UNITED STATES MARITIME COMMISSION

VOLUME 2

DECISIONS OF THE

UNITED STATES MARITIME COMMISSION

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

DECEMBER 1938 TO JANUARY 1947

REPORTED BY THE COMMISSION

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DECISIONS OF THE

UNITED STATES MARITIME COMMISSION

UNITED STATES MARITIME COMMISSION

No. 492

WYPENN OIL COMPANY, INC.

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

Submitted November 14, 1938. Decided December 6, 1938

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

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

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

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

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

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

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

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

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

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

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[1] Members of Intercoastal Steamship Freight Association.

UNITED STATES MARITIME COMMISSION

No. 419

NEUSS, HESSLEIN & CO., INC.

v.

GRACE LINE, INC., ET AL.

Submitted January 29, 1938. Decided January 24, 1939

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

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

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

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

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

By complaint filed July 18, 1936, as amended, complainant alleges that joint through rates charged it by defendants for transportation of shipments of cotton piece goods from New York, N. Y., to points on the west coast of Central America during August and September 1934 were unjust and unreasonable in violation of section 18 of the Shipping Act, 1916, as amended, in that they were higher than a combination of local rates between the same points, plus Canal Zone unloading and loading charges, paid on similar shipments by the Baltic Shipping Company, Inc., complainant's competitor, and unjustly discriminatory between shippers in violation of section 17 thereof; that defendants thereby subjected complainant to payment of rates exacted in violation of section 14 and to undue prejudice in violation of section 16 of that act. Reparation is requested. Rates will be stated in cents per cubic foot.

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

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

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

Defendants and United Fruit Company were members of the Atlantic and Gulf-West Coast of Central America and Mexico Conference. The joint through route via which complainant's shipments moved and the joint through rates paid by complainant were established by conference action. Subsequent to the movement of the Baltic shipments concerned, the 25-cent rate from the Canal Zone was increased to 50 cents and the joint through rates were reduced to 67.5 and 75 cents, respectively. The conference did not govern local rates of its members from New York to Cristobal, nor the local rates of the on-carriers from the Canal Zone to Central America.

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

We find that the rates assailed have not been shown to have subjected complainant to undue prejudice in violation of section 16 of the Shipping Act, 1916, as amended, or to have been unjustly discriminatory in violation of section 17 thereof, as alleged. An order dismissing the complaint will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 24th day of January, A. D. 1939

No. 419

NEUSS, HESSLEIN & CO., INC.

v.

GRACE LINE, INC., ET AL.

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

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

By the Commission.

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

ORDER

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

No. 492

WYPENN OIL COMPANY, INC.

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

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

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

By the Commission.

[SEAL] (Sgd.) RUTH GREENE,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 421

B. M. Arthur Lumber Company, Inc.

v.

American-Hawaiian Steamship Company

Submitted September 13, 1938. Decided January 26, 1939

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

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

Report of the Commission

By the Commission:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Complainant contrasts the rate in question with the defendant's rate of 5 cents per 1,000 net board feet per day for the storage of lumber. It is testified that in the lumber industry, 40 bundles of shingles are considered to be the equivalent of 1,000 net board feet of lumber for the purpose of fixing handling, loading, and storage charges. On that basis, 900 bundles of shingles are the equivalent of 22,500 net board feet of lumber upon which defendant's storage charge would be $1.125 per day, whereas the shingles in question were charged at the rate of $13.50 per day. While the ratio of 40 bundles of shingles to 1,000 board feet of lumber is not uniformly observed in the fixing of storage charges at other ports, it appears that generally there is a close approximation of such relation. For example, a witness for intervener states that Agent Thackara's above mentioned tariff names lumber storage rates at New York, N. Y., of 40 cents per 1,000 net board feet per month in shed, 35 cents per 1,000 net board feet per month in open storage, and a rate of 1.5 cents per bundle of shingles per month. It is further testified that at Newark, N. J., the Newark Tidewater Terminal charges a storage rate of 40 cents per 1,000 net board feet of lumber per month for shed storage, and 1 cent per bundle of shingles per month. Similar lumber and shingles storage rates appear to apply at the Connecticut Terminal, New London, Conn., and The Camden Marine Terminal, Camden, N. J., which are public terminals. However, at their own piers, the intercoastal lines maintain the same storage rates on lumber and shingles at Philadelphia, Camden, and other Delaware River ports; namely, 5 cents per 1,000 net board feet for lumber and 1.5 cents per bundle of shingles per day. The record fails to show, as to any port other than Delaware River ports, such a wide disparity as between the storage rates on shingles and lumber.

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

The record is clear that defendant gave consignee adequate notice of arrival and sufficient opportunity to remove the shingles before they were stored, and was not at fault in any particular with respect to the handling, storage, and delivery of the shipment. Nor can there be any doubt of the carrier's right to exact charges high enough to clear its piers. A charge which is no higher than is necessary to accomplish this end is not unreasonable because of the mere fact that it is higher than would be just if the value of the storage service were the only element to be considered. The question is whether the charges in issue have been shown to exceed the bounds of reasonableness, taking into consideration the carrier's right to insist upon prompt clearance of its terminal facilities.

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

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

> That every common carrier by water in interstate commerce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto * * * and all other matters relatiug to or connected with the receiving, handling, transporting, storage, or delivery of property.

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

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

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

2 U. S. M. C.

918579 O—51——4

ORDER

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

No. 421

B. M. ARTHUR LUMBER COMPANY, INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY

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

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

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

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

By the Commission.

UNITED STATES MARITIME COMMISSION

No. 507

In the Matter of Rates, Charges, and Practices of Yamashita Kisen Kabushiki Kaisha and Osaka Syosen Kabusiki Kaisya

Submitted December 22, 1938. Decided January 26, 1939

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

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

Report of the Commission

By the Commission:

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

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

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

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

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

During this period O. S. K. carried coffee to Los Angeles, Calif., but did not serve any ports north thereof. It had adopted a policy of charging rates on this commodity approximately 20 percent below those of the conference lines, and on other commodities rates which were approximately 50 cents per ton less than those of the conference lines. O. S. K. only picked up coffee at Santos, and Rio de Janeiro, Brazil, but en route to Los Angeles it diverted its ships to Gulf ports, with the result that even though its ships were some 7 or 8 knots faster than the conference ships, its total time in transit was two or three days longer. As a result of these lower rates of O. S. K., available only to Los Angeles, the northern ports and the receivers of cargo there, claimed they were unable to meet the competitive situation thus created. They protested to the conference lines against this discrimination, with the result that these lines succeeded in persuading O. S. K. to establish and observe conference rates, in return for which the conference lines guaranteed O. S. K. a minimum of 3,500 bags of coffee per sailing for twelve sailings annually. This agreement was filed and was known as No. 200–A, entered into December 10, 1935, to run for six months. When Agreement 200–A expired, a new agreement, No. 200–B, which expired May 31, 1937, was entered into on the same terms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

No. 507

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

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

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

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

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

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

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

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

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 495

IN THE MATTER OF AGREEMENT No. 6510

Submitted January 3, 1939. Decided January 31, 1939

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

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

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

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

SUPPLEMENTAL REPORT OF THE COMMISSION

BY THE COMMISSION:

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

Order

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

No. 495

In the Matter of Agreement No. 6510

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

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 106

HARBOR COMMISSIONERS OF THE CITY OF SAN DIEGO ET AL.

v.

AMERICAN MAIL LINE, LTD., ET AL.

Submitted August 24, 1938. Decided February 3, 1939

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

C. A. Hodgman for complainants.
E. I. Young, *J. J. Geary*, and *H. R. Kelly* for defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

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

In the original report herein, 1 U. S. M. C. 661, we found that an arbitrary of $2.50 per ton on cargo from San Diego, Calif., over so-called terminal rates from Los Angeles Harbor, Calif., on like commodities to destinations in the Orient and defendants' rules, regulations, and practices with respect thereto were unduly prejudicial to complainants and unduly preferential of their competitors to the extent that they were less favorable to San Diego than to Los Angeles. Terminal rates from San Diego were permitted to be conditioned upon cargo offerings there in direct call service of not less than 500 tons in the aggregate. Defendants were ordered to cease and desist on or before November 23, 1937, from publishing, demanding, or collecting rates from San Diego to points in the Orient which exceeded those on like traffic from Los Angeles to the same destinations, either in direct call or transshipping service, subject to the 500-ton *minimum* for direct call service. Upon petition of defendants the case was reopened for further hearing, which was held January 27, 1938, to bring the record down to date in view of the fact that the prior hearing was held in September 1933. The effective date of the cease and desist order was postponed until the further order of the Commission.

At the further hearing complainants offered no testimony.

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

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

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

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

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

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

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

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

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

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

There is no comparison of record contrasting the volume of movement actually transshipped between terminal ports with that which might be reasonably expected to move from San Diego in transshipping service. The record is equally deficient as to a comparison of the cost of transshipping from San Diego with the cost of such service between terminal ports. As stated, the transportation conditions existing between San Diego and Los Angeles have changed materially since the original decision herein. How the more or less irregular and infrequent coastwise service between San Diego and Los Angeles compares with that between terminal ports is not ascertainable from the record.

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

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

Order

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

No. 106

Harbor Commission of the City of San Diego et al.

v.

American Mail Line, Ltd.; The China Mutual Steam Navigation Company, Ltd., and The Ocean Steam Ship Company (Blue Funnel Line); Canadian Pacific Steamships, Ltd.; Dollar Steamship Lines, Inc., Ltd.; General Steamship Corporation, Ltd.; Kerr Steamship Company, Inc.; Klaveness Line (A. F. Klaveness & Company, A/S); Nippon Yusen Kabushiki Kaisha (Nippon Yusen Kaisha); Oceanio & Oriental Navigation Company; Osaka Shosen Kabushiki Kaisha (Osaka Shosen Kaisha); Pacific-Java-Bengal Line (N. V. Stoomvaart Maatschappij and N. V. Rotterdamsche Lloyd); States Steamship Company; Tacoma Oriental Steamship Company; "K" Line (Kawasaki Kisen Kaisha); Bank Line, Ltd.; Barber Steamship Lines, Ino.; Prince Line; Los Angeles Steamship Company; McCormick Steamship Company; Pacific Steamship Lines, Ltd.; and San Diego-San Francisco Steamship Company

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

It is ordered, That the order entered herein of September 23, 1937, which by its terms was to become effective November 23, 1937, and which, by order of December 15, 1937, was modified to the extent its effective date was postponed until the further order of the Commission, be, and it is hereby, further modified (1) to eliminate the requirement that rates for the transportation of property from San Diego, Calif., to the destinations mentioned in said order of September 23, 1937, shall not exceed those on like traffic from Los Angeles, Calif., in transshipping service; (2) to provide that rates from San Diego may be made subject to a minimum of 800 tons in the aggregate for direct call service; and (3) to become effective on or before April 17, 1939.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 483

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

Submitted August 17, 1938. Decided February 9, 1939

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

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

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

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

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

[1] Conference Agreement No. 200.

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

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

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

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

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

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

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

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

An order will be entered discontinuing this proceeding.

ORDER

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

No. 483

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

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

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

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 460[1]

SUN-MAID RAISIN GROWERS ASSOCIATION AND SUNLAND SALES COOPERATIVE ASSOCIATION

v.

BLUE STAR LINE, LTD., ET AL.

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

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

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

Reparation denied.

J. Richard Townsend for complainants and interveners supporting complainants.

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

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

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

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

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

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

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

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

Complainants in No. 464 allege that, in the case of any and all freight except commodities on which rates are declared open and on which rates are not published from terminal loading ports, the maintenance, demanding, charging, or collecting by defendants of a rate from Stockton to United Kingdom and Continental European ports higher than the corresponding rate contemporaneously maintained on the same commodity to the same United Kingdom and Continental European ports from their terminal loading ports has been, and for the future will be, unfair, unjustly discriminatory, unduly and unreasonably preferential and prejudicial, and detrimental to the commerce of the United States. A cease and desist order is sought. Complainants in No. 460 make substantially the same allegations as complainants in No. 464, except that they relate only to dried fruit. A cease and desist order and reparation are sought. Complainant in No. 461 presents issues substantially the same as those in No. 464, but makes no exception as to open rates, and alleges, upon information and belief, a violation of section 205 of the Merchant Marine Act, 1936. This complainant requests a cease and desist order and a modification of the conference agreement to require defendants to provide reasonably adequate service from Stockton to the United Kingdom and Continental Europe if they desire to continue to function in concert, or a notification to defendants that we will watch the Stockton situation for a period of six months and that, if, during this period, defendants shall not have afforded such service, we will, at the end of the six-month period, cancel the conference agreement without further hearing.

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

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

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

Traffic moving in various trades by water, rail, and truck, from and to Stockton, increased in volume from 309,546 net tons in 1933 to 614,030 net tons in 1937. In the European trade, the increase was from 7,193 net tons to 49,430 net tons. Of the latter figure 49,337 tons were destined for outbound movement, consisting of 37 tons of canned goods, 8,069 tons of dried fruit, 19 tons of pencil slats, 2,728 tons of cotton, and 38,484 tons of barley.

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

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

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

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

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

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

Defendants state that it was necessary, in the beginning, to serve all of the ports in the blanket in order to obtain sufficient cargo to operate in the trade; that they would now gladly withdraw their services from some of the ports were it not for the fact that, unlike the situation in respect of Stockton, industries have been established in reliance upon the continuance of such services; and that, if Stockton should be made a terminal loading port, the increase in traffic that would move through that port would not be new tonnage but cargo such as defendants now lift at San Francisco Bay ports. On behalf of San Francisco, Oakland, and Alameda and their various interests, it is asserted that these ports have been developed with the thought in mind that ports such as Stockton, lying behind terminal ports, would not be served by ocean-going vessels, and the large investments of the former, it is urged, should not be jeopardized by disturbing the existing relationship. All of these considerations are matters of which defendants might take cognizance in deciding whether to serve Stockton, but they are not sufficient to sustain an unduly discriminatory rate adjustment after service has been inaugurated. The amount of tonnage that would be diverted to Stockton would depend in large measure on the frequency and regularity of the service accorded it, and, in connection with the question of diversion of traffic from one port to another, it is to be noted that Oakland and Alameda, lying behind San Francisco, were developed after, and have caused the diversion of cargo from, the last-mentioned port. The Federal Government has seen fit to spend large sums of money in the development of the port of Stockton, and the port is entitled to the benefit of rates on the basis of transportation circumstances and conditions surrounding the movement of traffic.

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

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

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

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

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

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

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

An appropriate order will be entered.

APPENDIX

Complainants in No. 460:

Sun-Maid Raisin Growers Association.

Sunland Sales Cooperative Association.

Complainant in No. 461: Stockton Port District.

Complainants in No. 464:

Stockton Traffic Bureau.

Allan Cutler, Inc.

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

Bercut-Richards Packing Co.

Boothe Fruit Company.

California Cotton Oil Corporation.

California Milk Products Co.

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

Robt. W. Dickey.

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

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

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

R. Fair.

Foster and Wood Canning Company.

G. W. Hume Company.

Griffith Durney Company.

Gulf Red Cedar Company.

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

Harry Hall & Co., Inc.

Kings County Packing Company, Ltd.

Lincoln Packing Company.

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

Manteca Canning Co.

Memorie Fruit Co.

Mor-Pak Preserving Corp.

Norman L. Waggoner, Inc.

Pacific Grape Products Co.

Pacific Packing Company.

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

The Packwell Corporation.

Port Stockton Compress, Inc.

Pratt-Low Preserving Co.

Complainants in No. 464—Continued.

Producers Cotton Oil Company.

R. L. Puccinelli, A. J. Puccinelli, and Elena Puccinelli, doing business under the name and style of Puccinelli Packing Company.

Sacramento Valley Packing Co.

Stockton Food Products, Inc.

Tri-Valley Packing Association.

Turlock Co-operative Growers.

Turlock Dehydrating & Packing Co., Inc.

Carl Tusan and Dick Tusan, doing business under the name and style of Tusan Packing Co.

J. G. Vagim and Edward J. Vagim, doing business under the name and style of Vagim Packing Company.

Visalia Canning Company.

D. R. Hoak and A. R. Hoak, doing business under the name and style of West Coast Growers & Packers.

W. J. Withers, Inc.

Defendants in Nos. 460, 461, and 464:

Blue Star Line, Ltd.

Compagnie Generale Transatlantique (French Line).

The Donaldson Line, Ltd.

Aktieselskabet Det Østasiatiske Kompagni (The East Asiatic Company, Limited).

Fred. Olsen & Co. (Fred Olsen Line).

Fruit Express Line A/S.

Furness, Withy & Co., Limited.

Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft (Hamburg American Line).

Isthmian Steamship Company.

"Italia" Societa' Anonima di Navigazione.

Knut Knutsen O. A. S.

J. Lauritzen.

Norddeutscher Lloyd (North German Lloyd).

Nederlandsch Amerikaansche Stoomvaart Maatschappij Holland Amerika Lijn.

Rederiaktiebolaget Nordstjernan (Johnson Line).

Royal Mail Lines, Limited.

Westfal-Larsen & Co., A/S.

Interveners in support of complainants in Nos. 460, 461, and 464:

California Farm Bureau Federation.

Thomas D. Stevenson & Sons.

Continental Grain Company.

Port of Stockton Grain Terminal.

Interveners in support of defendants in Nos. 460, 461, and 464:

Board of State Harbor Commissioners for San Francisco Harbor.

City and County of San Francisco.

San Francisco Chamber of Commerce.

Board of Port Commissioners of the City of Oakland.

Oakland Chamber of Commerce.

City of Alameda.

Golden Gate Terminals.

State Terminal Co., Ltd.

Interveners in support of defendants in Nos. 460, 461, and 464—Continued.

Islais Creek Grain Terminal Corporation.
Howard Terminal.
Encinal Terminals.
Intercoastal Steamship Freight Association.
Edward L. Eyre & Co.
Kerr Gifford & Co.
Westrope Bros. Grain Co.
F. M. Ball & Company.
R. G. Hamilton & Company.
Calbear Canneries Company.
Schuckl & Co., Inc.

Order

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

No. 460

Sun-Maid Raisin Growers Association and Sunland Sales Cooperative Association

v.

Blue Star Line, Ltd., et al.

No. 461

Stockton Port District

v.

Blue Star Line, Ltd., et al.

No. 464

Stockton Traffic Bureau et al.

v.

Blue Star Line, Ltd., et al.

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

It is ordered, That the defendants herein, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before April 30, 1939, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of canned goods, dried fruit, cotton, pencil slats, and other commodities from Stockton, Calif., to United Kingdom and Continental European ports, rates which exceed those on like traffic to the same ports from San Francisco, Oakland, Alameda, Los Angeles Harbor, and San Diego, Calif.; Portland, St. John's Terminal, and Astoria, Oreg.; Seattle, Tacoma, Everett, Bellingham, Olympia, Grays Harbor, and Longview, Wash.; Vancouver, Victoria, and New Westminster, B. C.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 480

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

Submitted June 14, 1938. Decided March 23, 1939

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

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

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

Harry McCall for intervener.

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

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

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

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

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

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

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

Cotton shipped to North Atlantic ports from Texas ports and from New Orleans originates at interior points. Some moves from Memphis compress points to New Orleans via all-rail and rail-barge routes. Texas shipments consist principally of high density bales, occupying from 19 to 21 cubic feet per bale. New Orleans shipper bale. Stowage of high density and standard bales is 80 and 120 cubic feet, respectively, per ton of 2,000 pounds.

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

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

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

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

Protestants are interested principally in the rate on flour, wheat bran, and bran shorts. The bulk of such shipments move on through bills of lading at joint through or combination rail-water or water-rail rates. However, some flour moves from Houston and Galveston at port-to-port rates. There is practically no movement of grain at rates subject to our jurisdiction. Flour moves in 140-, 98- and 6-pound bags. The larger bags stow in 35 and 42 cubic feet, respectively, per ton. Respondents admit that flour, especially in the larger bags, is desirable cargo. Current rates to North Atlantic ports, for dock delivery, on flour and other products, except bran and shorts, are 32 and 25 cents, minimum weight 10,000 and 40,000 pounds, respectively. The rate on bran and shorts is 22 cents, minimum weight 40,000 pounds. In August 1935 rates were 26.5 and 20 cents, respectively, on flour and other products, and 17 cents on bran and shorts. On August 20, 1937, the flour rates were increased to 30.5 and 24 cents. The April 1938 increases on flour amount to approximately 5 percent, but the total percentage of increases since 1935 are 20.7 percent on flour and other products, minimum weight 10,000 pounds, 25 percent on a minimum weight of 40,000 pounds, and 29 percent on bran and shorts.

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

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

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

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

Protestants' principal interest is in the 32-cent carload rate on old bags and bagging, and in the 65-cent less-than-carload rate on new and old material. Old material is accumulated at points along the Atlantic seaboard and moves southbound. New material moves northbound only, but in small volume. New and old material moves in machine-compressed bales, and stows from 85 to 90 cubic feet to the ton. Bags and bagging are easy to handle, are rarely damaged, and are generally considered desirable cargo. The movement of old material southbound is reasonably steady and large in volume, although there may be peak periods. Rates stated are for warehouse delivery. An allowance of 3 cents is made if dock delivery is taken.

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

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

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

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

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

ORDER

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

No. 480

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

This case, instituted under section 22 of the Shipping Act, 1916, having been duly heard, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That respondents be, and they are hereby, notified and required to cease and desist, on or before April 27, 1939, and thereafter to abstain from publishing, demanding, or collecting for the transportation of bags and bagging, burlap and cotton, new; and bags and bagging, old, between North Atlantic ports and Gulf ports of the United States, of rates which exceed those prescribed in the next succeeding paragraph hereof;

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 482

In the Matter of Storage Charges Under Agreements 6205 and 6215

Submitted October 17, 1938. Decided March 23, 1939

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

Roger Siddall for various respondents.

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

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

Report of the Commission

By the Commission:

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

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

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

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

Cargo other than coffee:

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

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

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

Coffee:

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

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

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

Cargo other than coffee:

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

Coffee:

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

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

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

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

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

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

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

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

Respondents express the fear that increased charges on coffee at New York would cause a diversion thereof through the port of New Orleans. This feeling is shared by the Port of New York Authority, which shows that for the first quarter of 1938 the movement of coffee through the port of New York was 25,896 tons less than during the first quarter of 1937; whereas New Orleans coffee imports in the first quarter of 1938 were 2,223 tons higher than in the corresponding period of 1937.

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

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

Respondents were admonished in the *Free Storage case* that the imposition of merely nominal storage charges would plainly violate the spirit of the regulation prescribed therein. This is true for the reason that such charges really have the effect of extending the period of free time. They must, therefore, be deemed to be a constituent part of a practice pertaining to the handling, storing or delivery of property. We not only have the authority under section 17 to prescribe just and reasonable regulations and practices, but also the power to order them enforced. Clearly, therefore, any means or device tending to nullify or interfere with the enforcement of such regulations and practices must be subject to our condemnation.

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

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

An appropriate order will be entered.

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

ORDER

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

No. 482

IN THE MATTER OF STORAGE CHARGES UNDER AGREEMENTS 6205 AND 6215

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

It is ordered, that respondent be, and they are hereby, notified and required to cease and desist, on or before May 11, 1939, and thereafter to abstain from publishing, demanding, or collecting for the storage on piers at the port of New York after the expiration of free time of coffee transported from their ports of loading herein involved charges which are lower than their storage charges contemporaneously in effect at the port of New York on other commodities transported from their said ports of loading;

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 467

PACIFIC FOREST INDUSTRIES

v.

BLUE STAR LINE, LIMITED, ET AL.

Submitted August 20, 1938. Decided April 4, 1939

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

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

Chalmers G. Graham for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

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

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

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

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

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

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

Complainant points out that it is wholly dependent upon defendants for the movement of plywood to the destinations involved. It asserts that its rates are higher to the same market than rates from foreign competitive points; that European industries are increasing their purchases of American Douglas fir logs which may be manufactured into competitive plywood abroad; that one or more defendants either own or are affiliated with competitive foreign plywood mills; that the conference is controlled by foreign flag carriers; and that some of defendants are either owned or controlled by foreign governments which are not sympathetic to the growth of American commerce. None of these statements in themselves warrants a finding that defendants' rates are unfair, unjustly discriminatory, or unduly prejudicial to complainant and preferential to foreign competitors, or that defendants are engaged in acts or practices detrimental to the commerce of the United States within the meaning of section 15.

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

Complainant urges that the conference rates are unreasonably high, and therefore detrimental to the commerce of the United States. *Edmund Weil* v. *Italian Line "Italia,"* 1 U. S. S. B. 395, 398. In addition to the rate increases referred to, it is obliged to pay other charges formerly absorbed by the defendants. For example, before complainant was organized, it was customary for defendants to pay for brokerage at a cost approximately 1¼ percent of the gross freight. The payment of brokerage has since been abandoned, and complainant now is obliged to maintain a traffic department to handle this function at its own expense. It asserts that by the establishment of its warehouse and concentration of all plywood for export there, defendants' cost of service has been reduced by the elimination of scattered calls, a saving which it argues should be reflected by lower rather than higher rates. For more efficient handling and stowing of its product, complainant has improved the plywood package from time to time. A witness for complainant states that claims for damage against defendants have diminished to practically nothing since complainant devised its present method of packaging. Improvements in packaging undoubtedly facilitate handling of the cargo, but the fact that complainant voluntarily instituted this improvement does not of itself establish unreasonableness of the transportation rate.

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

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

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

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

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

An order will be entered dismissing the complaint.

Order

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

No. 467

Pacific Forest Industries

v.

Blue Star Line, Limited, et al.

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

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

By the Commission.

[seal] (Sgd.) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 477

In the Matter of Rates, Charges, Rules, Regulations, and Practices of Pacific Coast European Conference Carriers et al.

Submitted September 28, 1938. Decided April 4, 1939

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

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

Report of the Commission

By the Commission:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

At the time of hearing the conference fixed minimum rates on lumber and the individual lines were given freedom of action in fixing their rates subject only to the conference minimums. It was testified that this practice had worked to the disadvantage of lumber exporters, as the feeling of uncertainty caused by frequent rate fluctuations made it difficult to do business in a highly competitive European market. These fluctuations in the liner rates are largely influenced by fluctuations or changes in the charter market, and though nearly all witnesses interested in the exportation of lumber indicated a preference for actual rates to be fixed by the conference for a definite period, they were somewhat doubtful as to whether the period should be thirty, sixty, or ninety days, and it was generally recognized that the question of charter competition required careful consideration. One witness admitted that with fixed rates for a period of sixty days for liner service, fluctuations or changes in the charter market would seriously affect the ability of his company to sell in competition with dealers using chartered vessels. Since the hearing the conference has eliminated provision for minimum rates on lumber from United States ports and has substituted therefor agreed rates for fixed periods of time to be charged by all conference members.

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

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

An order discontinuing the proceeding will be entered.

Order

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

No. 477

In the Matter of Rates, Charges, Rules, Regulations, and Practices of Pacific Coast European Conference Carriers et al.

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

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

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 215

ROBERTO HERNANDEZ, INC.

v.

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

Submitted January 18, 1939. Decided May 25, 1939

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

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

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

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

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

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

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

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

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

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

A further question occurs as to complainant's ability to obtain cars for shipment. At page 691 of the original report we said: "Complainant's evidence establishes the fact of its agreement with de Bareno, and the fact of complainant's ability to obtain cars for shipment in the quantities and under the terms of such agreement." Defendants disputed this and at the further hearing complainant declined to reveal the names of the persons from whom cars could be purchased but did specify certain cities including Pontiac, Michigan and Windsor, Canada, where cars could be obtained. Defendants sought time within which to examine and take the testimony of the various dealers and distributors in such places and requested a further hearing, which was granted. At that hearing defendants developed on cross-examination that complainant had no direct contacts with dealers in Pontiac and Windsor. They introduced no evidence. Complainant, however, produced witnesses representing a number of Ohio, Michigan, and New Jersey dealers in General Motors and Chrysler products, who testified to having sold automobiles to complainant for export before, during and after June–December 1934, the period covered by the agreement. According to these witnesses, experienced in the selling of automobiles, domestic sales were very poor in 1934, but the export business was good. One witness could have gotten for complainant at any one time 300 to 500 automobiles, trucks and chassis of General Motors and Chrysler manufacture at a discount of 17½ percent or more off factory retail prices. He stated that "if you took in all the models shown in complainant's analysis of these companies' products, it would be very easy to double that, or triple the amount." This witness also testified he could have obtained 500 to 700, and possibly more, units of both makes in December 1934 at a discount of at least 17½ percent. Another representative of dealers testified to his ability to have obtained for complainant "easily a thousand" General Motors and Chrysler pleasure automobiles, trucks and chassis between June and December 1934, and "in some instances you would be able to get a thousand of each kind" such as "the cheaper standard models." He had been told by complainant's president of the agreement to ship a large amount of cars each month to de Bareno in Spain, and that he, the witness, would probably get the major portion of the orders. But no cars were ever ordered for Spain. According to their testimony, neither of these witnesses ever had any difficulty in filling within 72 hours any order for General Motors and Chrysler products during 1934. None of the testimony as to availability of cars was refuted. Before service of the proposed report on further hearing, defendants requested a further hearing for the purpose of showing the contracts, if any, between the aforesaid dealers and distributors and manufacturers. In view of the numerous hearings held in this proceeding, and the fact that such contracts, if they existed, would not be controlling in this further proceeding, the request is denied.

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

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

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

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

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

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

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

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

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

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

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

We find that by the refusals of the defendants, pursuant to their concerted plan, to furnish complainant available space in their vessels, the defendants prevented complainant from shipping $167,000 worth of automobiles to Spain in the period from June 1 to December 31, 1934, which complainant otherwise would have done; that complainant was thereby precluded from earning a commission of 15 percent of the purchase price of the cars; that complainant's net profit therefrom would have been $25,050, the full amount of such commission; that complainant was injured to the extent of $25,050; that complainant is entitled to reparation in the sum of $25,050, with interest; and that defendants Arnold Bernstein Schiffahrtsgesellschaft, M. B. H., Compania Espanola de Navigacion Maritima S. A. and Compagnie Generale de Navigation a Vapeur Cyprian Fabre are jointly and severally liable to complainant for the full amount of the injury caused by defendants.

An appropriate order will be entered.

Order

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

No. 215

Roberto Hernandez, Inc.

v.

Arnold Bernstein Schiffahrtsgesellschaft, M. B. H., Compania Espanola de Navigacion Maritima S. A., and Compagnie Generale de Navigation a Vapeur Cyprian Fabre

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

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

By the Commission.

[seal]

(Sgd.) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 502

MARTIN L. CLOSE

v.

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

Submitted March 7, 1939. Decided May 25, 1939

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

No appearance for complainant.

Joseph J. Geary, for defendant.

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

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

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

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

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

An order will be entered dismissing the complaint.

ORDER

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

No. 502

MARTIN L. CLOSE

v.

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

This case being at issue upon complaint and answer on file, and the Commission having on the date hereof made and entered of record a report containing its conclusions and decisions thereon; which report is hereby referred to and made a part hereof;

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

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, Jr.
Secretary.

UNITED STATES MARITIME COMMISSION

No. 501

S. H. Kress & Co.

v.

Nederlandsch Amerikaansche Stoomvaart Maatschappij "Holland-Amerika Lijn" and Pacific-Atlantic Steamship Company "Quaker Line"

Submitted May 2, 1939. Decided June 30, 1939

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

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

Report of the Commission

By the Commission:

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

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

Complainant instructed its broker of long standing at Rotterdam to forward the merchandise by the first available vessel for the holiday trade. A special order of the Secretary of the Treasury increasing the import duty, to become effective at about the time the goods should arrive, also made speed desirable. In accordance with local bills of lading issued at Rotterdam on June 17, 1936, defendant Holland America Line transported the shipments to Baltimore at port-to-port rates, the bills of lading providing that the merchandise was "TO BE REFORWARDED FROM PHILADELPHIA OR BALTIMORE BY THE QUAKER LINE." There being no through rates on such traffic, defendant Quaker Line issued local bills of lading and performed the transportation from Baltimore to the Pacific coast at its regularly established port-to-port rates. There is no indication that defendants failed to comply with complainant's routing instructions.

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

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

ORDER

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

No. 501

S. H. KRESS & CO.

v.

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

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

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

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, JR.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 515

SPRAGUE STEAMSHIP AGENCY, INC.

v.

A/S IVARANS REDERI ET AL.

Submitted April 14, 1939. Decided July 11, 1939

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

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

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

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

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

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

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

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

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

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

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

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

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

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

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

Concerning its operation with chartered vessels, ascribed by the conferences as an obstacle to membership, complainant showed that prior to an undisclosed date in 1927, the American Republics Line was operated by Moore & McCormack Co., Inc., for account of the United States Shipping Board. When that agency was terminated, Moore & McCormack Co., Inc., continued in the trade with Norwegian flag steamers, applied for membership in and was admitted to the conferences now debarring complainant. Undisputed testimony of complainant is that three members of the conferences, viz, International Freighting Corporation, Inc., Linea Sud Americana, Inc., and Norton, Lilly & Company, operate with chartered vessels and that defendants Booth Steamship Company, Ltd., Lamport & Holt Line, Ltd., and Moore-McCormack Lines, Inc., operate chartered vessels in conjunction with owned tonnage.

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

The chairman of the conferences testified that after service of the formal complaint, the members again voted on the application of complainant. At that time, March 3, 1939, the affirmative vote of 12 of the 17 members was necessary for admission. After ten lines voted to accept and five to deny the application, the question was put to two inactive lines, i. e., lines not then maintaining sailings in the trade. One voted with the majority and the other withheld its vote. The final result thus was 11 in favor of admission, 5 opposed with 1 member withholding its vote. The latter, according to the chairman, has not operated any vessels in this trade for approximately seven years.

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

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

By the United States Maritime Commission:

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

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

UNITED STATES MARITIME COMMISSION

No. 517

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

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

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

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

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

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

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

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

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

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

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

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

On June 20, 1938, a contract was made between Philipsons Automobil Aktiebolag and Adolf Palmquist Aktiebolag, both of Stockholm, and hereinafter called Philipsons and Palmquist, respectively, whereby Philipsons "except for what has already been chartered, hereby undertakes to send all unboxed and boxed automobiles and trucks as well as boxed automobile material, consigned to Messrs. Philipsons Automobil A. B. Stockholm, A. B. Svenska Bilfabriken, Stockholm, and Lindblads Motoraktiebolag, Stockholm, or any other concern owned or controlled by the Merchant (Philipsons), to the extent as hereinafter set forth during 1938 and 1939 via U. S. North Atlantic ports/New York-Baltimore range/and Canada/St. John-Montreal range/to Sweden/Gothenburg-Stockholm range/by vessels put at the Merchant's service by the carrier (Palmquist). Shipments moving direct from Lake ports on direct steamers are not included under this agreement." Palmquist undertakes to put at Philipsons' service first-class vessels of approximately 300 unboxed-automobiles capacity about once a month for full cargoes for shipments under and on deck; to furnish additional sailings during the anticipated "rush season" of January–April, if required, so as to handle an average of about 500 units per month during the period; and, should more tonnage be required, to make the best endeavors to supply it within a certain time, after which Philipsons shall be at liberty to make its own disposal as far as concerns the shipment involved. A form of contract constituting part of an exhibit introduced at the hearing did not contain the rates on the commodities mentioned; nor did it disclose the period of the contract. Rates averred to be charged under the contract were set forth in another part of the exhibit, which stated that they would expire October 31, 1939. The contract period through 1939 is shown in a copy of the contract which, pursuant to agreement, was furnished for the record after the hearing. The rates named therein are as follows: Unboxed automobiles, $65 per unit; unboxed truck chassis, $1.50 per 100 pounds, minimum $45 per unit; boxed automobiles and trucks and knocked-down automobile material in boxes or crates, 10 cents per cubic foot. In submitting the copy of contract, it was explained that, following the execution of the contract, Palmquist became agent for the Thorden Lines and guaranteed them the shipments made thereunder, Thorden Lines' rates apparently to be the same as those stated in the contract. It also was stated that, in addition to the commodities and rates mentioned in the contract, the following had been included: Tires, 10 cents per cubic foot; boxed spare parts, 15 cents per cubic foot; accessories, motorcycles, and marine engines, 25 cents per cubic foot.

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

Minutes of conference meetings, furnished by consent for the record after the hearing, disclose that in order to enable its members to meet the competition of Thorden Lines, the conference opened the rates to Finland, Sweden, and Denmark, effective April 19, 1939, on commodities not in the conference contract list, through October 31, 1939, except where a longer period is specified in conference tariffs. The rate on automobiles to Sweden, Finland, and Denmark was likewise made open through April 19, 1940. Upon this action being taken, three members who previously had submitted their resignations withdrew them with the understanding that the Thorden Lines would not be admitted to the conference.

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

The record in this case discloses a situation relating to Thorden Lines' dealings with the conference and with this Commission which merits condemnation. Prior to the hearing, the president of Thorden Lines' agency in this country filed with the Commission a sworn statement, in which he said that their contract rate on unboxed automobiles was $67.50 per unit, and at the hearing he testified "I filed with the Maritime Commission the rates that were given to me by Mr. Thorden when he was here, as being the correct rates against that contract, and the rates that we used in manifesting the Philipson cargo, and which have been confirmed since as being correct." When a photostat of the Philipsons' contract was received for the record after hearing, it showed that the rate was $65 per unit, and that the contract period covered the entire year 1939. This witness and Mr. Thorden had advised the conference that "This contract cannot be terminated prior to November 1st, 1939." Furthermore, this witness read into the record an extract from a cablegram from Thorden Lines, as to which he testified "Now I take it from that telegram that, aside from what you might call current forward commitments, there have been no long-term contracts." He testified further that "we have been working on the basis of quoting rates, say, thirty, forty, forty-five days ahead." Yet, a copy of a letter which he submitted for inclusion in the record after the hearing discloses the existence of a contract with Northern Auto Import A/B which does not expire until February 15, 1940.

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

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

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

ORDER

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

No. 517

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

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

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

By the Commission.

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

918579 O—51——10

Order

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

No. 516

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

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

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

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

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 516

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

Submitted May 12, 1939. Decided July 13, 1939

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

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

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

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

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

Report of the Commission

By the Commission:

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

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

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

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

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

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

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

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

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

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

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

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

During 1938 respondent transported 43,487 tons of cargo between Baltimore and Wilmington. Gross revenue thereon was $180,639.36, or $4.15 per ton. Total expenses, including claim adjustments, were $168,626.36, or $3.83 per ton. Net profit from such operations, based on facts of record, was approximately 18 percent on the company's depreciated capital investment. Respondent estimates that 21,060 tons of cargo will be transported in the extended service and that there will be an additional expense of $56,140 exclusive of pick-up and delivery costs, stevedoring at Baltimore, and transshipment at Wilmington. Based on costs incurred in 1938 in the Baltimore-Wilmington service in respect to the items excluded, total additional expense will be approximately $78,737 or $3.72 per ton. The evidence indicates that there should be little, if any, increase in vessel cost north of Wilmington. Respondent estimates that proposed rates will produce an average gross revenue of $5 per ton. Even anticipating reductions in respondent's estimate of available traffic, nothing of record indicates that net revenue resulting from the extended service will be materially lower than that earned in 1938. Consequently we do not find on this record that the proposed rates are unremunerative.

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

Shippers and other interests at Charleston register dissatisfaction with Bull's present north-bound service. They state that woodpulp and chemicals manufactured locally and pulpboard and paper from Georgetown, not now transported by Bull, are available for northern destinations. Floor covering from Kearny, N. J., now moving south by truck may also be routed via respondent's service. Iron and steel articles, with a lower level of rates, may also move from Bethlehem's plant at Sparrows Point. There are other factors which indicate that Bull may still secure substantial cargo. Respondent's transshipment service is an experiment with which shippers are unfamiliar. Possibilities of greater damage because of additional handling may render the service unsuitable for various types of cargo. The estimated four-day service on one sailing from Baltimore may be realized, dependent upon the connection at Wilmington. But with only one sailing each week beyond Wilmington, cargo transported on the next sailing from Baltimore may not reach its destination until the following week. Transit time north-bound on Charleston cargo may also be affected by the availability of space beyond Wilmington. Protestant is not particularly concerned with the proposed north-bound service. North-bound cargo transported by it has averaged approximately 50 tons each week. South-bound, its cargo has averaged 450 tons per trip. It claims that if proposed rates become applicable south-bound there will be a decrease in its traffic; and that, notwithstanding alleged unsatisfactory operating results from present rates, it will be compelled to meet the competition by rate reductions or to discontinue Charleston as a port of call. However, our obligation under Title I of the Merchant Marine Act, 1936, in respect to the maintenance of an American merchant marine will not permit disregard of the public interest generally in respect to transportation advantages via inland routes made available by congressional appropriations. With proper safeguards within existing law, economic influences should permit the use of all available transportation routes between all points or ports.

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

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

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

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

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

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

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

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

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

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

And we required the publication of a separately established uniform charge for deliveries either during or after free time to one or more than one person in single or parcel lots by designations other than general shipping mark and number of packages or other unit. If respondent desires to afford such service its tariff should contain somewhat similar provisions. There is some suggestion that the tariff now authorizes delivery of canned goods by brands, makes, sizes, or other description of package without an additional charge, but Item 50–A is now sufficiently broad to require the assessment of a 4.5-cent charge. We are unable to prescribe a reasonable charge on this record.

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

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

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

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

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

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

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

UNITED STATES MARITIME COMMISSION

No. 498

SHARP PAPER & SPECIALTY CO., INC.

v.

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

Submitted July 10, 1939. Decided July 20, 1939

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

Leonard R. Hanower for complainant.

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

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

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

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

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

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

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

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

An order will be issued dismissing the complaint.

ORDER

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

No. 498

SHARP PAPER & SPECIALTY CO., INC.

v.

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

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

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

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 526

KERR STEAMSHIP COMPANY, INC.

v.

ISTHMIAN STEAMSHIP COMPANY ET AL.

Submitted June 2, 1939. Decided July 25, 1939

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

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

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

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

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

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

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

ORDER

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

No. 526

KERR STEAMSHIP COMPANY, INC.

v.

ISTHMIAN STEAMSHIP COMPANY, ET AL.

This case being at issue upon complaint and answer on file, and the Commission, on the date hereof, having made and entered of record a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 184 and Related Cases[1]

J. G. Boswell Company et al.

v.

American-Hawaiian Steamship Company et al.

Submitted January 23, 1939. Decided July 27, 1939

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

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

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

Report of the Commission

By the Commission:

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

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

On February 1, 1933, the United States Shipping Board approved an agreement[3] for the establishment of an assembling and distributing charge upon all intercoastal general cargo loaded into or discharged from vessels owned, operated, represented, or controlled by certain common carriers by water in interstate commerce and other persons subject to the Shipping Act, 1916, at the ports of Los Angeles and Long Beach, Calif., except bulk cargo handled directly between ship and cars placed on the "high line," that is, railroad tracks for cars placed alongside the ship. As a result of this agreement, the following tariff was published on February 10, 1933, to become effective March 10, 1933, by the Los Angeles Steamship Association in which the parties to the agreement held membership:

Los Angeles Steamship Association Terminal Tariff

No. 2–AD

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

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

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

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

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

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

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

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

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

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

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

Rule 10 of the same tariff provided:

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

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

Complainants' counsel stated it was "the intent of the complainants in this proceeding to assail only the handling charge for the service in handling, sorting, and segregating between ship's tackle and pile on dock, and not in any instance where a carloading service was performed." The record indicates that the carloading service at San Diego was negligible.

