613.

[11] In 59 I. C. C. 488, the Interstate Commerce Commission found that a municipal water terminal was not a common carrier subject to the Interstate Commerce Act and ordered its handling and storage charges stricken from the files of the Commission. In 61 I. C. C. 379, that Commission, in authorizing rail carriers to increase handling charges at New Orleans, pointed out that lower *contract* rates of certain private contractors were available to carriers and shippers. In 213 I. C. C. 330, the Commission said: "We do not entertain the view that every terminal agency, performing for the railroads some service falling within the definition of 'transportation' contained in Section 1 (3) could, or should, be held to be a common carrier subject to the act."

[12] Section 320 (b) (3) of the Transportation Act of 1940 provides that nothing in the repealing provision shall be construed to repeal "the provisions of the Shipping Act, 1916, as amended, insofar as such Act provides for the regulation of persons included within the term 'other person subject to this Act', as defined in such Act."

Thus, if the above assumption as to "other persons" is correct, there is no question of an overlap in the jurisdiction of the two Commissions, except as to Luckenbach and Strittmatter.

Luckenbach and Strittmatter are "common carriers by water" subject to the Interstate Commerce Act. Their counsel contend, however, that both are subject to the Shipping Act, (1) in so far as Luckenbach transships foreign cargo from New York to San Francisco, and (2) because Strittmatter has filed an application with the Interstate Commerce Commission to transfer his common carrier rights to Olympic Steamship Company and proposes to continue thereafter to engage solely in terminal operations. This contention overlooks the fact that transshipped cargo moving between United States ports is subject to section 302 (i) (3) of the Interstate Commerce Act. Strittmatter has not shown that his carloading activities are in connection with commerce other than interstate. Section 320 (a) of the Interstate Commerce Act expressly repeals section 15 of the Shipping Act in so far as it provides for making agreements relating to transportation subject to the former Act.

The California Railroad Commission has assumed jurisdiction over the car-servicing activities of respondents and other carloaders under the State utilities act, which grants such power to the extent it does not encroach upon Federal authority.[18] *Parkersburg & Ohio River Transportation Co.* v. *City of Parkersburg* (1883), 107 U. S. 691. The question therefore is: If respondents are proper parties to a section 15 agreement and the Commission approves such agreement, has it occupied the field of activity here under discussion?

To the suggestion of counsel for the California Commission—that the case of *California and Oakland* v. *United States* (1944), 320 U. S. 577, fails to recognize Federal occupancy of this field—it is sufficient to say that that case did not involve section 15 of the Shipping Act. We must look to that section to find the extent of the powers of the Maritime Commission in this proceeding. When carriers or "other persons" undertake, by agreement, to *fix* or *regulate* rates, control competition and so on, there must be performed a series of acts under the statute. (1) They must file the agreement with the Commission. (2) The Commission must determine, among other things, whether such agreement is unjustly discriminatory or unfair as between carriers, shippers, or ports, or is detrimental to commerce, or whether it is in violation of the Shipping Act. (3) Upon favorable findings, the Commission must approve the agreement; otherwise it must disapprove the agreement. The rates must conform to the standards set forth in

[18] See Public Utilities Act of the State of California, sections 2 (1), 2 (dd), 32a, 84.

the agreement itself. The agreement here is explicit in providing for the establishment and maintenance of *just and reasonable* rates. Finally, the Commission must modify or cancel an approved agreement when such agreement or action taken thereunder contravenes the purposes of section 15.

Thus, it is apparent that while the agreement is operative, the Commission has plenary power to control, among things, the fixing and regulation of rates and practices of the agreeing parties. Therefore, approval of the agreement would constitute automatic and complete occupancy of the field of activity here involved by the Federal government.

The remaining and crucial question is whether the non-carrier respondents are "other persons," i. e., do they furnish "dock" or "other terminal facilities in connection with a common carrier by water."

As stated, carloaders furnish hand trucks, flat top trucks, lift trucks, and the labor required to operate such equipment. Platforms for unloading livestock are terminal facilities. *Union Stock Yard case, supra.* A switch engine with its crew and equipment are transportation facilities. *Nekoosa-Edwards* v. *Minneapolis et al., Ry. Co.*, 259 N. W. 618. Likewise, teachers are educational facilities, *State* v. *Cave* (1898), 52 Pac. 200. Facilities, when "specifically applied to carriers, (means) everything necessary for the * * * safety and prompt transportation of freight." 35 Corpus Juris Secundum 383. Terminal facilities have been defined as "All those arrangements, mechanical and engineering, which make an easy transfer of passengers and goods at either end of a stage of transportation service." Port terminal facilities embrace "handling equipment." Eddington's "Glossary of Shipbuilding and Outfitting Terms," pages 288, 107. "Handling" covers carloading and unloading (*Wharfage Charges at Atlantic and Gulf Ports*, 157 I. C. C. 663, 672) and handling and delivery practices of "other persons" are subject to the authority of the Commission under section 17 of the Shipping Act. Clearly, therefore, the equipment and labor furnished by respondents constitutes "terminal facilities."

An "other person" may be *in connection with* a water carrier without being affiliated with, controlled by, or in a continuing contractual relationship with such carrier. *United States* v. *American Union Transport, Inc., et al.*, No. 44, October Term, Supreme Court, 1945. That case, holding that freight forwarders are "other persons," and decided since the hearing (February 25, 1946), holds that the relationship or "connection" with the carrier illustrated by the *California and Oakland case, supra*, is sufficient. In the latter case the Court said:

> And whatever may be the limitations implied by the phrase "in connection with a common carrier by water" * * * there can be no doubt that wharf storage

facilities provided at ship's side for cargo which has been unloaded from water carriers are subject to regulation by the (Maritime) Commission.

* * * * * * *

Finding a wrong which it is duty-bound to remedy, the Maritime Commission * * * may, within the general framework of the Shipping Act, fashion the tools for so doing.

One of the tools fashioned by the Commission and approved by the Court in that case was a "handling" or receiving and delivery charge prescribed to cover, among other things, the cost of extra handling, high piling, and delivery of cargo to consignee from storage. *Practices, etc. of San Francisco Bay Area Terminals* (1941), 2 U. S. M. C. 588. There is no essential difference between the physical operation of providing wharf storage services and indirect carloading and unloading services. In the former, the movement is from "place of rest" to storage, thence to consignee; and in the latter, between car and "place of rest." The same handling facilities are used in both operations. If anything, indirect car-servicing work is more directly and intimately connected with the water carrier than the service of wharf storage. Certainly this is the fact as to direct car work where the operation is at once stevedoring and car service. The record here emphasizes the close physical and business relation between water carrier and carloader. The carloaders who do not have pier assignments cannot operate on the piers without the consent of the assignee, i. e. the steamship company or its agent. The operations of carloaders are directed and controlled largely by steamship interests, as, for instance, the ordering and spotting of cars and checking and placement of cargo. Carloading charges, to a considerable extent, are assessed against the water carrier, such as lift truck rental and overtime costs when incurred for the convenience of the ship. Hence, if wharf storage is "connected" with the carrier, so is carloading and unloading.

The Supreme Court in the *American Union* case was not so much concerned with the details of the "connection" as it was with the place of "other persons" in the broad scheme and policy of the Shipping Act. Sweeping away any lingering doubts as to the meaning of "other persons," the Court defines the term at length and in broad and comprehensive language:

* * * * * * *

We think (forwarders) are within the coverage of Section 1. This conclusion is required not only by the broad and literal wording of the definition but also to make effective the scheme of regulation the statute established and by considerations of policy implicit in that scheme, as well as by the legislative history and the decision in *California* v. *United States*, and *City of Oakland* v. *United Sates*, 320 U. S. 577.

Those "other persons" who are admittedly covered by the Act are subject to regulation under section 17 as to their practices in connec-

tion with the receiving, delivering, and handling (including carloading) of property. Whether or not the particular cargo handlers here involved should be treated differently from a regulatory standpoint is answered by the Court as follows:

> The language (defining "other person") is broad and general. No intent is suggested to classify forwarders, covering some but not others, just as none appears to divide *persons "furnishing wharfage, dock, warehouse, or other terminal facilities"* into regulated and unregulated groups. [Italics supplied.]

The Court, in reviewing the regulatory scheme and policy of the Act, pointed out that forwarders are in position to enter into agreements with carriers contrary to the policy of section 15, and to commit or induce discriminations forbidden by section 16. They are intimately connected with receiving, handling, and delivering of property, the practices as to which must be just and reasonable under section 17; and they have access to confidential shipping information, the disclosure of which is forbidden by section 20. Carloaders, perhaps as much as forwarders, are favorably placed to bring about these forbidden practices which the Act contemplates shall be subject to regulation. Carloaders are as likely to perpetrate the evils prohibited by the Act as any of the "other persons" admittedly covered by the Act.

In discussing the legislative history of the Act the Court stated:

> When dealing with the breadth of the term "other person subject to the Act" he (manager of bill) said: "Hence, if this board * * * effectually regulates water carriers, it must also have supervision of *all those incidental facilities connected with the main carriers* * * *" Certainly this language is not indicative of intent to give a narrowly restricted scope to the definition's coverage. Quite the opposite is its effect. (Emphasis supplied.)
>
> * * * * * * *
>
> These eliminated persons (engaged in ferrying, towing, transfer and lighterage) were included originally, along with forwarders and others, not simply to reach affiliates of carriers, but broadly to provide "for equal treatment to all shippers and water carriers by transfer and lighterage concerns *when forming a link* in interstate or foreign commerce." Nothing in the hearings, the committee reports, or the debates * * * suggests either an original intention to restrict to carrier affiliates the coverage of forwarders or other furnishers of terminal or "link" service or a later intention to change the initial broad coverage by so restricting it. * * * The original congressional purpose clearly was to reach all who carry on the specified activities * * * That purpose remained unaltered * * *.

What has been said disposes of the contention of counsel for the San Francisco Chamber of Commerce and others, that carloading is not in connection with a water carrier. Such contention is based on the fact that (1) car service is necessary to the completion or commencement of rail transportation, (2) the service is paid for by the shipper or rail carrier, and (3) the water carrier does not ordinarily absorb carloading costs, nor does it assume liability for the cargo be-

tween car and "place of rest" on dock. Obviously, any terminal or "link" service, broadly speaking, is in connection with both carriers interchanging the traffic. But the incidental connection with a rail carrier cannot be urged to defeat the purpose of the Act as to "link" service, namely, "to reach all who carry on the specified activities." *American Union case, supra.*

To sum up, two of respondents, Luckenbach and Strittmatter, are common carriers by water subject exclusively to the Interstate Commerce Act. The remaining respondents are either common carriers by water or "other persons" subject to the Shipping Act, and their car-servicing rates and practices here involved are subject to the exclusive jurisdiction of the Maritime Commission when fixed and established under a section 15 agreement.

*The rate level.* This proceeding stems directly from the termination by War Shipping Administration of an emergency subsidy granted certain respondents during the war. They were paid cost plus a fixed fee of ten cents a ton. In turn, they credited to War Shipping revenue received from shippers who were charged existing rates which have been in effect since 1941.

The proposed tariff represents an over-all increase of about 47 percent over present rates to compensate higher postwar operating costs. However, during this proceeding respondents proposed a 33⅓ percent increase (hereinafter called alternative basis) which would correspond with (1) rates now applied by War Shipping at San Francisco on intercoastal cargo,[14] and (2) rates recently approved by the California Railroad Commission for application by other terminal operators in the Bay area.[15] The proposed commodity rates—not the alternative basis—represent estimated cost of handling the particular commodity divided by tonnage handled. These costs are for direct labor, taxes and insurance, overhead, and profit.[16] Costs were derived by respond-

[14] Respondents propose to adopt, until February 1, 1947, War Shipping Administration Car Service Tariff 1–A, I. C. C. No. 1, which became effective November 15, 1945, and which represents a 33⅓ percent increase over Williams C. R. C. Tariff 1–A, effective November 1, 1941.

[15] These terminals, at Oakland, Alameda, Richmond, and San Francisco, were granted an increase of 20 percent which, added to an increase of about 10 percent granted in 1942, would approximate 33⅓ percent of Williams C. R. C. Tariff 1–A. (See Application No. 27142 of H. C. Cantelow, Agent.)

[16] The factors used were straight-time labor costs for an 8-hour day or $8; 8 percent for unemployment insurance, compensation insurance, and social security taxes; 12½ percent of the total of the foregoing items for overtime because the last 2 hours of the 8-hour day represent overtime at $1.50 per hour; the percentage for taxes and insurance applicable to overtime and 14 cents per ton for overhead. Four and one-half percent of the composite total of the foregoing was added for profit.

An N. O. S. rate applies on commodities not named, on commodities named where unusual conditions of shipping "preclude the performance of such services at rates named", and on bulky freight. Any increase or decrease in man-hour wages automatically increases or decreases the N. O. S. rate. When a palletized operation is performed a differential and lift truck rental is added.

ents from data submitted to War Shipping upon which it made disbursements to subsidized operators and covers the period July 1, 1944, to March 31, 1945. Tonnage involved was 250,000 tons unloaded by six operators,[17] and 90,000 tons loaded by five operators.[18]

We need not dwell upon the obvious imperfections of the proposed tariff and its factual foundation. Many abnormal traffic conditions obtained during the period chosen such as pier congestion with attendant uneconomical handling of cargo, and the unusual nature, volume, and direction of wartime traffic. The operations of six respondents are assumed to be representative of the other twenty-two, notwithstanding some of the latter, the "independents," have no overtime factor in their work day; and few carloaders would have an overhead factor comparable with that of such large organizations as Grace, Luckenbach, and Matson, which engage in various other activities. No study was made of direct car servicing costs and no justification was offered for the 4½ percent profit factor. Furthermore, none of the conventional rate making factors except cost was considered, such as earnings and the value, volume, and shipping characteristics of the commodities and the competition affecting them. Numerous commodities are omitted in the new tariff and previously existing commodity groupings are ignored resulting in disruption of the relation between commodities and many sharp increases. (See Appendix).

Counsel for respondents, recognizing some of these deficiencies, advanced the alternative (33⅓ percent) proposal. The presiding examiner notified all parties of record of the terms of this proposal and the date on which any objections thereto would be heard. Many interveners expressed no objection to the proposal as an interim adjustment and others were noncommittal. A representative of the Department of Agriculture thought that 20 percent was sufficient. The cement interests contended that the present rate on cement should not be increased more than 10 percent for direct, and 11 percent for indirect, work as authorized by the Office of Price Administration in August 1945, prior to the hearing herein.

A witness for the cement industry offered evidence to show, among other things, (1) the healthy financial condition of certain respondents, notably Grace, Matson, and Pope & Talbot; (2) rates, lower than those proposed, in effect at competitive Atlantic and Gulf ports; (3) a comparison with proposed rates on commodities of greater value than cement, such as flour and sugar (see Appendix), and (4) that costs of Grace and Luckenbach justify increases of not more than 10 and 11 percent.

[17] Strittmatter, California Stevedore, Grace, Matson, Luckenbach, and Marine.
[18] Strittmatter, Grace, Luckenbach, Pacific Ports, and Western Terminal.

The financial evidence is fragmentary and gives no adequate picture of the financial condition of respondents as a whole. The lower rates existing at competitive ports, while bearing upon the general question of a shipper's ability to do business at the proposed rates, afford no useful standard of reasonableness without evidence as to the conditions and circumstances surrounding their establishment. Finally, the witness apparently singled out operators with the lowest costs for his cost comparisons. His allegations of freight and terminal rate discrimination, as between California ports and Atlantic-Gulf ports, by Matson Navigation Company, which is not a respondent, and by Grace Line, which performs no car-servicing work, are beyond the scope of this proceeding. Despite all this, however, his testimony indicates the need for a careful analysis of car-servicing costs over a test period to determine proper rates.

The witness for Department of Agriculture computed labor costs on a straight-time basis only, allowing nothing for the 2-hour overtime factor.[19] The actual increase in labor cost, not compensated by tariff increases, is 30 percent. This is the difference between the 90-cent wage rate granted in 1941 (which was translated into the tariff) and the rate of $1.05 recently made retroactive to October 1, 1944.[20] The wages of longshoremen, who perform direct car-servicing work, have increased in the same proportion.

A rate consultant for War Shipping, who had previously worked out a tarriff designed to replace the subsidy arrangement with carloaders, testified:

> I developed that * * * to break even * * * the increase would necessarily need to be 47 percent without allowing anything for the two hours overtime, or anything for profit.

A witness from Office of Price Administration showed, as to Matson's indirect car-servicing operations, that an increase of 34 percent was required to allow compensatory rates on 20 representative commodities. This percentage reflects the increase in direct labor and other operating costs since 1940.[21]

The alternative (33⅓ percent) basis is somewhat lower generally than rates calculated under the Edwards-Differding formula, which

[19] He computed the increase in overhead as 2.35 percent and added an increase in labor wages of 17.6 percent, i. e., from 85 cents to $1.00.

[20] A rate of $1.05 for 6 hours plus $1.575 for 2 hours overtime averaged $1.18 an hour. This is 30.1 percent greater than 90 cents. (As a result of negotiations in progress at time of hearing, a recent award of $1.37 per hour was recommended, which would result in an increase of approximately 52 percent over the 1941 wage level.)

[21] He assumed the 1940 rates reflected adequate profit and overhead. Therefore, in order to obtain 1940 direct labor costs, he deducted from 1940 rates 4½ percent for profit and 13.34 percent for overhead as determined by War Shipping Administration. The remainder was increased by 12½ percent to reflect two hours overtime. The result was subtracted from 1944 direct labor costs, the difference representing the increase.

was derived from a comprehensive report submitted by members of the staff of the California Railroad Commission in Case No. 4090, a general investigation of marine terminal problems in the San Francisco Bay area. 40 Calif. R. R. Comm. Decisions 107; 2 U. S. M. C. 588, 320 U. S. 577, *supra*.

Unremunerative and noncompensatory rates are detrimental to the commerce of the United States. *Seas Shipping Co.* v. *American South African Line, et al.*, 1 U. S. S. B. B. 568. Upon this record we conclude that the present rates, which have been in effect since 1941, are noncompensatory and are burdensome upon other services which are performed by respondents. Any tariff of rates less than a general 33⅓ percent increase over present rates would be noncompensatory and detrimental to commerce within the meaning of section 15 of the Shipping Act, 1916.

FINDINGS

We find:

(1) That non-carrier respondents (see footnotes 4, 5, 6, and 7) are "other persons" subject to the Shipping Act, 1916.

(2) That Luckenbach and Strittmatter are not subject to the Shipping Act, and that such carriers, and Grace Line, are not proper parties to Agreement No. 7544.

(3) That Agreement No. 7544 should be approved, subject to the conditions in finding (4) below.

(4) That the proposed rates submitted with the agreement and contained in J. P. Williams Tariff No. 1, M. C. No. 1, as amended at the hearing (Exhibit 25), have not been justified; but that the alternative basis, as contained in War Shipping Administration Car Servicing Tariff 1–A, I. C. C. No. 1 (Exhibit 13), has been justified as an interim basis pending an analysis of actual costs of car-service work by the Commission for the purpose of determining proper rates. Approval of the said agreement and alternative basis will be conditioned upon an undertaking by respondents to refund by way of reparation any unfair or unreasonable charges determined by the Commission to result from establishment of such alternative basis.

(5) That the present rates are noncompensatory and burden other services which are performed by respondents; that such rates are detrimental to commerce within the meaning of section 15 of the Shipping Act, 1916; and that any tariff of rates less than the alternative basis herein approved would be noncompensatory and detrimental to commerce. This finding is without prejudice to any subsequent finding as to individual rates made under the conditions set forth in finding (4).

(6) That section 6 of Agreement No. 7544, providing that no change shall be made affecting rates unless agreed to by not less than 75 percent of water carrier members, would be unfair as between such carriers and other members, and would be detrimental to commerce.

The record will be held open for submission by respondents of the agreement and tariff revised in accordance with the findings herein; and for further hearings after completion of the cost study mentioned in finding (4).

By the Commission:

[SEAL] (Sgd.) A. J. WILLIAMS,
*Secretary.*

MAY 31, 1946.

APPENDIX

Table showing present rates, rates proposed originally, and alternative rates, on representative commodities

| Commodity | Present rate | Proposed rate | Increase proposed over present | Alternative 33⅓ percent basis |
|---|---|---|---|---|
| Loading: | | | | |
| Bags and Bagging | $0.59 | $0.60 | 1% | $0.79 |
| Canned Goods | .56 | .97 | 73 | .75 |
| Chemicals, N. O. S | .64 | .87 | 36 | .85 |
| Coffee, green, in bags | .53 | 1.10 | 107 | .71 |
| Potash | .16 | .65 | 306 | .21 |
| Sugar, in bags | .53 | .45 | ---------- | .71 |
| Tallow, in drums | .53 | 1.09 | 105 | .71 |
| Wool, in grease, in bales | .90 | 1.14 | 27 | 1.20 |
| Unloading: | | | | |
| Barley, rolled | .53 | .88 | 66% | .71 |
| Canned Goods, N. O. S | .53 | .82 | 54 | .71 |
| Cement | .53 | .76 | 43 | .71 |
| Food, N. O. S., in bags | .53 | .73 | 37 | .71 |
| (1) Corn | .53 | .79 | 50 | .71 |
| (1) Millrun | .53 | .94 | 77 | .71 |
| Fertilizer, N. O. S | .53 | .96 | 81 | .71 |
| Flour, double bags | .43 | .65 | 51 | .57 |
| Fruit, dried, cases | .53 | .91 | 71 | .71 |
| Meal, Soya bean | .53 | .85 | 60 | .71 |
| Pulpboard, in rolls | .48 | .74 | 54 | .64 |
| (2) Chipboard, in rolls | .48 | .81 | 70 | .64 |
| (2) Fibreboard, in rolls | .48 | 1.03 | 114 | .64 |
| Rice, in sacks | .48 | .72 | 50 | .64 |
| Sugar | .43 | .45 | 5 | .57 |

[1] Originally grouped under "Feed, N. O. S."
[2] Originally grouped under "Pulpboard."

# UNITED STATES MARITIME COMMISSION

No. 645

## PACIFIC WESTBOUND CONFERENCE AGREEMENT
(AGREEMENT NO. 7790)

*Submitted June 19, 1946. Decided October 2, 1946*

Membership and voting provisions of agreement found not to be unlawful, but should provide for the membership of carriers whose services originate at other than Atlantic or Gulf ports of the United States or Atlantic ports of Canada, and who call at Pacific coast ports en route to the Orient.

Discretionary withdrawal from membership provisions should be amended to provide that the conference shall report to the Commission every instance where a member fails to make a sailing within the twelve-month period, and the conference action thereon.

Provision for port equalization not shown to be unlawful.

Provision prohibiting the payment of brokerage should be eliminated.

Division of conference into districts not shown to be unlawful.

Rules and regulations not shown to be unlawful, but should be submitted for approval as part of the agreement.

*Joseph J. Geary* and *Allan E. Charles* for respondents.

*Nathan L. Miller*, *Thomas F. Lynch*, and *Walter Shelton* for Isthmian Steamship Company, and *J. Richard Townsend* for Pacific Coast Customs & Freight Brokers Association, interveners.

### REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed to certain of the conclusions in the examiner's proposed report, and the matter was argued orally. Our conclusions differ somewhat from those recommended by the examiner.

This investigation was ordered to determine whether approval should be given to Pacific Westbound Conference Agreement (U. S. Maritime Commission Agreement No. 7790), which is the new organic agreement of the conference intended to supersede its current Agree-

ment No. 57, as amended. The agreement governs the parties [1] thereto in the transportation of property from Pacific coast ports of the United States and Canada to Japan, Korea, Formosa, Siberia, Manchuria, China, Hongkong, Indo-China, and the Philippine Islands.

The following provisions of the agreement are the subject of investigation: (1) the creation of regular and associate membership with attendant rights and restrictions; (2) the vesting of discretionary authority to require a party to withdraw from the agreement when his sailings have been discontinued for a period of 12 months; (3) the reserving to each party the privilege of absorbing the cost of transporting freight from point of origin to ship's tackle at loading port [2] to an extent that would equalize transportation costs via other ports; (4) the prohibiting of the payment of brokerage on some cargo and permitting the payment thereof on other cargo; and (5) the division of the conference into two districts, permitting the delegation of full rate-making power on specific commodities to either of such districts. In addition, it appeared that the agreement was incomplete as to matter contained in rules and regulations filed with but not made a part of the agreement. These will be treated in sequence.

Isthmian Steamship Company and Pacific Coast Customs & Freight Brokers Association intervened in the proceeding.

*Membership and voting.* Regular membership is limited to those lines whose services originate at Pacific coast ports of the United States or Canada. This type of membership carries all the privileges and responsibilities set forth in the agreement. Associate membership may be enjoyed by those lines whose services originate at Atlantic or Gulf ports of the United States or Atlantic ports of Canada, and whose calls at Pacific coast ports are incidental to or a continuation of their main services. Associate members are not entitled to vote, do not pay an admission fee, are not required to put up a good performance bond, and pay no part of the conference expenses. On the other hand, they participate on an equal basis with regular members in contracts with about 1,300 Pacific coast shippers who receive lower rates in return for making all their shipments by conference vessels. Furthermore, they are kept advised of all conference proceedings and

[1] (As of the time of the hearing) American Mail Line, Ltd.; American President Lines, Ltd.; China Mutual Steam Navigation Co., Ltd., and Ocean Steam Ship Co., Ltd. (Blue Funnel Line); Canadian Pacific Steamships, Ltd.; The De La Rama Steamship Co., Inc., Swedish East Asiatic Co., Ltd.; The East Asiatic Company, Inc.; N. V. Stoomvaart Maatschappij "Nederland" and N. V. Rotterdamsche Lloyd (Java Pacific Line); Kerr Steamship Company, Inc.; *A. F. Klaveness & Co. A/S; Madrigal & Company* (The Madrigal Line); Pacific Mail Steamship Company; Rederi A/B Pulp (The Salen Line); States Steamship Co.; The Bank Line Limited; Barber Steamship Lines, Inc.; Cojuangco-Jacinto & Co. (C. & J. Line); Ellerman & Bucknall Steamship Co., Ltd.; and Prince Line, Limited.

[2] The loading ports are Los Angeles Harbor, Long Beach, and San Francisco, Calif., Portland, Oreg., Tacoma and Seattle, Wash., and Vancouver and Victoria, B. C.

receive all tariffs, conference circulars, and the minutes of the conference meetings.

Respondents publish two tariffs, one for local traffic originating in California, Oregon, Washington, Arizona, Nevada, Utah, Idaho, Montana, and Wyoming, and from points in Canada west of the Saskatchewan/Manitoba boundary line, and the other for traffic originating east of those points, referred to throughout this report as overland traffic. Traffic moving from overland territory to the Pacific coast on local bills of lading is considered local traffic even though it is eventually shipped out on respondents' vessels.

The regular members compete with Atlantic-Gulf carriers on cargo at such interior points as Chicago, Ill., and destined to common oriental markets. Most of the latter carriers belong to the Far East Conference. In order for the Pacific coast lines to obtain any of this common-territory traffic the rates usually must not exceed 75 percent of those maintained by the Atlantic-Gulf lines. Originally, the Atlantic-Gulf vessels called at Los Angeles primarily for bunkers for the transpacific voyage, but later they began loading unfilled space at Los Angeles and San Francisco. The cargo so loaded is only a small percentage of the vessel capacity, and the practice is known as "topping off." The total volume of Pacific coast cargo carried by the Atlantic-Gulf lines is small compared with the amount transported by the lines whose services originate on the Pacific coast.

Intervener Isthmian, who has been in the Far East trade for many years, plans to operate a fortnightly service from the Pacific coast with ships which start from Atlantic and Gulf ports, and states that it will fill nearly half of each ship with Pacific coast cargo. These ships will be large, fast, and modern, and equipped to carry all types of cargo, including bulk liquid and refrigerated cargo. It has established in San Francisco an organization to handle all the details of a regular service. Under the provisions of the agreement, however, Isthmian is not eligible for regular membership and objects strongly to being excluded from the right to vote on its own rates. It has recently accepted, under protest, associate membership in the current agreement, and requests the Commission to disapprove the membership provisions in the proposed agreement because they are unjustly discriminatory and unfair as between carriers, and detrimental to the commerce of the United States. No other line holding associate membership has protested the restrictions now under consideration.

At the time of the hearing there were 13 regular and 5 associate members of the conference. Respondents contend that the lines serving Atlantic-Gulf ports principally and Pacific coast ports incidentally have a natural tendency to favor their operations from the

former areas, and that if they were admitted to full membership they might vote on rates in such a manner as to affect seriously the competitive situation between the areas. This has never been attempted, however, by the two regular members who also belong to the Far East Conference. Respondents maintain that associate membership is more desirable than excluding the Atlantic-Gulf lines from the conference since such members observe conference rates, rules, and regulations, and shippers have the benefit of more vessels and greater frequency of sailings.

Isthmian believes that there are at least three ways that the regular members could protect themselves if associate members were given the right to vote: first, the voting rule could be changed to permit rates to be determined by majority vote instead of two-thirds, which would give the Pacific coast lines effective control over the rates from Pacific ports; second, on overland traffic the Pacific coast lines might be permitted to determine their own rates independently by a vote of three-fourths, the other members then to have the option of accepting such rates or maintaining their own choice of rates; and third, to rely upon the regulatory powers of the Commission to cure any real abuses.

The examiner found that regular and associate members are not similarly situated in the trade and do not participate on an equal basis, and that the membership provisions are not discriminatory as between carriers. He also found that Isthmian's complaint that the conference was dominated by foreign lines did not warrant a finding that the provisions are detrimental to the commerce of the United States.

Although Isthmian's desire to have a voice in the fixing of its rates on Pacific coast shipments is natural and has merit, it cannot be overlooked that the traffic moving under respondents' local tariff far exceeds the competitive overland traffic, and that respondents have spent much money and effort to build up this local traffic. Weighing all the factors, we conclude that the provisions of the agreement which create regular and associate membership and limit the privilege of voting to regular members are not unjustly discriminatory or unfair as between carriers or contrary to the public interest. Furthermore, the evidence does not warrant a finding that the conference is being dominated by foreign lines to such an extent as to be detrimental to the commerce of the United States.

The testimony was to the effect that a carrier whose vessels originate cargo on the East coast of South America might become a regular member of the conference if his vessels should proceed direct to the Pacific coast of the United States without calling at Atlantic or Gulf ports. The reason for this, as explained by the conference, is that such carrier does not offer competition in the same manner as the Atlantic

and Gulf lines. We wish to point out, however, that the agreement specifically limits regular membership to those lines whose services commence at Pacific coast ports of the United States or Canada, and that if the conference should admit a carrier to regular membership under the circumstances just described, there would be a clear violation of the agreement. There is no provision for the admission of a carrier whose services originate at other than Atlantic or Gulf ports of the United States or Atlantic ports of Canada and who lift cargo at Pacific coast ports en route to the Orient. We think that the present wording of the membership provisions in the agreement is too narrow and should be enlarged to provide for membership of such carriers.

*Discretionary withdrawal from membership.* Article 22 of the agreement provides in part as follows:

> Any party whose sailings have been discontinued for a period of twelve (12) calendar months may remain a nonvoting member of the conference or, subject to affirmative vote of two-thirds of the regular members entitled to vote, may be required to withdraw from this agreement.

The current agreement of the conference has no comparable provision. Respondents urge that a discretionary provision such as the above is most desirable as a member might not be able to maintain sailings for a year because of circumstances beyond his control, and yet he may reasonably expect to resume sailings within a short time after the 12 months. Automatic withdrawal would require the member, upon resumption of sailings, to pay additional fees and redeposit his bond. In addition, the conference would be put to the expense and trouble of notifying all contract shippers of the withdrawal and readmission. A further reason for the provision is to prevent the repetition of an experience of an earlier member who went out of business, but retained his membership for about three years without the conference being advised, a situation which resulted from the general confusion entailed by the war.

It cannot be denied that the provision permits of a possible discrimination in favor of a particular line or lines. Such a nonvoting line could attend conference meetings and influence deliberations of the conference without any real interest in the trade. The possibility of discrimination would be cured by requiring the conference to report to the Commission every instance where a member failed to make a sailing within the 12-month period, and the conference action thereon. Accordingly, that part of article 22 quoted above should be amended to incorporate the safeguards here discussed.

*Port equalization.* Article 7 (A) of the agreement reads as follows:

> Each party hereto shall have the right to transship and meet the tariff rates and charges applying by direct steamer, unless otherwise unanimously agreed by the regular members entitled to vote, but cannot in any event charge less than

such direct steamer. Each party has the privilege of equalizing the costs from point of origin to the ship's tackle at loading ports.

The charges absorbed may be those accruing under rail, motor vehicle, or coastwise water rates. Respondents state that the purpose of the rule is to minimize the ports of call for carriers, permit them to fill space that otherwise might not be filled, and to give the shipper more frequent sailings. Two examples were given as to how the rule works. First, a shipper with a plant in Oregon for the canning of berries desires to move the berries to San Francisco to consolidate them with a shipment of pears from the shipper's plant in California, in order that both shipments can go forward as one shipment under one bill of lading, thus lessening customs costs and paper work. Second, United States military authorities have shipped citrus fruit by rail from southern California to Vancouver, B. C., to be loaded on a vessel of respondent Canadian Pacific to reach destination at the proper time. Many times shippers have requested equalization to give them the benefit of a sailing that arrives at destination at a time to complete a contract or to make a particular festival.

Equalization has been practiced by the conference on a small scale since its organization in 1922, and there has been no complaint against it by shippers or ports. Nor does it appear that the absorptions dissipate carrier revenue to the extent of creating a deficit which must be defrayed by nonequalized traffic. Under the circumstances, we are not disposed to disturb the rule as presently worded. However, since it is discretionary with respondents to accord or deny equalization, they must apply the rule so as to preserve the equality of treatment of shippers and ports required by sections 15, 16, and 17 of the Shipping Act, 1916, as amended.

*Brokerage.* On traffic subject to respondents' overland tariff the agreement permits the lines to pay brokerage, but not in excess of 1¼ percent on the amount of ocean freight to base ports and direct steamer freight to differential ports. On traffic subject to respondents' local tariff, however, the agreement prohibits the payment of brokerage. Brokerage is compensation for securing cargo for the ship. Intervener Pacific Coast Customs & Freight Brokers Association maintains that the individual lines should be free to pay brokerage if they choose. Respondents, on the other hand, object to paying brokerage because they regard the forwarder as the agent of, and should be paid by, the shipper. Intervener contends that the provision prohibiting the payment of brokerage is detrimental to the commerce of the United States, violates the Bland Forwarding Act (56 Stat. 171), and is in violation of sections 16 and 17 of the Shipping Act, 1916.

The custom of paying brokerage dates back many years. Brokerage has been paid for some time by the carriers operating from Atlantic and Gulf ports, and it is also paid by the members of the Pacific Coast European Conference. On the other hand, it is not the practice to pay brokerage in the Pacific coast/Orient trade. Respondents have their own soliciting staffs and say that they have no need for the services of the forwarder. If brokerage were not paid on overland traffic the forwarders probably would divert it to the Atlantic-Gulf lines. Brokerage is paid on overland traffic even though the cargo may have been secured by respondents' own solicitors. Sixteen services are said by intervener to be performed by freight forwarders in connection with the handling of a shipment in foreign commerce. These, it is maintained, are beneficial to the carrier, who should pay the forwarder therefor. Intervener says that the forwarder cannot function at his best unless he is paid brokerage by carriers. Instances were cited where forwarders have acted to stimulate trade from the Pacific coast to Europe, upon which brokerage is paid. No such aggressive action is taken in the Pacific coast/Orient trade.

The Bland Forwarding Act provides that the Commission shall "coordinate the functions and private agencies engaged in the forwarding and similar servicing of water-borne export and import foreign commerce of the United States, for the efficient prosecution of the war, the maintenance and development of present and post-war foreign trade, and the preservation of forwarding facilities and services for the post-war restoration of foreign commerce."[3]

Historically, forwarding facilities and services have been sustained to a large extent by revenue obtained from brokerage. In view of the

[3] House Report No. 1682 of the 77th Congress, 2d Session, on H. R. 6291, states as follows:

"Your committee regards the operations of the Commission under the proposed law as so vital to the future of the American merchant marine that it proposes to continue, even after the bill may have become law, the closest scrutiny into its operations and your committee will do all in its power to see that the American merchant marine shall not be driven from the seas by that severe competition which will follow the termination of the emergency just as certainly as night follows day. (Page 2.)

* * * * * * *

"It was clear to the committee that the work of freight forwarding is essential to the movement of goods in foreign commerce under normal conditions. (Page 5.)

* * * * * * *

"The freight forwarders and licensed customs brokers, in the opinion of your committee, are necessary and vital agencies in the promotion of an American merchant marine, to such an extent that if they should be eliminated and the business formerly done by them should be done only by the representatives of their competitors, the future of the American merchant marine in the post-emergency period will be precarious in the extreme. (Page 6.)

* * * * * * *

"Among the more immediate steps to be taken by the Maritime Commission through such a coordination may be included the following: * * * development of plans for post-war coordination of foreign trade, ocean ports, transportation, and cargo forwarding and handling, to the best interests of the American merchant marine.

"Your committee believes that the last-stated objective is one of the most important points of this legislation." (Page 9.)

Bland Act, we cannot consistently approve an agreement, the effect of which would prohibit brokerage on a large segment of respondents' traffic. We do not hold or imply, however, that carriers must pay brokerage, for that would seem to be a matter for individual managerial judgment. The agreement will not be approved, therefore, unless the prohibition under discussion is eliminated. In view of the potentiality of discrimination resulting from unrestricted payment of brokerage, the agreement should provide specifically for the amount to be paid if the members elect to do so, and should also provide that all payments so made shall be reported to the conference.

In view of our conclusion on this point, we need not discuss or decide whether the prohibition against the payment of brokerage violates section 16 or section 17 of the Shipping Act, 1916.

*Division of conference into districts.* The agreement provides for the division of the conference into the Northern District, which includes Oregon, Washington, and British Columbia, and the Southern District, which includes California ports. The reasons for this are the natural geographical division and the difference in the type of cargo originating in the respective districts. The districts operate separately as to purely local problems, but there is a general meeting of both divisions twice a year, once in California and once in Seattle. On specific commodities which, for the most part, are local to the respective districts, the agreement permits full rate-making power to either district. The advantage to this plan is that each district can act quickly when rate adjustments are demanded on heavy-moving commodities to meet charter or tramp competition. The record discloses no friction between the districts, or other elements adversely affecting the members or the public by reason of the division.

The division of the conference into two districts has not been shown to be unlawful.

*Rules and regulations.* Article 8 of the agreement provides that each party shall abide and be governed by the rules and regulations made by the conference. The rules and regulations are to be such as, in the opinion of the conference, shall be necessary or desirable to further the ends of the conference. With the exception of Rule 10, which can be changed only by unanimous vote, the rules and regulations can be changed by a two-thirds vote. No change in or addition to the rules and regulations which constitute a modification of the agreement can be carried into effect without unanimous consent and unless and until they have been filed and approved in accordance with section 15 of the Shipping Act, 1916. The rules and regulations adopted pursuant to Article 8 were filed with but not as a part of this agreement.

The rules and regulations were described by respondents' witness as comparable to by-laws. The agreement is characterized as constant whereas the rules and regulations are more flexible and subject to change according to changed conditions and upon a two-thirds vote. The rules and regulations are so closely related to the agreement that they require section 15 approval, otherwise the agreement itself would be incomplete. The examiner found that the rules and regulations should be approved, and no exceptions were filed to his conclusion. We conclude that the rules and regulations have not been shown to be unlawful, but we think they should be submitted as component parts of the agreement.

*Findings.* We find (1) that the membership and voting provisions of Agreement No. 7790 are not unjustly discriminatory or unfair as between carriers, contrary to the public interest, or detrimental to the commerce of the United States, but should provide for the membership of carriers whose services originate at other than Atlantic or Gulf ports of the United States or Atlantic ports of Canada, and who call at Pacific coast ports en route to the Orient; (2) that the provisions for discretionary withdrawal from membership should be amended to provide that the conference shall report to the Commission every instance where a member fails to make a sailing within the twelve-month period, and the conference action thereon; (3) that the provision for port equalization has not been shown to be unlawful; (4) that the provision prohibiting the payment of brokerage should be eliminated; (5) that the division of the conference into districts has not been shown to be unlawful; and (6) that the rules and regulations have not been shown to be unlawful, but should be submitted as a part of the agreement.

The record will be held open for submission by respondents of a new agreement consistent with the findings herein.

By the Commission:

[SEAL] [Sgd.] A. J. WILLIAMS,
*Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 651

CARLOADING AT SOUTHERN CALIFORNIA PORTS
(AGREEMENT NO. 7576)

*Submitted June 10, 1946. Decided June 26, 1946*

Agreement of Master Contracting Stevedores Association of Southern California, governing carloading and unloading rates and practices, approved pursuant to section 15 of the Shipping Act, 1916.

Basis of rates proposed by respondents as interim adjustment under such agreement approved upon condition that they refund charges subsequently found by the Commission to be unfair or unreasonable.

Present rates and any basis lower than interim adjustment found noncompensatory, burdensome upon other services, and detrimental to commerce.

*John C. McHose* for respondents.

*Howard A. Leatart* for American Potash & Chemical Corporation, *Robert C. Neill* for California Fruit Growers Exchange, *R. G. Sangster* for Los Angeles Chamber of Commerce, *James A. Keller* for Pacific Coast Cement Institute, *John B. Harman*, *M. D. Alexander*, and *C. O. Burgin* for Office of Price Administration, interveners.

*John B. Jago* for the Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

All parties waived the issuance of the Examiner's proposed report except Pacific Coast Cement Institute. A proposed report dealing with the rates on cement will be served at a later date.

This investigation was ordered to determine whether approval should be given to a rate-fixing agreement submitted by respondents,[1]

[1] Marine Terminals Corporation (of Los Angeles), Crescent Wharf & Warehouse Company, Metropolitan Stevedore Company, Long Beach Terminals Company, Associated Banning Company, Pope & Talbot, Inc. (McCormick Steamship Division), Matson Terminals, Inc., Outer Harbor Dock & Wharf Co., and Seaboard Stevedoring Corporation.

who are members of Master Contracting Stevedores Association of Southern California. Two questions are presented: First, whether respondents are within the coverage of the Shipping Act, 1916, as amended; and second, whether their proposed rates for carloading and unloading are fair, nondiscriminatory, and otherwise acceptable under section 15 of that Act.

Respondent Pope & Talbot, Inc. (McCormick Steamship Division), is a common carrier by water, and all of the other respondents are either terminal operators or stevedoring companies. All are engaged in carloading and unloading of waterborne traffic at piers and wharves in southern California, including Los Angeles, Long Beach, and San Diego. Interveners in the proceeding were American Potash & Chemical Corporation, Pacific Coast Cement Institute, California Fruit Growers Exchange, Los Angeles Chamber of Commerce, and Office of Price Administration.

The agreement involved in this proceeding is similar to the agreement among San Francisco carloaders approved by us June 11, 1946, in Docket No. 639, *Status of Carloaders and Unloaders.* Likewise, there is close similarity between the two proceedings respecting the status and activities of respondents and the measure of relief sought.

In Docket No. 639, *supra*, we found (1) that car service work performed at San Francisco by certain common carriers, including Pope & Talbot, marine terminals, and carloading contractors was subject to our jurisdiction, and (2) that an interim adjustment of rates 33⅓ percent over rates established in 1941 was justified.[2] Approval of the agreement and sanction of the rate level were conditioned upon an undertaking by respondents in that proceeding to refund to shippers by way of reparation any charges found to be unfair or unreasonable as a result of a subsequent cost study to be conducted by us.

Respondents in this proceeding seek to increase their rates 33⅓ percent over their 1941 rates, but in no case higher than the rates found justified in Docket No. 639, *supra*, and agree to make reparation, if necessary.[3] No shipper interests protested approval of the agreement in question and none, except Pacific Coast Cement Institute, expressed disapproval of the basis of rates sought as a temporary measure.

Respondents support the proposed increase by reference to increased

[2] The tariff approved in Docket No. 639 was identical with War Shipping Administration Car Servicing Tariff No. 1–A, I. C. C. No. 1.

[3] Specifically, respondents proposed by stipulation at the hearing to increase by 33⅓ percent, rates contained in Southern California Carloading Tariff Bureau Terminal Tariff No. 1, C. R. C. No. 1, effective December 30, 1941, except that present rates on cement and on potash and coal in bulk will not be affected, rates on the latter two commodities having been changed March 20, 1946; and the rates on potash and soda ash, in packages, and salt cake, in bags (which do not move through San Francisco), will not be increased the full 33⅓ percent. Respondents also stipulated that they would establish permanent rates based on a cost study to be conducted by the Commission.

wages and other costs, and revenue losses under present rates. Wages, which are said to constitute 80 percent of carloading costs, increased 36.77 percent between December 1941, when carloading rates were last adjusted, and date of hearing (May 1946).[4]

Respondent Outer Harbor Dock & Wharf Company shows a deficiency of revenue incurred by War Shipping Administration amounting to 35.37 percent on car work, performed at straight time wages, in connection with ships plying between Los Angeles and west coast of Central and South America between August 1943 and April 1944. This loss, which does not include overhead, would be increased to 56.87 percent if the costs were expanded to include overtime and increases for wages and vacation allowance in effect at date of hearing.

Respondent Marine Terminals Corporation shows a deficiency in revenue of 34.66 percent, without including overhead, on tonnage handled in the same trade during January, February, and March, 1946. Including 10 cents a ton for overhead, the deficiency would amount to 48 percent.

Respondent Crescent Wharf & Warehouse Company reveals an increase in overhead cost per man hour, over 1941, of 36.04 percent in 1945 and 52.81 percent for the first 2 months in 1946; also increases, 1945 over 1942, of 62 cents per ton for labor (including 10 cents per ton for insurance and taxes), and 90.3 percent in direct costs per ton.

From the foregoing facts it is clear that respondents are entitled to substantial rate increases. As we said in *Status of Carloaders and Unloaders*, *supra*, unremunerative and noncompensatory rates are detrimental to the commerce of the United States. Upon this record we conclude that the present rates (i. e., those proposed to be increased), which have been in effect since 1941, are noncompensatory and are burdensome upon other services which are performed by respondents. With the exception of those hereinbefore enumerated, any rates less than 33⅓ percent higher than the present rates would be noncompensatory and detrimental to commerce within the meaning of section 15 of the Shipping Act, 1916.

FINDINGS

We find:

(1) That respondents, other than Pope and Talbot, are "other persons" subject to the Shipping Act, 1916;

[4] The wages were increased from 90 cents an hour for an 8-hour day in 1941, to $1.10 per hour straight time for 6 hours and $1.62½ per hour time and one-half for 2 hours (including 5 cents an hour for vacation) in February 1946. To the above rates there should be added 7.65 percent for insurance taxes, social security taxes, etc. (Effective June 15, 1946, the basic wage was increased to $1.37 per hour plus 5 cents an hour for vacation, retroactive to October 1, 1945.)

(2) That Agreement No. 7576 should be approved, subject to the conditions in finding (3) below;

(3) That the rates proposed to be established under the stipulation made at the hearing have been justified as an interim basis pending an analysis of actual costs of car-service work by the Commission for the purpose of determining proper rates. Approval of the agreement and interim basis is conditioned upon an undertaking made by respondents to refund by way of reparation any unfair or unreasonable charges determined by the Commission to result from establishment of such interim rates;

(4) That the present rates (i. e., those proposed to be increased) are noncompensatory and burden other services which are performed by respondents; that such rates are detrimental to commerce within the meaning of section 15 of the Shipping Act, 1916; and that any tariff of rates, with the exception of those rates hereinbefore enumerated, less than the interim basis herein approved would be noncompensatory and detrimental to commerce. This finding is without prejudice to any subsequent finding as to individual rates made under the conditions set forth in finding (3).

The record will be held open for submission by respondents of their tariff framed in accordance with the findings herein, for a proposed report on cement rates, and for further hearings after completion of the cost study mentioned in finding (3). 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 26th day of June A. D. 1946.

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No. 651

CARLOADING AT SOUTHERN CALIFORNIA PORTS (AGREEMENT NO. 7576)

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*It appearing*, That by order of April 16, 1946, the Commission entered upon a proceeding of investigation (1), into and concerning the lawfulness of proposed Agreement No. 7576 and (2), to afford the respondents named herein an opportunity to justify approval by the Commission of the rates, etc., to be established under said agreement;

*It further appearing*, That investigation of the matters and things involved has been had, and that the Commission 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 Agreement No. 7576 be, and it is hereby, approved subject to the proviso that the rates found justified in said report be established pursuant to said agreement, and subject to the undertaking made by respondents to refund by way of reparation any unfair or unreasonable charges determined by the Commission to result from the establishment of said tariff;

*It is further ordered*, That this proceeding be held open for issuance of a proposed report on cement rates and for further hearings after completion of the cost study mentioned in finding (3) of said report.

By the Commission:

[SEAL] (Sgd.) A. J. WILLIAMS,
*Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 651

CARLOADING AT SOUTHERN CALIFORNIA PORTS
(AGREEMENT NO. 7576)

*Submitted September 13, 1946. Decided November 7, 1946*

Proposed emergency surcharge on carloading and unloading rates at Southern California water terminals found justified, except as to rates on cement. Record held open for further hearings pending cost studies conducted by Commission.

Additional appearances:

*John S. Griffin* for United States Department of Agriculture, *C. E. Jacobson* for Los Angeles Chamber of Commerce, *S. A. Moore* for Permanente Cement Co., *W. O. Nary* for Richfield Oil Corp., *R. T. Potts* for Shell Oil Co. of California, *J. D. Rearden* for Union Oil Co. of California, and *Earl J. Shaw* for Chilean Nitrate Sales Corp.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

In the original report herein (decided June 26, 1946), we found (1) that respondents are subject to the Shipping Act, 1916; (2) that Agreement No. 7576 should be approved, subject to conditions; and (3) that with some exceptions an interim adjustment of rates 33⅓ percent over rates established in 1941 was justified. Approval of the agreement and interim basis was conditioned upon an undertaking made by respondents to refund by way of reparation any unfair or unreasonable charges determined by the Commission to result from establishment of such interim rates. The record was held open for issuance of a proposed report on cement rates and for further hearings after completion of cost studies to be conducted by us.

On July 22, 1946, Margaret M. Bridges, Agent, Southern California Carloading Tariff Bureau, filed a petition seeking authority to establish an emergency surcharge of 34 percent on rates named in its tariff M. C. No. 1 to be effective for nine months to cover additional out-of-pocket costs resulting from wage increases established on June 15, 1946, pursuant to recommendations by a presidential fact-finding board. A hearing on the petition was held jointly with the Railroad Commission of the State of California, which also had before it a petition from Agent Bridges seeking increases to the same general level sought in her petition of July 22, 1946. This proceeding parallels that in Docket No. 639, *Status of Carloaders and Unloaders*, wherein the San Francisco carloaders seek a similar surcharge as a result of the same wage increases.