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

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

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

During the periods covered by these complaints, and prior thereto, defendants' intercoastal tariffs provided that the rates named therein applied from and to ship's tackle, and there is no showing that the tackle-to-tackle rates included any compensation for services beyond ship's tackle. When the handling charge was not assessed the cost of performing the service involved in handling the cargo beyond ship's tackle was absorbed by the defendant carriers. After the passage of the Intercoastal Shipping Act, 1933, the practice of absorbing charges for handling shipments between ship's hook and point of rest without proper tariff provision by certain intercoastal carriers at other Pacific coast ports, was condemned in *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, 435, in following language:

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

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

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

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

The record shows that the over-all rates in the lump-sum stevedoring contracts were fixed after careful consideration of all services which past experience indicated would be required, and the fact that defendant carriers consistently handled a greater percentage of cargo received and delivered beyond ship's tackle which required the use of additional labor and equipment, was necessarily an important factor to be considered in constructing the rates. After the strike in 1934, most of the stevedoring was performed on a cost-plus basis, and the service actually rendered was the basis of the charge against the carrier under this arrangement. In view of the expense actually assumed by the carriers, represented in part by the items of additional labor and equipment considered in fixing the over-all stevedoring rates paid by the carriers, there is no merit in complainants' objection to the separate charge for handling beyond ship's tackle based on the theory that an impracticable method of receipt and delivery (at ship's tackle) that was not desired by the great majority of shippers and receivers, would have been more expensive and less efficient. It is well settled that a carrier is entitled to compensation for any transportation service rendered and the fact that all parties were advantaged by the receipt and delivery of general cargo at place of rest instead of at ship's tackle could not operate to prohibit the carriers from charging for the service actually rendered in performing the handling beyond ship's tackle, when, as here, it is not shown that the published tackle-to-tackle rates included any compensation for that service or were in excess of fair and reasonable rates for the tackle-to-tackle service actually rendered by the carriers.

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

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

The decision in *Re Assembling and Distributing Charge*, *supra*, was based upon the finding that transportation includes delivery and that the carriers could not make a contract changing the general obligations imposed upon them by law; consequently, they could not publish in their tariffs a charge for delivery separate from their line-haul rates. The cases of *Brittan* v. *Barnaby*, 62 U. S. 527, and *Covington Stock Yards Company* v. *Keith*, 139 U. S. 128, were relied upon to support the proposition that delivery, being an integral part of transportation, must be made by the carrier without a separate charge. The *Barnaby* case merely held that freight is not due until the merchandise is in readiness to be delivered to the consignee, when there is no different stipulation by the parties. The *Covington* case involved the obligation of a railroad company to furnish suitable and necessary facilities for receiving livestock offered to it for shipment over its road and connections, as well as for discharging such stock after it reached the place to which it was consigned. The right of a carrier to separate the charge for transportation was not in issue in that case, but the question decided was that the railroad company was compelled to receive and deliver the livestock free from any charge other than the customary one for transportation. The court said it could not give assent to the contention "that the carrier may, without a special contract for that purpose, require the shipper or consignee, in addition to the customary and legitimate charges for transportation, to compensate it for supplying the means and facilities that must be provided by it in order to meet its obligation to the public." There was no showing that "customary and legitimate charges for transportation" did not include the furnishing of facilities for properly receiving, transporting and delivering livestock, and apparently there was no special contract limiting the application of the line-haul rate. The principles announced in the *Covington* case are not conclusive of the issue in these proceedings, that is, whether the carriers have the right to divide the total charge for transportation. See *Walker* v. *Keenan*, 73 Fed. 755, 761 (certiorari denied 164 U. S. 706) where it was held:

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

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

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

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

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

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

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

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

Upon consideration of all facts and argument of record, we find that the assembling and distributing charge at Los Angeles Harbor and Long Beach and the handling charges at San Diego, California, and the defendants' practices in assessing and collecting such charges, were not unjust and unreasonable. Although it has been shown that during certain periods these charges were assessed by some defendants without proper tariff authority, in violation of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, complainants are not entitled to reparation unless the sum paid by complainants amounted to an unjust or unreasonable exaction for the service rendered. There has been no such showing in these cases. The petition for reparation is therefore denied. To the extent that these findings conflict with the decision of this Commission's predecessor in *Re Assembling and Distributing Charge*, *supra*, the decision in that case is hereby overruled. An order will be entered dismissing the complaints.

Order

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

No. 184

J. G. Boswell Company et al.

v.

American-Hawaiian Steamship Company et al. and Related Cases

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

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

It is ordered, That the complaints be, and they are hereby, dismissed.

By the Commission.

[seal] (Sgd.) W. C. Peet, Jr.
Secretary.

UNITED STATES MARITIME COMMISSION

No. 369 [1]

LOS ANGELES BY-PRODUCTS CO. ET AL.

v.

BARBER STEAMSHIP LINES, INC., ET AL.

No. 425

CANNERS' LEAGUE OF CALIFORNIA

v.

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

No. 450

CALIFORNIA PACKING CORPORATION

v.

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

No. 454

SUN-MAID RAISIN GROWERS ASSOCIATION AND SUNLAND SALES COOPERATIVE ASSOCIATION

v.

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

Submitted January 25, 1939. Decided July 27, 1939

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

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

Complaints dismissed.

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

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

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

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

Walter W. McCoubrey for Boston Port Authority, intervener.

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

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

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

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

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

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

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

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

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

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

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

[4] For list of defendants see Appendix.

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

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

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

Except on cargo handled direct to or from open railroad car with ship's tackle, bulk oil moved direct between ship and railroad tank car or pipe line and on cargo moved direct from ship to railroad car by gravity through hopper built into car door, a charge of 30¢ per ton of 2,000 lbs., or 40 cubic feet, as manifested (regardless of whether the manifest basis is other than a ton of 2,000 lbs. or 40 cubic feet), will be assessed at all Los Angeles and Long Beach wharves for use of facilities, equipment, and labor incident to handling between ship's tackle and pile on dock or across dock, including ordinary sorting, piling and breaking down; subject to a maximum of $1.00 per ton of 2,000 lbs.

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

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

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

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

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

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

> All of the foregoing Foreign Trades Steamship Conferences have decided to discontinue, at all ports of the Pacific Coast of the United States and British Columbia, the practice, where applied, of absorbing in their freight rates the cost of handling export and import cargo between ship's tackle and place of rest on terminals. Handling charges are to be assessed and will be for the account of cargo.
>
> At Oregon, Washington, and British Columbia ports the Handling Charges named in current Terminal Tariffs published by the respective Port Authorities, or by the terminals over which individual lines operate, will govern.
>
> At California ports where handling charges are not now assessed, the Handling Charge will be 40¢ per ton and at California ports where the present handling or A & D charge is less than that amount, same will be increased to 40¢ per ton.
>
> The Pacific Westbound Conference subscribes to this announcement as to California ports. A separate announcement will be made by that Conference as to Northern ports.
>
> The tariffs of the various Conferences are being amended accordingly to become effective January 1, 1936, except those of the Pacific Westbound Conference, the Pacific Dutch East Indies Conference, and the Pacific-Straits Conference, which are to become effective February 1, 1936.

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

Conference tariffs and individual tariffs of certain lines were duly amended or supplemented to provide for the application of the handling charge at all Pacific Coast ports, substantially as provided in the joint notice hereinbefore referred to. Such amendments and supplements were duly filed with this Commission or its predecessor. With some variations, the following are typical of the tariff provisions referred to:

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

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

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

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

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

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

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

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

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

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

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

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

Any provision herein to the contrary notwithstanding, goods may be received and/or delivered by carrier at ship's tackle and receipt and delivery beyond ship's tackle shall be entirely at the option of the carrier and solely at the expense of the shipper or consignee.

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

The terminals used by defendants are in most cases equipped with railroad tracks at shipside, known as the "high line," where certain types of cargo such as bulk commodities, heavy machinery, boxed automobiles, tractors, and steel pipe are sometimes received and delivered direct at ship's tackle without assessment of the handling charge when they move in open-top cars or when, in the case of some bulk commodities, they are handled between car and ship by elevator, or by hopper or chute. General cargo moves to and from the terminals in closed railroad cars or motor trucks, and also at some ports in river vessels or barges. It is clearly established by the record in these cases that it is impracticable to spot such equipment at shipside and receive and deliver the cargo direct at ship's tackle. It is conceded that such practice would result in undue delay and inconvenience, increased risk of injury and damage, and increased cost to all concerned, including the ship operator, the terminal operator, and the shipper or consignee. It is customary, therefore, to receive and deliver general cargo at place of rest on the wharf or in the transit shed, where it is placed after unloading from or before loading to rail cars, trucks, or river vessels or barges. The rail cars are usually spotted on the low-line tracks which are on the land side of the wharf, or at the finger-type piers, on the apron outside of the shed with the shed between the low-line tracks and the ship. At some of the terminals these low-line tracks are depressed below the level of the wharf floor to facilitate the loading and unloading of the cars and the handling of the cargo between car door and place of rest. The loading and unloading of the rail cars is performed by the stevedores, or by independent companies, at all terminals except those at Stockton and the East Bay ports of Oakland and Alameda where this service is performed by the terminal employees. A separate charge is assessed against the shipper or consignee for this service. In some instances cargo is handled direct between car door and ship's tackle and in such cases both the car loading or car unloading charge and the handling charge are assessed. Trucks are usually loaded and unloaded in the transit shed by the employees of the trucking companies.

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

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

Every such carrier (common carrier by water in foreign commerce) and every other person subject to this act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the *receiving,* *handling, storing,* or *delivering* of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

This paragraph relates to services performed at the terminal as distinguished from the carrying or transporting by the vessel. Neither this nor other sections relating to foreign commerce require carriers to publish their charges in single amounts or prohibit them from dividing their rates and making specific charges for the different services performed. Our conclusion is that the separate charges for handling cannot be condemned as an unreasonable practice. The right of rail carriers to make a separate charge for terminal services incident to delivery has been recognized by the Supreme Court. *I. C. C.* v. *Stickney*, 215 U. S. 98, and *I. C. C.* v. *C., B. & Q. R. R. Co.*, 186 U. S. 320. In view of the foregoing conclusion, it follows necessarily that the conference agreements in respect of said charges have not been shown to be unreasonable or unfair.

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

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

The decision of the Department of Commerce, predecessor of this Commission, in *In Re Assembling and Distributing Charge*, 1 U. S. S. B. B. 380, is cited by complainants as conclusive of the issues in these proceedings. In that case the assembling and distributing charge on intercoastal shipments at the ports of Los Angeles Harbor and Long Beach was found to be "unjust and unreasonable in violation of section 18 of the Shipping Act, 1916." Section 18 relates to common carriers by water in interstate commerce and a decision under that section in regard to the reasonableness of charges of carriers in the intercoastal trade does not require a finding of unreasonableness as to practices of carriers in connection with similar charges in foreign trade under a different provision of law. Decision as to the reasonableness of carriers' practices must be based on the facts of record in each case, and previous findings in connection with similar practices do not have the force of law in subsequent proceedings involving different carriers, different trades, different competitive conditions, and different statutory provisions.

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

APPENDIX

LIST OF DEFENDANTS

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

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

ORDER

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

No. 369

LOS ANGELES BY-PRODUCTS CO. ET AL.

v.

BARBER STEAMSHIP LINES, INC., ET AL.
(And Related Dockets Nos. 410, 411, 417, 443, 445, 452, and 456)

No. 425

CANNERS' LEAGUE OF CALIFORNIA

v.

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

No. 450

CALIFORNIA PACKING CORPORATION

v.

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

No. 454

SUN-MAID RAISIN GROWERS ASSOCIATION AND SUNLAND SALES COOPERATIVE ASSOCIATION

v.

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

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

It is ordered, That the complaints be, and they are hereby, dismissed.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 500

PUERTO RICAN RATES

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

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

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

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

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

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

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

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

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

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[1] Per cubic foot.

Respondents herein, except Waterman, comprise the entire membership of the U. S. Atlantic and Gulf-Santo Domingo Conference and they control the rates to the Dominican Republic. Respondent Lykes is also a member of the U. S. Atlantic and Gulf Haiti Conference which names rates to Haiti. Tariffs of record show that since early 1937 neither of these conferences has increased the rates on the commodities mentioned; yet cargo to Santo Domingo and to Haiti is transported on vessels which also serve Puerto Rico. Santo Domingo is approximately 200 miles more distant than is San Juan, and Lykes serves Puerto Rico on return voyages to the Gulf. Rates to the foreign destinations prior to September 21, 1938, were either the same or lower than to Puerto Rico, and if costs involved in transportation do not necessitate increases in rates thereto, there appears little justification for increases to Puerto Rico. Counsel states on exceptions that competition with a German automobile requires the maintenance of the lower rates on automobiles to Santo Domingo but such statement is not based on evidence. Rates on flour from the Gulf to United Kingdom and Continental European ports, trades in which Lykes and Waterman engage, do not exceed 27 cents, and on lubricating oil rates to such foreign destinations from Texas ports do not exceed 49 cents. While the latter rates of themselves do not prove rates in issue to be unreasonable, in view of the greater cost in transatlantic trades because of the greater distances, and the same or similar port and terminal costs in the United States for both transatlantic and West Indies trades the comparison, along with other data, is persuasive that a 40-cent rate on flour and a 64-cent rate on lubricating oil are excessive. On this record we conclude that the higher rates to Puerto Rico will operate to unduly burden domestic traffic and unduly prefer foreign traffic and that under circumstances shown rates on automobiles, flour, rice, fish, hardware, iron and steel sheets, lubricating oil, and paint, to the extent the rates thereon exceed respondents' rates on the same commodities to foreign ports of call, are unjust and unreasonable in violation of section 18 of the Shipping Act, 1916. In making such finding we adhere to the statement in *Sugar from Virgin Islands*, *supra*, to the effect that—

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

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

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

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

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

ELIMINATION OF OUTPORT SERVICE

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

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

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

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

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

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

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

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

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

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

On shipments to minor ports to which rates are published respondents reserve an option to call there direct or to transship cargo, and when the option is exercised the expense of on-carriage is absorbed. Differentials between all-rail and barge or barge-rail rates from inland points in the United States to the seaboard when such routes terminate at the same port have also been absorbed. Such absorptions are not authorized by the tariff. Some respondents maintain precooling plants in Puerto Rico in which fruits are cooled to required temperatures before loading. A separate charge for that service is made. Neither the practice nor the charge is published. There are also storage charges applicable after expiration of free time at Puerto Rican ports at which cargo is discharged on docks. Rule 10 of the south-bound tariff provides that charges will be "according to the storage tariff authorized by the Puerto Rican Public Service Commission." Consignees should be able to ascertain the amount of all the foregoing charges from a tariff publication filed and posted in accordance with section 2 of the Intercoastal Shipping Act, 1933, as amended.

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

RULES, REGULATIONS, AND PRACTICES

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

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

The rate which the shipper is required to pay under this rule is dependent upon the rail or other carrier's rate from the interior United States point of origin to the particular United States port where the shipment is delivered to a respondent. The rates of such inland carriers are not published in respondents' tariff and are not on file with us. The inclusion of any provision in a tariff which makes the amount of the transportation charge depend upon the measure of a rate published in tariffs of some other carrier or not filed with us is violative of section 2 of the Intercoastal Shipping Act, 1933, as amended. *Intercoastal Rates of Nelson S. S. Co.*, 1 U. S. S. B. B. 326, 338–339; *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, 446–447.

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

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

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

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

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

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

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

We find:

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

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

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

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

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

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

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

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

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

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

[For authority see note 1 at end of table]

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

[1] Rates named are in cents per 100 pounds except as noted.
[2] $4 per ton of 2,000 pounds. An allowance of 50 cents per ton is made when shipper loads at shipper's plant.
[3] $3.85 per ton of 2,000 pounds.
[4] Increases of Sept. 21, 1938, are approximately 10 percent. Total percentage of increase since 1936 ranges from 20 to 30 percent.

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

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

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

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

[For authority seet note 1 at end of table]

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

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

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

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

[1] Each.
[2] Cubic feet.

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

Order

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

No. 500

Puerto Rican Rates

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

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

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

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 503 [1]

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

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE) ET AL.

Submitted May 11, 1939. Decided July 27, 1939

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

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

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

No. 503

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

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE) ET AL.

No. 504

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

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE) ET AL.

No. 505

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

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE) ET AL.

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

It is ordered, That the complaints in these proceedings be, and they are hereby, dismissed.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 418

IN THE MATTER OF SERVICES, CHARGES, AND PRACTICES OF CARRIERS ENGAGED IN THE EAST-BOUND TRANSPORTATION OF LUMBER AND RELATED ARTICLES BY WAY OF THE PANAMA CANAL

Submitted August 10, 1938. Decided July 28, 1939

Provisions of bills of lading affecting transportation rate and value of service not effective unless incorporated in tariff.

Unloading of ship a common carrier duty, and when owner of goods performs such service, compensation therefor should be published in carrier's tariff as an allowance.

Tender of intercoastal lumber for delivery at end of ship's tackle under tackle-to-tackle rates not unreasonable, and carrier is under no legal obligation to publish charges for services beyond ship's tackle when not undertaking to perform such services.

When terminal assumes duty of delivering intercoastal lumber to consignee its charges, rules, and regulations should be published and posted, and changes should not be made except on adequate notice. Maintenance of rates in any other manner an unreasonable practice.

C. S. Belsterling, *Harry S. Brown*, *Oliver P. Caldwell*, *J. P. Cussen*, *William J. Dean*, *M. G. de Quevedo*, *Gerald A. Dundon*, *Joseph J. Geary*, *Roscoe H. Hupper*, *Mack G. Klosty*, *T. F. Lynch*, *E. F. McGrath*, *George B. Milnor*, *R. T. Mount*, *Otis N. Shepard*, *J. A. Stumpf*, *H. W. Warley*, *Burton H. White*, and *Saunders Wright*, for various carrier respondents.

E. W. Bishop, *Herbert Buckley*, *John P. Campbell*, *Paul T. Carey*, *Windsor F. Cousins*, *W. D. Dimmitt*, *Arthur W. Dover*, *M. Carter Hall*, *Thomas J. Hefferman*, *Thomas B. Hornbeck*, *L. T. Howell*, *Berwick B. Lanier*, *James H. Miskell, Jr.*, *James A. Moore*, *H. Merle Mulloy*, *M. A. Myers*, *S. Frank Nolan*, *L. L. Oliver*, *William C. Purnell*, *R. Bruce Robinson*, *Isaac E. Schine*, *M. J. Silva*, *Emmett P. Simmons*, *G. H. Simpson*, *Samuel G. Spear*, *Arthur V. Sullivan*, *Max Thaten*, *H. B. Thomas*, *Charles R. Webber*, *George W. Witney*, *J. M. Woodruff*, *C. C. Yates*, and *D. Lynch Younger*, for various terminal respondents.

L. B. Anderson, *K. C. Batchelder*, *W. Scott Blanchard*, *Hugh P. Brady*, *Frank S. Davis*, *Mayor James E. Dunne*, *R. J. Evans*, *Charles J. Fagg*, *G. Coe Farrier*, *W. B. Greeley*, *Harold E. Kimball*, *John F. Lent*, *W. W. McCoubrey*, *William C. McCulloch*, *Hugh Oberg*, *Richard Parkhurst*, *Charles R. Seal*, *Francis L. Sellew*, *R. T. Titus*, *H. V. C. Wade*, *H. J. Wagner*, *W. W. Weller*, and *S. H. Williams*, for shippers, receivers, and civic and commercial organizations.

Supplemental Report of the Commission

By the Commission:

Exceptions were filed by carrier and terminal respondents to the report proposed by the examiner, and the case was orally argued. Our conclusions differ somewhat from those recommended by the examiner.

This investigation concerns the lawfulness of services, charges, and practices of water carriers engaged in the east-bound intercoastal transportation of lumber and related articles, and of terminal operators at whose facilities such commodities are discharged. In addition to the intercoastal carriers and connecting transhipment carriers, operators of public terminal facilities in the North Atlantic range are named respondents. (See Appendix A.) Hearings were held in Seattle, Boston, New York, Philadelphia, and Norfolk. Additional information was obtained from respondents in answer to questionnaires.

One of the matters in issue, the lumber berth quantity allowance rule of Calmar Steamship Corporation, was disposed of in the prior report herein, 1 U. S. M. C. 646. Certain questions, incidentally involved, relating to charter parties will be disposed of in Docket No. 488, In the Matter of Intercoastal Charters. The questions remaining for consideration relate to demurrage rules, tariff publication of bill of lading provisions and allowances, and services, charges, and practices of carriers and terminals in connection with the receipt and delivery of intercoastal lumber and related articles.

Demurrage rules.—Intervener West Coast Lumbermen's Association objects to the carriers' rules exempting the carrier from responsibility for demurrage and other charges. The rule, with the additions proposed by intervener in parentheses, reads as follows:

> Carriers party hereto shall not be held responsible (except for their disability, fault, or negligence) for demurrage or other charges accruing while any cargo or part thereof is on craft, wharf, rail equipment, or vehicle, nor shall vessel assume care, custody, control, or safety of, or be liable for any cargo or any part thereof until received in vessel's sling alongside, nor after delivery ex-ship's tackle (unless cargo has been specifically ordered by vessel or agents in which event charges referred to will be for account of the carrier).

Historically, demurrage has been an allowance or compensation for the delay or detention of a vessel. *The Appolon,* 22 U. S. 362. It has been customarily regarded only as a penalty against the shipper for detention of the carrier's equipment.

We are not prepared to say that carriers, as a part of their common carrier obligation, are under the duty to assume the responsibility sought to be placed upon them by this intervener. But carriers should not be permitted by a tariff rule to seek to exempt themselves in advance of such responsibility. However, apart from the question of liability for their negligence, carriers may state in their tariffs what charges they will not absorb when such a statement will aid the shipper or consignee in ascertaining the exact charges he must pay in connection with the transportation involved. Respondent carriers stated on brief that they were revising the rule in question. Therefore, no finding in regard thereto will be made at this time, but any revision made should reflect the views expressed herein.

Bills of lading.—It is apparent that in certain respects carriers have not attempted to make their tariffs consistent with their bills of lading. For example, Alternate Agent Joseph A. Wells publishes for a group of carriers, a tariff rule providing that each shipment shall be subject to the terms, conditions, and exceptions of the bill of lading of the carrier in use at the time of such shipment, and the shipper shall accept the same and be bound thereby. Such bills of lading are not reproduced in the tariff. Any provisions of a bill of lading which affect the charge for transportation or the value of the service, to be effective, must be incorporated in the tariff.

Allowances.—The Dutton Lumber Company, at Providence, R. I., a terminal operator, performs through the Providence Trucking & Stevedoring Company, a subsidiary, the stevedoring services for Luckenbach on all lumber received, most of which belongs to Dutton. Unloading vessels is a common carrier function and the compensation therefor, insofar as Dutton's lumber is concerned, should be made in the form of an allowance duly published in the carrier's tariff.

Carrier's duty in delivering lumber and publishing charges therefor.—Carriers state that their object in publishing tackle-to-tackle lumber rates is to relieve them of responsibility for the cargo after it leaves the ship's tackle or hook, regardless of the fact that in many instances actual delivery to consignee can be effected only through the intervention of the terminal operator. This raises the following questions: What is reasonable tender of delivery under a tackle-to-tackle rate? In order to obtain delivery, consignees must pay, in addition to such rate, handling charges assessed by terminal operators for services rendered by them. Query, should the carrier be required to publish such charges?

Carriers serving Atlantic ports publish rates on intercoastal lumber to apply from and to end of ship's tackle, that is, within reach of ship's hook. Their tariffs specifically exclude any service beyond ship's tackle at the ocean rate. Cargo is to be supplied to or removed from the vessel as rapidly as it can be received or delivered. Their bills of lading also provide that rates apply from and to ship's tackle only. Carriers' justification for this method of publication is that they have no control over the charges of independent public terminals, that such charges are changed without sufficient notice, and that in many instances terminal operators will not permit carriers to perform any terminal services on their piers. Certain terminal operators even reserve the right to perform the stevedore service aboard ship. However, where respondents have their own piers they publish charges for services beyond ship's tackle. And certain carriers reproduce in their tariffs the charges maintained by the terminals merely as information to the shipper, but expenses beyond ship's tackle are for account of the cargo. These schedules are not in all instances complete, do not always state charges separately, and often are not in accordance with the rates actually charged and collected by the terminal operators.

Lumber is discharged in sling loads onto the string-piece of the pier or into open-top rail cars or into lighters. When not loaded into open-top cars or lighters the lumber must be received at tackle and back-piled to place of rest on pier for subsequent delivery to trucks, rail cars, or, after the expiration of free time, to storage. The receiving terminals may be roughly divided into four classes: (1) Those that merely furnish space and facilities and perhaps limited service, (2) those that furnish complete terminal facilities and services, (3) terminals operated by the carriers, and (4) consignees' private terminals. At (1) and (3) the ship's stevedore performs the back-piling and the stevedore or employee of ship attends to the delivery of the lumber within the free-time period, collects the charges incident to delivery, and obtains a receipt for the cargo from the consignee. At railroad terminals the ship's stevedore performs the back-piling and the terminal makes delivery, giving a receipt for the cargo to the ship. Ordinarily, at (1) the terminal operator collects the charges accruing to the terminal, such as dockage, wharfage, and storage. At (2) the terminal reserves the right to and does perform all services beyond ship's tackle, usually receipts to the ship for the cargo, makes delivery to consignee, and collects the terminal charges.

Witnesses for both carriers and terminals are virtually unanimous in stating that it is impracticable for consignees to accept delivery at end of ship's tackle, except where cargo is unloaded into open-top cars or lighters or where it is delivered to consignee at his own private pier. By far the greater portion of lumber received at North Atlantic ports is trucked from the terminals. Generally, terminal companies will not permit consignees on their piers for the purpose of receiving cargo direct from ship's tackle. Witness for Luckenbach stated that arrival notices are not sent to consignee until after placement of cargo at point of rest on pier, and that consignee is required to ascertain by telephone if property is so placed and the lots segregated and ready for delivery, before he may call for it. This, apparently, is the general practice.

As disclosed in the proposed report, the record abounds with instances illustrating how the system of tariff publication and method of effecting delivery of intercoastal lumber as described above has resulted in a lack of uniformity in charges and practices as between terminals within a port, and as between ports; opportunities for abuses; and a generally unsatisfactory situation with respect to the publication of terminal charges. Before attempting to define the carrier's duty or the shipper's rights under these circumstances, it must be recognized that under the established custom of discharging intercoastal lumber the carrier cannot make nor the consignee accept ship's tackle delivery at independent public terminals. Both must be aware of this when they enter into a contract of affreightment at tackle-to-tackle rates, and presumably the measure of the rate is determined with this limitation in view.

Section 2 of the Intercoastal Shipping Act, 1933, requires every common carrier by water in intercoastal commerce to file its tariffs showing all the rates and charges for or in connection with intercoastal transportation, and stating separately "each terminal or other charge, privilege, or facility, granted or allowed, and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, * * * or charges, or the value of the service rendered to the * * * consignor, or consignee." In *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, 462, it was found that carriers' tariffs must show the specific terminals between which each rate applies, each service such as storage, handling, piling of lumber, wharfage, lighterage, rendered to the consignor or consignee, the charge for each service, and each absorption or allowance made, specifying the service for which it is made, entire amount for such service, and precise portion thereof absorbed or allowed. This finding was made upon a record dealing with practices of carriers in the intercoastal trade and dealt with the general situation and not with rates and practices in connection with individual commodities. The physical conditions of handling lumber and of handling general cargo are essentially different. Lumber is picked up by the vessels in small consignments at many loading berths on the Pacific coast and discharged at numerous berths on the Atlantic coast. For instance, Calmar lists a total of 261 berths at which it will either load or discharge lumber, and it does not own any docks or berths at any port. Moreover, much of the lumber is handled in large quantities at private docks. Because of this fact and because a great proportion of the lumber can be received from ship's tackle into open-top rail cars or lighters, tackle-to-tackle rates are a necessity in the trade. On the other hand, in the case of general cargo, the carrier must maintain or arrange for a loading dock on which cargo can be assembled awaiting loading, and a discharging dock on which the packages can be assorted by bill of lading lots for delivery to the consignee. As to such cargo, it would be impossible for the consignor to place the cargo at end of ship's hook or for the consignee to accept delivery at that point. The conditions under which lumber is handled, in our opinion, require and justify different treatment with respect to the publication of rates and services.

We conclude, therefore, that 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 that respondent carriers are under no legal obligation to publish rates and charges for services beyond ship's tackle at such terminals.

Terminal's duty in publishing rates for delivery of lumber.—This is the first major proceeding involving the services, charges, and practices of terminal operators. The terminals named respondents herein are operated by individuals, private companies, railroad companies, municipalities, and States. Jurisdiction over them is conferred upon us by section 1 of the Shipping Act, 1916, 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.

Section 15 of that act requires our approval of all agreements entered into by "other persons" between themselves or with common carriers by water concerning, among other things, rates, special privileges, competition, or in any manner providing for an exclusive, preferential, or cooperative working arrangement. Section 16 makes it unlawful for them unduly to prefer or unduly prejudice any particular person, locality, or description of traffic in any respect whatsoever. And section 17 requires them to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property.

This investigation has revealed certain practices respecting the publication of charges by terminal operators which undoubtedly lead to confusion on the part of shippers and consignees who must consider terminal costs in marketing their lumber. Some fail to publish and post a schedule of rates, as, for example, Green and Wood, Inc., at New Bedford, which publishes no tariff but quotes rates upon request, and the State Pier, at Providence, and Beard's Erie Basin, at New York, which apparently publish no tariff; others do not give ample notice or give no notice whatever of rate changes; still others apply rates which are different from those published by the carriers for the same services; and finally there are those who fail to state separately the charges for each service performed, as, for instance, Wiggin and Cilco Terminals which publish one inclusive rate for back-piling and wharfage.

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, because sudden rate changes often result in unexpected losses to, and unjust discriminations against, the shipper or consignee. This is a disruptive factor both in the transportation and marketing of the commodity involved. The question is whether the shipping acts which we administer contemplate the correction by us of these abuses.

Undoubtedly, 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—so much so that the carrier is specifically commanded by the act to file and post its charges in connection therewith. When the independent terminal operator displaces the carrier and undertakes the duty to deliver, it is obvious that 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. The power conferred upon us to prescribe reasonable regulations and practices in connection with the handling and delivery 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.

We conclude, therefore, that terminal respondents' practice of establishing or publishing their rates, to the extent that it fails to meet the above-mentioned requirements as to publicity of rates and adequate notice of rate changes, is unjust and unreasonable, and is conducive to undue preference and prejudice.

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 an agreement should embody, among other things, the principles set forth in finding (5) hereinafter made.

There are other minor issues incidentally raised during the course of this investigation such as those relating to alleged agreements between carriers and terminals with respect to berthing space, and to leases by terminals of storage space to certain large dealers in lumber. However, the testimony on these points is fragmentary, and in the absence of complaint those issues will not be considered herein.

Upon this record we find:

1. That bill-of-lading provisions affecting transportation rates or the value of transportation service are not governing unless incorporated in carrier's published tariffs.

2. That compensation to owner of cargo for service of unloading ship should be published in carrier's tariff as an allowance.

3. That tender of intercoastal lumber for delivery at end of ship's tackle under tackle-to-tackle rates is not an unreasonable practice.

4. That 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.

5. That when respondent terminals undertake the duty of delivering intercoastal lumber and establish the charges, rules, and regulations in connection therewith, said respondents should publish and post a tariff containing said charges, rules, and regulations, and should not make any changes in said tariff except upon thirty (30) days' notice.

No order will be issued at this time. Respondents will be allowed sixty (60) days from the date of this decision to amend their tariffs and conform their practices with the findings made and the views expressed herein.

By the Commission.

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

WASHINGTON, D. C., *July 28, 1939.*

APPENDIX A

CARRIER RESPONDENTS

Alameda Transportation Co., Inc.
American Foreign Steamship Corporation.
*American-Hawaiian Steamship Company.
American Tankers Corporation.
America Transportation Co., Inc.
*(Arrow Line) Sudden & Christenson.
Babbidge & Holt, Inc.
Bay Cities Transportation Company.
Border Line Transportation Company.
Bulk Carriers Corporation.
California Steamship Company.
The California Transportation Company.
*Calmar Steamship Corporation.
Chamberlin Steamship Co., Ltd.
Christenson-Hammond Line (Hammond Shipping Co., Ltd., Mang. Agents).
Crowley Launch & Tugboat Co.
*Dollar Steamship Lines, Inc., Ltd.
Erikson Navigation Company.
Fay Transportation Company (copartnership, Nahum Fay and Norvin Fay).
Freighters, Inc.
*(Grace Line) Panama Mail Steamship Company.
*Gulf Pacific Mail Line, Ltd.
Hammond Shipping Co., Ltd.
Sidney M. Hauptman, Trustee, Nelson Steamship Company.
Haviside Company.
Inland Waterways Corporation.
*Isthmian Steamship Company.
A. B. Johnson Lumber Company.
Jones Towboat Company.
Luckenbach Gulf Steamship Company.
*Luckenbach Steamship Company, Inc.
*McCormick Steamship Company.
Marine Service Corporation.
Mississippi Valley Barge Line Co.
Pacific Steamship Lines, Ltd. (The Admiral Line).
*(Panama Pacific Line) (American Line Steamship Corporation) (The Atlantic Transport Company of West Virginia).
Prudential Steamship Corporation.
Puget Sound Freight Lines.
Puget Sound Navigation Company.
*(Quaker Line) Pacific Atlantic Steamship Co.
Richmond Navigation and Improvement Co. (Partnership comprising H. P. Lauritzen, G. B. Lauritzen & N. P. Bush).
The River Lines.
Roamer Tug & Lighterage Company, C. Noom, Part Owner, and E. J. Noom, Part Owner.
Sacramento Navigation Company.
Schafer Bros. Steamship Lines.
Shaver Forwarding Company.
San Diego-San Francisco Steamship Co.
Shepard Steamship Co.
Skagit River Navigation and Trading Company.
*States Steamship Company (California-Eastern Line).
Swayne & Hoyt, Ltd., Managing Owners (Gulf Pacific Line).
*Weyerhaeuser Steamship Company.
Williams Steamship Corporation (dissolved).

TERMINAL RESPONDENTS

Albany Port District Commission, Albany, N. Y.
American Dock & Pouch Terminals, New York, N. Y.
Archer Daniels Midland Company, Edgewater, N. J.
Atlantic Terminals, Inc., Newark, N. J.
Baldwin Locomotive Works, Eddystone, Pa.
Baldwin Southwark Corp., Eddystone, Pa.
Baltimore Copper Smelting and Rolling Co., Baltimore, Md.
Baltimore & Ohio Railroad Company.

* Intercoastal Steamship Freight Association lines.

Beard's Erie Basin, Inc., New York, N. Y.
Bethlehem Shipbuilding Corp., Ltd., Bethlehem, Pa.
Bethlehem Steel Corporation, Bethlehem, Pa.
Block Street Wharf and Warehouse Company, Baltimore, Md.
Boston & Albany Railroad.
Boston and Maine Railroad.
Boston Tidewater Terminals, Inc., Boston, Mass.
Brooklyn Dock and Storage, Inc., New York, N. Y.
Brooklyn Intercoastal Terminals, Inc., New York, N. Y.
Brooklyn Standard Bag Company, New York, N. Y.
Brooklyn Waterfront Terminal Corp., Brooklyn, N. Y.
Cameron Lumber Company, Newburgh, N. Y.
Canton Railroad Company.
The Central Railroad Company of New Jersey.
The Chesapeake and Ohio Railroad Company.
Cilco Terminal Co., Inc., Bridgeport, Conn.
Commonwealth of Massachusetts, Department of Public Works, Boston, Mass.
Connecticut Terminal Company, Inc., New London, Conn.
The Delaware, Lackawanna & Western Railroad Co.
E. I. Dupont de Nemours and Company, Wilmington, Del.
A. C. Dutton Lumber Corporation, Providence, R. I.
Erie Railroad.
Federal Shipbuilding & Dry Dock Co., Kearney, N. J.
H. Nelson Flanagan & Company, New York, N. Y.
Ford Motor Company, Dearborn, Mich.
Church E. Gates & Company, New York, N. Y.
Grand Trunk Railway System.
Green & Wood, Inc., New Bedford, Mass.
Greenpoint Terminal Corporation, Brooklyn, N. Y.
Harborside Warehouse Company, Inc., Jersey City, N. J.
Hoboken Dock Company, Hoboken, N. J.
Independent Pier Company, Philadelphia, Pa.
International Mercantile Marine Dock Company, New York, N. Y.
Lamberts Point Terminal Corporation, Norfolk, Va.
Lawson & McMurray Lumber Sales Co., Hoboken, N. J.
Lehigh Valley Railroad.
Lincoln Tidewater Terminals, Inc., New York, N. Y.
The Long Island Railroad Company.
Lumber Exchange Terminal, Inc., Brooklyn, N. Y.
Mahlstedt Lumber Company, Yonkers, N. Y.
Maryland Dock Company, Inc., Baltimore, Md.
The Mystic Terminal Company, Charlestown, Mass.
Nacirema Operating Company, Newark, N. J.
City of New Bedford, Mass.
New Bedford Gas & Edison Light Co., New Bedford, Mass.
City of Newark, Department of Public Affairs, Bureau of Docks, Newark, N. J.
Newark Tidewater Terminal, Newark, N. J.
Newport News Shipbuilding & Dry Dock Co., Newport News, Va.
City of New York, Department of Docks, New York, N. Y.
The New York Central Railroad Company.
The New York, New Haven & Hartford Railroad Co.
New York, Ontario & Western Railway.
Norfolk Tidewater Terminals, Inc., Norfolk, Va.
Norfolk & Western Railway.
North Atlantic Terminal Service, Inc., Hoboken, N. J.

Ontario Land Company, Pier 179, Philadelphia, Pa.

The Pennsylvania Railroad Company.

City of Philadelphia, Dept. of Docks, Wharves, and Ferries, Philadelphia, Pa.

Philadelphia Piers, Inc., Philadelphia, Pa.

Piers Operating Company, Boston, Mass.

Port of Portland Authority, Portland, Me.

Portland Terminal Company, Portland, Me.

City of Providence, R. I.

Reading Company.

State of Rhode Island, Department of Public Works, Providence, R. I.

Rukert Terminals Corporation, Baltimore, Md.

Sears, Roebuck & Company, Chicago, Ill.

2 U. S. M. C.

South Chester Terminal & Warehousing Co., Chester, Pa.

Southgate Terminal Corporation, Norfolk, Va.

South Jersey Port Commission, Camden, N. J.

Southern Railway System.

Sun Shipbuilding & Dry Dock Co., Chester, Pa.

Thaten Terminals, New York, N. Y.

Tisdale Lumber Company, Long Island City, N. Y.

City of Trenton, Department of Public Affairs, Trenton, N. J.

J. C. Turner Lumber Company, Irvington, N. Y.

Western Maryland Railway Company.

West Shore Railroad.

Wiggin Terminals, Inc., Boston, Mass.

Board of Harbor Commissioners, City of Wilmington, Del.

Yerkes Lumber Company, Yonkers, N. Y.

UNITED STATES MARITIME COMMISSION

No. 488

In the Matter of Intercoastal Charters

Submitted January 16, 1939. Decided July 28, 1939

Bareboat charters and time and voyage charters distinguished.

Status and tariff filing responsibilities of vessel operators chartering vessels to cargo owners for intercoastal carriage of their cargoes under various charters defined.

Proceeding discontinued, without prejudice.

F. Riker Clark for American Foreign Steamship Corporation; *Herbert M. Statt* for Bulk Carriers Corporation; *H. W. Warley*, *Edmund J. Karr*, and *Russell T. Mount* for Calmar Steamship Corporation; *D. E. Harris* for Continental Grain Company; *Wilbur LaRoe, Jr.* for Ford Motor Company; *James McDonald* for Kerr-Gifford & Company; *M. G. de Quevedo* for Luckenbach Gulf Steamship Company, Inc.; *Ira S. Lillick*, *Theodore M. Levy*, *Edward G. Dobrin*, and *Gerald A. Dundon* for McCormick Steamship Company; *Erskine Wood* for Pacific Atlantic Steamship Company; *Earle Farwell* for Prudential Steamship Corporation; *Otis N. Shepard*, *H. B. Shepard, 2nd*, and *E. J. Martin* for Shepard Steamship Company; *E. Holzborn* and *Neil S. Laidlaw* for Swayne & Hoyt, Ltd. and Gulf Pacific Mail Line, Ltd.; *George de Forest Lord*, *John D. Garrison*, and *Joseph W. Wyatt* for The Union Sulphur Company, respondents.

Herbert M. Statt and *Harold S. Deming* for Association of Shipbrokers and Agents; *W. Scott Blanchard* for Blanchard Lumber Company; *Wilbur LaRoe, Jr.*, *Frederick E. Brown*, *Arthur L. Winn, Jr.*, and *Herbert Buckley* for A. C. Dutton Lumber Corporation; *M. D. Moon* for Fisher Flouring Mills; *H. S. Brown*, *W. M. Carney*, and *M. G. de Quevedo* for Intercoastal Steamship Freight Association; *E. H. Thornton* and *W. W. Wolford* for New Orleans Joint Traffic Bureau; *R. D. Lytle* for North Pacific Millers' Association: *F. H. Reese* for Portland (Oregon) Port Traffic Development Bureau; *E. F. Brady* for himself, interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed and oral argument was had. The conclusions adopted herein differ in some respects from those recommended by the examiner.

Upon allegations by the Western Lumber & Shingle Company, of Seattle, Wash., Calmar Steamship Corporation, American-Hawaiian Steamship Company, and Weyerhaeuser Steamship Company, charging unfair competition, discriminatory rates, and pendency of demoralized conditions in the intercoastal trade due to chartering, we instituted this investigation upon our own motion by orders of May 24, 1938, and June 7, 1938, to determine the lawfulness under the Shipping Act, 1916, as amended, of the chartering of vessels and vessel space, charter terms and provisions, charter rates, and charter practices as respects transportation of freight between Pacific coast ports and Atlantic and Gulf ports of the United States through the Panama Canal. Carriers and others indicated at any time to have been involved in chartering in the trade, except as respects oil-tanker chartering, were named respondents.[1]

Carriers comprising the membership of the Intercoastal Steamship Freight Association, hereinafter called the Association, and other intercoastal common carriers frequently charter vessels to replace or supplement their vessel facilities in transporting general or parcel-lot cargo. No unlawfulness or detriment is attributed by witnesses to such chartering, nor to oil-tanker operations. Evidence presented shows that the eastbound carriage of full cargoes of lumber and grain in chartered vessels by others than such common carriers is the basis of the allegations made. Under these latter charters full vessel loads of lumber, and less frequently grain, have been carried at lower rates for transportation than the rates of the common carriers applicable to parcel-lot cargo.