At the time of the original hearing herein (May 1946), the rate of pay to carloaders was $1.05 per hour for the first 6 hours between the hours of 8 a. m. and 5 p. m.; all other hours being paid for at time and one-half. The workers refuse to work less than 8 hours per day. The wage on Saturdays is on time and one-half basis. On June 15, 1946, the basic wage was increased 32 cents per hour, making the straight time pay for 6 hours $1.37. Of this 32-cent increase 22 cents per hour was retroactive to October 1, 1945. Corresponding increases were awarded the foremen. In addition, vacation allowances were provided for the car workers and foremen. The average hourly labor cost to respondents under the $1.37 scale amounts to $1.75, including overtime, vacation allowance, insurance, and taxes. The average hourly labor cost of a foreman at the basic wage of $1.57 is $2 per hour.

Respondents offer details of results from all car work done by them between June 1 and September 1, 1946, using exact tonnages of all commodities handled, the tariff rates, and applying the June 15th labor scale of wages. Using canned goods as one illustration, 656.45 tons were loaded; the tariff rate of 75 cents per ton would produce $494.96 revenue; and the pay-roll costs on an 8-hour day basis plus taxes, insurance, et cetera, would amount to $849.87. Stated in amounts per ton, the tariff rate is 75 cents and the labor cost is $1.29.

Summarizing the entire performance during the period mentioned: A total of 16,388 tons were handled; the labor cost at the June 15th scale was $19,848.23; and the revenue at tariff rates was $12,520.54. The deficit is 58.53 percent. Cotton was the heaviest moving commodity, amounting to 3,171.5 tons. Eliminating cotton from the total tonnage reveals a deficit of 52.33 percent so far as all other commodities are concerned. Studies of some of the individual respond-

ents are in evidence. We think it unnecessary to review their figures since they show beyond doubt need for additional revenue.

We find that the proposed schedule of emergency surcharges as contained in the above-mentioned petition of Agent Margaret Bridges has been justified, except as to rates on cement. This finding is subject to the same conditions as to reparation as attached to the original findings. The record will be held open for a proposed report on cement rates as provided in the prior report, and for further hearings after completion of the cost study mentioned in finding (3) of the original report herein.

By the Commission:

[SEAL] (Sgd.) A. J. WILLIAMS,
*Secretary.*

2 U. S. M. C.

# UNITED STATES MARITIME COMMISSION

No. 639

STATUS OF CARLOADERS AND UNLOADERS

*Submitted August 9, 1946. Decided November 7, 1946*

Proposed emergency surcharge on carloading and unloading rates at San Francisco water terminals found justified except as to rates on cement and petroleum products. Record held open for further hearings pending cost studies conducted by Commission.

Additional appearances:

*John S. Griffin* for United States Department of Agriculture, *W. H. Morley* for Shell Oil Co., Inc., *Earl J. Shaw* for Chilean Nitrate Sales Corp., and *W. G. Stone* for Sacramento Chamber of Commerce.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

In the original report herein (decided May 31, 1946), we found (1) that car service work performed at San Francisco by certain respondents was subject to our jurisdiction; (2) that an interim adjustment of rates 33⅓ percent over rates established in 1941 was justified; (3) and that respondents Luckenbach Steamship Co., Inc., and J. C. Strittmatter were not subject to the Shipping Act, 1916. Approval of San Francisco Bay Carloading Conference Agreement (No. 7544) and sanction of the rate level to be established thereunder were conditioned upon an undertaking by respondents to refund to shippers any charges found to be unfair or unreasonable as a result of a subsequent cost study to be conducted by us. Since the original hearing, Strittmatter and Luckenbach have shown to our satisfaction that they are subject to the Shipping Act as carloaders and unloaders in connection with common carriers in foreign commerce and are proper parties to Agreement No. 7544.

On July 3, 1946, J. P. Williams, Agent, San Francisco Bay Carloading Conference, filed a petition seeking authority to establish increases approximating 34 percent over rates named in his Car Servicing Tariff No. 1, M. C. No. 1, to be effective for nine months to cover additional out-of-pocket costs resulting from wage increases established on June 15, 1946, pursuant to recommendations by a presidential fact-finding board. A hearing on the petition was held jointly with the Railroad Commission of the State of California, which also had before it a petition from Agent Williams seeking increases to the same general level sought in his petition of July 3, 1946.

The base pay of car workers was increased from $1 per hour (which was effective during the previous hearing) to $1.37 per hour for a 6-hour day and 5-day week. In addition, they became entitled to vacation pay for 2 weeks of 40 hours each at $1.37 per hour. Although their agreement with the employers calls for a 6-hour day, the workers will not work less than 8 hours per day, which mean that they receive overtime for 2 hours out of every 8. Thus the actual wage, including vacation pay, accruing to car workers since June 15, 1946, is $1.613 per hour, exclusive of taxes.[1] Any work performed on Saturdays is at time-and-a-half scale of wages ($2.055 per hour). Basic wages for walking bosses, assistant walking bosses, and gang bosses were also increased to $1.72, $1.62, and $1.47 per hour, respectively. These basic wages are also subject to increases for overtime and vacation pay.

Respondents made a study of indirect car-service work done on the San Francisco water front between June 15 and July 15, 1946, when there were no strikes or work stoppages. The composite results of that study indicate a total of 30,592.41 tons of freight handled at an out-of pocket labor cost of $30,646.94 and revenue amounting to $25,117.69, representing a revenue deficiency of 22 percent. The wages paid were those described above which become effective June 15, and the revenue collected was at current tariff rates. The study included all commodities handled upon which the tariff application could be determined. As to certain commodities which generally move in volume there were few or no shipments during the 30-day period. There was a total of 18 different commodities in volume of 10 cars or more.

Cement and petroleum products amounted in the aggregate to over one-third of the total of all freight handled. The labor cost for un-

[1] The calculation: Six hours multiplied by $1.37 equals $8.22. Two hours overtime at $2.055 equals $4.11, making a total wage of $12.33 for 8 hours or $1.54 per hour. To this is added vacation pay which is computed on a 1,500-hour period. Thus, 80 hours multiplied by $1.37 equals $109.60 total vacation pay per year per man, which when divided by 1,500 equals $0.073. Adding this sum to $1.54 equals $1.613.

loading 7,367.55 tons of cement was $5,248.16 compared to revenue of $5,230.75. Petroleum products amounted to 3,790.14 tons at a labor cost of $2,508.73 and revenue of $2,691. At the hearing respondents modified their petition by proposing a 10 percent surcharge on rates on cement and petroleum products. Eliminating revenues from cement and petroleum, the revenue deficiency amounts to 33.11 percent, not considering overhead or profit.

Witnesses for Pacific Coast Cement Institute and Permanente Cement Co. stress the fact that Pacific-coast cement is highly competitive with Atlantic, Gulf, and European producers in selling Latin American markets, and that the car-service charges are an important factor in determining the through transportation costs. They offer figures ranging from 38 to 59 cents per ton as reflecting actual costs of loading and unloading carloads of cement. The 38-cent estimate is based on cement handled in warehouse and on industry spur tracks. The 59-cent cost is based upon unsupported data furnished by a steamship official. Another cost estimate of 46.18 cents per ton is based upon observations of an employee of Permanente who failed to appear at the hearing and was, therefore, unavailable for cross-examination.

According to respondents' study, the average cost of handling cement was 71.24 cents per ton. However, at Grace terminal eight carloads weighing 403.75 tons cost $3,180 to handle by pallet board operation or an average of 78 cents per ton. Seaboard Stevedoring Corp., using hand labor exclusively, arrived at a labor cost of 83.07 cents per ton for unloading 2,196.44 tons of cement between January 1 and June 15, 1946, applying the June 15th wage scale. It handled no cement during the 30-day study period.

The United States Department of Agriculture ships large quantities of foodstuffs abroad in connection with Asiatic and European food relief activities. Testimony on its behalf was limited to data showing the additional charges it would be obliged to pay under the proposed increases and to the probability that such increases would compel it to abandon rail deliveries to the water terminals in favor of motor carriers.

A representative of the Dried Fruit Association of California and the Canners League of California took the position that any increases should be limited to cover increased labor costs, and challenges respondents' 30-day study as not sufficient to support general increases in rates since the volume of movement of some commodities was not representative.

The Office of Price Administration submitted a formula for determining the effect of wage increases on rates, indicating that no increase

over 11.94 percent is justified. Without passing upon the merits of the formula, it is sufficient to observe that from the revenue study offered by respondents, as described above, an increase of 11.94 percent is obviously insufficient to meet the added labor costs.

We, of course, do not regard results of a 30-day period as sufficient operating experience upon which to fix rates on any commodity at any time. However, we are confronted here with an emergency situation which has developed during the period when our cost study is being conducted for the purpose of arriving at a proper level of car-service rates. We are convinced that the study offered by respondents is the best available data of record upon which an emergency surcharge can be based. We find that the proposed schedule of emergency surcharges contained in Agent Williams' petition hereinbefore mentioned has been justified, except that a surcharge on cement and petroleum products has not been justified. This finding is subject to the same conditions as to reparation as attached to the original findings. The record will be held open for further hearings after completion of the cost study now being conducted by us.

By the Commission:

[SEAL] (Sgd.) A. J. WILLIAMS,
*Secretary.*

2 U. S. M. C.

# UNITED STATES MARITIME COMMISSION

No. 650

TRANSPORTATION BY SOUTHEASTERN TERMINAL & STEAMSHIP CO. AND EASTERN SHIPPING, LTD., BETWEEN CONTINENTAL UNITED STATES AND PUERTO RICO

*Submitted September 3, 1946. Decided December 3, 1946*

Transportation between Miami, Fla., and San Juan., P. R., was that of common carriage for which schedules should have been filed pursuant to section 2 of the Intercoastal Shipping Act, 1933, as amended. Respondents were common carriers on northbound voyages but not on southbound voyages. Proceeding discontinued.

*Allan Briggs* for the Commission.
*H. N. Boureau* for respondents.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the examiner's proposed report. Our conclusions differ to an extent from those of the examiner.

We ordered this investigation on April 2, 1946, to determine whether respondents' transportation of property between Miami, Fla., and San Juan, P. R., was in violation of section 2 of the Intercoastal Shipping Act, 1933 as amended, as no tariffs had been filed for such operations.[1] Respondents, Southeastern Terminal & Steamship Co. and Eastern Shipping, Ltd., contend that they were not obligated to file tariffs because (1) the operations performed were not those of common carriage, and (2) they were acting merely as agents for the owners of the ships.

*Common carriage.*—Southeastern is a Florida corporation and Eastern is a Florida limited partnership, both engaged in the shipping business at Miami. Through stockholder connections, Southeastern

[1] Section 2, as amended, requires tariffs to be filed by common carriers engaged in transporting property between, among others, a port in a State and a port in a possession of the United States.

has handled the account of the Bacardi Corporation of America, which entailed the transportation of empty rum bottles from Miami to San Juan and the return of full bottles. The ships used regularly ranged from 85 to 115 feet in length and from 60 to 200 tons deadweight. Space from Miami to San Juan was so tight during 1945 and early 1946 that various shippers, including Railway Express Agency, having learned of Southeastern's operations, requested that their cargo be transported. There was no solicitation or advertising for this miscellaneous cargo. As there was not sufficient warehouse space in Puerto Rico to accommodate all the empty bottles that could be transported, that commodity would be shorted at times and the corresponding space allocated to other shippers. Personal effects of military personnel also were carried at times, often at no charge. On northbound voyages miscellaneous cargo was accepted by San Juan Mercantile Corp., agent, when there was not enough rum offering. San Juan Mercantile had authority to handle the Bacardi account only, the miscellaneous cargo being accepted on its own initiative and the rates therefor being made by it but accepted by respondents.

Typewritten charter parties, listing from two to six shippers each, were issued for the southbound voyages. Printed forms of charters prepared by San Juan Mercantile, and listing as many as 12 shippers in a single charter, were issued for the northbound voyages. Bills of lading also were issued in each direction, sometimes to shippers not named in the charters. Bills of lading were used because: (1) the charters did not show the nature of the goods or the number of packages; (2) it was not practicable to prepare enough copies of each charter for so many shipments; and (3) the bills of lading were surrendered to release the cargo at destination. As the miscellaneous cargo was not solicited, there was no way of knowing in advance the cubic of each shipment. The charter hire therefore was expressed in a lump sum and thereafter collected pro rata from each shipper after the amount of space utilized by the separate interests was ascertained.

The miscellaneous cargo amounted to between 10 and 15 percent of the tonnage carried and about 20 percent of the cubic capacity of the ships, and it was admitted that the space was allocated with an eye to the future for business. Respondents maintain, however, that the miscellaneous cargo was accepted purely as an accommodation to the shippers and was not sufficiently attractive from a revenue standpoint.

As stated in *Transp. by Mendez & Co., Inc., Between U. S. and Puerto Rico*, 2 U. S. M. C. 717, the absence of solicitation does not determine that a carrier is not a common carrier. Respondents in the present proceeding held out, by a course of conduct, that they would

accept goods from whomever offered to the extent of their ability to carry. We conclude, therefore, that the service rendered shippers amounted to common carriage within the purview of section 2 of the Intercoastal Shipping Act, 1933, as amended, and proper tariffs therefor should have been filed with this Commission.

*Respondents' status.*—Prior to March 1946 Southeastern had never owned or chartered a ship. As an incident of the Bacardi account, Southeastern loaded and unloaded the ships, charging the owners therefor and receiving a commission for the traffic. Except for the actual operation of the ships, Southeastern handled everything pertaining to the voyage because the primary interest was the Bacardi account. On northbound voyages San Juan Mercantile remitted prepaid charter monies to Southeastern, and these sums, minus expenses and commissions, were then turned over to Eastern.

Eastern has never owned or chartered a ship, but in the trade under discussion it operated the ships of Crosrig Corp., Mariposa Shipping Corp., Sylvia Corp., and Marcros Corp., all incorporated in Florida and all connected in some degree with respondents through stock ownership. For instance, the principal partner in Eastern is a substantial stockholder and president of the four corporations. Eastern provides the crews, pays the bills, looks after the ships in general, determines when and where the voyage shall be made, collects the freight, and fixes the charter rate. The agreement between Eastern and the individual corporate owners is oral.

The earlier southbound charters were issued by Southeastern and the later ones by Eastern, but in each instance the respective respondent was referred to as "agents for the owners" and the charter was signed "By authority of owners." Northbound, some of the charters were signed by San Juan Mercantile as agent for Southeastern and some as agent for Eastern, but in all cases the respective respondent was designated as "charter owners." Prior to the period under discussion, Southeastern acted as agent for McCormick Shipping Corp., and when respondents commenced to represent Crosrig, Mariposa, Sylvia, and Marcros they continued to use the McCormick bill of lading. On southbound bills of lading McCormick's name is stricken out and Eastern's name typed in. There are no southbound bills of lading in evidence for the period prior to the summer of 1945, but Southeastern's witness believes that McCormick's form was used without striking McCormick's name. The northbound bills of lading were issued by San Juan Mercantile, with Eastern's name at the top and McCormick's name stricken out. The testimony is that San Juan Mercantile continued to use the McCormick bill of lading after

Eastern entered the trade without being told not to. On October 1, 1945, Southeastern wrote to San Juan Mercantile and instructed them (1) to "x" out McCormick's name and stamp in Eastern's name; and (2) in the future to sign charters as agents for Eastern and not for Southeastern.

San Juan Mercantile's position is not clear. Eastern admits that the northbound charters were signed by San Juan Mercantile as its agent, and that San Juan Mercantile was its agent as to stevedoring and supplying the ships. On the other hand, Southeastern considers San Juan Mercantile its agent "in a sense," but any agency fees it pays to San Juan Mercantile are for Eastern's account. Both respondents accepted the benefits of all charters and bills of lading issued by San Juan Mercantile. That is, they retained their expenses and commissions out of the freight monies and remitted the balance through Eastern to the corporation owning the particular ship.

As stated, on the southbound voyages the charters referred to respondents as "agents for the owners' and were signed "by authority of owners." Respondents therefore dealt with the public as agents of the shipowners, and in view of our decision in *Agreement No. 7620*, 2 U. S. M. C. 749, we find that respondents were not common carriers southbound.

On the northbound voyages, however, respondents were not designated as agents for the shipowners but as "charter owners." They contend nonetheless that such designation was unauthorized and that they were merely agents for the owners. There are at least six different organizations here combined in one form or another to engage in the shipping business The purpose of the formation of the four corporate shipowners was to limit liability to each ship separately. Whether there was a further intention to create devices to evade the regulatory provisions of the shipping acts does not appear of record. Suffice it to say that the purposes of such legislation cannot be nullified in that manner. Due to the informal manner of transacting business, mostly by word of mouth, it is difficult if not impossible to trace the precise relations of these firms with each other. But when we look through the corporate fiction we find that, at least as far as Eastern and the four corporate shipowners are concerned, those organizations are responsive to the same general policy and subserve the same general investment.

Respondents accepted the rates fixed and the bills of lading issued by San Juan Mercantile on the northbound voyages, as well as the benefits of the transactions in the form of expenses and commissions from the freight moneys. Furthermore, they failed to instruct San

Juan Mercantile not to designate them as "charter owners," and as it was not until the hearing that they affirmatively denied that San Juan Mercantile had such authority, they cannot be heard to say that they were not acting as principals. Accordingly, we find that respondents were common carriers on the northbound voyages.

A different situation exists as to two charters dated March 18 and May 2, 1946, executed by Southeastern as charterer of the motor vessel *W–E*. One of these charters lists five shippers and the other two shippers. McCormick form bills of lading were issued in connection therewith but Southeastern's name was substituted at the top and they were signed by Southeastern for the master. In the body of the bills of lading it is stated that the freight was "per charter agreement." Southeastern admits that the *W–E* was operated for its own account on those two voyages, and that the ship carried an accumulation of miscellaneous cargo, including bottles for Bacardi. About March 12, 1946, Southeastern filed a tariff with the Interstate Commerce Commission covering common carrier operations between Miami and Puerto Rico. Southeastern was advised that the tariff should have been filed with this Commission, and proper filing thereafter was made.

Inasmuch as Southeastern now has proper tariffs on file and Eastern has ceased operations, an order discontinuing the proceeding will be entered.



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ORDER

At a Session of the UNITED STATE MARITIME COMMISSION, held at its office in Washington, D. C., on the 3d day of December A. D. 1946

No. 650

TRANSPORTATION BY SOUTHEASTERN TERMINAL & STEAMSHIP CO. AND EASTERN SHIPPING, LTD., BETWEEN CONTINENTAL UNITED STATES AND PUERTO RICO

This proceeding having been instituted by the Commission on its own motion and without formal pleading, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a 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.) A. J. WILLIAMS,
*Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 644

INCREASED RATES—INTER-ISLAND STEAM NAVIGATION CO., LTD.

*Submitted October 15, 1946. Decided December 30, 1946*

Proposed increases in class and commodity rates between points in the Territory of Hawaii found justified except as to wallboard and scrap paper, without prejudice, however, to an increase on wallboard and scrap paper by amounts not exceeding 50 percent.

Proposed increases on cattle not shown to be unduly preferential or prejudicial.

Respondent expected to submit the results of the first six months of its private operation under the new rates for the Commission's scrutiny.

Proceeding dismissed as to Matson Navigation Company.

*J. Garner Anthony* for respondent.

*David Castléman* for Office of Price Administration.

*Eugene H. Beebe* for Parker Ranch, *Guy M. Carlon* for War Shipping Administration, *Dudley C. Lewis* for Public Utilities Commission, Territory of Hawaii, *James M. Richmond* for Hawaiian Cane Products, Limited, and *James McEldowney*, interveners.

*John B. Jago* for the Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By schedules filed to become effective December 1, 1945, respondent Inter-Island Steam Navigation Company, Ltd., hereinafter referred to as Inter-Island, a common carrier of freight and passengers by water, operating as agent of War Shipping Administration (now as agent for the Commission) between points in the Territory of Hawaii, proposed to increase class and commodity rates by about 50 percent. Upon protest of the Office of Price Administration the operation of the schedules was suspended until April 1, 1946. However, prior to that date, at the request of the War Shipping Administration, the effective date of the proposed schedules was indefinitely postponed. A hearing was held at Honolulu, T. H. Unless otherwise stated, rates will be stated in amounts per 2,000 pounds or 40 cubic feet.

Office of Price Administration, War Shipping Administration, Parker Ranch, Hawaiian Cane Products, Limited, Public Utilities Commission, Territory of Hawaii, and James McEldowney, an individual, intervened.

Inter-Island's tariff M. C. No. 1 named Matson Navigation Company as a participating carrier. Tariff M. C. No. 2, which is the tariff under suspension, also named Matson as a participating carrier. However, the suspension automatically reinstated M. C. No. 1, Supplement No. 8 of which, effective April 15, 1946, cancelled Matson as a participating carrier. By notice dated February 5, 1946, Matson revoked its concurrence in M. C. No. 1. If and when M. C. No. 2 becomes effective, Matson should be eliminated as a participating carrier. Inasmuch as Matson is named as a respondent in the present proceeding, but, as stated above, it is no longer a participating carrier in M. C. No. 1, the reinstatement of M. C. No. 2 would not revive Matson's participation therein. Therefore, the proceeding will be dismissed as to Matson.

Operating and traffic conditions in the inter-island trade were described in *Rates of Inter-Island Steam Navigation Co., Ltd.*, 2 U. S. M. C. 253. Except as hereinafter stated, those conditions have not changed materially. It should be observed at the outset that Matson no longer owns any of the capital stock of Inter-Island. The most important operational change is a reduction from five to three vessels in respondent's service, with consequent elimination of certain points of call. The shippers of record appear to be satisfied with the present schedules and service. Another new factor is the rapid development of inter-island air transportation of passengers and freight by Hawaiian Airlines, 70 percent of the stock of which is owned by respondent. In 1941 only 23 percent of all inter-island passengers traveled by air. During the first four months of 1946, 15,220 passengers were carried by respondent and 66,747 by Hawaiian Airlines, or 19 percent by water and 81 percent by air.

Respondent's class rates apply on general merchandise, n. o. s. Only one class rate applies between two points, and it is applicable to freight on which no specific commodity rate or exception to the class rate is named. This unusual tariff structure is compelled by the peculiarities of the trade. As stated in *Rates of Inter-Island Steam Navigation Co., Ltd., supra*, respondent's business may be characterized as an express type of service requiring much paper work and cargo handling. During the first four months of 1946, of 55,333 tons of cargo handled, 35,927 tons consisted of unclassified small package freight. It is questionable whether it would be practicable to establish a freight

classification and name individual class rates for each article. There have been no increases in the class rates for over twenty years. In fact, the only changes that have been made in the class rates were decreases applicable to transportation between Honolulu and Nawiliwili and Port Allen. It is now proposed to increase by from 25 percent to 59 percent the respective class rates applying to the different ports out of Honolulu.

Respondent's commodity rates also have remained constant for many years. Illustrative of heavy moving freight upon which commodity rates apply are livestock, fertilizer, coffee, automobiles, fruits, and vegetables. The Island of Hawaii is a great producer of beef cattle and the southwest coast is well known for its Kona coffee. Automobiles carried by respondent belong to the island residents or travelers. New automobiles are shipped from the mainland direct to dealers and buyers on each island and rarely are transported by respondent. The proposed increases on all classes of livestock average approximately 28 percent; on fertilizer, from 61 to 69 percent, depending on the points of call; on coffee, 58 percent; on automobiles, from 15 to 40 percent, depending on the weight; and on specified fruits and vegetables, from 50 to 90 percent, depending on points of call and kind of fruit and vegetable moving.

Respondent offers a detailed survey of its post-war freight compared with its 1940 volume. It estimates a total reduction, exclusive of livestock, from 216,513 tons carried in 1940 to 190,200 tons per year. This prediction is based on Matson's plans for improved direct services between the mainland and island ports and upon changed conditions within the islands. For example, a fertilizer plant is being erected on Kauai, which will result in a substantial loss of freight and revenue. There is now a higher density of population on Oahu than before the war. This growing concentration of population in the Honolulu area heightens an already unbalanced trade.

An analysis of respondent's financial position shows a need for additional revenue. It is experiencing heavy losses because of substantial increases in its operating costs, maintenance and repair costs, and prices of materials and supplies. As long as it is an agent of the Commission those losses are borne by the Government. A few figures are illustrative. According to a witness for War Shipping Administration, respondent's estimated operating loss for the year 1945 amounted to more than $1,200,000, and for the six-months period from October 1, 1945, to March 31, 1946, the loss is estimated at $594,176.27. He indicates that a freight rate increase of 119 percent would have been required to overcome the operating loss for 1945, and a 143-per-

cent increase would have been necessary to meet the operating loss for the six-month period ending March 31, 1946.

The following are representative examples of respondent's increased operating and materials costs since 1940, and which are responsible for the condition just stated. Wages paid seagoing personnel, exclusive of overtime and stevedoring premiums, increased an average of 87 percent. Respondent's employees both ashore and afloat do the stevedoring. The basic longshoreman wage increased 67 percent. From January 1, 1940, to April 1, 1946, the cost of fuel rose from 98 cents to $1.73 per barrel. Many other items of increased costs are of record.

Applying the proposed increased tariff rates to an estimated post-war tonnage of 190,200 tons and 20,650 head of livestock, respondent arrives at a revenue of $1,414,108. This, plus estimated passenger and mail revenue, equals total estimated revenue of $2,097,867. This figure is offset by estimated expenditures of $2,317,877, leaving a deficit, on the basis of respondent's figures, of $220,010 under the proposed rates.

The only witness for Office of Price Administration admittedly had no transportation experience and did not profess knowledge of rate-making principles. This witness assails respondent's estimate of post-war volume of traffic as being too low, based largely on a 25-percent increase in population on Oahu and the increased purchasing power of island residents. Witness stated that the average weekly wage increased from $18.65 in 1939 to $47.68 in 1945. Bank deposits and income tax payments have risen sharply. Witness predicted expansion of business activities but admitted that "the most important commodities" will move between the mainland and the four major islands. Her estimate of post-war tonnage exceeds that of respondent by 40,000 tons, 35,000 tons of which represent unclassified cargo.[1] Increase in the movement of unclassified cargo is based upon increased population and purchasing power. The witness asserts that the proposed rate increase will seriously affect the economy of the islands and interfere with the stabilization efforts of the Government, yet she was unable to demonstrate what effect, if any, the proposed rates would have on prices in general or upon any given commodity under Government price regulation.

Intervener Parker Ranch opposes the proposed increases on beef cattle on the sole ground that they will be unduly prejudicial and unjustly preferential in violation of section 16 of the Shipping Act, 1916. Parker Ranch operates the largest ranch in the islands and ships upwards of 7,000 head of cattle per year from Kawaihae to

[1] This estimate also includes an additional 4,000 tons of sugar and 1,000 tons of coffee.

Honolulu, which is more than all other producers combined. Cattle constitutes the largest single item of respondent's business. In 1940, of a total of 17,691 head moving to Honolulu, 9,998 originated at Kawaihae. The next important port is Kailua, from which 2,072 head were shipped that year. During the war thousands of acres of cattle lands on the Island of Hawaii were given to the military forces for training purposes and it may be a long time before such acreage is reconverted to pasture. Respondent estimates an increase of two percent in the cattle movement.

The current rates on cattle are $6.50 per head from Kawaihae and Kailua, $7.00 from Hilo, and $6.00 from Kahului. It is proposed to increase these rates to $8.25, applicable from all ports named. The increases amount to 26 percent, 18 percent, and 37 percent, respectively. The port of Kahului is not important as far as cattle is concerned, however, as the consumption on Maui now exceeds the supply and there is little likelihood of future shipments from either Maui or Kauai to Honolulu. The demand at Honolulu also exceeds the supply available on the Island of Hawaii, so that island meat producers compete with mainland shippers.

At Kawaihae, Parker Ranch loads its cattle through a runway across the wharf onto the ship. At other places cattle are made fast to surf boats which go out to the ship anchored in the roadstead, where the cattle are then raised to the ship by means of slings. Approximately 200 head can be loaded in 40 minutes by the direct method as compared with four or five hours by the surf boat method. The volume of cattle shipped from the alleged preferred ports of Kailua, Napoopoo, and Kaalualu is considerably less than that from Kawaihae. Although the position of Parker Ranch is based primarily on the difference in cost of loading cattle at the various ports, there is no evidence of record to show what difference, if any, there actually is. Furthermore, there has been no showing that Parker Ranch will be damaged by the proposed rates or that its competitors would gain from the alleged preference. Under the circumstances, therefore, we find that the proposed rates on cattle have not been shown to be in violation of section 16 of the Act.

Intervener Hawaiian Cane Products has been manufacturing wallboard from the residue of sugar cane stalk and scrap paper at Hilo for about 15 years. It opposes the proposed increases on wallboard and scrap paper, which go as high as 100 percent on wallboard and 66 percent on paper, but has no objection to a 50-percent increase.

Wallboard generally is wrapped in paper and is placed on pallet boards in intervener's warehouse from which it is transported to re-

spondent's wharf. It is three or four feet in width and measures from three to sixteen feet in length. Before the tidal wave of 1946, wallboard was placed at the wharf on railroad flat cars. Now it is delivered to respondent on motor trucks. Respondent states that one weight ton of wallboard occupies 3½ space tons; that it is stevedored at a rate of 12 to 15 tons per gang hour; and that it is stowed under deck. Heavy rainfall at Hilo often stops handling of wallboard. In 1940, 3,358 tons were shipped from Hilo to Honolulu. Respondent estimates a post-war volume of 4,000 revenue tons. The rate on wallboard from Hilo to Honolulu is $3.00 and the proposed rate is $5.50, an increase of 83 percent. From Hilo to Kahului and Nawiliwili the proposed increase is from $3.25 to $6.50, or 100 percent.

During the war, War Shipping Administration found the cost of handling wallboard at Hilo to be about $6.00 per ton. It entered negotiations with respondent as agent with a view towards raising the rates on wallboard to a compensatory level. We will not analyze the factors used in determining that cost because the record clearly shows that not more than 15 percent of all wallboard handled at Hilo moved over respondent's vessels; that the handling of wallboard on other vessels is not comparable with the pallet board method used by respondent; and that the cost to War Shipping Administration reflected use of an independent stevedoring company whereas respondent does its own stevedoring. One witness for respondent asserts that the bare labor cost of handling wallboard in January 1945 was 80 cents per ton, and that wages have since been increased about 50 percent. Respondent describes rates on wallboard as low and designed to encourage island industry.

We find that respondent has failed to justify the proposed increase on wallboard, and has made no effort to justify the proposed increase on paper. However, this finding is without prejudice to an increase in the rates on those two commodities by amounts not exceeding 50 percent, which, as already stated, is concurred in by Hawaiian Cane Products.

Evidence was offered to the effect that if one of respondent's small laid-up vessels, the S. S. *Hawaii*, was substituted for a large one in respondent's fleet, its operating costs could be cut and substantial rate increases avoided. We need not be concerned with this question, however, because the S. S. *Hawaii* was sold subsequently to the hearing, a fact of which we take official notice.

The suggestion was made that inasmuch as respondent does not propose to raise its passenger fares, that class of traffic is unduly preferred at the expense of freight shippers. The record is clear, how-

ever, that passenger fares are now on a compensatory basis. Further more, as pointed out above, respondent is now competing for passenge business with Hawaiian Airlines, the fares of which carrier form ceiling on surface passenger fares.

Respondent estimated a deficit of $220,010 under the proposed rates Counsel for the Commission presented estimates tending to indicat a profit, before taxes, of $234,434. The latter was predicated upo (1) the inclusion of revenue on the extra 40,000 tons estimated b OPA's witness and revenue on an additional 1,000 tons of automobile and 1,500 head of cattle; (2) the reduction of the allowance for de preciation by approximately $120,000 through the use of a servic life of 30 years for vessels instead of 20 years; and (3) the exclusio of an expense item of $12,000 representing donations.

Granting that respondent's estimates of post-war tonnage may b somewhat pessimistic, nevertheless we are not convinced that th estimate of 35,000 additional tons of unclassified cargo offered by OP or the estimate of additional tonnage of automobiles and coffee hav any probative value. Reducing counsel's estimated revenue o $2,417,512 by the revenue on the questioned tonnage leaves revenu of $2,164,312. Then, accepting counsel's estimate of expenses, in cluding his depreciation figure, but eliminating his costs attributabl to the 37,000 tons eliminated herein, we have expenses of $2,151,423 leaving net income before taxes of $12,889. Deducting estimate Federal and Territorial income taxes, there remains a profit of $7,218 This estimated profit represents a return of less than one percent o counsel's rate base figure of $809,514.

Summing up, the proposed rates will yield a deficit of slightly les than $220,010 under respondent's estimates; and under the estimate used by Commission counsel, as revised above, there would be a profi of $7,218 or a return of less than one percent on his rate base. It i abundantly clear that the proposed rates, except as to wallboard an scrap paper, have been justified.

An order will be entered permitting the increases found justified However, respondent will be expected to submit the results of the firs six months of its private operation under the new rates for our furthe scrutiny.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 30th day of December A. D. 1946

No. 644

INCREASED RATES—INTER-ISLAND STEAM NAVIGATION COMPANY, LTD.

*It appearing*, That pursuant to order dated November 30, 1945, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices in the schedule described in said order, and suspended the operation of said schedule until April 1, 1946;

*It further appearing*, That subsequent to the said order the effective date of the said schedule was voluntarily indefinitely postponed;

*It further appearing*, That 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, and has found that the schedule under suspension has been justified, except as to the proposed increased rates on wallboard and scrap paper;

*It is ordered*, That respondent Inter-Island Steam Navigation Company, Ltd., be, and it is hereby, required to cancel, effective on or before January 29, 1947, proposed increased rates on wallboard and scrap paper, upon notice to the 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, as amended; without prejudice, however, to the establishment of increased rates on those commodities not in excess of 50 percent on not less than one day's filing and posting as prescribed by the said Act;

*It is further ordered*, That the order of suspension heretofore entered herein be, and it is hereby, modified to the extent that Matson Navigation Company be eliminated as a respondent;

*It is further ordered*, That, except as to the proposed rates on wallboard and scrap paper, the order of suspension heretofore entered herein be, and it is hereby, vacated and set aside as of the date hereof.

By the Commission.

[SEAL] (Sgd.) A. J. WILLIAMS,
*Secretary.*

# UNITED STATES MARITIME COMMISSION

No. 641

INCREASED RATES FROM, TO, AND WITHIN ALASKA

*Submitted November 13, 1946. Decided January 3, 1947*

Petition of the War Shipping Administration for permission to make a general increase in rates, fares, and charges for and in connection with the transportation of passengers and property between United States' Pacific-coast ports and the Territory of Alaska and between places in that Territory dismissed and proceeding discontinued.

*John B. Jago* for War Shipping Administration, *Lawrence Bogle*, *Ira L. Ewers*, and *Stanley B. Long* for Alaska Steamship Company, Northland Transportation Company, and War Shipping Administration, *Albert E. Stephan* for Alaska Transportation Company and War Shipping Administration.

*Malcolm D. Miller* for Price Administrator, *Ralph J. Rivers* for Territory of Alaska, *Walter D. Matson*, *Harry C. Burnett*, and *Harry J. DeFranq* for United States Department of Agriculture, *David E. Scoll* for Alaska Development Board, *Norman C. Stines* for City of Nome, Alaska, City of Fairbanks, Alaska, and Northwestern Alaska Chamber of Commerce, *Philip M. Crawford* for United States Department of Commerce, *George Sundborg* and *Dan H. Mater* for Bonneville Power Administration, *Herald A. O'Neill* for Alaska Salmon Industry, Inc., *G. H. Bucey* for Santa Ana Steamship Company, *A. V. Stoneman* for *Heinie Berger*, *Volney Richmond, Jr.*, for Northern Commercial Company, *Al Anderson* for Alaska Miners' Association, *Omar O. Victor* for United States Smelting, Refining and Mining Company, *John Wiese* for International Fishermen and Allied Workers (C. I. O.), *Jerry Tyler* for Marine Cooks' and Stewards' Union, *Glenn Carrington* for Fairbanks Chamber of Commerce and Alaska Committee of the Seattle Chamber of Commerce, *E. N. Patty* for Alaska Committee of the Seattle Chamber of Commerce, *J. W. McCune* for Tacoma Chamber of Commerce, *Edward F. Medley* for Cordova Chamber of Commerce, *Allen Walker* for National Canners Association.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This is a proceeding concerning a petition of the War Shipping Administration for permission to make a general increase in its rates, fares, and charges for and in connection with the transportation of passengers and property between United States' Pacific-coast ports and the Territory of Alaska and between places in that Territory. The transportation is performed through Alaska Steamship Company, Northland Transportation Company, and Alaska Transportation Company, hereinafter called the lines, which prior to 1942, the year in which the War Shipping Administration requisitioned their vessels, served Alaskan and Puget Sound ports as common-carrier principals.

The petition presents two grounds for seeking the general increase: (1) apparently in contemplation of the return to the lines of their vessels, that they "would be unable and are therefore unwilling to operate in such trade for private account, upon the basis of the present schedules of rates, fares, and charges applicable thereto," and (2) insufficient revenue to the War Shipping Administrator from such rates,, fares, and charges "to insure his ability to continue to operate in the public interest upon a compensatory basis, the adequate and efficient service contemplated by law."

The proposed report of the examiner recommended that the petition be denied and that an order discontinuing the proceeding be entered.

At the oral argument, counsel for Alaska Steamship Company and Northland Transportation Company stated that these lines had not, "because of rapidly changing conditions and the great lapse of time since the cessation of private operations, been able to indicate with accuracy the magnitude of any rate increase which might later be necessary to permit the resumption of private service in this trade." He agreed that the proceeding should be dismissed but, pointing out that the petition was filed by the War Shipping Administration and not by the lines, took the position, in which the Alaska Development Board and the Territory of Alaska concurred, that the dismissal must be "without prejudice to the private carriers to take such action as they deem proper if, as and when they resume their private operations." Alaska Transportation Company insists on a general increase of 67.4 percent, which is based on the operation of vessels most of which it no longer has.

The petitioner was the War Shipping Administration, and, by the act of July 8, 1946 (Public Law 492, 79th Congress), making appro-

priations for the Navy Department and the naval service for the fiscal year ending June 30, 1947, and for other purposes, all functions, powers, and duties of the War Shipping Administration were transferred to this Commission effective September 1, 1946, and the War Shipping Administration ceased to exist as of that date. The question before us, therefore, is no longer whether to permit the War Shipping Administration to make a general increase in rates, fares, and charges, but is whether we ourselves should make such an increase.

The direct financial result to the government from the operation of vessels controlled by the War Shipping Administration and employed in the Alaskan commercial service during the calendar year 1945 is indicated in the appendix hereto. To overcome the estimated loss of $1,361,861.93 shown therein would require an increase in freight and passenger revenue for 1945 of 12.17 percent. This would be raised to 16.43 percent by giving 12 instead of 3 months' effect to advance in wages of $45 per month per crew member which became effective October 1, 1945. If the estimated loss is to be recouped through freight charges alone, (and the record evidences strong passenger competition with airlines and Canadian ships) the increase required would be 24.07 percent. The increases of 16.43 percent and 24.07 percent would be in addition to the present 16 percent surcharge.

Notwithstanding the record indicates prospective economies of operation due to fewer vessel calls and decreased charter hire, repair costs, and agents' compensation, apparently 1946 losses will exceed those of 1945. (See general report of Commission to Director of War Mobilization and Reconversion dated November 26, 1946.)[1]

That report, of which we may take official notice, aptly characterizes the Alaskan transportation problem as follows:

> The Alaskan trade presents many problems which must be solved before the commercial steamship lines can again provide service without government assistance. Such prewar vessels as still remain in service are very much overage, and the more modern vessels which are available would require extensive changes to fit them for this trade. Operating costs in the Alaskan trade have always been high because of the seasonal nature of the business, adverse weather conditions, difficult harbor operations and the many small ports that require regular service. With the large increases in labor and material costs that have been imposed on ship operators during the past year, much higher freight revenues are necessary to produce a profitable commercial operation. However, the citizens of Alaska protest that they cannot stand substantially higher freight rates. Meanwhile both from the standpoint of providing for the basic commercial needs of the Territory and servicing the various United

[1] "Out-of-pocket losses to the Commission amounted to about $380,000 during the summer season (April–October 1946) and it is anticipated losses during the coming winter will approximate $1,630,000 based on the results of last winter's operations. These figures do not include vessel repair costs which are very substantial in this (Alaskan) trade."

States military establishments in Alaska, the Maritime Commission is required to provide essential freight and passenger services.

The report contains, and the parties herein have submitted, various recommendations bearing upon the general Alaskan transportation situation which are not germane to the particular questions before us, and they will not here be considered.

The evidence which was presented in support of a rate structure for private operation was set forth in detail in the examiner's report. However, the estimates of tonnage, revenue, and expenses were so speculative, and the future operational plans of the lines so uncertain that such evidence affords no sound basis upon which to predicate a rate structure.

In view of the imminent expiration of the government's authority to operate ships we shall not make the necessary rate increases. If the lines desire to resume private operations they may submit tariffs in conformity with the Intercoastal Shipping Act, 1933, as amended. Such tariffs should be framed with a view to correcting any existing inequalities as between commodities.

An order will be issued dismissing the petition under consideration and discontinuing the proceeding.

# APPENDIX

| | Alaska Steamship Co., general agent | Northland Transportation Co., general agent | Alaska Transportation Co., general agent | Olympic Steamship Co., general agent [1] | Total | Percentages |
|---|---|---|---|---|---|---|
| Number of voyages [2] | 127 | 50 | 37 | 4 | 218 | |
| Number of tons of cargo carried: | | | | | | |
| Commercial | 288,717 | 90,365 | 45,094 | 10,089 | 434,265 | 72.04 |
| Military (free) | 93,341 | 52,595 | 13,119 | 9,461 | 168,516 | 27.96 |
| Total | 382,058 | 142,960 | 58,213 | 19,550 | 602,781 | 100.00 |
| Number of passengers carried: | | | | | | |
| Commercial | 32,517 | 9,498 | 385 | 0 | 42,400 | 71.34 |
| Military (free) | 15,133 | 1,900 | 0 | 0 | 17,033 | 28.66 |
| Total | 47,650 | 11,398 | 385 | 0 | 59,433 | 100.00 |
| Revenue (commercial traffic): | | | | | | |
| Freight | $4,004,704.90 | $1,028,091.84 | $408,417.39 | $91,641.00 | $5,532,855.13 | 68.88 |
| Passenger | 2,094,902.73 | 360,720.42 | 12,868.52 | .00 | 2,468,491.67 | 30.73 |
| Other | 27,114.42 | 3,745.02 | .00 | .00 | 30,859.44 | .39 |
| Total revenue | 6,126,722.05 | 1,392,557.28 | 421,285.91 | 91,641.00 | 8,032,206.24 | 100.00 |
| Expense (all traffic): | | | | | | |
| Vessel and voyage expense | $6,069,265.38 | $1,321,460.13 | $577,484.60 | $166,780.00 | $8,134,990.11 | 62.95 |
| Inactive-vessel expense | 203,958.00 | 19,436.00 | 13,259.00 | .00 | 236,653.00 | 1.83 |
| Repairs | [3] 1,427,714.62 | 131,297.85 | 64,456.18 | 67,437.75 | 1,690,906.40 | 13.08 |
| Charter hire | 1,389,075.00 | [4] 248,227.00 | 54,565.00 | 39,831.00 | 1,731,698.00 | 13.40 |
| Insurance [5] | 126,332.00 | 12,104.00 | 4,971.00 | 2,515.00 | 145,922.00 | 1.13 |
| Compensation payable to general agents, agents, and Alaska subagents | 702,288.46 | 195,460.19 | 67,639.61 | 17,351.43 | 982,739.69 | 7.61 |
| Total expense [6] | 9,918,633.46 | 1,927,985.17 | 782,375.39 | 293,915.18 | 12,922,909.20 | 100.00 |
| Loss before adjustment for estimated revenue value of military traffic and United States mail carried free | $3,791,911.41 | $535,427.89 | $361,089.48 | $202,274.18 | $4,890,702.96 | |
| Estimated revenue value of military traffic [7] | 2,193,279.00 | 772,612.00 | 136,337.27 | 85,906.00 | 3,188,134.27 | |
| Loss before estimated revenue value of United States mail | 1,598,632.41 | [8] 237,184.11 | 224,752.21 | 116,368.18 | 1,702,568.69 | |
| Estimated revenue value of United States mail | (Allocation by general agents not available) | | | | 340,706.76 | |
| Estimated net loss | | | | | 1,361,861.93 | |

[1] Though the operations of the War Shipping Administration through Olympic Steamship Co. as general agent are not mentioned in the petition for increases, they constituted an integral part of the services of the former.

[2] Includes voyages on which both military traffic and commercial traffic were carried, but not those on which only military traffic was transported.

[3] May include large expenditures as result of 4-year survey.

[4] Includes $24,805 as estimate of what charter hire would have been for one vessel owned by Government and on which, therefore, no charter hire was paid.

[5] Includes marine protection and indemnity insurance on all vessels but marine hull and machinery premiums for only one. As to others than this one, the Government acted as self-insurer.

[6] Does not include Government administrative expense for Alaskan commercial service or amount for Federal old age and unemployment taxes or for cargo or personal-injury claims.

[7] The revenue value of military traffic shown under Alaskan Transportation Co., general agent, is based upon the application of tariff rates to military cargo handled, which produces an average rate of $10.39 per payable ton as compared with an average rate of $9.06 per payable ton for commercial traffic. The revenue value of military traffic shown under the other general agents is based upon the application of the average revenue per ton and per passenger of commercial traffic handled by each vessel.

[8] Profit.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 3d day of January A. D. 1947.

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No. 641

INCREASED RATES FROM, TO, AND WITHIN ALASKA

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

*It is ordered*, That the petition under consideration herein be, and it is hereby, dismissed and that this proceeding be, and it is hereby, discontinued.

By the Commission.

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

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# INDEX DIGEST

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ABANDONMENT OF SERVICE. *See* DISCONTINUANCE OF SERVICE; EMBARGOES; SERVICE.

ABSORPTIONS. *See also* COST OF SERVICE; DELIVERY; EQUALIZATION; FREE TIME; GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES; ILLEGAL RATES AND PRACTICES; PORT EQUALIZATION; PREFERENCE AND *PREJUDICE*; SERVICE; TARIFFS.

Absorption of on-carrying charges to ports for which direct-line service is published but at which, for carriers' convenience, their vessels do not call, while refusing to serve discontinued ports direct or by transshipment, is unduly prejudicial. Puerto Rican Rates, 117 (129).

Through rate on rice from interior Louisiana points to Puerto Rico via New Orleans or Lake Charles was equalized by absorption of the difference in through rate, while New Orleans shippers of milled rice obtained in the rough from the same interior points were charged full ocean rate. New Orleans mills request equitable portion of their inland rate on rough rice be absorbed. No tariff authority exists for such absorption, and continued absorption on shipments from interior mills under conditions shown is open to question, but because of the importance of the issue raised no decision will be made on this record. Id. (130).

Carriers' absorptions for legitimate competitive reasons are lawful, and their absorbing in whole or in part through divisions or otherwise the costs of on-carriage to ports never or seldom served by their vessels not shown to be unlawful. Intercoastal Rate Structure, 285 (307).

Ocean lines, for operating convenience, sometimes transship at New York cargo destined to Boston, Philadelphia, Baltimore, and Newport News, and absorb the cost of such on-carriage, and, as to traffic which ordinarily would move through Boston to an interior point, shipments are sometimes forwarded to the interior point from New York, the ocean carrier absorbing the difference in cost between the inland rail rate from Boston to the interior point and from New York to such point. Complainant contends that shipments billed to New Orleans should be accorded similar treatment. Ocean lines offer direct service to North Atlantic ports, but only transshipment to New Orleans. Carriers are willing to accord rate parity with New York if and when direct-line service is established, but compelling rate parity on shipments via New York under the circumstances shown would not be warranted. Green Coffee Association *v.* Seas Shipping Company, 352 (356).

ABSORPTIONS—Continued.

An absorption practice that creates an undue advantage which cannot be overcome by break-bulk lines individually, except by resigning from the conference and precipitating a rate war, should be condemned. Seatrain's practice of absorbing difference between costs of delivering cargo to its vessels at Texas City and costs of delivering local tonnage to shipside at Houston, Galveston and Beaumont, and the action of the other conference members in authorizing such practice, are in violation of sections 16 and 17 of the Shipping Act, 1916, as amended. Beaumont *v.* Seatrain, 500 (504, 505). Reversed in part, 699.

ABUSE OF PROCEDURE.

Failure to request withdrawal of complaint prior to hearing, when complainant knew it could not produce evidence to prove alleged undue prejudice and unjust discrimination, constituted an abuse of the complaint and hearing procedure provided for shippers by the Shipping Act, 1916. Complainant's request for withdrawal, made at the hearing, denied, and complaint dismissed with prejudice. Weis-Fricker *v.* Hill, 705.

At the hearing on a complaint filed by complainant against the conference for refusal to admit it to membership, complainant's testimony was concluded at the morning session. During the noon recess the conference held a meeting and voted to admit complainant. This action was not conveyed to the examiner, however, until respondents' testimony was concluded late in the afternoon. No excuse was offered for the failure to advise the examiner of the conference action, which resulted in an unwarranted continuance of the hearing. The practice of denying membership in conferences until a complaint has been filed and a hearing has started is not looked upon with favor. There appears to have been an abuse of statutory procedure and a lack of the cooperative spirit which should govern the operation of conferences. Lykes Bros. *v.* Fla. East Coast Car Ferry Co., 722 (723).

ADMISSION TO CONFERENCES. *See* ABUSE OF PROCEDURE; AGREEMENTS UNDER SECTION 15.

ADVANTAGES. *See* AGREEMENTS UNDER SECTION 15; CIRCUMSTANCES AND CONDITIONS; DISCRIMINATION; EQUALIZATION; GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES; MINIMUM WEIGHTS; PREFERENCE AND PREJUDICE.

AGENCY. *See* COMMON CARRIERS.

AGENTS. *See also* AGREEMENTS UNDER SECTION 15; BILLS OF LADING; COMMON CARRIERS; PARTIES.

The law does not prohibit a steamship company from employing an agent merely because he is at the same time an importer or merchant, but the paying to an agent of a commission on his own cargo in addition to a fee for handling the ship results in violation of section 16 of the Shipping Act, 1916, as amended. Cargo to Adriatic, 342 (347).

Agents named respondents along with their common-carrier principals held not subject to Shipping Act, 1916. Cont. Distrib'g. Co., Inc. *v.* Cia. Nacional De Nav., 724 (725).