Respondent Bulk Carriers Corporation first engaged in intercoastal charter transportation with cargo owners in October 1935. Its service was carried on intermittently with two vessels owned by it,

[1] American Foreign Steamship Corporation, American-Hawaiian Steamship Company, Bulk Carriers Corporation, California Eastern Line, Inc., Calmar Steamship Corporation, Continental Grain Company, Dollar Steamship Lines, Inc., Ltd., Ford Motor Company, Girdwood Shipping Company, Gulf Pacific Mail Line, Ltd., Isthmian Steamship Company, Kerr-Gifford Company, Luckenbach Gulf Steamship Company, Inc., Luckenbach Steamship Company, Inc., Matson Navigation Company, McCormick Steamship Company, Northland Transportation Company, Pacific American Fisheries, Inc., Pacific Atlantic Steamship Company (Quaker Line), Pacific Coast Direct Line (Weyerhaeuser Line), Panama Mail Steamship Company (Grace Line), Prudential Steamship Corporation, Puget Sound Associated Mills, Shepard Steamship Company, States Steamship Company (California Eastern Line), Sudden & Christenson (Arrow Line), Swayne & Hoyt, Ltd. (Gulf Pacific Line), Tacoma Oriental Steamship Company, Twin Harbors Lumber Company, The Union Sulphur Company, Weyerhaeuser Steamship Company.

and with chartered vessels. It had on file with us eastbound and westbound tariffs publishing rates and rules applicable as for a common-carrier service. Its published eastbound lumber rate was $12.50 per 1,000 feet. The tariff specified a minimum quantity requirement of 12,000 feet for a single shipment, but the evidence is that respondent declined to carry less than full cargo lots. The nature of its service as indicated by testimony of its witness was that when "a shipper comes to us and asks us to take a full cargo of lumber, we go out and see if we can charter a ship on advantageous terms." 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 Shipping Act, 1933.

On February 21, 1938, this respondent chartered the *Emergency Aid* from McCormick Steamship Company. McCormick's published and filed rate on lumber, as well as that of the other Association lines, was $14 per 1,000 feet. Immediately following the charter of this ship, Bulk Carriers transported therein, under freighting agreement with Blanchard Lumber Company constituting a charter, a full cargo of 5,016,130 feet of the latter's lumber at its $12.50 rate. The vessel loaded at six or seven berths on the Pacific coast and discharged at four berths on the Atlantic coast, the entire transportation transaction consuming 45 days. On April 16, 1938, Bulk Carriers chartered the *San Felipe* from Pacific Atlantic Steamship Company, another Association line, and on the same date it entered into a freighting agreement constituting a charter with Blanchard for the transportation of 5,000,000 feet of lumber at its $12.50 rate. Bulk Carriers later chartered the *Helen Whittier* from Matson Navigation Company and substituted it for the *San Felipe* in the charter carriage of the Blanchard lumber cargo, aggregating 5,175,640 feet. The vessel loaded at six Pacific coast berths and was booked to discharge at four Atlantic coast berths. At the time of hearing her discharge had not been completed.

The testimony is that these two transactions had the effect of stopping the buying of parcel-lot lumber on the Atlantic coast and depriving lumber shippers and dealers who patronize the regular carriers of Atlantic coast sales. About the time of the charter of the *Emergency Aid* to Bulk Carriers, a booking at the $14 rate by Blanchard for transportation of 909,000 feet of lumber via Calmar Steamship Corporation, an Association line, was broken by Blanchard. No facts are of record which in any manner indicate that the McCormick and Pacific-Atlantic charters to Bulk Carriers were for the purpose of according any shipper of McCormick or Pacific Atlantic a lower rate than such Association carriers' rates on file. It is clear that any such chartering used by an association or other carrier as a subterfuge to give a shipper a lower rate than its rate on file would be in violation of the shipping acts.

Subsequent to the hearing in this case Bulk Carriers Corporation duly canceled its schedules on file with us and discontinued all intercoastal operation.

Respondent Prudential Steamship Corporation had on file with us "Prudential Steamship Corporation" east-bound tariff providing a rate of $12 per 1,000 feet of lumber, minimum 4,500,000 feet. As agent for the Postal Steamship Corporation, owner of the *Eastern Glade*, this respondent since early 1935 has time chartered such vessel on seven occasions for intercoastal transportation as follows: One charter to Luckenbach Steamship Company, Inc., three charters to McCormick Steamship Company, two charters to Bulk Carriers Corporation, and one charter to Twin Harbors Lumber Company. The charter of the ship to Twin Harbors was for five cargoes of lumber from Pacific to Atlantic ports at the $12 rate. This charter was entered into on March 6, 1935, and the last voyage was on October 29, 1937. The average voyage time for the last four of the five voyages referred to was approximately 50 days, and the average amount of lumber carried on each of such voyages was 4,984,500 feet. Postal Steamship Corporation at no time had a tariff on file with us. The transportation therefore was performed without tariff authority in violation of section 2 of the Intercoastal Shipping Act. Since the hearing Prudential Steamship Corporation has, under schedule duly filed, inaugurated intercoastal contract service with a vessel owned by it.

American Foreign Steamship Corporation, respondent, owns four vessels, in which are transported full cargoes of lumber of the Puget Sound Associated Mills from Pacific coast to Atlantic ports under gross form voyage charters. West-bound, the ships are generally chartered to McCormick Steamship Company. Notwithstanding respondent's tariff on file at time of hearing specified a rate for east-bound carriage of lumber of $12 per 1,000 feet, on all of the east-bound voyages of its vessels except one, the rate charged was the higher current rate of the Association lines. Moreover, although its tariff designated Puget Sound ports as loading ports of its vessels for lumber cargoes, at the time of hearing its vessel *American Oriole* was loading at Columbia River ports. These tariff departures constituted violations of section 2 of the Intercoastal Shipping Act, 1933. Following the hearing, tariff was filed by this respondent stating its rate as $14 and including Columbia River ports.

Since October 1931, the vessel *Mary D*, owned by respondent Pacific American Fisheries, Inc., salmon packer located at Bellingham, Wash., has made six round-trip voyages between Pacific and Atlantic ports. Two of the east-bound voyages were with canned salmon of the owner of the vessel. All of the other voyages, east-bound and west-bound, were under time charters to cargo owners. They included one east-bound cargo of lumber, two of grain for Continental Grain Company, and one west-bound voyage with cargo of Kieckhefer Container Company. The last of the charter voyages was in early 1937. Under our findings herein, as to the time-charter transportation engaged in by it on and after June 2, 1933, Pacific American Fisheries was a contract carrier operating without tariff authority in violation of section 2 of the Intercoastal Shipping Act, 1933.

Respondent Continental Grain Company is engaged in trading in grain and is a stockholder in respondent Bulk Carriers Corporation. Prior to 1936 this respondent and its subsidiary, Pacific Continental Grain Company, since dissolved, experienced difficulty in obtaining intercoastal common carrier vessel space. In 1934 and 1935 approximately 19 cargoes of wheat and other grain moved from Pacific to Atlantic and Gulf ports in vessels time chartered by these companies from Nelson Steamship Company, American Foreign Steamship Corporation, Northland Transportation Company, and others. Respondent's intercoastal consignments in 1936, 1937, and 1938 have been parcel lots only, all of which have moved via common carriers at such carriers' tariff rates.

Respondent Kerr-Gifford & Company, grain exporters and dealers, time chartered the *Tenana* from Alaska Steamship Company, Inc., on February 19, 1937, for an east-bound intercoastal carriage of a full vessel load of lumber and grain and return to Pacific coast. West-bound the vessel was subchartered on February 26, 1937, to Shepard Steamship Company, and carried general cargo under that common carrier's published tariff. Under our findings herein, Alaska Steamship Company was a contract carrier operating without tariff authority in violation of section 2 of the Intercoastal Shipping Act, 1933. No subsequent intercoastal charters have been entered into by Kerr-Gifford & Company, whose witness testifies that in his belief intercoastal chartering for vessel-load transportation is more expensive to the cargo owner than shipping via common carrier lines at their parcel-lot rates.

Vessels of respondent Ford Motor Company have in the past been chartered to A. C. Dutton Lumber Corporation for intercoastal transportation of cargo lots of that corporation's lumber to Poughkeepsie, N. Y., and other North Atlantic ports. The last Ford vessel so chartered was in March 1937. Time charters were used in this transportation prior to July 1935, and bareboat charters thereafter. Under our findings herein, as to all such transportation engaged in by it under time charter on and after June 2, 1933, respondent Ford was a contract carrier operating without tariff authority in violation of section 2 of the Intercoastal Shipping Act, 1933.

The Union Sulphur Company, respondent, owns four vessels, with three of which it transports, as a contract carrier pursuant to tariff duly filed with us, bulk sulphur from Gulf to Pacific coast ports under net voyage charters to the Texas Sulphur Company and Freeport Sulphur Company. After discharge of these vessels on the Pacific coast, they are consecutively chartered under a bareboat charter for each voyage to A. C. Dutton Lumber Corporation for transportation of that corporation's lumber to the Atlantic coast. Upon Atlantic coast discharge of the lumber, the vessels ordinarily sail in ballast to the Gulf. Prior to July 1935, time charters rather than bareboat charters were used by Union Sulphur and Dutton for the lumber carriage referred to. Under our findings herein, all such transportation by Union Sulphur under time charters without tariffs on file was in violation of section 2 of the Intercoastal Shipping Act, 1933. The lumber is used to supply Dutton's concentration yards, and intercoastal common carriers are generally used for the transportation of its lumber sold upon direct order. The east-bound charter voyages have varied in time from 39 to 56 days, and usually loadings are at four Puget Sound berths and discharges at two North Atlantic berths. The out-of-pocket cost per 1,000 feet to Dutton of getting its lumber from Pacific to Atlantic coast in vessels under bareboat charter has averaged \$13.21. This average is calculated upon all completed charter voyages, 12 in number, since April 15, 1937, the date on which the Association carriers' lumber rate was increased to \$14 per 1,000 feet.

Western Lumber & Shingle Company, Lewis & Dalin Lumber Company, and others, ascribe to intercoastal lumber charters an undue preference to a few large lumber interests and an undue prejudice to them, in violation of law. Lumber moving in cargo lots in chartered vessels at "wholesale" rate for transportation is testified to deprive them and other small dealers of Atlantic coast sales because their "parcel-lot" shipments must be made in common carrier "berth" vessels at the \$14 rate. North Pacific Millers' Association states that chartering of vessels for grain is likely to occur when the market price of wheat in the Pacific Northwest is lower than in Chicago and St. Louis. At such times, Pacific coast wheat may be purchased, transported in vessel load and stored at Atlantic and Gulf ports until milled, with the result that intervener and others may be deprived of the manufacture of such wheat into flour at their mills in the Pacific Northwest, as well as of the sale of flour in competition with eastern and southern millers. This intervener compares vessel-load carriage under charters with cargo owners to "train-load" transportation by railway, and alleges that chartering to cargo owners at rates less than parcel-lot rates via common carriers is unduly prejudicial. Calmar Steamship Corporation compares its greater number of loading and discharging berths, longer voyage time, greater overhead, and other incidents of its common carrier transportation of lumber with vessel-load transportation of lumber in chartered vessels. Due to lumber charter competition, its 11 vessels are stated to have been laid up during the first half of 1938 for periods of from 6 to 86 days, and frequency of its sailings has been reduced from 10 days and weekly to two sailings a month. This carrier alleges that charter transportation of lumber at a lower rate than for transportation by itself and other common carriers constituted an unfair and unjustly discriminatory contract with a shipper based on the volume of freight offered, in violation of section 14 of the Shipping Act, 1916, and an undue and unreasonable preference and advantage to those particular cargo owners whose cargoes move in full cargo lots, in violation of section 16 of that act. As respects these allegations and the allegations of unlawfulness made by the lumber companies and flour millers referred to above, there is no showing that any of the charter carriers concerned have also transported competitive cargo in parcel lots.

Luckenbach Gulf Steamship Company testifies that sporadic charter operations in the Gulf intercoastal trade are conducted without solicitation or overhead expenses similar to those incurred by itself and other Gulf Intercoastal Conference common carriers. The effect of such operations at a lower rate to the cargo owner than is available via conference lines for parcel lots is asserted to be injurious to the latters' rate structure and revenues. Objection is made by the Association to chartering which results in rates to the charterer lower than those of its member lines. Except as to oil tanker operations and charters of vessels to common carriers for transportation at Association rates, this intervener urges that we specify the status of parties to charters which obtain in intercoastal trade, that is, whether they are subject or not to the regulatory shipping statute. It points out that, as common carriers, its member lines are by statute under rigid rate filing responsibility, and that by the same statute such responsibility is applicable with equal force to intercoastal contract carriers.

The charters involved in this proceeding may be classified generally as bareboat, time, and gross and net voyage charters.

A bareboat charter transfers for the time being the vessel and control over her navigation and working to the charterer. This charter is a contract for letting the ship, and the relation between the owner and charterer is determined by the law governing the hiring of chattels. Ownership of a vessel may be acquired by purchase or by bareboat charter, and acquirement under the latter method is as complete ownership, during the occasion of the charter, as under the former. It follows that in the case of a bona fide bareboat charter there is no carrier-shipper relationship as respects cargo of the charterer transported in the vessel, and that as to such cargo the bareboat charterer is a private carrier. Extended examination of the charters entitled "Bareboat" entered into between Union Sulphur and Dutton referred to above, and of the affidavits and supporting data and records filed by both of these parties, fails to disclose any ground for determining such charters to be other than as entitled.

Except for the bareboat charters between respondent Union Sulphur and Dutton Lumber Corporation referred to, all intercoastal chartering to cargo owners here involved has been accomplished by charters generally described as time charters and gross and net voyage charters. All these charters are definitely distinguishable from bareboat charters, in that under them the control and management of the vessel or vessel space remains in its owner or other person from whom it is chartered, the charterer using the vessel's service as maintained by the owner or such other person.[2] Under each of these charters the record is that the relationship between the owner or other person from whom chartered and the charterer is without question that of contract carrier and shipper.

We are asked by the carriers regularly engaged in the trade to rigidly enforce tariff provisions of the statute against such charterers as are found to be contract carriers, and to declare unlawful such of their rates for full cargoes as are lower than those of the regular carriers for parcel-lot cargo.

Disposing of the second point first, obviously we cannot attempt to fix minimum rates on this record, because the evidence is insufficient for that purpose. That issue was not contemplated inasmuch as this proceeding was instituted before such authority was granted. As stated, Calmar contends that the lower rates of contract carriers, being based on volume, are in violation of section 14, paragraph Fourth, and section 16 of the Shipping Act, 1916. So far as the record shows, 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 shippers thereof.

[2] Illustrative are provisions that owners shall pay wages of captain, officers, engineers, firemen, and crew; pay for all provisions, captain, deck, engineroom, and other necessary stores; provide gear, and maintenance thereof; cargo to be stowed under master's supervision and direction; stevedores to be appointed by owners; owners to victual pilots and customs officers, charterer paying at agreed meal rate therefor; charterer's liability to cease and determine as soon as cargo aboard; nothing stated in charter to be construed as a demise of vessel.

Under the statute contract carriers must file and observe their rates. The question here is which, if any, of the parties to the various forms of charter contracts is the contract carrier.

In *Intercoastal Investigation, 1935*, 1 U. S. S. B. B., 400, 458, a contract carrier in intercoastal commerce was defined to include "every carrier by water which under a charter, contract, agreement, arrangement, or understanding, operates an entire ship, or some principal part thereof, for the specified purposes of the charterer during a specified term, or for a specified voyage, in consideration of a certain sum of money, generally per unit of time, or weight, or both, or for the whole period or adventure described." In this definition a distinction should be made between a charterer who is a shipper and a charterer who is a carrier. It should not be understood to apply to the latter because a carrier must either own or be the charterer of a vessel to conduct its business, and the provisions of the statute are met when such carrier files and observes its published rates. However, in order to discourage possible abuses of this practice the charter party should be filed with the Commission.

The authorities clearly support the proposition that unless there is a demise of the vessel—a parting with all possession and control by the owner, the latter is a contractor for service and is therefore a contract carrier.

It is true that there are other cases from which it may be inferred that although the owner remains in control of the vessel for the purposes of navigation and the maintenance of the ship in seaworthy condition, for all the purposes of carriage of cargo the charterer is in full possession and control and it is the charterer and not the owner who is the carrier. This doctrine would permit an owner to charter his vessel under a time or voyage charter to a shipper who would then become the carrier—a private carrier of his own cargo. Thus both would escape the regulatory provisions of the statute. These are the customary charters used in the intercoastal trade, and under the doctrine just announced, practically no form of chartering in the trade would be subject to regulation. It is inconceivable that Congress, in subjecting contract carriers to regulation in order to protect the regular lines, meant to exempt from regulation practically all of the carriers which offer the real competition in the trade. The doctrine cannot be accepted, for a carrier is such by virtue of its occupation and not by virtue of the responsibilities it assumes.

We conclude therefore that the owner need not file under the statute if he has divested himself of complete control and possession of the vessel, as for instance under a bareboat charter. But the bareboat charterer must file if he carries cargo of others. We further conclude that under a time or voyage charter to a carrier who has filed its regularly established rates, the owner should file only the charter party with the Commission as a matter of information; but that under a time or voyage charter to a shipper, the owner, if he retains any control or possession of the ship, must file. This last 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.

As noted in this report, the record shows instances in the past of violations of law by certain respondent contract carriers engaged in charter transportation. These violations, not inherent in vessel-load charter transportation as such, consisted of failures to file schedules, or to conform rates or service strictly to schedules filed. Schedule cancellations and new filings since this proceeding was begun indicate that such respondents now have a clear understanding of their status and responsibilities under the statute.

We do not feel called upon to pass on the question of whether the chartering of vessels in the intercoastal trade has resulted in unfair competition to the carriers regularly engaged therein as alleged. But we cannot fail to recognize the demoralizing effects of the practice, and the possible necessity of exercising our minimum rate powers, should a proper case be presented, to prevent a general deterioration of service in the intercoastal trade.

Inasmuch as this investigation is, in many respects, an advisory proceeding no order will be issued except to discontinue the proceeding without prejudice to any subsequent proceeding upon complaint or otherwise involving the same or related issues.

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ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 28th day of July A. D. 1939.

No. 488

IN THE MATTER OF INTERCOASTAL CHARTERS

It appearing, That pursuant to orders of May 24, 1938, and June 7, 1938, this Commission entered upon hearing concerning the lawfulness under the Shipping Act, 1916, as amended, of the intercoastal chartering of vessels and vessel space, charter terms and provisions, charter rates, and charter practices;

It further appearing, That a full investigation of the matters and things involved has been made 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, without prejudice to any subsequent proceeding upon complaint or otherwise involving the same or related issues.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 506

INTERCOASTAL TIME-CHARTER RATE OF MALLORY TRANSPORT LINES, INC.

Submitted May 18, 1939. Decided July 28, 1939

Tariff containing time charter rates found not to be in compliance with tariff reguations and ordered canceled. Proceeding discontinued.

Harold S. Deming and *Herbert M. Statt* for respondent.

Harry S. Brown and *M. G. de Quevedo* for Intercoastal Steamship Freight Association.

H. W. Warley and *Russell T. Mount* for Calmar Steamship Corporation.

Herbert Buckley for A. C. Dutton Lumber Corporation.

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

By schedules filed to become effective November 26, 1938, respondent Mallory Transport Lines, Inc., proposed to establish a time-charter rate of $1.60 per dead weight ton per month for the steamship *Malantic* from Atlantic to Pacific coast ports by way of the Panama Canal. Intercoastal Steamship Freight Association requested rejection of such schedules as not being in compliance with the Intercoastal Shipping Act, 1933, and our Tariff Circular No. 2, or, in the alternative, that the schedules be suspended if accepted for filing. The schedules were placed on file but were suspended until March 26, 1939.

At the hearing it was shown that respondent had time-chartered the *Malantic* from her owner, C. D. Mallory Corporation, and that the schedules concerned were filed pursuant to a subcharter between respondent and Kieckhefer Container Company, a manufacturer of paperboard products, for the purpose of transporting a westbound intercoastal cargo of the latter. It was also shown that both of the foregoing charters were terminated by mutual agreement of the parties shortly after our suspension order was issued.

The examiner's proposed report recommended a finding that Mallory Transport Lines, Inc., is not a common carrier, that C. D. Mallory Corporation, the owner of the *Malantic*, was the common carrier, and that the tariff be stricken from our files. Upon brief and oral argument our attention is called to the fact that C. D. Mallory Corporation is not a party respondent, and it was argued that no finding with respect to that corporation can be made. The question before us is the lawfulness of the tariff under investigation in this proceeding. Our finding herein will make it unnecessary to consider the status of the respondent or the owner. The status of owners and charterers of vessels under the regulatory provisions of the shipping acts is determined in our report *In The Matter of Intercoastal Charters*, decided concurrently herewith. Owners and charterers operating ships in the intercoastal trade will be subject hereafter to the views expressed in that report.

The suspended tariff publishes a time-charter rate on a vessel named, based on the dead weight tonnage of the vessel. It does not publish rates on a commodity or commodities and is in no sense a tariff which is authorized by our rules contained in Tariff Circular No. 2. An order will be entered requiring respondent to cancel the tariff and discontinuing the proceeding.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 28th day of July A. D. 1939.

No. 506

INTERCOASTAL TIME-CHARTER RATE OF MALLORY TRANSPORT LINES, INC.

It appearing, That by order dated November 25, 1938, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until March 26, 1939;

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

It is ordered, That respondent Mallory Transport Lines, Inc., be, and it is hereby, notified and required to cancel its tariff described above, effective on or before September 1, 1939, upon not less than one day's filing and posting in the manner required by law; 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. 484

In the Matter of Agreements 6210, 6210–A, 6210–B, 6210–C, and 6105

Submitted January 18, 1939. Decided August 3, 1939

Basic conference agreement designed to promote stabilization of rates and uniformity of practices approved.

Company transporting cargo in chartered space of vessels of others found to be a common carrier. Agreement approved.

Operating a common and a contract carrier service on the same vessel on the same voyage, and granting to particular shippers by contract rates lower than those charged the general public, found to result in undue preference and prejudice. Agreements permitting such arrangements disapproved, and preference and prejudice ordered removed.

Agreement between common carrier and terminal company whereby a particular shipper is accorded more free time and assessed lower charges than the general public, found to be unduly preferential and prejudicial. Agreement disapproved, and preference and prejudice ordered removed.

Theodore M. Levy for members of Pacific Coastwise Conference.
Alfred A. Hampson for Coastwise Line.
R. R. Morris for Columbia Basin Terminals, Inc.
Stanley Griffiths for James Griffiths & Sons, Inc.
J. C. Strittmatter for Consolidated Olympic Line.
George Herrington for Crown Zellerbach Corporation.

Report of the Commission

By the Commission:

Exceptions were filed by Coastwise Line and James Griffiths & Sons, Inc., to the report proposed by the examiner, and oral argument was had. Crown Zellerbach Corporation was permitted to intervene at the oral argument. The findings recommended by the examiner are adopted herein.

By order dated May 10, 1938, we instituted this investigation on our own motion to determine the lawfulness and propriety of the following agreements submitted for approval pursuant to section 15 of the Shipping Act, 1916. No protests against approval were received, and no one appeared in opposition at the hearing.

Agreement 6210, hereinafter referred to as the basic conference agreement, provides for the functioning of the parties in a cooperative working arrangement under the name Pacific Coastwise Conference. Agreements 6210-A, 6210-B, and 6210-C are supplements to the basic conference agreement. Agreement 6105 is a separate agreement between Coastwise Line, one of the members of the conference, and Columbia Basin Terminals, Inc., which operates dock properties at Portland, Oregon.

Agreement 6210 is designed to promote commerce and to insure the stabilization of rates and uniformity of practices between ports of California, Oregon, and Washington. The provisions of the agreement indicate the intention of the parties to carry out the provisions of the Shipping Act, 1916, as amended, and the record contains no evidence that its provisions are unfair, detrimental to the commerce of the United States, or unlawful. No. 6210 will be approved.

Agreement 6210-A permits Consolidated Olympic Line, a member of the conference, to use the vessels of James Griffiths & Sons, Inc., a nonconference carrier, for the transportation of the former's cargo within the scope of the basic agreement, such cargo to "move under bills of lading of said Consolidated Olympic Line," and to be booked, handled, and transported strictly in accordance with the agreed rates, divisions, charges, rules, and regulations of the conference. Consolidated owns no vessels. It contracts with different vessel owners, of which Griffiths is one, for the use of vessel space. Some of the salient provisions of the contract are as follows: Consolidated acts as agent for the vessel, solicits and receives the cargo, collects freight, takes care of all handling details, receives a specified commission from the vessel owner for the different types of cargo, obtains the benefits of the owner's protection and indemnity insurance, assumes and pays all claims for cargo damage, except where the damage is caused by extraordinary hazards, and does the contracting for stevedoring. Consolidated ascertains from the owner how much space there will be on a particular vessel after the owner's commitments have been cared for, and then goes into the market and solicits against the space. There is no assurance that the desired amount of cargo will be secured.

At the top of the first page of the bill of lading form used under this arrangement appear the words: "CONSOLIDATED-OLYMPIC LINE"; three lines below: "Received by Consolidated-Olympic Line, as Carrier's Agents"; and signed at the bottom: "Consolidated-Olympic Line, as Agents for Carrier." Consolidated's witness testified that his company handles the cargo from start to finish; assumes all the rights and obligations of a common carrier; and considers itself a common carrier. Griffiths' witness testified that under the arrangement its vessels do the physical carrying but that the company is not a common carrier.

The contract between Consolidated and the various vessel owners, and also the bill of lading form used by Consolidated, are confusing. They also are inconsistent with the contentions of the parties that Consolidated is a common carrier. We conclude from all the facts that Consolidated is a common carrier. No. 6210–A will be approved, but in order to remove the conflict outlined herein, Consolidated should eliminate from the bill of lading and from the vessel-space contract all reference to itself as agent.

Agreement 6210–B is an agreement between James Griffiths & Sons, Inc., and the members of the conference, whereby Griffiths agrees that all cargo handled on its vessels, except bulk salt, lumber and lumber products, barley in sacks, millfeed in lots of 100 tons or more and flour booked and carried in connection therewith, and all cargo transported to or from Tacoma Smelter or Selby Smelter, shall be booked through a member line of the conference and transported strictly in accordance with the rates, divisions, charges, rules, and regulations of such line. On the excepted commodities Griffiths is permitted to charge its own rates, except that its rates on barley in sacks shall in no case be less by more than 25 cents per 2,000 pounds than the corresponding rates of the conference, and that in the event the present conference rates on millfeed and flour are increased during the life of the agreement, Griffiths shall simultaneously make identical increases in its rates on those commodities.

Notwithstanding Griffiths' witness testified that his company has never operated as a common carrier in the coastwise trade, it has filed tariffs with us covering various commodities. Furthermore, Griffiths' witness stated that "it has been largely or almost entirely a contract proposition." The examiner recommended that we find that Griffiths is a common carrier. Such recommendation is accepted by Griffiths in its exceptions. The terms of the agreement under which Griffiths 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. In its exceptions Griffiths states that effective September 21, 1938, as required by the amendments to the Intercoastal Shipping Act, 1933, it filed actual tariff rates in place of maximum rates, and expresses willingness to amend the agreement. No. 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 it, if submitted for approval, will be given consideration.

No. 6210–C is a supplemental agreement between Coastwise Line, a member of the conference, and the other members of the conference, under which all of Coastwise Line's operation in the performance of its contract with Crown Zellerbach Corporation and the handling by Columbia Basin Terminals, Inc., of the cargo transported under such contract, which is more fully described hereinafter, are excepted from the provisions of the basic conference agreement. Crown Zellerbach, a large manufacturer of paper and paper products with plants in Washington and Oregon, ships approximately 225,000 tons annually to California, which is its largest individual market. In 1920 Pacific Steamship Company, a coastwise carrier, contracted to transport all of Crown Zellerbach's products to California, but the cessation of that carrier's operations in October 1936 left Crown Zellerbach without adequate transportation service. Thereupon Crown Zellerbach was instrumental in establishing Coastwise Line to take care of its transportation needs.

The contract between Crown Zellerbach and Coastwise states that the "primary object and purpose of this agreement is to provide for contract carriage by the carrier as a contract carrier of the shipper's cargo." Coastwise is permitted to offer unlimited common-carrier service north-bound, and to transport at least 250 tons per vessel of common-carrier cargo south-bound. Coastwise pays all charges and expenses with some exceptions. Crown Zellerbach pays $4.75 per net ton on all its south-bound cargo and the "regular traffic rates" on north-bound cargo. If the basic conference agreement is approved, Coastwise would assess on newsprint paper transported for the general public the conference carload rates ranging from 28 to 50 cents per 100 pounds. Though Crown Zellerbach has no stock interest in Coastwise, it guarantees the latter against all losses, and receives one-half the profits. The contract also provides for loans from Crown Zellerbach to Coastwise for working capital and for the purchase of vessels.

Coastwise's managing director testified that no other paper shippers have sought a service similar to that given Crown Zellerbach; that there are current shipments by other such concerns amounting to about 15 to 25 tons several times a month; that there is always sufficient space for general cargo south-bound; and that the public is satisfied. There is no evidence that Coastwise, if requested, would make the same type of contract with other shippers of paper and paper products, although at the oral argument counsel for Coastwise stated that "if there were a competitor of Crown Zellerbach manufacturing paper in the Oregon area—and there is—and having a comparable transportation problem and willing to make the same arrangement with Coastwise Line with respect to furnishing capital and guaranteeing against loss, Coastwise Line would be very happy to enter into that arrangement."

Assuming the correctness of the foregoing statement, it would thus appear that only one competitor is in a position to contract with Coastwise on the same basis as Crown Zellerbach. The same principle should apply in this case as in *Intercoastal Rates of American-Hawaiian Steamship Company et al.*, 1 U. S. S. B. B. 349, 351, where our predecessor said:

> Rates based on a minimum weight so large as to be available only to one shipper are not in consonance with section 16 of the Shipping Act, 1916, which makes it unlawful for common carriers by water to make or give any undue or unreasonable preference or advantage to any particular person or description of traffic in any respect whatsoever.

The examiner recommended that we find that the dual operation as a common and as a contract carrier resulted in undue preference and prejudice. It is now 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 Coastwise and Crown Zellerbach is the basis of the dual operation. Without a review of that contract the questions here involved cannot be determined. Furthermore, it should be pointed out that counsel for Crown Zellerbach was in attendance at the hearing but did not see fit to participate therein, and the traffic manager of Crown Zellerbach was one of the principal witnesses. Every opportunity was given to present whatever testimony the parties thought advisable.

It is contended that no provision of the law permits us to condemn dual operation as a common and as a contract carrier on the same vessel on the same voyage, and that even if such power does exist, this case is not one where it should be exercised. Suffice it to say that although section 16 of the Shipping Act, 1916, does not apply to contract carriers in the coastwise trade, nevertheless, where a carrier subject to our jurisdiction attempts to operate in the above-described manner, we may order the removal of any violation of that section resulting from the operation of the contract portion. Compare *West-Bound Intercoastal Rates to Vancouver*, 1 U. S. M. C. 770, 773, 774. We find that the facts of this case do result in undue preference and prejudice, and consequently, agreement 6210-C will not be approved. See *Southern Pacific Terminal Co.* v. *I. C. C.*, 219 U. S. 498. Coastwise will be required to remove the violation thus found to exist.

Agreement 6105, between Coastwise and Columbia Basin Terminals, Inc., referred to above, requires the latter to acquire, maintain, and operate necessary wharf and terminal facilities for the former's use at Portland, Oreg., Coastwise to use such properties for all cargo moved by it to and from Portland, with certain exceptions. The agreement provides, among other things, that Columbia shall not be restricted in its right to handle other available business, subject, however, to its obligations to Coastwise; that the charges to others may be more or less than those to Coastwise, that with the exception of Crown Zellerbach's shipments, which are allowed eight days, five days free time are allowed on all cargo after unloading from northbound vessels or after delivery to the dock properties for loading on southbound vessels; that general cargo, except that of Crown Zellerbach, is assessed 2 cents a ton per day after free time; that against Crown Zellerbach there is assessed 25 cents a ton for 30 days on newsprint, "wrappings and bags," and 40 cents a ton for 30 days on "toilet and towels."

It was explained that the difference in free time arises from the nature and quantity of cargo handled by Coastwise; that general cargo moves in comparatively small quantities, which makes the five-day free time sufficient to meet the reasonable requirements of those shippers; that Crown Zellerbach's products move in large quantities, as much as 8,000 tons being stored at a time; and that a longer period is required for such accumulation. Although the agreement embraces "storage charges" on all cargo transported by Coastwise, it was testified that the 2-cent charge against general cargo is really for demurrage while the charge against Crown Zellerbach is for storage; that the latter's cargo not moved within the free time is usually stored with Columbia; and that 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. We find that Agreement 6105 results in undue preference and prejudice. It will not be approved.

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 3rd day of August A. D. 1939

No. 484

In the Matter of Agreements 6210, 6210–A, 6210–B, 6210–C, and 6105

It appearing, That by its order herein dated May 10, 1938, the Commission entered upon a hearing concerning the lawfulness and propriety of agreements 6210, 6210–A, 6210–B, 6210–C, and 6105;

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 agreements 6210 and 6210–A be, and they are hereby, approved;

It is further ordered, That agreements 6210–B, 6210–C, and 6105 be, and they are hereby, disapproved, without prejudice to the right of the parties under agreement 6210–B to submit for approval a new agreement not inconsistent with the findings herein; and

It is further ordered, That Coastwise Line and Columbia Basin Terminals, Inc., be, and they are hereby, notified and required to cease and desist on or before September 18, 1939, from practices herein found to be unduly preferential and prejudicial.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 487

F. A. Smith & Co., Ltd.

v.

Matson Navigation Company

Submitted February 24, 1939. Decided August 3, 1939

Contract rates and minimum quantity provisions on lumber from the Pacific Coast of the United States to the Hawaiian Islands found unduly prejudicial but not otherwise unlawful. Contract rates ordered canceled, and prejudicial minimum quantity provisions ordered removed.

F. A. Smith, for complainant.

Frank E. Thompson, *Herman Phleger*, and *James S. Moore* for defendant.

Report of the Commission

By the Commission:

Exceptions were filed by complainant and defendant to the report proposed by the examiner, and each replied. The findings recommended by the examiner, with certain exceptions, are adopted herein.

By complaint filed May 21, 1938, complainant, a lumber dealer at Honolulu, T. H., alleges that defendant's rates on lumber shipped from the United States Pacific coast to the Hawaiian Islands since 1922 were, and are, unduly or unreasonably preferential, prejudicial, or disadvantageous in violation of section 16 of the Shipping Act, 1916, and that they are "too high," and "disproportionate" with rates charged by other lines on lumber moving from the Pacific coast to the Atlantic coast and to foreign ports.

Defendant's practice of computing quantities shipped on the basis of gross measurement rather than the net measurement of manufactured lumber is also assailed. Lawful rates for the future and reparation are sought. Rates will be stated in amounts per 1,000 feet gross board measure. The case was heard in Honolulu, T. H., and San Francisco, Calif.

Defendant has served the Hawaiian Islands from the Pacific northwest for more than 30 years. Its lumber-carrying operations embrace a merchandising service and a lumber-carrying service. The merchandise vessels are large, move on a three-week schedule from San Francisco, pick up cargo, including lumber, at Portland, Seattle, and Tacoma, and proceed to the Hawaiian Islands where the cargo is discharged at four or five ports where Hawaiian products, such as sugar and pineapple, are loaded for the return trip to San Francisco. The lumber vessels are smaller, move only when cargo offerings justify sailing, call at numerous Pacific coast ports and lumber mills for lumber, discharge at about 14 Hawaiian ports, most of which cannot be served by the large vessels, and take on Hawaiian products for delivery at San Francisco. It is testified that the distance from San Francisco to the Hawaiian Islands via the Pacific northwest ports is about 3,000 miles, and that there is an additional 200 miles steaming distance in making deliveries at Island outports.

Prior to August 1, 1928, defendant maintained an any-quantity rate of $10.00 applicable on lumber from the Pacific coast to the Hawaiian Islands. Between August 1, 1928, and September 20, 1938, it maintained tariff rates and unpublished contract rates. On August 1, 1928, the contract rates were $9.50, minimum 500,000 feet, and $11.00 for quantities less than 500,000 feet. The tariff rates were $11.00, minimum 500,000 feet, and $12.50 for quantities less than the minimum. Effective August 1, 1937, each of the foregoing rates was increased $1.00. The complaint attacks all of the latter rates, but the issues center mainly on the contract rates which, it is alleged, prefer large lumber dealers to the injury of complainant, a small dealer. Since the hearing defendant's contract and noncontract rates were filed and became effective September 21, 1938.

The pertinent provisions of the contract are: (1) shipper agrees to ship all lumber to Hawaii by vessels of defendant and not less than 1,500,000 feet of lumber each year; (2) shipper shall, within 30 days after the commencement of each year, notify defendant of the estimated amount of lumber to be shipped during that year; (3) defendant undertakes to transport all lumber required by shipper and shall, upon reasonable notice, furnish the space required therefor; (4) defendant shall charge the rates named in the contract which are subject to the provisions of the tariff filed with this Commission; and (5) if the shipper fails to ship at least 1,500,000 board feet during any single calendar year, the noncontract rate applies on the amount shipped. It is testified that defendant's contract

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system is well known in the lumber trade, and is open to all shippers, including complainant, if they can comply with the terms. There were only six contract shippers in this trade at the time of hearing. Among those not shipping under contracts are five or six dealers which maintain plants and equipment, and perhaps 12 firms or individuals who do not carry lumber in stock. During the year 1937, 91 percent of the lumber transported to the Hawaiian Islands by defendant moved under contract. During the past several years, contract shippers have been required to file bonds for the difference between the contract and tariff charges.

In support of its allegations of undue preference and prejudice, complainant points out that the small lumber shipper is precluded from obtaining defendant's lower rates enjoyed by large shippers by virtue of the 1,500,000-foot annual quantity requirement, and by the 500,000-foot minimum, stating it can comply with neither requirement. Complainant asserts that the difference of $1.50 between the contract and noncontract rates on quantities less than the 500,000 minimum is excessive. For example, on a representative shipment of 100,000 feet, the contract shipper pays a rate of $12.00 amounting to a freight charge of $1,200.00, whereas complainant is charged a rate of $13.50 or $1,350.00, making a difference in charges of $150 for transportation of the same quantity of lumber. During the years 1936 and 1937, complainant shipped 475,375 and 320,789 feet, respectively, averaging about 34,615 feet per shipment. In 1929 complainant shipped 2,884,064 feet at which time it was a contract shipper. Complainant states that it lost competitive bids to the large shippers due to the difference between the contract and tariff rates, but no specific instance of such loss is shown. Complainant also points to the fact that defendant has practically no competition in the trade under consideration. The record shows there is an occasional shipment by an industrial or tramp carrier owned or controlled by lumber companies. One such vessel carried lumber to the Hawaiian Islands in 1937.

Defendant contends that the contract-rate system is necessary to maintain adequate service and stable rates on lumber to Hawaii. Prior to the inauguration of contract rates in 1928, it operated only three small lumber carriers of 3,700 tons deadweight cargo capacity. Increase of volume led to the necessity of acquiring additional vessels. At the same time industrial carriers were bidding on lumber at cut rates. Defendant held numerous conferences with lumber shippers both in California and in the Hawaiian Islands in an endeavor to perfect a plan whereby it could be assured of sufficient lumber to warrant the purchase of new ships and at the same time maintain a rate satisfactory to the trade as well as productive of adequate revenue. Complainant participated in these conferences and originally approved the contract-rate system and the quantity requirements which grew out of these conferences. Relying upon the contracts, defendant invested about $800,000 in new equipment and retired about $275,000 of existing equipment.

Defendant points to the fact that there are essential differences in the transportation services performed under the contract and non-contract rates, and to the differences in costs of service under the two systems. Parcel lots of lumber such as complainant ships move on merchandise ships sailing on schedule. It is not clear from the record whether shipments under contract rates move partly via merchandise vessels or are confined strictly to the lumber carriers. Witness for defendant stated that the contract lumber cargo "moves on the lumber carriers almost without exception." Where a lumber vessel loads 500,000 feet or more it is generally taken on at one mill in stock sizes and does not involve sorting at destination. On the other hand, small parcels are brought to the merchandise dock in drays or cars, have a tendency to congest the facilities, and must be handled by sizes and by marks both at origin and destination. While exact cost figures are not produced, there is no doubt that the merchandise operations are more costly to the carrier. A typical shipment made by complainant consisted of 57,556 feet covered by six bills of lading and involved 33 lumber items of less than 2,000 feet each, and had to be segregated and delivered separately. This necessitated sorting and clerical work not required as to contract quantities moving on lumber carriers.

Defendant urges that since complainant is unable to show any specific instance where the lower contract rates have injured its business and inasmuch as the difference in rates reflects the difference in the cost and value of the services rendered, there is no ground upon which to condemn the assailed rates as being unduly prejudicial. This does not necessarily follow. Quantity provisions which can be met by only a few shippers have been declared to be in violation of section 16 of the act. *Intercoastal Rates of American-Hawaiian S. S. Co.*, 1 U. S. S. B. B. 349, 351; *Intercoastal Rate on Silica Sand from Balto.*, 1 U. S. S. B. B. 373, 375; and *Transportation of Lumber through Panama Canal*, 1 U. S. M. C. 646. It is also apparent that defendant contract system tends to create a monopoly. In *Intercoastal Rate on Silica Sand from Baltimore, Md., supra*, 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 is no longer apparent in the light of the Intercoastal Shipping Act, 1933. The same reasoning applies here because the provisions of the Intercoastal Shipping Act now apply to this traffic. Furthermore our control of rates has been increased by the minimum-rate power which should lend a stabilizing influence to the rate structure of the common carriers engaged in the trade. Upon exceptions, however, defendant points out that its only competition comes from unregulated carriers. The record shows that the actual competition from that source is negligible. As to a possible threat from that quarter, it is noteworthy that witness for defendant admitted that its competitors got "very little" return cargo from the Islands, which fact, of course, operates to discourage competition. We therefore fail to see the necessity for contract rates on lumber in this trade.

There remains for consideration the propriety of the 500,000 feet minimum per shipment. Minimum weights or quantities should be fixed at a figure that will best serve the general public as a whole and at the same time insure economic handling and carriage of cargo by the carriers. Prior to 1928 defendant's rates were on an any-quantity basis. Complainant testified that he could find no instance in coastwise trades where a rate differential applied on lumber based on quantity. In the intercoastal lumber trade the rate is 50 cents higher for quantities less than 12,000 feet, but that minimum is fixed with reference to railroad competition. As heretofore stated, the evidence indicates that complainant, a representative noncontract shipper, averaged about 34,615 feet per shipment during 1936 and 1937; there is no showing of the average quantities shipped by all shippers. Complainant would be satisfied with a minimum of 50,000 feet. Defendant stresses the fact that the minimum of 500,000 feet was determined in 1928 after consultation with the trade, and contends that since one-half of the regular dealers can meet this minimum it is adapted to the trade. It is significant, however, that this one-half ships 91 percent of the lumber carried by defendant. The fact remains that out of approximately 24 firms or individuals engaged in the lumber business in Hawaii, only six can meet the minimum provision. What may have been suitable to the trade ten years ago does not necessarily remain so today. One development since then, which should not be overlooked, is the fact that complainant, one of the original contract shippers, cannot meet a minimum above 50,000 feet now. Incidentally, defendant publishes no minimum provision in connection with any other commodity moving in volume, such as cement. It is evident, therefore, and we so conclude, that the minimum provision of 500,000 feet is excessive and discriminatory. The record furnishes no adequate basis upon which to prescribe a reasonable minimum for the future.

Complainant's evidence of unreasonableness of the assailed rates consists of various comparisons with lumber rates in the Pacific coast coastwise and intercoastal trades. The dissimilarities of transportation and competitive conditions in the respective trades render these comparisons of little value. Neither is complainant's attack on defendant's practice of charging rates based on gross measurement supported by evidence of unreasonableness. Defendant takes the position that lumber is bought and sold on a gross-measurement basis and that surfaced lumber is more valuable and more susceptible to damage, requires greater care in stowage and handling, and that the use of the gross-measurement basis is a convenient means of arriving at the higher rate which is justified by these considerations.

We find that defendant's contract rates are unduly and unreasonably preferential of and advantageous to lumber shipped under contracts and the shippers thereof, and unduly and unreasonably prejudicial and disadvantageous to lumber moving over the defendant's line which is not shipped under contract, and the shippers of such lumber in violation of section 16 of the Shipping Act, 1916.

We further find that the minimum of 500,000 feet is unduly preferential and prejudicial in violation of section 16.

We further find that the assailed rates and practices have not been shown to be otherwise unlawful.

ORDER

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

No. 487

F. A. SMITH & CO., LTD.

v.

MATSON NAVIGATION COMPANY

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the 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 above-named defendant be, and it is hereby, notified and required to cancel its contract rates for the transportation of lumber from the Pacific coast of the United States to the Hawaiian Islands, effective on or before September 12, 1939, upon not less than 10 days' filing and posting in the manner required by law;

It is further ordered, That the above-named defendant be, and it is hereby, notified and required to cease and desist, on or before September 12, 1939, and thereafter to abstain from publishing, demanding, or collecting for the transportation of lumber from the Pacific coast of the United States to the Hawaiian Islands, rates which are lower for quantities of 500,000 feet gross board measure or more per shipment than those contemporaneously in effect on quantities less than 500,000 feet gross board measure per shipment.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 528

East-Bound Intercoastal Brandy and Champagne Rates

Submitted July 24, 1939. Decided September 12, 1939

Proposed east-bound intercoastal rates on brandy and champagne found justified. Suspension order vacated and proceeding discontinued.

Harold S. Deming, *Chalmers G. Graham*, *Otis N. Shepard*, *A. L. Burbank*, *E. J. Martin*, and *David Dysart* for Shepard Steamship Company.

M. G. de Quevedo, *Harry S. Brown*, *Parker McCollester*, *Clement C. Rinehart*, *George E. Talmage, Jr.*, and *J. A. Stumpf* for members of Intercoastal Steamship Freight Association, except Isthmian Steamship Company, and for American-Hawaiian Steamship Company, Inc.

A. G. Frericks, *Louis R. Gomberg*, *A. R. Covell*, *Henry J. Buckman*, and *Charles R. Seal* for interveners.

Report of the Commission

By the Commission:

No exceptions were filed to the examiner's proposed report, the findings in which are hereby adopted.

By schedules filed to become effective May 14, 1939, Shepard Steamship Company proposed to reduce its east-bound intercoastal carload rate on brandy from $1.10 to 90 cents per 100 pounds, minimum weight 24,000 pounds, no reduction being made in the champagne rate. Effective the same day, Calmar Steamship Corporation in its tariff SB–I No. 6, and parties to tariff SB–I No. 7 of Alternate Agent Joseph A. Wells, proposed to reduce their carload rates in the same trade on champagne and brandy from $1.49 to $1.14 per 100 pounds, minimum weight 24,000 pounds. Member lines of Intercoastal Steamship Freight Association protested the Shepard reduction and requested its suspension. Though making no formal protest, Shepard requested suspension of the Calmar and the Wells tariffs if its own schedules were suspended. All schedules involved were suspended to September 14, 1939.

Except for one short period, Shepard's brandy rate steadily increased from $2.75 per barrel (55 cents per 100 pounds) on June 1, 1933, until the present reduction was made. The rates of the other respondents also increased during the same period, ranging from 3 to 120 percent higher than the Shepard rate. The suspended schedules of all respondents were filed upon the announcement that the east-bound all-rail transcontinental rate would be reduced from $2.20 to $2 per 100 pounds and the rail-water rate from $2.20 to $1.85 per 100 pounds.

The east-bound brandy movement by water has not been heavy, the bulk of it being handled by Shepard as follows: 1934, 41 tons; 1935, 278 tons; 1936, 1,413 tons; 1937, 1,278 tons; and 1938, 892 tons. Brandy weighs 500 pounds per barrel (460 pounds net), stows 60 cubic feet to the ton of 2,000 pounds, and the value thereof averages approximately $35 per barrel or about $152 per ton. Shepard's costs for handling brandy total $8.12 per ton, apportioned as follows: Transportation from Stockton, Calif., to ship's side, $2.56½; loading, $1.62½; loading terminal, 45 cents; discharging terminal, 74 cents; stevedoring and discharging, $1.30; agency fee, $1.35; and claims, 9 cents. Based upon the suspended rate, there remains the sum of $9.88 to apply against the cost of transportation. This revenue, it was testified, is "quite well above the average" on other commodities transported. The daily operating cost of a Shepard vessel, exclusive of port charges and stevedoring, approximates $450, or a total of approximately $13,500 for an east-bound voyage of 30 days. The 90-cent rate would net approximately $55,000 on a full cargo of 7,000 measurement tons. With its east-bound vessels operating 96 to 98 percent fully loaded, Shepard's 1938 average net for all commodities was $20,000 per voyage. We find that the 90-cent rate has been justified.

Although there is no testimony whatever as to whether the $1.14 rate of the other respondents 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. We find that the $1.14 rate has been justified.

The conclusions stated herein are based on the record in this proceeding, and are not to be regarded as limiting any order which may be issued in Docket 514, Intercoastal Rate Structure, a general investigation of rates and practices in the intercoastal trade, which is now pending before the Commission.

Subject to the above limitation, an order will be entered vacating the order of suspension and discontinuing the proceeding.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 12th day of September A. D. 1939.

No. 528

EAST-BOUND INTERCOASTAL BRANDY AND CHAMPAGNE RATES

It appearing, That by order dated May 11, 1939, 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 September 14, 1939;

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 findings thereon, which report is hereby referred to and made a part hereof, and has found that the schedules under suspension have been justified;

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 as of this date, and that this proceeding be, and it is hereby, discontinued, without prejudice, however, to any order which may be issued in Docket 514, Intercoastal Rate Structure, now pending before the Commission.

By the Commission.

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

Secretary.

UNITED STATES MARITIME COMMISSION

No. 536

West-bound Carload and Less-Than-Carload Rates

Submitted July 6, 1939. Decided October 12, 1939

West-bound intercoastal reductions on classes 1 to A, inclusive, and on higher rated articles to $2 for transportation in ordinary stowage, and to $3 on commodities transported under refrigeration, and reductions in commodity rates based on the level of proposed class rates, found not justified. Reductions in rates to level of carload rates from New York via water-rail routes, and other adjustments incidental theerto, except reductions in commodity rates based on proposed class rates, found justified.

M. G. de Quevedo, *H. S. Brown*, and *W. N. Carney* for respondents, members of Intercoastal Steamship Freight Association; *Parker McCollester* and *J. H. Stumpf* for respondent American-Hawaiian Steamship Company.

R. H. Specker for Luckenbach Gulf Steamship Co., Inc., and *H. J. Niemann* for Inland Waterways Corporation, interveners.

Rene A. Stiegler for Board of Commissioners of the Port of New Orleans, New Orleans Joint Traffic Bureau and Mississippi Valley Association; and *R. M. Nielson* for Western Shade Cloth Co. of California, and Wm. Volker & Co., Inc., of Washington, and associated companies, protestants.

Report of the Commission

By the Commission:

Schedules of Calmar Steamship Corporation and of Alternate Agent Joseph A. Wells, published on behalf of American-Hawaiian Steamship Company and other intercoastal all-water carriers, and filed to become effective June 15, 1939, propose reductions in less-than-carload and any-quantity commodity rates to $2 and lower, and in rates applicable to classes 1, 2, 3, 4, 5, and A to $2 on commodities transported in ordinary stowage, and to $3 on commodities requiring refrigeration. Westbound transportation only is involved. Upon protest of interested persons the operation of the schedules was suspended until October 15, 1939, pending investigation as to their lawfulness. Luckenbach Gulf Steamship Company, Inc., and Inland Waterway Corporation intervened at the hearing. The filing of briefs and issuance of a proposed report have been waived. Rates are stated in cents, or in dollars and cents, per 100 pounds.

Respondents state that the necessity for reductions in rates on less-than-carload traffic has existed for several years. Prior to 1933 the difference between carload and less-than-carload rates, hereinafter called the spread, was approximately 50 cents. An upward general rate adjustment in 1933, with larger increases in less-than-carload rates, and further increases in 1935, widened the spread materially. For some time the effect of these increases, made primarily to obtain additional revenue, was difficult to ascertain, but in 1937 it became apparent that less-than-carload rates were producing unfavorable results. Carload shipments, exclusive of iron and steel articles, passenger automobiles, and trucks, moving westbound during March, April, and May 1936, were 23 percent greater than during the same three-month period in 1937. The increase in less-than-carload traffic was less than one-half of one percent, but shipments of professional consolidators, hereinafter called forwarders, via respondents' vessels increased 104 percent. Competition also exists through the use by forwarders of all-rail routes and also water-rail routes from the Atlantic seaboard. In December 1938 a committee of the lines appointed to study the situation recommended reductions in all less-than-carload and any-quantity commodity rates to the level of the carload rate via water-rail routes. Action upon this recommendation was deferred, but upon publication by transcontinental railroads on traffic from Chicago, and by carriers operating water-rail routes from Atlantic seaboard ports effective on June 15, 1939, of an all-commodity rate of $2.75, immediate action was deemed imperative. A special committee then appointed, reaffirmed the recommendation of the earlier committee, and in addition recommended the specific reductions in class rates involved.

The schedules involve approximately 540 rate changes. In addition to reductions in less-than-carload and any-quantity rates to the level of the water-rail carload rates, which level is also charged by transcontinental railroads from Chicago, reductions in carload and less-than-carload commodity rates are proposed in instances where such rates are now higher than $2 or higher than the proposed less-than-carload commodity rates; in a few instances carload rates are also increased. Some carload rates are changed to an any-quantity basis; in 42 instances such rates are initially established. Only 7 of the commodities thus affected have moved in carload quantities during recent years. Special adjustments became necessary when a spread of less than 10 cents between carload and less-than-carload rates would have resulted. In other instances, where there was a carload commodity rate in respondents' tariffs but only a class rate for small lots and the water-rail carload rate was less than the applicable class rate, a less-than-carload commodity rate equal to the water-rail carload commodity rate was established. The formula used also results in the cancellation of alternate carload minima and some released valuation rates. Many of the reductions in commodity rates are only a few cents, but there are some substantial reductions. The following tabulation is illustrative of the larger reductions, and also shows the competitive forwarder rate:

Commodity	Rates of respondents						Forwarder rate	
	Present			Proposed			All-rail	Water-rail
	C. L.	L. C. L.	A. Q.	C. L.	L. C. L.	A. Q.		
Horns or sound warning equipment			$3.30			$1.67		$2.15
Oil of mirbane	$2.05	$2.85				1.49	$2.25	2.15
Candy and confectionery			1.93			1.49		2.15
Magneto points			3.25			1.78	2.25	2.15
Automobile shock absorbers			1.75			1.43		2.15
Motortruck seat cabs	2.31½					1.54		2.15
Radiator and other automobile ornaments			3.25			1.67		2.15
Shoe trees		2.57			$2.00		[1] 2.25 [2] 3.13	

[1] From Chicago.
[2] From Pittsburgh.

The following is illustrative of class-rate reductions: On auto-parking indicators originating at Buffalo, N. Y., the first-class all-water rate was $4.40. The first-class rail rate from Buffalo to New York, N. Y., is $1. The forwarder rate from Buffalo to all Pacific coast cities is $3.13. Respondents' proposed rate is $2. Similar situations exist in respect to commodities rated lower than first class. On traffic from Cleveland, Columbus, Cincinnati, Akron, and Youngstown, Ohio, rates to Atlantic seaboard are higher than from Buffalo. Forwarder rates from such points all-rail to the Pacific coast are lower than from Buffalo, all-commodity rates available in combination with all-rail carload rates from Chicago lower than from Buffalo being a factor in their computation.

The establishment of $2 as a maximum on both classes and commodities will also result in large reductions on articles concerning which shippers have requested reductions. The following are illustrative:

Commodity	Present rate	Proposed rate
Artificial sun lamps	$4.63½	$2.00
Musical instrument cases	6.50	2.00
Polishing cloths	5.40	2.00
Cake ornaments	[1] 6.60	2.00
Cushions and pillows	5.78	2.00

[1] Class rate.

The general practice of the forwarder is to consolidate numerous small lots of merchandise into one shipment of a carload quantity, which is then tendered to a carrier for transportation at the published carload rate. The forwarder is both the consignor and consignee. At destination the shipment is segregated by the forwarder, who delivers each individual lot to the person for whom it is intended. The rate which a forwarder charges is sufficiently higher than the carload rate to cover expense of solicitation, assembling, segregation, delivery, accounting, and other incidental costs. It is, however, lower than the applicable less-than-carload rate published by the carriers. The forwarder's charge includes insurance on the goods transported and, in many instances, store door pick-up and delivery services. Respondents submit the following to illustrate the method used by representative forwarders in quoting rates to Pacific coast destinations via all-rail routes from Chicago and also via water-rail routes from Atlantic seaboard ports:

Rates on all-rail traffic from Chicago, Ill.

RAIL RATE—

On commodities (straight carloads) named in Agent Kipp's I. C. C. 1417 and 1418 from group D territory at—	*Forwarder rate*
$1.30 or less, minimum 70,000 pounds or less	$2.00
1.31 to $1.55, minimum 60,000 pounds or less	2.25
1.56 to 1.85, minimum 60,000 pounds or less	2.55
1.86 to 2.60, minimum 40,000 pounds or less	3.30
2.61 to 3.00, minimum 30,000 pounds or less	[1] 3.70

[1] Applies only on commodities rated first, second, or third class; the charge on fourth class is $3.32.

Rates from Atlantic seaboard via water-rail routes

WATER-RAIL RATE—

On commodities named in Agent Kipp's I. C. C. 1417 taking group A-2 solid carload rates of—	*Forwarder rate*
$1.74 or lower, minimum 50,000 pounds or less	$2.15
1.75 to $1.93, minimum 40,000 pounds or less	2.50
1.94 to 2.22, minimum 36,000 pounds or less	2.60
2.23 to 2.97, minimum 24,000 pounds or less	3.30
2.98 to 3.08, minimum 18,000 pounds or less	3.50

On shipments of forwarders routed via respondents' vessels, the charge of the forwarder, which in this instance does not include marine insurance or pick-up or delivery service, range from 2 cents to $1.00 higher than the carload rate, depending upon the spread.

Practices of forwarders, it is stated, are not confined to quoting rates in the manner shown. They sometimes offer to particular shippers a special rate concession on specific commodities, or special services not accorded to others, in order that they may control a volume of business for use as a nucleus with which to consolidate other merchandise. Respondents state that because of these special inducements their attempts in the past to adjust individual rates have not resulted in the desired increase in traffic. Forwarder service also appears particularly attractive to shippers of small lots because they are relieved of all responsibility in the transfer of shipments between connecting carriers and one freight bill covers the entire transportation service; also because of stoppage in transit privileges, a collection service on c. o. d. shipments and a saving of incidental terminal or port costs if all-water routes are used. Forwarder operations are also aided by liberal mixing rules in published tariffs. The reductions involved were published in an effort to meet the forwarder competition and to reestablish direct carrier-shipper contact which they formerly enjoyed. The importance of this class of traffic to individual respondents varies considerably. For instance, Luckenbach Gulf Steamship Company states its less-than-carload freight has not exceeded 3 percent of its total traffic, but American-Hawaiian states that its carryings have ranged from 16 to 40 percent, and that this class of traffic has produced 40 percent of its revenue. Individual respondents other than those named were not represented.

Respondents contend that irrespective of the forwarder competition their reductions are fully warranted. While there exists competition between all-rail carriers and respondents in respect to traffic originating in central territory and points east of Chicago, the competition of water-rail routes is said to be much more keen due to the shorter time in transit which attracts a considerable volume of less-than-carload traffic consigned to retail stores that do not carry a large stock of merchandise. Rates via such routes also include marine insurance and, in some instances, store-door delivery. On shipments via respondents' vessels, the cost of marine insurance alone is said to average in excess of 12 cents per 100 pounds. Even though such delivery is not included in the water-rail rate, charges for drayage from railroad terminals to consignee's place of business, particularly at Los Angeles, to which point the movement of less-than-carload traffic is heaviest, is less than from steamship piers at

Los Angeles Harbor. Drayage, on classes 1 to 4, inclusive, from piers to some points in the Los Angeles business district, when shipped in quantities less than 2,000 pounds, range from 42 to 46 cents; on shipments from 2,000 to 4,000 pounds charges range from 27 to 38 cents. The majority of the less-than-carload shipments would come within these weight groupings.

Protestants Wm. Volker & Company, Inc., of the State of Washington, and associated companies, wholesalers and jobbers of house furnishings in various Pacific coast cities contend that any reduction, or elimination of, the spread on merchandise which they handle will result in a 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 *Ames Harris Neville Co. v. American-Hawaiian Steamship Company*, 1 U. S. M. C. 765, we upheld the establishment of any-quantity rates on cotton piece goods and cotton factory products although similar objections were interposed by dealers, jobbers, and wholesalers. The principles underlying that decision are applicable here.

Other protestants have no objection to reductions per se, but they contend that because shippers who now use Gulf ports compete with shippers who use Atlantic ports, and because the establishment of lower rates from South Atlantic ports than are applicable from New Orleans will divert traffic from the latter port, undue preference and prejudice will result unless rates from the Gulf are no higher than those proposed by respondents. They also contend that the conference affiliations and close relationship between Luckenbach Steamship Co., Inc., and Luckenbach Gulf Steamship Co., Inc., at well as the operations of Isthmian Steamship Co., from both Atlantic and Gulf ports, require the maintenance of a competitive relationship between the Atlantic and the Gulf.

The record shows that proposed reductions will result in rates from Atlantic ports, with few exceptions, lower than from the Gulf. Luckenbach Gulf recognizes that this may adversely affect some shippers and the Gulf ports, and states that if the proposed rates from Atlantic ports become effective, some of the rates from the Gulf must also be reduced. It contends, however, that the establishment of complete rate parity is unnecessary since there are some commodities 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

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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 prohibitive.

There are certain commodities set forth in Appendix B to the protest of the New Orleans Joint Traffic Bureau concerning which Luckenbach Gulf admits rate adjustments should be made. In fact the record shows that the Gulf Conference has already announced contemplated reductions on such commodities, and it is stated that an application for permission to file such reductions on short notice will be promptly made should reductions here involved be found justified. Luckenbach Gulf also indicated its willingness to make other adjustments should investigation disclose the need thereof, but even if all adjustments thought to be necessary are not made, the rights of injured persons or ports are fully protected by the provisions of section 22 of the Shipping Act, 1916.

Respondents admit the proposed reductions are drastic and in some instances greater than might have resulted if a study in respect to each commodity moving in the trade had been made. Nevertheless, they contend that the rates proposed are not lower than reasonable minima. They also contend that even though reductions appear drastic we are without authority to hold in effect rates on small shipments which are higher than rates applicable on the same commodities when shipped in larger quantities. This is tantamount to a statement that so long as rates proposed for less-than-carload traffic are higher than applicable carload rates, a finding that they are unreasonably low would not be warranted. Our findings make it unnecessary to discuss the latter contention.

On this record the attempt to meet forwarder competition, upon which respondents chiefly rely in support to 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.

Reductions in class rates of the nature proposed presents an entirely different problem. Notwithstanding respondents' contention that the rates proposed for classes 1 to A and higher, are not lower than reasonable minima, the basis of the conclusion does not appear of record. It is apparent that an adequate study of class rates generally was not made. While the evidence was based upon forwarder, water-rail and all-rail competition on traffic to which class rates apply, it does not support an action which, if approved, will result in the virtual destruction of the class-rate structure. It is difficult to reconcile the retention of different rate levels resulting from continued adherence to rate-making principles for the articles within classes B, C, D, and E and the complete disregard of such basic principles in respect to higher grade cargo. Such treatment of the respective groupings would result in undue and unreasonable preference and prejudice in numerous instances. It is also difficult to escape the conclusion that if transportation conditions now warrant such drastic changes, 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. It should also be noted that proposed rates will result in a level on classes 1 to 4, inclusive, lower than was established effective October 3, 1935, and that on first and second-class traffic the rate will be lower than that charged in 1925. In *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, the need for additional revenue to meet increases in the cost of transportation were apparent, and following the decision in that case the level of 1935, just mentioned, was established. On June 15, 1937, and again on July 29, 1938, the level established in 1935 was increased still further. Respondents made no study of the financial results to be expected from reductions which they now propose and, therefore, it is uncertain that earnings from the hoped-for increase in less-than-carload business will offset the decrease in revenue on traffic which they now handle.

Under the shipping statutes we administer, responsibility for rates which are both reasonable to shippers and remunerative to carriers rests with us. On this record we are not warranted in approving the proposed class-rate reductions. As has been noted, reductions are also proposed in commodity rates in instances where such rates are higher than the proposed class rates, or higher than the proposed less-than-carload commodity rates. Condemnation of the class-rate reductions compels condemnation also of reductions in commodity rates when such reductions are based solely upon the proposed class rates. We recognize that protests filed with respondents by shippers against class rates charged on their shipments may be deserving of some consideration. However, our action herein does not restrict respondents' right to establish specific commodity rates in proper cases.

We find that respondents' proposed reductions in class rates, also reductions in commodity rates, when based thereon, have not been justified. We further find that, subject to the limitation above mentioned, proposed changes in commodity rates have been justified. 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 12th day of October A. D. 1939

No. 536

WEST-BOUND CARLOAD AND LESS-THAN-CARLOAD RATES

It appearing, That by its orders of June 14 and 23, 1939, the Commission entered upon a hearing concerning the lawfulness of the schedules enumerated and described in said orders, and suspended the operation of said schedules until October 15, 1939;

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

It is ordered, That respondents be, and they are hereby, required to cancel, effective on or before November 13, 1939, schedules proposing reductions in class rates and in commodity rates based on the level of the class rates sought to be established, upon notice to this Commission and the general public by not less than one day's filing and posting in the manner prescribed in section 2 of the Intercoastal Shipping Act, 1933;

It is further ordered, That in respect to schedules proposing changes in commodity rates, except those involving reductions of the nature herein condemned, the orders of suspension heretofore entered be, and they are hereby, vacated and set aside as of October 15, 1939, and that this proceeding be discontinued.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 544

Class Rates Between North Atlantic Ports—Pan-Atlantic Steamship Corporation

Submitted September 11, 1939. Decided October 19, 1939

Schedules containing class rates between North Atlantic ports found justified. Suspension order vacated and proceeding discontinued.

M. S. Dixon for Pan-Atlantic Steamship Corporation.

Charles P. Reynolds, *Alexander Gawlis*, and *Frank H. Mickens* for Merchants and Miners Transportation Co. and Eastern Steamship Lines, Inc.

Frank S. Davis, *Walter W. McCoubrey*, *F. M. Dolan*, and *H. J. Wagner* for interveners.

Report of the Commission

By the Commission:

By schedules filed to become effective July 19, 1939, respondent Pan-Atlantic Steamship Corporation proposes to establish class rates between Boston, Mass., New Bedford, Mass., New York, N. Y., Hoboken, N. J., Camden, N. J., and Philadelphia, Penna. Upon protest of Merchants and Miners Transportation Co. and Eastern Steamship Lines, Inc., the schedules were suspended until November 19, 1939.

Respondent has two services: one leaving New Orleans, La., on Friday and calling at various Gulf ports, thence to New York, Hoboken, New Bedford, and Boston, and returning to New York, Hoboken, Camden, Philadelphia, and the Gulf; the other leaving New Orleans on Saturday and calling at various Gulf ports, thence to Philadelphia, Camden, Hoboken, and New York, and returning to the Gulf. Respondent does not now handle local traffic between North Atlantic ports. It is contemplated that the traffic to be secured in that territory, very little of which would be new business, would be handled in connection with the present services.

Respondent testified that it actually intends to engage in the trades. The filing with us of a tariff of rates for the proposed services is a necessary preliminary for such undertaking. Publishing of the 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 has 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.

Merchants and Miners has operated between Boston and Philadelphia for over 50 years, and at present has three sailings a week in each direction. Due principally to truck and rail competition, its traffic has decreased from 40,065 tons in 1935 to an estimated 32,000 tons in 1939. For the first six months of 1939 about 25 percent of this protestant's vessel space was utilized south-bound and about 60 percent north-bound. Eastern has operated between New York and Boston for approximately 75 years, and at present has an overnight service in each direction. Because of water, rail, and truck competition, its traffic has decreased from 383,412 tons in 1923 to 188,418 tons in 1938, or 50.8 percent. The movement now is mainly carload. This protestant's summer ships are filled about 75 percent of the time, and its winter ships are filled less than 60 percent of the time.

The suspended schedules provide for the following services: Boston to and from New Bedford, New York, and Hoboken; New Bedford to and from New York and Hoboken; New York and Hoboken to and from Camden and Philadelphia; and Camden and Philadelphia to and from New Bedford and Boston. The rates applicable between Boston and Camden are the same as those of Merchants and Miners between Boston and Philadelphia; those applicable between New York, Hoboken, and New Bedford are the same as respondent's rates between New York, Hoboken, and Boston; and those applicable between New York, Hoboken, Camden, and Philadelphia are the same as those of Eastern between New York, Hoboken, and Boston. All other proposed rates are the same as those of Merchants and Miners or of Eastern in their respective trades. It was testified on behalf of respondent that three of the proposed services would be entirely new. Although not served direct by Merchants and Miners, Camden is included in the Philadelphia area to which pick-up and delivery service applies on less-carload or any-quantity shipments.

It is protestants' position that the territory involved is amply served, that there is no demand for additional service, that they have idle ships that 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. The witness for intervener Maritime Association of the Boston Chamber of Commerce stated that ordinarily his organization welcomes new water lines, but that in this particular instance there is no demand for the additional service, that the public interest would not be served by it, and that he feared protestants will be obliged to curtail their services unless able to retain present patronage. To contend that we can prevent a bona fide carrier from entering a trade for the above reasons presupposes a power which is not conferred upon us by the shipping acts. Nor can such affirmative authority be derived solely from the declarations in 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. *Yazoo R. Co.* v. *Thomas*, 132 U. S. 174, 188.

Protestants urge that the 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.

We find that the schedules have been justified, and an order will be entered vacating the suspension and discontinuing the proceeding.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 19th day of October A. D. 1939.

No. 544

CLASS RATES BETWEEN NORTH ATLANTIC PORTS—PAN-ATLANTIC STEAMSHIP CORPORATION

It appearing, That by order dated July 18, 1939, 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 November 19, 1939;

It further appearing, That investigation of the nature 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 schedules under suspension have been justified;

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. 525[1]

PACIFIC COASTWISE CARRIER INVESTIGATION

Submitted September 16, 1939. Decided October 20, 1939

No unlawfulness in connection with chartering, charter arrangements, or practices, rules, regulations, charges, and/or rates related thereto, shown to exist. Proceeding in No. 525 discontinued.

Suspended schedules proposing reductions in Pacific coastwise lumber rates not justified. Schedules ordered canceled and proceedings in Nos. 530 and 532 discontinued.

Robert C. Parker for complainant in No. 529.

L. G. Burns, *R. J. Deremer*, *W. E. Dooling*, *S. D. Freeman*, *Joseph J. Geary*, *S. A. Griffiths*, *Alfred A. Hampson*, *F. C. Lawler*, *Emmett G. Lenihan*, *Theodore M. Levy*, *Courtney L. Moore*, *L. C. Stewart*, *Reginald L. Vaughan*, and *Gilbert C. Wheat*, for defendants in No. 529 and respondents in No. 525.

Joseph J. Geary, *Theodore M. Levy*, and *Gilbert C. Wheat*, for respondent in No. 530, *Alfred A. Hampson* for respondent in No. 532; *K. C. Batchelder*, *Emmett G. Lenihan*, *Courtney L. Moore*, *Robert C. Parker*, *and Reginald L. Vaughan*, for protestants.

K. C. Batchelder for West Coast Lumbermen's Association, *H. S. Brown* and *M. G. de Quevedo* for Intercoastal Steamship Freight Association, *C. O. Burgin* for Port of Stockton, *T. G. Differding* for Oakland Chamber of Commerce, *C. A. Hodgman* for City of San Diego Harbor Commission and San Diego Chamber of Commerce, *Walter A. Rohde* for San Francisco Chamber of Commerce, *J. Richard Townsend* for Stockton Port District, *W. H. E. Usher*, for Calmar Steamship Corporation, interveners in No. 525.

[1] This report includes No. 529, *Robert C. Parker* v. *W. R. Chamberlin & Company et al.*, No. 530, *Pacific Coastwise Lumber Rates—McCormick Steamship Company*, and No. 532, *Pacific Coastwise Lumber Rates—Coastwise Line.*

REPORT OF THE COMMISSION

BY THE COMMISSION:

These cases involve related matters, were heard together, and will be disposed of in one report. Exceptions were filed by respondent McCormick to the examiner's proposed report. The findings recommended by the examiner are adopted herein.

No. 525 is an investigation instituted by us concerning the lawfulness of chartering and charter arrangements by respondent carriers[2] engaged in interstate transportation between Pacific coast ports, and of their practices, rules, regulations, charges, and/or rates related thereto.

No. 529 is a proceeding upon complaint filed by the Chairman of the Pacific Lumber Carriers' Association against certain members of that organization. All defendants therein are respondents in No. 525. At the hearing this complaint was withdrawn for the reason that all allegations made therein were embraced within the issues of No. 525.

Nos. 530 and 532 are investigation and suspension proceedings concerning the lawfulness of reductions in rates for transportation of lumber and forest products from Washington and Oregon to California ports proposed by respondents McCormick and Coastwise.

No. 525

This proceeding was instituted at the instance of carriers comprising the membership of the Pacific Lumber Carriers' Association, a conference governing its members' transportation of lumber and lumber products from Washington and Oregon to California ports and functioning pursuant to an agreement on file and approved under section 15 of the Shipping Act, 1916. Representations were made that the chartering by association and "outside" vessel operators to shippers at rates or hire different from the agreed conference tariff charges threatened the existence of the association and the stability of the trade. Along with all association members, the order named as respondents all known "outside" or nonassociation operators.[3]

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[2] American-Hawaiian S. S. Co., Burns S. S. Co., W. R. Chamberlin & Co., Coastal S. S. Co., Coastwise Line, Consolidated Olympic Line, S. S. Freeman & Co., Gorman S. S. Co., James Griffiths & Son, Hammond Shipping Co., Ltd., Hart-Wood Lumber Co., A. B. Johnson Lumber Co., Kingsley Co. of Calif., Lawrence-Philips S. S. Co., Fred Linderman, McCormick S. S. Co., Moore S. S. Co., Oliver J. Olson & Co., Paramino Lumber Co., Portland S. S. Co., J. Ramselius, Schafer Bros. S. S. Lines, Silverado S. S. Co., Sudden & Christenson, Wallingford S. S. Co., Wheeler-Hallock Co., E. K. Wood Lumber Co., West Oregon Lumber Co.

[3] American-Hawaiian S. S. Co., Coastal S. S. Co., S. S. Freeman & Co., James Griffiths & Son, Kingsley Company of California, Moore S. S. Co., Portland S. S. Co., J. Ramselius, Silverado S. S. Co., Wallingford S. S. Co.

Of the nonassociation respondents three, namely, Freeman, Griffiths, and Ramselius, are shown to transport lumber in the southbound trade involved under charter or contract. Respondent Freeman operates two vessels, built for the lumber carrying trade, in which it transports exclusively, under contract in the nature of a charter at a rate per 1,000 feet, the lumber of one wholesale lumber dealer. The contract arrangement has been in effect for two years, and the rate during such period has averaged lower than the corresponding association carriers' rate. This respondent was previously engaged in furnishing southbound transportation to shippers generally, as a common carrier. Respondent Griffiths operates one vessel in which under separate contracts it transports from North Pacific to California ports the lumber of two shippers only. In the past it has occasionally transported lumber under similar contract arrangements for several other shippers. Respondent Ramselius owns and operates one vessel in which under continuing contract it transports the lumber of one shipper only from Port Orford, Oreg., to San Pedro, Calif., at a rate which is at all times the association carriers' rate. Until June 9, 1939, this respondent was an association member. Of the association carriers, respondents Johnson, Chamberlin, and West Oregon are shown to furnish transportation under charter or contract to lumber shippers. Respondent Johnson is a mill representative for the sale of lumber in California and the managing owner of two steam schooners. Since 1938 the activities of the mills it represents have been curtailed, and the schooners have been used to transport the lumber of one or two other lumber interests as well. This transportation for others has been performed under individual contracts at the per 1,000-foot association carriers' rate, except in one instance of a per-day time charter of the vessel at a hire which is testified to have approximated such rate. Respondent Chamberlin is the managing owner of three schooners with which it formerly engaged as a common carrier. These vessels are now operated by it under time charters to two lumber interests in the transportation of the latters' lumber to California ports. Calculated per 1,000 feet of lumber carried, the charter hire approximates a rate ranging from \$5.64 to \$5.90, as compared with the association carriers' rate of \$6. The last of such charters was entered into in March 1939, since which time respondent has represented itself as a contract carrier. On June 23, 1939, it submitted its resignation from association membership. Respondent West Oregon, on two vessels chartered by it for use in the transportation of its lumber to California ports occasionally contracts with other lumber concerns for the carriage of negligible quantities of lumber. Such contracts are testified to be made only when respondent does not have a full cargo of its own lumber and as a matter of accommodation when other concerns importune it for service. The rate exacted by it for this sporadic service is at all times the association carriers' rate.

It is testified that subnormal Pacific coast lumber production and marketing and shipping conditions now existing have accentuated mill and carrier competition. As detailed above, vessels normally engaged in transportation of lumber for their owners are now employed in the carriage of lumber for other mills and interests under charter or special and individual contract. Also operators of several vessels normally engaged as common carriers of lumber and other cargo have reduced their operations to a single or to several lumber patrons for whom they transport under closely calculated charter or contract arrangement. On behalf of vessel owners who charter or contract under these subnormal conditions, the evidence is that due to economies in relation to type of vessel, maintenance of schedules, labor overtime, and lesser number of berths of loading and discharge, their operation costs are lower than for common-carrier service. Charterers and contractees are shown to gain certain advantages by control of loadings, sailings, and deliveries. Testimony is that their primary reason for chartering is not a lower transportation cost, but the assurance of a more responsive service than may be obtainable at all times in shipping via common carriers. According to one charterer, chartering is considered by it to be the long-range alternative to puchasing ships in which to move its lumber. The contention that no ultimate substantially lower cost is attained through chartering seems to be borne out by evidence of added expense incurred by the charterers' payments for overtime, disbursements in connection with labor difficulties, and expenditures incident to multiple berth loading and discharge, together with losses said to be incurred in relation to charter hire based on full cargoes when their cargoes are less than full vessel loads.

Upon the facts of record it is clear that 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. The recent increase in the extent of the lumber chartering and contracting by others in the trade, is directly traceable to existing subnormal lumber and shipping conditions, and should be met by increased individual and united effort of the common carriers concerned. The association chairman testified that "all these things can be corrected among the members themselves if they will show a disposition to do so." He suggests a pooling agreement between the members under section 15 of the Shipping Act, 1916, 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, in the alternative, establishment through a proper section 15 agreement of a rate for charter hire or other contract adjusted to protect the association carriers' rate. Emphasized as a potent contribution to the threatened instability of the trade are unsubstantiated rumors of secret and substantial rate cutting and of rate structure disintegration which are said to cause a holding back by lumber shippers of their business in anticipation of a rate break. Immediate cooperative effort by the common carriers in a constructive plan according to the suggestion of the association chairman or otherwise, will tend to remove this phase of their difficulties. The private or contract carriers might well, in their own interest, lend their aid to achieve stability in the trade.

In No. 525 we conclude and decide that no unlawfulness in violation of the Shipping Act, 1916, as amended, is shown. An order discontinuing the proceeding will be entered.

No. 530

The present rate of respondent McCormick applicable to lumber from Washington and Oregon to California ports is the established $6 association carriers' rate to which it agreed in the past as a member of the association. Although retaining its association membership, it filed with us pursuant to an independent action clause of the association agreement schedules proposing a rate of $5.50,[4] to become effective May 22, 1939. Upon protests the operation of these schedules was suspended by us until September 22, 1939, and they since have been postponed voluntarily by respondent until November 24, 1939.

The reasons ascribed by respondent for the filing of the reduction concerned 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

[4] Suspended schedules, Robt. C. Parker Agency Tariff U. S. M. C. No. 1. Supplement No. 1, include reductions on forest products.

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. Respondent nevertheless affirms that costs of vessel operation in the carriage of lumber to California 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 it furnishes is more expensive than service under charter. It states, further, that during existing subnormal trade and shipping conditions "it is very much of a disadvantage" for a lumber shipper "to have a vessel under charter."

Respondent made no study to determine whether its proposed $5.50 rate would be compensatory. It admitted that such rate would not in all instances pay the out-of-pocket cost, and might ultimately be to its disadvantage, but that it was filed "in the hope it would correct a situation we believed was not healthy." In the event its action would disrupt rather than correct the situation, respondent states it "would not be in favor of it."

Protestants' testimony is that the reduction proposed if permitted to become effective would be forthwith followed by reductions by other carriers, by withholding of lumber consignments to California by shippers in anticipation of further rate reductions, and by general and serious detriment to both Pacific coastwise shipping and the Pacific coast lumber trade.

We find that the suspended schedules have not been justified. An order requiring their cancellation and discontinuing this proceeding will be entered.

No. 532

Respondent Coastwise Line's present rate on lumber is $6 per 1,000 feet any quantity. By schedules filed to become effective June 24, 1939, it proposed a rate of $5 per 1,000 feet when shipped in a minimum quantity of 350,000 feet.[5] Upon receipt of protests the operation of the schedules was suspended by us until October 24, 1939, and they since have been postponed voluntarily by respondent until November 24, 1939.

Reasons advanced by respondent for the proposed reduction are that it has been unable to obtain lumber for carriage to the extent of its available carrying capacity: that shippers and consignees claim to enjoy lower rates, and that respondent found it necessary to take action similar to that of McCormick.

[5] Suspended schedules, Robt. C. Parker Agency Tariff U. S. M. C. No. 1, Supplement No. 6, include reductions on forest products.

As to lumber shipments of less than 350,000 feet, respondent would continue to charge $6 per 1,000 feet. The $1 per 1,000 feet lower rate which it proposes to accord shippers of 350,000 feet or more would clearly effect undue preference to such shippers and undue prejudice to shippers of lesser quantities, in violation of section 16 (First) of the Shipping Act, 1916.

This respondent operates seven vessels, transporting therein, under contract [6] with Crown Zellerbach Corporation, paper, paper products, and pulp from Washington and Oregon mills of that corporation to San Francisco and Los Angeles Harbor. As a common carrier it transports in the same vessels and on the same voyages miscellaneous cargo and on-deck lumber. The deck carrying capacity of each of such vessels for lumber is approximately 350,000 feet. Crown Zellerbach receives one-half the profit from respondent's whole operation, and in turn is shown to guarantee 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 its 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 testified that this rate would not cover operating costs. Protestants predict that such a rate reduction if permitted to become effective would result in resignations of association members, general counter reductions, and grave detriment or chaos in Pacific coastwise shipping and Pacific coast lumber production and marketing.

We find that the suspended schedules have not been justified. An order requiring their cancellation and discontinuing the proceeding will be entered.

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[6] In Docket No. 484, In the Matter of Agreements 6210 et al., decided August 3, 1939, this contract was held to result in undue prejudice in violation of section 16 of the Shipping Act, 1916, as amended.

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ORDER

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

No. 525

PACIFIC COASTWISE CARRIER INVESTIGATION

No. 530

PACIFIC COASTWISE LUMBER RATES—MCCORMICK STEAMSHIP COMPANY

No. 532

PACIFIC COASTWISE LUMBER RATES—COASTWISE LINE

It appearing, That by its order of May 16, 1939, this Commission entered upon an investigation into and concerning the lawfulness of chartering and charter arrangements by, and of practices, rules, regulations, charges and/or rates of carriers named in said order engaged in interstate transportation between Pacific coast ports of the United States; and

It further appearing, That by its orders of May 18, 1939, and May 25, 1939, this Commission entered upon hearings concerning the lawfulness of rates on lumber and forest products proposed by McCormick Steamship Company and Coastwise Line stated in the schedules enumerated and described in said orders, and suspended the operation of said schedules until September 22, 1939, and October 24, 1939, respectively;

It further appearing, That the operation of said McCormick Steamship Company and Coastwise Line schedules has been voluntarily postponed by said carriers until November 24, 1939;

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

It is ordered, That the proceeding in No. 525 be, and it is hereby, discontinued; and that the respondents in Nos. 530 and 532 be, and they are hereby, notified and required to cancel the suspended schedules therein concerned on or before November 24, 1939, upon notice to the Commission and to 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, and that these proceedings be discontinued.

By the Commission.

(Sgd.) W. C. PEET, JR.,
Secretary.

[SEAL]

UNITED STATES MARITIME COMMISSION

No. 539

WEST-BOUND ALCOHOLIC LIQUOR CARLOAD RATES

Submitted September 9, 1939. Decided November 3, 1939

Proposed west-bound intercoastal carload rates on alcoholic liquors n. o. s. found justified. Suspension order vacated and proceeding discontinued.

Joseph J. Geary for Gulf Intercoastal Conference.

M. G. de Quevedo and *W. M. Carney* for Intercoastal Steamship Freight Association and Calmar Steamship Corporation.

Frank Lyon and *J. A. Stumpf* for American-Hawaiian Steamship Company.

Clement C. Rinehart and *George E. Talmage, Jr.*, for Baltimore Mail Steamship Company.

Herbert M. Statt for Shepard Steamship Company.

Wilbur La Roe, Jr., *Edward F. Gallagher*, *W. L. Thornton, Jr.*, *Samuel H. Williams*, *E. H. Thornton*, *C. A. Mitchell*, *Louis A. Schwartz*, *Charles R. Seal*, *W. A. Cox* and *H. J. Wagner* for intervening port organizations.

Edward Gusky, *M. F. Chandler*, *Frank H. Luther*, for intervening shippers.