AGREEMENTS UNDER SECTION 15. *See also* ABUSE OF PROCEDURE; BROKERS AND BROKERAGE; CHANGED CONDITIONS; CHARTERS; COMMON CARRIERS; COMPENSATORY RATES; COMPETITION; CONTRACT RATES; CONTRACTS WITH SHIPPERS; COST OF SERVICE; DETRIMENT TO COMMERCE; DIFFERENTIALS; DISCRIMINATION; DUAL COMMON AND CONTRACT CARRIERS; EVIDENCE; FRAUD; FREE TIME; HANDLING; JURISDICTION; LIABILITY; MERCHANT

AGREEMENTS UNDER SECTION 15—Continued

MARINE ACTS; MONOPOLY; PARTIES; PORT EQUALIZATION; REASONABLENESS; SERVICE; SHIPPING ACT, 1916; TARIFFS; UNFAIRNESS.

**In General:**

The question of the duties of conference members and of what constitutes proper relationship between them and shippers patronizing their lines is discussed in 2 U. S. M. C. 58. Pacific Forest Industries *v.* Blue Star Line, 54 (55).

The advantages of group action on 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. *Pacific Coast-European Rates and Practices*, 58 (61).

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 respondents with respect to matters involved in the present proceeding. Proceeding discontinued. Id. (61).

Notice of filing of a section 15 agreement will be publicly posted in the Commission's offices in accordance with its established procedure. Kerr S. S. Co., Inc. *v.* Hansa Line, 206 (207).

**Ambiguity:**

Parties disagree on interpretation of authority under paragraphs 1 and 16 of conference agreement as to equalization between ports. Examination of the agreement shows that it is ambiguous as to the question of equalization and should be amended to clearly define the true agreement between the parties. Beaumont Port Commission *v.* Seatrain Lines, Inc., 500 (503).

**Canal Zone:**

Section 15 requires filing of agreements by carriers operating from Colombia and Ecuador to Canal Zone with transshipment to carriers on traffic to United States ports on the Atlantic and Gulf. Restrictions on Transshipments at Canal Zone, 675 (678).

**Competition:**

We cannot condemn too severely agreements which attempt to regulate competition in perpetuity. Agreements restricting competition should be of definite duration and for relatively short periods so that the parties and the Commission may have opportunity from time to time to observe the impact of changing conditions on their undertakings. Dollar-Matson Agreements, 387 (393, 394).

Contention is made that inasmuch as the originating carriers, operating from Columbia and Ecuador, and the delivering carriers, operating

AGREEMENTS UNDER SECTION 15—Continued

**Competition—Continued**

from Canal Zone to Atlantic and Gulf ports of the United States, do not compete with each other for the traffic transshipped by them at the Canal Zone, section 15 does not require filing of agreements relative to such transshipped traffic. But the cocarriers do compete with members of the association operating direct services. Restrictions on Transshipments at Canal Zone, 675 (679).

**Conference Membership:**

Conference denial of membership on grounds that additional tonnage would tend to demoralize the trades; that conference members had more than adequate tonnage available to meet the needs of the trades; that granting the application would be contrary to the best interest of the trade in many respects; and that complainant's method of acquiring vessels did not give promise of stability of service, not supported. Complainant is entitled to membership in the conference on equal terms with each of defendants. Failure to admit complainant, including participation in shippers' contracts entered into pursuant to the conference 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, and in complainant being subjected to undue and unreasonable prejudice and disadvantage in violation of section 16. Also, the regarding of inactive companies as regular carriers in the trades enjoying full and equal membership in the conferences, which complainant is denied, is patently unjustly discriminatory and unfair as between carriers, particularly in view of the period of approximately 7 years one member was inactive. Sprague *v.* Ivarans, 72 (75, 76).

If defendants, members of River Plate-Brazil conferences, do not submit 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. Id. (76).

Thorden Lines operate as a common carrier in North Atlantic service with sailings every 3 or 4 weeks to Gothenburg, Stockholm, and Helsingfors, occasional calls at Malmo and transshipments to Copenhagen. North Atlantic Baltic Freight Conference agreed to approve Thorden Lines' application for membership if revised to provide that the Scandinavian and Baltic ports served directly by Thorden would be confined to Finland, with the understanding that Thorden would be privileged until October 31, 1939, to call at Swedish ports in order to carry out the terms of a contract between Thorden and Stockholm receivers of automobiles. The conference agreement does not undertake to allot ports. Thorden Lines contended that the conditions under which the conference agreed to approve their application were unfair and discriminatory, and requested disapproval of the conference agreement unless they were admitted to the conference on equal terms with each of the conference members. There is no provision in the conference agreement restricting any member's

AGREEMENTS UNDER SECTION 15—Continued

**Conference Membership**—Continued

service, and to impose such a restriction on Thorden alone, if admitted to membership, would be unwarranted. Thorden Lines failed to disclose facts regarding rates, contracts, and commodities known to be material and important in a determination by the conference lines of their application for admission to the conferences and 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. In view of the contract situation in which Thorden Lines are involved, they are not shown to be eligible for equal membership in the conference and the record does not justify disapproval of the conference agreement. Application of Thorden, 77 (78, 79, 82).

Since Brodin Line is not in regular common-carrier operation in the trades concerned, refusal of admission to the conferences does not violate any of its 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 it as member of the conferences will not result in unjust discrimination, unfairness, detriment to commerce of the United States, undue prejudice, or violation of the shipping laws, as alleged. Complaints dismissed. Hind, Rolph & Co. *v.* French Line, 138 (141, 142). Dismissal without prejudice, 280.

Agreement 6210–A permits Consolidated, a conference member, to use vessels of Griffith, a nonconference carrier, for transportation of the former's cargo. Some of the contract's salient provisions are that Consolidated acts as agent for the vessel, solicits and receives the cargo, collects the freight, etc. From all the facts we conclude that Consolidated is a common carrier. Agreement 6210–A will be approved, but Consolidated should eliminate from the vessel-space contract all reference to itself as agent. Agreements 6210, etc., 166 (167, 168).

Complainant alleges that defendant's refusal to admit it to conference membership, the practices of conference members in connection with exclusive patronage contracts adopted after complainant applied for membership, and admission of Ellerman & Bucknall and Strick & Company to conference membership subsequent to complainant's application, created undue prejudice and preference, unjust discrimination, unfairness, and detriment to commerce of the United States. Withdrawal by Hansa and Strick-Ellerman Joint Service from conference membership, effecting the dissolution of the conference and terminating the conference agreement, render the issues moot. Complaint dismissed. Kerr *v.* Hansa, 206 (207).

The stipulation by conference members Hansa and Strick-Ellerman that their conference membership withdrawal was "without prejudice to all rights, both now and in the future, all such rights being reserved" does not affect their status under the agreement, since the withdrawal of these parties as stated in the conference minutes effected the dissolution of the conference and terminated the conference agreement. Therefore, no resumption of concerted action with respect to matters within the purview of section 15 may lawfully be taken by defendants

AGREEMENTS UNDER SECTION 15—Continued

**Conference Membership**—Continued

until the agreement of the parties in respect thereto has been filed with us and has received section 15 approval. Id. (207).

It is apparent that complainant is prepared to engage regularly in the trade in conformity with the terms of the conference agreements; that the proposed direct service will be an improvement over the present indirect service; that denial of conference membership to complainant, together with the effect of the exclusive patronage contracts, acts as an effective bar to complainant's participation in the trade and that it is not shown conclusively that the trade is overtonnaged. Waterman *v.* Bernstein, 238 (243).

Excessive vessel tonnage in this trade proved to be no deterrent to admission of Osaka Syosen Kaisya to conference membership just a short time prior to complainant's application. Defendants allowed 20 days to admit complainant. Id. (243, 244).

Complainant Cosmopolitan applied for conference membership independently of its common-carrier principal, Mowinckels, and could have no legitimate interest other than that of its principal; hence, no necessity exists for separate membership. Consequently, no further consideration will be given to the application of Cosmopolitan. Cosmopolitan *v.* Black Diamond, 321 (326).

Establishment in a trade by operating vessels regularly in it as a condition precedent requirement to conference-membership right is not binding on the Commission in an approved agreement when deciding questions of contested eligibility. Id. (327)..

Announcement of service, publication of sailing schedules, and solicitation of cargo resulting in common-carrier commitments are sufficient to qualify an applicant to submit an application for conference membership. Id. (328).

Mowinckels is entitled to conference membership, and defendants' denials of membership were without just and reasonable cause. Such denials while at the same time maintaining exclusive patronage contracts with shippers create unjust discrimination and operate unfairly as between Mowinckels and defendants, thus subjecting the conference agreements to disapproval under section 15 and Mowinckels being subjected to undue and unreasonable prejudice and disadvantage, in violation of section 16. Id. (330).

Complainant Danish corporation alleges defendants' refusal to admit it to conference membership and defendants' exclusive patronage contracts with shippers create an undue preference to certain shippers, subject complainant to undue prejudice, and are in violation of sections 15, 16, and 17 of Shipping Act, 1916. Due to complainant's cessation of service upon invasion of Denmark by Germany, and pursuant to agreement of all parties after hearing, complaint dismissed as moot, without prejudice. Rederiet Ocean *v.* Yamashita, 335 (336).

Membership in the conference continues to be held by inactive lines while it is denied complainant. Like situations were condemned in 1 U. S. M. C. 634, 641, and 2 U. S. M. C., 72, 76. Olsen *v.* Blue Star, 529 (532).

Although complainant has the background, the experience, the personnel, and the financial ability to engage in common carrier activities, the

AGREEMENTS UNDER SECTION 15—Continued

**Conference Membership**—Continued

conference contends it is not eligible for membership as the conference agreement restricts admission to persons, firms, or corporations engaged in operating vessels regularly in the trade. Compliance with this requirement would necessitate operation for an appreciable period of time, probably at a loss, which would result in unjust discrimination, unfairness as between carriers, and detriment to commerce of the United States. Black Diamond S. S. Corp. *v.* Cie M't'me Belge (Lloyd R.) S. A., 755 (759).

A proper clause for the admission of new members to a conference suggested. Id. (759).

Conference action on application for membership was unduly delayed, and no reason was given for denial of membership. The conference produced no witnesses at the hearing, and no reason appeared for the length of time taken to notify complainant. Prompt action was important to complainant, and failure of the conference to act more expeditiously was inexcusable. Since the agreement provided that admission should not be denied except for just and reasonable cause, complainant was entitled to know the reason or reasons for the denial of the application. Id. (760).

Conference agreement limits regular membership to lines whose services originate at Pacific coast ports of the United States or Canada and permits associate membership to lines whose services originate at Atlantic or Gulf ports of the United States or Atlantic ports of Canada and whose calls at Pacific coast ports are incidental to, or a continuation of, their main services. Associate members are not permitted to vote, are not required to pay an admission fee, put up a good performance bond or pay any part of the conference expenses, but they participate on an equal basis with regular members in contracts with Pacific coast shippers and are kept advised of all conference proceedings and receive all tariffs, conference circulars, and the minutes of conference meetings. The provisions which create regular and associate membership and limit the privilege of voting to regular members are not unjustly discriminatory or unfair as between carriers, contrary to the public interest, or detrimental to the commerce of the United States but should provide for the membership of carriers whose services originate at other than Atlantic or Gulf ports of the United States or Atlantic ports of Canada and who call at Pacific coast ports en route to the Orient. Pacific Westbound Conference Agreement, 775 (776, 778, 783).

Discretionary withdrawal from membership permits of possible discrimination in favor of a particular line or lines. Such provisions should be amended to provide that the conference shall report to the Commission every instance where a member fails to make a sailing within the 12-month period, and the conference action thereon. Id. (779).

**Districting:**

Provision in conference agreement dividing the conference into two districts for geographical reasons and because the type of cargo originating in them is different, permitting full rate-making power to

AGREEMENTS UNDER SECTION 15—Continued

**Districting**—Continued

each district, the advantage to the plan being that each district can act quickly when rate adjustments are demanded on heavy-moving commodities to meet charter or tramp competition, not shown to adversely affect the public or to be unlawful. Pacific Westbound Conference Agreement, 775 (782, 783).

**Evidence of Existence:**

Respondents contend there is no agreement or understanding with Gulf Lines concerning establishment of proportional rates or transshipments. On the contrary, it appears that the two groups fix rates, after discussion with each other, at competitive levels. Respondents are subject to the provisions of section 15 without the necessity of any previous finding by us. Inland Waterways Corporation et al., 458 (459, 460).

A through route is an arrangement, expressed or implied, between connecting carriers for the continuous carriage of goods from an originating point on the line of one carrier to destination on the line of another. While the existence of an agreement is denied by respondents, it is obvious there is an implied arrangement within the meaning of the above definition. Id. (462, 463).

**Expiration:**

In the agreement concerned filed with us for action under section 15, the parties expressed their several undertakings in connection with proposed discontinuance by Puerto Rico Line of its common carrier service from Gulf to Puerto Rico and the sale of its good will to Waterman. Following hearing on the agreement and before determination by the Commission of the issues, advices are that the agreement has expired by limitation and that a new agreement relating to the same subject has been executed. Under the circumstances, further consideration of the subject agreement is unnecessary. Proceeding dismissed. Agreement 6630, 215.

**Fraud:**

The Commission has power to withdraw its approval ab initio where such approval has been obtained by fraud, but nothing in the record justifies such an inference here. Dollar-Matson Agreements, 387 (390).

**Good will:**

Agreement indicated a desire to transfer as far as reasonably feasible the good will and patronage of service to be terminated. Claim that agreement involved only a sale of good will not subject to our jurisdiction is anomalous. Assuming good will only was involved, the contract would be of doubtful validity without an express or implied agreement or understanding not to compete within the specified term. The agreement is one which controls, regulates, prevents, and destroys competition in the trade and is subject to our jurisdiction under section 15. Respondents carried out portions of the agreement before approved by us as required by section 15, and their failure to secure such approval was in violation of that section. N. Y. P. R.—Waterman, 453 (456, 457).

AGREEMENTS UNDER SECTION 15—Continued

**Jurisdiction of Commission:**

Both parties seek clarification of the order in 1 U. S. M. C. 750 forbidding further payments under the agreement. Under section 15, the agreement became lawful when approved and remained so until disapproved. Our function is either to disapprove or not disapprove the agreement. Going beyond that step is either to trespass upon the contractual rights of the parties or to issue a gratuitous command to refrain from violating laws which the Commission does not administer. Therefore, the order will be amended to eliminate reference to further payments. Dollar-Matson Agreements, 387 (396).

Where one of two parties to an agreement is an agent and not a common carrier, such agreement is not the kind contemplated by section 15 of the Shipping Act, 1916, and will not be approved. Agreement No. 7620, 749 (754).

The Commission has the power to order a change in a conference agreement after it has been approved and action taken thereunder by the conference. Id. 759.

California Railroad Commission assumed jurisdiction over the car-servicing activities of respondents and other carloaders under the State utilities act, which grants such power to extent it does not encroach upon Federal authority. Parkersburg & Ohio River Transportation Co. *v.* City of Parkersburg (1883), 107 U. S. 691. The question therefore is: If respondents are proper parties to a section 15 agreement and the Maritime Commission approves such agreement, has it occupied the field of activity here under discussion?

To the suggestion of counsel for the California Commission—that the case of California and Oakland *v.* United States (1944), 320 U. S. 577, fails to recognize Federal occupancy of this field—it is sufficient to say that that case did not involve section 15 of the Shipping Act. One must look to that section to find the extent of the powers of the Maritime Commission in this proceeding. When carriers or "other persons" undertake, by agreement, to fix or regulate rates, control competition and so on, there must be performed a series of acts under the statute. (1) They must file the agreement with the Commission. (2) The Commission must determine, among other things, whether such agreement is unjustly discriminatory or unfair as between carriers, shippers, or ports, or is detrimental to commerce, or whether it is in violation of the Shipping Act. (3) Upon favorable findings, the Commission must approve the agreement; otherwise it must disapprove the agreement. The rates must conform to the standards set forth in the agreement itself. The agreement here is explicit in providing for the establishment and maintenance of just and reasonable rates. Finally, the Commission must modify or cancel an approved agreement when such agreement or action taken thereunder contravenes the purposes of section 15.

Thus, it is apparent that while the agreement is operative, the Commission has plenary power to control, among other things, the fixing and regulation of rates and practices of the agreeing parties. Therefore, approval of the agreement would constitute automatic and complete occupancy of the field of activity here involved by the Federal government. Status of Carloaders and Unloaders, 761 (766, 767).

AGREEMENTS UNDER SECTION 15—Continued

**Liability of Parties:**

Motion to dismiss contending that some of defendants did not participate in the equalization denied because the responsibility for rates and practices resulting from conference action falls upon all members jointly, and, therefore, the conference in effect operates substantially as one carrier Beaumont *v.* Seatrain, 500 (501).

**Management:**

Respondents' conference agreements when filed and approved manifestly contemplated every proper effort on their part to accomplish the details of management through adequate tariff items and rules and, if and as found necessary by them, through amendments to the conference agreements themselves. Rates from Japan to United States, 426 (437).

**Rates, Routes, Sailings, Pooling:**

$43 N. O. S. rate unreasonably high, and its substitution for the $16 commodity rate previously in effect created a barrier to the sale of Pacific Coast lumber in the East Coast of South America market and constituted an abuse of the rate-making power which the conference members are permitted to exercise under their approved conference agreement. 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 is condemned. Pacific Coast River Plate Brazil Rates, 28 (29, 30).

Quaker's agreements restrict transshipment to New York. It testifies 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 into new ones. There is no evidence that Quaker has refused Holland America's request to participate in a through rate Rotterdam to Pacific coast ports via Baltimore, or that Holland America ever made such a request. Combination of local rates applied on school slates and Christmas tree ornaments, Rotterdam to Pacific coast via Baltimore, not unduly prejudicial or discriminatory. Kress *v.* Nederlandsch, 70 (71).

The fact that the imposition of the separate handling charge pursuant to defendant's agreements 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, and there has been no contention or proof that the total charges are so unreasonably high as to be detrimental to commerce of the United States. Los Angeles By-Products Co. *v.* Barber, 106 (114).

The terms of Agreement 6210–B under which Griffith, the vessel owner, may transport certain commodities at its own rates, would permit those commodities to be transported at different rates. This would result in undue preference and prejudice. Agreement 6210–B as now before us will not be approved. A new agreement showing that the rates on file with us will be assessed on all shipments transported by

AGREEMENTS UNDER SECTION 15—Continued
**Rates, Routes, Sailings, Pooling**—Continued
Griffith, if submitted for approval, will be given consideration. Agreements 6210, 6210–A, etc., 166 (168).
Agreement 6105 between a common carrier and a terminal company, whereby a particular shipper is accorded more free time and assessed lower charges than the general public, is unduly preferential and prejudicial. The agreement will not be approved. Id. (171).
Conference chairman suggests a section 15 pooling agreement designed to compensate an operator whose vessel is laid up because of inability to obtain lumber cargo, thereby preventing chartering or contracting by such operator; or establishment through a proper section 15 agreement of a rate for charter hire or other contract adjusted to protect the conference carriers' rate. This or some other constructive plan is desirable; and respondent private or contract carriers might well, in their own interest, lend their aid to achieve stability in the trade. Pacific Coastwise Carrier Investigation, 191 (195).
U. S. Navigation Company, a nonconference line, has continued to maintain rates less than conference rates, but the pooling agreements made it unnecessary and unprofitable for it to engage in arbitrary rate cutting and resulted in mutual advantage to it and the conference lines. There was no showing that the agreements were unjustly discriminatory or unfair as between carriers, and all parties desired their continuance. Agreements 1438, etc., 228 (236).
The pooling agreements have resulted in effective control of the competition of U. S. Navigation Company, a nonconference line, but at the same time have required that company to continue its Hamburg service. This service at less than conference rates has been an effective means of protecting the conference lines against competition from tramps or others outside of the conferences, and at the same time has furnished adequate facilities to those shippers who cannot or will not use the conference lines. There have been no complaints from shippers against the agreements, and there is no evidence that they have operated to deprive shippers of adequate facilities for the movement of their goods. Id. (237).
The purpose of a meeting concerning 10-percent increase in wharfage charges on import and export traffic "was to get together and have an understanding that there would be concerted action at the same time and in the same manner, to devise the proper method of putting those rates into operating form," and, while increases in excess of 10 percent were discussed at the meeting, "it was the concensus of opinion that there would be only the 10-percent increase," and "the only thing put into effect was what all three railroads agreed upon." These activities clearly establish the existence of a cooperative working arrangement as described in section 15, no memorandum of which has been filed with and approved by us. Railroad respondents will be expected to comply immediately with the provisions of section 15 applicable to this arrangement. Wharfage Charges, Boston, 245 (247, 248).
While the establishment of through routes and the bases of the apportionment of earnings on traffic moving over such routes are fixed by the agreements and, therefore, are not routine, establishment and revision

AGREEMENTS UNDER SECTION 15—Continued
**Rates. Routes, Sailings, Pooling**—Continued

of the rates, by the terms of the agreements, are left to the parties. We have not heretofore held that such routine operations under the agreements need approval under section 15. The record does not justify departure from the present procedure. Green Coffee Assoc. *v.* Seas Shipping Co., 352 (358).

Arrangement involving transportation of automobiles on Great Lakes in space engaged by a common carrier in vessels of another common carrier is one authorized by section 15, which, subject to prior approval by the Commission permits common carriers to apportion traffic and enter into cooperative working arrangements. Section 2 of Intercoastal Shipping Act must be interpreted in the light of specific provisions of section 15. Agreements outlining these arrangements were approved. New Automobiles in Interstate Commerce, 359 (364).

In view of changed circumstances, pooling agreement previously approved is unjustly discriminatory and unfair as between the parties thereto. Pooling Agreement 5893, 372 (381).

**Rules and Regulations:**

Rules and regulations in conference agreement providing that each party shall abide and be governed thereby, and which are to be such as, in the opinion of the conference, shall be necessary or desirable to further the ends of the conference, and which can be changed by a two-thirds vote, with one exception requiring unanimous vote, not shown to be unlawful, but should be submitted as a part of the agreement. Agreement No. 7790, 775 (782, 783).

**Terminal Operators:**

We will not at this time prescribe for terminal operators a detailed system of rules and regulations governing the publication of their tariffs. For the present we suggest that self-regulation through the medium of section 15 agreements approved by us is a much simpler and more satisfactory solution of the problem. A cooperative working arrangement among the terminals, designed to bring about a stable terminal rate structure for the handling of intercoastal lumber, would not only promote the orderly transportation and marketing of lumber, but would foster fair and regulated competition among the terminals themselves. Such agreements should embody, among other things, publication and posting of tariffs of charges, rules and regulations, and provision for 30 days' notice for changes therein. Lumber Through Panama Canal, 143 (150).

One agreement is between the Commonwealth of Massachusetts and the New Haven R. R., whereby the latter agrees to make its Boston rates apply to and from the former's piers and to make no additional charge to shippers or consignees for wharfage. New Haven agrees to pay Commonwealth a wharfage charge. The other agreement is between Piers Operating Company and New Haven. Piers Operating Company agrees to maintain the wharf premises, and the railroad agrees to pay it 10 cents per ton on freight received ex vessel or delivered at said premises for movement by vessel. These are operating agreements between terminals and railroad which are not operating under

AGREEMENTS UNDER SECTION 15—Continued
**Terminal Operators**—Continued

said agreements as "other persons" and are not subject to the Commission's section 15 jurisdiction. Wharfage Charges, Boston, 245 (250, 251).

McCormack has preferential assignment of part of Oakland's terminal providing that McCormack shall not compete with Oakland for terminal traffic and shall observe the same rates. Howard has lease agreement covering part of Oakland's facilities providing latter shall receive all revenue from tolls, wharfage, and dockage. Rates to be those fixed by Oakland. Port of Stockton Grain Terminal has preferential-use agreement with Stockton covering certain floor space. Stockton retains control of space, rates, rules and regulations. These are agreements as defined in section 15 and are subject to Commission approval. None of them has been filed with the Commission, and it is unlawful to carry them out before such filing and approval. Practices of San Francisco Bay Terminals, 588 (592, 593).

Respondents should not overlook the possibilities of solving their problems through section 15 agreements. They have taken the first step in this direction by forming associations and filing cooperative working agreements which have been approved by the Commission. These agreements, fully implemented and utilized and strictly adhered to, will go far toward avoiding further regulation. Id. (607).

**Unlawful, Unfair, Detriment to United States Commerce:**

In the original report in this proceeding (1 U. S. M. C. 775), it was found that agreement between the Intercoastal Steamship Freight Association and the Gulf Intercoastal Conference, which established procedure designed to keep each group of carriers informed of rate changes of the other and allocated certain inland territory tributary to either Atlantic or Gulf ports, was incomplete. Respondents were accorded opportunity to file their true and complete agreement and intention as disclosed at the hearing. No further action by them having been taken, an order disapproving the agreement will be entered. Agreement No. 6510, 22.

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 storage charges in question, of new agreements showing the parties thereto and true scope. Storage Charges under Agreements 6205 and 6215, 48 (53).

The allegation that defendants' agreements respecting the handling charge have not been filed as required by section 15 is not sustained by the record. The action taken by defendants in their respective conferences concerning the establishment of the handling 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 the 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. Los Angeles By-Products Co. *v.* Barber, 106 (114).

AGREEMENTS UNDER SECTION 15—Continued

**Unlawful, Unfair, Detriment to United States Commerce—Continued**

Defendants' conference agreements and exclusive patronage contracts with shippers found unjustly discriminatory and unfair as between complainant and defendants and to subject complainant carrier to undue prejudice. Complainant's admission to conference membership required. Waterman S. S. Corp. *v.* Bernstein, 238 (244).

The purpose of a meeting concerning 10-percent increase in wharfage charges on import and export traffic "was to get together and have an understanding that there would be concerted action at the same time and in the same manner, to devise the proper method of putting those rates into operating form," and, while increases in excess of 10 percent were discussed at the meeting, "it was the consensus of opinion that there would be only the 10-percent increase," and "the only thing put into effect was what all three railroads agreed upon." These activities clearly establish the existence of a cooperative working arrangement as described in section 15, no memorandum of which has been filed with and approved by us. Railroad respondents will be expected to comply immediately with the provisions of section 15 applicable to this arrangement. Wharfage Charges, Boston, 245 (247, 248).

Application of requirement in defendants' schedules providing for 250-ton minimum because identical in terms, concurrently filed, and concurrently effective was not a carrying out of an agreement without filing and approval in violation of section 15, since defendants publish and file through common publishing agent and their agreement on file and approved authorizes such a practice without obtaining separate approval every time a practice is revised. Pacific American Fisheries *v.* American Hawaiian, 270 (274).

No attempt has ever been made by respondents to enforce important provisions of their conference agreements. The view is warranted that in allowing false billing there may be concurrence by respondents pursuant to a tacit understanding between them differing from the express provisions of their conference agreements and joint tariff, and in derogation thereof. However, we are not prepared to conclude that the common disregard by respondents of their conference provisions and joint tariff, and their common allowance of false billings, establish that there is an agreement between them to so disregard and allow. Rates from Japan to United States, 426 (435, 436).

On shipments from certain interior origins there are deductions in ocean rates which exceed the maximum of 30 percent established by the conference agreement. Consequently, such excess deductions are made without section 15 authority. Mobile *v.* Baltimore Insular, 474 (481, 482).

Agreements covering transportation on Great Lakes found subject to section 15. Practices thereunder found not to result in departures from tariffs in violation of section 2 of Intercoastal Act or to create undue preference in violation of section 16. New Autos in Interstate Commerce, 359 (365).

AGREEMENTS UNDER SECTION 15—Continued
Voting:
Section in agreement providing that no change shall be made affecting car-servicing rates unless agreed to by not less than 75 percent of water-carrier members is unfair as between such carriers and other members and detrimental to commerce. Status of Carloaders and Unloaders 761 (774).
AGREEMENTS WITH SHIPPERS. *See* CONTRACT RATES; CONTRACTS WITH SHIPPERS.
ALASKA RAILROAD.
Alaska Steamship maintains joint rates and fares with Alaska Railroad, which is owned and operated by the U. S. Government. Apparently these rates do not come within the jurisdiction of the Interstate Commerce Commission, 34 *Attorney General Opinions* 232. Respondent Alaska Steamship should cancel existing joint through rates and fares with Alaska Railroad and establish in lieu thereof proportional rates for the water transportation involved. Alaskan Rates, 558 (581).
ALLOWANCES. *See also* PICK-UP AND DELIVERY.
Compensation to owner of cargo for service of unloading ship should be published in carrier's tariff as an allowance. Lumber through Panama Canal, 143 (145, 150).
ANTITRUST LAWS. *See* AGREEMENTS UNDER SECTION 15; MONOPOLY.
ANY-QUANTITY RATES. *See also* CARLOAD-LESS-CARLOAD; QUANTITY.
Wholesalers and jobbers in various Pacific coast cities contend that any reduction or elimination of the spread on merchandise which they handle will result in decrease in their business for the reason that some retail merchants which they now supply may be enabled thereby to purchase direct from eastern manufacturers. Such evidence does not establish unlawfulness. In 1 U. S. M. C. 765, we upheld the establishment of any-quantity rates although similar objections were interposed. Westbound Intercoastal Carload and Less-Carload Rates, 180 (185).
Proposed any-quantity port-to-port commodity rates on wine between Baltimore and Norfolk found not justified. Baltimore-Virginia Ports Wine Rates, 282 (284).
APPLICABLE RATES. *See* CONCESSIONS; CONTRACT RATES; EVIDENCE; FALSE BILLING; OVERCHARGES; PROPORTIONAL RATES; RELEASED RATES; REPARATION; TARIFFS; THROUGH ROUTES AND THROUGH RATES; UNDERCHARGES.
ARBITRARIES. *See* EQUALIZATION; PREFERENCE AND PREJUDICE.
ARGUMENT. *See* HEARING.
ASSEMBLING AND DISTRIBUTION. *See also* HANDLING; REPARATION.
Complainants contend defendants' costs were not increased by the service involved in view of defendants' contracts with stevedoring companies providing for an all-inclusive service between ship's hold and place cargo is received and delivered. The record shows that these contracts were fixed after a careful consideration of all services past experience indicated would be required, and the fact that the defendants 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. Boswell *v.* American-Hawaiian, 95 (101).


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ASSEMBLING AND DISTRIBUTION—Continued

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. Id. (101).

Decision in 1 U. S. S. B. B. 380 was based on 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 right of a carrier to separate the charge for transportation was not in issue in the Brittan *v.* Barnaby, 62 U. S. 527, and Covington *v.* Keith, 139 U. S. 128, cases, and the principles announced in those cases are not conclusive of the issue here, that is, whether carriers have the right to divide the total charge for transportation. Charges for assembling, distributing and handling and defendants' practices in assessing and collecting such charges were not unjust and unreasonable. To the extent these findings conflict with 1 U. S. S. B. B. 380, that case is overruled. Id. (102–105).

Complainants cited Assembling and Distributing Charge, 1 U. S. S. B. B. 380, as conclusive of the issues in these proceedings. 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. Collection of separate charges for handling general cargo beyond ship's tackle at California ports, in connection with shipments moving in foreign commerce, not shown to be an unreasonable practice in violation of section 17. Los Angeles By-Products Co. *v.* Barber, 106 (114, 115).

BERTH

The word "berth" in "berth owner" as understood in shipping is "the connection with the trade, the contact with the shippers as merchants over the years. It is the amount of money that has been expended in working up those contacts and general good will." Agreement No. 7620, 750.

BILLS OF LADING. *See also* COMMON CARRIERS; TARIFFS.

Whenever a tariff refers to a bill of lading and states that the rates therein published are dependent upon bill of lading conditions, such conditions should be published in the tariff. Puerto Rican Rates, 117 (131).

Respondents claim that if they did not prepare the shipping documents, for which reasonable compensation is proper, when requested by shippers, the employment of a forwarder or broker would be necessary, in which event the cost to the shipper would be greater. It is necessary, however, to differentiate between preparing and issuing bills of lading and preparing and issuing export declarations and other documents of the character mentioned in respondents' tariff rule. Id. (133).

The Harter Act requires carriers to issue bills of lading or shipping documents. The Bills of Lading Act requires carriers to count package freight and ascertain kind and quantity of bulk freight. Respondents' contention that all

BILLS OF LADING—Continued
necessary requirements are fulfilled when they sign bills of lading presented by shippers overruled. Carriers must tender a duly executed bill of lading for goods offered for transportation. Id. (133).
In 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. No reason to depart from that ruling. Respondents' rules in such connection are unreasonable and unlawful and should be modified. Id. (133).
Bill-of-lading provisions affecting transportation rates or the value of transportation service are not governing unless incorporated in the carriers' tariffs. Lumber Through Panama Canal, 143 (145, 150).
The bill of lading form used contains phrases "Consolidated-Olympic Line, Agent for Carrier" and "Consolidated-Olympic Line, Carrier's Agents." Concluded from all the facts that Consolidated-Olympic Line is a common carrier. It should eliminate from the bill of lading all reference to itself as agent. Agreements 6210 Etc., 166 (168).
When rates are published dependent upon conditions in the carrier's bill of lading, such conditions should be published in the tariff. Alaskan Rates, 558 (581).
Provisions of bills of lading or other documents affecting rates or the value of transportation service are not governing unless incorporated in carrier's published and filed tariffs. Id. (584).
BILLS OF LADING ACT. *See* BILLS OF LADING.
BLAND FORWARDING ACT. *See* BROKERS AND BROKERAGE.
BLANKET RATES. *See also* DISCRIMINATION; DISTANCE; TARIFFS.
Respondents' justification of their failure to reflect in rates the distances between southwestern ports in the Yakutat-Seward area while observing the distance factor with respect to rates to and from southeastern ports south of Yakutat, is that vessels call at intermediate ports sometimes en route to and from Seward, and the rates have always been blanketed in order to avoid having higher rates for a shorter than for a longer distance over the same route in the same direction, the shorter being included within the longer distance. That practice justified. Alaskan Rates, 558 (577–578).
Inasmuch as no justification was given for blanketing rates on commodities such as products of mining, fuel oil, and livestock, respondents will be expected to adjust such rates on a mileage basis. Id. (578).
BOOKING. *See also* SPACE.
Proration or distribution of space in times of space stringency based upon the relative proportion in which shippers offer lumber on hand and conveniently located for prompt loading, taking into consideration the rights of small shippers, would seem to be just and reasonable. This principle recognizes a shipper's ability to do business and hence his right to demand space in times of shortage. Defendant did not prorate the space and service in proportion to cargo offerings which were on hand and ready for loading. Its failure in this respect resulted in undue prejudice in violation of section 16. Patrick Lumber Co. *v.* Calmar, 494 (498).
BROKERS AND BROKERAGE. *See also* BILLS OF LADING; CONCESSIONS; FORWARDERS AND FORWARDING; JURISDICTION; SHIPPING ACT, 1916; SPACE.
Complainant urges that the conference rates are unreasonably high and therefore detrimental to the commerce of the United States. In addition

BROKERS AND BROKERAGE—Continued
to the rate increases, it is obliged to pay other charges formerly absorbed by 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. Assailed rates not unduly prejudicial or unjustly discriminatory, and conference agreement not shown unjustly discriminatory or unfair or to operate to detriment of U. S. commerce. Pacific Forest Industries *v.* Blue Star Line, 54 (56).

The duties imposed upon defendant by sections 14, 16, and 17 of the Shipping Act, 1916, were not owed by defendant to complainant broker whose only interest in the transportation involved was the compensation it expected to receive from defendant for supplying cargo for defendants' vessels. American Union Transport *v.* Italian Line, 553 (556, 557).

By "brokerage" payments to shippers, respondents allowed persons to obtain transportation at less than the regular rates by unjust and unfair means in violation of section 16 of the Shipping Act, 1916. Rates of Garcia, 615 (619).

Provision in conference agreement prohibiting payment of brokerage cannot be approved by the Commission in view of the Bland Forwarding Act. Such provision should be eliminated, but carriers do not have to pay brokerage, for that would seem to be a matter for individual managerial judgment. Pacific Westbound Conference Agreement, 775 (781–3).

BULK. *See also* WEIGHT OR MEASUREMENT.

Defendant refers to the bulk of complainant's shipments of glass lamp globes or shades and the importance of shipboard displacement in connection with rate making for transportation by water. Measurement rates not shown unreasonable. Gill *v.* Alaska Steamship Company, 316 (317).

Defendants point out that the candy item embraces all types of candy in relation to which the hollow-mold variety is but a small portion; that hollow-mold candy is bulky and light, measuring 7 times its weight; and contend that, if the $55 weight rate sought were applied to all of complainant's shipments of candy, the revenue thereon would be greater than that derived from the rate charged. This contention is without merit. Kress *v.* Baltimore Mail, 450 (451).

BURDEN OF PROOF. *See also* INTERCOASTAL SHIPPING ACT, 1933; REASONABLENESS; SUSPENSION.

Respondents contend Commission's power extends only to particular rates, rules, regulations and practices; that no burden of proceeding or 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, Commission has no authority to require them to justify increases in rates generally. Acceptance of respondents' position would be a recognition that under section 4 of the Intercoastal Act a just and reasonable tariff can be prescribed only after numerous complaint proceedings against particular rates. Respondents' position is untenable. Puerto Rican Rates, 117 (123).

Respondents rely upon the inherent right to initiate rates and, notwithstanding protests and the suspension of their tariffs, claim that a prima facie

BURDEN OF PROOF—Continued
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. The presumption of reasonableness attaches to defendants' rates in effect prior to September 21, 1938, and not to the changes in those rates. 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. Id. (124).
Respondents argue that absence from the statute Commission administers of a provision set forth in the Interstate Commerce Act which requires carriers to justify rate increases 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 Interstate Commerce Commission's practice of requiring respondents in suspension proceedings to justify reductions as well as increases. Id. (124).
Protestants urge that respondent's schedules should be ordered canceled because respondent has failed to show that the rates will be compensatory. No protest was made on that ground and respondent's witness was not prepared to testify in such connection. Inasmuch as respondent's proposed rates are aligned competitively with those of the other carriers in the trade, it cannot be assumed without proof that they will be noncompensatory. Class Rates Between North Atlantic Ports, 188 (190).
CANAL ZONE. *See also* AGREEMENTS UNDER SECTION 15; SHIPPING ACT, 1916; THROUGH ROUTES AND THROUGH RATES.
Transportation from New York to the Canal Zone, with transshipment to Central America, is not subject to section 18 of the Shipping Act, 1916. Neuss, Hesslein *v.* Grace, 3 (4).
CARLOADING AND UNLOADING. *See* AGREEMENTS UNDER SECTION 15; LOADING AND UNLOADING; REASONABLENESS; SHIPPING ACT, 1916.
CARLOAD—LESS-CARLOAD. *See also* FORWARDERS AND FORWARDING; HANDLING; MIXED SHIPMENTS; QUANTITY.
Carload unit system in ocean transportation is justified only because of railroad competition. Intercoastal Rate Structure, 506 (509).
CARRIER PROPERTY. *See also* REVENUE; VALUE OF CARRIER PROPERTY.
Where hotel is built by carrier to accommodate tourists on side automobile trip, it is fair to conclude that its use by the general public is incidental. It is reasonably necessary in the carrier operation and should be classified as common-carrier property. Rates of Inter-Island Steam Navigation Company, 253 (255).
Drydocks owned by carrier, which eliminate commercial drydocking at estimated yearly cost of $200,000 and which are also used for outside commercial work, resulting in saving to carrier operations, are necessary adjuncts and should be valued as part thereof without segregation of proprietary and commercial uses. Id. (255).
CHANGED CONDITIONS. *See also* DISCRIMINATION; MOOT CASES; UNFAIRNESS.
In view of changed circumstances, pooling agreement, previously approved, is unjustly discriminatory and unfair as between the parties thereto. Agreement disapproved. Pooling Agreement 5893, 372 (381).
Upon receipt of stipulation of facts and agreement by the parties to modification of the order in 2 U. S. M. C., 366, reciting changed conditions, the

CHANGED CONDITIONS—Continued
proceeding was reopened. Original report and order modified so as to permit establishment by defendants of schedule of rates proposed in the stipulation and agreement. Grays Harbor *v.* Klaveness, 525 (526).
Petition for further hearing to show changed conditions denied without prejudice to filing formal complaint. Alaskan Rates, 558 (580).
CHARTERS. *See also* COMMON CARRIERS; COMPETITION; CONTRACT CARRIERS; COST OF SERVICE; DISCRIMINATION; DUAL COMMON AND CONTRACT CARRIERS; EVIDENCE; TARIFFS.
The action of a conference in refusing to admit to membership a carrier operating chartered vessels, when other carriers so operating have been admitted, results in unjust discrimination, unfairness, and unreasonable prejudice. Sprague *v.* Ivarans, 72 (74, 76).
Chartering of vessels as a subterfuge to give a shipper a lower rate than that on file would violate the shipping acts. Intercoastal Charters, 154 (156).
The law governing the hire of chattels controls the relation between a vessel owner and a charterer. Ownership of a vessel may be acquired by purchase or by bareboat charter, the latter transferring to the charterer the vessel and control of her navigation, which is as complete ownership for the period as by purchase. Id. (160, 161).
Bonafide bareboat charterer, carrying his own cargo, is a private carrier. Id. (161).
Bareboat charters differ from time, gross, and net voyage charters in that under the latter the control and management of the vessel or its space remain with the owner or other person from whom it is chartered. Id. (161).
If owner has divested himself of complete control and possession of his vessel under a bareboat charter, the bareboat charterer should file rates pursuant to the Intercoastal Shipping Act, 1933, if he carries for others. Id. (162).
As respects the definition in 1 U. S. S. B. B. 400, 458, a distinction should be made between a charterer-shipper and a charterer-carrier, because the latter must own or charter a vessel to be such and the Intercoastal Act is complied with when he files and observes his published rates. To prevent abuses, the charter party also should be filed. Id. (162).
Owners and charterers of ships operated intercoastally are subject to the views expressed in 2 U. S. M. C. 154. Intercoastal Time-Charter Rate of Mallory, 164 (165).
Transportation of automobiles on the Great Lakes by bulk carriers for subject common carriers does not violate the Shipping Act or the Intercoastal Act. The common carriers, however, should file their charter parties as a matter of information. New Autos in Interstate Commerce, 359 (362).
CHESAPEAKE BAY.
On the authority of 1 U. S. S. B. 90, jurisdiction under the Shipping Act, 1916, over common carriers operating on Chesapeake Bay affirmed. North Carolina Line—Rates to and from Charleston, 83 (84).
CIRCUMSTANCES AND CONDITIONS. *See also* CHANGED CONDITIONS; DISCRIMINATION; EVIDENCE; GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES; OTHER TRADES; PREFERENCE AND PREJUDICE; RAIL AND RAIL-WATER RATES; RATE AND COMMODITY COMPARISONS; RATE STRUCTURE; REASONABLENESS; UNFAIRNESS; VALUE OF COMMODITY.
Respondent contends there is a fundamental difference between seaports and river ports such as Stockton, that the function of an ocean carrier is to

CIRCUMSTANCES AND CONDITIONS—Continued
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 terminal loading ports are 18 in number, located on bodies of water of various descriptions—ocean, bay, sound and river—from San Diego to Vancouver, B. C. Excepting San Diego, Los Angeles, San Francisco, Oakland and Alameda, all of them are farther from Europe than Stockton. 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 to extend similar rates, and the record is that such service as is accorded Stockton is not attended by unusual transportation difficulties. Indeed, respondent states that it "feels the waterway is reasonably safe or it would not send its vessels to Stockton." Sun-Maid Raisin Growers Assoc. *v.* Blue Star, 31 (36).

The amount of tonnage which would be diverted to a port accorded terminal rates depends in large measure on the frequency and regularity of service. The Government having spent large sums in developing the port, Stockton is entitled to the benefit of rates on the basis of transportation circumstances and conditions surrounding the movement of traffic. Id. (37).

There can be no finding that conference rates are unreasonable or otherwise unlawful if the record contains nothing of substance dealing with traffic and transportation conditions. Pacific Coast-European Rates and Practices, 58 (59).

There is no showing of similarity of conditions in the Hawaiian and Philippine trades; hence, there is no adequate basis for a comparison of the rates in those trades. Sharp *v.* Dollar, 91 (92).

Whiskey in bulk cannot be classed as a finished product inasmuch as it must be rectified, bottled, and labelled before sale to the public. Unless bottled in bond prior to tax payment, whiskey in glass in cases is tax-paid before bottling and, therefore, of higher value than similar whiskey in barrels. Frankfort Distilleries *v.* American Hawaiian, 318 (320).

Shipments of printing paper from Portland, Seattle, Tacoma, and Grays Harbor are substantially similar; hence, any disparity as to rates from Grays Harbor prevents shipments therefrom and is unduly prejudicial and unjustly discriminatory. Grays Harbor *v.* Klaveness, 366 (369). Modified, 525.

Sacremento is some 94 miles from San Francisco Harbor and, except in the rainy season, is only accessible to shallow-draft vessels over inland bays and rivers, whereas the competitive ports are accessible to oceangoing vessels and are, therefore, accorded direct service. Thus a different competitive situation exists at these other ports. The burden of the difficulties attendant upon Sacramento's position cannot be made to fall upon respondents. Intercoastal Cancellations and Restrictions, 397 (399).

Similarity of transportation conditions is a necessary element of undue preference and prejudice. It is clear that the transportation conditions prevailing at Sacramento are materially different from those at the competitive ports. While the evidence establishes that respondents' proposed withdrawal of service will be detrimental to Sacramento interests, it falls short of proof of unlawfulness. Id. (401).

CIRCUMSTANCES AND CONDITIONS—Continued
Discrimination results where a rate which is applicable to a commodity classification is applied differently to some shipments moving over the same line between the same ports but not on the same ship. Rates of Garcia, 615 (617).
CLASS RATES. *See also* REASONABLENESS.
Class rates generally are appropriate when the movement is small or sporadic. Wypenn Oil Co. *v.* Luckenbach, 1 (2).
Evidence based upon forwarder, water-rail, and all-rail competition on class-rate traffic will not support a reduction which would result in the virtual destruction of the class-rate structure. The retention of different rate levels resulting from adherence to rate-making principles for articles within certain classes and the complete disregard thereof in respect to higher grade cargo, would result in undue preference and prejudice in numerous instances. Westbound Intercoastal Carload and Less-Carloads Rates, 180 (186, 187).
Responsibility for rates which are reasonable to shippers and remunerative to carriers rests with the Commission. Disapproval of proposed class-rate reductions necessitates disapproval of proposed commodity-rate reductions when the latter are based solely upon the former. Id. (187).
COMBINATION RATES. *See* AGREEMENTS UNDER SECTION 15; LOCAL RATES; PREFERENCE AND PREJUDICE; THROUGH ROUTES AND THROUGH RATES.
COMMISSIONS. *See* AGENTS.
COMMODITY RATES. *See also* CLASS RATES; N. O. S. RATES; QUANTITY.
Failure of conference to agree on commodity rates, thus permitting application of unreasonably high n. o. s. rate, made it practically impossible for shippers to accept offers or quote prices for lumber on c. i. f. basis, to the detriment of the commerce of the United States. Pacific Coast-River Plate-Brazil Rates, 28 (30).
COMMON CARRIERS. *See also* AGREEMENTS UNDER SECTION 15; BILLS OF LADING; CHARTERS; CONTRACT CARRIERS; DUAL COMMON AND CONTRACT CARRIERS; INTERCOASTAL SHIPPING ACT, 1933; JURISDICTION; MERCHANT MARINE ACTS; PREFERENCE AND PREJUDICE; REGULAR ROUTES; TARIFFS; TRAMP.
A carrier is such by virtue of its occupation, not by responsibilities assumed. Intercoastal Charters, 154 (162).
A carrier must either own or be the charterer of a vessel to conduct its business. Id. (162).
Operator is a common carrier under the following circumstances: Acts as agent for the vessel, solicits and receives cargo, collects freight, takes care of all handling details, receives specified commission, obtains benefit of owner's protection and indemnity insurance, assumes and pays claims for cargo damage except that caused by extraordinary hazards, contracts for stevedores, and then goes into the market and solicits for himself against space not used by vessel owner. Agreements 6210, Etc., 166 (167).
Filing tariff for proposed service is necessary. Such action, coupled with intention to engage in transportation, even though there has been no advertising or soliciting, justified vacation of suspension of schedules. Class Rates Between North Atlantic Ports, 188 (188, 190).
Operators are not common carriers where there are no particular routes, ports, or sailings, and no holding out to transport except upon conditions

COMMON CARRIERS—Continued
satisfactory to the operator. New York Marine Co. *v.* Buffalo Barge, 216 (218).
Private or contract carriers do not become common carriers merely because in some instances the tonnage of different shippers is comparatively small. Id. (219).
Complainant's showing that several of defendants are bonded carriers who have satisfied regulations of the United States Treasury Department applicable to common carriers does not establish defendants as common carriers. Id. (219).
Bulk freighters on the Great Lakes which do not hold themselves out to serve the public, which have no contracts with shippers, and which lease part of their vessel space to common carriers for the transportation of automobiles, are not common carriers. New Automobiles in Interstate Commerce, 359 (362).
It is the duty of common carriers by water to consider the needs of shippers. Inability of carriers to agree is not a justification for a neglect of this duty. Intercoastal Cancellations and Restrictions, 397 (402).
Mississippi Valley Barge Line Company and Inland Waterways Corporation, operating in connection with intercoastal carriers, are common carriers in intercoastal commerce engaged in transportation on a through route as defined by section 2 of the Intercoastal Shipping Act, 1933. Inland Waterways Corporation, 458 (463).
Railway Express Agency, Inc., forwards shipments between ports in the United States and ports in Alaska via vessels of a common carrier pursuant to contract, the latter issuing no bills of lading. The agency is a common carrier by water operating on regular routes from port to port. Alaskan Rates, 558 (582).
Respondent accepted cargo for transportation to Puerto Rico and received freight moneys for a period of 2 months, but did not deliver any cargo to Puerto Rico. Respondent's failure to comply with filing of rate schedules is without justification. Cease and desist order entered, and violation referred to Department of Justice for prosecution. In Re M. S. Vencedor, Inc., 666 (668,670)
Nothing in the context of the paragraph defining "common carrier by water" warrants the conclusion that it was intended to amend, restrict, or affect in any way the definitions of "common carrier by water in interstate commerce" and "common carrier by water in foreign commerce." Rates of General Atlantic, 681 (684).
The absence of solicitation does not determine that a carrier is not a common carrier. Transp. by Mendez & Co., Inc., between U. S. and Puerto Rico, 717 (720).
Respondent became known generally throughout the trade as planning to transport merchandise and did transport merchandise of others on the particular voyage to the extent of its capacity. Respondent's course of conduct fixed or "established" it, for the voyage concerned, as a carrier ready and willing to transport for all, space permitting. The fact that respondent did not solicit contributes nothing which advantages its position that it was not a common carrier or, alternatively, that if it were a common carrier it was not "established" in the trade. It was, as respects this March 10 operation, a subject carrier to which the filing requirement of the statute attached. Id. (720).