Neal D. Belnap, *H. J. Niemann* and *W. G. Oliphant* for Inland Waterways Corporation.

David E. Scoll for United States Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By order dated July 7, 1939, we suspended until November 9, 1939, various schedules[1] naming reductions in westbound intercoastal carload rates on alcoholic liquors established by the members of the

[1] 12th Amended Page No. 300 of C. Y. Roberts' Tariff SB–I No. 3; 5th Amended Page No. 289 of Jos. A. Wells' Tariff SB–I No. 6; 8th Amended Page No. 203 of Calmar Steamship Corporation's Tariff SB–I No. 5; 10th Amended Page No. 278 of Shepard Steamship Company's Tariff SB–I No. 1.

Intercoastal Steamship Freight Association,[4] American-Hawaiian Steamship Company, Calmar Steamship Corporation, Shepard Steamship Company and the members of the Gulf Intercoastal Conference.[5] The members of the Intercoastal Steamship Freight Association, American-Hawaiian Steamship Company and Calmar Steamship Corporation will be referred to collectively as the Atlantic lines, and the members of the Gulf Intercoastal Conference as the Gulf lines. The Atlantic lines' reduction from \$1.54½ to \$1.41 per 100 pounds was filed June 5 and 6, effective July 9; the Gulf lines' reduction from \$1.41 to \$1.31 was filed June 7, effective July 9; and Shepard's reduction from \$1.40 to \$1.20 was filed June 28, effective July 28. Baltimore Mail Steamship Company and American-Hawaiian Steamship Company protested the reduction proposed by the Gulf. The protest was opposed by the Gulf lines and others, all of whom requested that if the Gulf rates be suspended the Atlantic rates also be suspended. There was no formal protest against the Shepard reduction. It was not contended in the original protest that the \$1.31 rate was unreasonable per se or was not within the "zone of reasonableness," but only that by the reduction the Gulf lines were endeavoring to maintain or establish a rate differentially lower than the Atlantic lines. Except as otherwise noted, rates will be stated in amounts per 100 pounds.

Alcoholic liquors move in large volume from points on or adjacent to the Atlantic seaboard, and from inland points in Kentucky, Ohio, Indiana, and Illinois. Competition between the Atlantic and Gulf lines exists only insofar as the inland points are concerned. Heretofore Shepard, whose last port of call is Philadelphia, has not been interested in this inland business as the rail rates to Philadelphia, together with the nature of the service offered by Shepard, have been such as to preclude its participation in the movement even though its port-to-port rate has been lower than that of the Gulf lines.

Shepard contends that its reduction was made to meet competition and to recapture tonnage which it has been losing since the latter part of 1938. Effective March 3, 1935, Shepard established a rate of \$1.29½ which continued in effect until October 13, 1938. Under this rate the company carried 1,269 tons during the first nine months of 1938, or an average of 115 tons per ship. On October 13, 1938, Shepard increased its rate to \$1.40 and, beginning with its sailings

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[4] American President Lines, Ltd. (Arrow Line), Sudden & Christenson, Isthmian Steamship Company, Luckenbach Steamship Company, Inc., McCormick Steamship Company, Pacific Coast Direct Line, Inc., Baltimore Mail Steamship Company, States Steamship, California Eastern Line, Inc.

[5] Luckenbach Gulf Steamship Company, Inc., Swayne and Hoyt, Ltd., Managing Owners (Gulf Pacific Line).

in October of that year to and including March 1939, it carried a total of only 112 tons, or an average of 14 tons per ship. It was stated that the increase in the rate brought about this loss of traffic.

To support its contention that the proposed reduction does not result in an unreasonable or unremunerative rate, Shepard compared the revenue obtained from alcoholic liquors with that derived from other commodities which were said to be similar from a transportation standpoint. Stowage was reduced to a basis of 60 cubic feet. Under the proposed rate, 60 cubic feet of alcoholic liquor would produce $22.18. The cost of handling, without allowance for vessel operating and administrative expenses, would amount to $6.01, divided as follows: Loading $1.20, terminal loading $0.76, terminal discharging $0.55, discharging $1.18, claims $0.23, and solicitation $1.16. Net revenue is $16.17. The compared commodities and the revenue obtained therefrom per 60 cubic feet are as follows: Codliver oil $7.73, milk of magnesia $7.39, printing paper $6.93, listerine $6.58, gingerale $5.60, canned goods $5.34, and cocoa $3.86. The value of these commodities ranges from $116 per ton for canned goods to $570 for listerine and codliver oil. The relationship of the rate to the value ranges from 2.3 percent in the case of listerine to 9 percent in the case of canned goods. Alcoholic liquors transported by this company were stated to be worth $425 per net ton and the rate was 5.6 percent of the value. It was shown that the 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.

We find that the rate of $1.20 has been justified.

Insofar as the reductions made by the Gulf and Atlantic lines are concerned, it is the position of the former that on shipments from inland points they are entitled to a differential for the reasons that they are faced with different competitive conditions, offer a different service, and that the traffic necessitates consideration of the preterminal movement and rates. Further, it is contended that the differential is necessary for the 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. The Atlantic lines, on the other hand, contend that they are entitled to parity of port-to-port rates to enable them to participate in the movement of the traffic from these inland points inasmuch as the preterminal rail rates are lower to Baltimore, Maryland, the principal Atlantic port concerned, than to the Gulf. They maintain that they have not been able to participate heretofore because of the differential in the port-to-port rates. Shipments through Gulf ports are accorded preterminal rail, rail-barge, and barge service, whereas those through Atlantic ports are accorded only rail service.

At the time of the repeal of the Volstead Act, each group had in effect a rate of $1.50 plus 3 percent surcharge. On September 4, 1933, the Gulf lines reduced their rate to $1.14, plus 3 percent surcharge in order to obtain some portion of this new commercial movement of alcoholic liquors. On June 2, 1933, the transcontinental rail rate from this territory was $5.25. It was reduced subsequently to $3.00, $2.75, $2.25, and in November 1935, a further reduction to $2.00 was proposed. The Atlantic lines reduced their rate to $1.39 on March 1, 1935, and the present rate of $1.54½ was established on October 3, 1935.

The principal competition met by the Gulf lines has been from the transcontinental lines, as it is the rail rate which fixes the ceiling above which water carriers may not go if they are to carry any traffic. As a result of the proposed rail reduction in 1935, the Gulf lines proposed to reduce their rate to $0.92½. In short, the competitive situation was gradually resolving itself into a rate war. Because of these proposed reductions, a conference was called in Washington in November 1935 which was known as the "Washington Conference." Representatives of the Shipping Board Bureau, Department of Commerce; the Interstate Commerce Commission; the Atlantic carriers; the Gulf carriers and their inland connections; and the transcontinental rail lines were present. As a result of this conference, the rail lines restored their rate to $2.25, the Gulf lines increased their rate to $1.30, and the Atlantic lines maintained their rate of $1.54½. These rate adjustments were for a trial period to ascertain what was necessary in the way of a differential between the competitors so as to enable each to obtain some portion of the traffic and thus avoid a rate war.

The Gulf lines contend that all carriers represented at the conference had agreed that some differential should be maintained as between the various groups; but the Atlantic lines stated that they were merely interested observers and were not parties to any agreement, and that the agreement, if any, was between the transcontinental rail lines and the Gulf lines. An agreement of this character can in no way derogate from the statutory powers of this Commission.

The competitive situation resulting from the movement of traffic from these inland points was the subject of discussion between the Atlantic and the Gulf lines as early as 1932. Until 1936, however, no definite solution had been found. On December 12 of that year, the members of each group filed an agreement with us pursuant to section

15 of the Shipping Act, 1916, which was approved January 9, 1937, and was assigned Agreement No. 5630. The general purport of the agreement was the establishment of a working arrangement between the two groups insofar as this territory is concerned. An imaginary line was drawn from Michigan City, Indiana, diagonally southeast to Logansport, Indiana, thence south to Frankfort, Indiana, thence following the line of the Chicago, Indianapolis & Louisville Railroad to Indianapolis, Indiana, thence along the line of the Baltimore & Ohio Railroad to Cincinnati, Ohio. For rate-making purposes territory west of the line was considered to be naturally tributary to the Gulf and that east of the line tributary to the Atlantic. Points on the line were considered as neutral territory. Traffic south and southeast of Cincinnati was to flow through the natural port as established by the applicable rail rate to the port.

A complaint was filed against this agreement by the Inland Waterways Corporation, and at the hearing thereon a stipulation was entered of record clarifying the intent of the agreement to show that there should be parity of intercoastal rates wherever practicable, and further that whenever rail rates from the interior favored one group of ports no adjustment was to be made by the other group subject, however, to the qualification that the Atlantic lines would not attempt to equalize rail-barge or barge rates through the Gulf so long as such rates remained on the customary relationship with the rail rates. Further, the Gulf lines were to be permitted to establish rail-barge-ocean or barge-ocean rates to meet rail competition when there was a bona fide movement of cargo from one of the interior points. See *Inland Waterways Corporation* v. *Certain Freight Companies*, 1 U. S. M. C. 653. This agreement continued in effect until July 9, 1938. About the time of the expiration thereof a new agreement, assigned No. 6510, was filed, which in general was similar to 5630. A hearing was conducted by us prior to the final consideration of this latter agreement and as a result thereof approval was withheld until the carriers made certain suggested modifications. See *In the Matter of Agreement No. 6510*, 1 U. S. M. C. 775. The carriers were unwilling to accept these modifications and consequently approval was never accorded to 6510. There is, therefore, no lawful agreement in effect today. The Gulf lines contend, however, that they have always observed the spirit of these agreements and that the Atlantic lines should do the same insofar as establishing rates to attract traffic from the involved territory. The Atlantic lines take the position that as there is no agreement in effect they may establish any rates they choose. While the Washington Conference and Agreements 5630 and 6510 indicate a course of conduct or a 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 rates here in issue cannot be determined by any such custom.

Both groups apparently are in favor of the general principle of parity of port-to-port rates wherever practicable. Insofar as alcoholic liquors are concerned, however, they differ over the interpretation to be placed upon the word "practicable," as used in the above-mentioned agreements. The Atlantic lines feel that there is nothing impracticable about their having parity of port-to-port rates on alcoholic liquors, whereas, the Gulf carriers take the position that there are certain peculiar circumstances pertaining to this traffic which take it out of the general principle of parity of port-to-port rates. These circumstances, as outlined by the witnesses for the Gulf carriers, are that they are forced to meet different competition than the Atlantic lines; that if the rates are maintained at the $1.41 level neither group would receive any traffic because of the ceiling fixed by the transcontinental railways, and that if the rates are maintained at the $1.31 level they fear the rail lines will retaliate by making further reductions to retain traffic which they would probably lose by virtue of the ability of the Atlantic lines then to participate in the movement of this traffic. In determining the lawfulness of the port-to-port rates of water carriers subject to our jurisdiction, we cannot anticipate that such competitive action will be taken.

The Gulf carriers and some of the interveners in support of their position state that the nature of the Gulf service justifies the according of a differential to this group, because of the preterminal service and the fact that the Gulf lines require a longer time in transit. Insofar as the movement from the inland territory is concerned, the Atlantic carriers must also consider the preterminal service and the fact that, with the exception of the service of Baltimore Mail Steamship Company, the service of Gulf lines is generally more expeditious than that of the carriers serving the port of Baltimore. Time in transit is not the sole factor in determining whether a differential is warranted.

Alcoholic liquors move in substantial volume from the two areas involved. During 1938, approximately 13,000 tons were transported from the Atlantic seaboard, and approximately 26,000 tons moved from inland points via the Gulf carriers. Practically no alcoholic liquors moved from inland points through Atlantic ports via regular common carriers. The Gulf lines state that their reduction was not made with a view to establishing a differential below the Atlantic lines but to meet transcontinental rail reductions. In May 1939, the rail lines reduced their rate from $2.41 to $2.25, thus disturbing the relationship between the rail and Gulf rates. A comparison of the reduced rail rate with the $1.41 rate of the Gulf to which must be added preterminal rates and accessorial charges shows that the total cost to the shipper would, in some cases, be but very little under the rail rate and that in many cases, the total charge via the Gulf would be higher. For example, taking a rail movement from Peoria, Ill., to New Orleans, La., destination Los Angeles, the total cost to the shipper would amount to 246.75 cents. If a preterminal barge movement was used, the total charge would be 217.75 cents. Even at the $1.31 rate, the total charges would amount to 236.75 and 207.75 cents, respectively. It was testified that approximately 75 percent of the traffic moving to the Gulf was via barge. The greater time in transit via this route than via the transcontinental rail route is a factor to be considered. Further, unless the Gulf carriers are willing to relinquish to the transcontinental rail lines the 25 percent of the traffic which moves in by rail, their port-to-port rates must be fixed by taking into consideration the preterminal rail rate rather than the preterminal water rate. At times the barge route is closed to traffic during the winter months and consequently, it is necessay to use the rail lines. It may readily be seen therefore, that the maintenance of a $1.41 rate from the Gulf will result in loss of traffic to the water carriers. 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.

We find that the rate of $1.31 proposed by the Gulf carriers has been justified.

The Atlantic lines are faced with the same transcontinental rail competition as the Gulf from this inland territory. Insofar as the alcoholic liquors originating on the Atlantic coast are concerned, the Atlantic carriers are faced not only with Shepard competition, but also with competition from carriers operating over water-rail routes. Rates have been reduced by these carriers. The Shepard reduction has been found hereinabove to be justified. The rate as proposed by the Atlantic line is 21 cents higher than the Shepard rate and it would appear, therefore, that such rate also is justified. We find that the proposed Atlantic rate of $1.41 has been justified. The conclusions stated herein are based on the record in this proceeding, and are without prejudice to any order which may be issued in Docket 514, Intercoastal Rate Structure, a general investigation of the practices in the intercoastal trade in which decision is now pending.

The Atlantic lines state that the rail rates to the ports in many instances favor Baltimore and that, therefore, this port is a natural outlet for alcoholic liquors. They contend that they are entitled to port-to-port rate parity and to any advantages which may be derived from the difference between rail rates to Atlantic and Gulf ports. They do not desire to equalize the preterminal rail rates to Atlantic ports with the lower barge rates to Gulf ports. It also is the position of two shippers and of various Atlantic coast port organizations that a parity of port-to-port rates should exist. 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. There is nothing inherently unlawful either in the existence of a differential between the two groups or the existence of a parity of rates. We are referred to no provisions of the law which would require the two groups to maintain rates from their respective areas made on principles other than those usually followed in rate making, nor does the record in this case justify a departure from these principles.

An order will be entered vacating the order of suspension and discontinuing the proceeding.

ORDER

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

No. 539

WEST BOUND ALCOHOLIC LIQUOR CARLOAD RATES

It appearing, That by order dated July 7, 1939, 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 November 9, 1939;

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 findings thereon, which report is hereby referred to and made a part hereof, and has found that the schedules under suspension have been justified;

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, without prejudice, however, to any order which may be issued in Docket 514, Intercoastal Rate Structure, now pending before the Commission.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 527

KERR STEAMSHIP COMPANY, INC.

v.

DEUTSCHE DAMPSCHIFF-FAHRTS GESELLSCHAFT "HANSA" (HANSA LINE) ET AL.[1]

Submitted September 25, 1939. Decided November 7, 1939

Issues rendered moot by dissolution of United States Persian Gulf Conference. Complaint dismissed.

Herman Goldman, *Elkan Turk*, and *Leo E. Wolf* for complainant.
Roscoe H. Hupper and *Burton H. White* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the report proposed by the examiner were filed by defendants and complainant replied. Our conclusions differ from those recommended in that report. Defendants' request for oral argument is denied.

Complainant alleged that defendants' refusal to admit it to membership in the United States Persian Gulf Conference and the practices of the members in connection with exclusive patronage contracts adopted after complainant applied for membership, and the admission of Ellerman & Bucknall Steamship Company, Ltd., and Frank C. Strick and Company, Ltd., to the conference subsequent to complainant's application, created undue and unreasonable preference and advantage to shippers who patronized defendants exclusively, subjected complainant to undue and unreasonable prejudice and disadvantage, were unjustly discriminatory and unfair as between defendants and complainant, as between shippers and exporters from the United States and as between carriers, and operated to the detriment of the commerce of the United States, all in violation of sections 14, 15, 16, and 17 of the Shipping Act, 1916, as amended. Complainant sought an order disapproving the conference agreement and the exclusive patronage contract rate system and practices thereunder

[1] Isthmian Steamship Company (Isthmian Line); Ellerman & Bucknall Steamship Company, Ltd., and Frank C. Strick and Company, Ltd. (operating jointly the Strick-Ellerman Joint Service).

unless within a reasonable time fixed by us defendants admitted it to full and equal membership in the conference.

Paragraph 10 of the approved conference agreement contained the terms under which members might withdraw from the agreement and included a provision that "in event of war involving a country under whose flag any of the parties hereto operate, then the line or lines whose country is involved may withdraw from this Agreement immediately on giving notice, remaining responsible to the other members, however, for due performance of all obligations incurred by it prior to the effective date of such withdrawal. Notice of withdrawal shall in any event be given to the United States Maritime Commission."

After the hearing defendants took the following conference action recorded in the minutes of the meeting of September 18, 1939, which was received by us on September 26, 1939:

> Reference was made to the disturbed international situation and to conditions and situations of one kind and another contemplated by paragraph 10 of the Approved Conference Agreement No. 5990 as occasion for withdrawal from said agreement. The representatives of the Hansa Line and of Strick-Ellerman Service simultaneously stated that in view of the above they had no option but to give notice of withdrawal immediately from the agreement, but that withdrawal was without prejudice to all rights, both now and in the future, all such rights being reserved. The Secretary thereupon stated to the meeting that in view of said two withdrawals (there having been only three members of the Conference), the Conference appeared to be dissolved and no longer in existence and that he would advise the U. S. Maritime Commission of the aforesaid two withdrawals and the resulting dissolution of the Conference and the termination of the agreement, by sending the Commission a true copy of these minutes.

The actions of defendants Hansa Line (German) and Strick-Elleman Joint Service (British) in withdrawing from the conference 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 in this proceeding are therefore moot. The stipulation by the representatives of Hansa and Strick-Ellerman that "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 Minutes effected the dissolution of the conference and terminated the agreement. Therefore, no resumption of concerted action with respect to matters within the purview of section 15 may lawfully be taken by defendants until the agreement of the parties in respect thereto has been filed with us and has received section 15 approval. Notice of such filing will be publicly posted in the Commission's offices in accordance with its established procedure.

An order dismissing the complaint will be entered.

Order

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

No. 527

Kerr Steamship Company, Inc.

v.

Deutsche Dampschiff-Fahrts Gesellschaft "Hansa" (Hansa Line) et al.

This case being at issue upon complaint and answer on file, and the Commission, on the date hereof, having made and entered of record a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

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

By the Commission.

[seal] (Sgd.) W. C. Peet, Jr.,

Secretary.

UNITED STATES MARITIME COMMISSION

No. 531

JOSEPH E. SEAGRAM & SONS, INC. ET AL.

v.

FLOOD LINES, INC.

Submitted August 4, 1939. Decided November 7, 1939

Rates on alcoholic liquors from Baltimore, Md., to Pacific coast ports not shown to be unreasonable. Complaint dismissed.

Frank H. Luther for complainants.

Ira L. Ewers, *Robert H. Duff*, and *Raymond Flood* for defendant.

Edward Gusky for Schenley Distilleries Corporation, intervener, *Joseph J. Geary*, *M. G. de Quevedo*, *W. M. Carney*, *George E. Talmage, Jr.*, *Frank Lyon* and *J. A. Stumpf* for interveners, intercoastal carriers.

David E. Scoll for the United States Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Complainants, subsidiaries of a Canadian company, are United States corporations engaged in the manufacture and distribution of alcoholic liquors. By complaint filed May 11, 1939, they allege that a rate of \$1.54½ per 100 pounds, minimum weight 30,000 pounds, charged by defendant for the transportation of a shipment of 3250.18 tons of alcoholic liquors, n. o. s. shipped April 24, 1939, from Baltimore, Md., to Pacific coast ports was unreasonable in violation of section 18 of the Shipping Act, 1916, as amended. Reparation is requested. Rates are stated in cents per 100 pounds unless otherwise noted.

Complainants originally intended to transport the shipment in the S. S. *Walter D. Munson* which they had hired under a bareboat charter. But when question arose as to the legality of this transaction by virtue of their status as subsidiaries of a foreign corporation, they arranged with defendant to transport the shipment. Thereupon defendant, who does not operate regularly in the trade, chartered the ship from the owner and filed the rate in question effective on April 24, 1939, by special permission. This authority was obtained at the instance of complainants to avoid the further accrual of demurrage charges.

Complainants endeavor, through rate comparisons and evidence as to cost of service, to demonstrate that the rate assailed is unreasonably high. Reference is made to a rate on this commodity of $18 per ton (weight or measurement basis) from Atlantic coast ports to Honolulu, T. H.; and rates on numerous other commodities moving in the intercoastal trade such as: alcohol, n. o. s., $1.10; beverages 74 cents; and malt liquors 60 cents. The rate to Honolulu is assessed on the 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; nor is there any evidence as to the volume of movement or the value of the commodities alleged to be similar to alcoholic liquors. The rate assailed is the same as the rate contemporaneously maintained by the carriers regularly engaged in the intercoastal trade with one exception.

Complainants' witness estimated that the voyage cost $45,100 or approximately $13.85 per net ton of cargo. The actual cost, as revealed by defendant's testimony, was $76,029.71, exclusive of excess profit taxes. Total freight charges collected amounted to $101,453.17, resulting in a profit of $25,423.46, 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 the possibility of stoppage of work at destination ports. Complainants admitted that the shipment was unique in many respects and conceded that the profit thereon should range between 25 and 30 percent.

The value of the service to the shipper is an important factor in this case. Through the arrangement complainants were relieved from further demurrage charges which were accruing daily; also from possible liability under the charter arrangement for the S. S. *Walter D. 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.

Upon the particular facts in this case we conclude and decide that the rate assailed has not been shown to be unreasonable. An order dismissing the complaint will be entered.

ORDER

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

No. 531

JOSEPH E. SEAGRAM & SONS, INC., ET AL.

v.

FLOOD LINES, INC.

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

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 510

CITRUS FRUIT FROM FLORIDA TO BALTIMORE, MD.

Submitted September 19, 1939. Decided November 9, 1939

Rates and practices of common carriers by water in connection with transportation of citrus fruit from Florida ports to Baltimore, Md., found not unreasonable or otherwise unlawful. Proceeding discontinued.

Wilbur LaRoe, Jr., *James B. Sweeny*, and *Edward B. Wright* for respondent water carriers.

Frank W. Gwathmey, *Francis R. Cross*, and *Richard R. Bongartz* for intervening rail carriers.

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

By order of January 27, 1939, we instituted an investigation into and concerning the lawfulness of rates and practices of common carriers by water in connection with the transportation of citrus fruit from ports in Florida to Baltimore, Md., with a view to determining and prescribing just and reasonable rates and practices for the future. This proceeding was heard jointly with proceedings before the Interstate Commerce Commission with respect to the rail rates in effect from Florida to Baltimore.

Respondent Bull Steamship Line operates a service with vessels containing refrigerated space for the transportation of citrus fruit from Fort Pierce, Fla., to New York, N. Y. Any citrus consigned to Baltimore by this line is transported by its vessels to New York and thence to Baltimore. It formerly operated a direct service from Fort Pierce to Baltimore, but decreased movement of citrus on this route made it necessary for the company to discontinue its direct service and dispose of the ships operated in this trade. A witness for this respondent testified that the participation of its indirect service in the movement of citrus to Baltimore is inconsequential. The rate by the indirect route to Baltimore is 50 cents per standard box of 90 pounds, the same as the rate to New York.

Respondent Merchants and Miners Transportation Company, hereafter referred to as the M & M Line, maintains service with vessels containing some refrigerated compartments for the transportation of citrus fruit and other perishables from Miami, West Palm Beach, and Jacksonville to Baltimore. Although it maintains service from Fort Pierce to Philadelphia, it handles no fruit from this port to Baltimore and publishes no rates to cover such transportation. It maintains no service of any kind from the port of Tampa. The service from Miami is by the same ships that serve Baltimore from Jacksonville, and the service from West Palm Beach is by transshipment at Jacksonville. The movement of citrus fruit from Miami and West Palm Beach to Baltimore by water is light, because these two ports cannot compete successfully for this movement. The principal movement of citrus fruit by water to Baltimore is from Jacksonville. In this service the M & M Line operates two ships a week with sailings on Monday and Thursday. The ship sailing on Monday formerly called at Savannah on Tuesday to discharge and load, and arrived at Baltimore on Thursday morning. Since February 27, 1939, a call at Norfolk on Wednesday has been substituted for the Savannah call. The vessel sailing from Jacksonville on Thursday calls at Savannah on Friday and arrives at Philadelphia the following Monday morning. After discharging it proceeds to Baltimore via the Chesapeake and Delaware Canal, arriving on Tuesday morning.

The water rates on citrus fruit apply per standard box of 90 pounds. The rate from Miami to Baltimore is 55 cents per box, and from West Palm Beach 50 cents per box. The local rate from Jacksonville to Baltimore is 36 cents per box, published effective February 6, 1939. Proportional rates are also published, varying in amount according to the interior point of origin in order to equalize the through charges by truck and water with the through charges via other ports.

The movement of citrus fruit by truck from the producing areas to the port and by water to Baltimore is directly competitive with the faster all-rail movement. With an average trucking time of ten to twelve hours from points of origin to Jacksonville, delivery at Baltimore by the Monday sailing of M & M Line is made on the morning of the fifth day, but if the shipment has to be transferred to the railroad perishable terminal, delivery is made there on the morning of the sixth day. Shipments forwarded by the Thursday sailing arrive in Baltimore on the seventh morning from point of origin and the eighth morning if transferred to the railroad perishable terminal. Shipments by railroad arrive in Baltimore on the third day from any point in Florida.

It was not until the 1932–33 shipping season that any appreciable volume of citrus moved by water from Jacksonville to eastern port cities. During that season the boats were operated with draft ventilation only. Refrigerated service was established when precooling facilities were provided at Jacksonville. During the summer and fall of 1933 the M & M Line constructed a warehouse adjacent to its Jacksonville terminal and equipped the building with facilities for precooling approximately 18,000 boxes of citrus fruit a day. At the same time it installed refrigerating machinery in four steamers and during the 1933–34 season maintained a schedule of four sailings a week, on Wednesday, Thursday, Saturday, and Sunday, three of these sailings being to Philadelphia and one to Baltimore. During the 1933–34 season the M & M Line handled approximately 1,878,500 boxes of citrus fruit from Jacksonville. During the 1934–35 season the same schedule was maintained and the same refrigerated steamers were operated, but no figures were submitted to show the total volume of citrus handled. At that time the water rate from Jacksonville to Baltimore was 46 cents a box and during the greater part of the 1934–35 shipping season the all-rail rates to Baltimore were approximately 7 cents a box higher than the combination truck-water rate. During that season the water lines carried 623 carloads, or 44 percent of the total movement of citrus fruit to Baltimore.

Effective December 12, 1935, the differential was eliminated by reduction of the all-rail rates to meet the truck-water rates as authorized by the Interstate Commerce Commission in *Citrus Fruit from Florida to North Atlantic Ports*, 211 I. C. C. 535, and during the 1935–36 season the volume of Florida citrus handled by the water lines to Baltimore fell to 27.3 percent of the total movement to that port; 72.7 percent was carried by the rail lines. The water rate was thereafter reduced to 41 cents a box, effective March 23, 1936, but the establishment of this differential of 5 cents a box under the all-rail rate came too late in the season to have any appreciable effect on the movement. This differential was continued during the 1936–37 season as the result of a second decision in the above-mentioned proceeding (218 I. C. C. 637), by which fourth section relief to the rail lines was extended on the same basis as previously granted, except that to Baltimore the all-rail rates were fixed at a minimum differential of 5.6 cents per 100 pounds over the truck-and-water rates. This decision was made effective January 5, 1937, and at the same time the water rate was increased to 46 cents per box. During the season of 1936–37 the relative volume of citrus handled by the water lines to Baltimore showed a slight increase to 27.9 percent. With the same differential in effect from Sept. 1, 1937, to March 27, 1938, the participation of the water lines fell off to 5.9 percent of the total movement of citrus to Baltimore, but during this period the water lines were handicapped by labor difficulties. From March 28, 1938 to May 22, 1938, with a differential of 8.6 cents per box due to increased rail rates, the participation of the water lines increased to 10.4 percent of the total movement. Effective May 23, 1938, the differential was again eliminated by a reduction of the rail rates pursuant to a third decision in the case cited above (226 I. C. C. 315), which authorized the rail carriers to maintain the same rates from Florida origins to North Atlantic ports as those in effect over truck-and-water routes, including a modified free refrigeration service. From May 23, 1938 to July 31, 1938, the end of the 1937–38 season, the movement of citrus by water was only 8.5 percent of the total movement to Baltimore. For the entire season the movement by water was only slightly over 7 percent of the total.

At the beginning of the following season, from Sept. 1, 1938 to Nov. 30, 1938, the water movement represented only 3 percent of the total. Effective December 1, 1938, the differential of 5 cents a box in favor of the truck-water route was restored by a reduction of the water rate from 46 cents to 41 cents, and during the period from Dec. 1, 1938 to Jan. 1, 1939, the movement by water was 22.6 percent of the total. On January 2, 1939, the rail rates were again reduced to reestablish the equalization authorized by the Interstate Commerce Commission. This equalization of rates continued through February 5, 1939, but the water movement during this period amounted to 24.3 percent of the total. A witness for the M & M Line stated they were able to hold the traffic by making it clear to shippers that it would be their policy to continue the differential. In accordance with this announced policy, the M & M Line published and filed a rate of 36 cents which became effective on Feb. 6, 1939, thus restoring the differential of 5 cents a box. During the period from Feb. 6, 1939, to Feb. 28, 1939, the water movement increased to 30.7 percent. For the entire period from Sept. 1, 1938, to Feb. 28, 1939, the water movement amounted to about 20 percent of the total. Further reduction of the rail rates, to restore the basis of equalization authorized by the Interstate Commerce Commission, was deferred when the rail rate proceedings were instituted by that Commission.

From the foregoing analysis of the movement of citrus fruit from Florida to Baltimore and the relative rates applicable to such movement, it is apparent that the reductions in the water rate from Jacksonville to Baltimore were forced upon the M & M Line by the rate-equalization policy of the railroads, and it is equally clear that the water lines cannot hope to obtain a fair share of this traffic without a reasonable differential under the all-rail rates.

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. Although it is shown that during the years 1937 and 1938 the operating expenses of the M & M Line exceeded its total revenues, there is no evidence by which it can be determined what proportion, if any, of this deficit could be properly allocated to the movement of citrus from Jacksonville to Baltimore. The vessels operated on this route are combination passenger and freight ships, each having a cargo capacity of 242,500 cubic feet of which 66,200 cubic feet are refrigerated, leaving approximately 176,300 cubic feet of space on each ship for cargo other than citrus. These vessels carry passengers and cargo other than citrus, between ten different ports, and it is respondent's contention that it would be extremely difficult to determine the cost of handling any particular traffic between two given points. There is nothing of record to indicate the cost of transporting citrus fruit by water from Jacksonville to Baltimore. The M & M Line witness testified that the average rate of this line on merchandise traffic is about 29 cents per 100 pounds and that in his judgment this average could go as low as 25 cents and still return something more than actual cost. This witness testified further that in his opinion 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.

We find that respondents' rates and practices in connection with the transportation of citrus fruit from Florida ports to Baltimore, Md., have not been shown to be unreasonable or otherwise unlawful. An order will be entered discontinuing this proceeding.

ORDER

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

No. 510

CITRUS FRUIT FROM FLORIDA TO BALTIMORE, MD.

It appearing, That by its order dated January 27, 1939, the Commission instituted a proceeding of investigation into and concerning the lawfulness of rates and practices of common carriers by water in connection with the transportation of citrus fruit from ports in the State of Florida to Baltimore, Md.; 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.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 535

IN THE MATTER OF AGREEMENT No. 6630

Submitted June 30, 1939. Decided November 30, 1939

Action of applicants relating to an agreement dated May 22, 1939, between The New York and Porto Rico Steamship Company and Waterman Steamship Corporation limiting Gulf-Puerto Rico common carrier service, submitted for approval under section 15 of the Shipping Act, 1916, as amended, having rendered action thereon unnecessary, proceeding discontinued.

Roscoe H. Hupper for applicants.

William Cattron Rigby, *Rene A. Stiegler* and *Carl Giessow* for protestants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This proceeding involves the lawfulness of an agreement, executed May 22, 1939, by The New York and Porto Rico Steamship Company, hereinafter called "Porto Rico Line," and Waterman Steamship Corporation, hereinafter called "Waterman," in which parties expressed their several undertakings in connection with proposed discontinuance by Porto Rico Line of its common carrier service from Gulf ports of the United States to Puerto Rico and the sale of its good will to Waterman. On May 23, 1939, the agreement was filed with us for action under section 15 of the Shipping Act, 1916, as amended. A public hearing was held thereon on June 23, 1939.

Among other things, the agreement provided that if approval was not granted on or before July 1, 1939, or by such later date as may be agreed upon, parties thereto shall be relieved of all obligations thereunder. Subsequent to the hearing that date was extended from time to time to August 5, 1939. The issues not having been determined by that date, counsel for applicants requested that action be deferred and that the agreement be regarded as in suspense pending further advices. Such advices, received September 11, 1939, state that the agreement under investigation has expired by limitation and that a new agreement dated September 1, 1939, relating to the same subject, has been executed. Under the circumstances further consideration of the subject agreement is unnecessary. An appropriate order dismissing the proceeding will be issued.

ORDER

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

No. 535

IN THE MATTER OF AGREEMENT No. 6630

Hearing having been held in this proceeding, and subsequent thereto parties, through counsel, having advised that a new agreement dated September 1, 1939, has been executed relating to the subject under investigation herein; and

It appearing, That further consideration of Agreement No. 6630 is now unnecessary and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision, which report is hereby referred to and made a part hereof;

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 509

NEW YORK MARINE COMPANY

v.

BUFFALO BARGE TOWING CORPORATION, ET AL.[1]

Submitted August 4, 1939. Decided November 30, 1939

Defendants not shown to be subject carriers, and their transportation of freight without schedules of rates on file not shown to be unlawful, as alleged. Complaint dismissed.

Pearce H. E. Aul and *Reginald G. Narelle* for complainant.

Edward Ash for Buffalo Barge Towing Corporation; *E. C. Denby* for Erie & St. Lawrence Corporation; *Carl V. Essery* for Ford Motor Company; *W. E. Hedger* for W. E. Hedger Transportation Corporation; *Richard F. Lenahan* for McLain Marine Corporation, O'Donnell Transportation Company, Inc., Frank Cunningham, Frank Egan, Frank Lowery and John Mulqueen; *William J. Mahar* for Conners Marine Company, Inc., Standard Towing Corporation and Joseph Hutton; *J. H. Muller* for Transmarine Transportation Corporation; *Ray M. Stanley* for Federal Motorship Corporation; *John A. Urquhart* for Michigan Atlantic Corporation, defendants.

A. R. Sheff for Minnesota Atlantic Transit Company; *Arthur C. Schier* for Water Routes, Inc.; *Frank W. Sullivan* for Great Lakes Transit Corporation and Minnesota Atlantic Transit Company; *C. H. Tregenza* for himself.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner. His conclusions are adopted herein.

Complainant is a New Jersey corporation carrying on a transportation business between the Atlantic seaboard and points on the

[1] Conners Marine Company, Inc., Frank Cunningham, Frank Egan, Erie & St. Lawrence Corporation, Federal Motorship Corporation, Ford Motor Company, W. E. Hedger Transportation Corporation, Joseph Hutton, Frank Lowery, McLain Marine Corporation, Michigan Atlantic Corporation, John Mulqueen, O'Donnell Transportation Company, Inc., Standard Towing Corporation, Transmarine Transportation Corporation, Bernard Tucker. The complaint, as to Harry Killian, Murray Transportation Company, Reliance Marine Corporation, Frank Tucker, James Tucker, and Thomas Tucker, named as defendants therein, was withdrawn at the hearing.

Great Lakes. It alleges that defendants are common carriers by water in interstate commerce as defined by section 1 of the Shipping Act, 1916, and as such that their failure to file schedules of rates with the Commission is in violation of section 2 of the Intercoastal Shipping Act, 1933, as amended. Complainant requests a finding that defendants are subject interstate common carriers, and that they be required to file schedules in compliance with the section specified and to comply with other applicable regulatory provisions of the Shipping Act, 1916, as amended.

Defendants Erie & St. Lawrence, Federal Motorship, Ford, and Michigan Atlantic operate motorships between Atlantic seaboard ports and Great Lakes ports. They transit the Hudson River and New York State Barge Canal via Oswego, over what is known as the "Oswego route." Occasionally, due to weather conditions, they transit the Hudson River and New York State Barge Canal to Buffalo, over the so-called "inside route." Their motorships are of shallow draft, can clear bridges having 15½ feet clearance, and are designed for carriage of bulk cargoes. Ford's motorships are used primarily for transportation of Ford automobile parts and commodities. Michigan Atlantic's motorship is used for the carriage of bulk liquid cargoes from Wyandotte, Michigan, to New York, N. Y.

Erie & St. Lawrence and Michigan Atlantic also operate tug-propelled barge fleets. All defendants other than the four-named above are operators of barge fleets exclusively. A fleet ordinarily consists of a tug and six barges. No barge operation of any defendant extends beyond New York Harbor on the east or Buffalo on the west, and all of such operations are confined to the "inside route." In some instances the cargo carried by barge defendants originates at or is destined to United States or Canadian lake and inland points beyond Buffalo, or to interstate or foreign points beyond New York Harbor. Much of the cargo transported by them originates at or is destined to intermediate points in New York on the Hudson River and canal system. Hedger transports general cargo to Buffalo which is destined beyond over through routes in connection with common carriers by rail and by water. Tariffs covering this through transportation are filed by Hedger with the Interstate Commerce Commission and with the Maritime Commission. As the originating carrier this defendant has transported for various shippers to Buffalo in a single or "general cargo" barge under its tariffs on file with us miscellaneous commodities destined to Chicago, Detroit, Cleveland, Milwaukee, and other lake ports served by water carriers concurring in defendant's tariff. These concurring carriers are indicated to be without facilities for transportation of bulk cargoes. There is no showing that any other defendant operating barges allots or segregates a barge in a fleet for the interstate transportation of diversified cargo.

Illustrative cargoes carried by the motorship and barge defendants for others for hire are bulk sugar, sulphur, superphosphate, fertilizer, wood pulp, steel, waste paper, and case goods westbound, and bulk grain, flour, manganese, fertilizer, copper, steel billets, caustics, pig iron, coke, and case goods eastbound. Seasonal contracts for the carriage of these bulk cargoes predominate and are frequently entered into eight months in advance of transportation. Other agreements for carriage are made with cargo owners "wherever business exists at the moment" and wherever "our deliveries take us and to where return loads are available. * * * There are no particular routes or sailings; ports differ with each trip, depending upon time of season or other factors." In numerous instances defendants have refused to carry because of failure to agree with shippers and brokers concerning the rate, sailing, and other considerations. There is no testimony or intimation that any shipper at any time has contemplated or demanded service by any defendant as a matter of right independent of a prearranged special and individual contract to carry.

Defendants seek to confine their carryings to full motorship and full fleet loads of one kind of cargo for one shipper and one consignee. A full barge load is the minimum upon which arrangements for carriage by the barge defendants ordinarily are negotiated, and "split" barge loads are rare. The ports and the places in the ports served 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. It was testified that the defendants' vessels leave when the shipper completes loading and that often they are laid up awaiting cargo. Cargo to fill out a motorship or a fleet load is solicited, or offers of shippers are accepted generally dependent upon the origin or destination of the principal load. Defendants do not maintain terminals where interstate cargo is delivered for shipment without prior agreement for carriage, and defendants' loadings and unloadings are principally at private refineries, elevators, and wharves. Between New York and Buffalo the State of New York provides free terminals. With the exception of Hedger, none of defendants is shown to have through route connections with railroads or with other carriers by water.

Complainant's position is that although defendants are engaged in transporting cargoes pursuant solely to individual contract negotiations with particular cargo owners, they are nevertheless common carriers because their patrons are considerable in number and the cargo carried is varied in character. Complainant urges that a carrier willing to transport for all who offer freight cannot evade a common carrier status merely by arranging to transport upon special contracts. There is, however, no evidence in the instant case of willingness by defendants to transport for all; nor of holding out to transport upon conditions and terms other than those made pursuant to privately negotiated arrangement, which are satisfactory to defendants. Except Hedger, whose service under tariffs is not here in issue, defendants are not shown to be common carriers. Their 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. Their status as common carriers is not established by a showing that in some instances the particular tonnage of cargo carried for different cargo owners has been comparatively small. Nor does complainant's showing that several of defendants are bonded carriers who have satisfied regulations of the United States Treasury Department applicable to common carriers establish their status as common carriers.

Complainant contends that the barge defendants when operating over the harbor waters of the ports of New York and Buffalo are engaged in transportation "on the high seas" and "the Great Lakes," within the meaning of those terms as used in the definition of a common carrier by water in interstate commerce contained in section 1 of the Shipping Act, 1916. Its further contention is that as the motorship and barge defendants invariably transit the Hudson River and the New York State Barge Canal System they are engaged in transportation "on regular routes" as that term is used in this definition. In view of our finding that defendants are not common carriers, these contentions, as well as complainant's showing that the motorship defendants are engaged in transportation on the high seas and Great Lakes, need not be considered.

We conclude and decide that defendants are not shown to be common carriers by water in interstate commerce as defined by section 1 of the Shipping Act, 1916, and that their transportation of freight without schedules of rates on file with us is not shown to be in violation of section 2 of the Intercoastal Shipping Act, 1933, as amended. An order dismissing the complaint will be entered.

Order

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

No. 509

New York Marine Company

v.

Buffalo Barge Towing Corporation et al.

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

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

By the Commission.

[seal] (Sgd.) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 513

CONTRACT ROUTING RESTRICTIONS UNDER AGREEMENTS NOS. 16, 147, 185, AND 4490

Submitted September 13, 1939. Decided November 30, 1939

Contracts made pursuant to respondents' Agreements Nos. 16, 147, 185, and 4490 found to be unjustly discriminatory, unfair, and detrimental to the commerce of the United States.

If respondents do not modify their contracts to remove the discrimination found herein to exist, consideration will be given to the question of issuing an order disapproving the conference agreements.

Roscoe H. Hupper, *J. Franklin Fort*, and *James Sinclair* for respondents.

W. L. Thornton, Jr., and *Frederick E. Brown* for The Shippers' Conference of Greater New York, The Merchants Association of New York, The Port of New York Authority, and Boston Port Authority.