COMMON CARRIERS—Continued

The operation of the *Grimsoy* from San Juan to Miami in the latter part of March 1943, and again in late April 1943, and of the *Tropical* from Miami to San Juan in April 1943, and from San Juan to Miami in that month, involved a full cargo as to each voyage and for the same shipper. There is no evidence that respondent did other than to contract for the full use of these vessels on these voyages by this one shipper, and no common-carrier status is indicated. Id. (720).

As respects the operation of the *Pedro Murias* and *Minna*, whether respondent's status was that of a common carrier is not free from doubt. The fact that there were two shippers on each voyage tends to create presumption that respondent had placed these vessels upon the market for transportation and that common-carrier engagements were fairly to be attributed to such voyages. However, other evidence as to the nature and purposes of this transportation, including that relating to the activities of local Puerto Rican and Federal authorities at San Juan in connection with this, rebuts the presumption of common-carrier engagement. Id. (720, 721).

Under agreements with two shipowners, respondent found to be an agent and not a common carrier. Agreement No. 7620, 749.

The legislative history of the Shipping Act, 1916, indicates that the person to be regulated is not the vessel itself but rather the common carrier at common law, namely, one who undertakes for hire to transport the goods of those who may choose to employ him. Id. (752).

The undertaking to carry must continue, for a certain period of time at least, subsequent to the receipt of the goods for transportation. Id. (752).

Although a common carrier is such by virtue of its occupation and not its responsibility, common carriage arises out of a contract or undertaking, express or implied, which exists during some stage of the process of transportation. Id. (753).

The holder of a power coupled with an interest, in order to remove himself from the field of agency, must possess a proprietary interest in the subject matter over which the power is exercised. Ownership of the berth is not such proprietary interest. Id. (753).

No authority has been cited which, in the absence of statutory direction to the contrary, holds that one performing only the limited transportation functions of receiving and delivering—no transportation haul being involved—is a common carrier. The record in this proceeding does not show satisfactorily that respondent itself or through a controlled subsidiary loads or unloads cargo. Id. (753).

The manner in which respondent has conducted its business reflects a course of dealing which avoids all the obligations of a common carrier and is consistent only with the theory of agency—however wide the authority and discretion granted. It is true that an agent acting for another has been held to be a common carrier, but in such cases there has been actual physical transportation on the part of the agent or else a personal undertaking to transport which endures for some portion, at least, of the process of land or water transportation. Since respondent fulfills neither of these conditions, concluded that it is not a common carrier by water. Id. (754).

The conference contends that the applicant for membership has not operated as a common carrier and cannot do so under its certificate of incorporation.

COMMON CARRIERS—Continued
The application of the Commission's regulatory powers under the Shipping Act, 1916, cannot be limited or expanded by the provisions of a carrier's charter. Black Diamond S. S. Corp. *v.* Cie M't'me Belge (Lloyd R.) S. A., 757.
Any doubts as to a common carrier's corporate authority to operate as such must be determined by the courts in a direct proceeding, for in performing its regulatory duties the Commission does not have the power to decide whether the actions of a carrier are ultra vires. Id. (758).
The fact that its application for an operating-differential subsidy was denied by the Commission in no sense can detract from the applicant's avowed purpose to operate as a common carrier. Id. (758).
The facts in the present proceeding differ from those in Agreement No. 7620, 2 U. S. M. C. 749. Here, complainant's predecessors were common carriers from 1931 until 1940, when war conditions effectively stopped such operation; complainant merely seeks to take up where its predecessors left off. In the other proceeding, the testimony was to the effect that after the return of shipping to private operation at the conclusion of the war, respondent was to operate as it had in the past, namely, as an agent and not as a common carrier. Id. (758).
The absence of solicitation does not determine that a carrier is not a common carrier. Transportation by Southeastern Terminal & S. S. Co., 795 (796).
Respondents held out, by a course of conduct, that they would accept goods from whomever offered to the extent of their ability to carry, although their main business was the transportation of full loads of empty bottles southbound and full bottles northbound. Such services amounted to common carriage within the purview of section 2 of the intercoastal Shipping Act, 1933, as amended, and proper tariffs therefor should have been filed with the Commission. Id. (796).
On southbound voyages the charters referred to respondents as "agents for the owners" and were signed "by authority of owners." Respondents, therefore, dealt with the public as agents of the shipowners, and in view of the holding in Agreement No. 7620, 2 U. S. M. C. 749, they were not common carriers southbound. Id. (798).
Respondents accepted the rates fixed and the bills of lading issued by its agent on northbound voyages, as well as the benefits of the transactions, in the form of expenses and commissions from the freight moneys. Furthermore, they failed to instruct the agent not to designate them as "charter owners," and as it was not until the hearing that they affirmatively denied that the agent had such authority so designated, they cannot be heard to say that they were not acting as principals and thereby common carriers. Id. (798).
COMPARISONS. *See* CIRCUMSTANCES AND CONDITIONS; RATE AND COMMODITY COMPARISONS.
COMPENSATORY RATES. *See also* COMPETITION; CONFISCATION; CONTRACT RATES; COST OF SERVICE; EVIDENCE; GOVERNMENT; JURISDICTION; MINIMUM RATES; OUT-OF-POCKET COST; REVENUE; VOLUNTARY RATES.
Proposed rates aligned competitively with those of other carriers in the trade will not be assumed, without proof, to be noncompensatory. Class Rates Between North Atlantic Ports, 188 (190).
At the weight rate contended for, defendant's revenue for transporting 40 cubic feet of glass lamp globes from New York to St. Thomas would be 88

COMPENSATORY RATES—Continued
cents, which obviously is inadequate as compensation for the service rendered. Measurement rate of 30 cents per cubic foot assailed not shown unreasonable. Gill *v.* American Caribbean 314 (315).
At the weight rate contended for, defendant's revenue for transporting 40 cubic feet of glass lamp globes or shades from Seattle to Ketchikan would be 54.2 cents, which patently is inadequate for the service rendered. Measurement rate of 19.5 cents per cubic foot assailed not shown unreasonable. Gill *v.* Alaska Steamship Company, 316 (317).
An agreement is detrimental to commerce if one line is required to carry particular traffic at a loss. The loss of revenue contributed in large measure to the carrier's poor financial position. Dollar-Matson Agreements, 387 (394–396).
Rates accorded to Navy contractors are not unlawful where they are borne by the Navy, contractors do not profit from either the lower rates or consequences thereof, and it is not claimed that the rates are noncompensatory or influence other rates or traffic. Alaskan Rates, 558 (576). Maintenance of such rates subsequently found to result in undue preference and prejudice and unreasonable practice. Alaskan Rates, 639 (651, 652).
Present rates are noncompensatory and burdensome upon other services performed by respondents. Any tariff of rates less than a general 33⅓ percent increase over the present rates would be noncompensatory and detrimental to commerce within the meaning of section 15 of the Shipping Act, 1916. Status of Carloaders and Unloaders, 761 (773).
Present rates are noncompensatory and burden other services performed by respondents and are detrimental to commerce within the meaning of section 15 of the Shipping Act, 1916, and any tariff of rates, with certain exceptions, less than interim basis approved would be noncompensatory and detrimental to commerce. Finding is without prejudice to any subsequent finding as to individual rates made under conditions set forth herein. Carloading at Southern California Ports, 784 (787).
COMPETITION. *See also* ABSORPTIONS; AGREEMENTS UNDER SECTION 15; CARLOAD—LESS-CARLOAD; CHARTERS; CIRCUMSTANCES AND CONDITIONS; CLASS RATES; CONTRACT RATES; DETRIMENT TO COMMERCE; DIFFERENTIALS; DISCRIMINATION; EVIDENCE; FORWARDERS AND FORWARDING; HANDLING; JURISDICTION; MINIMUM RATES; MIXED SHIPMENTS; PORT EQUALIZATION; PRACTICES; PREFERENCE AND PREJUDICE; RAIL AND RAIL-WATER RATES; REASONABLENESS; RIVER PORTS; ROUTES; STABILITY OF RATES AND SERVICES; WHARFAGE.
**Carrier:**
Conference rate on coffee from South America to the Pacific coast reasonable, and a lower rate, while temporarily advantageous to receivers, who compete as far east as Chicago with receivers on the Atlantic and Gulf coasts, would result in a rate war with competing carriers. Rates, Charges, and Practices of Yamashita and O. S. K., 14 (19).
Practices of underquoting conference rates on coffee from South America to the Pacific coast are clearly within the scope of those heretofore condemned. Id. (20).
Developments may warrant rate revisions based on transportation conditions which actually result from competitive operations, but to

COMPETITION—Continued
**Carrier**—Continued
condemn rates proposed on mere supposition would be arbitrary and unwarranted. North Carolina Line—Rates to and from Charleston, 83 (87).
In determining the lawfulness of the port-to-port rates of subject water carriers, Commission cannot anticipate that competitive action will be taken by rail lines. Westbound Alcoholic Liquor Carload Rates, 198 (203).
Reductions to meet competition are proper if they do not result in unremunerative or unlawful rates or go beyond the limits of competition which rest within the managerial discretion of the carrier. Id. (204).
While carriers may make lawful reductions to meet competition, shippers are entitled to all the natural routes which may be open to them for the transportation of their commodities. This right may not be distorted by carriers, through unlawful competitive practices. Id. (205).
Defendants' desire to prevent alleged excessive and unnecessary competition recognized, but record not convincing that this would result if complainant were admitted to conference membership. Complainant's admission required. Waterman *v.* Bernstein, 238 (244).
History and the present situation reveal the futility of attempts by respondents to establish and maintain a stabilized and sound westbound rate structure in the intercoastal trade. This is due to short-sighted policies of steamship principals to secure competitive rate advantages for themselves. Their competitive practices have resulted in utter disorder and confusion in the rate structure. Rate cutting to meet real or imaginary competition of transcontinental rail, rail and water, motor carrier, and other intercoastal carriers has been indulged in by all respondents to secure traffic without due regard to accepted principles of rate making. Intercoastal Rate Structure, 285 (290).
As a result of real or imaginary competition, intercoastal rates are lower on many commodities than necessary to hold cargo. Serious threat to imporant carrier revenue results when rates are forced down in a "vicious cycle" by shippers who play the railroads against respondents and *vice versa*, using both transportation agencies as pawns in an effort to break down an important part of the rate structure. Id. (293).
Unrestricted competition in rate making in the westbound intercoastal trade has resulted and is resulting in rate wars, in unduly low and depreciated rates and charges, and in instability and unsound economic conditions in the trade. Minimum rates and charges prescribed. Id. (303).
As no competitive reason remains for respondents' abnormal practice of making free delivery of wool and mohair to warehouses within switching limits of Boston, the elimination of the practice found justified. Warehouse Deliveries, 331 (332).
Railroads are afforded protection against undue competition through certificates of public convenience and necessity. There is no such protection in the Alaskan steamship trade. Alaskan Rates, 558 (572).

COMPETITION—Continued
**Charter:**
Whether the chartering of vessels in intercoastal trade has resulted in unfair competition to the carriers regularly engaged therein not decided. Recognition given to the demoralizing effects of the practice, and the possible necessity of exercising minimum rate powers, should a proper case be presented, to prevent a general deterioration of service in that trade. Intercoastal Charters, 154 (163).
The lumber rate of the conference of which respondent is a member is $6. Respondent's proposed rate is $5.50, filed pursuant to an independent-action clause of the conference agreement. The reasons ascribed by respondent for the reduction are that "charters then existing might well reflect less than a $6 rate" and "shippers told us they believed the charters reflected less than the going rate." An offer by a chartering operator to permit respondent to examine its books and records for the purpose of comparison of costs was declined. Respondent maintains that all carriers should charge on the same basis and that no lumber charters should be made in the trade. It nevertheless affirms that costs of vessel operation in the carriage of lumber under charter, and in common-carrier service as well, vary "almost per voyage per vessel," and that common-carrier service in the trade such as respondent furnishes is more expensive than service under charter. It states, further, that during the existing subnormal trade and shipping conditions, "it is very much of a disadvantage" for a lumber shipper "to have a vessel under charter." Suspended schedule found not justified. Pacific Coastwise Carrier Investigation, 191 (195, 196).
**Prejudice; Commodities; Parts:**
Application of different wharfage charges on foreign and intercoastal traffic will not be condemned where there is no showing of a competitive relation between the traffic and an injurious effect arising from the discrimination. Wharfage Charges, Boston, 245 (248).
Tacoma intervener does not specifically show that there are competitive feed manufacturers at Seattle. Hence, there is no basis for a finding of undue preference and prejudice. Alaskan Rates 558 (579).
There are no processing plants at Seattle with which the Tacoma intervener competes. Herring oil is transported in bulk to Seattle in ships' tanks. It was not affirmatively shown that the on-carrier from Seattle to Tacoma has facilities for transporting oil in bulk. Finding of unlawfulness under section 16 cannot be made. Id. (579).
COMPLAINTS. *See* INTERVENTIONS; PARTIES; WITHDRAWAL OF COMPLAINTS.
CONCESSIONS. *See also* FALSE BILLING.
Nicholson Universal allowed Holt Motor Company to obtain, and Holt knowingly and willfully obtained, transportation of property at less than the legally applicable rate, in violation of section 16 of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933; Nicholson Universal gave an undue preference to Holt, in violation of section 16; Nicholson knowingly disclosed and permitted to be acquired, and Duluth Transit and Holt knowingly received, information in violation of section 20 of the Shipping Act, 1916. These violations will be certified to the

CONCESSIONS—Continued
Department of Justice for prosecution. Agreements of Nicholson Universal, 414 (424, 425).
Respondent carriers allow persons to obtain transportation at less than their regular rates currently established and enforced by means of false billing, and give undue preference to particular persons and subject particular persons to undue prejudice, in violation of section 16. Respondent shippers knowingly and willfully, by means of false billing, obtain transportation at less than the rates otherwise applicable, in violation of section 16. The record will be certified to the Department of Justice for prosecution. Rates to Philippines, 535 (544).
By "brokerage" payments to shippers and by otherwise reducing freight charges, respondent allowed transportation at less than the regular rates by unjust and unfair means, and unduly preferred certain shippers and unduly prejudiced and discriminated against other persons shipping under similar circumstances, in violation of sections 16 and 17 of the Shipping Act, 1916. Rates of Garcia, 615 (619).
The violations committed by respondent by allowing persons to obtain transportation for property at less than the regular rates then established and enforced on its line by unjust and unfair means and by not complying with the rules and regulations prescribed in Section 19 Investigation, 1935, 1 U. S. S. B. B. 470, will be certified to the Department of Justice for prosecution. Id. (619).
CONFERENCES. *See* ABUSE OF PROCEDURE; AGREEMENTS UNDER SECTION 15.
CONFISCATION.
The Commission must accord procedural due process and its findings must not result in confiscation of the carrier's property. Rates of Inter-Island Steam Navigation Company, 253 (255).
No formula has been adopted by the Supreme Court for the determination of nonconfiscatory rates. However, in 169 U. S. 466, 546, the court did attempt definitely to mark the limit below which public regulation of rates would amount to deprivation of property without due process of law by establishing the "fair value" rule. Id. (256).
CONSULAR INVOICES. *See* KNOWLEDGE.
CONTRACT CARRIERS. *See also* CHARTERS; COMMON CARRIERS; COST OF SERVICE; DISCRIMINATION; DUAL COMMON AND CONTRACT CARRIERS; INTERCOASTAL SHIPPING ACT, 1933; JURISDICTION.
Although contract-carrier operations may lawfully exist, such operations by a carrier who also operates a common-carrier service may result in injury to shippers patronizing the common-carrier service. In view of the importance of the subject, however, and the limited evidence of record concerning it, determination of the lawfulness of the dual operation should be deferred until presented upon a more comprehensive record. Puerto Rican Rates, 117 (126, 127).
Time-charters of vessels for intercoastal carriage of a full load were contract-carrier operations without tariff authority in violation of section 2 of the Intercoastal Act. Intercoastal Charters, 154 (158).
In the definition of a contract carrier in 1 U. S. S. B. B. 400, 458, a distinction should be made between a charterer-shipper and a charterer-carrier because the latter must own or charter a vessel to operate, and there is a compliance with the Intercoastal Act when such carrier files and observes its published

CONTRACT CARRIERS—Continued
rates. To discourage possible abuses, however, the charter party should be filed. Id. (162).
Operators carrying lumber and lumber products from Washington and Oregon to California ports under charter or contract are private or contract carriers not subject to the regulatory provisions of the Shipping Act, 1916, as amended. Pacific Coastwise Carrier Investigation, 191 (193, 194).
Defendants' status as private or contract carriers is not changed to that of common carriers because their transportation activities, conducted entirely through special and individual negotiation and agreement, involve a considerable number of cargo owners and a varied character of cargo. New York Marine Co. *v.* Buffalo Barge, 216 (219).
The ports and the places in the ports differ from trip to trip usually in accordance with the defendant's principal load engagement, the proprietary cargo or the cargo of seasonal or other principal shipper customarily determining defendant's operation in relation to port, place, and time. Defendant's vessels leave when the shipper completes loading and are often laid up awaiting cargo. Defendants do not maintain terminals. Defendants are private or contract carriers. Id. (218, 219).
CONTRACT RATES. *See also* AGREEMENTS UNDER SECTION 15; CONTRACTS WITH SHIPPERS; DISCRIMINATION; PARTIES; QUANTITY; SERVICE; STABILITY OF RATES AND SERVICES.
Failure to admit complainant to the conference agreement, including participation in shippers' contracts, resulted in the agreement and the contracts being unjustly discriminatory and unfair as between complainant and defendants. Sprague S. S. Agency, Inc. *v.* A/S Ivarans Rederi, 72 (76).
Defendant points to the fact that there are essential differences in the lumber transportation services performed under the contract and noncontract rates, and to the differences in cost of service under the two systems. Parcel lots such as complainant ships move in defendant's merchandise ships sailing on schedule. Defendant's lumber vessels are smaller, move only when cargo offerings justify sailing, call at numerous Pacific coast ports and lumber mills, discharge at about 14 Hawaiian ports, most of which can not be served by the large vessels, and take on Hawaiian products for delivery at San Francisco. While exact cost figures are not produced, there is no doubt that the merchandise operations are more costly to the carrier. F. A. Smith & Co. Ltd., *v.* Matson Nav. Co., 172 (173, 175).
Quantity provisions which can be met by only a few shippers have been declared to be in violation of section 16, 1 U. S. S. B. B. 349, 351; 1 U. S. S. B. B. 373, 375; 1 U. S. M. C. 646. Defendant's contract system tends to create a monopoly. In 1 U. S. S. B. B. 373, it was pointed out that although contract rates may have served a useful purpose in the past, when intercoastal carriers freely engaged in rate wars, their need for intercoastal transportation was no longer apparent in view of Intercoastal Shipping Act, 1933. The Commission's minimum rate power should lend a stabilizing influence to the rate structure of the common carriers. Defendant's competition from unregulated carriers is negligible. No necessity for contract rates on lumber in this trade. Id. (175, 176).
The contract rate system in foreign commerce, when based upon regularity of consignments, number of shipments, or quantity of merchandise furnished for transportation, is not unlawful *per se* (1 U. S. S. B. 285). But it has been condemned where it operates solely to effect a monopoly

CONTRACT RATES—Continued
(1 U. S. S. B. 41). Since they carry more than 80 percent of the traffic from the Great Lakes area, it is obvious that respondents, for all practical purposes, have a monopoly. Respondents' contracts with shippers, under which the latter may not patronize carriers operating direct from Great Lakes ports to Europe without being subject to penalty of respondents' noncontract rates on their shipments from North Atlantic ports to Europe, found unjustly discriminatory and unfair, to interfere with the flow of commerce through Great Lakes ports, and detrimental to commerce of the United States. Contract Routing Restrictions, 220 (225).
Equality of treatment is not accorded the shipper merely by giving him the opportunity to enter into discriminatory contracts in the same manner as offered to all shippers. Id. (226).
Denial of conference membership to complainant, together with the effect of the exclusive patronage contracts, acts as an effective bar to that carrier's participation in the trade. Complainant's admission required. Waterman *v.* Bernstein, 238 (243).
Municipally operated port leased land to shipper for erection of special loading and storage facilities for cement and accorded him contract rates for terminal services lower than "noncontract" rates accorded other shippers. Later, the Port, over lessee's objection, canceled contract rates, contending they were non-compensatory and that contract was unduly preferential of lessee since it grants rates exclusively to latter and continues for a term of years. Contract Rates—Port of Redwood City, 727 (728, 729).
A marine terminal subject to Shipping Act, 1916, may enter into rate-fixing contracts. Rates thus established, including any terms affecting such rates or the value of the services rendered, must be published in terminal's tariff and be made known and available to all patrons; such contracts are binding upon the parties thereto until the Commission finds that rates contained therein are unduly preferential or prejudicial or result in unreasonable practices in violation of sections 16 and 17, respectively, of the Shipping Act, 1916. Id. (744).
On October 24, 1944, Commission issued a notice to terminal operators requesting them to file their tariff schedules and all contracts or understandings which accord rates differing from those provided in such schedules. Compliance as to tariff filing was practically complete. No reason to doubt that same holds true as to contracts, nevertheless emphasized importance of the requirements stated in preceding paragraph, because failure to comply therewith will subject terminals to penalties provided by act. Id. (744).
Respondent marine terminal is an "other person" as defined in the Shipping Act, 1916, and its rates, charges, practices and services in connection with the handling and shipment of bulk cement through pipeline are subject to the said Act; lease agreement between respondent and lessee is nonexclusive, and execution of said agreement does not constitute an unreasonable practice in violation of section 17 of said act; contract rates contained in lease agreement compensatory and do not cast a burden upon other services and rate payers in violation of section 16 of said act; such contract rates, for duration of lease agreement, are legally applicable rates on all bulk cement handled through pipeline at respondent's terminal, irrespective of ownership of cement and irrespective of the ownership, control, or operation of vessels carrying cement; noncontract rates estab-

CONTRACT RATES—Continued
lished by respondent which are *different from legal contract rates* are unduly prejudicial in violation of section 16 of said act; and respondent's failure to incorporate *in its tariffs all of the rates* legally applicable and its insertion of rates which are different than legally applicable rates constitutes *an unreasonable practice* in violation of section 17 of that act. Id. (744, 745).

*Findings and order* are without prejudice to respondent's right to change its rates on cement should they be shown, in a proper proceeding, to be so low as to cast a discriminatory burden upon other services and rate payers during the term of said lease agreement; also without prejudice to respondent's right to establish proper charges for other services and facilities rendered in connection with cement traffic not in contravention of lease agreement. Id. (745).

CONTRACTS WITH SHIPPERS. *See also* AGREEMENTS UNDER SECTION 15; CONTRACT RATES; DISCRIMINATION; DUAL COMMON AND CONTRACT CARRIERS; FREE TIME; PARTIES; PRACTICES; QUANTITY; SERVICE; STABILITY OF RATES AND SERVICES.

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 non-conference lines. Contracts have been entered into with shippers covering such a percentage of cargo that it is impossible for any steamship line not a conference member 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 River Plate-Brazil conferences prevents it from obtaining southbound cargo, except at very low rates, because of the contract rate system. *Unjust discrimination*, unfairness, and unreasonable prejudice found. Sprague *v.* Ivarans, 72 (74, 76).

*Assumption of contracts* to transport merchandise by carrier who has applied for conference membership prevents the carrier from conforming fully and unreservedly to the conference agreement and renders applicant ineligible for conference membership. Application of Thorden, 77 (79, 81, 82).

Tariff provision for service to named ports "subject to prior arrangement" is objectionable because of indefiniteness and susceptibility to unduly preferential agreements or understandings with certain shippers. Puerto Rican Rates, 117 (129).

All parties to the contracts are presumed to have contracted with the knowledge that their agreements were subject to the regulatory powers of this Commission. Contract Routing Restrictions, 220 (226).

The section 15 conference agreements make the contracts possible, and *if the* contracts are unjustly discriminatory or otherwise unlawful, it follows that the conference agreements, too, may be canceled under section 15 *if* such discrimination is not removed. Id. (226).

Denials by conference of complainant's *applications for membership* while at the same time maintaining exclusive patronage contracts with shippers create unjust discrimination, operate unfairly as between complainant and defendants, subject the conference agreements to disapproval under section 15, and *complainant to unreasonable* prejudice in violation of section 16. Cosmopolitan *v.* Black Diamond, 321 (330).

CONTRACTS WITH SHIPPERS—Continued
A deduction of 10 percent from the freight rate on shipment of plumbing supplies was made pursuant to a "confidential" arrangement between respondent and the shipper. Violations of sections 16 and 17 found. Rates of Garcia, 615 (617, 619).
COST OF CARRIER PROPERTY. *See* VALUE OF CARRIER PROPERTY.
COST OF REPRODUCTION. *See* VALUE OF CARRIER PROPERTY.
COST OF SERVICE. *See also* COMPENSATORY RATES; CONTRACT RATES; DUAL COMMON AND CONTRACT CARRIERS; EQUALIZATION; EVIDENCE; OUT-OF-POCKET COST; PROPORTIONAL RATES; REASONABLENESS; REVENUE; STEVEDORING; VOLUNTARY RATES.
It is apparent that the 50-cent rate was arrived at without any consideration being given to the cost of service to the carriers or the value of the service to the shipper, and without consideration of usual transportation factors upon which reasonable rates are based. The threat to reduce the rate obviously tended unreasonably to influence the conference carriers to agree to a distribution of the pooled revenue out of proportion to its actual carryings. Rates, Charges and Practices of Yamashita and O. S. K., 14 (19).
Figures presented to show cost of deviation from Los Angeles to San Diego include certain costs such as for dockage, stevedoring, and clerk hire. These 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. Harbor Com. of San Diego *v.* Am. Mail Line, 23 (26).
To justify the rate increases, respondents show that since 1935 their vessel costs have increased on the average 14.5 to 26.08 percent, and handling costs for all 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. Rates on bags and bagging unreasonable; rates on cotton, grain and grain products not shown unlawful. Rates on Cotton Etc., 42 (43, 47).
Complainant is obliged to pay charges formerly absorbed by defendants. It asserts that, by establishing its warehouse and concentration of all plywood for export there, defendant's 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. Assailed rates and practices not shown unduly prejudicial or unjustly discriminatory, and conference agreement not shown to be unjustly discriminatory or unfair or to operate to detriment of United States commerce. Pacific Forest Industries *v.* Blue Star Line, 54 (56, 57).
Respondents' sole reason for increasing rates is increased operating costs. Each class of traffic should bear its proper share of increased cost. Since the rate on raw sugar was not increased and is a voluntary one, it must be assumed that the yield therefrom is compensatory. The materially

COST OF SERVICE—Continued
greater yield on fruits and vegetables is persuasive that the increases thereon are not warranted. The wide spread in revenue yielded by the respective rates is disproportionate and a downward revision of rates on fruits and vegetables should be made. Puerto Rican Rates, 117 (120).
The yield on caustic soda is disproportionate to the yield on 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. Id. (121).
Respondents rely upon increased costs to justify their increases in rates. 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. Id. (122).
A proper determination of the reasonableness of tariffs as a whole 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. Without such data an issue of so broad a scope cannot be properly determined. There can be no question as to its relevancy. Id. (123).
Existing subnormal Pacific coast lumber production and marketing and shipping conditions have accentuated mill and carrier competition. On behalf of vessel owners who charter or contract under such conditions the evidence is that due to economies in relation to type of vessel, maintenance of schedules, labor overtime, and less number of berths of loading and discharge, their operation costs are lower than for common carrier service. Pacific Coastwise Carrier Investigation, 191 (194).
There is nothing of record to indicate the cost of transporting citrus fruit by water from Jacksonville to Baltimore. Respondent testifies its average rate on merchandise traffic is about 29 cents per 100 pounds and that in its judgment this average could go as low as 25 cents and still return something more than actual cost. Opinion is that the lowest rate at which citrus could be transported from Jacksonville to Baltimore, with any hope of making a profit, would be 25 cents a box, which is the lowest proportional rate published on this traffic. Unreasonableness not shown; proceeding discontinued. Citrus Fruit Florida to Baltimore, 210 (214).
Cost of service is only one of the factors of reasonableness. Intercoastal Rate Structure, 285 (304).
Respondents rely upon recently increased costs resulting primarily from war conditions, and the contemporaneous rates on sugar from Cuba to Atlantic and Gulf ports. It appears the proposed increase in rate from 20 to 28 cents per 100 pounds, including allowances for full cost, stevedoring and other operating items, as well as war risk insurance, life insurance on crew and war risk P. & I. insurance and personal effects, applied to the new charter rates approved by us provides a net earning of $3,137.65 per voyage. This net earning does not take into account overhead, crew bonuses, possible delays in port or longer steaming time due to war conditions or other contingencies. Proposed increase not shown unlawful. Sugar Rates—Puerto Rico to U. S. Atlantic and Gulf Ports, 620 (621).
CROSS-EXAMINATION. *See* HEARING.

CUSTOM.
While the facts indicate a course of conduct or custom which has existed in the past with respect to the fixing of port-to-port rates insofar as attracting traffic from the inland points is concerned, the lawfulness of the suspended rates cannot be determined by any such custom. Westbound Intercoastal Alcoholic Liquor Carload Rates, 198 (202, 203).

DAMAGES. *See also* EVIDENCE; JURISDICTION; LOSS AND DAMAGE; MISQUOTATION OF RATES; OVERCHARGES; REPARATION.
No authority to award damages because of carrier's failure to follow instructions to ship on a particular voyage. Complaint dismissed. Pilgrim Furniture Co. *v.* Am. Hawaiian, 517 (518).

DELIVERY. *See also* ASSEMBLING AND DISTRIBUTION; JURISDICTION; NOTICE; OTHER PERSONS; PICK-UP AND DELIVERY; PRACTICES; TARIFFS.
Delivery is a necessary part of transportation and is accomplished on piers where consignees accept delivery and take possession of the shipments. Storage Charges under Agreements 6205 and 6215, 48 (52).
Under the suspended schedule, 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. While respondent makes a charge for the extra service, the aggregate thereof is the same whether the portion discharged is 1,000 or 10,000 pounds. The extra cost is not equitably applied to all receivers of less carload shipments at one port. The removal of such unlawfulness will be required. North Carolina Line—Rates to and from Charleston, 83 (88, 89).
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 is not shown to have been an unreasonable practice. Boswell *v.* Am. Hawaiian, 95 (102).
Tender of intercoastal lumber for delivery at end of ship's tackle under tackle-to-tackle rates is not an unreasonable practice. Lumber Through Panama Canal, 143 (148, 150).
When carriers do not hold themselves out to perform services beyond ship's tackle, their failure to publish charges therefor in connection with tackle-to-tackle rates on intercoastal lumber is not unlawful. Id. (150).
As no competitive reason remains for respondents' abnormal practice of making free delivery of wool and mohair to warehouses within switching limits of Boston, the elimination thereof it justified. Warehouse Deliveries, 331 (332).
Defendant's tariff provides that rate changes are effective as of the date of dock receipt. On that date defendant's tariff provided that shipment to San Diego would be transported either direct by defendant or by McCormick beyond Los Angeles. Regardless of the effect of the discontinuance of McCormick's service, the obligation remained upon defendant to make delivery direct as provided in its tariff. Atlantic Syrup Refining Co. *v.* Luckenbach, 521 (522).

DELIVERY—Continued
Due to representations made to complainant's truck driver by an official of the truck drivers' union not employed by defendant, complainant's truck driver drove away without placing complainant's truck in a position to receive delivery. Defendant public lumber wharf performed its duties by allowing complainant's truck to enter the yard, issuing loading slips, and carrying the lumber from the storage yard to the hoist. Defendant did not refuse delivery of complainant's lumber as alleged. Complaint dismissed. Long Beach Lumber Co. *v.* Consolidated Lumber Co., 611 (613, 614).
The practice of Seatrain of absorbing the difference between the costs of delivering cargo to its vessels at Texas City and the costs of delivering local tonnage to shipside at Houston and Galveston not shown to be in violation of sections 16 and 17. Beaumont *v.* Seatrain, 699 (704).
DEMURRAGE. *See also* FREE TIME; REASONABLENESS; REGULATIONS; STORAGE.
Historically, demurrage has been an allowance or compensation for the delay or detention of a vessel. It has been customarily regarded only as a penalty against the shipper for the detention of the carrier's equipment. Lumber Through Panama Canal, 143 (145).
Wharf demurrage is the charge accruing on cargo left in possession of the terminal beyond the free time period. Practices of San Francisco Bay Terminals, 588 (598). Findings are without prejudice to respondents' right to establish a proper scale of wharf-demurrage charges. Cont. Distrib'g. Co., Inc. *v.* Cia. Nacional de Nav., 724 (726).
DEPARTMENT OF JUSTICE. *See* CONCESSIONS; TARIFFS.
DEPARTURE FROM TARIFFS. *See* CONCESSIONS; TARIFFS.
DEPRECIATION. *See also* VALUE OF CARRIER PROPERTY.
Respondent's estimate of depreciation charges is excessive to the extent it ignores salvage value. Rates of Inter-Island Steam Navigation Company, 253 (264).
DETRIMENT TO COMMERCE. *See also* AGREEMENTS UNDER SECTION 15; BROKERS AND BROKERAGE; COMMODITY RATES; COMPENSATORY RATES; CONTRACT RATES; COST OF SERVICE; EVIDENCE; JURISDICTION; PRACTICES; PREFERENCE AND PREJUDICE; SERVICE.
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 is condemned. Pacific Coast-River Plate-Brazil Rates, 28 (30).
Action of conference members in allowing commodity rates on lumber to expire and subsequently applying unreasonable cargo NOS rate was detrimental to commerce of the United States. Subsequent to hearing respondents declared rates on lumber open, and two respondents entered into a pooling agreement providing for the establishment and maintenance of specific lumber rates upon which the fixing of expiration dates is prohibited. Proceeding discontinued. Id. (30).
Complainant urges that the conference rates on plywood are unreasonably high and therefore detrimental to commerce of the United States. Complainant has improved the plywood package for more efficient handling and stowing, thus reducing claims for damage. The fact that complainant voluntarily instituted this improvement does not of itself establish unreasonableness of the transportation rate. Rates on plywood not shown

DETRIMENT TO COMMERCE—Continued
to be unduly prejudicial, unjustly discriminatory, or detrimental to United States commerce. Pacific Forest Industries *v.* Blue Star Line, 54 (56).
Since carrier is not in regular common-carrier operation in the trades concerned, refusal of admission to the conferences does not violate any of its rights. Admission to the conference is not necessary to meet the needs of the trade, and the record is convincing that refusal to admit will not result in detriment to commerce of the United States. Hind, Rolph & Co., *v.* French Line 138 (141, 142). Dismissed without prejudice, 280.
The practice of making rates lower by a fixed percentage than those of other carriers is detrimental to commerce of the United States inasmuch as it is contrary to one of the principal purposes of the Shipping Act, which is to prevent destructive carrier competition. Cargo to Adriatic, 342 (345).
DIFFERENTIALS. *See also* MINIMUM RATES; OTHER TRADES; PORT EQUALIZATION; RAIL AND RAIL-WATER RATES.
Time in transit is not the sole factor in determining whether a rate differential is warranted. Westbound Intercoastal Alcoholic Liquor Carload Rates, 198 (203).
An agreement between carriers and government agencies can in no way derogate from the statutory powers of the Commission. Gulf respondent's rate of $1.31 on westbound carload shipments of alcoholic liquor, lower by 10 cents than Atlantic carriers' rate, found justified. Id (201, 204).
There is nothing inherently unlawful either in the existence of a differential in rates between the Atlantic and Gulf carriers on carload alcoholic liquors to Pacific coast or in the existence of a parity in such rates. No law requires the two groups of carriers to maintain rates from their respective areas made on principles other than those usually followed in rate making; nor does the record justify a departure from these principles. Id. (205).
Quoting rates differentially lower than rates of other carriers in the trade, without giving proper weight to usual rate-making factors, is detrimental to commerce of the United States and creates a condition unfavorable to shipping in foreign trade arising from competitive methods and practices of vessel operators. Cargo to Adriatic, 342 (345).
Amounts intended to apply as deductions from local rates in some cases are published only as "differentials." That term is not sufficiently descriptive of the use intended. The tariff, therefore, is ambiguous. Mobile *v.* Baltimore Insular, 474 (476).
DIRECTION. *See* OPPOSITE DIRECTIONS.
DISADVANTAGES. *See* AGREEMENTS UNDER SECTION 15; CIRCUMSTANCES AND CONDITIONS; DISCRIMINATION; EQUALIZATION; EVIDENCE; GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES; PREFERENCE AND PREJUDICE; SHIPPING ACT, 1916.
DISCONTINUANCE OF SERVICE. *See also* EMBARGOES; SERVICE.
Defendant's tariff provides that the rate changes are effective as of the date of dock receipt. On that date defendant's tariff provided that shipments to San Diego would be transported either direct by defendant or by McCormick beyond Los Angeles. Regardless of the effect of the discontinuance of McCormick's service, the obligation remained upon Luckenbach to make delivery direct as provided in its tariff. Atlantic Syrup Refining Co. *v.* Luckenbach, 521 (522).

DISCRIMINATION. *See also* ABSORPTIONS; AGREEMENTS UNDER SECTION 15; BROKERS AND BROKERAGE; CHANGED CONDITIONS; CHARTERS; CIRCUMSTANCES AND CONDITIONS; CONTRACT RATES; COST OF SERVICE; DELIVERY; DETRIMENT TO COMMERCE; DUAL COMMON AND CONTRACT CARRIERS; EVIDENCE; GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES; INTENTION; INTERCOASTAL SHIPPING ACT, 1933; PRACTICES; PREFERENCE AND PREJUDICE; PROFIT TO SHIPPERS; REPARATION; RETALIATION; SERVICE; SPECIAL RATES; STORAGE; THROUGH ROUTES AND THROUGH RATES; UNFAIRNESS; WHARFAGE.

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. Sun-Maid Raisin Growers Assoc. *v.* Blue Star Line, 31 (37).

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 San Diego-Vancouver rate blanket. But this possibility does not warrant a discriminatory adjustment; nor does the fact, as claimed by one carrier, that it has to meet lower rates from the terminal loading ports than apply at 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. Id. (37).

The failure by a public terminal utility to give adequate notice of rate changes is unjust and unreasonable to the shipping public, because sudden rate changes often result in unexpected losses to, and unjust discrimination against, the shipper or consignee. Lumber Through Panama Canal, 143 (149).

Calmar contends that the lower rates of contract carriers, being based on volume, are in violation of section 14, paragraph Fourth, and section 16. The carriers under charters limit their holding out to carry to shippers of cargo lots. There being no duty to carry, and, in fact, no carriage of, parcel lots, there can be no discrimination against the shippers thereof. Intercoastal Charters, 154 (161).

A difference in rates for identical services based solely upon whether or not the carrier secures the shippers' entire patronage is *prima facie* discriminatory. In determining whether it is undue or unreasonable we are called upon to weigh the disadvantages of respondents' monopoly (of traffic from the Great Lakes area to Europe, attained by their contract rate system) against the advantages flowing therefrom, such as stability of rates and consequent stability of service. Respondents' contracts with shippers found unjustly discriminatory. Contract Routing Restrictions, 220 (225, 227).

Respondents' contracts with shippers, under which the latter may not patronize carriers operating direct service from Great Lakes ports to Europe without being subject to penalty of respondents' noncontract rates on their shipments from North Atlantic ports to Europe, place the shipper using the direct service at a disadvantage in competing with contract shippers when the former is compelled to patronize respondents' lines. No penalty is assessed against shippers utilizing the Gulf route to Europe. While contract shippers of small quantities are required to use respondents'

DISCRIMINATION—Continued
vessels, those in position to make boatload shipments may provide their own transportation without violating their contracts. None of these discriminations appears upon the record to be fair or just. Id. (226).
Equality of treatment is not accorded the shipper merely by giving him the opportunity to enter into discriminatory contracts in the same manner as offered to all shippers. Id. (226).
Excessive vessel tonnage in this trade proved to be no deterrent to admission of Osaka Syosen Kaisya to conference membership just a short time prior to complainant's application. Denial of complainant's application clearly unjustly discriminatory between carriers. Waterman *v.* Bernstein, 238 (243).
In view of the existence of the competition which confronts the non-railroad-owned terminals from those which are railroad-owned, any discrimination or preference arising from the adoption by the former of the practices of the latter with respect to wharfage charges is not undue or unjust. Wharfage Charges, Boston, 245 (249).
Pooling agreement between carriers, previously approved under section 15 of Shipping Act, is, in view of changed conditions, unjustly discriminatory and unfair as between the parties. Pooling Agreement 5893, 372 (381).
Carrier will be expected to remove the apparent discrimination in connection with transportation of ore and ore concentrates as between principal ports and minor ports from which rates are subject to special arrangements. Alaskan Rates, 558 (581).
Where shipments are subject to the same rate and move over the same line on vessels sailing from and to the same ports and the transportation services are substantially similar, the same rate should be applied on the shipments. Rates of Garcia, 615 (618).
DISTANCE. *See also.* BLANKET RATES.
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 the Puerto Rican 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 to show unreasonableness. Puerto Rican Rates, 117 (119).
Inasmuch as no justification was given for blanketing rates on certain commodities, respondents will be expected to adjust such rates on a mileage basis. Alaskan Rates, 558 (578).
DISTRIBUTION. *See* ASSEMBLING AND DISTRIBUTION.
DIVERSION OF TRAFFIC. *See* CIRCUMSTANCES AND CONDITIONS; EVIDENCE; GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES; PRACTICES; PREFERENCE AND PREJUDICE.
DIVISIONS. *See* ABSORPTIONS.
DUAL COMMON AND CONTRACT CARRIERS. *See also* CONTRACT CARRIERS; INTERCOASTAL SHIPPING ACT, 1933; JURISDICTION.
Although section 16 does not apply to contract carriers in the coastwise trade, nevertheless, where a carrier subject to our jurisdiction attempts to operate as a common and contract carrier, the removal may be ordered of any violation of that section resulting from the operation of the contract portion. The facts of this case do result in undue preference and prejudice, and, consequently, agreement 6210–C will not be approved.

DUAL COMMON AND CONTRACT CARRIERS—Continued
Respondent will be required to remove the violation thus found to exist. Agreements 6210, Etc., 166 (170, 171).
The operators of vessels shown to be engaged in the transportation of lumber from Washington and Oregon to California ports under charter or contract with lumber shippers are private or contract carriers not subject to the regulatory provisions of the Shipping Act, 1916, as amended. It is not shown that any subject common carrier in that trade is so engaged or is violating any such provision through lumber chartering, chartering arrangement, or practice, rule, regulation, charge, and/or rate in relation thereto. It should be emphasized, however, that regular common carriers, might, through chartering their vessels to shippers, be guilty of creating undue preference and prejudice. Pacific Coastwise Carrier Investigation, 191 (194).
Respondent Coastwise Line operates seven vessels, transporting therein, under contract with Crown-Zellerbach Corporation, paper and other products from Washington and Oregon mills of that corporation to San Francisco and Los Angeles. As a common carrier it transports in the same vessels and on the same voyages miscellaneous cargo and on-deck lumber. Crown-Zellerbach receives one-half the profits from respondent's whole operation and in turn guarantees respondent against loss in such operation. Respondent's witness testifies to lack of knowledge as to whether lumber could be profitably carried by it at the suspended rate and whether, except for the Crown-Zellerbach contract, it would be willing to transport lumber at such rate. Witnesses for other operators engaged in the trade in charter, contract, or common carrier transportation of lumber testify that respondent's proposed rate would not cover operating costs. Suspended rate not justified. Id. (197).
In Agreements 6210 Etc., 2 U. S. M. C. 166, the contract between respondent Coastwise Line and Crown-Zellerbach pursuant to which respondent transports that corporation's paper, paper products, and pulp under contract, and also, as a common carrier, transports in the same vessels and on the same voyages miscellaneous cargo and on-deck lumber, was held to result in undue prejudice in viloation of section 16. Id. (197).
A carrier may be both a common and a contract carrier, not, however, on one vessel on the same voyage. Upon the facts detailed, it appears that respondent was a carrier of this dual capacity. This is not to say that a carrier may so contrive its operations in such dual capacity as to work unwarranted discrimination against the shipper patrons of its common-carrier service or to evade control over it as a common carrier. In the instant case, there is no indication of any such discrimination or attempt at evasion. Transp. by Mendez & Co., Inc., between U. S. and Puerto Rico, 717 (721).
DUE PROCESS. *See* CONFISCATION.
EARNINGS. *See* COST OF SERVICE; FAIR RETURN; REVENUE.
EMBARGOES.
An embargo is an emergency measure to be resorted to only where there is a congestion of traffic or when it is impossible to transport freight offered because of physical limitation of the carrier (1 U. S. S. B. 32). No such condition has been shown in this case. Embargo, North Atlantic and Gulf, 464 (465).

EMBARGOES—Continued
Even if an embargo were the proper medium of abandoning service, the short prior notice given by the embargo in question works an unreasonable hardship on the public. Id. (465).
Embargo by the respondent is unreasonable. Respondent should file schedules canceling its rates for the services to be withdrawn upon statutory notice or shorter notice as may be authorized. Id. (465).
Respondent justifies the embargo by emergency conditions created by withdrawal of coastwise services of other lines. With additional freight accumulating at both Gulf and Atlantic ports formerly carried by other lines, it has been unable to maintain schedules. With vessels as much as three days behind schedule, it has had to leave between 200 and 300 tons per trip on the Philadelphia dock. Before the outbreak of the European war respondent was able to secure additional vessels to meet emergencies, but none is available now. It states its withdrawal of its Camden, N. J., call is only temporary. Its rates have not been canceled. The embargo is not unreasonable or unjustly prejudicial. Embargo at Camden, N. J., 491 (492).
EQUALIZATION. *See also* GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES; PORT EQUALIZATION; PREFERENCE AND PREJUDICE.
Prior findings (1 U. S. M. C. 661) condemned an arbitrary 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. There is no comparison of record on further hearing contrasting volume of movement actually transshipped between terminal ports with that which might be reasonably expected to move from San Diego in transshipping service; also no comparison of cost of respective transshipping services. Removal of arbitrary found not justified. Harbor Comm. of San Diego *v.* American Mail Line, 23 (26).
The practice of equalization is not condemned as a general principle. But here it creates an undue advantage which cannot be overcome by the break-bulk lines individually, except by resigning from the conference and precipitating a rate war which is a condition contrary to the best interests of the American merchant marine. An absorption practice which would bring about such a result should be condemned. Beaumont *v.* Seatrain, 500 (504, 505). On further hearing, reversed in part, Beaumont *v.* Seatrain, 699.
EVASION. *See* CONCESSIONS.
The creation of devices to evade the regulatory provisions of the shipping acts cannot nullify the purposes of such legislation. Transportation by Southeastern Terminal & S. S. C., 795 (798).
There are at least six different organizations combined in one form or another to engage in the shipping business. Due to the informal manner of transacting business, mostly by word of mouth, it is difficult if not impossible to trace the precise relations of these firms with each other. Looking through the corporate fiction, at least as far as one respondent and the four corporate shipowners are concerned, those organizations are responsive to the same general policy and subserve the same general investment. Id. (798).

EVIDENCE. *See also* ANY QUANTITY RATES; CIRCUMSTANCES AND CONDITIONS; COST OF SERVICE; CUSTOM; HEARINGS; OTHER TRADES; PROOF; RATE AND COMMODITY COMPARISONS; REASONABLENESS; REVENUE.

Other than a statement of various stowage factors and rates on flour, wheat bran, and bran shorts, and on other commodities believed comparable, which comparisons of themselves are of little value, neither protestants nor respondents furnished convincing evidence regarding transportation conditions respecting flour or relationships generally existing concerning it. In view of increased operating costs, the increases on flour, bran and shorts do not appear excessive. Rates on Cotton, etc., 42 (45).

Although respondents contend that the competitive situation as between New Orleans and New York is "the most important consideration in the matter," they presented no witness who was certain of the manner in which the free-time tariff at New Orleans was construed and enforced. The record is not persuasive that by increasing the storage charges at New York to the level of those applicable on the other commodities coffee would be diverted through New Orleans. Storage Charges under Agreements 6205 and 6215, 48 (52).

Complainant is wholly dependent upon defendants for the movement of plywood. It asserts that its rates are higher to the same market than rates from foreign competitive points; that European industries are increasing their purchase 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 the defendants are either owned or controlled by foreign governments unsympathetic to the growth of American commerce. None of these statements in itself 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 commerce of the United States. Pacific Forest Industries *v.* Blue Star Line, 54 (56).

Exhibits show a decline in sales of plywood following defendants' rate increases. British import statistics show that the United States was the only country except Germany whose plywood sales to Great Britain declined. These exhibits, however, do not prove that the increased freight rates have been a controlling factor in curtailing exports. More plywood was transported in defendants' vessels 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. Id. (57).

Undisclosed 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. Application of Thorden, 77 (82).

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, rehabilitation of enter-

EVIDENCE--Continued

prises to increase employment, 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 traffic, its volume and regularity of movement, the cost of service to the carriers, and other basic factors considered in rate making. Puerto Rican Rates, 117 (119).

Existence of different rates on analogous commodities moving in the Puerto Rican 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, loss and damage claims, handling costs, and type of vessels operated both as to the trade involved and in compared trades, should also have been presented. Id. (119).

Revenue is claimed to have been insufficient, but the extent of the deficiency which must be met by 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. This position is difficult to undersatnd unless it is also respondents' 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 operation of a carrier engaged in interstate commerce. Id. (123).

Extended examination of the charters entitled "bareboat" and of the affidavits and supporting data and records filed by the parties to the charters fails to disclose any ground for determining such charters to be other than as entitled. Intercoastal Charters, 154 (161).

Complainant's evidence of unreasonableness consists of various comparisons with lumber rates in the Pacific coastwise and intercoastal trades. The dissimilarities of transportation and competitive conditions in these and the instant Pacific coast-Hawaiian trade render these comparisons of little value. Smith *v.* Matson, 172 (176, 177).

Respondents point out that the suspended 22-cent rate yields a per-ton-mile revenue of 2.67 cents. In the absence of estimated cost of handling wine at the terminals, damage ratio, and stowage factors, that figure is not of itself proof of compensatory revenue, even though it may compare favorably with revenue on other freight. Baltimore-Virginia Ports Wine Rates, 282 (284).