John E. Martin for State of Wisconsin, *Thomas Read*, *James W. Williams*, and *Willard McIntyre* for State of Michigan, *Omer Stokes Jackson* for State of Indiana, *Urban C. Stover* for State of Indiana and Indiana State Chamber of Commerce, *Thomas J. Herbert* and *Perry L. Graham* for State of Ohio, *Allen Dean* for Detroit Board of Commerce, *A. P. Zirkalosa* for Port of Detroit Commission, *Harry D. Fenske* for Port of Detroit Commission and Great Lakes Steel Corporation, *Harry C. Brockel* for Milwaukee Board of Harbor Commissioners, *John C. Beukema* for Muskegon Chamber of Commerce Harbor Committee, *R. F. Malia* for Great Lakes Harbors Association, *C. E. Hochstedler* and *A. H. Schwietert* for Chicago Association of Commerce, *Ralph S. McCrea* for West Michigan Docks and Market Corporation, and *C. B. Bissell* for Corydon-Ohlrich Company.

Olin P. M. Brown for United States Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This proceeding was instituted upon our own motion by order of February 17, 1939, requiring carriers parties to agreements of the

North Atlantic/United Kingdom Freight Conference (Conference Agreement 16), North Atlantic/Continental Freight Conference (Agreement 4490), North Atlantic/French Atlantic Freight Conference (Conference Agreement 185), and North Atlantic/Baltic Freight Conference (Conference Agreement 147), which carriers [1] are hereinafter called respondents, to show cause why an order should not be entered modifying or canceling the agreements on the ground that contracts made by them with shippers pursuant thereto are unjustly discriminatory, unfair, operate to the detriment of the commerce of the United States, and are in violation of the Shipping Act, 1916, as amended. A proposed report was issued; exceptions thereto were filed by respondents, and supporting interveners, to which other parties replied, and the case was orally argued.

The contracts in question obligate the shipper, including subsidiaries, affiliates, and agents to offer to respondents for transportation to certain European ports, at rates agreed upon, all of its export shipments thereto of commodities named or provided for, "which shipments move via any United States or Canadian North Atlantic port or waterway (Great Lakes, River St. Lawrence and other rivers and waters tributary to North Atlantic included)." All of such shipments, irrespective of their point of origin, must be tendered to respondents for their vessels which may load at the ports of Norfolk, Newport News, Baltimore, Philadelphia, New York, Boston, Portland, Montreal, Quebec, Halifax, St. John, or West St. John. Some of the contracts are seasonal, covering shipments from the Great Lakes region, but, for the most part, they are annual contracts extending over the calendar year and providing that they shall continue in effect on the same terms and conditions throughout consecutive subsequent years, subject to termination by either party on 90 days' written notice to the other. The rates, however, are subject to increases and reductions from time to time. If a shipment be made in violation of a contract, respondents, parties thereto, may declare

[1] Aktiebolaget Svenska Amerika Linien, Aktiebolaget Svenska Amerika Mexiko Linien, American Line, American Scantic Line, Inc., Anchor Line, Limited, Arnold Bernstein Schiffahrtsgesellschaft m. b. H., Black Diamond Lines, Inc., Bristol City Line of Steamships, Ltd., Cairn Line of Steamships, Ltd. (Cairn-Thomson Line), Canadian Pacific Steamships, Ltd., Compagnie Generale Transatlantique (French Line), Compagnie Maritime Belge (Lloyd Royal) S. A., County Line, Ltd. (County Line), Cunard White Star, Limited Den Norske Amerikalinje A/S, Oslo, Det Forenede Damps kibs-Selskab A/S, Dominion Line (Canadian/Bristol Channel Joint Service of Bristol City Line of Steamships, Ltd., and Donaldson Line, Ltd.), Donaldson Atlantic Line, Limited, The Donaldson Line, Ltd., Ellerman's Wilson Line, Limited, Furness Withy & Co. Ltd., Gdynia America Shipping Lines, Ltd., Hamburg Amerikanische Packetfahrt Actien Gesellschaft, Manchester Liners, Ltd., N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn," Norddeutscher Lloyd, Osaka Syōsen Kaisya, Red Star Linie G. m. b. H., Rederiaktiebolaget Transatlantic, Ulster Steamship Co., Ltd., United States Lines Company, United States of America—United States Maritime Commission (America France Line), and United States of America—United States Maritime Commission (American Hampton Roads—Yankee Line and Oriole Lines).

the contract terminated, and shipments previously carried thereunder during that yearly period, as well as future shipments, shall be subject to the higher noncontract rates in effect at the time of making those shipments. Some contracts provide that it shall not be a breach of contract if a shipper uses its own or chartered vessels for boatload quantities of such commodities as steel, oil, and automobiles. A contracting shipper may not patronize a carrier operating a direct service from ports on the Great Lakes to Europe by way of the St. Lawrence River without being subject to the penalty of a higher noncontract rate on past and future shipments made via North Atlantic ports on respondents' lines. According to respondents' witness, the difference between the noncontract and contract rates might average 20 percent, with a minimum of $2 per ton. The record does not show the maximum spread.

Resolutions and witnesses assail the contracts as unjustly discriminatory, unfair, detrimental to the commerce of the United States, and in violation of the Shipping Act, 1916, as amended. On behalf of the ports of Milwaukee and Muskegon, attention is called to expenditures made in the development of those ports, to the overseas traffic of the former, and to the fact that seven concerns in Muskegon are overseas shippers, one at present using direct service.

The protests and the evidence submitted concern only the provisions in the contracts which so restrict routing to have the effect of prohibiting direct shipment from Great Lakes ports. The issue may thus be narrowed to the lawfulness of such provisions.

The first direct service on regular schedule from Great Lakes ports to Europe was inaugurated in 1933 by the Fjell Line, a Norwegian company, which had for several years operated tramp ships in the trade. Sailings are made about every 10 days or 2 weeks. At the time of hearing, another line, known as the Oranje Line, was expected to enter the trade with fortnightly sailings. According to the testimony, a shipment is in transit 3 weeks from Detroit to Antwerp via direct service and from 13 to 18 days by railroad to the Atlantic seaboard and respondents' lines beyond.

Respondents claim that the contracts benefit the shipper in that they make forward trading possible and contribute to the maintenance of improved services by stabilizing rates. They admit, however, that the purpose of the contracts is to retain business for their lines. The extent to which they have succeeded is indicated by the testimony of their own witness who estimated that they carry more than 80 percent of the traffic moving in the trades involved. The volume of the tonnage is not disclosed. Their sailings in these trades in 1938 totaled 1,594. Nonconference lines' sailings are estimated to average 60 a year.

The contracts are available to all shippers willing to abide by their terms. They were first entered into by respondents as conference groups in January 1927. Before that time, respondents acted individually in contracting with shippers. Prior to 1934, the terms of the contracts were such as to prohibit the use of Gulf, South Atlantic, and Pacific ports. It is testified that such a construction was never intended, and in 1934 the language of the contracts was changed to apply only to shipments moving through North Atlantic ports and waterways.

There is testimony that when the conference contracts were introduced to cover a limited group of commodities, the contract rates were made the same as the tariff rates previously in effect, the noncontract rates being increased above the contract rates. It is asserted that from a few commodities the contract list has been extended until at present most of the commodities moving in appreciable volume are included. Respondents' witness stated that while there had been some increases in rates to meet greater operating expenses, the rates in effect in 1938 were generally lower than in 1927. On packing house products, respondents, like railroads serving the Great Lakes region, maintain so-called summer rates during the months that the St. Lawrence route is open. Under their contracts with packers for 1938 and 1939, the summer rate was fixed at 36 cents per 100 pounds or 19 cents below the rate of 55 cents in force the rest of the year and which was the rate effective for the year 1927. The difference between the noncontract and contract rates on these products is 10 cents per 100 pounds.

According to respondents' witness, the higher noncontract rates have not been applied retroactively for breach of contracts, the penalty being confined to future shipments as in the case of Sears International, Chicago. This shipper has contracts with respondents on various commodities shipped to Continental Europe and for all of its shipments to the United Kingdom except refrigerators. Its contract on refrigerators was canceled in 1938 for patronizing the Fjell Line. It now pays respondents the noncontract rate on refrigerators shipped on their vessels, which is about 5 cents per cubic foot higher than the contract rate paid by its competitors.

Various other shippers registered objections to being subject to a penalty for using direct service from the Great Lakes. McCord Radiator & Manufacturing Company, Detroit, exports annually about 50 tons of automotive parts and accessories and refrigeration and air-conditioning equipment to Europe, where it encounters American, French, and German competition. It has had a contract with respondents for five years or more and does not use direct service from the Great Lakes, except that some of its customers in Scandinavia who have boats under charter have picked up its products at Detroit. It is estimated that it could effect an annual saving in transportation charges of approximately 50 per cent by shipping over the direct route from Detroit instead of using the rail-water route. Such a saving, according to the testimony, would have enabled this shipper to better its competitive position on many occasions.

The Norge Division of Borg-Warner Company, a contract shipper with plants in Detroit and Muskegon, exports electric refrigerators and other articles to European markets in competition with American and German manufacturers. Direct service is said to have made it possible for it to introduce gas and electric ranges into Belgium. Cutler-Hammer, Incorporated, Milwaukee, a manufacturer of electric control devices and moulded insulation, exports the latter product to Great Britain, 7 tons having been shipped in 1938. This company has never had a contract with respondents and it is testified that until direct service was available from Milwaukee, it could not compete with a manufacturer of moulded insulation at Garfield, N. J., because of the latter's location at seaboard. Its customer in Great Britain has requested it to use the direct service from Milwaukee. Massey-Harris Company, Racine, a contract shipper, would like to see respondents establish a service from the Great Lakes. It considers the contract to have been of some benefit to it but is opposed to being subject to a penalty for availing itself of direct service from the Great Lakes.

The Great Lakes Steel Corporation, Detroit, markets its products in the United Kingdom, France, Belgium, Scandinavia, and other countries. It competes with manufacturers of similar steel products in the United States closer to the seaboard and with manufacturers abroad. Prior to 1935, its exports were negligible. It has since developed an appreciable business in Europe, principally in the United Kingdom, where it markets steel sheets. It has never had a contract with respondents and made use of practically every one of approximately 25 sailings out of the Great Lakes in 1938, the shipments amounting at times to 1,000 tons per vessel. When the Great Lakes are closed to navigation, it ships through the North Atlantic ports. This shipper points to the greater hazard to commerce involved in the transfer of shipments at the seaboard necessitated by the contracts than in the use of direct service. Whereas it has had no claims for damage arising out of the use of direct service, damage to shipments made over the transshipment route resulted in one instance in actual loss of business. It is testified that the ability to ship direct from the Great Lakes to the United Kingdom has been an important factor in the development of business in that country.

In competing with manufacturers in England, it discovered that buyers feared that highly finished sheets could not be safely shipped to them. Direct service was a means of relieving this apprehension. While this shipper makes use of the transshipment route in the winter, it endeavors to hold its shipments for direct movement when the Great Lakes are open. According to the testimony, by using direct service the effect of the higher cost of the rail-water movement during the winter is reduced, enabling it to make c. i. f. quotations throughout the year in competition with exporters closer to the seaboard.

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* (*The Rawleigh Case*, 1 U. S. S. B. 285), but it has been condemned where it operates solely to effect a monopoly. *Eden Mining Co.* v. *Bluefield Fruit & S. S. Co.*, 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. A difference in rates for identical services based solely upon whether or not the carrier secures the shipper's entire patronage is *prima facie* discriminatory. The issue here is whether such discrimination is undue or unreasonable. In determining this question we are called upon to weigh the disadvantages of the monopoly against the advantages flowing therefrom such as stability of rates and consequent stability of service. *Swayne & Hoyt, Ltd., et al.* v. *United States* 300 U. S. 297.

Shippers have a right to enjoy their legitimate opportunities to obtain carriage on the best terms they can. *Menacho* v. *Ward*, 27 Fed. 529. And, as stated in Docket 539, *Westbound Alcoholic Liquor Carload Rates*, they are entitled to use all the natural routes open to them, which right may not be abridged by carriers through improper competitive practices. The Great Lakes-St. Lawrence route is one of our great natural waterways upon which millions of dollars of federal, state, municipal, and private funds have been expended in the expectation of a natural development and growth of traffic from areas contiguous to its ports. The testimony of shippers using this route 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. Should the right to use this route, which respondents do not serve, be unduly diminished or indeed abrogated altogether by those carriers through arbitrary contract routing restrictions imposed because they have the peculiar ability to attract substantially all the traffic, largely by virtue of their monopolistic power which, in this instance, is greatly enhanced through the incidence of climate? No. We do not look with favor upon the attempt of carriers by artificial means to control the flow of traffic not naturally tributary to their lines.

In addition to their tendency to stifle other carrier competition, the contracts are discriminatory in other respects. They 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' 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.

As against this we have the statement of the conference chairman that the contracts contribute to improved service by stabilizing rates. Respondents produced no contract shippers to testify in support of the contracts. There is nothing of record which would lead us to believe that the routing restriction in the contracts is vital to the maintenance of stability of service and rates. On the other hand, we have no doubt that respondents, with their frequency and quality of service, are fully capable of retaining their fair share of this traffic without resort to coercive competitive tactics.

Respondents argue that shippers may, if they choose, refrain from entering into the contracts, but they overlook the fact that with the choice goes the penalty of the higher noncontract rates. 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. *Eden Mining Co.* v. *Bluefield Fruit & S. S. Co., supra.*

Respondents contend that we may take no action affecting the contracts because not all parties to the contracts are before us. The hearing in this case was held after due public notice, and under our 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 this Commission.

Respondents contend further that we should not have proceeded to reach the contracts under section 15 of the Shipping Act, 1916, through the conference agreements since the lawfulness of the contracts could have been investigated independently under other sections of the act. The 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.

We find that the contracts in question are unjustly discriminatory and unfair as between Great Lakes ports and shippers of traffic through such ports, on the one hand, and Atlantic and Gulf ports and shippers of traffic through these ports, on the other hand; and as between shippers having insufficient cargo to ship in boatload quantities from Great Lakes ports and shippers in position to ship in such quantities. We further find that the contracts interfere with the flow of commerce through ports on the Great Lakes and are detrimental to the commerce of the United States.

The record will be held open for a period of 20 days from the date hereof to permit respondents to modify their contracts in such a manner as to remove the unjust discrimination found herein to exist. Failing this, we will consider entering an order disapproving the conference agreements.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 470

IN THE MATTER OF AGREEMENTS NOS. 1438, 5260, 5261, 5262, 5263, AND 5264, AS AMENDED

Submitted September 18, 1939. Decided November 30, 1939

Agreements Nos. 1438 and 5264 found not unjustly discriminatory or unfair as between carriers or shippers, not detrimental to the commerce of the United States, and not otherwise in violation of the Shipping Act, 1916. Proceeding as to these agreements discontinued.

Roger Siddall and *Victor J. Freeze* for United States Lines Company.

Christian J. Beck for Hamburg-American Line and North German Lloyd.

James Sinclair for North Atlantic Continental Freight Conference and Continental North Atlantic Westbound Freight Conference.

John Tilney Carpenter for United States Navigation Co., Inc.

R. H. Hallett for United States Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

This proceeding was instituted upon our own motion, by order entered January 4, 1938, to determine whether Agreements Nos. 1438, 5260, 5261, 5262, 5263, and 5264, as amended, or any of them, heretofore approved under section 15 of the Shipping Act, 1916, should be disapproved, canceled, or modified. By a supplementary order entered March 14, 1939, the parties[1] to Agreements Nos. 1438 and 5264 were directed to show cause why we should not disapprove and cancel these two agreements as being unduly discriminatory

[1] Hamburg-Amerikanische Packetfahrt Actien Gesellschaft (Hamburg-American Line), Norddeutscher Lloyd (North German Lloyd), United States Lines Company (United States Lines), and United States Navigation Company, Inc.

between carriers and detrimental to the commerce of the United States. By the same order the investigation with respect to the other agreements was deferred pending our future orders. Pursuant to the supplementary order a hearing was held at which representatives of respondents testified in regard to the agreements and related matters deemed pertinent to the issues.

Agreement No. 1438, the east-bound pooling agreement, was approved December 20, 1930. This agreement, covering traffic from New York to Hamburg, was entered into between United States Lines Operations, Inc. (United States Lines), and Hamburg-Amerikanische Packetfahrt Actien Gesellschaft (Hamburg American Line), collectively referred to as the Lines, on the one hand, and United States Navigation Company, Inc., referred to as the Company, on the other. The parties agreed to pool their gross-cargo earnings, after deducting handling charges of $2.75 per manifest ton on general cargo and 70 cents per manifest ton on grain, and to distribute the same between the Lines and the Company on the basis of their respective percentages of cargo earnings during the three years ending December 31, 1929. The percentages of pool distribution as thus determined were 86.446892 for the Lines and 13.553108 for the Company. The agreement was made effective from January 1, 1931, and was to run for three years with provision for automatic extension from year to year thereafter unless terminated by written notice given by any party. The Company agreed to maintain a minimum service from New York to Hamburg of not less than one sailing per month and not more than 24 sailings per year, and that it would not, during the life of the agreement, without the sanction of the Lines, extend its activities in the Hamburg trade to U. S. North Atlantic ports other than New York or to ports other than Hamburg in the Continental range, Hamburg to Havre, both inclusive. There was no agreement by the Company to observe the rates maintained by the Lines, and no provision for changes in the percentages of pool distribution to represent future changes in the percentages of actual carryings of the respective parties.

By amendment approved November 10, 1932, The United States Lines of Nevada was substituted for United States Lines Operations, Inc. By amendment approved August 9, 1933, United States Lines Company was substituted for The United States Lines of Nevada, and Kokusai Kisen Kabushiki Kaisha (Kokusai Line), for which U. S. Navigation Co. was acting as agent, was included as a party to the agreement with provision that such participation was to continue only so long as the agency arrangement continued in existence. By amendment approved December 20, 1937, the percentages of pool distribution were changed to give the Lines 88 percent and the Company 12 per cent, commencing January 1, 1938; the right to terminate the agreement was mutually waived for the year 1938, and the agreement was extended to December 31, 1940, with provision that if the west-bound pool agreement (No. 5264) is terminated and not replaced for the year 1939 or 1940, Agreement No. 1438 may be terminated by written notice on or before October 1, 1938, or October 1, 1939. Otherwise, it was to be automatically continued from year to year after December 31, 1940, unless terminated by written notice on or before October 1, 1940, or October 1 of any subsequent year effective at the end of the particular year. The Company also agreed that it would not, without the sanction of the Lines, load any vessels from Gulf, Atlantic, St. Lawrence, or Great Lakes ports of the United States and Canada to ports in the Havre/Hamburg range, except from New York to Hamburg.

Agreement No. 5264, the west-bound pooling agreement, was approved December 16, 1933, as Agreement No. 223–D. This agreement, covering traffic from Hamburg and Bremen to New York, was entered into between Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft (Hamburg American Line), Norddeutscher Lloyd (North German Lloyd), and United States Lines Company (United States Lines), collectively referred to as the Lines, on the one hand, and Kokusai Kisen Kabushiki Kaisha (Kokusai Line) and United States Navigation Company, Inc., referred to as the Company, on the other. It was provided that the term "Company" as used in the agreement included the Kokusai Line for the duration of the agency of the United States Navigation Company, Inc., for the Kokusai Line in said service. The parties agreed to pool their total revenue derived from ocean freight (except surcharge assessed by the express steamers *Bremen*, *Europa*, and *Leviathan*) from German ports to New York, after deducting a carrying charge of $2.50 per manifest ton on general cargo and $2 per manifest ton on bulk cargo, and to distribute the pooled revenue on the basis of 91½ percent to the Lines and 8½ percent to the Company. It was testified that these percentages were arrived at by negotiation between the parties, with knowledge of what the respective parties were carrying and having in mind the percentages agreed upon in the east-bound pool. Division among the Lines of the amounts paid or received by them was to be in accordance with agreement reached among the Lines themselves. The agreement was made effective from February 1, 1933, for a period of two years and eleven months, with the right to terminate as of December 31, 1933, with provision for automatic extension from year to year thereafter unless terminated by written notice given by any party. The Company agreed to maintain a regular service from

Hamburg to New York of not less than 12 and not more than 24 sailings per year, and that it would not, during the life of the agreement, without the sanction of the Lines, load any steamers from ports in the Hamburg/Havre range to ports in the Portland/Hampton Roads range except from Hamburg to New York. There was no agreement by the Company to observe the rates maintained by the Lines, but the parties did agree that special concessions such as free storage, warehousing, financing, rebates, or other preferences to shippers or consignees would not be permitted. There was no provision for changes in the percentages of pool distribution to represent any changes in percentage of cargo actually carried by the respective parties.

Agreement No. 223–D was renumbered 5264 by order entered June 23, 1936, and various amendments have been made since the initial approval, involving, among others, provisions in regard to deductions from gross freight, notice of termination, and percentages of pool distribution, by amendment approved December 20, 1937, the percentages of pool distribution were changed, effective January 1, 1938, to give the Lines 93.625 percent and the Company 6.375 percent; the Company was given the privilege of dispatching 11 sailings from Hamburg to New York during 1937; the agreement was extended to December 31, 1940, with provision for right of termination by written notice by any party on or before October 1, 1938, or October 1, 1939, if the so-called Continental North Atlantic Northern Group-Western Group Westbound Pool Agreement (No. 5260) should be terminated and not replaced by the same or substantially similar arrangement for the year 1939 or 1940. Otherwise, the agreement was to be automatically continued from year to year after December 31, 1940, unless terminated by written notice on or before October 1, 1940, or October 1 of any subsequent year effective at the end of the particular year. This amendment also provides that in event of termination no party, except by mutual consent, will negotiate term contracts for any period beyond the end of such year, before October 1 of the year in which notice of termination is given.

The agency of U. S. Navigation Co. for Kokusai Line terminated December 31, 1935, and thereafter, until December 31, 1937, the service was operated by U. S. Navigation Co. under a joint working agreement with Kokusai, as United States Navigation Company, Inc.-Kokusai Line Hamburg Service. Since December 31, 1937, when this joint agreement expired, U. S. Navigation Co. has operated the service, both east-bound and west-bound, for its own account, using chartered foreign flag vessels.

The two pooling agreements heretofore described, and related agreements hereinafter referred to, were consummated after extended negotiations between the parties with a view to lessening the severity of competition and stabilizing the rates in the North Atlantic-Continental trade. The North Atlantic Continental Freight Conference [2] and the Continental North Atlantic Westbound Freight Conference,[3] formed to promote commerce and to establish and control rates in the east-bound and west-bound trades, respectively, had not been effective in preventing rate wars, unequal treatment of shippers, and other undesirable practices by carriers. The operations of carriers outside the conferences contributed to, but were not the sole reason for, the chaotic conditions that had prevailed for some years. There was also intense competition between the conference carriers serving the same ports and between such carriers serving different ports or groups of ports in the range covered by the two conferences. The carriers serving Hamburg and Bremen, commonly known as the "Northern" ports, and the carriers serving Rotterdam and Antwerp, commonly known as the "Western" ports, were competing for traffic originating in or destined to interior Germany, Czechoslovakia, Austria, Switzerland, and Roumania. The competition between the two groups also extended to the North Atlantic ports of the United States and Canada.

The east-bound rate conference extended to both northern and western port groups from its inception, but the west-bound rate conference was not extended to include Rotterdam and Antwerp until 1933.[4] In 1928 some of the carriers in the western group formed a pool which relieved the situation to some extent between themselves, and after negotiations over a period of about five years, the present system of control in the west-bound trade was established, that is, extension of the conference rate agreement to include the western group, a pooling agreement [5] between the two groups, and separate pools between the lines serving the northern ports. In addition to the pool between the three conference lines and U. S. Navigation Co. Inc., heretofore described, the separate agreements between the conference lines of the northern group included a pooling agreement [6] between the two German lines and United States Lines on traffic to New York, an agreement [7] between the German lines and Baltimore

[2] Agreement No. 48, approved June 26, 1923, superseded by Agreement No. 4490, approved August 24, 1935.

[3] Agreement No. 70, approved conditionally November 3, 1925; condition of approval accepted and approval effective April 15, 1926.

[4] Agreement No. 70–1, approved May 16, 1933.

[5] Agreement No. 223, approved May 9, 1933, superseded by No. 5260, approved July 23, 1936.

[6] Agreement No. 223–A, approved December 16, 1933, superseded by No. 5261, approved June 23, 1936.

[7] Agreement No. 223–B, approved December 16, 1933, superseded by No. 5262, approved June 23, 1936.

Mail Steamship Company on traffic to Baltimore and Hampton Roads, and a pooling agreement[8] between the German lines and Yankee Line on traffic to Boston and Philadelphia. These agreements between the conference lines, in addition to dividing the revenue or traffic in the particular trades involved, also provide for proportionate participation by said lines in the west-bound pool with U. S. Navigation Co. The right to terminate the east-bound pooling agreement (No. 1438) with U. S. Navigation Co. for the years 1939 and 1940 is conditioned upon the termination of the west-bound agreement (No. 5264), and the right to terminate No. 5264 for the same years is conditioned upon the termination of Agreement No. 5260. As all of these agreements together form an interrelated structure, the entire effect of any single agreement cannot be measured independently of the others.

The U. S. Navigation Co. has been engaged in the cargo trade between New York and Hamburg since 1919, either for its own account or as agent, operating comparatively slow cargo vessels requiring considerably longer elapsed time than the faster vessels of the conference lines, and has generally maintained rates lower than the conferences but apparently not upon a fixed differential basis. This company has also maintained for some years separate regular services from the United States to the United Kingdom and to South Africa. The operation of the U. S. Navigation Co. Hamburg service with lower rates, outside of the conferences, presented a rather serious competitive situation and was a constant threat to the stability of the conference rate structure. In this service the company had maintained approximately 24 sailings per year from 1923 to 1930, inclusive, east-bound, and approximately the same number west-bound from 1923 to 1932, inclusive. Its carryings during these periods averaged about 123,000 payable tons per year east-bound with an average annual gross revenue of about $572,000, and about 67,410 payable tons per year westbound with an average annual gross revenue of about $304,000. U. S. Navigation Co. has carried principally low-grade commodities which could readily move by its slower vessels with the inducement of lower rates. The principal commodities carried by it eastbound have been flour, rags, asphalt, lubricating oil, lubricating grease, oil cake, scrap brass and copper, scrap rubber, and grain. The principal commodities carried west-bound have been chlorate of potash, muriate of potash, nitrate of potash, napthalene, wood pulp, rock salt, peat moss, and cod-liver oil. While carrying these low-grade commodities this

[8] Agreement No. 223–C, approved December 16, 1933, superseded by No. 5263, approved June 23, 1936.

company was also soliciting and quoting lower rates on the higher grade commodities but there is no evidence to show the amount of such cargo it was able to obtain. The pooling agreements with U. S. Navigation Co. were expected to ease the competitive situation and directly result in confining that company's activities largely to the low-grade cargoes, leaving the higher rated goods for the conference lines.

Immediately after the pooling agreements were consummated, U. S. Navigation Co. reduced the number of its sailings in the Hamburg trade from 24 to 12 per year and has continued to operate the service on this reduced basis. In 1934 it operated five of the Hamburg ships via London and in 1935 there were four of these sailings via London. Since that time all of this company's sailings to Hamburg have been via London. The record indicates that this change in the service was due to the comparatively small amount of cargo moving to Hamburg, and shippers by this line apparently did not object to the additional delay necessitated by a call at London.

In addition to curtailing its service, U. S. Navigation Co. also became less active in soliciting cargo both in the United States and in Europe. It has continued to carry some of the low grade commodities, but the total cargo carried and gross revenue earned by it have shown a substantial decrease in practically every year since the agreements became effective. Its percentage of the total cargo and gross revenue of all parties to each of the two pooling agreements has shown a similar decrease. This situation is more clearly illustrated by the following statement of its participation in the trade:

Year	East-bound				West-bound			
	Payable tons	Percent	Gross revenue	Percent	Payable tons	Percent	Gross revenue	Percent
1931	21,196	8.37	$120,299.97	4.64				
1932	20,500	13.10	119,035.76	7.50				
1933	18,240	11.69	92,058.73	6.73	[1] 11,755	4.04	$52,504.08	2.75
1934	14,186	8.90	67,732.85	4.54	12,472	4.64	56,860.17	2.94
1935	12,402	8.04	58,055.87	4.60	4,857	1.46	29,297.93	1.28
1936	10,319	6.05	39,216.39	2.75	7,385	1.89	42,448.74	1.46
1937	7,220	2.78	38,196.24	1.67	12,622	2.75	65,661.19	1.84
1938	1,627	.62	13,174.65	.52	6,496	1.90	52,825.92	1.59
Total			547,770.46				299,598.03	

[1] Feb. 1, 1933, to Dec. 31, 1933.

As U. S. Navigation Co. has been an undercarrier in both pools from their inception, it has received substantial payments each year from the other carriers to make up its percentage of the pooled revenue in accordance with the agreements. The payments thus received by it have been as follows:

Year	East-bound	West-bound	Year	East-bound	West-bound
1931	$185, 335. 30		1936	$117, 481. 19	$137, 294. 00
1932	85, 402. 75		1937	192, 988. 65	173, 366. 01
1933	81, 086. 09	$73, 124. 74	1938	201, 517. 40	118, 773. 21
1934	105, 325. 66	78, 650. 01			
1935	88, 746. 94	108, 752. 78		1, 057, 883. 98	689, 960. 75

The payments to U. S. Navigation Co. in the east-bound pool have been divided between United States Lines and Hamburg American Line in accordance with the provisions of Agreement No. 1438, as follows:

Year	United States Lines	Hamburg-American Line	Year	United States Lines	Hamburg-American Line
1931	$38, 228. 80	$147, 106. 50	1936	$31, 216. 54	$86, 264. 65
1932	19, 563. 93	65, 838. 82	1937	55, 625. 99	137, 362. 66
1933	20, 672. 51	60, 413. 58	1938	44, 239. 61	157, 277. 79
1934	37, 955. 40	67, 370. 26			
1935	23, 278. 70	65, 470. 24		270, 779. 48	787, 104. 50

The payments to U. S. Navigation Co. in the west-bound pool have been divided between the participating lines in accordance with the provisions of Agreements Nos. 5260 to 5264, inclusive, as follows:

Year	United States Lines	Hamburg-American Line and North German Lloyd	Other participating lines
1933 [1]	$15, 372. 81	$50, 243. 07	$7, 506. 86
1934	16, 690. 51	64, 032. 57	7, 926. 93
1935	22, 712. 92	74, 846. 54	11, 193. 32
1936	20, 392. 57	44, 614. 79	72, 286. 64
1937	26, 791. 72	54, 237. 28	92, 337. 01
1938	18, 971. 95	38, 015. 48	61, 785. 78
	120, 932. 48	315, 989. 73	253, 038. 54

[1] Feb. 1 to Dec. 31.

During the years 1933, 1934, and 1935 the payments to U. S. Navigation Co. in the west-bound pool, as shown in the above statement, were all made by the lines of the northern group and the participation of the western group was separately handled between the two groups. For the years 1936, 1937, and 1938 the amounts contributed by the western group are included in the figures showing amounts paid by other participating lines.

In return for the payments made to U. S. Navigation Co. the conference lines have been directly benefited by decreased competition from U. S. Navigation Co. and increased stability of the conference rate structure. Although there have been some increases in conference rates since the pooling agreements became effective, it is not shown that these increases were the direct result of the agreements. The decreased service of U. S. Navigation Co. has not resulted in the shutting out of any Hamburg cargo for lack of space, but the conference lines have obtained an increased percentage of the total traffic at the higher conference rates with resulting benefit to all parties to the agreements.

The undertaking by U. S. Navigation Co. to confine its activities in the trade to New York and Hamburg has been the consideration for the pool contributions made by the lines which serve other ports in the North Atlantic-Continental range, as provided by agreements 5260 to 5263. Because of this provision of the agreements, U. S. Navigation Co. has been compelled to refuse the agency for the Fjell Line, which serves the western ports, anad to refuse cargo for those ports that is transshipped at London. The stability of the conference relations between the northern and western groups has been promoted by this restriction on the activities of U. S. Navigation Co.

The agreements undoubtedly have been of substantial benefit to the U. S. Navigation Co. The pool payments received from the other lines, together with the revenue received from the comparatively small amount of cargo carried in the Hamburg trade since the agreements became effective, have resulted in slightly greater revenue per voyage west-bound and reduced revenue per voyage east-bound. It must be remembered, however, that for the three years 1936–1938 the eastbound sailings were all via London and the expense of operation was shared by the London cargo. On the basis of 24 voyages per year eastbound from 1923 to 1930, inclusive, and the same number westbound from 1923 to 1932, inclusive, compared with 12 voyages per year in each direction since the agreements, the comparative voyage revenue has been approximately as follows:

East-bound:		West-bound	
1923–30	$23,833	1923–32	$12,667
1931–38	[1] 16,725	1933–38	[1] 13,744

[1] Includes pool payments.

U. S. Navigation Co. has continued to maintain rates less than the conference rates, but the agreements have made it unnecessary and unprofitable for it to engage in arbitrary rate-cutting, and it has shared in the increased revenue obtained by the conference lines on all competitive cargo that it may have lost to those lines by reason of its decreased service and solicitation. It is not possible to determine whether the payments made to U. S. Navigation Co. outweigh the advantages accruing to the conference lines, but it is clearly established that the agreements have been mutually advantageous, and there has been no showing that they are unjustly discriminatory or unfair as between carriers. At the hearing it was indicated that all parties to the agreements were in accord in desiring their continuance.

The agreements have resulted in effective control of the competition of the U. S. Navigation Co., a nonconference line, but at the same time have required that company to continue its Hamburg service both east-bound and west-bound. 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 the agreements have operated to deprive shippers of adequate facilities for the movement of their goods.

We find that Agreements Nos. 1438 and 5264 are not unjustly discriminatory or unfair as between carriers or shippers, do not operate to the detriment of the commerce of the United States, and are not in violation of the Shipping Act, 1916, as amended. An order will be entered discontinuing the proceeding as to these agreements.

Order

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

No. 470

In the Matter of Agreements Nos. 1438, 5260, 5261, 5262, 5263, and 5264, as Amended

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It appearing, That by its order dated January 4, 1938, the Commission instituted a proceeding of investigation to determine whether Agreements Nos. 1438, 5260, 5261, 5262, 5263, and 5264, as amended, or any of them, should be disapproved, canceled, or modified.

It further appearing, That by a supplementary order dated March 14, 1939, the parties to Agreements Nos. 1438 and 5264 were directed to show cause why the Commission should not disapprove and cancel these two agreements as being unduly discriminatory between carriers and detrimental to the commerce of the United States, and the investigation with respect to the other agreements was deferred pending future orders of the Commission;

It further appearing, That full investigation of the matters and things in connection with Agreements Nos. 1438 and 5264 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, as to Agreements Nos. 1438 and 5264, be, and it is hereby, discontinued.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 519 [1]

WATERMAN STEAMSHIP CORPORATION

v.

ARNOLD BERNSTEIN SCHIFFAHRTSGESELLSCHAFT M. B. H. (ARNOLD BERNSTEIN LINE), ET AL.

Submitted October 11, 1939. Decided December 19, 1939

Defendants' conference agreements and exclusive patronage contracts with shippers found to be unjustly discriminatory and unfair as between complainant and defendants and to subject complainant to undue and unreasonable prejudice and disadvantage.

If complainant be not admitted to full and equal membership in the conferences, consideration will be given to disapproval of the conference agreements.

Gessner T. McCorvey for complainant.

R. H. Hupper, *B. H. White*, and *J. Sinclair* for defendants.

M. G. de Quevedo for defendant Black Diamond Lines, Inc.

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

Defendants filed exceptions to the report proposed by the examiner to which complainant replied, and the cases were orally argued. Our conclusions agree with those recommended by the examiner.

Complainant is an Alabama corporation and common carrier by water in foreign and domestic commerce. Defendants [2] are common

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[1] This report also embraces No. 520, *Same* v. *French Line et al.*, and No. 521, *Same* v. *American Line et al.*

[2] No. 519: Arnold Bernstein Schiffahrtsgesellschaft m. b. H. (Arnold Bernstein Line), Black Diamond Lines, Inc. (Black Diamond Lines), Canadian Pacific Steamships, Ltd., Compagnie Maritime Belge (Lloyd Royal) S. A., County Line, Ltd. (County Line), Ellerman's Wilson Line, Limited (Ellerman's Wilson Line), Hamburg-Amerikanische

carriers by water in foreign commerce and are the members of the North Atlantic Continental Freight Conference (Docket No. 519); the North Atlantic French Atlantic Freight Conference (Docket No. 520), and the North Atlantic United Kingdom Freight Conference (Docket No. 521).

Complainant alleges that defendants' denials of its applications for admission to the three conferences, in connection with defendants' exclusive patronage contracts with shippers, subject it to unjust and unfair discrimination, create monopolies in the trades, give undue or unreasonable preference or advantage to defendants, and operate to the detriment of the commerce of the United States in violation of sections 15 and 16 of the Shipping Act, 1916, as amended. We are asked to require defendants to admit complainant to membership in the conferences and if they fail to do so, to cancel the conference agreements and the exclusive patronage contracts.

The agreements of the conferences in question were approved in accordance with section 15 of the Shipping Act, 1916, August 24, 1935, August 24, 1932, and March 19, 1929, respectively. They provide for establishment and maintenance of agreed rates, charges, and practices and the members agree to endeavor to stabilize and otherwise improve, in all proper ways, the steamship and export trade. Provisions are also made for the admission of other carriers to the conferences. The agreement of the North Atlantic Continental Freight Conference further specifies that such admission shall not be denied except for just and reasonable cause.

Waterman Steamship Corporation operated the Mobile Oceanic Line for account of the United States from 1919 until October 1931, between East Gulf ports, Gulfport, Miss., to Tampa, Fla., inclusive, and ports in the United Kingdom and Continental Europe. On or

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Packetfahrt Aktien-Gesellschaft (Hamburg-American Line), Norddeutscher Lloyd (North German Lloyd), N. V. Nederlandsch-Amerikansche Stoomvaart-Maatschappij (Holland-America Line), Osaka Syosen Kaisya, Red Star Linie G. m. b. H. (Red Star Line), United States of America-United States Maritime Commission (American Hampton Roads-Yankee Line), and United States Lines Company (United States Lines).

No. 520: Compagnie Generale Transatlantique (French Line), County Line, Ltd. (County Line), United States Lines Company (United States Lines), and United States of America-United States Maritime Commission (America France Line).

No. 521: American Line, Anchor Line, Limited (Anchor Line), Arnold Bernstein Schiffahrtsgesellschaft m. b. H. (Arnold Bernstein Line), Bristol City Line of Steamships, Ltd., Cairn Line of Steamships, Ltd. (Cairn-Thompson Line), Canadian Pacific Steamships, Ltd., Cunard White Star, Limited, Dominion Line (Canadian/Bristol Channel Joint Service of Bristol City Line of Steamships, Ltd., and Donaldson Line, Ltd.), Donaldson Atlantic Line, Limited, The Donaldson Line, Ltd., Ellerman's Wilson Line, Limited (Ellerman's Wilson Line), Furness, Withy & Co., Ltd. (Furness Line), Manchester Liners, Ltd., Osaka Syosen Kaisya, Red Star Linie G. m. b. H. (Red Star Line), Ulster Steamship Co., Ltd. (Head Line), United States Lines Company (American Merchant Line), United States of America-United States Maritime Commission (American Hampton Roads-Yankee Line), and United States of America-United States Maritime Commisssion (Oriole Lines), United States Lines Company (United States Lines).

about October 1, 1931, the Corporation purchased the line and 14 vessels from the Government, thereafter operating the service for its own account. Additional American flag vessels have been purchased since then. The fleet now consists of 21 vessels aggregating 185,662 deadweight tons. Practically all of the ships have been improved in speed, and some have been provided with refrigerated space. A minimum of 72 sailings per year has been maintained for the last seven years, and commencing June 1, 1939, weekly sailings were scheduled to London; semi-monthly sailings to Liverpool, Manchester, Glasgow, Bremen, Hamburg, Rotterdam, and Antwerp, and sailings every four weeks to Avonmouth, Havre, Hull, and Newcastle. Waterman, as a member of the Gulf United Kingdom Freight Conference and of the Gulf French Atlantic Hamburg Range Freight Conference, carried approximately 80 percent of the total exports from Mobile, Ala., to United Kingdom and Continental ports during the fiscal year 1937, and an estimated higher percentage from the other East Gulf ports.

Complainant applied for admission to the North Atlantic Continental Freight Conference by letter of October 25, 1938, informing the conference of its intention to inaugurate a freight service from Norfolk, Va., to Bremen, Hamburg, Rotterdam, and Antwerp, with semimonthly sailings, the initial sailing to be on or about December 21, 1938. Details of the vessels to be used were given with the advice that the ships would call at Norfolk enroute from the East Gulf; that applicant was prepared to allocate such vessel space to the Norfolk trade as might be required for general cargo, and that applicant was prepared to serve the Norfolk trade with vessels independent of its Gulf operations when warranted by trade conditions. Additional information being requested, applicant thereafter advised the conference of its intention to load at Norfolk for Bremen, Hamburg, Rotterdam, and Antwerp only; that while in all probability discharging would be in that order it was Waterman's custom to arrange discharging itineraries that best suit cargo requirements; that the contemplated service was to be maintained by the Waterman Steamship Corporation with American flag vessels owned by it and that a trade name had not been assigned for the proposed service. By letter of November 18, 1938, the conference notified Waterman that at a meeting on November 17, 1938, its application was considered but was not approved.

On November 28, 1938, complainant sought to learn why its application was not accepted, and renewed it. At the same time application was made for admission to the North Atlantic French Atlantic Freight Conference and the North Atlantic United Kingdom Freight Conference, outlining the proposed services, frequency of sailings and probable discharging itineraries, the first sailing to be during the second half of January 1939. The conferences desired to know if a definite amount of space on each vessel was to be assigned to Norfolk irrespective of cargo offerings at Gulf loading ports, and they were informed Waterman did not intend to restrict space allocations but to supply sufficient space to accommodate the trade requirements. Complainant was advised under date of January 12, 1939, that its application had been considered by the various conferences but was not approved.

Waterman renewed its application for membership in the three conferences by letter of March 3, 1939, and under date of April 4, 1939, was advised that after consideration by the conferences the application was not approved.

Although denied admission to the conferences, Waterman started the new service with its S. S. *Iberville* sailing from Norfolk January 24, 1939, direct for London, having lifted 32 tons of apples for London and 55 tons of fertilizer for Antwerp. When applying for conference membership, Waterman was aware that the members had contracts with shippers requiring them to confine their shipments to conference lines, and knew that unless admitted to the conferences it would be handicapped in obtaining cargo. When solicitation for cargo began it was found that contracts had been entered into with so many shippers that it was impossible for Waterman to secure any appreciable amount of cargo. Bookings of scrap metal and glucose were cancelled when the shippers learned that Waterman was not a conference member. Some business of substantial importance was offered at a later date for loading at Hampton Roads at less than conference rates but Waterman declined this, preferring to protect conference rates. Because of its inability to secure cargo due to the conference contracts, Waterman has put no other ships into Hampton Roads.