Testimony is that the intercoastal respondents' proposed cancellation of direct-line and joint through rates and placement of minimum tonnage restrictions upon service in issue will jeopardize terminal property of Sacramento which is leased to the River Lines. River Lines estimates that it stands to lose 50 percent of its traffic if the transshipment service is canceled. This is, of course, highly speculative inasmuch as the future prosperity of River Lines will depend upon the service it renders and the charges it makes therefor, together with the ability of its patrons to hold their markets as against their competitors using other modes of transportation. Intercoastal Cancellations and Restrictions, 397 (400).

There is little probative evidence of a positive nature clearly describing the the actual contents of the shipments. Hence it is impossible to determine

EVIDENCE—Continued
the applicable rate. Rates charged not shown to have been inapplicable. Complaint dismissed. Assoc. Tel. Co. *v.* Luckenbach, 512 (513-514).
Defendant moves that complainant's exceptions to the examiner's proposed report be stricken from the record on the ground, among other things, that they contain evidential matter not introduced at the hearing. The motion is denied, but such matter will not be considered in the disposition of the issues. Rowe Service Co. *v.* Am. Hawaiian, 519.
Complainant's cost study appears to be based on too many assumptions unsupported by factual evidence, to be conclusive. G. C. Schaefer *v.* Encinal Terminals, 630 (634).
The estimates of tonnage, revenue, and expenses were so speculative and the future operational plans of the lines so uncertain that such evidence affords no sound basis upon which to predicate a rate structure. Increased Rates From, To, and Within Alaska, 807 (810).
EXCLUSIVE PATRONAGE. *See* AGREEMENTS UNDER SECTION 15; CONTRACT RATES; CONTRACTS WITH SHIPPERS; DISCRIMINATION.
FAIR RETURN. *See also* CONFISCATION; COST OF SERVICE; DEPRECIATION; FINDINGS IN FORMER CASES; INSURANCE; REASONABLENESS; REVENUE; VALUE OF CARRIER PROPERTY.
The rate expected and usually obtained from investments with corresponding risks in the locality offers a comparable measure of return for respondent carrier. Rates of Inter-Island Steam Navigation Company, 253 (261).
For the purpose of this proceeding, the fair return on the value of respondent carrier's property does not exceed 7 percent. Id. (262).
Upon the basis of the value found for rate-making purposes of respondent's properties used and useful in the public service, respondent's estimated earnings will yield a return of 4.77 percent. This is 2.23 percent less than the 7 percent found to be a fair return. It is clear that the rate structure as a whole is not shown to be unreasonable from the standpoint of the fair value test. Id. (265, 266).
In 2 U. S. M. C. 253 it was recognized that a rate of return should be such as to attract the intelligent investor, with due regard to certainty and security, and that as a comparative measure the return expected and usually obtained from investments with corresponding risks should be considered. Also recognized that in the regulation of public utilities the constitutionally guaranteed fair return excludes the right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. Alaskan Rates, 558 (571).
In 2 U. S. M. C. 253 it was found that the fair rate of return on the value of the property did not exceed 7 percent. That finding, however, does not operate as a precedent. The fair rate of return in instant case should not exceed 7.5 percent. Id. (571).
Rate of return on fair value of property of Alaskan carriers should not exceed 6 percent. Alaskan Rates, 639 (649).
FALSE BILLING. *See also* CONCESSIONS; KNOWLEDGE; PREFERENCE AND PREJUDICE; REGULATIONS.
In delivering shipments upon release from customs in the United States, respondents make no effort, through their delivery clerks or otherwise, to check the description of the goods in the bill of lading and manifest with the description in the entry permit; nor to check the weight or measurement of the shipment with the weight or mea urement stated in the bill of

FALSE BILLING—Continued
lading and manifest. Similarly, in delivering shipments billed under various tariff items involving the value of the commodity, there is not even a casual effort to inquire into the shipments' value to insure collection of applicable rates; nor in delivering shipments billed under a general descriptive phrase is there exercise of any precaution by them to insure the collection of proper tariff rates. In many instances labels or stencilled inscriptions on the cases of merchandise themselves clearly indicate the contents of the cases to be other than as stated in the bills of lading and manifests. This failure to inform or even attempt to inform themselves as normal business resource and acumen should dictate is proof that they knowingly and willfully keep themselves in ignorance of false billings. Rates from Japan to United States, 426 (429, 430, 434).
There is false billing if fabric remnants are billed as rags, for the latter are fragments or pieces of cloth not usable as originally intended in the manufacture of garments or other cloth articles. Rates to Philippines, 535 (539).
Respondent carriers' own evidence of their course of action, their position and their defense plainly show passive interest and complaisance. They do not recognize an obligation on their part to determine the nature of the textiles received by them for transportation, or whether shipments are "stuffed" with textiles, further than to compare the export declaration and dock receipt with the bill of lading. A principle sanctioned by reason and adopted by law is that one charged by statute with a duty is thereby charged with the responsibility of reasonably diligent inquiry and exercise of care to insure his compliance with the statute, and that indifference on his part is tantamount to outright and active violation. Id. (542).
Respondents found to allow shippers to obtain transportation at less than their regular rates currently established and enforced by means of false billing. Id. (544).
Shippers found to knowingly and willfully, by means of false billing, obtain transportation at less than rates otherwise applicable, in violation of section 16 of Shipping Act, 1916. Id. (544).
FINDINGS IN FORMER CASES. *See also* JURISDICTION.
Decisions 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. Los Angeles By-Products *v.* Barber, 106 (115).
Defendant's second motion to dismiss with respect to allegations of unlawfulness under section 16 was on the gound that complainants have no standing under the doctrine enunciated in T. & P. *v.* U. S., 289 U. S. 627, that a port is not susceptible to undue preference and prejudice. The same issue was presented in Docket 567, City of Mobile et al. *v.* Baltimore Insular Line, Inc., et al., 2 U. S. M. C. 474, and was determined adversely to defendants' contentions. This motion is therefore denied. Beaumont *v.* Seatrain, 500 (501).
FORWARDERS AND FORWARDING. *See also* BILLS OF LADING; OTHER PERSONS; PREFERENCE AND PREJUDICE.
The proposed reductions under suspension were published in an effort to meet forwarder competition and to reestablish direct carrier-shipper contact. The attempt to meet forwarder competition, upon which respondents

FORWARDERS AND FORWARDING—Continued
chiefly rely in support of their schedules, must be recognized. While forwarders, in their capacity as shippers, must be given every privilege accorded other shippers, there is no obligation on carriers to maintain rates that will benefit forwarders. Westbound Intercoastal Carload and Less-Carload Rates, 180 (184).
A company engaged in the business of consolidating and forwarding freight receives a bill of lading from the transporting carrier and pays the regularly published and filed rates; charges a rate which is sufficiently higher than the rate it pays the transporting carrier to cover expense of solicitation, assembling, segregation, delivery, accounting, marine insurance and other incidental costs; issues bills of lading, and assumes full liability for loss and damage, but does not own or control vessel space, is a consolidator and forwarder or "other person" as defined in the Shipping Act, 1916, and is not required to file its tariffs. Alaskan Rates, 558 (582).
Respondent states that the shipments were made by a forwarder and contends that it is entirely proper to pay forwarding agents commissions, as the brokerage paid can in no way be construed to be a deduction of the freight rates as found in L. V. R. R. *v.* U. S., 243 U. S. 444. On the contrary, the court in that case held that the forwarder was to all legal intents the shipper and that any payment made by a carrier to a shipper, whether by way of salary, commission, or otherwise, in consideration of his shipping goods over the carrier's line, was prohibited. Rates of Garcia, 615 (617).
FRAUD. *See also* AGREEMENTS UNDER SECTION 15.
There is no doubt that the Commission has power to withdraw its approval *ab initio* to agreements where such approval has been obtained by fraud. Dollar-Matson Agreements, 387 (390).
Whether the contract is invalid in its inception on grounds of fraud or public policy other than as expressed in section 15 is a matter for the courts to decide. Id. (396).
FREE TIME. *See also* DEMURRAGE; EVIDENCE; PRACTICES; REASONABLENESS; STORAGE.
Agreement between Coastwise Line and Columbia Basin Terminals requires the latter to acquire, maintain, and operate wharf and terminal facilities for the former's use; the charges to others may be more or less than those to Coastwise; with the exception of Crown Zellerbach shipments, which are allowed eight days, five days' free time are allowed on all cargo. Limited facilities do not permit to others a service as extensive as that given Crown-Zellerbach. The record does not justify the difference in free time accorded nor the difference in the type of charges assessed. The agreement results in undue preference and prejudice and will not be approved. Agreements 6210 Etc., 166 (171).
Free time is the period allowed for the assembling of cargo upon, or its removal from, the wharves. Upon its expiration, demurrage charges are assessed. The uniformity of the free-time period allowed at the larger terminals is more apparent than real. Obviously, when demurrage is waived, transit shed space, the most valuable in the terminal, is being wasted. This involves a cost which has to be recouped somewhere, and it is unreasonable that those shippers who do not use the piers beyond the free time should be forced to bear the burden either directly or indirectly. The practice also affords an opportunity to discriminate between shippers. Free-time-period allowances greater than as outlined unduly prejudicial

FREE TIME—Continued
and preferential in violation of section 16, and unreasonable in violation of section 17. Practices of San Francisco Bay Terminals, 588 (595–598).
FREQUENCY OF SERVICE. *See* SERVICE.
GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES. *See also* PRACTICES.
Complainant seeks to demonstrate the unlawfulness of the rates on paper and paper specialties from Atlantic and Gulf ports to Hawaii by comparing them with rates from Pacific coast to Hawaii. The sailing time New York to Hawaii is approximately 29 days, and from Pacific coast to Hawaii 9 days. The Atlantic and Gulf carriers are subject to substantial Panama Canal tolls. Complainant's primary difficulty in its competition with Pacific coast shippers is due to geographical disadvantages, from which the law affords no relief. Sharp *v.* Dollar, 91 (91, 92).
The testimony of shippers using the St. Lawrence River Route from the Great Lakes shows convincingly that the economies, as well as other advantages inherent in the direct service, have enabled them to penetrate European markets despite severe competition from abroad and at the Atlantic seaboard. Carriers should not attempt by artificial means to control the flow of traffic not naturally tributary to their lines. Contract Routing Restrictions, 220 (225, 226).
As an operating convenience, defendants sometimes transship at New York cargo destined for Boston, Philadelphia, Baltimore, and Newport News, cost of on-carriage from New York to destination being absorbed by the carriers. Also, as to traffic which would ordinarily move through Boston to an interior point, shipments are sometimes forwarded to the interior point from New York, the ocean carriers absorbing the difference in cost between the inland rail rate from Boston to the interior point and from New York to such point. Complainant contends shipments of green coffee billed to New Orleans, transshipped at New York, should be accorded similar treatment. The geographical relationship between New York and New Orleans is not comparable with that between ports within the North Atlantic range. Green Coffee Assn. *v.* Seas Shipping Company, 352 (356, 357).
Sacramento is some 94 miles from San Francisco Harbor. Except in the rainy season, it is only accessible to shallow-draft vessels routed over inland bays and rivers. The burden of the difficulties attendant upon Sacramento's position cannot be made to fall upon respondent carriers. The law does not contemplate the equalization of natural advantages and disadvantages through an adjustment of freight rates, and the fact that a shipper may encounter economic and geographical disadvantages in selling his produce in a given market does not establish unlawfulness of the practice of the carrier in connection with the transportation of the shipper's commodity. Intercoastal Cancellations and Restrictions, 397 (399).
Diversion of traffic through New York by means of "equalization" which traffic, by reason of a substantially more favorable geographical position, is naturally tributary to South Atlantic or Gulf ports, is uneconomic and unnecessarily wasteful of carrier revenue. Mobile *v.* Baltimore-Insular, 474 (481).
To permit continuation of unrestricted solicitation by carriers for business through condonation of a practice whereby unfavorable inland rates are overcome would wholly ignore the right of a port to traffic to which it may


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GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES—Continued
be entitled by reason of its geographical location. Such right appears fundamental under statutes designed to establish and maintain ports. Id. (486).
Under section 8 of the Merchant Marine Act, 1920, the Commission is required to recognize territorial regions and zones tributary to ports, and should there exist rates to seaboard which, among other things, do not recognize the natural direction of the flow of traffic, recommendations may be made to the Interstate Commerce Commission for such action as it deems necessary. Although it is contended that section 8 has no relation to rate regulatory provisions of the Shipping Act, 1916, the Commission would not be warranted in wholly ignoring basic policies of Congress. Id. (486).
Statement in 2 U. S. M. C. 474 is even more applicable in the present situation, where the absorption practice permits a carrier to reach into the port itself and draw therefrom the traffic which is local and, therefore, naturally tributary to that port. Practices of Seatrain of absorbing difference between costs of delivering cargo to its vessels at Texas City and costs of delivering local tonnage to breakbulk carriers shipside at Houston, Galveston, and Beaumont, found in violation of sections 16 and 17. Beaumont *v.* Seatrain, 500 (504, 505). On further hearing, reversed in part, 699.
It is well settled that the law does not contemplate the equalization of natural advantages and disadvantages through an adjustment of freight rates. 1 U. S. M. C. 628. Intercoastal Rate Structure, 506 (511).
GOING-CONCERN VALUE. *See* VALUE OF CARRIER PROPERTY.
GOOD WILL. *See* AGREEMENTS UNDER SECTION 15; VALUE OF CARRIER PROPERTY.
GOVERNMENT. *See also* ALASKA RAILROAD; COMPENSATORY RATES; DIFFERENTIALS.
A lower basis of rates applied on property moving under a contract between contractors and the Navy Department for the construction of navy air bases. Where the Navy bears the freight charges and the contractors do not profit from either the lower rates or consequences thereof, and there is no claim that those rates are below a compensatory level or that they influence other rates or traffic in any particular, such rates are not unlawful. Alaskan Rates, 558 (576, 577). Maintenance of such rates subsequently found to result in undue preference and prejudice and unreasonable practice. Alaskan Rates, 639 (651, 652).
GREAT LAKES. *See* HIGH SEAS AND GREAT LAKES.
HANDICAP RATES.
The intercoastal handicap system may be described as an arbitrary basis of rates agreed upon between the lines and designed to divide traffic between them without regard to value of service to the shipping public. It is based upon such considerations as frequency of sailings or time in transit. Intercoastal Rate Structure, 285 (290).
HANDLING. *See also* ASSEMBLING AND DISTRIBUTION; DELIVERY; NOTICE; OTHER PERSONS; REPARATION; SHIPPING ACT, 1916; STEVEDORING.
The 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 requires the handling service beyond ship's tackle is necessarily an important consideration in constructing these rates. Los Angeles By-Products Co. *v.* Barber, 106 (112).

HANDLING—Continued
Collection of separate charges for handling general cargo beyond ship's tackle at California ports in foreign commerce, not shown to be an unreasonable practice, and the establishment and collection of the separate handling charge by agreement not shown to be in violation of section 15. Complaints dismissed. Id. (115).
The physical conditions of handling lumber and of handling general cargo are essentially different. Lumber Through Panama Canal, 143 (147).
The record is convincing that, were it not for railroad competition, the carload unit system of rates would have no place in ocean transportation. The water carrier performs all the service and bears the expense of loading and unloading and handling, whether or not the shipment is tendered in carload quantities. Neither the carload minimum nor the spread between the carload and less-carload rates is based on cost or value of service. The spread between steamship terminal costs of handling carload and less-carload traffic is not so great as that between railroad terminal costs of handling carload and less-carload traffic. Intercoastal Rate Structure, 506 (509).
HARTER ACT. *See* BILLS OF LADING.
HEARING. *See also* ABUSE OF PROCEDURE; INTERCOASTAL SHIPPING ACT, 1933; JURISDICTION; PARTIES.
The statute gives the right to a full hearing, which includes the right to cross-examine witnesses, and imposes the duty of deciding in accordance with the facts established by proper evidence. Complaint dismissed for lack of prosecution. Close *v.* Swayne & Hoyt, 68 (69).
Complainant did not appear at hearing but subsequently filed request for withdrawal of complaint. Request denied and complaint dismissed. Gallegher *v.* Cunard White Star, 371.
A full hearing has been had where evidence of actions subsequent to the hearing has been allowed by stipulations and the parties have been heard in oral argument. Pooling Agreement 5893, 372 (375).
Respondents appeared specially, stating that a petition for declaratory judgment to set aside order of investigation had been filed in a district court, based on jurisdictional and other grounds, and moved that the hearing be deferred pending decision of the court. Request denied, but report deferred. N. Y. P. R.—Waterman, 453 (454).
Complainant's petition for oral hearing, received after proceedings had under shortened procedure and issuance of the examiner's proposed report, denied. Complaint dismissed. National Cable & Metal Co. *v.* Am. Hawaiian, 470.
HIGH SEAS AND GREAT LAKES. *See also* RIVER CARRIERS.
Carriers need not actually go upon the high seas or the Great Lakes to be subject to Commission's jurisdiction. Inland Waterways Corporation, 458 (460, 461).
The contention that the transportation was not on the high seas from port to port on regular routes is untenable, for under the Act the character of transportation is determined before a movement from port begins. In re Pan-American, 693 (697).
HOTELS. *See* CARRIER PROPERTY; PREFERENCE AND PREJUDICE.
ICING.
The record indicates that there is sufficient necessity for the icing of pears to preclude any finding that the requirement by individual lines is un-

ICING—Continued
reasonable. There is apparently no objection to the conference rule requiring precooling. Pacific Coast-European Rates and Practices, 58 (60).
ILLEGAL RATES AND PRACTICES. *See also* CONCESSIONS; EVIDENCE; FALSE BILLING; INTERCOASTAL SHIPPING ACT, 1933; TARIFFS.
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 absorption of differentials between rates over competitive inland routing within the United States terminating at the same port, are illegal because not filed as required by Intercoastal Shipping Act. Precooling service, charges therefor, and specific storage charges after free time at Puerto Rican docks also are illegal because not filed. Puerto Rican Rates, 117 (134).
INCOME. *See* REVENUE.
INFORMATION ILLEGALLY DISCLOSED.
Nicholson Universal necessarily disclosed to Duluth Transit, and so permitted Holt Motor Company, its officers and employees to acquire, information concerning the nature, kind, quantity, destinations, consignees, and routing of automobiles. The information improperly disclosed business transactions of automobile dealers to a competitor; and the information also may have been used to the detriment or prejudice of shippers, consignees, and carriers. Nicholson Universal, by knowingly disclosing the information to Duluth Transit, and Holt Motor Company, by knowingly receiving the information, violated section 20 of the Shipping Act, 1916. Agreements of Nicholson Universal, 414 (424).
The giving and receiving of information as to the billing of shipments consigned to another terminal was not necessary to insure proper delivery of freight, and, even though it was not used to the prejudice of shippers or consignees, it was the kind of information which may be used to the detriment of a shipper or which may improperly disclose his business transactions to a competitor. Receiving the information was a violation of section 20. Practices of San Francisco Bay Terminals, 588 (594, 595).
INJURY. *See also* PREFERENCE AND PREJUDICE; REPARATION.
Application of different wharfage charges on foreign and intercoastal traffic will not be condemned where there is no showing of a competitive relation between the traffic and an injurious effect arising from the discrimination. Wharfage Charges, Boston, 245 (248).
Complainant's evidence of injury based upon the fact that he had sold the commodities at prices predicated upon his understanding that the lower rates were applicable is immaterial. Remis *v.* Moore-McCormack et al, 687 (692).
INLAND WATERWAYS CORPORATION. *See* COMMON CARRIERS.
INSTRUCTIONS. *See* SHIPPING INSTRUCTIONS.
INSURANCE.
Respondent's estimate for cost of marine insurance represents an accrual for self-insurance in excess of actual losses suffered, it being maintained that the excess should be charged to operations inasmuch as it would have to pay the same amount to an outside insurer. However, the self-insurance fund was created out of excess accruals charged to operation, and income from the investment of such funds is available for dividends. The public, which has contributed the fund, should pay no more than the actual cost of carrying the risk. The excess will be deducted from marine insurance

INSURANCE—Continued
expenses. Rates of Inter-Island Steam Navigation Company, 253 (263, 264).
INTENTION. *See also* TARIFFS.
The application of the prohibitions against undue preference and unjust discrimination does not depend upon whether a carrier intends to violate the statute. The intention to charge different shippers different rates is sufficient. Rates of Garcia, 615 (618).
The fact that 9 months elapsed between filings of tariffs pursuant to Docket No. 128, that a filing within 10 days was promised in November 1939 and not made until February 1940, and the fact that respondent repeatedly ignored the Commission's requests, indicate all too clearly that respondent, aware of the rules and regulations, subordinated compliance therewith to its own convenience. Id. (618, 619).
INTERCOASTAL SHIPPING ACT, 1933. *See also* BURDEN OF PROOF; CHARTERS; CONTRACT CARRIERS; ILLEGAL RATES AND PRACTICES; JURISDICTION; NOTICE; PRACTICES; REGULAR ROUTES; RIVER CARRIERS; SHIPPING ACT, 1916; SUSPENSION; TARIFFS; THROUGH ROUTES AND THROUGH RATES.
**Carriers Subject:**
The absence of solicitation does not determine that a carrier is not a common carrier. Respondent carried for others to the extent of its available space. In view of the prevailing shipper-distressed transportation conditions in the Miami to San Juan trade, it is abundantly clear that no solicitation was necessary. Respondent became known generally throughout the trade and transported merchandise of others on the particular voyage to the extent of its capacity. Its course of conduct fixed or "established" it as a carrier ready and willing to transport for all, space permitting. Failure to file schedule with the Commission was a violation of section 2 of the Intercoastal Shipping Act, 1933, as amended. As to its contract-carrier operations, respondent was not a subject carrier. Transportation by Mendez & Company, Inc., between Continental United States and Puerto Rico, 717 (720–721).
**Tariffs:**
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 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. Puerto Rican Rates, 117 (124).
Section 2 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. Id. (129).
Congress found that the interests of carriers and the shipping public concerned with intercoastal trade would best be served by rate stability which, in turn, could best be secured by giving the Commission power to fix maximum and minimum rates. It therefore granted such power by amendment of June 23, 1938, to the Intercoastal Shipping Act, 1933. Intercoastal Rate Structure, 285 (300).
The purpose of section 2 was to give publicity to the rates charged, to prevent prejudice and discrimination in the charges made, and to

INTERCOASTAL SHIPPING ACT—Continued
**Tariffs**—Continued

prevent rebates which would result from lack of publicity. In the instant case involving Great Lakes transportation of automobiles in space engaged by a common carrier in vessels of another common carrier, no prejudice or discrimination results from the charges assessed against the shippers. The amounts retained by the respective carriers are in the nature of divisions of the through rates published and filed with us. New Autos in Interstate Commerce, 359 (364).

Arrangement involving Great Lakes transportation of automobiles in space engaged by common carrier in vessels of another common carrier is one authorized by section 15. Section 2 of the Intercoastal Shipping Act, 1933, as amended, must be interpreted in the light of the specific provisions of section 15. Id. (364).

The filing requirements of the Intercoastal Shipping Act, 1933, apply notwithstanding cargo agreed to be carried may not move from port. In re Pan-American, 693 (696).

INTERSTATE COMMERCE ACT. *See* SHIPPING ACT, 1916; STORAGE; THROUGH ROUTES AND THROUGH RATES.

INTERSTATE COMMERCE COMMISSION. *See* ALASKA RAILROAD; JURISDICTION; MERCHANT MARINE ACTS; PROPORTIONAL RATES; RAIL AND RAIL-WATER RATES; STORAGE.

INTERVENTIONS.

Intervening interests are vitally affected, and their admission as parties tends to eliminate multiplicity of complaints. No new issues are raised, and the carriers cannot claim surprise, for many of the protested interventions were granted prior to hearing. Mobile *v.* Baltimore-Insular, 474 (478, 479).

ISSUES. *See also* INTERVENTIONS.

It is urged that the question of preference and prejudice is not properly in issue and that the parties did not know such phase of the matter was to be investigated. Necessarily, however, the contract between the carrier and the shipper is the basis of the dual common-contract carrier operation, and without a review of that contract the questions involved cannot be determined. Furthermore, counsel for the shipper was in attendance at the hearing but did not see fit to participate therein, and the shipper's traffic manager was one of the principal witnesses. Every opportunity was given to present whatever testimony the parties thought advisable. Agreements 6210, Etc., 166 (170).

JOINT RATES, FARES, AND CHARGES. *See* AGREEMENTS UNDER SECTION 15; ALASKA RAILROAD; JURISDICTION; LOCAL RATES; PROOF; PROPORTIONAL RATES; RAIL AND RAIL-WATER RATES; RATE CHANGES; RIVER CARRIERS; THROUGH ROUTES AND THROUGH RATES.

JUDICIAL NOTICE. *See* OFFICIAL NOTICE.

JURISDICTION. *See also* AGREEMENTS UNDER SECTION 15; BURDEN OF PROOF; CANAL ZONE; CHESAPEAKE BAY; COMMON CARRIERS; CONTRACT CARRIERS; DAMAGES; DUAL COMMON AND CONTRACT CARRIERS; FRAUD; HIGH SEAS AND GREAT LAKES; INTERCOASTAL SHIPPING ACT, 1933; MERCHANT MARINE ACTS; OTHER PERSONS; POLICY; PRACTICES; QUANTITY; RAIL AND RAIL-WATER RATES; REGULATIONS; RIVER CARRIERS; SHIPPING ACT, 1916; WAR SHIPPING ADMINISTRATION.

Shipment originated in British Columbia and was transshipped at Seattle to

JURISDICTION—Continued
Philadelphia. Contention is made that since the shipment originated in a foreign country section 17 is applicable and Commission has no jurisdiction to determine the reasonableness of the storage charge and to require payment of reparation. 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 by the Shipping Act, 1916, and subject to the jurisdiction imposed upon that type of carrier. Defendant's storage charges unreasonable in violation of section 18. Arthur v. A. H. S. S. Co., 6 (7).
The intention of Congress to place common carriers by water in interstate commerce under the Commission's jurisdiction irrespective of the foreign origin or destination of the cargo transported by them is 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 with other interstate carriers. Id. (9).
Shipping Board decisions 1 U. S. S. B. 49 and 1 U. S. S. B. 86, finding that section 18 of the Shipping Act, 1916, had no application to cargo which was moving in foreign commerce, are, in so far as such decisions limit Commission's 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, clearly in error, cannot be followed, and are overruled. Id. (9).
In the absence of a showing of undue prejudice Commission has no authority to require carriers to serve a port. Sun Maid Raisin Growers Assoc. v. Blue Star Line, 31 (38).
New Orleans shippers argue that the increased cotton rate of 35 cents 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. Rates on Cotton, etc., 42 (44).
Commission not only has the authority under section 17 to prescribe just and reasonable regulations and practices, but also the power to order them enforced. Any means or device tending to nullify or interfere with the enforcement of such regulations and practices must be subject to our condemnation. Storage Charges Under Agreements 6205 and 6215, 48 (53).
Respondents contend that order of investigation and suspension was unauthorized by the statute because the tariffs were "initial" 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 Act that "no person shall engage in transportation unless and until its schedules have been duly and properly filed and posted." Section 3

JURISDICTION—Continued

of the Intercoastal Act 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. Puerto Rican Rates, 117 (122, 123, 124).

The prime object of the Intercoastal Act is to insure filing and posting of actual rates for intercoastal transportation upon reasonable notice to the public. Delivery, when accomplished by the carrier, is an integral part of such transportation. When the independent terminal operator displaces the carrier and undertakes the duty to deliver, Congress did not intend to relinquish or waive its requirement for publicity of the charges made for this service by the terminal operator. To relieve the terminal operator of the duty to give publicity to his charges for services performed by him in place of the carrier would defeat the purpose of the act. Lumber through Panama Canal, 143 (149).

Jurisdiction under section 17 is broad enough to prevent defeat of the purpose of the Shipping Act, 1916, by a public terminal operator's failure to publish and post a tariff of rates and failure to give adequate notice of rate changes. Id. (149).

It is contended that no provision of law permits condemnation of dual operation as a common and as a contract carrier on the same vessel on the same voyage. Although section 16 does not apply to contract carriers in coastwise trade, nevertheless, where a subject carrier attempts to operate in the above-described manner, the Commission may order the removal of any violation of that section resulting from the operation of the contract portion. 1 U. S. M. C. 770, 773, 774. Agreements 6210 etc., 166 (170).

Under the shipping statutes responsibility for rates which are both reasonable to shippers and remunerative to carriers rests with the Commission. Westbound Intercoastal Carload and Less-Carload Rates, 180 (187).

Protestant carriers' position is that the territory involved is amply served, that there is no demand for the additional service proposed by respondent, that they have idle ships which could be used if business warranted, that respondent cannot secure new traffic, and that respondent's entry into the field will only result in a further decrease of traffic for them. Intervener chamber of commerce states that ordinarily it welcomes new water lines, but that there is no demand for respondent's proposed service, that the public interest would not be served by it, and that it fears the protestant carriers will be obliged to curtail their services. To contend that the Commission can prevent a bona-fide carrier from entering a trade for the above reasons presupposes a power which is not conferred by the shipping acts. Nor can such affirmative authority be derived solely from the declarations of the various shipping statutes that it is the policy of the United States to foster the development and encourage the maintenance of an adequate merchant marine. Class Rates Between North Atlantic Ports, 188 (189, 190).

It would be illogical to assume the power indirectly to grant certificates of public convenience and necessity without exercising the concomitant authority to deny the right to abandon service. These powers have not been directly conferred, and they are of such drastic nature as not to be implied. As stated in McCormick S. S. Co. *v.* U. S., 16 Fed. Supp. 45, the delegation by Congress of such power "would have to be made in terms so

JURISDICTION—Continued
clear that there was no possible ambiguity or doubt as to such intent." Waterman *v.* Bernstein, 238 (243).
Protestants express the fear that if respondent's proposed rates become effective they may lead to a spreading of unduly low rates. That possibility is remote as long as both the Interstate Commerce Commission and this Commission have the power of suspension and minimum-rate jurisdiction. Baltimore-Virginia Ports Wine Rates, 282 (284).
Congress found that efforts of carriers to maintain ships and services had been handicapped and the Commission's efforts to build up a merchant marine in line with the national policy had been hampered by lack of authority in the Commission to fix reasonable rates; also that the interests of carriers and the shipping public concerned with intercoastal trade would best be served by rate stability, which in turn, could best be secured by giving the Commission power to fix maximum and minimum rates. Such power, therefore, was granted by amendment of June 23, 1938, to the Intercoastal Shipping Act, 1933. Intercoastal Rate Structure, 285 (300).
There is nothing unlawful *per se* for a carrier to charge a rate different from that of another, and the Commission has no authority to prevent rate reductions as such in the foreign trade. But the practice of making rates lower by a fixed percentage than those of other carriers is detrimental to commerce inasmuch as it is contrary to one of the principal purposes of the Shipping Act, which is to prevent destructive carrier competition. Moreover, the practice affords only temporary benefit to a particular shipper and to the carrier and destroys that stability in rates which is advantageous to American shippers. Cargo to Adriatic, 342 (345).
It is urged that the Commission is disqualified from acting on the present agreement because it owned 90 percent of the Stock of American President Lines, and because of its interest under the operating-differential subsidy agreement. The interest of the Commission is the interest of the United States and was acquired in furtherance of the purposes expressed in the Merchant Marine Act, 1936, creating the Commission, and of the Shipping Act, 1916, conferring the regulatory powers here challenged. Neither the Commission nor any of the commissioners has any personal or private interest. The interest of the Commission in behalf of the public is not such as to disqualify it from acting. Furthermore, and particularly as to the propriety of the Commission's acting, the refusal of the Commission to act on the grounds of a supposed inconsistent interest would result in the agreement being without the scope of any effective regulation. Disqualification will not be permitted to destroy the only tribunal with power in the premises. Dollar-Matson Agreements, 387 (388).
The grounds upon which the Commission may disapprove and thereby render the instant agreement unlawful are specifically enumerated in section 15. The agreement was made lawful when approved; it remained lawful until disapproved. Id. (390).
The voluntary change of position by a party to an agreement was performed in the light of statutory provisions that the agreement might be disapproved subsequent to its original approval. The Shipping Board by its approval did not and could not abdicate its functions for itself or its successors, and neither the Board's approval nor changes of position by the parties to the contract can operate to prevent the Commission from performing its legitimate functions and its obvious duty. Id. (393).

JURISDICTION—Continued

The parties seek clarification of order in 1 U. S. M. C. 750, which forbids the parties to the agreement to make further payments thereunder. Under section 15, the agreement became lawful when approved; and remained so until disapproved. In short, the function of the Commission is either to disapprove or not disapprove the agreement. Going beyond that step is either to trespass upon the contractual rights of the parties or to issue a gratuitous command to refrain from violating laws which the Commission does not administer. Order amended to eliminate reference to further payments. Id. (396).

Whether the contract is invalid in its inception on grounds of fraud or public policy other than as expressed in section 15 is a matter for the courts to decide. Id. (396).

Protestants offered no evidence of undue prejudice relative to respondent's cancellation of its entire service and rates from the Gulf to Puerto Rico. *Lucking v. Detroit Navigation Co.*, 265 U. S. 346, states that "The duty to furnish reasonable service while engaged in business as a common carrier is to be distinguished from the obligation to continue in business. No duty to continue to operate its boats on the route is imposed by the common law or federal statutes." See also McCormick *v.* U. S., 16 Fed. Sup. 45. Legislation subsequently enacted confers no additional authority upon the Commission on the point involved. Proceeding discontinued. Gulf-Puerto Rico Rates, 410 (411).

The rate on bags and bagging from Philadelphia to Houston was separated as to ocean charge, loading charge, and switching charge. The shipments were delivered from Houston dock to consignee's premises by Houston Belt and Terminal Company. The assailed rate was a joint ocean-rail rate concurred in by the belt and terminal company and was filed with the Interstate Commerce Commission. The rate was not subject to Maritime Commission's jurisdiction. Complaint dismissed. Lone Star Bag and Bagging Co. *v.* Southern S. S. Co., 468 (468–469).

Carriers may do many things which the Commission could not compel, but that privilege is not unlimited. *Mobile v. Baltimore-Insular*, 474 (486).

An examination of the various acts from which the Commission derives its jurisdiction fails to disclose any authority to adjudicate loss and damage claims or to award damages because of a carrier's failure to follow instructions to ship on a particular voyage. Pilgrim Furniture Co. *v.* Am. Hawaiian, 517 (518).

The duties imposed upon carriers by sections 14, 16 and 17 of the Shipping Act, 1916, are not owed to a broker whose only interest was the compensation it expected to receive from defendant in return for supplying cargo for its vessels. The cause of action, if any, is not cognizable under the provisions of the Shipping Act, 1916. American Union Transport *v.* Italian Line, 553 (556).

Joint through rates and fares maintained with Alaska Railroad are apparently not within the jurisdiction of the Interstate Commerce Commission, 34 Attorney General Opinions 232. Respondent should cancel joint through rates and fares and establish in lieu thereof proportional rates for the water transportation. Alaskan Rates, 558 (581).

Cotton traders who obtained allocation of cargo space and disposed of it to others are not subject to the Shipping Act, 1916, as amended. Rates of M. Benin and Sigma Trading Corp. 662.

KNOWLEDGE. *See also* INTENTION; TARIFFS.

No weight can be given to complainant's assertion that it was without knowledge that, at time of movement, other intercoastal carriers' rates on the commodity concerned were lower than defendant's, since complainant is presumed to have notice of rates of common carriers legally published and filed. United Can Company *v.* Shepard, 404 (405).

Nicholson Universal S. S. Co. found to have knowingly disclosed and permitted to be acquired, and Duluth Transit Co. and Holt Motor Co. found to have knowingly received, information, in violation of section 20 of the Shipping Act, 1916. Agreements of Nicholson Universal, 414 (425).

There is no doubt that the false billings of raw silk and other commodities are merely disclosed instances of an habitual billing practice knowingly and willfully engaged in by many shippers in the two trades concerned for the gain accruing to them and their consignees from the difference in transportation charges and the resultant advantage over their competitors. Rates From Japan to United States, 426 (433).

Respondents disclaim knowledge of any false billings, and seek to explain this by assertions that in the routine receipt and delivery of cargo they are confined by practical difficulties to the representations stated by their shipper-patrons in the bills of lading brought to them for signature or in the shippers' memoranda furnished them for preparation of the bills of lading. They admit that comparison by them of a copy of the consular invoice with the bill of lading at the time of shipment in Japan or at the time of delivery in the United States would completely prevent false billing, but they assert that consular invoices are confidential and therefore are not available to them. This is not a fact controlling persons in interest, of which a transporting carrier is one, nor persons to whom the shipper or consignee may give or display a copy. Id. (433, 434).

Respondents' failure to inform or even attempt to inform themselves through the media of entry papers, inquiries of shippers, customs officers or importers, labels, stencils, visual observation, or by other means which normal business resource and acumen should dictate, is proof that they knowingly and willfully keep themselves in ignorance of the false billings concerned Id. (434).

Respondents have had little or no concern for the accuracy of billings under tariffs, and have complacently disregarded the fact that by law they are charged with the duty of exercising every reasonable diligence in this connection. This duty is in no sense lessened because reasonable adherence to it entails difficulty and may be burdensome. A principle sanctioned by reason and adopted by law is that one charged with a duty who purposely keeps himself in ignorance in order to deny actual knowledge is estopped to deny knowledge of what he could learn by his exercise of reasonable diligence. Id. (434, 435).

Respondent's own evidence of their course of action, their position, and their defense plainly show passive interest and complaisance. At no point do they recognize an obligation on their part to determine the nature of the textiles received by them for transportation, or whether shipments are "stuffed" with textiles, further than to compare the export declaration and dock receipt with the bill of lading. A principle sanctioned by reason and adopted by law is that one charged by statute with a duty is thereby charged with the responsibility of reasonably diligent inquiry and exercise of care to insure his compliance with the statute, and that indifference on

KNOWLEDGE—Continued
his part is tantamount to outright and active violation. Rates to Philippines, 535 (542).
Certain shippers set forth at length various contentions calculated to show lack of knowledge or willfulness on their part in relation to their false billings. Upon the facts there is no sufficient ground for belief that in falsely billing their shipments the shippers were under any misapprehension, as claimed; or that there was other than a reckoned and generally well followed purpose on their part to profit from the substantial differences in transportation charges involved. *Id.* (543, 544).
Respondent knowingly received information in violation of section 20 of the Shipping Act, 1916. Practices of San Francisco Bay Terminals, 588 (594).
In not filing with the Commission as required, rates, charges, rules, and regulations for and in connection with transportation of property from New York to Havana, respondent found to have knowingly and willfully violated the Commission's rules and regulations prescribed in section 19, Investigation, 1935, 1 U. S. S. B. B. 470. Rates of Garcia, 615 (619).
Respondent makes no contention that it lacked knowledge of the section 19 regulation requiring rate filings. On entering into the business, respondent was under a duty to inform itself of the governmental rules, regulations and orders which might apply thereto. Failure to comply with the section 19 regulations must be considered to have been with knowledge and willful. Rates of General Atlantic, 681 (685, 686).
LEASES. *See also* AGREEMENTS UNDER SECTION 15; CONTRACT RATES; OTHER PERSONS.
Oakland and McCormick S. S. Company operate under agreement covering preferential assignment to the latter of one-half of the shed area at the former's terminal. The Agreement provides that McCormick shall not compete with Oakland for terminal traffic and shall observe the same rates. Oakland also has an agreement with Howard leasing certain facilities to the latter with the understanding that Oakland shall receive all revenue from tools, wharfage, and dockage, rates to be observed as fixed by Oakland. Stockton under agreement extends preferential use of certain floor space to its lessee, Port of Stockton Grain Terminal, a public wharfinger. Stockton retains control of the space as well as the rates to be observed. These are agreements as defined in section 15. Practices of San Francisco Bay Terminals, 588 (592).
LEGAL RATE. *See* CONCESSIONS; CONTRACT RATES; EVIDENCE; FALSE BILLING; OVERCHARGES; TARIFFS; THROUGH ROUTES AND THROUGH RATES; UNDERCHARGES.
LESS CARLOAD. *See* CARLOAD—LESS-CARLOAD; QUANTITY.
LIABILITY OF CARRIERS. *See also* AGREEMENTS UNDER SECTION 15; LOSS AND DAMAGE.
Determination of the degree of liability of each defendant depends upon the question whether they acted in concert. Participation by all defendants in any scheme to thwart complainant from shipping was necessary to assure its success, and the conference relationship and activities not only refute defendants' objections but evidence the inception of such a scheme. Hernandez *v.* Bernstein, 62 (65, 66).
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

LIABILITY OF CARRIERS—Continued
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. Defendants' refusals, pursuant to their concerted plan, to furnish complainant available space, prevented complainant from shipping automobiles as complainant would otherwise have done, and injured complainant. Defendants jointly and severally liable to complainant for full amount of injury. Reparation awarded. Id. (66, 67).
LIGHTERAGE. *See* PICK-UP AND DELIVERY.
LIMITATION OF ACTIONS. *See* REPARATION.
LOADING AND UNLOADING. *See also* HANDLING.
Respondent will load and unload rail cars at Charleston without additional charge when it participates in the line-haul rate. 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 result. 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. North Carolina Line—Rates to and from Charleston, 83 (88).
Unloading vessels is a common carrier function. Lumber Through Panama Canal, 143 (145).
Compensation to owner of cargo for service of unloading ship should be published in carrier's tariff as an allowance. Id. (145, 150).
Many of intercoastal respondents' figures and estimates of loading costs are assailed. Conceding that some of the analyses are faulty, it must be remembered that loading costs can not be reduced to mathematical certainty to fit each voyage and port. On the whole the proposed increased rates are not excessive considering the characteristics of wool. Wool Rates to Atlantic Ports, 337 (341).
LOCAL RATES. *See also* AGREEMENTS UNDER SECTION 15; PREFERENCE AND PREJUDICE; RAIL AND RAIL-WATER RATES; RATE AND COMMODITY COMPARISONS; THROUGH ROUTES AND THROUGH RATES.
Local rates applied by foreign line from Rotterdam to Baltimore and by inter-coastal carrier from Baltimore to Pacific Coast, while under section 15 agreement a lower through rate via New York is in effect, are not unduly prejudicial, discriminatory, or unreasonable. Kress *v.* Nederlandsch, 70 (71).
Proposed reductions will result in rates from Atlantic ports to Pacific coast lower than from the Gulf. Respondent contends that rate parity is unnecessary since there are some commodites moving through the Gulf which do not compete with those moving through Atlantic ports and that, although competition in some instances exists, joint all-water rates from river points adequately protect the interests of both shippers and the port of New Orleans. However, it does not follow that the mere existence of joint rates relieves carriers of their obligation to maintain local rates on a proper level. No purpose is served by local rates so high that their use in combination with rates of inland carriers from interior points is

LOCAL RATES—Continued
prohibitive. Westbound Intercoastal Carload and Less-Carload Rates, 180 (185, 186).
LONGSHOREMEN. *See* STEVEDORING.
LOSS AND DAMAGE. *See also* EVIDENCE; JURISDICTION.
An examination of the various acts from which the Commission derives its jurisdiction fails to disclose any authority to adjudicate loss and damage claims or to award damages because of a carrier's failure to follow instructions to ship on a particular voyage. Pilgrim Furniture Co. *v.* Am. Hawaiian, 517 (518).
Carriers should not exempt themselves from liability for damage under a tariff rule and at the same time increase rates to cover such risks. Increases in rates on commodities formerly transported at the rate on Freight, N. O. S., to the extent they exceed increases applicable on traffic remaining within that classification, have not been justified. Alaskan Rates, 558 (576).
MANAGERIAL DISCRETION. *See also* BROKERS AND BROKERAGE; JURISDICTION.
It is difficult to rationalize spreads exceeding 100 percent between reasonable minimum and maximum rates. Carriers are privileged to exercise their managerial discretion within reasonable limits, but to sanction a zone of reasonableness of so broad a scope would nullify all attempts at regulation. Westbound Intercoastal Carload and Less-Carload Rates, 180 (187).
Reductions to meet competition are proper if they do not result in unremunerative or unlawful rates or go beyond the limits of competition which rest within the managerial discretion of the carrier. Westbound Intercoastal Alcoholic Liquor Carload Rates, 198 (204).
Consideration must be given to the interests of respondents, who in their managerial wisdom have seen fit to discontinue service. Upon consideration of the conflicting interests, the difference in volume of movement, and other dissimilarities in transportation conditions reviewed, concluded that respondents' proposed cancellation of intercoastal service will not result in undue preference and prejudice. Intercoastal Cancellations and Restrictions, 397 (401).
Longview interests admit that they do not have sufficient general cargo to entitle them to service of all intercoastal respondents, but maintain that there is sufficient tonnage to justify service by a few of the lines. Establishment of rates and service is a question in the first instance for the managerial discretion of respondents. On this record the proposed minimum tonnage requirement at Longview has been justified. Id. (402).
MARKET PRICE. *See* VALUE OF COMMODITY.
MAXIMUM RATES. *See* INTERCOASTAL SHIPPING ACT, 1933; JURISDICTION; SHIPPING ACT, 1916.
MERCHANT MARINE ACTS. *See also* JURISDICTION; KNOWLEDGE; POLICY; REGULATIONS; SUBSIDY CONTRACTS.
Appropriate rules and regulations prescribed under authority of section 19 of the Merchant Marine Act, 1920, regarding respondents' practices of underquoting coffee rates of other carriers primarily engaged in trade from East Coast of South America to West Coast of United States. Tariffs required to be filed. Rates, Charges and Practices of Yamashita and O. S. K., 14 (21).

MERCHANT MARINE ACTS—Continued

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 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 the conference has authorized individual carriers to establish rates from Stockton and other non-terminal ports which they desire to serve, 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. Sun-Maid Raisin Growers Assoc. *v.* Blue Star Line, 31 (38).

Protestant claims that if the proposed rates become applicable 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 discontinue Charleston as a port of call. The Commission's 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 advantage 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. North Carolina Line—Rates to and from Charleston, 83 (87).

To contend that the Commission can prevent a bona-fide carrier from entering a trade because of lack of prospective traffic presupposes a power which is not conferred by the shipping acts. Nor can such affirmative authority be derived solely from the declarations of the various shipping statutes that it is the policy of the United States to foster the development and encourage the maintenance of an adequate merchant marine. Class Rates Between North Atlantic Ports, 188 (190).

Since issuance of the examiner's report conditions in the trade have materially changed as a result of the European war. Recommended regulations under authority of section 19 of Merchant Marine Act, 1920 will not, therefore, be promulgated. Proceeding discontinued. Cargo to Adriatic, 342 (348).

Grays Harbor, Wash., comes within the purview of section 205 of Merchant Marine Act, 1936. The question raised by complainant's allegation of defendants' violation of that section affects not only other members of the Pacific Westbound Conference, but members of other conferences serving United States ports. The question is so far-reaching that it should not be determined on a record to which other interested carriers are not parties. Moreover, findings make it unnecessary to consider the question in disposing of the case. Grays Harbor *v.* Klaveness, 366 (370).

Under section 8 of the Merchant Marine Act, 1920, the Commission is required to recognize territorial regions and zones tributary to ports, and should there exist rates to seaboard which, among other things, do not recognize the natural direction of the flow of traffic, recommendations may be made to the Interstate Commerce Commission for such action as it

MERCHANT MARINE ACTS—Continued
deems necessary. The contention has been made that this section 8 has no relation to rate regulatory provisions of the Shipping Act, 1916. But to wholly ignore basic policies of Congress would be unwarranted. Mobile *v.* Baltimore-Insular, 474 (486, 487).

In not filing with the Commission as required, rates, charges, rules, and regulations for and in connection with transportation of property from New York to Havana, respondent found to have knowingly and willfully violated the Commission's rules and regulations prescribed in Section 19 Investigation, 1935, 1 U. S. S. B. B. 470. Rates of Garcia, 615 (619).

Common carriers by water in foreign commerce are under the obligation of informing themselves of the rules and regulations prescribed in Section 19 Investigation, 1935, 1 U. S. S. B. B. 470, and they should understand that they are expected to comply therewith without being notified individually of their requirements. Rates etc. of American Fruit & S. S. Co., Inc., 706 (708).

Respondent failed unwittingly to follow correct tariff interpretation. It did not knowingly and willfully violate the rules and regulations prescribed in Section 19 Investigation, 1935, 1 U. S. S. B. B. 470, and the penalty provisions of section 806 (d) of the Merchant Marine Act, 1936, as amended should not be invoked against it. Id. (708).

MINIMUM RATES. *See also* CONTRACT RATES; INTERCOASTAL SHIPPING ACT, 1933; JURISDICTION; REASONABLENESS.

Congress found that the interests of carriers and the shipping public concerned with intercoastal trade would best be served by rate stability, which, in turn, could best be secured by giving the Commission power to fix maximum and minimum rates. Congress therefore granted such power by amendment of June 23, 1938, to the Intercoastal Shipping Act, 1933. Intercoastal Rate Structure, 285 (300).

There is a continuing threat that competition, unrestrained by minimum rates, will tend to bring the intercoastal rates to unremunerative levels. This would be prevented by the prescription of minimum rates. Id. (301).

The A lines urge prescription of a uniform rate level not lower than B line rates for all. They maintain that differences in speed and frequency of service do not justify requiring different minimum rates for different lines unless such differences in services are measurable in differences in charges which shippers will pay and reflect corresponding differences in service costs to the lines. They contend that one minimum rate level would insure greater rate stability than more than one and that differentials in favor of inferior services encourage inferiority. Shepard rate level and proposed reductions under suspension found unreasonably low. B line rates prescribed as minimum. Id. (300, 302, 303).

MINIMUM WEIGHTS. *See also* PREFERENCE AND PREJUDICE; QUANTITY; REASONABLENESS; VOLUME.

Only one competitor is in a position to contract with Coastwise Line on the same basis as Crown-Zellerbach. The same principle should apply in this case as in 1 U. S. S. B. B. 349, 351, where our predecessor said that rates based on a minimum weight so large as to be available only to one shipper are not in consonance with section 16, which forbids subject carriers to make or give any undue or unreasonable preference or advantage to any particular person or description of traffic in any respect whatsoever. Agreements 6210, Etc., 166 (170).

MINIMUM WEIGHTS—Continued
Minimum-tonnage restriction found justified except as to Richmond, Calif. Intercoastal Cancellations and Restrictions, 397 (403).
MISQUOTATION OF RATES.
It is well settled that misquotation of an applicable rate by a carrier affords no basis for a finding that the rate is unreasonable or for an award of reparation. United Bottle Supply Co. *v.* Shepard, 349 (351).
*MISSISSIPPI VALLEY BARGE LINE COMPANY. See* COMMON CARRIERS.
MIXED SHIPMENTS. *See also* PREFERENCE AND PREJUDICE.
To *meet rail competition*, intercoastal conference lines originally followed the railroad practice of providing mixed carload rules. Later, their mixing provisions were modified to meet certain departures from the standard mixing rules published by non-conference carrier Calmar in order to be competitive with Calmar on certain traffic. Present exceptions to the general mixing provisions in individual rate items are numerous. Intercoastal Rates Structure, 285 (291).
As long as there are railroad mixing rules it is clear that intercoastal respondents must of necessity maintain fair competitive mixing rules, and as the rail rules change it is axiomatic that intercoastal rules must follow suit. Id. (307).
What is needed is a uniform mixing rule applicable over all intercoastal carriers, with exceptions to meet the general needs of the shipping public. Use of mixing provisions as an instrument of competitive bargaining between the lines does violence to intelligent rate making, opens the door for wide variations of prejudice and preference, and deprives carriers of needed revenue from less-carload shipments. Id. (308).
In railroad transportation *the usual rule governing* mixed carloads is that the entire shipment shall be subject to the highest rate and highest minimum weight applicable to straight carloads of any article in the mixture. This rule was followed in 1 U. S. M. C. 719. Intercoastal Rate Structure, 506 (509).
Any liberalization of mixing provisions constitutes a lowering of freight rates on the commodities affected. Respondents' rates and mixing provisions are predicated upon railroad competition. This record affords no reason why respondents should provide any more mixtures than are necessary to meet actual competition. Generally speaking, any broader or more liberal mixtures cause an unreasonable and unnecessary loss of revenue. Id. (511).
Intercoastal respondents' rules, regulations and practices with respect to mixed carload shipments found unreasonable, without prejudice to establishment of rules, regulations and practices which are not more liberal than those maintained by transcontinental rail and water-rail lines. Id. (511).
MONOPOLY. *See also* AGREEMENTS UNDER SECTION 15; CONTRACT RATES; CONTRACTS WITH SHIPPERS; SERVICE.
Defendants contend that complainant *is not entitled* to membership in the conference unless it can show that its participation in the trade would be in the public interest. Commission urged to consider, as determining factor, whether the trade is adequately tonnaged. But this factor cannot be controlling for the reason that if adequacy of existing service is to prevent new lines from engaging in the trade, carriers already in the service could perpetuate their monopoly by the simple and expedient method of

MONOPOLY—Continued
continuing to maintain adequate service. Waterman *v.* Bernstein, 238 (243).
The Shipping Act, 1916, does not recognize that monopoly is desirable in water transportation. While under certain circumstances agreements which would otherwise violate the antitrust laws will be given legal clearance, it does not follow that such agreements must be approved or are desirable in all cases. Dollar-Matson Agreements, 387 (394).
Even if the trade were adequately tonnaged "this factor cannot be controlling, for the reason that if adequacy of existing service is to prevent new lines from engaging in the trade, carriers already in the service could perpetuate their monopoly by the simple and expedient method of continuing to maintain adequate service." 2 U. S. M. C. 238, 243; 2 U. S. M. C. 321, 330. Olsen *v.* Blue Star, 529 (532).
Defendants contend that, since complainant has transported no coffee he is not regularly engaged in the coffee-carrying trade covered by the conference agreement and, therefore, not entitled to conference membership. Thus they endeavor to impose a requirement which they themselves by monopolizing the trade make impossible to fulfill. Complainant has announced his service, published sailing schedules, solicited coffee shipments, and carried cargo obtainable. This is sufficient. Id. (532).
MOOT CASES.
Issues as to lawfulness of refusal by defendants to admit complainant to conference memberships and of defendants' exclusive patronage contract rate system are rendered moot by defendants' dissolution of the conference and abolition of their contract rate system. Kerr *v.* Isthmian, 93 (94).
Complainant seeks an order disapproving the conference agreement and the exclusive patronage contract rate system and practices thereunder unless within a fixed reasonable time defendants admit it to full and equal conference membership. Withdrawal by two defendants in accordance with the terms of the agreement and the consequent dissolution of the conference effect the alternative relief requested by complainant, and the issues are, therefore, moot. Complaint dismissed. Kerr *v.* Hansa, 206 (207).
After the rehearing, the two vessels employed by complainants in the trade were recalled to Sweden. The issues presented, therefore, were rendered moot. Complaints dismissed without prejudice to complainants' right to petition for reopening or to file new complaint if and when they reenter the trade. Hind, Rolph & Co. *v.* French Line, 280 (281).
Subsequent to the hearing Denmark was invaded by Germany, thereby subjecting complainant's ships (Danish) to the possibility of being seized as prize, and complainant ceased operations. All parties have agreed to entry of order dismissing the proceeding as moot, without prejudice to complainant's right to petition for reopening in the event that it is in position later to operate in the trade. Rederiet Ocean *v.* Yamashita, 335 (336).
Since issuance of the examiner's report conditions have materially changed as a result of the European war. The issues have become moot. Recommended regulations under section 19 of the Merchant Marine Act, 1920, therefore, not promulgated. Proceeding discontinued. Cargo to Adriatic, 342 (348).

N. O. S. RATES. *See also* COMMODITY RATES.

Ordinarily, N. O. S. rates are among the highest in the tariff, and there is nothing of record to justify the fact that the specific commodity rate here assailed is on a higher level. Kress *v.* Baltimore Mail, 450 (452).

Increases in rates on commodities formerly transported at the rate on Freight N. O. S., to the extent that they exceed increases applicable on traffic remaining within that classification, found not justified. Alaskan Rates, 558 (576).

NOTICE. *See also* AGREEMENTS UNDER SECTION 15; DISCRIMINATION; EMBARGOES; JURISDICTION; OFFICIAL NOTICE; OTHER PERSONS; REASONABLENESS; TARIFFS.

Carriers in foreign commerce between ports on East Coast of South America and U. S. Pacific coast ports required to file schedules of rates and charges containing all rules and regulations which in any wise change, affect, or determine any part or the aggregate of the rates and charges. Schedules to be filed within 30 days from date such schedule, change, modification, or cancellation becomes effective. Rates, Charges and Practices of Yamashita and O. S. K., 14 (21).

The failure of a public utility to publish and post a tariff of rates is indefensible. The failure to give adequate notice of rate changes is unjust and unreasonable to the shipping public. To relieve the terminal operator of the duty to give publicity to his charges for services performed by him in place of the carrier would defeat the purposes of the act. The power conferred to prescribe reasonable regulations and practices in connection with the handling and delivering of property, whether by carriers or terminal operators, and to prevent undue preference and prejudice in connection therewith is broad enough to prevent the defeat of the purpose of the act by any such device or situation. Lumber Through Panama Canal, 143 (149).

Commission refrained from prescribing for terminal operators a detailed system of rules and regulations governing the publication of their tariffs, but suggested self-regulation through the medium of section 15 agreements. Such agreements should embody, among other things, publication and posting of tariffs of charges, rules, and regulations, and provision for 30 days' notice for changes therein. Id. (150).

While the provisions of section 2 of the Intercoastal Shipping Act, 1933, do not specifically require that schedules on file thereunder shall be cancelled upon withdrawal of service, they clearly contemplate that such schedules shall serve notice to the Commission and the public of the services maintained and the charges therefor. It follows that maintenance by common carriers of schedules of rates for services they do not perform cannot be justified. Since no changes in rates duly filed may be made on less than 30 days' notice, except by special permission of the Commission, withdrawal of service without the filing of schedules with statutory notice cancelling the rates therefor is an unreasonable practice. Respondent should file schedules cancelling its rates for the services to be withdrawn upon statutory notice or upon such notice as may be authorized. Embargo, North Atlantic and Gulf, 464 (465).

Reasonable notice of rate changes is not always accorded by San Francisco, Oakland, and Stockton Terminal respondents. The privately owned terminals are required under State law to file on 30 days' notice. The terminals at ports on Puget Sound, the Columbia River, and at Portland, Oregon, give 30 days' notice of tariff changes. The conclusion is warranted that failure

NOTICE—Continued
of respondents to give adequate notice of tariff changes is an unreasonable practice. Practices of San Francisco Bay Terminals, 588 (594, 595).
OFFICIAL NOTICE.
The Commission may take official notice of its general report to Director of War Mobilization and Reconversion dated November 26, 1946. Increased Rates From, To, and Within Alaska, 807 (809).
ON-CARRIAGE. *See also* ABSORPTIONS; THROUGH ROUTES AND RATES.
Defendant's tariff provides that rate changes are effective as of the date of dock receipt. On that date, the tariff provided that shipments to San Diego would be transported either direct by defendant or by McCormick beyond Los Angeles. Regardless of the effect of the discontinuance of McCormick's service, the obligation remained upon defendant to make delivery direct as provided in its tariff. Atlantic Syrup Refining Co. *v.* Luckenbach, 521 (522).
OPERATING-DIFFERENTIAL SUBSIDY. *See* COMMON CARRIERS; JURISDICTION; SUBSIDY CONTRACTS.
OPPOSITE DIRECTIONS.
The southbound rate on oxygen and acetylene cylinders is 55 cents, although a measurement rate of 21 cents is also published. Measurement rate northbound is 18 cents, which produces less revenue than the southbound rate. There is no weight rate northbound. Volume of movement and other factors are not shown to be materially different in respect to the two movements. The southbound rates are unduly prejudicial, and the practice of applying a weight rate southbound and a cubic-foot rate on the same commodity northbound as the only rate is unjust and unreasonable. Puerto Rican Rates, 117 (121).
ORAL ARGUMENT. *See* HEARING.
OTHER PERSONS. *See also* AGREEMENTS UNDER SECTION 15; CONTRACT RATES; FORWARDERS AND FORWARDING; FREE TIME; JURISDICTION; PRACTICES; PREFERENCE AND PREJUDICE; SHIPPING ACT, 1916; TARIFFS; WHARFAGE.
Jurisdiction over terminals operated by individuals, private companies, railroad companies, municipalities, and States is conferred upon Commission by section 1 of the Shipping Act, 1916. Lumber Through Panama Canal, 143 (148).
The power conferred to prescribe reasonable regulations and practices in connection with the handling and delivering of property, whether by carriers or terminal operators, and to prevent undue preference and prejudice in connection therewith is broad enough to prevent the defeat of the purpose of the act by failure of a public utility to publish and post a tariff of rates or give adequate notice of rate changes. Id. (149).
Commonwealth of Massachusetts, so far as it engages in activities of an "other person" as defined by the Shipping Act, is subject to that act. Wharfage Charges, Boston, 245 (247).
Railroad respondents, in revising and applying the scale of wharfage rates on import and export traffic concerned, clearly establish the existence of a cooperative working arrangement as described in section 15. They will be expected to comply immediately with the provisions of that section. Id. (247).
It is an unreasonable practice to increase wharfage charges on short notice and for terminal operators to maintain rates and charges for wharfage

OTHER PERSONS—Continued
without furnishing shippers copies of the tariff containing such charges. Id. (250).
Under one agreement New Haven R. R. agrees to make its Boston rates apply to and from Commonwealth Piers, to make no additional charge to shippers or consigness for wharfage, and to pay Commonwealth piers a wharfage charge. The other agreement is between Piers Operating Company and New Haven R. R., the former agreeing to maintain the wharf premises and the railroad agreeing to pay it 10 cents per ton on freight received ex vessel or delivered at said premises for movements by vessel. These are operating agreements between the terminals and the railroad which are not operating under said agreements as "other persons" as defined by section 1 and are not subject to section 15. Id. (250, 251).
International Ocean Express System, Inc., is a consolidator and forwarder included within the term "other persons" as defined in the Shipping Act, 1916. Such persons are not required to file their rates and charges. Alaskan Rates, 558 (582).
The Board of State Harbor Commissioners for San Francisco Harbor and Board of Port Commissioners of the City of Oakland oppose the jurisdiction of the Commission on the ground that they are not "other persons" within the definition contained in the Shipping Act, 1916. No sufficient reason is shown for a departure from 2 U. S. M. C. 245, wherein, after considering contentions similar to those advanced, it was ruled that the Commonwealth of Massachusetts, insofar as it engages in the activities of "other persons", as defined in the Shipping Act, 1916, is subject to that act. Practices of San Francisco Bay Terminals, 588 (591, 592).
Reasonable notice of rate changes is not always accorded by San Francisco, Oakland, and Stockton terminal respondents. The privately owned terminals are required under State law to file on 30 days' notice. Puget Sound, Columbia River, and Portland, Oreg., terminals give 30 days' notice of tariff changes. The conclusion is warranted that failure of respondents named to give adequate notice of terminal changes is an unreasonable practice. Id. (595).
The record does not warrant a finding that the practice of Oakland and Stockton of leasing or renting space in warehouses adjacent to their piers at rates below their regular wharf storage rates is unlawful. However, respondents are admonished that any space rental device used for the purpose of unduly discriminating between storers of cargo in water transportation is strictly in violation of section 16 of the Shipping Act, 1916. Id. (608).
Respondent terminals, including State and Municipal terminals, required to file tariffs of rates and charges for the furnishing of wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water. Id. (609).
Defendant public lumber wharf performed its duties by allowing complainant's truck to enter the yard, issuing loading slip, and carrying the lumber from storage yard to hoist. Due to representations made to complainant's truck driver by an official of the truck driver's union not employed by defendant, complainant's truck driver drove away without placing complainant's truck in a position to receive delivery. Defendant did not refuse delivery of complainant's lumber, as alleged. Complaint dismissed. Long Beach Lumber Co. v. Consolidated Lumber Co., 611 (614).

OTHER PERSONS—Continued

Respondent is a subject "other person" engaged in operating docks and other terminal facilities in connection with common carriers by water. Its pool-car business, however, is an independent private venture, separate and apart from its terminal operations, and tariff charges in question are not applicable to the traffic handled in such enterprise. G. C. Schaefer *v.* Ecinal, 630 (633).

OTHER TRADES. *See also* CIRCUMSTANCES AND CONDITIONS; DIFFERENTIALS; DISTANCE; EVIDENCE; PREFERENCE AND PREJUDICE; RATE AND COMMODITY COMPARISONS; REASONABLENESS; WHARFAGE.

The existence of rates to or from foreign ports, whether higher or lower than rates of respondents to or from Puerto Rico, is of little probative value. Puerto Rican Rates, 117 (124).

Gulf lines contend that on alcoholic liquors from inland points they are entitled to a differential under the Atlantic lines because they are faced with different competitive conditions, offer a different service, and the traffic necessitates consideration of preterminal movement and rates. Further, that the differential is necessary for proper maintenance of their business, and that parity of port-to-port rates is impracticable because a differential has existed between the two groups since 1933. Gulf respondents' rate of $1.31 justified. Atlantic respondents' rate of $1.41 justified. Westbound Intercoastal Alcoholic Liquor Carload Rates, 198 (200, 204).

In assailing the reasonableness of defendant's rate of $1.54½ per 100 pounds for transportation of liquors from Baltimore to Pacific Coast, complainant refers to a rate on this commodity of $18 per ton (weight or measurement basis) from Atlantic coast ports to Honolulu. The rate to Honolulu is assessed on a measurement basis which yields $27 per ton, the equivalent of $1.35 per 100 pounds. No showing is made as to comparability of transportation conditions affecting the compared services. Rate assailed not shown to be unreasonable. Seagram *v.* Flood, 208 (209).

Rates in other trades, even though comparable in some respects, have little probative value when the lawfulness of an entire rate system is in issue. The value of comparisons is seriously impaired by the absence of a convincing showing that the traffic and other conditions surrounding the traffic are comparable. Rates of Inter-Island Steam Navigation Company, 253 (266).

Complainant points to other trades wherein there is rate parity to New Orleans and other United States ports on green coffee via direct or transshipment routes. Contention is made that a similar practice should prevail in the instant trade. But defendants do not operate in such other trades and no inconsistency of practice can be attributed to them. Also, the required similarity of transportation conditions in the compared trades has not been shown. Green Coffee Assoc. *v.* Seas Shipping Co., 352 (356).

OUT-OF-POCKET COST.

Respondent made no study to determine whether its proposed reduced rate would be compensatory. It admits that the rate would not in all instances pay out-of-pocket costs. Suspended schedule found not justified. Pacific Coastwise Carrier Investigation, 191 (196).

OVERCHARGES. *See also* TARIFFS.

Complainant's contention is that the shipments were overcharged since the canes in question were parade canes to be used for amusement, and should be rated as toys. There is no evidence that any manufacturer or shipper

OVERCHARGES—Continued
of parade canes has ever classified them as toys. An established rule of tariff interpretation is that terms must be taken in the sense in which they are generally understood and accepted commercially. Rate on canes was applicable. Complaint dismissed. Acme Novelty Co. *v.* Am. Hawaiian, 412 (413).
No evidence was offered to support the allegation of unreasonableness, complainant relying solely on establishing overcharges. Rate charged not shown to have been inapplicable. Complaint dismissed. Assoc. Tel. Co. *v.* Luckenbach, 512 (512–514).
Defendant's tariff rule provides that any claim for overcharge must be filed within 1 year from payment of freight. Section 22 of the Shipping Act, 1916, provides for payment of reparation if complaint is filed within 2 years after cause of action accrued. It follows that recovery in the instant case is not barred. Overcharges should be refunded. Plomb Tool Co. *v.* Am. Hawaiian, 523 (524).
In order to avoid unlawful discriminations, carriers are under an obligation to apply their charges carefully in accordance with their established rates. The practice of compromising claims in a manner which ignores the rates which are applicable must be condemned. Remis *v.* Moore-McCormack et al., 687 (691).
OVERTONNAGE. *See* AGREEMENTS UNDER SECTION 15; SERVICE.
PANAMA CANAL ZONE. *See* CANAL ZONE.
PAPER RATES.
Two shipments of animal or marine oil spent catalyst were the only ones that moved over any of the intercoastal lines between January 1, 1936, and July 15, 1938, and during this period there were no shipments of vegetable oil spent catalyst. Being a mere paper rate, competitively depressed, its value from a comparative standpoint is negligible. Wypenn Oil Co. *v.* Luckenbach, 1 (2).
PARTIES. *See also* AGREEMENTS UNDER SECTION 15.
Respondents contend that no action may be taken affecting the conference contracts because not all parties to the contracts are in the proceeding. The hearing was held after due public notice, and under the rules of procedure any party to a contract could have become a party to the proceeding by entering an appearance. Though no shipper appeared in support of the contracts, none has complained that it was deprived of an opportunity to be heard. Furthermore, all parties to the contracts are presumed to have contracted with the knowledge that their agreements were subject to the regulatory powers of the Commission. Contract Routing Restrictions, 220 (226).
Complaint for failure to admit to conference must be in name of carrier and not agent. Hind, Rolph & Co. *v.* French Line, 280 (281).
Conference provision regarding admission to membership by any person, firm, or corporation engaged in "operating vessels" necessarily means operation by a common-carrier principal. Consequently, no further consideration will be given to application by complainant as agent for its principal. Cosmopolitan *v.* Black Diamond, 321 (326).
The question of defendants' violation of section 205 of the Merchant Marine Act, 1936, is so far-reaching that it should not be determined on a record to which other interested carriers are not parties. Moreover, findings

PARTIES—Continued
make it unnecessary to consider the question in disposing of the case. Grays Harbor *v.* Klaveness, 366 (370).
Motion by one party to tariff containing assailed rate to dismiss complaint on the ground that none of shipments moved over its line, denied because rates for the future are in issue. Kress *v.* Baltimore Mail, 450.
The City of Mobile and Mobile Chamber of Commerce, organizations created under state authority, are persons as defined by section 1 of the Shipping Act. Such organizations are proper complainants under section 22. The Department of State Docks and Terminals is also a proper complainant. Mobile *v.* Baltimore-Insular, 474 (478).
Matson named as participating carrier in tariff M. C. Nos. 1 and 2. Suspension of M. C. No. 2 automatically reinstated M. C. No. 1, supplement of which canceled Matson as a participating carrier, and Matson revoked its concurrence therein by notice. Upon effectiveness of M. C. No. 2, Matson should be eliminated as a participating carrier. Reinstatement of M. C. No. 2 would not revive its participation therein, and the proceeding, therefore, as to it, should be dismissed. Increased Rates—Inter-Island Steam Navigation Co., Ltd., 800 (801).
PENALTIES. *See* CONTRACT RATES; MERCHANT MARINE ACTS; RETALIATION.
PETITIONS. *See* INTERVENTIONS.
PICK-UP AND DELIVERY.
When the carrier does not perform the service, an allowance of 5 cents is made only on less-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 it must be on a basis of equality to all. North Carolina Line—Rates to and from Charleston, 83 (87, 88).
Respondent will perform harbor pick-up and delivery (so-called lighterage) on carload traffic at Charleston, and at Baltimore when the rate is 17 cents or more. It states that such service can be performed at less cost than would accrue in handling traffic through its own terminal. 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. Id. (88).
PLACES.
Respondents' tariff provides 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. The list of ports in respondents' schedules requires amendment to show such data. Puerto Rican Rates, 117 (129).
POLICY. *See also* AGREEMENTS UNDER SECTION 15; FRAUD; JURISDICTION; MERCHANT MARINE ACTS.
The Shipping Act, 1916, Merchant Marine Act, 1920, and Merchant Marine Act 1936, declare the policy of the United States through the Commission to foster the development and encourage the maintenance of a merchant marine. These mandates are to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine. These acts were designed for practical ends, and objects sought to be obtained must

POLICY—Continued
be considered in the interpretation of the powers granted and in the administration of such acts. Intercoastal Rate Structure, 285 (299, 300).
A port and its transportation services are indissolubly linked together, are interdependent, and a practice harmful to one injures the other. Therefore, the diversion of traffic from the port and the consequent crippling of essential carrier services there constitute undue prejudice and unjust discrimination against the port. This view is in complete harmony with the declared policy of the shipping acts, namely, to further the development and maintenance of an adequate merchant marine. Beaumont *v.* Seatrain, 500 (504). Reversed in part on further hearing, 699.
POOL CARS. *See* OTHER PERSONS.
PORT EQUALIZATION. *See also* ABSORPTIONS; EQUALIZATION; PREFERENCE AND PREJUDICE; ROUTES; TARIFFS.
Inclusion of any provision in a tariff which makes the amount of the rate depend upon the tariff of some other carrier not filed with the Commission is violative of section 2 of the Intercoastal Act. Puerto Rican Rates, 117 (131).
The purpose of intercoastal respondents' port equalization is to offset rail Atlantic port differentials, thus equalizing the total charges for transportation of selected commodities from interior points through Baltimore, Philadelphia, and New York, to the Pacific coast. Port equalization is a source of discord among respondents and has long been used by them as a bargaining factor, some adopting the system merely to be competitive with others. Intercoastal Rate Structure, 285 (291).
Respondents' port equalization system does not bear an exact relationship to the rail differentials. Its application is limited to a few commodities, ignores Boston and Albany, and apparently has extended the eastern boundary beyond rail differential territory. Calmar applies its equalization on all freight regardless of whether it moves by rail, and has extended its western differential boundary beyond the rail territory. This situation appears to be the result of competitive bids for certain traffic rather than a careful attempt at port equalization. Id. (305).
From the tariff it appears the present port equalization rates are primarily designed by the various intercoastal respondents to entice a larger share of the business away from their competitors. The question is not the lawfulness of port equalization as a rate-making principle, but whether the present port-equalization rates are reasonable. The present rates are ambiguous in their application and may be unjustly discriminatory as between commodities and localities. To this extent, they further confuse an already complicated competitive struggle and should be declared unreasonable. Equalization rules found unreasonable, without prejudice to establishment of reasonable rules designed only to equalize rates where necessary in view of the applicable rail rates to the ports. Id. (306, 307).
Port equalization prevails in some offshore trades, but it is not generally practiced by ocean carriers. Mobile *v.* Baltimore-Insular, 474 (479).
Puerto Rican interests urge that continuance of equalization not only is desirable, but necessary, in order that the delivered cost of merchandise might be the same to all, thus permitting a consignee to compete with others in the same business. Even with equalization, the suggested result could not be achieved. All purchasers do not patronize the same manu-

PORT EQUALIZATION—Continued
facturer, and the combination of inland-ocean rates is different for each origin. Id. (485).
The lawfulness of port equalization under a particular tariff rule is presented here. In the case cited (2 U. S. M. C. 285) the practice was more limited in scope than in this case, and the shrinkage in local rate in no instance amounted to 30 percent as here. A further important distinction is that in the Puerto Rican trade there is no actual competition with transcontinental and joint rail-water routes from inland points. Defendants' rule and tariff also are designed to permit each of them to entice a larger share of business from its competitor. If there was justification to find the equalization rates in intercoastal trade unreasonable, greater justification for a similar finding exists in this instance. Id. (485, 486).
Complainant contends that since port-equalization provisions allowed maximum deductions of 30 percent from the rates on mixed feed and beet pulp to Puerto Rico the rates must have been unreasonably high to permit such deductions. Rates not shown to be unreasonable. Larrowe *v.* Baltimore-Insular, 549 (552).
Provisions in conference agreement that members may transship and meet the tariff rates and charges applying by direct steamer, unless otherwise unanimously agreed by regular members entitled to vote, but in no event charge less than direct steamer, involving absorption of such charges as under rail, motor vehicle, or coastwise water rates, not shown to be unlawful, but, since discretion rests with respondents to accord or deny equalization, they must apply the rule so as to preserve the equality of treatment of shippers and ports required by sections 15, 16, and 17 of the Shipping Act, 1916, as amended. Pacific Westbound Conference Agreement, 775 (779, 780, 783).
PORTS. *See also* CIRCUMSTANCES AND CONDITIONS; GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES; PORT EQUALIZATION; PREFERENCE AND PREJUDICE.
With respect to traffic moving by rail en route to destinations beyond seaboard, ports are neither origins of the traffic nor shipping, producing, or consuming areas affected by the rates; they are merely transshipping points. As to water transportation, a port also is a transshipping point, but it is something more. It is an area affected by the port-to-port rates established by the carrier. It is also a place at which, either actually or constructively, the contract of affreightment is executed. Therefore, a port becomes for the water movement a point of origin, and under T. & P. *v.* U. S., 289 U. S. 627, is within the term "locality" even though shipments have received prior rail transportation under an independent contract. Mobile *v.* Baltimore-Insular, 474 (478).
Motion for dismissal of complaint on ground that a port is not susceptible to undue prejudice is denied upon the basis of 2 U. S. M. C. 474. Beaumont *v.* Seatrain 500 (501). On further hearing, reversed on other grounds. Beaumont *v.* Seatrain, 699.
We do not hold that the equalization practice in question results in undue prejudice to the carrier in the legal sense. However, a port and its transportation services are indissolubly linked together, are interdependent, and a practice harmful to one injures the other. Therefore, the diversion of traffic from the port and the consequent crippling of essential carrier services there constitute undue prejudice and unjust discrimination against

PORTS—Continued
the port. Beaumont *v* Seatrain, 500 (504). On further hearing, reversed in part. Beaumont *v.* Seatrain, 699.
PORT-TO-PORT. *See* HIGH SEAS AND GREAT LAKES; REGULAR ROUTES.
PRACTICES. *See also* ABSORPTIONS; COMPETITION; CONTRACT RATES; DELIVERY; OPPOSITE DIRECTIONS; PREFERENCE AND PREJUDICE; REGULATIONS; SERVICE; STABILITY OF RATES AND SERVICES; STORAGE; TARIFFS; WHARFAGE.
There is no foundation for defendant's argument that the provisions of section 18 do not empower the Commission to condemn or prescribe the amount of a storage charge or rate and that it may only act and pass upon the lawfulness of regulations and practices relating to the storage of property. Arthur *v.* A. H. S. S. Co., 6 (12).
Respondents' practices of underquoting coffee rates of other carriers primarily engaged in trade from East Coast South America to West Coast of U. S. create a special condition unfavorable to shipping in the foreign trade. Corrective rules and regulations prescribed under section 19 of Merchant Marine Act, 1920. Rates, Charges and Practices of Yamashita and O. S. K., 14 (21).
Practice of conference under which unreasonable rates are permitted to become effective because the conference members are unable to agree upon rates for the future, condemned. Pacific Coast-River Plate-Brazil Rates, 28 (30).
Nominal charges for storage have the effect of extending the period of free time. They must, therefore, be deemed a constituent part of a practice pertaining to the handling, storing, or delivering of property. The Commission not only has the authority under section 17 to prescribe just and reasonable regulations and practices, but also the power to order them enforced. Any means or device tending to nullify or interfere with the enforcement of such regulations and practices must be condemned. Storage Charges Under Agreements 6205 and 6215, 48 (52, 53).
Failure of a public utility to publish and post a tariff of rates is indefensible. The failure to give adequate notice of rate changes is unjust and unreasonable to the shipping public because sudden rate changes often result in unexpected losses to, and unjust discrimination against, the shipper or consignee. This is a disruptive factor both in the transportation and marketing of the commodity involved. The prime object of the Intercoastal Act is to insure the filing and posting of actual rates for intercoastal transportation upon reasonable notice to the public. Delivery, when accomplished by the carrier, is an integral part of such transportation. When the independent terminal operator displaces the carrier and undertakes the duty to deliver, Congress did not intend to relinquish or waive its requirement for publicity of the charges made for this service by the terminal operator. The power to prescribe reasonable regulations and practices in connection with the handling and delivering of property, whether by carriers or terminal operators, is broad enough to prevent the defeat of the purpose of the act. Lumber Through Panama Canal, 143 (149).
Practice by respondent terminals in failing to meet the requirements of the Intercoastal Act as to publicity of rates and adequate notice of rate changes is unjust and unreasonable and is conducive to undue preference and prejudice. Respondents should publish and post tariffs containing their charges,

PRACTICES—Continued
rules, and regulations, and should not make any changes therein except upon 30 days' notice. Id. (149, 150).
The practice of computing quantities shipped on the basis of gross measurement rather than the net measurement of manufactured lumber is defended on the grounds that lumber is bought and sold on such basis, that surfaced lumber is more valuable and more susceptible to damage, requires greater care in stowage and handling, and the use of the basis is a convenient means of arriving at the higher rate which is justified by these considerations. The practice is not shown to be unreasonable. Smith *v.* Matson, 172 (172, 177).
It is alleged that respondents' practice with respect to assessment and collection of wharfage charges makes it impossible for a shipper or consignee to determine in advance the exact charge he will be required to pay, since he does not know at what particular pier many vessels will dock. Considering the actual movement of the traffic, the adverse effects attributed to the practice are over-emphasized. There is substantial uniformity of charges on the import and export and on the intercoastal traffic concerned, and the allegation of unreasonableness is not sustained. Wharfage Charges, Boston, 245 (249, 250).
It is an unreasonable practice to increase wharfage charges on short notice and for terminal operators to maintain rates and charges for wharfage without furnishing shippers copies of the tariff containing such charges. (Id. (250).
Increase in the volume of a protestant's shipments is not a justification of a carrier's practice. Pacific American Fisheries *v.* Am. Hawaiian, 270 (276).
Of five calls made by vessels of one respondent, the only cargo lifted by two of such vessels was traffic transferred from Pier B, and practically all of the cargoes of the other three vessels were similarly transferred. No inbound cargo was discharged by any of these five vessels, and they navigated the customary route over Bellingham Bay past Pier B. Had the tonnage involved been lifted at Pier B rather than at Municipal Dock, respondent's saving would have been approximately $1,457. Cost to consignors for transfer from Pier B to Municipal Dock was approximately $1,700. Elimination of Pier B not justified. Id. (276, 277).
No competitive reason remains for respondents' abnormal practice of making free delivery of wool and mohair to warehouses within switching limits of Boston. Elimination of the practice found justified. Warehouse Deliveries, 331 (332).
There is nothing unlawful per se for a carrier to charge a rate different from that of another, and the Commission has no authority to prevent rate reductions as such in foreign trade. But the practice of making rates lower by a fixed percentage than those of other carriers is detrimental to United States commerce. Cargo to Adriatic, 342 (345).
There is no doubt that the false billings of raw silk and other commodities are merely disclosed instances of an habitual practice knowingly and willfully engaged in by many shippers in the two trades concerned for the gain accruing to them and their consignees from the difference in transportation charges and the resultant advantage over their competitors. Rates from Japan to United States, 426 (433).
Since under section 2 of the Intercoastal Shipping Act, 1933, no changes in rates duly filed may be made on less than 30 days' notice, except by special

PRACTICES—*Continued*

permission, withdrawal of service without the filing of schedules with statutory notice cancelling the rates therefor is an unreasonable practice. Embargo, North Atlantic and Gulf, 464 (465).

Diversion through New York by means of "equalization" of traffic, which by reason of a substantially more favorable geographical position is naturally tributary to South Atlantic or Gulf ports, is uneconomic and unnecessarily wasteful of carrier revenue. Mobile *v.* Baltimore-Insular, 474 (481).

The use of a difference between an export rate to one port and a domestic rate to another port, or between other unlike rates to different ports, as a basis for reductions in port-to-port rates is, in the instant circumstances, an unreasonable practice. Id. (481).

Practices under tariff rules, if otherwise objectionable, cannot be upheld because of the length of time a practice has been observed, the fact that shippers and consignees generally have become accustomed to it, and that ports and businesses have been built thereon. Id. (484).

To permit continuation of unrestricted solicitation by carriers for business through condonation of a practice whereby unfavorable inland rates are overcome would wholly ignore the right of a port to traffic to which it may be entitled by reason of its geographical location. Such right appears fundamental under statutes designed to establish and maintain ports. Id. (486).

Rules, regulations, and practices with respect to mixed carload shipments found unreasonable, without prejudice to establishment of rules, regulations, and practices which are not more liberal than those maintained by transcontinental rail and water-rail lines. Intercoastal Rate Structure, 506 (511).

The evidence does not show that Encinal used its purchasing power or that of its affiliates in a coercive manner. Concluded that the allegation that Encinal diverted cargo has not been sustained. Practices of San Francisco Bay Terminals, 588 (594).

On freight billed to, but not delivered at, Encinal, the carriers pay toll and service charges to Encinal as if the cargo had been delivered there. Carriers are said to be forced into this unusual practice by Encinal's use of the purchasing power and controlled tonnage of its parent companies. The collection of the charge, for which no service is performed, is not only in violation of Encinal's tariff, but is an unreasonable practice. Id. (593).

The justification given by Encinal of its practice of receiving information, without the consignee's consent, as to the billing of shipments consigned to another terminal, is not convincing. The giving and receiving of such information was not necessary to insure proper delivery of freight, and, even though it was not used to the prejudice of shippers or consignees, it was the kind of information which may be used to the detriment of a shipper or which may improperly disclose his business transactions to a competitor. Receiving the information was a violation of section 20. Id. (594, 595).

PRECOOLING. *See* ICING; ILLEGAL RATES AND PRACTICES; TARIFFS.

PREFERENCE AND PREJUDICE. *See also* ABSORPTIONS; AGREEMENTS UNDER SECTION 15; BROKERS AND BROKERAGE; CHARTERS; CIRCUMSTANCES AND CONDITIONS; CLASS RATES; COMPETITION; CONTRACT RATES; CONTRACTS WITH SHIPPERS; COST OF SERVICE; DELIVERY; DETRIMENT TO COMMERCE; DISCRIMINATION; DUAL COMMON AND CONTRACT CARRIERS; EMBARGOES;

PREFERENCE AND PREJUDICE—Continued

EQUALIZATION; EVIDENCE; FINDINGS IN FORMER CASES; FREE TIME; GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES; GOVERNMENT; INJURY; INTENTION; INTERCOASTAL SHIPPING ACT, 1933; ISSUES; LOADING AND UNLOADING; MINIMUM WEIGHTS; NOTICE; OPPOSITE DIRECTIONS; OTHER PERSONS; PORTS; PRACTICES; PROOF; QUANTITY; RAIL AND RAIL-WATER RATES; RATE AND COMMODITY COMPARISONS; RATE STRUCTURE; REGULATIONS; REPARATION; SERVICE; SHIPPING ACT, 1916; SPACE; SPECIAL RATES; STORAGE; TARIFFS; THROUGH ROUTES AND THROUGH RATES; WHARFAGE.

**In General:**

Discontinuance of service at four Puerto Rican ports unduly prejudicial to such ports and to shippers using them; also to manufacturers in the St. Louis area of the United States and to eastern manufacturers. Puerto Rican Rates, 117 (129).

Reduction on lumber from Washington and Oregon to California from $6 per 1,000 feet, any quantity, to $5, minimum 350,000 feet, would clearly effect undue preference to larger shippers and undue prejudice to smaller shippers. Suspended schedules not justified. Pacific Coastwise Carrier Investigation, 191 (196, 197).

From a business standpoint it is only natural that respondent should give preference to its own hotel accommodations over those of its competitors on a tour around the island. But this is not the kind of undue preference that is condemned by section 16. Respondent's only duty is to its patrons. And there is no complaint from any passenger of undue preference or prejudice arising from respondent's arrangements for the tour. Rates of Inter-Island Steam Navigation Company, 253 (266, 267).

Discontinuance of rate parity New York-New Orleans on green coffee from South and East Africa by charging $3 per ton higher to New Orleans on that commodity transshipped at New York, not shown to be unduly prejudicial or unjustly discriminatory. Green Coffee Assoc. *v.* Seas Shipping Co., 352 (358).

The circumstances and conditions surrounding shipments of printing paper from Portland, Seattle, and Tacoma are not substantially different from those surrounding complainant's like shipments from Grays Harbor. The disparity against Grays Harbor prevents the movement of shipments through that port and is unduly prejudicial and unjustly discriminatory. Grays Harbor *v.* Klaveness, 366 (369). Modified, 525.

Only preference and prejudice which is unjust and undue is prohibited. The evidence must clearly demonstrate unlawfulness to sustain entry of an order. Intercoastal Cancellations and Restrictions, 397 (400, 401).

Upon consideration of the conflicting interests, the difference in volume of movement, and other dissimilarities in transportation conditions, proposed cancellation of intercoastal service will not result in undue preference and prejudice. Id. (401).

As respects respondent's discontinuance of its entire service from the Gulf to Puerto Rico, protestants offered no evidence of undue prejudice. Suspension proceeding discontinued. Gulf-Puerto Rico Rates, 410 (411).

PREFERENCE AND PREJUDICE—Continued
**In General**—Continued

Shipments of the same commodities as those falsely billed by some shippers are accurately billed by other shippers, and the higher applicable tariff transportation rates and charges are collected from the latter. There results undue preference and undue prejudice between persons and unjust discrimination. Rates from Japan to United States, 426 (435, 437).

Contention that respondents' system of mixtures by individual treatment of specific commodities is unduly prejudicial, unreasonably preferential and disadvantageous as between persons, localities, or descriptions of traffic is not without support. However, there is no specific proof of such unlawfulness with respect to any particular person, locality, or description of traffic, and the record, therefore, does not support a finding of undue prejudice or preference. Intercoastal Rate Structure, 506 (510).

So long as Railway Express Agency, Inc., remains a common carrier under the Shipping Act, no preference or prejudice as between it and International, herein found to be a consolidator and forwarder or "other person," can result from the contract. Alaskan Rates, 558 (582).

The application of the prohibitions against undue preference and unjust discrimination does not depend upon whether a carrier intends to violate the statute. The intention to charge one shipper the rate of 43 cents and the intention to charge the other shipper 51 cents is sufficient. Rates of Garcia, 615 (618).

**Practices:**

Upon further hearing, finding in 1 U. S. M. C. 661 that defendants' practice of charging rates on cargo from San Diego to Orient higher by an arbitrary of $2.50 per ton than on like cargo from Los Angeles Harbor was unduly prejudicial, reversed as to transshipping service, but affirmed as to direct-call service, except that minimum for calls increased from 500 to 800 tons. Harbor Com. of San Diego *v.* Am. Mail Line, 23 (27).

At Commonwealth Piers the wharfage scale applies on all freight interchanged between vessel and pier, except on shipments which move by rail to or from points more than approximately 40 miles distant from Boston. This area was determined in 1928 by drawing an arbitrary line around a zone then representing a reasonable distance for teaming and trucking. There are companies within the 40-mile zone which compete with companies located beyond that area whose shipments by rail to and from Commonwealth Piers are not charged wharfage. This practice is unduly preferential and prejudicial in violation of section 16. Wharfage Charges, Boston, 245 (250).

From some origins inland rates to New Orleans and Mobile are the same; yet defendant shrinks its rate only from New Orleans to equalize rates via northern ports. Shippers are thereby deprived of their choice of routes via New Orleans or Mobile, and Mobile is deprived of an opportunity to compete. Such action is unduly prejudicial to Mobile and unduly preferential of New Orleans. Mobile *v.* Baltimore-Insular, 474 (480).

PREFERENCE AND PREJUDICE—Continued
**Practices**—Continued

Lake Charles is in the center of the rice producing area of southwestern Louisiana, the average distance from mills being 58.4 miles as compared with an average of 174.6 to New Orleans. Inland rates from 10 origins of rice to Lake Charles are lower than to any other port. Previously, rates via New Orleans and Lake Charles were equalized from all origins. Defendant now equalizes only from four places. Shippers at such points have a choice of routes at equal rates but shippers at other origins, similarly situated in respect to distances and inland rates to Lake Charles, are not accorded like treatment. The susceptibility to undue preference and prejudice is apparent, but no shipper of rice complained of injury; consequently, the record does not warrant a finding of unlawfulness under section 16. Id. (483).

Defendant's failure to arrange its vessel itineraries and apportion its space, prorating the space and service in proportion to cargo offerings which were on hand and ready for loading, resulted in undue prejudice to complainant. Patrick Lumber Co. *v.* Calmar, 494 (499).

Equalization practice in question does not result in undue prejudice to the carrier in the legal sense. However, a port and its transportation services are indissolubly linked together, are interdependent, and a practice harmful to one injures the other. Therefore, the diversion of traffic from the port and the consequent crippling of essential carrier services there constitute undue prejudice and unjust discrimination against the port. Beaumont *v.* Seatrain, 500 (504). Upon further hearing, reversed in part. Beaumont *v.* Seatrain, 699.

By "brokerage" payments to shippers and by otherwise reducing freight charges, respondent allowed persons to obtain transportation at less than the regular rates by unjust and unfair means and unduly preferred certain shippers and unduly prejudiced and discriminated against other persons shipping under similar circumstances. Rates of Garcia, 615 (619).

Contract rate on cement found to be legal rate which should be extended to all similarly circumstanced and establishment of higher noncontract rates for shippers not under contract found unduly prejudicial in violation of section 16 of Shipping Act, 1916. Contract Rates—Port of Redwood City, 727 (727, 745).

Findings are without prejudice to respondent's right to change its contract rates on cement if shown, in proper proceeding, to be so low as to cast a discriminatory burden upon other services and rate payers during term of lease agreement; and to establish proper charges for other services and facilities rendered in connection with cement traffic not in contravention of lease agreement. Id. (745).

**Rates; Commodities; Service:**

Complainant states that through rates are ordinarily lower than a combination of local rates via the same route. Defendants, however, did not control the rate of the carriers from the Canal Zone for local transportation to the Central American destinations. Neuss, Hesslein *v.* Grace, 3 (5).

Complainant admits that the Baltic shipments at lower rates were not competitive and that no sales were lost because of them. Rates not shown unduly prejudicial or unjustly discriminatory. Id. (5).

PREFERENCE AND PREJUDICE—Continued
**Rates; Commodities; Service**—Continued

Rates from Stockton, California, to United Kingdom and Continental European ports higher than those contemporaneously maintained on like traffic from ports on San Francisco Bay and other ports in the United States and Canada unduly prejudicial and unjustly discriminatory. Reparation denied. Sun-Maid Raisin Growers Assoc. *v.* Blue Star, 31 (38).

Port-to-port rate on bags and bagging between Gulf and North Atlantic ports has been increased 39.1 percent since 1935. Failure to change the through rates enabled the inland dealer to reach further into southern and southwestern territory, to the detriment of Gulf port dealers. Increases should apply equitably to all classes of traffic. The rates are unduly prejudicial. Rates on Cotton, etc., 42 (46).

Respondents' rates on bags and bagging from Gulf to North Atlantic ports found unreasonably preferential and prejudicial as between classes of traffic and shippers. Rates on cotton and grain and grain products not shown unlawful. Rates prescribed. Id. (47).

Rates on plywood from U. S. Pacific ports to Europe, Asia, and Africa not shown to be unduly prejudicial, unjustly discriminatory, or detrimental to commerce of the United States. Complaint dismissed. Pacific Forest Industries *v.* Blue Star Line, 54 (57).

The rates on paper and paper specialties from Atlantic and Gulf ports to Hawaii are compared with those from the Pacific coast to Hawaii. There is no evidence of undue or unreasonable preference, prejudice, or disadvantage on the part of Dollar, which is the only defendant serving Hawaii from Atlantic, Gulf, and Pacific ports. Sharp *v.* Dollar, 91 (92).

Respondents' rates on manganese and barite ores, based on quantity, wrapping paper, paper bags, empty cylinders, soap, and caustic soda unduly and unreasonably preferential and prejudicial as between shippers in violation of section 16. Puerto Rican Rates, 117 (134).

Defendants' 250-ton requirement for application of their intercoastal terminal rates on canned goods at Seattle and not at Bellingham was an inadvertence, which was corrected after a period of approximately 13 months by like requirement at Bellingham. Allegations of unduly prejudicial and unreasonable parity not sustained. Pacific American Fisheries *v.* Am. Hawaiian, 270 (274).

Rate as applied alike on alcoholic liquors in glass in cases and in bulk in barrels not shown to be unduly prejudicial to the former description of traffic or unduly preferential of the latter description. Frankfort Distilleries *v.* Am. Hawaiian, 318 (320).

The facts disclosing disadvantage to shippers, together with the showing of respondents' responsibility therefor due to their allowance of false billing, establish that for the same transportation service performed under similar circumstances and conditions the respondents subject certain shippers to undue prejudice and unduly prefer others. Rates to Philippines, 535 (543).

Increased rates on beef cattle between points in Hawaii not shown to be in violation of section 16 of the Shipping Act, 1916, as amended. Increased Rates—Inter-Island Steam Navigation Co., Ltd., 800 (804).

PRESUMPTIONS. *See* BURDEN OF PROOF; COMMON CARRIERS; CONTRACTS WITH SHIPPERS; EVIDENCE; INTERCOASTAL SHIPPING ACT, 1933; PARTIES; PROPORTIONAL RATES; REASONABLENESS; VOLUNTARY RATES.

PROFIT TO SHIPPERS.

Although complainant is of opinion that its sales in California decreased because of the rate assailed, there is no evidence that its losses are the result of the alleged discrimination. Frankfort Distilleries *v.* Am. Hawaiian, 318 (320).

Carriers cannot be required to establish rates which assure to a shipper the profitable conduct of his business. Increased rates on intercoastal wool found justified. Wool Rates to Atlantic Ports, 337 (341).

That a shipper does not realize as large a net profit as formerly may be a factor in determining reasonableness, but it is not conclusive. Intercoastal Cancellations and Restrictions, 397 (400).

Carriers cannot be required to establish rates which assure to a shipper the profitable conduct of his business. A carrier may not impose an unreasonable transportation charge merely because the business of the shipper is so profitable that he can pay it; nor, conversely, can the shipper demand that an unreasonably low rate be accorded him simply because the profits of his business shrink to a point where they are no longer sufficient. Id. (400).

PROOF. *See also* EVIDENCE.

There is no specific proof of the unlawfulness of respondents' system of mixture with respect to any particular person, locality, or description of traffic, and the record, therefore, does not support a finding of undue prejudice or preference. Intercoastal Rate Structure, 506 (510).

It is not shown that competitive merchants or manufacturers at Tacoma receive unlike treatment or that competition actually exists between shippers at Tacoma and shippers at Seattle. Evidence of general character has little, if any, value. Findings of undue prejudice resulting from cancellation of through routes, and joint rates should be made only when unlawfulness has been shown by the most clear and convincing proof. Alaskan Rates, 558 (579).

PROPORTIONAL RATES. *See also* ALASKA RAILROAD; RIVER CARRIERS.

Respondent urges that from the standpoint of ship operation cost of service is the same for transportation of a given commodity regardless of interior point of origin and that, therefore, it is unreasonable and unjustly discriminatory to charge different rates on a given commodity depending upon its interior point of origin. Proportional rates have existed with approval in railroad and water transportation for many years. Respondent's position is unique. It is sufficient to observe that cost of service is only one of the factors of reasonableness. There is, of course, the possibility of unlawfulness in this or any other general scheme of rate making, and where found it can be disposed of in appropriate proceedings. Intercoastal Rate Structure, 285 (303, 304).

Mississippi River carriers contend there is no agreement or understanding with the Gulf intercoastal lines with respect to the establishment of the proportional rates concerned or for the transshipment of the traffic. On the contrary, the two groups fix the rates, after discussion with each other, at a level where the through charges are competitive with other forms of transportation between the same origin and destination points. Inland Waterways Corporation, 458 (459, 460).