The position of the conferences is that Hampton Roads ports are amply served by the member lines, that the entry of Waterman into the trade from Hampton Roads is not required in the public interest and that it would bring about excessive and unnecessary competition. The chairman of the conferences testified that a special study made in view of these proceedings showed that on the average the ships serving those destinations left Hampton Roads with at least 50 percent of their space unoccupied, which condition had existed for a number of years. The conference lines consider the current business rather spotty and contend that, based on their experience and anticipations for the future, they are sure "the lines already serving the port will be able to supply adequate tonnage for the cargo offered." They therefore believe that no additional service out of Hampton Roads is required. The probable effect of an additional service would be to diminish the carryings of each line now operating in the trade when there is already a limited amount of cargo available. There is said to be some doubt whether all of these lines could continue to operate their services if they incurred the losses that obviously would be incurred. The members think this would tend to prejudice rather than improve shipper interests, not only at Hampton Roads ports but at other ports now being served. They know of no particular demand for direct service from Hampton Roads but say that they are prepared to give such service if it is justified. Defendant Black Diamond Lines, Inc., which presented no separate defense, discussed in its brief, the possibility that complainant might extend its service to other North Atlantic ports if permitted to become a member of the conferences. In considering this phase of the matter it should not be overlooked that defendant Holland America Line is a member of the Gulf United Kingdom Freight Conference; that this line and defendant French Line are members of the Gulf French Atlantic Hamburg Range Freight Conference; and that these defendants are operating from East Gulf as well as North Atlantic ports.

Since the discontinuance of the Baltimore Mail Line, there has been no direct line service, except for occasional sailings, from Hampton Roads to United Kingdom and Continental ports. Generally, the calls are made at Baltimore first and Hampton Roads next. Some vessels already have called at Philadelphia, in which case Hampton Roads is the third. Some of the vessels after leaving Hampton Roads go to New York, others to Halifax, and still others to Boston to complete loading. Whether the order of calling is a reason why vessels do not load to capacity at Hampton Roads ports is not made clear by the record. Complainant's witness testified that his examination of many of defendants' schedules showed vessels sailing from other North Atlantic ports five to eight days after leaving Hampton Roads. In his opinion those services are not as satisfactory to the trade as Waterman's contemplated direct sailings would be, which ordinarily would make the trip from Norfolk to Liverpool in not more than 13 days and to London in about 14 days. We must observe that "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 Lines' service from Hampton Roads with vessels calling at New York en route to Rotterdam. Waterman is convinced that the delay incurred by its vessels in calling at Hampton Roads en route to Europe from the Gulf would not exceed 36 hours and possibly not more than 24 hours. In view of the asserted superiority of its Gulf service over all others from the Gulf, Waterman feels that that delay is not a matter of any material consideration nor of any prejudice to the Gulf trade.

Complainant regards denial of its applications as particularly discriminatory in that the North Atlantic United Kingdom Freight Conference admitted Osaka Syosen Kaisya to membership on July 6, 1938. The conference chairman, however, pointed out that while Waterman's proposed service was to be in connection with its vessels sailing from the Gulf, Osaka Syosen Kaisya is not diverting its ships to North Atlantic ports for the purpose of lifting cargo. Its vessels call at North Atlantic and European ports to discharge cargo loaded in the Far East and are consequently there without any diversion. As a member of the conference, Osaka Syosen Kaisya has a right to go to Hampton Roads ports and to enjoy the benefits of the exclusive patronage contracts of the conference. Excessive vessel tonnage in this North Atlantic trade proved to be no deterrent to the admission of that carrier to conference membership just a short time prior to complainant's application. Under these circumstances the denial of Waterman's application for admission to this conference is clearly unjustly discriminatory as between carriers.

From the foregoing it is apparent that Waterman 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 Waterman, together with the effect of the exclusive patronage contracts, acts as an effective bar to that carrier's participation in the trade; and that it is not shown conclusively that the trade is over tonnaged.

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. Specifically, it is suggested that the test here should be similar to that applied in cases involving a certificate of public convenience and necessity. It would be illogical to assume the power indirectly to grant such certificates without exercising the concomitant authority to deny the right to abandon service. These powers have not been directly conferred upon us, and they are of such drastic nature as not to be implied. As stated in *McCormick Steamship Company* v. *U. S.*, 16 Fed. Supp. 45, the delegation by Congress of such power "would have to be made in terms so clear that there was no possible ambiguity or doubt as to such intent." We are 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 continuing to maintain adequate service.

We are not unsympathetic with defendants' desire to prevent alleged excessive and unnecessary competition. However, the record is not convincing that this would result if complainant's prayer is granted.

We find on the record in these cases that complainant Waterman Steamship Corporation is entitled to membership in the North Atlantic Continental Freight Conference, the North Atlantic French Atlantic Freight Conference, and the North Atlantic United Kingdom Freight Conference on equal terms with each of the defendants, and that failure to admit complainant to membership in said conference, including participation in shippers' contracts entered into pursuant to the conference agreements, resulted in the said agreements and contracts being unjustly discriminatory and unfair as between complainant and defendants, thus subjecting the agreements to disapproval or modification under section 15 of the Shipping Act, 1916, as amended; and in the complainant being subjected to undue and nnreasonable prejudice and disadvantage. Defendants will be allowed twenty days within which to admit complainant to full and equal membership in each conference, failing which consideration will be given to the issuance of orders disapproving the conference agreements.

By the United States Maritime Commission.

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

WASHINGTON, D. C., *December 19, 1939.*

UNITED STATES MARITIME COMMISSION

No. 481

In the Matter of Wharfage Charges and Practices at Boston, Mass.

Submitted October 17, 1938. Decided January 4, 1940

1. Certain respondents operating under agreements or working arrangements within the purview of section 15 of the Shipping Act, 1916, without approval as required by said section. Other agreements for furnishing terminal facilities to rail carriers not within scope of section 15 of the Sbipping Act, 1916.
2. Practice of Department of Public Works of the Commonwealth of Massachusetts of collecting wharfage charges on freight interchanged between vessel and pier, which moves to or from points within a prescribed area, while exempting from such charges freight moving to or from points beyond that area, unduly preferential and prejudicial in violation of section 16 of that act.
3. Charging of different rates of wharfage by other respondents, operators of different wharves and piers, and practices of such operators not shown to be unduly preferential, prejudicial, unjust or unreasonable.

John F. Fitzgerald, *Richard Parkhurst*, and *Walter W. McCoubrey* for Boston Port Authority; *Richard D. Chase* for Boston Wool Trade Association; *Kenneth B. Williams* for the Boston Coffee Brokers Association, Dwinell-Wright Company, Economy Grocery Stores Corporation, Stanley W. Ferguson, Inc., Standard Brands, Inc., and La Touraine Coffee Company; *Walter E. Dougherty* for Foreign Commerce Commission of Boston; *Eli C. Benway* for the Motor Truck Club of Massachusetts, Inc.; and *Frank S. Davis* for the Maritime Association of the Boston Chamber of Commerce, interveners.

George H. Fernald, Jr., for Boston & Albany Railroad; *W. A. Cole* and *Richard W. Hall* for Boston & Maine Railroad and Mystic Terminal Company; *H. D. Boynton* for New York, New Haven & Hartford Railroad Company; *Raymond E. Sullivan* for the Department of Public Works of the Commonwealth of Massachusetts;

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L. J. Coughlin for Boston Tidewater Terminal, Inc.; *Leland Powers* for Piers Operating Company; and *Samuel G. Spear* for Wiggin Terminals, Inc., respondents.

Report of the Commission

By the Commission:

Interveners and respondents filed exceptions to the report proposed by the examiner and the case was orally argued. The findings recommended by the examiner with certain exceptions are adopted herein.

This proceeding was instituted by our orders dated April 12, 1938, and April 21, 1938, upon petitions filed by the Boston Port Authority, the Boston Wool Trade Association, the Boston Coffee Brokers Association and others. It is an investigation concerning the lawfulness under sections 15, 16, and 17 of the Shipping Act, 1916, as amended, of wharfage charges and practices in connection with water-borne traffic at Boston, Mass., of respondent terminal operators;[1] and of their agreements relating to wharfage charges and practices.

The Commonwealth of Massachusetts, though presenting evidence on behalf of its Department of Public Works, contends that it is not an "other person" within the definition contained in the Shipping Act, 1916, as amended, and submits that any rates or charges applicable to Commonwealth Piers are not subject to our approval or disapproval. In principle this question was set at rest in *United States* v. *California*, 297 U. S. 175, a suit brought by the United States against the State of California to recover the statutory penalty for violation of the federal Safety Appliance Act by a common carrier owned and operated by that State. There it was argued that inasmuch as the State was operating the railroad without profit, for the purpose of facilitating the commerce of the port, and was using proceeds for harbor improvements, it was engaged, as argued here, in performing a public function in its sovereign capacity and therefore could not lawfully be subjected to the provisions of the federal act. The Court said:

> Despite reliance upon the point both by the government and the state, we think it unimportant to say whether the state conducts its railroad in its "sovereign" or in its "private" capacity * * * The only question we need consider is whether the exercise of that power, in whatever capacity, must be

[1] Boston & Albany Railroad, operating Grand Junction Docks; Boston & Maine Railroad; New York, New Haven & Hartford Railroad Company; Boston Tidewater Terminal, Inc., operating the New Haven's Piers 1 and 4, as agent; Department of Public Works of the Commonwealth of Massachusetts, operating Commonwealth Piers Nos. 1 and 5; Piers Operating Company, operating the Army Base Pier under lease from the United States Government; Wiggin Terminals, Inc.; and Mystic Terminal Company, operating the Boston & Maine's Mystic and Hoosac Wharves.

in subordination to the power to regulate interstate commerce, which has been granted specifically to the national government. The sovereign power of the states is necessarily diminished to the extent of the grants of power to the federal government in the Constitution.

California, by engaging in interstate commerce by rail, has subjected itself to the commerce power, and is liable for a violation of the Safety Appliance Act, as are other carriers, unless the statute is to be deemed inapplicable to state-owned railroads because it does not specifically mention them * * * No convincing reason is advanced why interstate commerce and persons and property concerned in it should not receive the protection of the act whenever a state, as well as a privately owned carrier, brings itself within the sweep of the statute, or why its all-embracing language should not be deemed to afford that protection.

We conclude therefore that the Commonwealth of Massachusetts, insofar as it engages in the activities of an "other person" as defined in the Shipping Act, 1916, as amended, is subject to that act.

There are two bases of wharfage rates under attack: the "Commonwealth Scale," applied generally by respondents on intercoastal traffic and by Commonwealth Piers on all freight, with certain exceptions hereinafter noted; and the "Howard Scale," applied generally on import and export traffic by respondents except the Commonwealth of Massachusetts.

The Commonwealth Scale provides for a flat charge of 25 cents per net ton or 40 cubic feet whichever makes the higher charge. At Commonwealth Piers this charge is levied on all freight interchanged between vessel and pier except that on traffic moving by rail to or from points more than 40 miles distant from Boston, the charge is not assessed. The Howard Scale, applying on traffic trucked to or from the piers, provides varying charges on many commodities grouped in five classes, and for other articles, rates of 50 cents per long ton or three-fourths of a cent per cubic foot whichever makes the higher charge. Following authority granted to railroads by the Interstate Commerce Commission [2] respondents, except Piers Operating Company and Department of Public Works, increased their wharfage charges approximately 10 percent, effective April 15, 1938. This action precipitated the petitions upon which this proceeding was instituted.

At the outset the question occurs whether railroad respondents, in revising and applying the Howard Scale, conformed with section 15 of the Shipping Act, 1916. While the testimony on behalf of each respondent railroad is that the 10-percent increase was a matter of independent determination and no agreement was involved, nevertheless the representative of the Boston & Maine Railroad

[2] Ex Parte No. 123, *The Matter of Increases in Rates, Fares, and Charges*, 226 I. C. C. 41 (March 8, 1938).

testified, in regard to a meeting concerning the increase, that "the purpose of the meeting 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 that 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,[3] 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.

Certain interveners contend that the varying bases of wharfage charges, including the differences based on method of movement to and from the piers, and the practices of respondents in assessing them result in discrimination and chaotic conditions in the port. These differences may be illustrated by the charges on import coffee which are as follows: at Army Base, 60 cents per long ton; Commonwealth, 25 cents per short ton (Commonwealth Scale); and other piers, 66 cents per long ton (Howard Scale). Wharfage charges at other North Atlantic ports on foreign traffic, moving other than in railroad service, are shown to be uniform, but respondents herein do not operate wharves at such ports. It should be noted that the rates of each respondent are the same to each class of shippers and that no individual respondent controls the rates assessed at any other pier. Application of different wharfage rates on foreign and intercoastal traffic will not be condemned where, as here, there is no showing of a competitive relation between the traffic and an injurious effect arising from the discrimination. *Philadelphia Ocean Traffic Bureau* v. *Philadelphia Piers, Inc. et al.*, 1 U. S. M. C. 701. The Boston Coffee Brokers Association contends that the assessment of wharfage charges, particularly at Army Base, against coffee trucked from the wharf, while no wharfage charge is made against such traffic moving out by rail, is unduly prejudicial against the former

[3] Section 15 of the Shipping Act, 1916, requires that every common carrier by water, or other person subject to that act, shall file immediately with us a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to that act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part *inter alia* controlling, regulating, preventing, or destroying competition, or which in any manner provides for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in that section includes understandings, conferences, and other arrangements. This section further provides that agreements shall be lawful only when and as long as approved by us, and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement.

and preferential of the latter traffic. The rail rate to and from the wharf, whether the wharf is railroad-owned or otherwise, is a shipside rate covering all terminal services. The record does not disclose what, if any, amount is included therein for wharfage. It is obvious that, if the shipside rates do include a charge for wharfage, the railroads collect the same whether they render the service or not. It is also obvious that, if the shipside rates include wharfage charges, the nonrail terminal respondents cannot attempt to make and collect such charges from rail borne traffic bearing the shipside rates, as the shippers would thereby be required to pay the charges twice. It is equally clear that the nonrail terminal respondents cannot afford, for competitive reasons, to assess a wharfage charge against rail traffic, the inevitable effect of which would be to drive that business away from them. The result is that these nonrail terminal respondents are furnishing a service and the use of their facilities for which they can collect no charge from the shipper because the railroads have either already charged for the service or absorbed the charge in their rates. If the nonrail respondents are to continue in business, their rates on other services must be sufficiently high to bear this burden. Rail carriers have received the sanction of the Interstate Commerce Commission to publish their rates in this manner in *Charges for Wharfage, etc., at Atlantic and Gulf ports*, 157 I. C. C. 663. We have no jurisdiction over the railroad shipside rates. The failure of the 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.

Our lack of jurisdiction to compel the railroads to disclose the actual services and charges therefor contained in their rates prevents a finding as to the actual amount of discrimination, preference, or double payments which may result from the present practice. In view of the existence of the competition which confronts the non-railroad-owned terminals from those which are railroad-owned we cannot say that any discrimimination or preference arising from the adoption by the former of the practices of the latter with respect to wharfage charges is undue or unjust.

The Boston Port Authority submits 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. The practice is alleged to be unreasonable in violation of section 17 of the Shipping Act, 1916. Considering the actual movement of the traffic, the adverse effects attributed to this practice are over-emphasized. In point of fact, import and export traffic moves principally over railroad-owned piers and the Army Base at which piers, including Wiggin Terminal, the Howard Scale applies. Intercoastal traffic finds its way principally through Commonwealth Pier No. 5 at which the Commonwealth Scale applies. Negligible amounts of export and import traffic move over this pier at the same rates. Also small quantities of intercoastal traffic move over other piers on which, for competitive reasons, the Commonwealth Scale is applied. Thus there is substantial uniformity of charges on the two classes of traffic and the allegation of unreasonableness is not sustained.

It is also contended that it is an unreasonable practice to increase wharfage charges on short notice and for respondent terminal operators to maintain rates and charges for wharfage without furnishing shippers copies of the tariff containing such charges. With this contention we agree and repeat what we stated in Docket No. 418, *Eastbound Intercoastal Lumber*, decided July 28, 1939, that:

> The failure of a public utility to publish and post a tariff of rates is plainly indefensible. The failure to give adequate notice of rate changes is unjust and unreasonable both to the shipping public and the water carrier who of necessity must utilize the facilities of the terminals. Sudden rate changes cannot be immediately reflected in the tariff of the carrier, resulting in an unexpected loss either to the carrier or shipper. This is a disruptive factor both in the transportation and marketing of the commodity involved.

See also, *Buxton Lines, Inc.* v. *Norfolk Tidewater Terminals, Inc.*, 1 U. S. M. C. 705.

As stated, at Commonwealth Piers, the Commonwealth 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. According to the record there are companies within the 40-mile zone which compete with companies located beyond that area whose shipments by rail to and from Commonwealth Pier are not charged wharfage. Under such circumstances we conclude that this practice is unduly preferential and prejudicial in violation of section 16 of the Shipping Act, 1916.

There remains for consideration the status of two agreements. One is between the Commonwealth of Massachusetts and the New Haven whereby the latter agrees to make its Boston rates apply to and from the former's piers in South Boston and to make no additional charge to shippers or consignees for wharfage. The New Haven also agrees to pay to the Commonwealth a wharfage charge of ten cents a ton on all goods taken by it to and from the South Boston piers, or transported between its terminals and the South Boston piers, and to absorb this charge in the freight rates. An associate commissioner of the Department of Public Works testified that the charge of 10 cents per ton has always been interpreted as a trackage charge, and is for the use of its tracks and piers. The Commonwealth makes no similar charge against trucks.

The other agreement is between the Piers Operating Company, lessee of the Army Base Pier, and the New Haven. Piers Operating Company agrees to maintain the wharf premises and the railroad company agrees to pay to the Piers Operating Company as full compensation for the use of said premises 10 cents per net or gross ton on all freight received ex vessel or delivered at said premises by the railroad company for movement by vessel. The railroad company also agrees to pay extra for use of the Piers Operating Company's equipment, to remove snow and ice from tracks, and to perform light maintenance of tracks. These are operating agreements between the terminals and railroads which are not operating under said agreements as "other persons" as defined in section 1 of the act and are not subject to our jurisdiction under section 15 of the act.

We conclude and decide that:

1. Respondents Boston & Albany Railroad, Boston & Maine Railroad, and New York, New Haven & Hartford Railroad Company, are parties to agreements or cooperative working arrangements within the purview of section 15 of the Shipping Act, 1916, and that copies or memoranda of such agreements or arrangements have not been filed for approval as required by that section.

2. The charging of different rates of wharfage by operators of different piers has not been shown to be unduly preferential, prejudicial, or unjustly discriminatory.

3. The agreement between the Commonwealth of Massachusetts and the New York, New Haven & Hartford Railroad Company, and the agreement between Piers Operating Company and the New York, New Haven & Hartford Railroad Company are not within the scope of section 15 of the Shipping Act, 1916.

4. The Commonwealth of Massachusetts, insofar as it furnishes wharfage and other terminal facilities at its Commonwealth Piers in Boston Harbor in connection with common carriers by water in inter-

and pier which moves by rail to or from points beyond an area arbitrarily fixed, while collecting such charges on goods moving to or from points within such area, has established and is observing and enforcing a practice which is unduly preferential and prejudicial in violation of section 16 of the Shipping Act, 1916, as amended. All other terminals which have adopted the Commonwealth Scale and which engage in the same practices are subject to this same conclusion.

5. Respondents' practices other than those described in paragraph 4 hereof have not been shown to be unjust and unreasonable.

An order will be entered requiring respondent Department of Public Works of the Commonwealth of Massachusetts to cease and desist from the aforementioned practice found unlawful.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 4th day of January A. D. 1940

No. 481

IN THE MATTER OF WHARFAGE CHARGES AND PRACTICES AT BOSTON, MASS.

It appearing, That by orders of April 12 and April 21, 1938, the Commission entered upon a hearing concerning the lawfulness of respondents' wharfage charges and practices at Boston, Mass., on interstate and foreign water-borne commerce of the United States;

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

It is ordered, That respondent Department of Public Works of the Commonwealth of Massachusetts be, and it is hereby, notified and required to cease and desist, on or before February 21, 1940, and thereafter to abstain from the practice herein determined to be in violation of section 16 of the Shipping Act, 1916, as amended, and that this proceeding be discontinued.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 471

IN THE MATTER OF RATES, FARES, CHARGES, REGULATIONS, AND PRACTICES OF INTER-ISLAND STEAM NAVIGATION COMPANY, LTD., BETWEEN POINTS IN THE TERRITORY OF HAWAII

Submitted September 19, 1939. Decided January 4, 1940

Rate base, fair rate of return, and probable future revenues and expenses under present rates of respondent, determined.

Present rates found to yield less than fair return on rate base.

Respondent's rate structure as a whole and regulations and practices in connection therewith found not unreasonable or unduly prejudicial or preferential.

J. Garner Anthony, and *Dudley Lewis* for respondent.

David E. Scoll, *Ralph H. Hallett*, *William R. Furlong*, and *John R. Wolf* for United States Maritime Commission.

Jon Wiig for Public Utility Commission of Hawaii.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed to the examiner's report by respondent and counsel for the Commission, respondent replied, and oral argument was had. Our conclusions are substantially those of the examiner.

This investigation was instituted January 4, 1938, on our own motion upon complaints, to determine whether the rates, charges, regulations, and practices of Inter-Island Steam Navigation Company, Ltd., the respondent, are unduly prejudicial or unreasonable in violation of sections 16 and 18, respectively, of the Shipping Act, 1916. Hearings were had in Honolulu, T. H., and Washington, D. C.

Respondent was incorporated in 1883 under the laws of the Kingdom of Hawaii. It provides the only regular common-carrier service between the Hawaiian Islands. It owns and operates steamers, drydocks, terminals, a hotel, and appurtenant real estate; charters tugs and barges; and acts as agent for other transportation companies, including an airplane and automobile service which it controls through stock ownership.

Operating conditions.—Respondent serves 22 ports, 18 of which have open roadsteads unprotected by breakwaters. In small ports the ships anchor offport and cargo is transferred by surf boat. At one port cargo can be received only by cable. The isolation of the Islands, which are 2,400 miles from the mainland, is an important factor in respondent's operations. It means larger inventories of supplies and spare parts, higher fuel costs, and accounts for the maintenance of drydocks and spare vessels for stand-by use.

Traffic.—The company's local competition is negligible. But with the gradual development of deep-water harbors at outports it has progressively lost most of its heavy-volume cargo to transpacific lines which carry 98 percent of the sugar and pineapple shipped, the principal products of the Islands. Its chief competitor is Matson Navigation Company, the owner of 18 percent of its capital stock. The bulk of the company's traffic moves between Honolulu and the Islands of Hawaii, Kauai, and Maui, respectively, the percentages being approximately 41, 28, and 24 percent, respectively. Main cargo moves 26 percent inward to Honolulu, and 74 percent outward, indicating an unbalanced traffic. Aside from a few bulk commodities such as sugar, fertilizer, lime, and cattle, the traffic consists of general merchandise in small lots. In 1937, 292,867 bills of lading were issued, the average number per trip approximating 568. Revenue per bill of lading averaged $3.45. Approximately one-fourth of all bills of lading take the minimum charge of 25 cents. Sixty-two percent of shipments weigh less than 500 pounds, and 95 percent 4,000 pounds or less. Fifty-three percent of the traffic moves between ports on class rates of $4.00 per ton or less, and 95 percent at rates of $4.40 or less. Respondent's business may thus be characterized as an express type of service requiring much paper work and cargo handling.

Issues.—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." *Smyth* v. *Ames*, 169 U. S. 466. This calls for a classification of properties used and useful in the public service, and consideration of the fair value of those 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.

Classification of property.—Counsel, by stipulation, agreed that substantially all of respondent's property, except the drydock plant and Kona Inn, is devoted to common-carrier operation.

Respondent owns two steel drydocks capable of lifting 2,500 and 4,500 tons, respectively, which can be joined together; and a small wooden drydock with a capacity of 150 tons for serving small craft. At times both large docks are in use simultaneously. The alternative to maintaining drydocks is to send the vessels, if not seriously disabled, to the mainland for drydocking at an estimated cost of $200,000 a year. Outside commercial repair work is done which provides a broader spread for distribution of overheads and results in a saving to common carrier ship operations. Thus it appears that the entire drydock plant is a necessary adjunct to respondent's steamer operations, that efficient use of the plant requires its operation as a unit, and that no segregation should be made as between carrier and noncarrier operation.

Kona Inn is located on the Island of Hawaii, which attracts more passenger traffic from Honolulu than any of the other Islands. The hotel affords accommodations for tourists taking the company's two-day automobile tour around the Island. The question arises whether the hotel is kept for the accommodation of the general public and is therefore noncarrier property, or whether it is used primarily by respondent's passengers and should be classified as common-carrier property. The President of the company testified that Kona Inn was built by the company, after unsuccessful efforts to enlist outside capital, solely for the purpose of stimulating passenger traffic, and that the hotel facilities, together with the automobile tour, have had that effect. The number of passengers accommodated at the hotel as distinguished from other guests is not disclosed. But it is reasonable to assume that practically all of the passenger guests travel via the Inter-Island because round-the-world cruise ships do not stop at Hilo, where the tour begins and ends, long enough for their passengers to visit the Kona district; and only a few patrons come by plane. The remaining source of nonpassenger patronage is the residents of the Island of Hawaii. Thus it is fair to conclude that the hotel is patronized chiefly by tourists carried by the Inter-Island, and that use by the general public is incidental. There are only two other hotels on the Island, one at Hilo, 100 miles away, and one at Kilauea Volcano, which is 30 miles from Hilo. Obviously, neither one is suitably located to accommodate passengers on the tour.

It is concluded, therefore, that Kona Inn is reasonably necessary in respondent's common carrier operations and should be classified as common-carrier property.

Fair Value

We are bound in this proceeding by two fundamental rules. We are to accord procedural due process, and our findings must not result in confiscation of the carrier's property. This is clearly stated by the Supreme Court in *Railroad Commission of California* v. *Pacific Gas and Electric Company*, 302 U. S. 388, as follows:

> When the rate-making agency of the state gives a fair hearing, receives and considers the competent evidence that is offered, affords opportunity through evidence and argument to challenge the result and makes its determination upon evidence and not arbitrarily, the requirements of procedural due process are met, and the question that remains for this court, or a lower federal court, is not as to the mere correctness of the method and reasoning adopted by the regulatory agency but whether the rates it fixes will result in confiscation.

No formula has been adopted by the Supreme Court for the determination of nonconfiscatory rates. As Chief Justice Hughes stated in *The Minnesota Rate Cases*, 230 U. S., 352, 434, such determination is "not a matter of formulas, but there must be reasonable judgment having its basis in a proper consideration of all relevant facts." However, 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, in *Smyth* v. *Ames*, *supra* 546–7, as follows:

> We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And, in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property.

We are referred to no case wherein this oft-repeated decision has been overruled. On the other hand the Court has repeatedly held that no element or measure of value is an exclusive or final test. As stated in *Los Angeles G. & E. Corp.* v. *Railroad Commission*, 289 U. S. 287, 306, 308:

> The actual cost of the property—the investment the owners have made—is a relevant fact. * * * But while cost must be considered, the Court has held that it is not an exclusive or final test. The public have not underwritten the investment. The property, on any admissible standard of present value, may be worth more or less than it actually cost. * * *
>
> The weight to be given to actual cost, to historical cost, and to cost of reproduction new, is to be determined in the light of the facts of the particular case.

We shall proceed therefore to consider the evidence bearing upon the elements of value as revealed by the record, giving them such weight as may be just and right in this case.

ORIGINAL COST

Respondent's accounting records as to existing property, though not kept according to any prescribed uniform system of accounting, are complete and well kept. They afford a reliable record of the detailed cost of the property. And there is no suggestion from the evidence that the investments were not honestly, wisely, and prudently made. Our accountants and those of the company, after an exhaustive investigation, agreed upon original cost of property and equipment and recorded accrued depreciation thereon as of June 30, 1938, as shown in the following table:

	Original cost	Accrued depreciation	Original cost less depreciation
Vessels and auxiliaries	$5,420,507	$3,198,597	$2,221,910
Drydocks and shops	828,694	718,031	110,663
Terminal facilities	645,336	300,702	344,634
Office building and equipment	232,282	112,720	119,562
Kona Inn	285,978	103,693	182,285
Total	7,412,797	4,433,743	2,979,054
Land:			
Drydock site	80,000		80,000
Dredging	76,278	76,278	
Terminal site	222,809		222,809
Dredging	265,259		265,259
Office building site	90,004		90,004
Kona Inn	27,733		27,733
Grand total [1]	8,174,880	4,510,021	3,664,859

[1] To the total original cost less accrued depreciation there should be added $76,578 representing salvage value of vessels, hereinafter discussed, bringing the grand total to $3,741,437.

COST OF REPRODUCTION LESS DEPRECIATION

Respondent introduced the only estimate of reproduction cost.

Vessels and auxiliaries.—Witness A. F. Pillsbury, marine surveyor, consulting engineer and ship appraiser, ascertained what he termed "depreciated value" of the fleet as of April 1, 1938. He trended original cost to present prices by adding a factor of 45 percent; deducted 5 percent for residual value to arrive at cost to be depreciated; depreciated the vessels at 4 percent annually on basis of a service life of 25 years for each vessel; and after deducting depreciation, added back the residual value, thus arriving at present depreciated cost. The appraised value of the vessels is $4,115,393. Including launches, other operating equipment, and overheads brings the estimate to $4,679,337.05. The factor of 45 percent is not broken down into unit costs applied to the plans and specifications of the vessels, but represents a general estimate of increased costs based on bids, cost of present construction of certain barges, and information obtained by the witness from interviewing shipbuilders on the Pacific coast where theoretically the ships would be reproduced.

Witness J. E. Schmeltzer, who is supervising the design, estimating and construction work on vessels under construction for this Commission, outlined the customary steps in estimating the cost of a ship. Estimated weights of steel structure, machinery, deck equiment, and quantities of other material are computed from plans and specifications. Material and labor costs based on the experience of a particular yard are applied. To this is added overhead and profit. He stated that labor and material costs vary as between different yards and overheads range anywhere from 50 to 100 percent. Illustrative of this are bids received by us on a steel cargo vessel ranging from $1,856,675, to $3,400,000. No ships larger than 850 gross tons have been built on the Pacific coast since 1929. The witness was of the opinion that the advance in design since then would materially increase the percentage of error in estimating costs.

Drydocks and shops.—Witness George M. Collins, a local construction engineer, estimated the cost of reproduction less depreciation of the three drydocks and shops, which, including other items and overheads, amounts to $666,325.50. Prices based on local contractor's current costs were used.

Terminal facilities.—Mr. Collins also estimated cost of reproduction less depreciation of the common-carrier portion of the terminal facilities at Iwilei, which, with certain adjustments including overheads, amounts to $509,644.40.

Office building and equipment.—Witness Stanley Livingston, chairman of the appraisal committee of the Honolulu Realty Board, estimated cost of reproduction less depreciation of respondent's five-story office building in Honolulu at $90,000, which, plus the stipulated value of equipment with overheads, amounts to $147,838.60.

Kona Inn.—The estimate of reproduction less depreciation for buildings and equipment at Kona Inn is stipulated on the basis of original cost or $205,725.22 which, including overheads equals $221,343.22.

Respondent's estimates for cost of reproduction new, including overheads, and excluding land, total $10,545,269 and for reproduction cost less depreciation, $6,224,488.

LAND

Respondent's land in Honolulu is located at Fort and Merchant Streets, occupied by the office building; in the Kakaako District along Ala Moana Road, occupied by the drydock properties; and in the Iwilei District, occupied by the terminal properties. It also owns the land occupied by Kona Inn. Mr. Livingston also appraised the land in Honolulu. He inspected the property and made a study of the market values of similar adjacent and adjoining land, of sale prices over a period of years, and of assessed valuation for taxation purposes, which represents 60 percent of market value. The total valuation placed by respondent upon land, including dredging and excluding overheads, is $1,580,118.

Respondent excepts to the examiner's recommended reduction of the unit price on Lot 2 of the Ala Moana drydock land from $1.50 to $1.10 per square foot. This land consists of two lots separated by a street. Lot 1, which has no water frontage, is vacant except for a shed and is used for storage purposes. Lot 2 contains the drydocks and shops and fronts on the water. The witness testified to a recent sale of improved non-water-front residential land 1,000 feet away from Lot 1 at 50 cents a square foot; also, that adjoining water-front land was selling at $1.80 per square foot. Leases of property across Ala Moana Road, capitalized at 6 percent, produce a unit value of $1.00 per square foot. Lot 1 is assessed at $43,891, which adjusted to market value, would be $73,151, or 69 cents per square foot. The assessment on Lot 2 produces a market value of $123,186, or 67 cents per square foot. The tax assessor testified that consideration was given in the assessment to the fact that the land was dredged. It will be observed that while the value assigned by the witness to Lot 1 is only 15 percent higher than market value based on the assessment, the estimate for Lot 2 is 125 percent higher. In view of all the facts we conclude that the reduction is proper. This reduces the value of land to $1,507,238 not including overheads. No allowance will be made for overheads inasmuch as market value of land reflects all the elements of value thereof. *The Minnesota Rate Cases*, *supra*.

WORKING CAPITAL

In arriving at estimated working capital, respondent's witness used the average value of material and supplies on hand during the last four years. To this was added the equivalent of a half month's pay roll, prepayments of insurance, and $50,000 for a buffer fund to meet contingencies. The total of $259,000 was rounded off to $250,000.

Summary and conclusion as to fair value.—Respondent's estimates of reproduction cost may fairly be criticized in two respects. Prices applied, except to vessels, are current or "spot" prices which, without evidence showing the present trend of prices, cannot blindly be accepted as representing normal prices which might obtain during the entire period required for constructing the property. But the most serious objection runs to Mr. Pillsbury's synthetic trend of original cost of vessels to present prices. Obviously, this method can produce only the most approximate results because prices of the numerous

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items that enter into the construction of a ship do not change uniformly. The witness supplied no underlying data from which the accuracy of the factor of 45 percent increase in cost may be verified. In the circumstances, we may take judicial notice of the trend of prices generally as did the Supreme Court in *McArdle* v. *Indianapolis Water Co.*, 272 U. S. 400. As of valuation date the prices [1] of metals and metal products, of building materials, and of all commodities as a group were substantially lower than during the years 1923, 1924, 1928, and 1929 when five of the ships were purchased. In the absence of compelling evidence to the contrary, there is no reason to believe that the trend of prices for materials entering into ship construction has differed so radically from that of commodities generally—certainly not to the extent indicated in Mr. Pillsbury's appraisal. Ignoring the alleged increase of 45 percent and adding $248,112 for additions in 1938 at cost reduces the estimate for vessels and auxiliaries approximately to $6,121,164 for cost of reproduction, new, and $3,628,940 for cost of reproduction less depreciation.

The following statement summarizes the data as to the elements of value of respondent's property used in common-carrier service as of June 30, 1938:

	Undepreciated	*Less depreciation*
1. Original cost except land	$7,412,797	$3,055,632
2. Original cost including land	8,174,880	3,741,437
3. Original cost, except land, depreciated same percentage as item 4	---------	4,440,265
4. Cost of reproduction, including overheads, except land	8,637,553	5,174,091
5. Present value of land	1,507,238	---------
6. Working capital, including material and supplies	250,000	---------

Essentially, this is a rate rather than a valuation proceeding. Therefore it is unnecessary to make a precise determination of the value of the property in question. The estimates submitted are considered insofar as they have a bearing upon the economic cost of performing the service; also as they indicate the level of rates which may avoid the taking of the carrier's property for public use without just compensation.

In addition to the elements of value mentioned above, the record shows the volume of earnings past and present, the sums estimated as necessary to meet operating expenses, hereinafter discussed, and the amount and market value of the stocks and bonds. Considering all these factors, and recognizing that the property is an integrated

[1] See index numbers of wholesale commodity prices published by Bureau of Labor Statistics, U. S. Department of Labor.

operating enterprise and that respondent is a going concern, it is concluded, for the purpose of this particular proceeding, that the value of the property in question is not more than $6,565,000.

RATE OF RETURN

Fair return has been defined by the Supreme Court as follows:

"The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." *Bluefield Water Works & Improvement Company* v. *Public Service Commission of West Virginia*, 262 U. S. 679.

The rate expected and usually obtained from investments with corresponding risks in the locality offers a comparable measure of return for respondent. *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19. The rate of return on real estate mortgages in the Territory is 6 percent. The Supreme Court of the Territory allowed a return of 7½ percent on the value of the Honolulu Gas Company in 1935. The Public Utilities Commission of the Territory, on the basis of rate bases established as of December 31, 1936, fixed returns ranging from 7 percent to 8 percent for certain local electric and gas companies. Respondent submitted an exhibit showing, among other things, that the ratios of market price of stocks to earnings of representative Hawaiian companies during the past six years averaged 7.96 for the utility group, 8.57 for the transportation group including respondent, and 7.78 for the sugar group. Based on these ratios and allowing for the relatively greater risks inherent in the operation of a few large expensive units, exposed to the perils of the sea, as compared with the risks of operating a land utility, respondent's treasurer testified that the company should receive a rate of at least 9 to 10 percent. A local banker thought that 8 or 9 percent would represent a fair rate. On brief, counsel for respondent contends that 8 percent is a minimum fair return.

Testimony given by one of our finance examiners shows that 29 large Hawaiian companies were able not only to increase their invested capital substantially during the five-year period, 1932 to 1937, but were also able to reduce materially their outstanding debt. The increase of invested capital during this period amounted to $16,077,-500, whereas, the decrease in outstanding debt was $9,018,000. In other words, these companies had sufficient capital in the five-year period not only to provide for expansion, but to retire 78 percent of their debt outstanding at the beginning of the period. Figures were also submitted showing a general upward trend in the economic progress of the Islands through progressive increases over a ten-year period in population, tourist trade, automobile registrations, use of telephones, bank deposits, imports and exports, insurance business, and aviation transportation.

The investment risk to be evaluated is the possibility that the investor will not receive any income or that his principal will be lost. The respondent, through insurance, makes adequate provision for losses due to the hazards of operation. Its property is well maintained, and there is nothing of record to indicate that any capital for carrier operations will be required for some time to come. The company maintains reserves totalling $2,714,682 which is available for expansion or replacements before outside capital would be required. While it is true that respondent has lost some of its heavy volume traffic, nevertheless, as to cargo providing the bulk of its revenue there is no competition.

Judging from its financial history and its present sound credit standing, there appears to be no serious doubt as to respondent's ability to attract capital at reasonable rates. Of the total $5,850,000 par value [2] of common stock outstanding on valuation date, $3,150,000 or 53 percent was issued as stock dividends. The average dividend rate for 33 years ending 1937 on the total stock outstanding, including stock paid out as dividends, was 9.97 percent. The dividend paid in any year on the total stock outstanding has never been less than 5 percent, and has been as high as 40.23 percent. Annual dividends for the same period, calculated on the basis of capital actually paid into the business, have ranged from 10 percent to 96.49 percent. These dividend rates reflect earnings from noncarrier as well as carrier operations. However, in considering the risk of the enterprise there must be taken into account the earnings of the business as a whole.

Upon consideration of all the evidence, we conclude that for the purpose of this proceeding the fair rate of return on the value of respondent's property does not exceed 7 percent.

REVENUE AND EXPENSE

The Treasurer of the company estimated the probable future annual net income of the company based primarily upon the company's average experience for the past five calendar years, namely 1933–1937, inclusive, and the year 1937. The results from the five-year period cannot be wholly relied upon in view of certain changed conditions affecting operations for 1938, as for instance, the reduction of passenger fares on January 17, 1938, and the strike which began May

[2] Par value, $18 per share; market value as of June 30, 1938, $21 per share. Respondent has no securities senior to its common stock.

26, 1938, and ended about the middle of August with its consequent disruption of passenger and freight service and increased costs for wages involved in its settlement. The estimates have been modified to reflect these abnormal conditions. The following table shows respondent's estimates of net income, as compared with net income for the five-year period and for 1937, together with net income stated on the basis of revisions hereinafter discussed:

Department	Respondent's estimate of net income	Average annual net income for 5 years ended Dec. 31, 1937	Net income for year ended Dec. 31, 1937	As revised herein						
				Total revenues	Total expenses	Net income before income taxes	Allocation of drydock net loss [1]	Revised net income before income taxes	Income taxes payable	Revised estimate of net income
CARRIER OPERATIONS										
Vessels	$116,228	$345,859	$376,606	$2,141,446	$1,818,058	$323,388	[2] $9,126	$314,262	$70,439	$243,823
Drydocks	[2] 20,429	339	23,482	527,361	545,112	[2] 17,751				(3)
Terminal	61,488	64,769	83,612	152,031	73,603	78,428	[2] 497	77,931	17,467	60,464
Kona Inn	[2] 20,923	[2] 18,745	[2] 20,371	72,397	93,366	[2] 20,969		[2] 20,969		[2] 20,969
Other carrier property	6,969	7,505	1,869	36,706	27,720	8,986		8,986	2,014	6,972
Airline agencies		14,736	24,732	43,000	13,566	29,434		29,434	6,597	[4] 22,837
	143,333	414,463	490,020	2,972,941	2,571,425	401,516	9,623	409,644	96,517	313,127

[1] Reallocation of net loss from drydock operations according to drydock revenues contributed by each department. Balance of $8,128 allocated to noncarrier operations and special work.
[2] Indicates loss.
[3] Allocated.
[4] Transfer of airline agency net income from noncarrier to carrier operations.

These figures relate to respondent's common-carrier operations which, during the five-year period, accounted for approximately 71 percent of respondent's net income.

Revisions.—Respondent's estimate of passenger revenue is obviously too low. The trend during the five-year period and the seven normal [3] months of 1938 is upward. Revenue for the corresponding seven months of 1936 and 1937 was 51.82 percent and 51.63 percent, respectively, of the total revenue for each of those years. Adjusting revenue of $553,787 for the seven normal months of 1938 to an annual figure on basis of these ratios produces figures which average approximately $1,070,000 or $164,888 more than respondent's estimate.

In respondent's estimate for cost of marine insurance there is included $15,656 representing an accrual for self-insurance in excess of actual losses suffered. The company's position is that this amount should be charged to operations inasmuch as it would have to pay the same amount to an outside insurer. It must be remembered however that the self-insurance fund was created out of excess

[3] Excluding January because of fare reduction and May to August, inclusive, on account of strike.

accruals charged to operation and that income from the investment of such funds are available for dividends. The public, which has contributed the fund, should pay no more than the actual cost of carrying the risk. Therefore, the sum of $15,656 will be deducted from marine insurance expenses.

The estimate of depreciation charges submitted by respondent is excessive to the extent it ignores salvage value. Generally speaking, the original cost of vessels is depreciated on the basis of 20 years service life, and additions on the basis of remaining service life. While respondent allows 5 percent of the cost new for salvage value in its reproduction estimate, no allowance is made therefor in the estimate of annual depreciation accruals. Mr. Schmeltzer testified that salvage value should be computed at $10 per ton of estimated built weight of respondent's vessels which would amount to $116,000. Adjustments in depreciation accruals to account for this value would reduce the annual depreciation estimate $4,386. Considering salvage value, the balance of accrued depreciation of vessels as of June 30, 1938, should be reduced $76,578 and the book value increased by the same amount.