PROPORTIONAL RATES—Continued
Recognized that proportional rates in water transportation may be proper in some instances, but it must not be presumed that every rate which is lower than the corresponding local rate is a lawful proportional rate. Except when delivery costs at ports are relied upon, differentials between defendant's local rates and the alleged proportional rates do not reflect any competitive cost or other transportation factor in the transportation service which defendants actually perform. A carrier undertaking to establish proportional rates should be prepared to prove some such relationship. Obviously defendants have given little consideration to the cost of transporting shipments originating at inland points as compared with costs of transporting similar shipments originating at the ports. Mobile *v.* Baltimore-Insular, 474 (486).
Proportional rate on rice from Houston and Galveston to North Atlantic ports found applicable on shipments originating within Houston and Galveston switching limits. Beaumont *v.* Agwilines, 515 (516).
Joint rates and fares maintained by Alaska Steamship with Alaska Railroad are apparently not within the jurisdiction of the Interstate Commerce Commission. Alaska Steamship should cancel such rates and fares and establish in lieu thereof proportional rates for the water transportation involved. Alaskan Rates, 558 (581).
PRUDENT INVESTMENT THEORY. *See* VALUE OF CARRIER PROPERTY.
PUBLIC INTEREST. *See* JURISDICTION; MERCHANT MARINE ACTS; MINIMUM RATES.
QUANTITY. *See also* CARLOAD—LESS-CARLOAD; CONTRACT RATES; CONTRACTS WITH SHIPPERS; MINIMUM WEIGHTS; PAPER RATES; PRACTICES; PREFERENCE AND PREJUDICE; REASONABLENESS; VOLUME; WEIGHT OR MEASUREMENT.
Respondents did not present any evidence to justify the difference in rates between shipments of ores up to 149 tons and shipments of 150 tons or more. The lower rate on the larger quantities is unduly preferential to larger shippers and unduly prejudicial to smaller shippers. Puerto Rican Rates, 117 (121, 122).
Defendant's rates unduly preferential to lumber shipped under contract requiring large annual minimum. Smith *v.* Matson, 172 (174, 177).
Elimination of Pier B from application of Bellingham terminal rate for eastbound canned goods in minimum quantities of 250 tons not justified, and denial of such rate therefrom, in view of respondents' contrary practice at Seattle, unreasonable and unduly prejudicial. Pacific American Fisheries *v.* Am. Hawaiian, 270 (279).
Since the wine in question generally moves in shipments of about 22,000 pounds, the record affords no justification of either less-carload or any-quantity commodity rates. Nor is there justification for any commodity rates northbound. Baltimore-Virginia Ports Wine Rates, 282 (284).
The 250-ton minimum is the smallest quantity which can be handled economically on an intercoastal ship in a day's time. The minimum tonnage requirements have been justified except at Richmond. Intercoastal Cancellations and Restrictions, 397 (401).
Richmond, Calif., located on San Francisco Bay, is shown to be competitive with other Bay ports. Respondents offer service not only to piers in San Francisco proper without restriction as to minimum-tonnage requirement but serve Oakland piers, in addition to according unrestricted service to Alameda. A Richmond shipper testified that he was in direct com-

QUANTITY—Continued
petition with shippers at Oakland and Alameda and that the proposed curtailment of service at Richmond would necessitate his using these competitive ports at an additional expense. The minimum-tonnage requirement has not been justified. Id. (401).
Longview admits it does not have sufficient general cargo to entitle it to service of all respondents, but contends that there is sufficient tonnage to justify service by a few. Establishment of rates and service is a question in the first instance for the managerial discretion of respondents. No authority exists to make a finding under these circumstances with respect to some of the respondents and not with respect to the others; also no authority to allocate ports as requested. Minimum-tonnage requirement at Longview justified. Id. (402).
No substantial volume of traffic has moved over respondents' lines at Vancouver, Washington. The proposed establishment of the minimum-tonnage requirement at Vancouver has been justified. Id. (402).
Recognition by defendants of the inland differentials to the ports based on quantity produces ocean rates lower on small quantities than are charged on larger quantities of the same article and results in an unreasonable tariff. Except on bulk commodities, to which the equalization rule does not apply, local rates are uniform on all shipments. Tariffs of ocean carriers rarely name rates based on quantity unless there exist competitive rail or other inland carrier rates between common origins and destinations based on quantity, There is no such situation in the trade to Puerto Rico. Mobile *v.* Baltimore-Insular, 474 (484).
RAIL AND RAIL-WATER RATES. *See also* COMPETITION; JURISDICTION; MIXED SHIPMENTS; RATE AND COMMODITY COMPARISONS; WHARFAGE.
New Orleans shippers argue that the increased cotton rate of 35 cents 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. Rates on Cotton, Etc., 42 (44).
Shippers of flour, wheat bran, and bran shorts 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 evidence regarding transportation conditions respecting flour or relationships generally existing concerning it. In view of 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. Id. (45).
Respondents file with the Interstate Commerce Commission joint through rates on bags and bagging 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, and from Philadelphia and Baltimore 42 cents. These rates were increased by Interstate Commerce Commission authority 10 percent effective March 31, 1938.

RAIL AND RAIL-WATER RATES—Continued
Respondents do not state the 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. Rates from Gulf to North Atlantic ports are unduly prejudicial. Id. (46).
To impose a 39.1 percent increase on port-to-port bags and bagging from Gulf to North Atlantic and only a 10-percent increase on through rail-water bags and bagging from Memphis to North Atlantic via New Orleans results in undue prejudice. Id. (46).
The reductions in the water rate on citrus fruit from Jacksonville to Baltimore was forced upon respondent by the rate-equalization policy of the railroads. The water lines cannot hope to obtain a fair share of this traffic without a reasonable differential under the all-rail rates. Citrus Fruit Florida to Baltimore, 210 (214).
Prior to hearing defendant filed special-docket application seeking authority to pay reparation on basis of rate contemporaneously applicable via transcontinental rail lines. This application, which was denied, was by stipulation incorporated into the record. Rate found unreasonable to extent it exceeded contemporaneous rail rate. Reparation awarded. Jos. G. Neidinger *v.* Am. Hawaiian, 466 (466, 467).
The rate on bags and bagging from Philadelphia to Houston was separated into ocean charge, loading charge, and switching charge. The shipments were delivered from Houston dock to consignee's premises by Houston Belt and Terminal Company. The rate was a joint ocean-rail rate concurred in by the belt and terminal company, and was filed with the Interstate Commerce Commission. The rate was not subject to Commission's jurisdiction. Complaint dismissed. Lone Star Bag and Bagging Co. *v.* Southern S. S. Co., 468 (468–469).
Joint rates and fares maintained by Alaska Steamship and Alaska Railroad are apparently not within the jurisdiction of the Interstate Commerce Commission. Respondent should cancel such rates and fares and establish in lieu thereof proportional rates for the water transportation. Alaskan Rates, 558 (581).
RAILWAY EXPRESS AGENCY, INC. *See* COMMON CARRIERS; PREFERENCE AND PREJUDICE.
RATE AND COMMODITY COMPARISONS. *See also* CIRCUMSTANCES AND CONDITIONS; COST OF SERVICE; EVIDENCE; GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES; HANDLING; OTHER TRADES; PAPER RATES; RAIL AND RAIL-WATER RATES; REASONABLENESS; REVENUE; RISK; WEIGHT OR MEASUREMENT.
There should be a fair relationship between storage charges on lumber and shingles, particularly since it was not shown that shingle dealers have abused the free-time privilege more than lumber shippers, and since there is a general practice in the lumber business of observing such relationship for the purpose of handling, loading, and storing. Arthur *v.* A. H. S. S. Co., 6 (12).
Although the evidence shows that plywood can be stowed in the same places as lumber, that both are carried under deck and have comparable stowage factors, such comparisons are of little value in the absence of comparative average, loadings, values, volume, loss and damage claims, and conditions

RATE AND COMMODITY COMPARISONS—Continued
under which the rates were established. Pacific Forest Industries *v.* Blue Star Line, 54 (56).

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. Proposed rates between Charleston and Baltimore, Camden, Chester and Philadelphia found not unlawful. North Carolina Line—Rates to and from Charleston, 83 (85).

Complainant compares the rates on paper and paper specialties from Atlantic and Gulf ports to Hawaii with those from the Pacific coast to Hawaii. The sailing time New York to Hawaii is approximately 29 days, and from Pacific to Hawaii 9 days, and the Atlantic and Gulf carriers are subject to substantial Panama Canal tolls. Complainant's primary difficulty is due to geographical disadvantages. There is no evidence of undue or unreasonable preference, prejudice, or disadvantage on the part of Dollar, which is the only defendant serving Hawaii from Atlantic, Gulf, and Pacific ports. Sharp *v.* Dollar, 91 (91, 92).

A rate of 35 cents applies on wrapping paper, and paper bags. Bags yield approximately 9.2 cents per cubic foot and wrapping paper about 13 cents. The value of bags, volume of movement, and the cost of unloading are greater than in respect to paper. Puerto Rican Rates, 117 (120, 121).

Ordinarily rates on manufactured articles exceed rates on material used in their manufacture. Id. (121).

To support its contention that the proposed reduction does not result in an unreasonable or unremunerative rate, respondent compared the revenue obtained from alcoholic liquors with that derived from other commodities said to be similar from a transportation standpoint. Alcoholic liquors transported by respondent were stated to be worth $425 per ton and the rate was 5.6 percent of the value. Revenue from a full carload of alcoholic liquors would return from two to two and a half times as much as the average revenue derived from general cargo per voyage during 1938. Suspended rate found justified. Westbound Intercoastal Alcoholic Liquor Carload Rates, 198 (200).

The rate on liquor from Baltimore to Pacific coast are compared with those on numerous other commodities moving in the trade, but there is no evidence as to the volume of movement or the value of the latter. Unreasonableness not shown; complaint dismissed. Seagram *v.* Flood, 208 (209).

Defendant does not operate regularly in the intercoastal trade. The rate assessed on a cargo of alcoholic liquors is the same as the rate contemporaneously maintained by the carriers regularly engaged in the trade, with one exception. Unreasonableness not shown; complaint dismissed. Id. (209).

The rate on glass chimneys from New York to St. Thomas is approximately the same as that of other carriers to neighboring West Indies and Caribbean ports. Rate not unreasonable. Gill *v.* American Caribbean, 314 (315).

RATE AND COMMODITY COMPARISONS—Continued
On certain commodities defendant maintains lower rates than those named by other intercoastal carriers. Such evidence is of no probative value in so far as the issue of reasonableness here is concerned and has not been considered. United Can Company *v.* Shepard, 404 (405).
If any deduction in the local rate on traffic moving via New Orleans is warranted such deduction must be based on differences between applicable export rates over established routes from a common origin to both Texas ports and New Orleans. Mobile *v.* Baltimore-Insular, 474 (481).
The use of a difference between an export rate to one port and a domestic rate to another port, or between other unlike rates to different ports, as a basis for reductions in port-to-port rates, is, in the instant circumstances, an unreasonable practice. Id. (481).
Rates on coin-operated vending machines are compared with those on steel cabinets used as stands for coin-operated cigarette-vending machines and for the storage of cigarettes to be vended. They, like the machines, are of three sizes. Their average weight per cubic foot is about 15 pounds, and the machines weigh 13 pounds. This is not enough to establish unreasonableness of the rates attacked. Rowe Service Co. *v.* Am. Hawaiian, 519 (520).
Complainant compares the assailed rates on mixed feed and beet pulp to Puerto Rico with rail and water rates in continental United States. It assumes that a movement of 3 or 3.6 statute miles by water is equivalent to a haul of 1 mile by rail. The only ground offered for the use of the ratios employed is that they have been used or referred to in certain decisions of the Interstate Commerce Commission. Neither of them nor any other ratio has been approved for general application. There is nothing in the record to warrant acceptance of any of the compared rates as a measure for rates to Puerto Rico. Costs, competition, and other factors may account for the rate differences. What the circumstances are is not shown. Larrowe *v.* Baltimore-Insular, 549 (550–552).
The bulk of the traffic to and from minor ports consists of fishery traffic which takes the lowest rates. It does not necessarily follow that traffic to and from principal ports is being unduly burdened with more than its share of operating costs, inasmuch as traffic to and from minor ports is of lower grade and the revenue thereon consequently would be less. Alaskan Rates, 558 (578).
The presumption is that rates which have been in effect for some time are reasonable, and that a proposed change requires justification. Puerto Rican Rates, 117 (124).
While the establishment of the through routes and the bases of the apportionment of the earnings on traffic moving over such routes are fixed by the transshipment agreements and therefore are not routine, establishment and revision of the rates, by the terms of the agreements, are left to the parties. Not heretofore held that such routine operations under the agreements need approval under section 15. The record does not justify departure from the present procedure. Green Coffee Assoc. *v.* Seas Shipping Co., 352 (358).
RATE STRUCTURE. *See also* CLASS RATES; COMPETITION; REASONABLENESS; REVENUE.
In 1 U. S. M. C. 642, Commission stated that rates in this trade have been fixed on the basis of competition, with little regard for scientific rate

RATE STRUCTURE—Continued
structures. The situation has not improved. Respondents were unable to furnish information on many of the factors which should determine the measure of rates. Rates on bags and bagging, burlap and cotton, new, and on bags and bagging, old, found unreasonable and prejudicial as between classes of traffic and shippers thereof. Rates on cotton and grain and grain products not shown to be unlawful. Rates on Cotton, etc., 42 (43).
Respondent's estimated earnings will yield a return of 4.77 percent; this is 2.23 percent less than the 7 percent found to be a fair return. It is clear that the rate structure as a whole is not shown to be unreasonable from the standpoint of the fair-value test. Rates of Inter-Island Steam Navigation Company, 253 (265, 266).
Rates in other trades, even though comparable in some respects, have little probative value when the lawfulness of an entire rate system is in issue. The value of the comparisons made in this case is seriously impaired by the absence of a convincing showing that the traffic conditions in the compared trades, such as the methods, conditions, and cost of operation, the amount and characteristics of the tonnage carried, and other conditions surrounding the traffic, are comparable. Id. (266).
Defendants' tariff would result in more than 100 different port-to-port rates on vehicles from each origin. Such a system of rate making is not only confusing, ambiguous, and impossible of intelligent interpretation, but unreasonable. Mobile *v.* Baltimore-Insular, 474 (482).
Passenger and freight rate increases by Alaska Steamship, Northland and Alaska Transportation became effective in January and June of 1940, respectively. A determination of the reasonableness of the rate structure as a whole, measured by annual net operating income in relation to the fair value of the property, must necessarily give consideration to the effect on net income of those increases and the value of the property during the period the income was earned. Alaskan Rates, 558 (569).
It is estimated that respondent's net operating income would produce rates of return on the fair value found therein ranging from 6 to 12 percent. In view of the unpredictable loss of revenue in 1941 and its effect on net income, and in the absence of complaint from shippers, respondent's rate structure has not been shown unreasonable. Id. (575).
The evidence does not disclose that the rate structures as a whole of three respondents are unreasonable or that the rate structure of the fourth respondent will, for the future, be unreasonable. Id. (583).
Rate structures as a whole found unreasonable. Alaskan Rates, 639 (650)
REASONABLENESS. *See also* AGREEMENTS UNDER SECTION 15; ASSEMBLING AND DISTRIBUTION; BILLS OF LADING; BLANKET RATES; BOOKING; BULK; BURDEN OF PROOF; CIRCUMSTANCES AND CONDITIONS; CLASS RATES; COMPENSATORY RATES; COMPETITION; CONTRACT RATES; COST OF SERVICE; DELIVERY; DETRIMENT TO COMMERCE; DIFFERENTIALS; DISTANCE; EMBARGOES; EVIDENCE; FAIR RETURN; FREE TIME; GOVERNMENT; HANDLING; ICING; JURISDICTION; LOCAL RATES; MINIMUM RATES; MISQUOTATION OF RATES; MIXED SHIPMENTS; N. O. S. RATES; NOTICE; OPPOSITE DIRECTIONS; OTHER PERSONS; OTHER TRADES; PORT EQUALIZATION; PRACTICES; PROFIT TO SHIPPERS; PROPORTIONAL RATES; QUANTITY; RAIL AND RAIL-WATER RATES; RATE AND COMMODITY COMPARISONS; RATE STRUCTURE; REGULATIONS; REPARATION; REVENUE; RISK; ROUTING; SPACE; STORAGE; TARIFFS; THROUGH

REASONABLENESS—Continued

ROUTES AND THROUGH RATES; VALUE OF COMMODITY; VALUE OF SERVICE; VOLUNTARY RATES; WEIGHT OR MEASUREMENT; WHARFAGE.

**In General:**

The presumption is that rates which have been in effect for some time are reasonable. Puerto Rican Rates 117 (124).

If transportation conditions now warrant the drastic reductions proposed, present rates are unduly high. It is difficult to rationalize spreads exceeding 100 percent between reasonable minimum and maximum rates. Carriers are privileged to exercise their managerial discretion within reasonable limits, but to sanction a zone of reasonableness of so broad a scope would nullify all attempts at regulation. Westbound Intercoastal Carload and Less-Carload Rates, 180 (187).

Protestants express the fear that if respondent's proposed rates become effective they may lead to a spreading of unduly low rates. That possibility is remote as long as both the Interstate Commerce Commission and this Commission have the power of suspension and minimum-rate jurisdiction. Baltimore-Virginia Ports Wine Rates, 282 (284).

Congress found that efforts of carriers to maintain ships and services had been handicapped; that the Commission's efforts to build up a merchant marine in line with the national policy had been hampered by lack of authority to fix reasonable rates; that the interests of carriers and the shipping public would best be served by rate stability, which, in turn, could best be secured by giving the Commission power to fix maximum and minimum rates. Such power was granted by amendment of June 23, 1938, to the Intercoastal Shipping Act, 1933. Intercoastal Rate Structure, 285 (300).

New Orleans complainant and supporting interveners state they are interested principally in maintaining rate parity with New York and not particularly in the level of the rate charged. No necessity exists, therefore, for considering allegations of unreasonableness under Section 18. Green Coffee Assoc. *v.* Seas Shipping Co., 352 (353).

Carriers cannot be required to establish rates which assure to a shipper the profitable conduct of his business. A carrier may not impose an unreasonable transportation charge merely because the business of the shipper is so profitable that he can pay it, nor, conversely can, the shipper demand that an unreasonably low rate be accorded him simply because the profits of his business shrink to a point where they are no longer sufficient. Intercoastal Cancellations and Restrictions, 397 (400).

**Rates; Factors; Commodities; Suspension; Service:**

Complainants' contention that the rates on animal oil or marine oil spent catalyst are unreasonable is based on two factors: First, that when the shipments moved there was a commodity rate of 57 cents on vegetable oil spent catalyst; and, second, that the rates on animal or marine oil spent catalyst were subsequently reduced. There was no evidence as to value, stowage, volume of movement, or any of the other transportation characteristics of these commodities. Marine oil spent catalyst is difficult to handle, generally badly packed, gives off a contaminating

REASONABLENESS—Continued
**Rates; Factors: Commodities; Suspension, Service**—Continued
odor, and exudes oil. Rates not shown unreasonable. Wypenn Oil Co. *v.* Luckenbach, 1 (2).
Class rates on marine or animal oil spent catalyst from Tacoma to New York not shown to have been unjust or unreasonable. Reparation denied and complaint dismissed. Id. (2).
Storage charges on shingles originating at Vancouver, B. C., transshipped at Seattle, and transported thence by defendant to Philadelphia, where such charges accrued, found unreasonable in violation of section 18. Reparation ordered and reasonable charges prescribed for future. Arthur *v.* A. H. S. S. Co., 6 (13).
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. All-rail rates are prohibitive. The market price is controlled by the market price of new bagging imported from Calcutta, which moves at the same rate both to Gulf and North Atlantic ports. Moreover, there is some trade in old bags and bagging originating in Europe. The foreign product is inferior in quality and offered at lower prices, thereby tending to further reduce the spread between cost and selling price. New Orleans and Galveston dealers compete with Memphis dealers. In turn, both compete with St. Louis and Chicago dealers. Respondents file with the Interstate Commerce Commission joint through rates between North Atlantic ports and Memphis via New Orleans. Rates on bags and bagging, Gulf to North Atlantic, unjust and unreasonable. Rates on Cotton, etc., 42 (46).
The carload rate on old bags and bagging 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. A 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 on new bags and bagging. Id. (47).
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. Assembling, distribution, and handling charges not unjust or unreasonable. Boswell *v.* American-Hawaiian, 95 (100, 104).
Existence of different rates on analogous commodities moving in the Puerto Rican 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,

REASONABLENESS—Continued
**Rates; Factors; Commodities; Suspension; Service**—Continued
value, loss and damage claims, handling costs, and type of vessels operated both as to the trade involved and in compared trades should also have been submitted. Puerto Rican Rates, 117 (119).
In finding rates on specified commodities to Puerto Rico unreasonable to the extent they exceed respondents' rates on the same commodities to foreign ports of call we adhere to statement in Sugar from Virgin Islands, 1 U. S. M. C. 695, to the effect that all cargo carried should contribute its share of operation costs, and the burden imposed upon interstate transportation should not be greater than that imposed on traffic moving in foreign trade. Id. (126).
Respondents' southbound comparison indicates that on their own vessels to Santo Domingo and to Haiti rates on some commodities are lower than to Puerto Rico. In the absence of any affirmative showing of justification by respondents, who are engaged in both foreign and domestic commerce with the same facilities, respondents' southbound rates on automobiles, flour, rice, fish, hardware, iron and steel sheets, lubricating oils and paint, to the extent the rates thereon exceed respondents' rates to foreign ports of call on the same commodities are unreasonable. Increases on other commodities not specifically mentioned above not justified. Id. (126, 134). Amended by order of November 15, 1940.
Respondent proposes reduction of its rate on brandy from $1.10 to 90 cents per 100 pounds. No reduction is proposed in its rate on champagne. Eastbound intercoastal movement of brandy has not been heavy, the bulk of it, 3,902 tons in the five-year period 1934–1938, being handled by respondent. Respondent's handling costs for brandy total $8.12 per ton. Based upon the suspended 90-cent rate, there remains $9.88 to apply against the cost of transportation. This revenue, it was testified, is quite well above the average on other commodities transported. Daily operating cost of a vessel of respondent, exclusive of port charges and stevedoring, approximates $450, or a total of approximately $13,500 for an eastbound voyage of 30 days. The 90-cent rate would net approximately $55,000 on a full cargo of 7,000 measurement tons. With its eastbound vessels operating 96 to 98 percent fully loaded, respondent's 1938 average net for all commodities was $20,000 per voyage. The 90-cent rate found justified. Eastbound Intercoastal Brandy and Champagne Rates, 178 (179).
Although there is no testimony whatever as to whether the suspended rate of the conference lines of $1.14 per 100 pounds on brandy and champagne would be compensatory, it seems reasonable to assume that it is not unreasonably low since it is approximately 27 percent higher than the 90-cent rate of a nonconference line. We find that the rate has been justified. Id. (179).
Suspended westbound intercoastal class rate reductions and reductions in commodity rates based on level of proposed class rates found not justified. Reductions in rates to level of carload rates via water-rail routes, and other adjustments incidental thereto, found justified. Westbound Carload and Less-than-carload Rates, 180 (187).

REASONABLENESS—Continued
**Rates; Factors; Commodities; Suspension; Service**—Continued
There is no showing that the present rate of 36 cents a box on citrus fruit from Jacksonville to Baltimore is less than a reasonable minimum rate. Unreasonableness not shown; proceeding discontinued. Citrus Fruit Florida to Baltimore, 210 (214).
Respondent's entire rate structure is under review here, and the only satisfactory test of its reasonableness is whether the rates "yield a fair return upon the value of the carrier's property devoted to the public service." This calls for a classification of properties used and useful in the public service, and consideration of the fair value of these properties, a fair rate of return on such value, and the estimated revenue and expense reasonably to be expected under the present rates and operations. Rates of Inter-Island Steam Navigation Company, 253 (254).
Reductions proposed would further deplete respondents' revenues. Such a low basis of rates cannot be justified on this record. Intercoastal Rate Structure, 285 (302).
The fact that a per-100-pound rate of 50 cents applied on bottles shipped under a released value is not proof that the applicable per-100-pound rate of $1 was unreasonable. United Bottle Supply Co. *v.* Shepard, 349 (351).
That a shipper does not realize as large a net profit as formerly may be a factor in determining reasonableness; but it is not conclusive. Intercoastal Cancellations and Restrictions, 397 (400).
The use of a difference between an export rate to one port and a domestic rate to another port or between other unlike rates to different ports as a basis for reductions in port-to-port rates is, in the instant circumstances, an unreasonable practice. Mobile *v.* Baltimore-Insular, 474 (481).
Complainant contends that, since port-equalization provisions allowed maximum deductions of 30 percent from the rates, the rates must have been unreasonably high. The facts of record are insufficient to sustain this contention. Assailed rates on mixed feed and beet pulp to Puerto Rico not shown unreasonable. Larrowe *v.* Baltimore-Insular, 549 (552).
Basic rate structures of Alaska Steamship Company and Northland Transportation Company found unreasonable. Alaskan Rates, 639 (650).
Proposed rates should yield more revenue at East Bay terminals (and compensatory revenues at San Francisco) than the minimum basis prescribed in original report, 2 U. S. M. C. 588. Findings in said original report, on further hearing, modified to permit respondents to establish substitute basis of rates and regulations concerning free time, wharf demurrage, and storage, and without prejudice to establishment of reasonable and proper rates on additional commodities and for other demurrage services. Practices, etc., of San Francisco Bay Area Terminals, 709 (709, 713).
Lower rates existing at competitive ports, while bearing upon the general question of a shipper's ability to do business at the proposed rates, afford no useful standard of reasonableness without evidence as to the

REASONABLENESS—Continued
**Rates; Factors; Commodities; Suspension; Service**—Continued
conditions and circumstances surrounding their establishment. Status of Carloaders and Unloaders, 761 (772).
Proposed rates submitted with agreement not justified, but alternative basis justified as an interim basis pending analysis of actual costs of car-service work by the Commission for the purpose of determining proper rates. Approval of said agreement and alternative basis conditioned upon undertaking by respondents to refund by way of reparation any unfair or unreasonable charges determined by the Commission to result from establishment of such alternative basis. Id. (773).
Record held open for submission by respondents of agreement and tariff revised in accordance with findings and for further hearing after completion of cost study. Id. (774).
Proposed rates justified as interim basis pending analysis of actual costs of car-service work by the Commission to determine proper rates. Approval of agreement and interim basis conditioned upon undertaking by respondents to refund by way of reparation any unfair or unreasonable charges determined by the Commission to result from interim rates. Carloading at Southern California Ports, 784 (787).
Proposed schedule of emergency surcharges of 34 percent on tariff rates justified, except as to cement. Finding conditioned upon undertaking by respondent to refund by way of reparation any unfair or unreasonable charges determined by the Commission to result therefrom. Carloading at Southern California Ports, 788 (789–790).
Record held open for proposed report on cement rates and for further hearing after completion of cost study. Id. (790).
Proposed schedule of emergency surcharges approximating 34 percent over rates named in car-servicing tariff justified, except on cement and petroleum products, and conditioned upon undertaking by respondent to refund by way of reparation any unfair or unreasonable charges determined by the Commission to result therefrom. Status of Carloaders and Unloaders, 791 (792, 794).
Proposed percentage increases on class and commodity rates between points in Hawaii found to yield a return of less than one percent on respondent's rate base, and justified except as to wallboard and scrap paper. Finding as to those two commodities is without prejudice to an increase in rates thereon by amounts not exceeding 50 percent. Increased Rates—Inter-Island Steam Navigation Co. Ltd. 800 (802, 804–806).
Although increased rates found justified, respondent expected to submit the results of the first 6 months of its private operation under the rates for the Commission's scrutiny. Id. (806).

**Practices:**
There is no doubt that the conference carriers' $43 rate on lumber was unreasonably high and that its substitution for the $16 commodity rate 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

REASONABLENESS—Continued
**Practices**—Continued

members are permitted to exercise under their approved conference agreement. Pacific Coast-River Plate Brazil Rates, 28 (29).

Respondents not only made no effort to justify the N. O. S. rate, but frankly admitted that the situation of their inability to agree upon a commodity rate, resulting in their applying the N. O. S. rate, should not be permitted to arise again. Respondents' action in permitting their commodity rates on lumber to expire and thereafter, because of their failure to agree, permitting the application of the N. O. S. rate, resulted in the application of an unreasonably high rate detrimental to commerce of the United States. Id. (29, 30).

A decision under section 18 that the charges of carriers in the intercoastal trade are unjust and unreasonable does not require a finding of unreasonableness as to practices of carriers in connection with similar charges in foreign trade under a different provision of law. Los Angeles By-Products Co. *v.* Barber, 106 (115).

Respondents' rules effecting charges for issuing ocean bills of lading are unreasonable and unlawful. Puerto Rican Rates, 117 (133).

The failure of a public terminal utility to give adequate notice of rate changes is unjust and unreasonable to the shipping public. Lumber Through Panama Canal, 143 (149).

Defendants, 250-ton requirement for application of their terminal rates on canned goods at Seattle and not at Bellingham was an inadvertence which was corrected after a period of approximately 13 months by like requirement at Bellingham. It is this parity which complainant alleges to have been, as to it, unduly prejudicial and unreasonable. These allegations are not sustained. Pacific American Fisheries *v.* Am. Hawaiian, 270 (274).

To meet competition the conference lines reduced their flour rate to 10 cents per 100 pounds. A rate may be so low as to be unreasonable. As one of the purposes of the conference agreement is the establishment of reasonable rates, this reduction is a violation of the agreement and constitutes a condition unfavorable to shipping in the foreign trade. Inasmuch as the conference has restored the rate to 60 cents, no order with respect thereto will be entered. Cargo to Adriatic, 342 (346, 347).

The Commission finds to be reasonable practices in violation of section 17 of the Shipping Act, 1916, as amended: (1) The practice of both respondents of collecting, in the past, present, or future, the $2 charge as "expenses"; (2) the practice of respondent in No. 634 of failing to give ample notice of restriction of free time; and (3) the practice of both respondents in not promptly amending their tariffs to reflect their rules and regulations pertaining to free time and the charges applicable to cargo after expiration of free time. Cont. Distrib'g. Co., Inc. *v.* Cia. Nacional De Nav., 724 (726).

Failure to incorporate in tariff all rates legally applicable on bulk cement and insertion in tariff of rates on cement different from legally applicable rates constitute unreasonable practice in violation of section 17 of Shipping Act, 1916. Contract Rates—Port of Redwood City, 727 (745).

REBATES. *See* CONCESSIONS.
RECEIPT OF PROPERTY. *See* DELIVERY; PICK-UP AND DELIVERY.
RECORD AS BASIS OF FINDINGS. *See* HEARING.
REFRIGERATION. *See* ICING; SERVICE.
REGULAR RATES. *See* CONCESSIONS; FALSE BILLING.
REGULAR ROUTES. *See also* COMMON CARRIERS; HIGH SEAS AND GREAT LAKES; SERVICE.

Section 2 of the Intercoastal Act, which requires that every common carrier by water in interstate commerce engaged in transportation on regular routes from port to port shall file schedules of rates, does not classify ports, nor does it contemplate regularity of sailings in a trade or regularity of calls at a port. Alaskan Rates, 558 (580).

To accept respondent's contention that there is no requirement for filing tariffs to and from the canneries, salteries, lumber camps, and small settlements, on the ground that they are not on regular routes and because no regularity exists with respect to sailings or calls, would, under the circumstances reviewed, render futile any regulation with respect to principal ports. Id. (580).

The primary purpose for the insertion in the statute of "on regular routes from port to port" was to exclude from regulation traffic transported by tramp vessels. Certainly, respondents cannot contend that any vessel which they operate is a tramp; they operate the only services to Alaska. In fact, that trade comprises their principal business. Respondents admit they hold themselves out to transport cargo to and from all industry locations within the respective areas which each serves, and it has become generally known that if service is required and requested it will be given. Id. (580).

Respondent is an individual operating a motor vessel between Anchorage, Cook Inlet, and Seattle during nine months of the year. He carries passengers and freight but maintains his operation is not that of a common carrier because of irregularity of schedules and routes. He carries all kinds of freight offered, sails quite regularly although not on stated schedules. In this respect we see no difference between his service and that of other common carriers serving so-called irregular ports. He operates as a common carrier and will be required to publish and file his schedules. Id. (581).

Service by Alaska Steamship, Alaska Transportation, and Northland to and from so-called irregular (minor) ports is transportation on regular routes from port to port within the intent of Congress and subject to the Shipping Act. Id. (583).

REGULATIONS. *See also* AGREEMENTS UNDER SECTION 15; KNOWLEDGE; MERCHANT MARINE ACTS; OTHER PERSONS; PRACTICES; SERVICE; STORAGE; TARIFFS.

Much of respondents' argument is addressed to the absence and asserted need of regulations by us which would make the false billings concerned impossible. This argument even approaches a position that respondents are free of condemnation for violation of section 16 or 17 unless and until such regulations are prescribed. Respondents' conference agreements when filed and approved manifestly contemplated every proper effort on their part to accomplish the details of management through adequate tariff items and rules, and, if and as found necessary by them, through amendments to the conference agreements themselves. The

REGULATIONS—Continued
duties and responsibilities placed upon carriers by sections 16 and 17 are not to be transferred to the regulatory body, and respondents will be expected to promulgate their own regulations. Any assistance of the Commission applied for and actually shown by them to be necessary will be given. Rates from Japan to United States, 426 (436, 437).
Intercoastal rules, regulations, and practices with respect to mixed-carload shipments found unreasonable, without prejudice to establishment of rules, regulations, and practices which are not more liberal than those maintained by transcontinental rail and water-rail lines. Intercoastal Rate Structure, 506 (511).
Rates, rules, regulations, and practices relating to wharf demurrage and wharf storage are unduly prejudicial and preferential and unreasonable in violation of sections 16 and 17. Reasonable regulations prescribed. Practices of San Francisco Bay Terminals, 588 (598–609).
In not filing with the Commission as required, rates, charges, rules and regulations for and in connection with transportation of property from New York to Havana, respondent found to have knowingly and willfully violated the Commission's rules and regulations prescribed in Section 19 Investigation, 1935, 1 U. S. S. B. B. 470. Rates of Garcia 615 (619).
Respondent's contention respecting its failure to comply with regulations requiring rate filings is that section 19 of the Merchant Marine Act, 1920, provided no authority to require rate filings by carriers in foreign commerce. It confuses rate filings before transportation, such as statutorily required of interstate carriers, with rate filings after transportation, required of foreign carriers by the section 19 regulations. It overlooks that its contention was originally and unsuccessfully argued in 1 U. S. S. B. B. 470 (500). Rates of General Atlantic, 681 (685).
Respondent seeks to support its contention that section 19 of the Merchant Marine Act, 1920, did not afford authority to require its rate filings by additional contentions that the Commission's right to require production of information by carriers was limited to the Commission powers contained in sections 21, 22, and 27 of the Shipping Act, 1916. The exercise of the several powers specified would in no manner prevent or conflict with the authority of section 19. Id. (685).
RELEASED RATES.
Defendant's eastbound tariff Item 165, which complainant seeks to have applied, names a 50-cent rate on bottles released to a valuation not exceeding $5 per 100 pounds. That tariff contains no specific commodity rate on bottles, unreleased, but Rule 55 provides for application of the westbound rate when a specific commodity rate is not named. Westbound tariff item 1480 provides a rate of $1 on bottles, unreleased. Item 1480 was applicable. United Bottle Supply Co. *v.* Shepard, 349 (350).
The fact that a per-100-pound rate of 50 cents applied on bottles shipped under a released value is not proof that the applicable per-100-pound rate of $1 was unreasonable. Id. (351).
In connection with shipments whose values required billing under different items and at higher rates than those applied, respondents question the accuracy of the investigators' tariff interpretation, directing attention to stamped notations on the bills of lading reading, for example, "metalware, value not exceeding $175 per 40 cubic feet." Although conceding the true 40-cubic-foot value to exceed that stated in the notation, respondents'

RELEASED RATES—Continued
contention is that such notation serves to justify the lower tariff rate charged on the theory that the shipper released the shipment's value to obtain the lower rate. No tariff provision authorizes released-value rates by respondents, and at most such bill of lading notations have no other effect than to restrict the shipper to the value stated in the event of claims for loss or damage. Rates From Japan to United States, 426 (432).

REOPENING. *See* CHANGED CONDITIONS; MOOT CASES.

REPARATION. *See also* DAMAGES; JURISDICTION; LIABILITY; MISQUOTATION OF RATES; OVERCHARGES; RAIL AND RAIL-WATER RATES; REASONABLENESS; SPACE.

Complainant asks for reparation, but does not show that it was injured by the violations of sections 16 and 17 found to exist. In addition to competing in the European markets with raisin shippers in this country, it must meet the competition offered by other countries. 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. Reparation, therefore, is denied. Sun-Maid Raisin Growers Assoc. *v.* Blue Star Line, 31 (38).

As to complainant's ability to obtain automobiles for shipment in space requested and refused by defendants, the record shows complainant could and would have obtained and shipped the $167,000 worth of automobiles in compliance with its contract and that complainant's net profit would have been 15 percent of that sum, or $25,050. This amount, with interest, awarded as reparation for unfair treatment and unjust discrimination in violation of section 14 "Fourth" of Shipping Act, 1916. Hernandez *v.* Bernstein, 62 (65–67).

In 1 U. S. M. C. 686, we found that defendants unfairly treated and unjustly discriminated against complainant in the matter of cargo-space accommodations for automobile shipments to Spain, and that complainant had been injured by the violation of section 14. Complainant made no showing that all the automobiles upon which request for 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. Upon further hearing with respect to the measure of complainant's injury, reparation, with interest at six percent, awarded. Id. (67).

Although it has been shown that during certain periods the assembling, distributing, and handling charges were assessed by some defendants without proper tariff authority, in violation of the Shipping Act, 1916, and 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 showing. The petition for reparation is, therefore, denied. Boswell *v.* Am-Hawaiian, 95 (104, 105).

The exceptions seeking reparation overlook that the case is a suspension proceeding instituted and conducted under section 3 of the Intercoastal Shipping Act, 1933. Reparation awards are authorized only in connection with proceedings under section 22 of the Shipping Act, 1916. Pacific American Fisheries *v.* Am.Hawaiian, 270 (278).

Rate charged on second-hand bottles found inapplicable and reparation awarded. United Bottle Supply Co. *v.* Shepard, 349 (351).

REPARATION—Continued
Rate on candy from New York to Hawaii found unreasonable. Reparation awarded and reasonable rate for future prescribed. Kress *v.* Baltimore Mail, 450 (452)
Defendant's failure to fulfill obligation fixed by its routing sheet in connection with shipment of syrup from Philadelphia to San Diego found an unreasonable practice. Reparation awarded. Atlantic Syrup Ref. Co. *v.* Luckenbach, 521 (522).
Defendant's tariff rule provides that any claim for overcharge must be filed within 1 year from payment of freight. Section 22 of the Shipping Act, 1916, provides for reparation if complaint is filed within 2 years after cause of action accrued. It follows that recovery in the instant case is not barred. Overcharges should be refunded. Plomb Tool Co. *v* Am. Hawaiian, 523 (524).
Rate charged on synthetic indigo paste and sodium hydrosulphite from Philadelphia to Houston is unreasonable and reparation awarded. Du Pont de Nemours *v.* Southern, 527 (528).
Found due. Cont. Distrib'g. Co., Inc. *v.* Cia. Nacional De Nav., 724 (726).
RETALIATION.
There is testimony to the effect that the Pacific Coast-European 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. Pacific Forest Industries *v.* Blue Star Line, 54 (57).
Protestants charge that elimination of Bellingham Pier B was an act of retaliation by canal respondents against protestant because of the latter's refusal to withdraw a formal complaint. They show that respondents' conference chairman threatened Pacific American Fisheries' president that the pier would be eliminated from terminal-rate application unless such complaint was withdrawn, and that apparent authority was given by respondents to their chairman to effect such elimination. Apart from the force of such evidence as possible added proof of unreasonableness and undue prejudice, it shows an attitude toward and treatment of shippers by these respondents which is to be condemned in view of section 14 (third) of the Shipping Act, 1916, prohibiting resort by a subject carrier to a discriminating or unfair method because a shipper has filed a complaint. Pacific American Fisheries *v.* Am. Hawaiian, 270 (277).
RETURN. *See also* FAIR RETURN; RETURNED SHIPMENTS; REVENUE.
When the rate charged applies on "carriers empty, returning," including bottles, the item does not apply when the bottles are not "returned" bottles. Reparation awarded. United Bottle Supply Co. *v.* Shepard, 349 (350, 351).
REVENUE. *See also* COMPENSATORY RATES; COST OF SERVICE; EVIDENCE; FAIR RETURN; PRACTICES; STABILITY OF RATES AND SERVICES.
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 concerned will be lower than that earned in 1938. Proposed rates are not found unremunerative. North Carolina Line—Rates to and from Charleston, 83 (86).
Revenue prior to September 21, 1939, is claimed to have been insufficient, but the extent of the deficiency which must be met by increases in rates

REVENUE—Continued

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. Puerto Rican Rates, 117 (123).

As all drydock property of respondent has been valued as common-carrier property, respondent contends that all drydock revenue and expenses, whether from carrier or non-carrier sources, should also be classified as common carrier. The soundness of this argument is not questioned. Rates of Inter-Island Steam Navigation Company, 253 (264).

Net income from air-line agencies has been allocated to common-carrier income because the services, such as administrative and accounting duties, the sale of tickets and so on, are performed by officials and employees of respondent who are primarily engaged in steamer operations. This accords with the treatment of income from drydock operations, which is allocated to common-carrier income notwithstanding a substantial amount of work is done for outsiders. Id. (265).

The value for rate-making purposes of respondent's properties which are used and useful in the public service does not exceed $6,565,000. A fair rate of return on such value does not exceed 7 percent. The probable net income from respondent's present rates will approximate $313,127 annually, which represents a return of 4.77 percent on present value. Respondent's rate structure as a whole not shown unreasonable or otherwise unlawful. Id. (267).

Respondents point out that the suspended 22-cent rate yields a per-ton-mile revenue of 2.67 cents, based on a distance of 165 nautical miles, Baltimore to Norfolk. In the absence of estimated cost of handling wine at the terminals, damage ratio, and storage factors, that figure is not of itself proof of compensatory revenue, even though it may compare favorably with revenue on other freight. Baltimore-Virginia Ports Wine Rates, 282 (284).

Respondents' exhibit shows a revenue from wool and mohair of 9.7 cents per cubic foot as compared with a higher revenue from eleven other commodities on which the stowage factors and rates are lower. Suspended schedules eliminating free warehouse delivery found justified. Warehouse Deliveries of Wool, 331 (333).

In original report (2 U. S. M. C. 253), the Commission found that respondent was entitled to a return of 7 percent on a rate base of $6,565,000 and that annual revenues, estimated at $313,127, produced a return of only 4.77 percent. Because the task of calculating future revenues and expenses was complicated by reduction in passenger fares and a strike, the proceeding was held open for incorporation of evidence showing actual income for the calendar year 1939. Evidence now submitted indicates such actual net income was $274,234.78, or 4.18 percent on the rate base. Proceeding, therefore, discontinued. Rates of Inter-Island Steam Navigation Company, 334.

The rate of return of 29.49 percent earned by Santa Ana in 1940 is clearly excessive. Assuming that on the basis of 1940 traffic all revenue from the oil and oil products is lost, with no offsetting traffic or any corresponding reduction in operating expenses, the resulting estimated net operating income, ranging from $17,500 to $34,000, would produce rates of return on the fair value found herein ranging from 6 to 12 percent. In view of the unpredictable loss of revenue in 1941 and its effect on net income,

REVENUE—Continued
and in the absence of complaint from shippers, concluded that respondent's rate structure has not been shown unreasonable. Alaskan Rates, 558 (575).
The bulk of the traffic to and from minor ports consists of fishery traffic which takes the lowest rates. On northbound traffic, gross per-ton revenue for the minor ports is from $1 to $4 per ton lower than for principal ports. It does not necessarily follow that traffic to and from principal ports is being unduly burdened with more than its share of operating costs inasmuch as traffic to and from minor ports is of lower grade than to and from principal ports, and the revenue thereon consequently would be less. Id. (578).
RISK.
Complainant estimates that the voyage cost $45,100, or approximately $13.85 per net ton of cargo. The actual cost was $76,029.71, exclusive of excess profits taxes. Total freight charges collected for transportation of the alcoholic liquors from Baltimore to Pacific coast amounted to $101,453.17, resulting in a profit to defendant of $25,423.46, and producing a return of 33 percent on the investment. The reasonableness of this rate of return must be judged in the light of the risk involved. Defendant was faced with several unusual risks, such as threatened crew trouble, inability to obtain sufficient fuel, and possibility of stoppage of work at destination ports. Complainants admit that the shipment was unique in many respects and conceded that the profit thereon should range between 25 and 30 percent. Unreasonableness not shown; complaint dismissed. Seagram *v.* Flood, 208 (209).
RIVER CARRIERS.
Mississippi River carriers clearly are subject to Commission's jurisdiction with respect to intercoastal shipments billed through under joint rates, and the questions presented are whether they are subject with respect to shipments billed to or from New Orleans at proportional rates and whether the proportional rates must be filed. Carriers need not actually go upon the high seas or the Great Lakes to be subject. Through carriage implies a through rate. This through rate is not necessarily a joint rate. It may be merely an aggregation of separate rates fixed independently by the several carriers forming the through route, such as in this case. Inland Waterways Corporation, 458 (460, 463).
ROUTES. *See also* COMPETITION; CONTRACT RATES; GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES; MERCHANT MARINE ACTS.
Shippers have a right to enjoy their legitimate opportunities to obtain carriage on the best terms they can. They are entitled to use all the natural routes open to them, which right may not be abridged by carriers through improper competitive practices. Carriers should not by artificial means, attempt to control the flow of traffic not naturally tributary to their lines. Contract Routing Restrictions, 220 (225, 226).
From some origins inland rates to New Orleans and Mobile are the same; yet defendant shrinks its rate only from New Orleans to equalize rates via Northern ports. Shippers are thereby deprived of their choice of routes via New Orleans or Mobile, and Mobile is deprived of an opportunity to compete. Such action is unduly prejudicial to Mobile and unduly preferential of New Orleans. Mobile *v.* Baltimore-Insular, 474 (480).

ROUTING. *See also* THROUGH ROUTES AND THROUGH RATES.
Defendant's failure to fulfill obligation fixed by its routing sheet in connection with shipment from Philadelphia to San Diego found unreasonable. Reparation awarded. Atlantic Syrup Refining Co. *v.* Luckenbach, 521 (522).
RULES. *See* AGREEMENTS UNDER SECTION 15; REGULATIONS; SERVICE; STORAGE.
SAILINGS. *See* SERVICE.
SCHEDULES. *See* AGREEMENTS UNDER SECTION 15; TARIFFS.
SECTION 15 AGREEMENTS. *See* AGREEMENTS UNDER SECTION 15.
SECTION 19 REGULATIONS. *See* KNOWLEDGE; MERCHANT MARINE ACTS; REGULATIONS.
SERVICE. *See also* ABSORPTIONS; AGREEMENTS UNDER SECTION 15; ASSEMBLING AND DISTRIBUTION; BLANKET RATES; BOOKING; CIRCUMSTANCES AND CONDITIONS; DISCONTINUANCE OF SERVICE; EMBARGOES; EVIDENCE; GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES; HANDICAP RATES; JURISDICTION; MANAGERIAL DISCRETION; MERCHANT MARINE ACTS; MONOPOLY; NOTICE; ON-CARRIAGE; PICK-UP AND DELIVERY; PRACTICES; QUANTITY; SHIPPING ACT, 1916; SPACE; STABILITY OF RATES AND SERVICES; SUSPENSION; VALUE OF SERVICE.
Respondents' service was ten days faster than either of the conference lines. 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. Commission would hesitate to approve an agreement of respondents with the conference lines providing guarantee to respondents of 20 percent of all the coffee carried based on such considerations. Granting respondents' demand would have resulted in a loss to the conference carriers far beyond that which they were able to bear. Rules and Regulations prescribed. Rates, Charges and Practices of Yamashita and O. S. K., 14 (18).
The business of coffee receivers and roasters has increased over 100 percent directly as a result of the regularity of service and stability of rates of the conference lines. Regulations prescribed in connection with respondents' practices in underquoting conference carriers' rates. Id. (19).
Defendants state it was necessary, in the beginning, to serve all of the ports in the San Diego-Vancouver blanket in order to obtain sufficient cargo; 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 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. San Francisco, Oakland, Alameda and their various interests assert their ports have been developed with the thought that ports such as Stockton, lying behind terminal ports, would not be served by ocean-going vessels. It is urged that their large investments would 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. Sun-Maid Raisin Growers Association *v.* Blue Star, 31 (36, 37).

SERVICE—Continued

Complainant 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, Commission has no authority to require carriers to serve a port. Id. (38).

The record discloses that respondents' practices have not at all times been such as to promote commerce as provided in their conference agreement. The advantages of group action in rate matters and exemption from the antitrust laws with 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. Pacific Coast—European Rates and Practices, 58 (61).

The practice of absorbing on-carrying charges on cargo destined to ports to which respondents publish direct-line service but at which, for their own convenience, their vessels do not call, while at the same time refusing to serve the discontinued ports either direct or by transshipment, is unduly prejudicial. Puerto Rican Rates, 117 (129).

A necessary preliminary for the coastwise service as proposed by respondent is the filing with the Commission of a tariff of rates. Class Rates between North Atlantic Ports, 188.

Protestant carriers' position is that the territory involved is amply served, that there is no demand for the additional service proposed by respondent, that they have idle ships which could be used if business warranted, that respondent cannot secure new traffic, and that respondent's entry into the field will only result in a further decrease of traffic for them. Intervener chamber of commerce states that ordinarily that organization welcomes new water lines, but that there is no demand for respondent's proposed service, that the public interest would not be served by it, and that there is fear that protestant carriers will be obliged to curtail their services. To contend that the Commission can prevent a bona-fide carrier from entering the trade for the above reasons presupposes a power which is not conferred by the Shipping Acts. Id. (189, 190).

Respondent testifies it actually intends to engage in the local service between North Atlantic ports. Its publication of rates was not only intended to give solicitors an opportunity to make contacts to determine whether the services would be used, but to avoid additional regulation, and to satisfy any future statutory requirements incident to securing a certificate of public convenience and necessity. No advertising has been done, and respondent's witness did not know whether solicitation had been made. Whether extra ships, personnel, or terminals, except those at New York and Hoboken, would be needed to handle the traffic, has not been determined. Suspended schedules found justified. Id. (188, 190).

In determining the question of whether the discrimination involved is unjust, the disadvantages of respondents' monopoly (of traffic from the Great Lakes area to Europe, attained by their contract rate system) should be weighed against the advantages flowing therefrom, such as stability of rates and consequent stability of service. Respondents' contracts with shippers

SERVICE—Continued
whereby the shippers are subject to the penalty of respondents' noncontract rates on their shipments from North Atlantic ports to Europe if they patronize carriers operating direct from Great Lakes ports to Europe, found unjustly discriminatory and unfair, to interfere with the flow of commerce through Great Lakes ports, and detrimental to commerce of the United States. Contract Routing restrictions, 220 (225, 227).
"Direct service" is only that service from the last loading port to the first discharging port of a vessel. Therefore, complainant's proposed service from Hampton Roads to Rotterdam by vessels discharging first at Bremen and Hamburg would be less direct than Black Diamond's service from Hampton Roads with vessels calling at New York en route to Rotterdam. Waterman *v.* Bernstein, 238 (242).
Adequate tonnage in a trade will not justify refusal of admission to conference for the reason that, if adequacy of existing service is to prevent new lines from engaging in the trade, carriers already in the service could perpetuate their monopoly by the simple and expedient method of continuing to maintain adequate service. Id. (243).
Elimination of Pier B from the application of respondents' Bellingham terminal rate for eastbound canned goods in minimum quantities of 250 tons not justified, and denial of such rate therefrom, in view of respondents' contrary practice at Seattle, found unreasonable and unduly prejudicial. Pacific American Fisheries *v.* Am. Hawaiian, 270 (279).
The intercoastal handicap system is based upon such considerations as frequency of sailings and time in transit. Intercoastal Rate Structure, 285 (290).
Bernstein and Red Star have discontinued operations. Black Diamond and Belgian Line by increasing their sailing schedules to a weekly basis have supplied to shippers the equivalent of the services withdrawn. Subsequently, Hamburg-American and North German Lloyd were discontinued. The contention as to overtonnage is without merit. Cosmopolitan *v.* Black Diamond, 321 (330).
To justify its solicitation of cargo by offers to underquote rates of conference carriers, and employment of agents and payment of commissions to them when, at the same time, they are shippers or receivers of cargo, respondent testifies that such a system was made necessary by the need of shippers for lower rates, conference competition, and the use of slow vessels by respondent. The fact that a carrier chooses to employ slow vessels is not justification of indulgence in a practice otherwise unlawful. Cargo to Adriatic, 342 (344).
Protestants offered no evidence of undue prejudice relative to respondents' cancellation of its entire service and rates from the Gulf to Puerto Rico. Lucking *v.* Detroit Navigation Co., 265 U. S. 346, states that "The duty to furnish reasonable service while engaged in business as a common carrier is to be distinguished from the obligation to continue in business. No duty to continue to operate its boats on the route is imposed by the common law or Federal statutes." See also McCormick *v.* U. S., 16 Fed. Sup. 45. Legislation subsequently enacted confers no additional authority on the point involved. Proceeding discontinued. Gulf-Puerto Rico Rates, 410 (411).
Without question, service which includes refrigeration of a shipment throughout its entire route is superior to service according refrigeration over only a part of the route. Kress *v.* Baltimore Mail, 450 (451).

SERVICE—Continued

Maintenance by common carriers of schedules of rates for services which they do not perform cannot be justified. Embargo, North Atlantic and Gulf, 464 (465).

Respondent proposes by means of embargo to abandon its service. It has filed no tariff supplement cancelling rates for transportation between the ports involved. It asserts that it is common practice in coastwise trade to issue embargoes withdrawing service. Even if an embargo were the proper medium of abandoning service, the short notice given by the embargo in question works an unreasonable hardship on the public. The embargo is unreasonable. Respondent ordered to file schedules cancelling its rates for the services to be withdrawn. Id. (464, 465).

Seatrain's service differs materially from that offered by the breakbulk lines and is conceded by all parties to be of a superior nature. Shippers testified that with equal costs they would always use Seatrain. The practice of equalization is not condemned as a general principle. But here it creates an undue advantage which cannot be overcome by the breakbulk lines individually, except by resigning from the conference and precipitating a rate war, which is a condition contrary to the best interests of the American merchant marine. Practice of Seatrain of absorbing difference between costs of delivery of cargo to its vessels at Texas City and costs of delivering local tonnage to breakbulk carriers at shipside at Houston, Galveston, and Beaumont, found in violation of sections 16 and 17. Beaumont *v.* Seatrain, 500 (502–505). Reversed in part on further hearing, 699.

Defendants contend that since complainant has transported no coffee, it is not regularly engaged in the coffee-carrying trade covered by the conference agreement, and, therefore, not entitled to conference membership. Thus, they endeavor to impose a requirement which they themselves by monopolizing the trade make impossible for others to fulfill. Complainant has announced his service, published sailing schedules, solicited coffee shipments, and carried cargo obtainable. This is sufficient. Olsen *v.* Blue Star, 529 (532).

The Shipping Act, 1916, does not contemplate regularity of sailings in the trade or regularity of calls at ports as being the test of whether or not common carriers fall within or without the provision relating to "regular routes." Rates of General Atlantic, 681 (684).

SHIPPING ACT, 1916. *See also* AGREEMENTS UNDER SECTION 15; CANAL ZONE; CHESAPEAKE BAY; COMMON CARRIERS; CONTRACT RATES; DETRIMENT TO COMMERCE; DUAL COMMON AND CONTRACT CARRIERS; EVASION; HEARING; INTERCOASTAL SHIPPING ACT, 1933; JURISDICTION; MERCHANT MARINE ACTS; MONOPOLY; OTHER PERSONS; OVERCHARGES; POLICY; PRACTICES; REPARATION; RIVER CARRIERS; SERVICE; STORAGE; SUBSIDY CONTRACTS; THROUGH ROUTES AND THROUGH RATES.

Interpretation; Jurisdiction:

Complainant's shipments were transported by defendants from New York to Cristobal and by other carriers from the Canal Zone to ports in Central America. 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. Neuss, Hesslein, *v.* Grace, 3 (4).

SHIPPING ACT, 1916—Continued

**Interpretation; Jurisdiction**—Continued

Section 1 of the Interstate Commerce Act applies the provisions of that act to common carriers engaged in transportation wholly by railroad or partly by railroad and partly by water, but only insofar 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 for or in connection with transportation between points on its own route. It is thus seen that the Interstate Commerce Act applies to transportation which takes place within the United States, while section 18 of the Shipping Act applies to transportation by a common carrier engaged in interstate transportation "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, consideration must be given to the construction given to the above mentioned provision of the Interstate Commerce Act. Arthur *v.* A. H. S. S. Co., 6 (8).

Exceptions seeking reparation overlook that the case is a suspension proceeding instituted and conducted under section 3 of the Intercoastal Shipping Act, 1933. Reparation awards are authorized only in connection with proceedings under section 22 of the Shipping Act, 1916. Pacific American Fisheries *v.* Am. Hawaiian, 270 (278).

As section 18 relates solely to interstate commerce, the allegations thereunder against North Atlantic Continental Freight Conference carriers will not be considered. Cosmopolitan *v.* Black Diamond 321 (322).

Respondents' position is that the Commission is without authority to require them to maintain service and, further, that it had no authority to suspend the operation of schedules the effect of which was merely to withdraw service. No reason found to depart from 1 U. S. M. C. 770, asserting authority to cancel respondents' schedules whenever in a given case the facts show undue prejudice to any locality or description of traffic. Intercoastal Cancellations and Restrictions, 397 (398).

The duties imposed upon defendant by sections 14, 16, and 17 of the Shipping Act, 1916, are not owed by defendant to complainant broker, whose only interest in the transportation involved was the compensation it expected to receive from defendant in return for supplying cargo for defendant's vessels. Complainant's cause of action against defendant, if any, is not cognizable under the provisions of the Shipping Act, 1916, alleged to have been violated. American Union Transport *v.* Italian Line, 553 (556, 557).

Section 18 is not applicable to carriers engaged in foreign commerce. Remis *v.* Moore-McCormack et al., 687 (692).

**Parties Subject; Requirements:**

The second paragraph of section 17, respecting receiving, handling, storing or delivering of property, relates to services performed at the terminal as distinguished from the carrying or transporting by the vessel. Los Angeles By-Products Co. *v.* Barber, 106 (113, 114).

SHIPPING ACT, 1916—Continued
**Parties Subject; Requirements**—Continued

Respondents' counsel states that revenue and expense data of the nature requested in 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 respondents' 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. Puerto Rican Rates, 117 (123).

It is only natural that respondent should give preference to its own hotel accommodations over those of its competitors. But this is not the kind of undue preference that is condemned by section 16 of the Shipping Act, 1916. Respondents only duty is to its patrons. And there is no complaint of record from any passenger of undue preference or prejudice arising from respondent's arrangements for the Island tour. Rates of Inter-Island Steam Navigation Company, 253 (266, 267).

New Orleans complainant and supporting interveners state they are interested principally in maintaining rate parity with New York, and not particularly in the level of the rate charged. No necessity exists, therefore, for considering allegations of unreasonableness under section 18. Green Coffee Assoc. *v.* Seas Shipping Co., 352 (353).

Carriers may do many things which the Commission could not compel, but that privilege is not unlimited. Mobile *v.* Baltimore-Insular, 474 (486).

Respondent Port of Redwood City is an "other person" as defined in the Shipping Act, 1916, as amended, and its rates, charges, practices and services in connection with handling and shipment of bulk cement through pipeline are subject to said Act. Contract Rates—Port of Redwood City, 727 (745).

Respondent stevedoring companies, terminal operators, and other contractors engaged in carloading and unloading of water-borne traffic are "other persons" subject to the Shipping Act, 1916. Status of Carloaders and Unloaders, 761 (773).

Certain water-carrier respondents, engaged in carloading and unloading of shipments in interstate commerce only, are subject exclusively to Interstate Commerce Act and, therefore, are not proper parties to agreement under section 33 of Shipping Act, which provides that Maritime Commission cannot exercise concurrent jurisdiction over any matter within power or jurisdiction of Interstate Commerce Commission. Id. (766, 770, 773). On further hearing, such carriers found to be subject to Shipping Act, 1916, and proper parties to agreement, 791.

Respondents are engaged in carloading and unloading of waterborne traffic, and are subject to the Shipping Act, 1916; Pope and Talbot is a common carrier, and all other respondents are "other persons" subject to the act. Carloading at Southern California Ports, 784 (785–786).

SHIPPING INSTRUCTIONS. *See also* THROUGH ROUTES AND THROUGH RATES.

No authority to award damages because of a carrier's failure to follow instructions to ship on a particular voyage. Complaint dismissed. *Pilgrim* Furniture Co. *v.* Am. Hawaiian, 517 (518).

SHORTENED PROCEDURE. *See* HEARING.

SIMILARITY OF TRAFFIC, SERVICES, CIRCUMSTANCES AND CONDITIONS. *See* CIRCUMSTANCES AND CONDITIONS; EVIDENCE.

SOLICITATION. *See also* COMMON CARRIERS; INTERCOASTAL SHIPPING ACT, 1933.

Solicitation is a part of the business of transportation. In re Pan-American, 693 (696).

SPACE. *See also* BULK; REPARATION; SERVICE.

Whether, at the particular times of complainant's requests for bookings of the five shipments upon which the complaint is predicated, there was available space in defendant's vessels to accommodate such shipments and whether the bookings by defendant abroad were subsequent to complainant's requests, as alleged by complainant, are not shown by any facts of record; nor is it shown that brokerage as to any of these shipments was paid by defendant. American Union Transport *v.* Italian Line, 553 (556).

Denial of space as in retaliation would be a misdemeanor under the act for which a severe penalty is provided. Pacific Forest Industries *v.* Blue Star Line, 54 (57).

Despite complainant's requests for bookings for automobiles, subsequent thereto defendants booked and accepted and stowed other cargo in spaces in their vessels usually used for unboxed automobiles. Reparation awarded. Hernandez *v.* Bernstein, 62 (63).

Distribution of space in times of space stringency, based upon the relative proportion in which the shippers offer lumber on hand and conveniently located for prompt loading, taking into consideration the rights of small shippers, would seem to be just and reasonable. Patrick Lumber Co. *v.* Calmar, 494 (499).

It is apparent that, in arranging its vessel itineraries and apportioning the space, defendant did not prorate the space and service in proportion to cargo offerings which were on hand and ready for loading. Its failure in this respect resulted in undue prejudice to complainant. Id. (499).

No showing was made that there was cargo space available, and, consequently, no action may be maintained under the allegation of section 14. Pilgrim Furniture Co. *v.* American Hawaiian, 517 (518).

Respondents obtained allocation of cargo space from Suez to the United States and disposed of it to others on bases far exceeding the rate accorded them. Respondents are not subject to the Shipping Act, 1916. Proceeding discontinued. Rates of M. Benin and Sigma Trading Corp., 662 (665).

SPECIAL RATES. *See also* GOVERNMENT.

Tariffs which accord to particular shippers within blanketed areas rates or privileges not available to others similarly situated are unlawful under section 16. Alaskan Rates, 558 (577).

Respondent will be expected to remove the apparent discrimination in connection with transportation of ore and ore concentrates as between principal and minor ports from which rates are subject to special arrangements. Id. (581).

SPEED. *See* MINIMUM RATES; SERVICE.
SPLIT-DELIVERY. *See* DELIVERY.
STABILITY OF RATES AND SERVICES. *See also* AGREEMENTS UNDER SECTION 15; COMPETITION; CONTRACT RATES; DISCRIMINATION; INTERCOASTAL SHIPPING ACT, 1933; JURISDICTION; MINIMUM RATES; SERVICE.
The stability of the rate structure is essential to coffee receivers and roasters in carrying out their business. Wide fluctuations in rates would be detrimental, if not destructive, of the business. This business has increased over 100 percent directly as a result of the regularity of service and stability of rates of the conference lines. Practices of respondents in underquoting conference carriers' rates condemned, and rates and regulations prescribed under section 19 of Merchant Marine Act, 1920. Rates, Charges, and Practices of Yamashita and O. S. K., 14 (19).
There is nothing of record leading to belief that the routing restriction of the contracts, whereby shippers are subject to the penalty of respondents' noncontract rates on their shipments via respondents from North Atlantic ports to Europe, if they patronize carriers operating direct from Great Lakes ports to Europe, is vital to the maintenance of stability of respondents' service and rates. On the other hand, there is no doubt that respondents, with their frequency and quality of service, are fully capable of retaining their fair share of traffic from the Great Lakes area without resort to coercive competitive tactics. Contract Routing Restrictions, 220 (226).
It is generally conceded that stability in rates is an advantage to shippers as well as carriers and is necessary for the preservation of carrier revenues. Intercoastal Rate Structure, 285 (301).
The practices of making rates lower by a fixed percentage than those of other carriers destroys that stability in rates which is advantageous to American shippers. Cargo to Adriatic, 342 (345).
STARE DECISIS. *See* ASSEMBLING AND DISTRIBUTION; FINDINGS IN FORMER CASES; JURISDICTION.
STEVEDORING. *See also* HANDLING.
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 defendants 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. Boswell *v.* Am-Hawaiian, 95 (101).
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 defendants 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, and the expense incident to furnishing this equipment is also reflected in the stevedoring rates. Los Angeles By-Products *v.* Barber, 106 (112).
STIPULATIONS. *See* CHANGED CONDITIONS; HEARING.
STORAGE. *See also* EVIDENCE; ILLEGAL RATES AND PRACTICES; JURISDICTION; OTHER PERSONS; PRACTICES; REASONABLENESS; REGULATIONS.
There can be no doubt of the carrier's right to exact charges high enough to clear its piers. A charge no higher than is necessary to accomplish this

STORAGE—Continued
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. Arthur v. A. H. S. S. Co. 6 (11, 12).
Paragraph 1 of section 18 is comprehensive and includes rates 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." Section 18 follows closely section 1 (6) of the Interstate Commerce Act. The Interstate Commerce 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. The rule adopted by the Interstate Commerce Commission applies here. Id. (12).
In 1 U. S. M. C. 676 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. Because of the lower storage charges on coffee, that commodity does not share the burden properly resting upon it respecting the preventing of pier congestion. Storage Charges Under Agreements 6205 and 6215, 48 (52).
Respondents' charges on coffee remaining on piers at New York after expiration of free time resulted in unlawful preference and prejudice and unreasonable practices. Cease and desist order entered, and section 15 agreements disapproved. Id. (53).
Respondents rates, rules, regulations, and practices relating to wharf demurrage and wharf storage are unduly prejudicial and preferential and unreasonable in violation of sections 16 and 17. Reasonable regulations prescribed. Practices of San Francisco Bay Terminals, 588 (598–607).
STOWAGE. *See also* EVIDENCE; RAIL AND RAIL-WATER RATES.
Respondents show that bagged wool requires unusual care in handling and stowing. Damp wool is susceptible to self-heating and spontaneous combustion and requires careful inspection when tendered for shipment. One respondent gives each bag a thermometer test before loading. Wool in grease will contaminate such commodities as dried fruit, sugar, and flour. Increased rates under suspension justified. Wool Rates to Atlantic Ports, 337 (339).
Conceding that some of respondents' analyses are faulty, it must be remembered that stowage factors are not constant. They may vary with types of vessels and space used thereon. On the whole, the proposed increased rates are not excessive considering the characteristics of wool. Id. (341).
STRIKES. *See* DELIVERY.
SUBPOENAS.
Motion to quash subpoenas duces tecum denied. Puerto Rican Rates, 117 (122, 135).
Respondents' counsel states that revenue and expense data of the nature requested in 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 respondents' contention that full right of cross-examination does not attach to data submitted pur-

SUBPOENAS—Continued
suant to that section. However, there can be nothing private or confidential in the operations of a carrier engaged in interstate commerce. Id. (123, 135).
SUBSIDY CONTRACTS. *See also* COMMON CARRIERS; JURISDICTION.
Operating-differential or other subsidy contracts executed under authority of the Merchant Marine Act, 1936, do not augment statutory regulatory procedure in respect to rates, charges, regulations, or practices of common carriers. Green Coffee Assn. *v.* Seas Shipping Co., 352 (358).
The purpose of the provision in the operating-differential-subsidy contract executed pursuant to the Merchant Marine Act, 1936, which requires establishment of rates and practices satisfactory to the Commission, was to prevent, if possible, the rise of subsidy payments to offset losses resulting from destructive competition between American-flag carriers operating in the same trade. Id. (358).
Matson urges that the Commission is disqualified from acting on the agreement with Dollar (now American President) because of its interest under the operating-differential-subsidy agreement. The interest of the Commission is the interest of the United States and was acquired in furtherance of the purposes expressed in the Merchant Marine Act, 1936, creating the Commission, and of the Shipping Act, 1916, conferring the regulatory powers here challenged. Disqualification will not be permitted to destroy the only tribunal with power in the premises. Dollar-Matson Agreements, 387 (388).
SURCHARGE.
Surcharge of 35 percent on Pacific Coast/Hawaiian freight rates found justified. Surcharge—Matson Navigation Company, 622 (624).
Surcharge of 22 percent on freight rates for transportation between United States and Haiti and east coast of Mexico not excessive. Surcharge—United States, Haiti, and Mexico Services, 625 (629).
Suspended rates on lumber from U. S. Atlantic and Gulf ports to Puerto Rico not justified. Suspended schedules ordered cancelled, without prejudice to establishment of surcharge based on actual costs. Lumber Rates—Atlantic and Gulf Ports to Puerto Rico, 636 (638).
Surcharges on adjusted rates determined. Alaskan Rates, 639 (654).
SUSPENSION. *See also* BURDEN OF PROOF; INTERCOASTAL SHIPPING ACT, 1933; JURISDICTION; REASONABLENESS; SHIPPING ACT, 1916; TARIFFS.
Respondents contend that order of investigation and suspension was unauthorized by the statute because the tariffs were "initial" filings of actual rates and that such action strictly construed would have precluded operation of their vessels because of the restriction of section 2 of the Intercoastal Act that "no person shall engage in transportation unless and until its schedules have been duly and properly filed and posted." Commission is authorized to suspend "any" schedule stating a "new rate." Puerto Rican Rates, 117 (122, 123).
Exceptions seeking reparation overlook that the case is a suspension proceeding instituted and conducted under section 3 of the Intercoastal Shipping Act, 1933. Reparation awards are authorized only in connection with proceedings under section 22 of the Shipping Act, 1916. Pacific American Fisheries *v.* Am. Hawaiian, 270 (278).
The burden of justifying a suspended schedule rests upon the carrier, and in the absence of carrier evidence the schedule ordinarily would be found not

SUSPENSION—Continued
justified and an order requiring its cancellation issued. Such action in the instant case is not warranted because the facts requiring discontinuance of this proceeding are clear. Service by respondent has been cancelled. Protestants offered no evidence of undue prejudice. Prior to respondent's agreement with Waterman the services of both were identical under a common agency tariff. Waterman's service thereafter continued under the same tariff with no immediate change in either service or rates. Gulf-Puerto Rico Rates, 410 (411).
SWITCHING. *See* RAIL AND RAIL-WATER RATES.
TARIFFS. *See also* ABSORPTIONS; AGREEMENTS UNDER SECTION 15; ALLOWANCES; ASSEMBLING AND DISTRIBUTION; BILLS OF LADING; CHARTERS; COMMON CARRIERS; CONCESSIONS; CONTRACT CARRIERS; CONTRACT RATES; CONTRACTS WITH SHIPPERS; DELIVERY; DIFFERENTIALS; DISCONTINUANCE OF SERVICE; EMBARGOES; FORWARDERS AND FORWARDING; ILLEGAL RATES AND PRACTICES; INTERCOASTAL SHIPPING ACT, 1933; JURISDICTION; KNOWLEDGE; LOADING AND UNLOADING; MERCHANT MARINE ACTS; NOTICE; OTHER PERSONS; OVERCHARGES; PARTIES; PORT EQUALIZATION; PRACTICES; REASONABLENESS; REGULAR ROUTES; RELEASED RATES; SERVICE; SHIPPING ACT, 1916; WHARFAGE.
**In General:**
Respondents contend that order of investigation and suspension was unauthorized by the statute because the tariffs were "initial" 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 Act, that "no person shall engage in transportation unless and until its schedules have been duly and properly filed and posted." Commission is authorized to suspend "any" schedule stating a "new" rate. Puerto Rican Rates, 117 (122, 123).
Tariff rules and practices thereunder, if otherwise objectionable, cannot be upheld because of the length of time a practice has been observed, the fact that shippers and consignees generally have become accustomed to it, and that ports and businesses have been built thereon. Mobile *v.* Baltimore Insular, 474 (484).
Defendant's tariff rule provides that any claim for overcharges must be filed within 1 year from payment of freight. Section 22 of the Shipping Act, 1916, provides for reparation if complaint is filed within 2 years after cause of action accrued. It follows that recovery in the instant case is not barred. Overcharges should be refunded. Plomb Tool Co. *v.* Am. Hawaiian, 523 (524).
Carriers should not exempt themselves from liability for damage under a tariff rule and at the same time increase rates to cover such risks. Increases in rates on commodities formerly transported at the rate on Freight, N. O. S., to the extent they exceed increases applicable on traffic remaining within that classification, have not been justified. Alaskan Rates, 558 (576).
Tariffs which accord to particular shippers within blanketed areas rates or privileges not available to others similarly situated are unlawful under section 16. Id. (577).
Shippers should investigate the responsibility of carriers entering a trade and determine whether they have complied with the filing requirements of law. In Re Vencedor, 666 (670).

TARIFFS—Continued
**In General**—Continued
As pointed out in In Re M. S. Vencedor, Inc., 2 U. S. M. C. 666, shippers, for their own protection, should at least investigate the responsibility of carriers and determine whether they have complied with the filing requirements of law. In Re Pan-American, 693 (697).
**Agreements — with Shippers; with Other Carriers and "Other Persons":**
A detailed system of rules and regulations governing the publication of terminal operators' tariffs not prescribed. For the present, self-regulation through the medium of section 15 agreements suggested. Such agreements should embody, among other things, publication and posting of tariffs of charges, rules, and regulations, and provision for 30 days' notice for changes therein. Lumber Through Panama Canal, 143 (150).
Nicholson Universal allowed Holt Motor Company to obtain, and Holt Motor Company knowingly and willfully obtained, transportation for property at less than the legally applicable rate, in violation of section 16 of Shipping Act, as amended, and section 2 of the Intercoastal Shipping Act, 1933, as amended. Agreements of Nicholson Universal, 414 (423).
**Ambiguity; Uncertainty; Conflict:**
Respondents' tariff provides 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. The list of ports in respondents' schedules requires amendment to show such data. Puerto Rican Rates, 117 (129).
Respondents' tariff provides for service to Yabacoa and Guayanilla "subject to prior arrangemeut." 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. Id. (129).
Respondents' tariff provides that storage 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 these charges from a tariff publication filed and posted in accordance with section 2 of the Intercoastal Shipping Act. Id. (130).
Respondents' tariff 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, providing an additional charge when the diverted cargo is carried by other thau the original carrying vessel, does not clearly show to what the "additional" charge is applicable. Amendment should be made to clearly state what special additional services will be rendered and the specific sum that will be charged therefor when cargo is diverted. Id. (132).
Respondents' tariff rule 1 provides that the rates named in the tariff "are based upon the prepayment of freight charges," and rule 5, that all freight is "prepayable" by the shipper. It is testified that all

TARIFFS—Continued

**Ambiguity; Uncertainty; Conflict—Continued**

freight must be prepaid by the shipper and that no freight is taken on a collect basis, but the tariff does not definitely state the practice. It is objectionable for this reason. Id. (132).

Respondents' 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 appointed sailing time. Also, shipping receipts must be tendered in triplicate by shippers with the goods on carriers' form. Provision is made that at request of shippers, the carrier will prepare bills of landing, export declarations and so on, the fee for which will be $1 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 fee will be waived. These rates 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. Id. (132).

Defendant's eastbound tariff contains no specific commodity rate on bottles, unreleased. But a rule thereof provides for application of defendant's westbound rate when a specific commodity rate is not named. The westbound tariff provides a rate on bottles, unreleased, which was applicable. United Bottle Supply Co. *v.* Shepard, 349 (350).

Complainant's contention is that the shipments were overcharged since the canes in question were parade canes to be used for amusement, and should be rated as toys. There is no evidence that any manufacturer or shipper of parade canes has ever classified them as toys. It is an established rule in tariff interpretation that terms must be taken in the sense in which they are generally understood and accepted commercially. Rate applied by defendant on canes was applicable. Complaint dismissed. Acme Novelty Co. *v.* Am. Hawaiian, 412 (413).

In interpreting a tariff the terms used must be taken in the sense in which they are generally understood and accepted commercially, and neither carriers nor shippers should be permitted to urge for their own purposes a strained and unnatural construction. Tariffs are to be interpreted according to the reasonable construction of their language; neither the intent of the framers nor the practice of the carriers controls, for the shipper cannot be charged with knowledge of such intent or with carriers' canons of construction. A proper test is whether the article may be reasonably identified by the tariff description. National Cable and Metal Co. *v.* Am. Hawaiian, 470 (473).

By so-called exceptions published in individual rate items, defendants have extended the application of port equalization to traffic moving via New York from certain origins. Exceptions should be no broader in scope than the provisions to which they are published as exceptions. The tariff is not published as required by section 2 of the Intercoastal Shipping Act, 1933, as amended. Mobile *v.* Baltimore-Insular, 474 (476).

Amounts intended to apply as deductions from local rates in some cases are published only as "differentials." That term is not sufficiently descriptive of the use intended. The tariff, therefore, is ambiguous. Id. (476).



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TARIFFS—Continued

**Ambiguity; Uncertainty; Conflict—Continued**

Variable deductions from defendants' rates on a sliding-scale weight basis are published for application on shipments via New York, Baltimore, Mobile, or New Orleans of commercial units and chassis from various interior manufacturing points. Apparently defendants' intention was to make deductions of 2 cents or more per 100 pounds, but the tariff does not so state. Defendants' tariff would result in more than 100 different port-to-port rates on vehicles from each origin. Such a system of rate making is not only confusing, ambiguous, and impossible of intelligent interpretation, but unreasonable. It requires users of the tariff to obtain information not published in the tariff, and to make innumerable mathematical calculations to determine what the applicable rate will be. Such a tariff does not comply with the requirements for clarity and certainty in rate publication contemplated by the act. Id. (482).

Because the item names only minimum and maximum allowances, the specific amount which will be allowed on a particular shipment can not be determined, and consequently shippers cannot ascertain what port-to-port rate will apply. This situation is complicated further by exceptions published in the commodity-rate section of the tariff. It is also impossible to determine from the tariff whether the origin of any shipment is located on a railroad named in the tariff. Such indefiniteness in tariffs does not comply with the publication requirement of the Intercoastal Shipping Act, 1933. Id. (484).

Respondent shippers point to the fact that under U. S. Bureau of Customs' regulations a description of a mixed fabric as "cotton" or "cotton chief value" is acceptable for customs purposes as cotton goods if the fabric contains 50 percent or more of cotton by value. Furthermore, under regulations administered by the Surplus Marketing Administration, U. S. Department of Agriculture, subsidy payments applicable to shipments of cotton goods are made on mixed fabrics, to the extent of their cotton content, if their weave includes 50 percent or more of cotton by weight. However, respondent carriers' tariff admits of no such latitudes of interpretation. Item 655 thereof is applicable by unqualified description to "cotton" goods of the varied kinds specified by name in the tariff and does not permit of application to any goods which do not consist wholly of cotton. For textiles consisting of mixtures of cotton and rayon or other material in any proportion, the only applicable provision of the governing tariff is "Cargo, N. O. S." This item expressly provides that it applies on commodities not specifically covered by individual rate items. Rates to Philippines, 535 (538).

Carriers' tariffs are submitted to the rule of interpretation applicable to written instruments generally. This rule is that the tariff, having been written by the carrier, is vulnerable against the carrier if the tariff's meaning is ambiguous. Rubber Development Corp. *v.* Booth S. S. Co., Ltd., 746 (748).

Ambiguity of the tariff is demonstrated by the fact that respondents themselves applied three different rates to the article in question. Id. (748).

TARIFFS—Continued
Ambiguity; Uncertainty; Conflict—Continued
Neither of the N. O. S. rates was applicable because the cargo or metalware is specified as "Basins, Metal." That item is unrestricted as to use of the basin and refers the shipper directly to the rate on plumbing supplies. He should have to go no further. Id. (748).
Other Carriers—Rates of:
The rate which the shipper is required to pay under respondents' port-equalization 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 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 the Commission is violative of section 2 of the Intercoastal Act. Puerto Rican Rates, 117 (131).
Parties Subject; Filing; Notice; Service:
Every common carrier in foreign commerce between ports on the East Coast of South America and U. S. Pacific coast ports required to file schedules showing all rates and charges for or in connection with transportation of property between those ports on its own route, and, if a through route is established with another common carrier by water, all the rates and charges for or in connection with the transportation of property between ports on its own route and on the route of such other carrier, except that such filing need not be made with respect to cargo loaded and carried in bulk without mark or count. Schedules to contain all rules and regulations which in any wise change, affect, or determine any part or the aggregate of the filed rates and charges. Schedules to be filed within 30 days from date such schedule, change, modification, or cancellation becomes effective. Rates, Charges and Practices of Yamashita and O. S. K., 14 (21).
During certain periods assembling and distributing charges at Los Angeles Harbor and Long Beach and handling charges at San Diego were assessed by some defendants without proper tariff authority, in violation of the Shipping Act, 1916, and Intercoastal Shipping Act, 1933. Boswell *v.* Am-Hawaiian, 95 (104).
Some respondents maintain pre-cooling plants in Puerto Rico in which fruits are cooled to required temperatures before loading. A separate charge for the service is made. Neither the practice nor the charge is published. Consignees should be able to ascertain the amount of the charge from a tariff filed and posted in accordance with section 2 of the Intercoastal Shipping Act. Puerto Rican Rates 117 (130).
On shipments to minor Puerto Rican ports to which rates are published respondents reserve an option to call there direct or to transship, 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 United States points to seaboard when such routes terminate at the same port have also been absorbed. Such absorptions are not authorized by the tariff. Id. (130).
Whenever a tariff refers to a bill of lading and states that the rates therein published are dependent upon conditions in the bill of lading, such

TARIFFS—Continued

**Parties Subject; Filing; Notice; Service—Continued**

conditions should be published in the tariff. The statute requires publication in tariffs of any rules or regulations which in any wise change, affect, or determine any part or the aggregate of the rates, fares, charges, or the value of the service. Id. (131).

The physical conditions of handling lumber and of handling general cargo are essentially different. The conditions under which lumber is handled require and justify different treatment with respect to the publication of rates and services. Therefore, tender of delivery of intercoastal lumber at end of ship's tackle at independently operated terminals over which the carrier has no control is not an unreasonable practice, and respondent carriers are under no legal obligation to publish rates and charges for services beyond ship's tackle at such terminals. Lumber through Panama Canal, 143 (147–148).

Respondent published a rate of $12.50 per 1,000 feet for transportation of lumber and specified a minimum-quantity requirement of 12,000 feet for a single shipment. The evidence is that respondent declined to carry less than full cargo lots. Holding out service to the public by tariff beyond that actually performed, or refusing to perform service in accordance with the provisions of such tariff is in violation of section 2 of the Intercoastal Act, 1933. Intercoastal Charters, 154 (156).

Respondent at no time had a tariff on file. The transportation was, therefore, performed without tariff authority, in violation of section 2 of the Intercoastal Shipping Act. Id. (157).

Notwithstanding its tariff on file specified a lumber rate of $12 per 1,000 feet, on all voyages of its vessels except one the rate charged by respondent was the higher current rate of the Intercoastal Association lines. Moreover, although its tariff designated Puget Sound ports as loading ports of its vessels for lumber cargoes, at time of hearing one of respondents' vessels was loading at Columbia River ports. These tariff departures constitute violations of section 2 of the Intercoastal Act. Id. (157).

A vessel owner need not file under the Intercoastal Act if he has divested himself of complete control and possession of the vessel, as, for instance, under an intercoastal bareboat charter. But the bareboat charterer must file if he carries for others. Id. (162).

Under an intercoastal time or voyage charter to a shipper, the vessel owner, if he retains any control or possession of the ship, must file. This requirement presents obvious difficulties which readily come to mind, as, for instance, the translation of the time-charter hire into commodity rates. But the difficulties are not insurmountable. This is demonstrated by the fact that there are acceptable tariffs based on time and voyage charters on file with the Commission. Id. (163).

The suspended tariff publishes a time-charter rate on a vessel named, based on the dead-weight of the vessel. It does not publish rates on commodities and is in no sense a tariff which is authorized by the rules. Tariff ordered canceled. Intercoastal Time-Charter Rates of Mallory, 164 (165).

TARIFFS—Continued
**Parties Subject; Filing; Notice; Service—Continued**
The filing of a tariff of rates for a service as intended by respondent is a necessary preliminary for such undertaking. Class Rates Between North Atlantic Ports, 188.
Motorships and barge carriers operating interstate between Atlantic coast and Great Lakes ports via the Hudson River and New York State Barge Canal System not shown to be common carriers, and their transportation of freight without schedules of rates on file not in violation of section 2 of the Intercoastal Shipping Act, 1933, as amended. Complaint dismissed. New York Marine Co. *v.* Buffalo Barge, 216 (219).
Except in the case of approved conferences and in a recent proceeding involving nonconference lines, 2 U. S. M. C. 14, the filing of rates covering import traffic has not generally been required. Green Coffee Assoc. *v.* Seas Shipping Co., 352 (357).
Maintenance by common carriers of schedules of rates for services which they do not perform cannot be justified. Embargo, North Atlantic and Gulf, 464 (465).
Defendant's tariff provides that rates changes are effective as of the date of dock receipt. On that date defendant's tariff provided that shipment to San Diego would be transported either direct by defendant or by McCormick beyond Los Angeles. Regardless of the effect of the discontinuance of McCormick's service, the obligation remained upon defendant to make delivery direct as provided in its tariff. Atlantic Syrup Refining Co. *v.* Luckenbach, 521 (522).
International Ocean Express System, Inc., is a consolidator and forwarder included within the term "other persons" as defined in the Shipping Act, 1916. Such persons are not required to file their rates and charges. Alaskan Rates, 558 (582).
Respondent terminals, including State and municipal terminals, required to file tariffs of rates and charges for the furnishing of wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water. Practices of San Francisco Bay Terminals, 588 (609).
In not filing with the Commission as required, rates, charges, rules, and regulations for and in connection with transportation of property from New York to Havana, respondent found to have knowingly and willfully violated the Commission's rules and regulations prescribed in Section 19 Investigation, 1935, 1 U. S. S. B. B. 470. Rates of Garcia, 615 (619).
Respondent held not to have knowingly and willfully violated the rules and regulations as to filing rates, prescribed in Section 19 Investigation, 1935, 1 U. S. S. B. B. 470. Rates, etc., of American Fruit & S. S. Co., Inc., 706 (708).
TERMINALS. *See* AGREEMENTS UNDER SECTION 15; CONTRACT RATES; DELIVERY; HANDLING; JURISDICTION; LEASES; NOTICE; OTHER PERSONS; PRACTICES; REASONABLENESS; SHIPPING ACT, 1916; TARIFFS; WHARFAGE.
THREATS. *See also* RETALIATION.
The threat of Yamashita to reduce the coffee rate to 50 cents a bag or lower obviously tended unreasonably to influence the conference carriers to agree to a distribution of the pooled revenues out of proportion to its actual

THREATS—Continued
carryings. Rates, Charges and Practices of Yamashita and O. S. K., 14 (19).
THROUGH ROUTES AND THROUGH RATES. *See also* AGREEMENTS UNDER SECTION 15; ALASKA RAILROAD; COMMON CARRIERS; EVIDENCE; JURISDICTION; LOCAL RATES; ON-CARRIAGE; PREFERENCE AND PREJUDICE; PROOF; RAIL AND RAIL-WATER RATES; RIVER CARRIERS.
Complainant instructed its broker at Rotterdam to forward the school slates and Christmas tree ornaments by first available vessel for the holiday trade. In accordance with local bills of lading issued at Rotterdam, Holland America transported the shipments to Baltimore at port-to-port rates, the bills of lading providing "To Be Reforwarded from Philadelphia or Baltimore by the Quaker Line." There being no through rates on such traffic, Quaker issued local bills of lading and performed the transportation from Baltimore to Pacific coast at its regularly established port-to-port rates. There is no indication that defendants failed to comply with complainant's routing instructions. Assailed rates of Holland America not unduly prejudicial or discriminatory, and rates of Quaker not unreasonable. Kress *v.* Nederlandsch, 70 (71).
There is no requirement in the shipping acts that there must be a common arrangement as under section 1 of the Interstate Commerce Act, and the Munson Case, 283 U. S. 443, is not in point. Through carriage implies a through rate. This through rate is not necessarily a joint rate. It may be merely an aggregation of separate rates fixed independently by the several carriers forming the through route, such as in this case, where the through rate is the sum of the locals on the several connecting lines or is the sum of lower rates otherwise separately established by them for through transportation. Inland Waterways Corporation, 458 (462, 463).
Tariff provides that the through joint rates are applicable except when service of the participating on-carrier has been interrupted due to strike, vessel accident, break-down, or other similar emergency situation. Defendant contends that this exception is controlling in the premises. The exception was published by defendant as a result of 1 U. S. M. C. 760, where it was stated that carriers ordinarily cannot free themselves from the obligation to deliver, but may be permitted to do so under certain specified conditions. None of the conditions outlined is present here. Atlantic Syrup Refining Co. *v.* Luckenbach, 521 (522).
The transportation does not end at Christobal; is through transportation from Colombia and Ecuador to United States. When the lines operating up to the Canal enter into carriage of commerce of the United States by agreeing to receive the goods by virtue of through bills of lading and to participate in through rates and charges, they thereby become part of a continuous line, not made by consolidation with on-carrying lines, but made by an arrangement for the continuous carriage or shipment from a foreign country to the United States. They are, therefore, subject carriers. Restrictions on Transshipments at Canal Zone, 675 (678, 679).
TIME IN TRANSIT. *See* DIFFERENTIALS; HANDICAP RATES; MINIMUM RATES; SERVICE.
TRAMP.
A "tramp" is a "free lance" that has "earned its name from its gypsy-like existence," and in addition to having no regular time of sailing has "no fixed route and is ever seeking those ports where profitable cargo is most

TRAMP—Continued
likely to be found." From the details of its operations, respondent was not a "tramp" carrier. Rates of General Atlantic, 681 (683).
TRANSSHIPMENT. *See* ABSORPTIONS; EQUALIZATION; EVIDENCE; GEOGRAPHICAL ADVANTAGES AND DISADVANTAGES; PORT EQUALIZATION; PREFERENCE AND PREJUDICE; THROUGH ROUTES AND THROUGH RATES.
ULTRA VIRES. *See* COMMON CARRIERS.
UNDERCHARGES.
Two of the intercoastal shipments of tinplate tops and bottoms were undercharged. Defendant should collect the outstanding undercharges. United Can Company *v.* Shepard, 404 (405, 406).
Rates assessed are inapplicable, and complainant's shipments are undercharged. Complaint dismissed. National Cable and Metal Co. *v.* Am. Hawaiian, 470 (473).
Proportional rates on rice from Houston and Galveston to North Atlantic ports are inapplicable to shipments originating within Houston or Galveston switching limits. Outstanding undercharges should be collected. Beaumont *v.* Agwilines, 515 (516).
UNFAIRNESS. *See also* AGREEMENTS UNDER SECTION 15; BROKERS AND BROKERAGE; CHANGED CONDITIONS; CHARTERS; CONTRACT RATES; COST OF SERVICE; DISCRIMINATION; EVIDENCE; REPARATION; RETALIATION; SERVICE.
In the light of changed conditions the agreement is now unfair as between carriers within the meaning of section 15. A consideration of the actual results of the agreement down to the time of the hearings confirms this conclusion. Dollar-Matson Agreements, 387 (392).
By "brokerage" payments to shippers and by otherwise reducing freight charges, respondent allowed persons to obtain transportation at less than the regular rates by unjust and unfair means, in violation of section 16 "Second" of the Shipping Act, 1916. Rates of Garcia, 615 (619).
Expenses incurred by carrier in unloading complaint's bananas, in accordance with bill of lading provision, were requisite to the accomplishment of the unloading at the times complainant dictated. There was no showing that the carrier charged more than it expended or that there was any inequality as between complainant and other consignees or shippers of bananas in the settlement of claims. There was no unfair treatment in violation of section 14, Fourth (c), of the Shipping Act, and complaint dismissed. Raporel Banana & Fruit Importing Co., Inc. *v.* French Line, 715 (716).
UNLOADING. *See* AGREEMENTS UNDER SECTION 15; ALLOWANCES; LOADING AND UNLOADING; REASONABLENESS.
VALUE OF CARRIER PROPERTY. *See also* CARRIER PROPERTY; DEPRECIATION; FAIR RETURN; REVENUE.
Essentially, this is a rate rather than a valuation proceeding. Therefore, it is unnecessary to make a precise determination of the value of respondent's property in question. For the purposes of this particular proceeding it is concluded that such value is not more than $6,565,000; that a fair rate of return thereon does not exceed 7 percent, and that the probable net income from respondent's present rates will approximate $313,127 annually, which represents a return of 4.77 percent on present value. Rates of Inter-Island Steam Navigation Company, 253 (260, 267).
Counsel urge, as in 2 U. S. M. C. 253, the adoption of the "prudent investment theory" as a proper test of fair value. In the decision therein Commission adhered to principles laid down in 169 U. S. 466; 230 U. S. 352,

VALUE OF CARRIER PROPERTY—Continued
434; 272 U. S. 400; 289 U. S. 287, 306, 308; 302 U. S. 388, and 307 U. S. 104. It is unnecessary to restate principles underlying those cases except to emphasize that reproduction cost and other elements of value are to be given such weight as may be just and right in each case. 169 U. S. 466, *supra*. Alaskan Rates, 558 (564).

Working capital for a rate base usually includes, first, the investment, if any, in a stock of materials and supplies for operations; second, the cash necessary to pay operating expenses incurred for common-carrier service prior to the time when the revenues from that service are collected and available and, third, a buffer fund of cash on hand to cover fluctuating deficiencies in the receipt of cash from operating revenues necessary to meet maturing operating payments. Id. (566).

The amounts claimed for going-concern value and good will are merely speculative estimates. The property is valued as an organized going concern. Otherwise, it would have only a salvage value. Good will is but another name for the value of the attached business. No definite amounts will be assigned for going concern or good will. Id. (568).

Original cost and original cost less accrued depreciation of respondents' vessels and other property owned and used in Alaskan trade determined. Id. (564–565).

Cost of reproduction new of respondents' vessels and reproduction cost new less depreciation thereof determined. Id. (565, 566).

Valuations brought down to December 31, 1941, upon basis of evidence submitted at further hearing. Alaskan Rates, 639 (641).

VALUE OF COMMODITY. *See also* RATE AND COMMODITY COMPARISONS.

Respondents' rates on sugar in bags weighing 200 pounds or more are based on the price obtained for the sugar. The price basis used places too great emphasis upon value. The quantum of the rate should rest upon all the transportation conditions involved. Rates are not in compliance with Intercoastal Shipping Act and are, therefore, unlawful. Puerto Rican Rates, 117 (126, 134).

Fact that defendant's measurement rate of 30 cents per cubic foot represents approximately 37 percent of the value of the shipment is not persuasive that the rate charged was unreasonable. Gill *v.* American Caribbean, 314 (315).

VALUE OF SERVICE. *See also* HANDICAP RATES; SERVICE.

It is apparent that the 50-cent rate was arrived at without any consideration being given to the cost of service to the carriers or the value of the service to the shipper, and without consideration of usual transportation factors upon which reasonable rates are based. Rates, Charges and Practices of Yamashita and O. S. K., 14 (19).

Value of service to the shipper is an important factor. In this case complainants were relieved from further demurrage charges which were accruing daily; also from possible liability under the charter arrangement for the S. S. *Munson*, the owner of which had spent approximately $18,000 in preparing it for this voyage. The value of the service in this instance is further enhanced by the fact that the shipment was of considerable value, placed at $2,255,355.50 for insurance purposes. Unreasonableness of the rate assailed not shown; complaint dismissed. Seagram *v.* Flood, 208 (209).

VESSELS.

Respondents Alaska Steamship and Northland insist that, notwithstanding the age of some of them, their vessels are as serviceable today as when built. The record warrants the conclusion that they consider it a sounder investment policy to purchase old vessels and to recondition them than to build new vessels. Apparently neither freight nor passenger traffic requires modern vessels. Alaskan Rates, 558 (569).

VOLUME. *See also* CLASS RATES; DISCRIMINATION; EQUALIZATION; EVIDENCE; PAPER RATES; PREFERENCE AND PREJUDICE; QUANTITY; RATE AND COMMODITY COMPARISONS; REASONABLENESS.

Although the evidence indicates a paucity of export tonnage from San Diego to the Orient even as to commodities enjoying terminal rates, nevertheless if affords no criterion of the volume of cargo that could be developed in direct-call service if the arbitrary over Los Angeles Harbor were removed. Finding of prejudice as to direct-call service affirmed, except that minimum for calls increased from 500 to 800 tons. Harbor Comm. of San Diego *v.* Am. Mail Line, 23 (25).

Volume of movement and other factors are not shown to be materially different in respect to the north and southbound transportation of cylinders. The southbound rates are unduly prejudicial, and the practice of applying a weight rate southbound and a cubic-foot rate on the same commodity northbound as the only rate is unjust and unreasonable. Puerto Rican Rates, 117 (121, 134).

Increase in the volume of protestants' shipments is not justification of a carrier's practice. Pacific American Fisheries *v.* Am. Hawaiian, 270 (276).

The small amount of tonnage handled does not warrant continuance of the wharves as an intercoastal terminal. It follows that their elimination by respondents is justified. Id. (278).

VOLUNTARY RATES.

Subsequent to the two shipments in this case, defendant voluntarily reduced the rate in the hope 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. Wypenn Oil Co. *v.* Luckenbach, 1 (2).

Since the rate on raw sugar is a voluntary one, it must be assumed that the yield therefrom is compensatory and is so regarded by respondents. Puerto Rican Rates, 117 (120).

The rate sought was voluntarily established, has been applied to certain shipments of complainant, and in the absence of convincing evidence to the contrary it must be presumed to be reasonable. Kress *v.* Baltimore Mail, 450 (451, 452).

WAREHOUSES. *See* DELIVERY.

WAR SHIPPING ADMINISTRATION.

The regulatory jurisdiction of the Commission is the same as it was before the War Shipping Administration was created; in no respect have the activities of the latter affected the tariff-filing requirements of the Commission. Rates, etc., of American Fruit & S. S. Co., Inc., 706 (708).

The petitioner was the War Shipping Administration, and, by the act of July 8, 1946 (Public Law 492, 79th Cong.), making appropriations for the Navy Department and the naval service for the fiscal year ending June 30, 1947, and for other purposes, all functions, powers, and duties of the War Shipping Administration were transferred to the Commission effective

WAR SHIPPING ADMINISTRATION—Continued
September 1, 1946, and the War Shipping Administration ceased to exist as of that date. Increased Rates From, To, and Within Alaska, 807 (808–809).
WEIGHT OR MEASUREMENT.
Practice of charging weight rates on southbound traffic and measurement rates on the same commodity northbound is unjust and unreasonable. Puerto Rican Rates, 117 (121, 134).
Complainant contends that the measurement rate results in a prohibitive price for glass lamp globes in the Virgin Islands and that there is not a proper relation between defendant's measurement and weight rates. A mere comparison between weight and measurement rates on a commodity is not conclusive that they are improperly related. Gill *v.* American Caribbean, 314 (315).
Defendant's rates applicable to glass lamp globes accord with the practice that a weight ton is the equivalent of 40 cubic feet, $12 being defendant's revenue per weight ton of 2,000 pounds or per measurement ton of 40 cubic feet. Although the freight charges at the measurement rate attacked is 13.7 times the charges at the weight rate, complainant's shipments measure 13.7 times their weight. Measurement rate not shown to be unreasonable. Id. (315).
Complainant contends that defendant's measurement rate on lamp globes or shades results in a prohibitive price in Alaska and that there is not a proper relation between defendant's measurement and weight rates. A mere comparison between weight and measurement rates on a commodity without more, is not conclusive that they are improperly related. Gill *v.* Alaska S. S. Co., 316 (317).
Defendant's tariff item and rule as respects glass lamp globes or shades concerned accord with the practice that a weight ton is the equivalent of 40 cubic feet, $7.80 being defendant's revenue per weight ton of 2,000 pounds or per measurement ton of 40 cubic feet. Although the charges at the measurement rate assailed is 14.4 times a charge computed at defendant's Freight N. O. S. weight rate, complainant's shipments measure 14.4 times their weight. Measurement rate not shown unreasonable. Id. (317).
In the off-shore trades, under the weight or measurement system of rates lower rates for certain minimum quantities are not uncommon and have been approved by the Commission. Intercoastal Rate Structure, 506 (509).
WHARFAGE. *See also* DISCRIMINATION; INJURY; OTHER PERSONS; PRACTICES; PREFERENCE AND PREJUDICE.
Application of different wharfage rates on foreign and intercoastal traffic will not be condemned where there is no showing of a competitive relation between the traffic and an injurious effect arising from the discrimination. Wharfage Charges, Boston, 245 (248).
Failure of railroad-owned terminals to publish and collect from rail-borne traffic charges for the use of their services and facilities separate from the line-haul rail rates creates a situation which is potentially discriminatory as between shippers, appears to give those terminals an unfair and unjust preference and advantage over other terminals and may result in the double payment by shippers or consignees for wharfage services, and which appears to demand corrective action. Id. (249).

WHARFAGE—Continued
Charging of wharfage on freight when the movement is otherwise than by rail and making no charge on railroad freight found unreasonable. Interchange of Freight at Boston Terminals, 671.
WHARF DEMURRAGE. *See* DEMURRAGE; FREE TIME; REASONABLENESS; STORAGE.
WILLFULNESS. *See* INTENTION; KNOWLEDGE.
WITHDRAWAL OF COMPLAINTS. *See also* ABUSE OF PROCEDURE; HEARING.
Complainant did not appear at hearing. Complainant's subsequently filed request for withdrawal of complaint denied, and complaint dismissed. Gallagher *v.* Cunard White Star, 371.
Upon settlement of issues by voluntary adjustment, request for withdrawal of complaint granted and proceeding discontinued. People of Puerto Rico *v.* Waterman, 407 (409).
WITNESSES. *See* HEARING.
WORDS AND PHRASES.
"Any schedule": 117 (123); "direct service": 238 (242); "locality": 474 (478); "new rate": 117 (123); "on the high seas or the Great Lakes on regular routes from port to port": 458 (460, 461); 558 (580, 581); 681 (684); 693 (696, 697); "operating vessels": 321 (326); "places": 117 (129); "ports": 474 (478).
WORKING CAPITAL. *See* VALUE OF CARRIER PROPERTY.