Respondent estimates an annual net loss of $20,429 for drydock operations. The average experience for the five years to December 31, 1937, shows that, to cover drydock overheads, labor was billed at an average mark-up of 66⅔ percent to the various departments, 74 percent on special work, and 52 percent on outside work. The average mark-up on material was 20 percent to departments, 23 percent on special work, and 24 percent on outside work. While these mark-ups were ample to produce sufficient revenues to take care of overheads and leave a margin of $339 during the five-year period, they fail to do so by $20,429 in the estimate because of increased taxes and other overheads. There is no certainty that outside work will produce sufficient profit to absorb this loss. Under the circumstances, it appears reasonable to allocate it proportionately on the basis of work performed during the five years. Because of the necessary reallocation of general and administrative expense the loss to be allocated is $17,751 of which amount $9,623 is allocable to common-carrier operations.

Respondent excepts to the allocation of only $9,623 of the estimated loss to common-carrier operations. As all drydock property has been valued by us as common carrier it contends that all revenue and expenses, whether from carrier or noncarrier sources, should also be classified as common carrier. The soundness of this argument is not questioned. However our adjustment of the loss does not violate the principle advanced by respondent. Drydock revenues consist of the amounts including mark-ups on labor and material for overhead, at which labor, material, plant, and service and wharfage are billed to the various departments and to outside interests, including revenues from some outside work that is obtained under competitive bidding and performed for a fixed amount. Any revenues that accrue from work performed for the various departments are reflected as departmental costs equal to the drydock revenue, so that for work done for respondent's departments there can be no true profit from the drydock operation. The only possible profit must be derived from outside work. The drydocks and appurtenances are primarily designed as a plant facility to service the steamer and auxiliary departments and the charges to these departments should be the amount necessary to reimburse the drydock department for actual costs after deducting any profits or adding any losses that accrue from outside work. In other words, the accounting should follow the principle of clearing accounts. In making its estimate respondent should have increased the mark-ups and correspondingly the drydock revenues sufficiently to take care of these increased overheads, and wipe out the loss of $20,429. If this had been done the various departments would have been billed for that additional amount in proportion to the work done for them. The net effect would have been substantially the same as our adjustment in allocating the loss to the various departments. This allocation was merely a convenient method of adjusting an error in respondent's estimate.

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.

Minor changes have been made in the revenue and expense estimates in connection with other items largely to accord with the revisions mentioned above.

CONCLUSIONS

Reasonableness of rate structure.—Upon the basis of the value tentatively found herein of $6,565,000, respondent's estimated earnings revised by us to $313,127, will yield a return of 4.77 percent. This is 2.23 percent less than 7 percent, which is found herein to be a fair return. On basis of book cost less accrued depreciation, plus working capital, the return would be 7.84 percent; on this basis, but including land at present value as required by *The Minnesota Rate Cases*, *supra*, the return would be 6.51 percent. So it is clear that the rate structure as a whole is not shown to be unreasonable from the standpoint of the fair value test.

The record is devoid of any testimony from shippers, thus we are at a loss to know their estimate of the value of the services rendered. One of our rate experts introduced studies showing that respondent's rate structure averages 300 to 400 percent higher than the rate structure applying between the Philippine Islands; that respondent's rates yield earnings per mile which are 348 percent of the revenue earned by rates for comparable distances between Los Angeles and San Francisco; that respondent's rates are 102 to 500 percent of rates for comparable distances between points in Alaska and between Puerto Rico and the Virgin Islands; that respondent's local rates between Honolulu and Hilo are 177 percent of its proportional rates on the same commodities between the same points on traffic from the Orient; and that earnings per cubic foot yielded by respondent's rates from Honolulu to Hilo, 194 nautical miles, average 677 percent of earnings under rates between Honolulu and San Francisco, 2,091 nautical miles.

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 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.

Although no reduction in rates can be ordered upon this record, it is not amiss to point out that respondent announced, immediately prior to the institution of this investigation, a reduction in passenger fares which became effective January 17, 1938, averaging 18 percent on first-class accommodations and 9 percent on steerage.

Preference and prejudice.—Evidence bearing upon the matter of undue prejudice and disadvantage was presented by the proprietor of a drug store at Hilo, the Superintendent of the Hawaiian National Park, and the proprietor of the Volcano House, a hotel located in the park. Their chief complaint is that the company's tour around the Island of Hawaii is so arranged that the tourists must, of necessity, stop at Kona Inn, and are permitted only a short stopover at Hilo or the park with no opportunity to patronize the stores at Hilo, or the Volcano House, or to take full advantage of the scenic attractions offered by the park. From a business standpoint 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. Respondent's 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.

FINDINGS

Upon this record we find, for the purpose of this proceeding:

1. That Kona Inn and the drydock plant are reasonably necessary in respondent's common-carrier operations and should be classified as common-carrier property.
2. That the value for rate-making purposes of respondent's properties which are used and useful in the public service does exceed $6,565,000.
3. That the fair rate of return on such value does not exceed 7 percent.
4. 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.
5. That the evidence of record does not disclose that respondent's rate structure as a whole is unreasonable or otherwise unlawful. This finding is not an approval of individual rates, and is without prejudice to the right of shippers to file formal complaint against such rates in accordance with section 22 of the Shipping Act, 1916.

The task of calculating future revenues and expenses was complicated by the reduction in passenger fares and the strike. Therefore, the proceeding will be held open for the incorporation of evidence showing the actual net income for the calendar year 1939.

WOODWARD, *Commissioner*, concurring:

I concur in the conclusion of the report that the record does not establish that the rate structure as a whole is unreasonable or otherwise unlawful.

The report finds a value for rate-making purposes of respondent's properties which are used and useful in the public service. It finds a fair rate of return on such value and that the probable net income from respondent's present rates will yield an amount less than a fair rate of return on the value found for rate-making purposes. Assuming the correctness of these findings, it does not in my judgment necessarily follow that the respondent's rate structure as a whole is not unreasonable. A fair return upon the value of the property is only one of the tests to determine the reasonableness of rates. It is not the sole test, nor should it be overemphasized. This investigation was instituted because of complaints made informally that the rates were too high. Some of the rate comparisons introduced in the record at the Honolulu hearing by one of the rate experts of the Commission disclose that the interisland rates exceed rates for comparable and greater distances in other trades. These differences appear extreme. However, in the absence of a showing of similar transportation conditions in the compared trades, such rate comparisons are of insufficient probative value to impeach the rates in issue.

TRUITT, *Commissioner*, concurring:

Here no individual rate either is assailed or is the subject of controversy.

The case is grounded on the sole question of the lawfulness of the general rate structure of the Inter-Island Steam Navigation Company, which in turn is dependent upon a determination of a fair return upon a fair value of the property of the company used in its common-carrier operations. The "fair value" of such property, which is the rate base for determining such "fair return," involves consideration of standards laid down by a long line of opinions of the United States Supreme Court in various decisions affecting rates. In a comprehensive brief filed by counsel for the Commission, many of these cases have been carefully reviewed and summarized. In that brief it is ably argued that the "prudent investment theory" should be the *sole* test applied in determining valuation for a rate base in this case. Although this theory has found support by State Utility Commissions, text writers and some court decisions, the Supreme Court of the United States has yet to hand down an opinion upholding rates determined *solely* on a "prudent investment theory" basis. There are those who believe that an early decision to such an effect is not beyond the realm of possible expectancy. Nevertheless, unless and until such a ruling may be rendered it is my belief that the Commission, in the judicatory capacity in which it sits—as in this case—is obliged to follow [4] the existing decisions enunciated by that court and to apply the rules and standards therein laid down with respect to the elements to be considered in determining a rate base. The Commission in its report in this case has arrived at a valuation by averaging original cost of the property, except land, depreciated on the same basis as cost of reproduction new, and cost of reproduction less depreciation, and by then adding to this figure the present value of land and working capital. Such an application of all elements of value,

[4] *Hudson & Manhattan Railroad Co.* v. *Iorio*, 239 Fed. 855 (C. C. A. 2d, 1917); *Chastleton Corporation* v. *Sinclair*, 290 Fed. 348, 53 App. D. C. 373 (1923); *Travelers Mutual Casualty Co. of Des Moines* v. *Skeer, et al.*, 24 F. Supp. 805 (W. D. Mo., 1938).

including original cost and cost of reproduction less depreciation, and a rejection of the contention that book cost less recorded depreciation alone should be considered, conform, in my opinion, with the controlling decisions on the subject.[5]

For these reasons, I concur in the result reached in the report of the Commission in this case.

By the Commission.

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

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[5] *Smyth* v. *Ames*, 169 U. S. 466 (1898); *McCardle* v. *Indianapolis Water Co.*, 272 U. S. 400 (1926); *Los Angeles Gas & Electric Co.* v. *Railroad Comm. of Calif.*, 289 U. S. 287 (1933); *Railroad Comm. of Calif.* v. *Pacific Gas & Electric Co.*, 302 U. S. 388 (1938); *Driscoll et al.* v. *Edison Light and Power Co.*, 307 U. S. 104 (1939).

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 4th day of June A. D. 1940

No. 471

IN THE MATTER OF RATES, FARES, CHARGES, REGULATIONS, AND PRACTICES OF INTER-ISLAND STEAM NAVIGATION COMPANY, LTD., BETWEEN POINTS IN THE TERRITORY OF HAWAII

This proceeding, instituted by the Commission on its own motion, having been duly heard, and full investigation of the matters and things involved having been had, and the Commission, on January 4, 1940, and the date hereof having made and entered of record reports stating its conclusions and decision thereon, which reports are 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. 478

PACIFIC AMERICAN FISHERIES, INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

No. 490

BELLINGHAM, WASH., TERMINAL FACILITIES

Submitted November 1, 1939. Decided January 25, 1940

Practice of restricting application of established rates for intercoastal transportation of canned goods from Bellingham Warehouse Company Pier B to shipments of 250 tons or more not shown to be in violation of the Shipping Act, as alleged. Defendants not shown to have carried out an agreement in violation of that act, as alleged. Complaint dismissed.

Elimination of Bellingham Warehouse Company Pier B from application of Bellingham terminal rate on eastbound canned goods in minimum lots of 250 tons not justified, and denial of such rate to such traffic is unreasonable and unduly prejudicial. Cease and desist order entered.

H. Thomas Austern, *Stephen V. Carey*, *J. L. Collins*, *J. Harry Covington*, *Harry A. Grant*, *Evan McCord*, and *E. Marshall Nuchols, Jr.*, for complainant in No. 478; *Same* and *F. E. Lovejoy* and *Philip D. McBride* for protestants in No. 490.

M. G. de Quevedo for defendants in No. 478 and respondents in No. 490, members of the Intercoastal Steamship Freight Association other than American-Hawaiian Steamship Company and Isthmian Steamship Company.

E. M. Hopkins and *Walter B. Whitcomb* for Port of Bellingham, *H. D. Fadden* for Port of Seattle, *E. A. Chapman* for International Longshoremen's Union, Local 16, *N. A. Bass* for Longshoremen's and Warehousemen's Auxiliary, Local 1–6.

Report of the Commission on Further Hearing

By the Commission:

No exceptions were filed to the examiner's proposed report on further hearing in No. 478. In No. 490 exceptions were jointly filed by respondents members of the Intercoastal Steamship Freight Association in respect to the findings proposed with reference to service from Bellingham Warehouse Company Pier B, and oral argument thereon was had. Exceptions were also filed in No. 490 by protestant Pacific American Fisheries, Inc., seeking reparation in that proceeding.

By complaint filed March 9, 1938, in No. 478, Pacific American Fisheries, Inc., hereinafter called P. A. F., alleges that a practice of defendants [1] then existing of restricting application of their established rates for transportation of canned salmon and other canned goods from Bellingham Warehouse Company Pier B, Bellingham, Wash., to Atlantic coast ports to shipments of 250 tons or more [2] was unduly prejudicial and disadvantageous in violation of section 16 of the Shipping Act, 1916, as amended, and unjust and unreasonable in violation of section 18 thereof. The complaint further alleges that said practice was arrived at by agreement between defendants, which agreement is alleged to have been carried out by defendants in violation of section 15 of that act. Reparation is requested.

Subsequent to the filing of the above complaint, defendants (except Panama Pacific whose intercoastal service had been discontinued) and other common carriers by water in intercoastal commerce [3] by schedules filed to become effective July 12, 1938, and on later dates eliminated Astoria & Puget Sound Canning Company Dock, Bellingham Canning Company Dock, Bellingham Warehouse Company Pier B, Citizens Dock, and Quackenbush Dock, thereby cancelling rates to and from such terminals and restricting the application of their Bellingham intercoastal rates to one Bellingham terminal, namely Municipal Dock.[4] By our orders of June 10, 1938, and July 8, 1938,

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[1] American-Hawaiian S. S. Company; American Lines S. S. Corporation and Atlantic Transport Company of W. Va. (*Panama-Pacific Line*); Dollar S. S. Lines, Inc., Ltd.; Isthmian S. S. Company; Luckenbach S. S. Company, Inc.; McCormick S. S. Company; Pacific-Atlantic S. S. Company (Quaker Line); States S. S. Company-California Eastern Lines, Inc. (California Eastern Line); Weyerhaeuser S. S. Company.

[2] Joseph A. Wells' Alternate Agent SB-I No. 7, Third Amended Page 3, Note CC.

[3] *Sudden & Christenson*; Border Line Transportation Company; Calmar Steamship Corporation; Hammond Shipping Company, Ltd.; Coastwise Line; Consolidated-Olympic Line; Panama Mail S. S. Company; Northland Transportation Company; Pacific Coast Direct Line, Inc.; Puget Sound Navigation Company; Puget Sound Freight Lines; Schafer Bros. S. S. Lines; Skagit River Navigation & Trading Company.

[4] Joseph A. Wells' Alternate Agent, Amended pages to SB-I Nos. 6 and 7. Service at Puget Sound Pulp & Timber Company Dock, subject to prior booking, was not changed. At time of hearing this wharf was not in operation.

in Docket No. 490 we suspended the eliminations until November 12, 1938, and instituted an investigation to determine their lawfulness. The eliminations became effective after the expiration of this suspension period. These cases were the subject of separate hearings conducted on June 13, 1938, and of consolidated further hearing on June 5, 1939. Both proceedings will be disposed of in one report. Dollar, defendant in No. 478, and respondent in No. 490, discontinued intercoastal transportation effective December 3, 1938. Panama Mail, respondent in No. 490, discontinued intercoastal service effective August 18, 1938.

Prior to December 9, 1937, the intercoastal canal carriers involved (except Dollar, Panama Mail, and Panama Pacific, whose vessels did not operate north of San Francisco) either called their vessels direct at Pier B or handled shipments from that pier by transshipment via a local Sound carrier at Seattle. Effective on the date referred to, a 250-ton minimum of canned goods was required for the application of the terminal rate from Pier B whether for direct or transshipment service. Thereafter shipments of P. A. F. of less than 250 tons were transferred from Pier B by it to Bellingham Municipal Dock, a distance of two miles, for movement therefrom by defendants direct or by transshipment from Sound carrier at Seattle, and on and after November 12, 1938, and later dates on which the carriers respectively eliminated Pier B from Bellingham terminal rate application, shipments of P. A. F. of whatever quantity have been so delivered by it to Municipal Dock. The expense to P. A. F. of transferring its shipments, including Municipal Dock wharfage charge, is 70 cents per ton. This transfer expense is the basis of P. A. F.'s claim for reparation in No. 478, and of its protest in No. 490 against the elimination by respondents of Pier B from application of Bellingham terminal rates entirely. The elimination of Pier B is also protested by Bellingham Warehouse Company, operator of Pier B. Elimination of Citizens Dock is protested by Citizens Dock and Puget Sound Freight Lines.

No. 478

P. A. F. operates numerous canneries in Alaska, and has an interest in the operation of two canneries in the State of Washington. It is one of the three largest Alaska salmon packers, the other two being located at Seattle and San Francisco, respectively. Ninety percent of its normal annual pack of approximately 1,000,000 cases is Alaska salmon, which is brought to Bellingham and there stored in warehouses of the Bellingham Warehouse Company, adjoining Pier B. From these warehouses the salmon is distributed by water and by rail as sales are made f. o. b. Pacific coast steamship terminal. During 1936 and the first eleven months of 1937, 36,142 tons of P. A. F. salmon moved from Pier B to Atlantic ports via intercoastal carriers. In the marketing of its salmon P. A. F. actively competes with various packers located in Seattle. The 250-ton minimum requirement in controversy has been applicable at all Seattle salmon wharves since November 8, 1936, and Seattle packers pool their shipments in order to meet that minimum, or dray them to the intercoastal carrier's Seattle terminal. A witness for Northwestern Marine Terminal Association, an organization comprised of public and private terminal operators, testifies that during the period November 8, 1936, to December 9, 1937, when the 250-ton minimum requirement applied at Seattle and not at Bellingham, the Seattle packers were thereby subjected to discrimination and detriment. During this period Nakat Packing Company, which ordinarily stores its salmon at Seattle and ships therefrom, transferred its storage and its shipping activities to Bellingham Warehouse Company and Pier B. Its retransfer to Seattle following defendants' application of the 250-ton minimum requirement at Pier B in Bellingham is instanced as evidence that such minimum requirement caused loss of business to Bellingham Warehouse Company and Pier B. Defendants' 250-ton minimum was also applicable to the Astoria & Puget Sound Canning Company's wharf during the period covered by the complaint.

Testimony of P. A. F. is that there are very few customers who buy canned salmon in quantities of 250 tons or more. It asserts that the customary market unit is 600 cases, or approximately 36,000 pounds or 18 tons, and that a minimum of 250 tons, equivalent to slightly more than 8,000 cases, was detrimental to it in meeting competition in eastern seaboard markets. Pooling of shipments to aggregate the 250-ton minimum as was and is done by Seattle packers, is declared to have been impracticable. Defendants point to the fact that during the period December 1937 to May 1939, inclusive, the monthly shipments of canned salmon to Atlantic coast originating at Pier B averaged 998 tons as proof that P. A. F. and others using Pier B were able to ship in quantities of 250 tons or more.

P. A. F. emphasizes that Pier B is on deep water, has berthing accommodations for three vessels, and is a public terminal operating under published tariff on file with the State of Washington Public Service Department. It shows that during 1937, 750,531 cases of salmon of others than itself, including salmon stored by Nakat Packing Company, were stored in the warehouse of Bellingham Warehouse Company to which that pier is adjoined, and that during

1936 and the first eleven months of 1937, 37,563 tons of eastbound intercoastal cargo moved over Pier B. The restricted extent of the use of Pier B as a public facility, however, is indicated by the fact that less than 4 percent of the 37,563 tons referred to, or an approximate monthly average of 62 tons, was the property of others than P. A. F. The entire tonnage of westbound intercoastal cargo which moved over its pier during the 23-month period concerned was for others, but totaled only 214 tons.

To Gulf ports a 250-ton minimum on general cargo, including canned salmon, was contemporaneously required by the carriers in that trade for application of their Pacific coast terminal rates. On shipments of lesser quantity, arbitraries covering the movement from Pier B, Bellingham, to Seattle of 9 and 12.5 cents per 100 pounds are added to the Seattle to Gulf carload and less carload rates, respectively. Twenty-five percent of the intercoastal shipments of P. A. F. move to Gulf ports.

It is clear from the record that defendants' application of the 250-ton minimum requirement at Seattle and not at Bellingham was an inadvertence which was corrected after a period of approximately 13 months by application of the same requirement at Bellingham. During this period complainant was advantaged over its Seattle competitors. The 250-ton requirement at Bellingham was established by defendants at the insistence of complainant's Seattle competitors, through the Northwestern Marine Terminal Association, that they be put on parity with Bellingham. It is this parity which P. A. F. alleges to have been, as to it, unduly prejudicial and disadvantageous, and unreasonable, in violation of sections 16 and 18 of the Shipping Act, 1916. These allegations are not sustained.

Complainant contends that as defendants' schedules providing for the 250-ton minimum requirement were identical in terms, were concurrently filed, and were concurrently effective, there is established a concert of action between defendants and the existence of an agreement between them. From this premise complainant argues that the application of the requirement was a carrying out of an agreement without filing and approval, in violation of section 15 of the Shipping Act, 1916. Defendants' position is that all matters of the nature concerned are determined by each defendant for itself, and are the subject of individual decision and instruction. Defendants publish and file their schedules through a common publishing agent, which fact is ascribed as the reason why their filings frequently show similarity of form and coincidence of dates. The Intercoastal Steamship Freight Association agreement on file with and approved by us authorizes the signatory lines to formulate and effect practices such as the one in question without obtaining separate approval every time a practice is revised. It is therefore evident that the alleged unlawfulness has not been proven.

We conclude and decide that defendants' practice has not been shown to have been unduly prejudicial or disadvantageous in violation of section 16 of the Shipping Act, 1916, as amended, or unreasonable in violation of section 18 thereof, as alleged. We further conclude and decide that defendants have not been shown to have carried out an agreement in violation of section 15 of that act, as alleged. An order dismissing the complaint will be entered.

No. 490

To justify the restriction of their Pacific coast terminal rates at Bellingham to one Bellingham terminal,[5] namely Municipal Dock, canal respondents show from protestants' exhibits that during 1936 and the first eleven months of 1937, no intercoastal cargo moved over Quackenbush Dock, and that over all of the other five wharves concerned the volume was 76,880 tons, or an average of about 3,343 tons per month, as follows:

	Tons eastbound	*Tons westbound*
Bellingham Warehouse Company Pier B	37,563	214
Municipal Dock	25,398	6,346
Citizens Dock	1,944	3,080
Astoria & Puget Sound Canning Co. Dock	1,205	0
Bellingham Canning Company Dock	1,130	0

Municipal Dock is located in the retail section of Bellingham, a city of 34,000 population. It is owned by the Port of Bellingham, a municipal corporation organized under the laws of the State of Washington, and operates under tariffs filed with the State Commission. Canal respondents urge that its facilities are ample to accommodate the intercoastal traffic of the port, and testimony of the chairman of the Bellingham Board of Port Commissioners is that the present capacity of Municipal Dock is sufficient to accommodate its daily business. Estimate is made by canal respondents that the per-day operating cost of an intercoastal vessel is $1,000. The approximate per day operating cost of a vessel of the Sound transshipment carrier is estimated at $150. Canal respondents assert that generally the loading of 1,000 tons of cargo at one wharf consumes about one-third the vessel time consumed in loading a 500-ton lot of cargo at each of two wharves. One canal respondent estimates that the cost of a call by it at Pier B for 500 tons, in addition to a call at Municipal Dock, would be $300. These facts are presented by canal respondents to support their position that the elimination

[5] Except in the case of Puget Sound Pulp & Timber Company Dock, as hereinbefore noted.

of the five wharves, including Pier B and Citizens Dock, from the application of their terminal rates was in the interest of economy of operation, an exercise by them of their managerial judgment, and therefore justified and lawful.

Respondents urge that, judging from the number of tons shown by protestants to have been transferred from Pier B to Municipal Dock during the three-month period of 1939 immediately preceding the further hearing, the intercoastal shipments of canned salmon therefrom were more than 267 percent of what they were during the corresponding period of 1938 before that pier was eliminated from terminal rate application. Witness for protestants testifies that the increase in the volume of such shipments in 1939 over 1938 was due to lower market prices of salmon. Increase in the volume of a protestant's shipments is not justification of a carrier's practice.

To refute the claim of respondents that the elimination of Pier B was in the interest of economy, and to illustrate and support their claims that elimination of east-bound service was arbitrary and unlawful, protestants P. A. F. and Bellingham Warehouse, through their witness, the Pacific coast manager of respondent American-Hawaiian Steamship Company, show that of the five calls made by vessels of that respondent at Municipal Dock during the period March 19 to May 1, 1939, inclusive, the only cargo lifted by two of such vessels was cargo which had been transferred from Pier B, and that practically all of the cargoes of the other three vessels concerned were similarly transferred. No in-bound cargo was discharged by any of these five vessels, and in calling at and departing from Municipal Dock they navigated the customary route over Bellingham Bay past Pier B. Outbound for Atlantic ports they loaded at Municipal Dock a total of 2,483.5 tons, all but 54.6 tons of which was canned salmon originating at Pier B. The 54.6 tons referred to consisted of three shipments, approximating 10.2 tons of paper, and 31.6 and 12.7 tons of canned salmon, respectively, which moved from Municipal Dock separately in three of the five vessels. This witness testifies further that at the time of the elimination of Pier B from terminal rate application respondents received cargo at that pier at ship's tackle, whereas cargo was and is received at Municipal Dock at point of rest on wharf. His estimate of the expense to respondents for trucking or otherwise conveying canned goods from point of rest to ship's sling is 60 cents per ton. Protestants show by this witness that had the 2,428.9 tons involved been lifted at Pier B rather than Municipal Dock, the saving to respondent American-Hawaiian would have been approximately $1,457. The cost to consignors for transferring the cargo from Pier B to Municipal Dork was approximately $1,700. These figures are presented by protestants to illustrate waste asserted to result from the elimination of Pier B from the application of terminal rates.

Respondents state that the five calls of American-Hawaiian involved during a period of less than a month and a half were unusual insofar as salmon is concerned, but do not show that the illustration is inapt as to intercoastal shipments of canned goods transferred from Pier B and lifted by them at Municipal Dock over a longer period of time and in lesser quantities. It appears from carriers' agreements and tariff filings with the Commission that the division of the joint through rate received by the Sound carrier in transporting the canned goods to Seattle is the same whether transported from Pier B or Municipal Dock. Nevertheless, since the elimination of Pier B has added to the Sound carrier's expense because canned goods are received at place of rest rather than at ship's sling, this lack of economy affecting respondents' direct call service also exists in relation to their service by transhipment.

The Pacific coast manager of respondent American-Hawaiian, witness for protestants P. A. F. and Bellingham Warehouse, states that in general it is less expensive for a carrier to lift cargo concentrated at one port terminal than to shift between terminals. He concedes, however, that Bellingham is not different from Seattle and other Puget Sound and Pacific coast ports at which shifts by respondents between terminals to lift cargoes in minimum quantities as determined by them are normal incidents of operation. Included among the shifts of respondents' vessels at Seattle are those between the salmon wharves of protestants' competitors for minimum lots of canned goods of 250 tons.

Protestants P. A. F. and Bellingham Warehouse charge that the elimination of Pier B concerned was an act of retaliation by the canal respondents against P. A. F. because of the latter's refusal to withdraw its complaint in No. 478. They show that the chairman of respondents' conference organization, the Intercoastal Steamship Freight Association, threatened the president of P. A. F. 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 the provision 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.

Elimination of Citizens Dock from the application of Bellingham terminal rates is assailed by Citizens Dock, and by Puget Sound Freight Lines, owner and operator of that dock, as unlawful on the grounds that such elimination is inconvenient to Bellingham consignees and a burden and expense to Puget Sound Freight Lines. Vessels of the protestant Sound carrier leave Seattle in the evening with local cargo and cargo transhipped to it by respondent canal lines, arriving at Bellingham at 7 a. m. the following day. Early morning delivery at Bellingham of the local cargo is necessary because of truck competition. Local cargo is unloaded at Citizens Dock, and prior to the elimination of that dock by respondents, intercoastal cargo also was unloaded there. But since the elimination, the Sound vessel after unloading local freight at Citizens Dock, proceeds a distance of approximately ¼-mile to Municipal Dock to discharge intercoastal freight. This shift consumes from 45 minutes to an hour's time, and upon the record involves an operating expense to the Sound carrier of approximately $6. Puget Sound Freight Lines regularly serves Municipal Dock, and it is not shown that delivery of intercoastal cargo is the sole cause of the vessel shift to that terminal.

As hereinbefore shown, only 5,024 tons of intercoastal cargo—3,080 tons in-bound, and 1,944 tons out-bound—were handled over Citizens Dock during a period of 23 months. This amount of tonnage does not warrant the continuance of the wharf as an intercoastal terminal. It follows that its elimination is justified. In view of the lack of any cargo over Quackenbush Dock during the same 23-month period, only 1,205 tons over Astoria & Puget Sound Canning Company Dock, 1,130 tons over Bellingham Canning Company Dock, and 214 west-bound tons over Bellingham Warehouse Company Pier B, these eliminations are likewise justified.

The exceptions and argument on behalf of association respondents on jurisdictional and other grounds have been considered and are determined to be without merit. The exceptions of P. A. F. seeking reparation overlook that No. 490 is a suspension proceeding instituted and conducted under section 3 of the Intercoastal Shipping Act, 1933. Reparation awards by us are authorized only in connection with proceedings under section 22 of the Shipping Act, 1916.

Following service of the examiner's report, respondents American-Hawaiian, Isthmian, Luckenbach, Pacific-Atlantic, States, and Weyerhaeuser reestablished, by duly filed schedules, the application from Pier B of their Bellingham terminal rate on east-bound canned goods when shipped in minimum quantities of 250 tons.

We find that the elimination by respondents Calmar and McCormick of Bellingham Warehouse Company Pier B from the application of their Bellingham terminal rate for east-bound intercoastal transportation of canned goods in minimum quantities of 250 tons has not been justified, and that denial by these respondents of such rate therefrom, in view of their contrary practice at Seattle, is, and for the future will be, unjust and unreasonable, in violation of section 18 of the Shipping Act, 1916, as amended, and unduly prejudicial, in violation of section 16 of that act. An order requiring respondents Calmar and McCormick to cease and desist from the said violations of sections 18 and 16 will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 25th day of January A. D. 1940.

No. 478

PACIFIC AMERICAN FISHERIES, INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

No. 490

BELLINGHAM, WASH., TERMINAL FACILITIES

These cases being at issue upon complaint and answers on file or having been instituted by the Commission on its own motion without formal pleading, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, 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 Docket No. 478 be, and it is hereby, dismissed; and

It is further ordered, That respondents Calmar Steamship Corporation and McCormick Steamship Company be, and they are hereby, notified and required to cease and desist, on or before March 11, 1940, and thereafter to abstain, from the unreasonableness, and undue prejudice, in violation of sections 18 and 16, respectively, of the Shipping Act, 1916, as amended, herein found.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No 503[1]

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

v.

COMPAGNIE GENERALE TRANSATLANTIQUE
(FRENCH LINE), ET AL.

Submitted November 6, 1939. Decided February 13, 1940

Upon rehearing, found that as a result of the withdrawal of complainants' vessels from the trades involved, the issues presented herein have become moot. Complaints dismissed without prejudice to complainants' right to petition for reopening of proceeding upon their reentry in the trade.

Farnham P. Griffiths and *Joseph B. McKeon* for complainants.
Chalmers G. Graham for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

In the original report herein, 1 U. S. M. C., decided July 27, 1939, it was found that defendants' refusal to admit Brodin Line to conference membership while maintaining contracts with shippers was not unjustly discriminatory, unfair, detrimental to commerce of the United States, unduly prejudicial, or otherwise unlawful. The complaints were dismissed.

Upon petition of complainants, by order dated October 18, 1939, we reopened these proceedings for rehearing, which was had, beginning November 2, 1939, at San Francisco, California. The purpose of the rehearing was to bring the record down to date as it appeared that conditions had changed materially as a result of the European war.

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

Although the complainants in these cases were Hind, Rolph & Company, Inc., and Rederiaktiebolaget Disa-Kare, it does not appear of record that any application has ever been made by Hind, Rolph & Company for admission to the conference in its own right. As to the other complainant, it appears that it is, in fact, two corporations, namely, Rederiaktiebolaget Disa and Rederiaktiebolaget Kare, and that it was only on their behalf that applications for admission were filed, consequently they are the only proper complainants.

Since the rehearing it appears that the two vessels employed by complainants in these trades, namely the *O. A. Brodin* and the *Disa* are proceeding to Sweden under recall orders from their owners. In view of the fact that complainants have recalled these vessels, thereby withdrawing service offered by them in this trade, the issues presented have been rendered moot. An order will be entered dismissing the complaints without prejudice to complainants' right to petition for reopening of this proceeding, or to file a new complaint if and when they reenter the trade involved.

ORDER

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

No. 503

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

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE) ET AL.

No. 504

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

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE) ET AL.

No. 505

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

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE) ET AL.

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

It is ordered, That the complaints in these proceedings be, and they are hereby, dismissed.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 557

BALTIMORE, MD.-VIRGINIA PORTS WINE RATES

Submitted January 15, 1940. Decided March 1, 1940

Proposed any-quantity port-to-port commodity rates on wine between Baltimore, Md., on the one hand, and Norfolk and Newport News, Va., on the other, found not justified. Suspended schedules ordered canceled without prejudice to the filing of new schedules in conformity with the findings.

L. H. Hogshire for Norfolk, Baltimore and Carolina Line, respondent.

T. C. Crouch for Middle Atlantic States Motor Carrier Conference, protestant.

Charles Clark for Chesapeake Steamship Line and Baltimore Steam Packet Line and *A. P. Donadio* for Trunk Line Freight Association, interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By schedules filed to become effective November 20, 1939, respondent Norfolk, Baltimore, and Carolina Line, Incorporated, proposed to establish a local any-quantity commodity port-to-port rate of 22 cents per hundred pounds for the transportation of wine, in cases, between Baltimore, Md., and Norfolk, Va., and with respondent Buxton Lines, Incorporated, a joint any-quantity commodity port-to-port rate of 24 cents on wine in cases, moving between Baltimore and Newport News, Va., to be competitive with a motor common-carrier any-quantity rate on wine from Baltimore to Norfolk of 12 cents per case maintained for about 5 years by Jimmie Thomas Bryant. Upon protest of Middle Atlantic States Motor Carrier Conference, Inc., the operation of the schedules was suspended until March 20, 1940.

This proceeding was heard jointly with proceedings before the Interstate Commerce Commission involving similar water and motor carrier rates. At the hearing Chesapeake Steamship Line and Baltimore Steam Packet Line, common carriers by water serving Baltimore and Norfolk and under the jurisdiction of the Interstate Commerce Commission, intervened on behalf of respondents; Trunk Line Freight Association, an organization of railroads, intervened on behalf of protestant. Protestant is an organization of about 500 motor common carriers transporting property in the States of New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia, not including Bryant. Respondent Norfolk, Baltimore, and Carolina operates two small diesel type vessels of about 250 and 350 cargo tons capacity between Baltimore and Norfolk, 198 statute miles, on a daily schedule, carrying miscellaneous freight. Respondent Buxton, a common carrier by water, furnishes on-carrier service to Newport News.

Wine is shipped in boxes containing pints, fifths, and gallons ranging from 37.5 to 45 pounds each, averaging about 40 pounds. Witness Bryant testified that for insurance purposes the value of an average truck load of 550 cases weighing 22,000 pounds is between $1,500 and $1,700. Witness for respondent Norfolk, Baltimore, and Carolina asserted that the value does not exceed $3.50 per case of 12 quarts and goes as low as $2.50, or less than a case of high-grade beer, the container of beer being returned and that of wine not. The alcoholic content is not shown.

Although the rates in question are proposed to apply between the ports, the traffic moves southbound from Baltimore where two wine manufacturers are located. During the past several years respondents have lost all of the movement to Bryant. According to witness Bryant the movement is not steady. Sometimes Bryant hauls a load every 2 weeks; at other times a load once a month or more. Railroads do not participate in the traffic. Recently the water and rail carriers found that Bryant was carrying all of it at the 12-cent per case rate. The proposed rates are an attempt by respondents to regain a share of this business.

Respondents do not now maintain commodity rates on wine between Baltimore and Norfolk. Under their exceptions to the governing official classification, wine, in carloads, in glass in wicker baskets; in containers in boxes or barrels; or in bulk in barrels is rated class 50, minimum 30,000 pounds and class 44, minimum 40,000 pounds. The class 50 and 44 rates are 32 and 27 cents per 100 pounds, respectively. The less-than-carload rates of respondents are subject to official classification which classes wines according to the alcoholic content. Wine less than 3.2 percent by weight of alcohol is rated second class, while that exceeding 3.2 percent is first class. The second-class rate is 53 cents and first-class is 62 cents. Witness for respondents testified that their port-to-port rates were 10 percent lower than water-truck rates maintained between Baltimore and Virginia points.

Respondents take the position that the proposed rates are necessary to meet Bryant competition, that wine will not move between the points in question at class rates and that the proposed rates are compensatory. Bryant's rate of 12 cents per case weighing 40 pounds is equivalent to 30 cents per 100 pounds. Its operation includes pick-up service from manufacturing plants in Baltimore and delivery to consignees' doors at destination, while respondents' rates apply from their Baltimore terminal to their terminals at Norfolk and Newport News. Respondents estimate that shippers would have to pay at least 10 cents per 100 pounds for the pick-up and delivery services to and from their terminals. They are satisfied with a rate 10 cents lower than competitive motor carriers' rates which would place them on a rate parity considering the estimated pick-up and delivery service. Bryant's position is that he would "be glad" to increase his rate but is forced to maintain the present rate because of some unknown motor carrier competitor, which he has been told, is now offering transportation at 10 cents per case.

Respondents point out that the suspended rate of 22 cents 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 stowage factors that figure is not of itself proof of compensatory revenue even though it may compare favorably with revenue on other freight.

Protestants express the fear that if the 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.

Wine is high-grade commodity. The proposed rates would apply to "high" wine as well as wine of less value and alcoholic content. Since the wine in question generally moves in shipments of about 22,000 pounds, the record affords no justification of either less-than-carload or any-quantity commodity rates. Nor is there justification for any commodity rates northbound.

We find that the proposed rates have not been justified but that a carload commodity rate of 30 cents, minimum 20,000 pounds, from Baltimore to Norfolk and Newport News has been justified. The suspended schedules will be required to be canceled and the proceedings discontinued without prejudice to the establishment of the rate in accordance with the findings.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 1st day of March, A. D. 1940

No. 557

BALTIMORE, MD.-VIRGINIA PORTS WINE RATES

It appearing, That by order dated November 17, 1939, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until March 20, 1940;

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

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel said schedules, on or before March 20, 1940, upon notice to this Commission and to 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, and that this proceeding be discontinued.

By the Commission.

[SEAL] (Sgd.) R. L. McDONALD,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 514[1]

INTERCOASTAL RATE STRUCTURE

Submitted February 28, 1940. Decided April 9, 1940

1. Minimum reasonable level of rates and charges of common carriers by water in west-bound intercoastal commerce determined and prescribed. Rates and charges of certain respondents which are lower than such minimum reasonable level found unreasonable.
2. Respondents' system of proportional rates found not unlawful without prejudice to future conclusions that may be reached in proceedings involving specific rates.
3. Respondents' port equalization rules found unreasonable.
4. Respondents' practice of absorbing on-carrier costs and divisions of joint through rates not shown to be unlawful.
5. Nos. 514 and 524 assigned for further hearing for the sole purpose of determining a uniform mixing rule.
6. Rednctions in certain west-bound rates proposed in No. 534 found unlawful. Schedules ordered canceled.

Charles S. Belsterling and *Thomas F. Lynch* for Isthmian Steamship Company, respondent in No. 514; *Oliver P. Caldwell* and *R. H. Specker* for Luckenbach Steamship Company, Inc., intervener in No. 524 and respondent in No. 534; *M. G. de Quevedo* for complainants in No. 408; *Harold S. Deming* for defendants in No. 408 and for Shepard Steamship Company, respondent in No. 514 and intervener in No. 534; *R. O. Flood* and *Francis H. Robinson* for Flood Lines, Inc., respondent in No. 514; *Alexander Gawlis* for Merchants and Miners Transportation Company, respondent in No. 514; *Joseph J. Geary* and *Ramond F. Burley* for McCormick Steamship Company, respondent in Nos. 514, 524, and 534; *Chalmers G. Graham* for Shepard Steamship Company, respondent in No. 514; *Robert A. Grantier*, *Reginald S. Laughlin* and *M. J. Buckley* for American

[1] This report also embraces No. 408, American-Hawaiian Steamship Company et al. *v.* Shepard Steamship Company et al., No. 524, Mixed Carload Rule-McCormick Steamship Company and No. 534, Westbound Carload Commodity Rates.

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President Lines, Ltd., complainant in No. 408, respondent in No. 514; intervener in No. 524, and protestant in No. 534; *E. Holzborn*, *Neil S. Laidlaw*, and *James P. O'Kelley* for Swayne & Hoyt, Ltd. (Gulf Pacific Line), respondent in No. 514; *Julian M. King* for Agwilines, Inc. (Clyde Mallory Lines), respondent in No. 514 and for Lykes-Coastwise Line, Inc., Mooremack Gulf Lines, Inc., Pan-Atlantic Steamship Corporation, Southern Pacific Company (Southern Pacific Steamship Lines "Morgan Line"), and Southern Steamship Company, interveners; *F. E. Lovejoy* for Puget Sound Freight Lines, The Border Line Transportation Company, Puget Sound Navigation Company, Puget Sound Freight Lines, and Skagit River Navigation and Trading Company, respondents in No. 514; *Frank Lyon* for American-Hawaiian Steamship Company, complainant in No. 408; *Parker McCollester* for American-Hawaiian Steamship Company, complainant in No. 408, respondent in No. 514, protestant in Nos. 524 and 534, for Luckenbach Steamship Company and Luckenbach Gulf Steamship Company, respondents in No. 514; *H. E. Manghum*, *Allen P. Matthew*, and *F. W. Mielke* for The California Transportation Company and Sacramento & San Joaquin River Lines, Inc., respondents in No. 514; *R. T. Mount*, *H. W. Warley*, and *Edmund J. Karr* for Calmar Steamship Corporation, respondent in No. 514; *R. A. Nicol* for California Eastern Line, Inc., and Pacific-Atlantic Steamship Co. (Quaker Line), respondents in Nos. 514 and 534 and interveners in No. 524; *W. G. Oliphant* for Inland Waterways Corporation, respondent in No. 514; *M. C. Pearson* for Mississippi Valley Barge Line Company, respondent in No. 514; *Clement C. Rinehart* for the Baltimore Mail Steamship Company (Panama Pacific Line), complainant in No. 408, respondent in No. 514 and protestant in Nos. 524 and 534; *W. P. Rudrow* and *J. A. Russell* for (Arrow Line) Sudden & Christenson, respondent in Nos. 514 and 534; *M. Sullivan* for The Bull Steamship Line, respondent in No. 514; *John W. Van Gordon* and *Charles J. Maley* for Pacific Coast Direct Line, Inc., respondent in Nos. 514 and 534; and *Joseph Wyatt* for The Union Sulphur Co., respondent in No. 514.

B. C. Allin, *Joseph M. Arnold*, *Markell C. Baer*, *K. L. R. Baird*, *J. S. Bartley*, *Milton P. Bauman*, *Charles A. Beardsley*, *L. A. Becker*, *Saul C. Billing*, *H. E. Boyd*, *Hugh B. Bradford*, *H. R. Brashear*, *H. S. Brown*, *H. W. Browne*, *J. G. Bruce*, *Walter H. Brusche*, *Paul J. Carey*, *William M. Casselman*, *M. F. Chandler*, *A. J. Chrystal*, *Julius Henry Cohen*, *E. M. Cole*, *W. A. Cox*, *George D. Cron*, *R. G. Curry*, *Robert De Kroyft*, *M. L. Dickerson*, *T. G. Differding*, *F. M. Dolan*, *C. F. Dowd*, *S. S. Eisen*, *Harry S. Elkins*, *Charles J. Fagg*, *R. C. Fels*, *A. H. Ferguson*, *C. D. Flowers*, *N. W. Ford*, *H. M. Frazer*, *J. Freed, R. M. Gaddis, H. H. Gibson, George O. Griffith, William H. Hackett, Robert Hamilton, E. C. Harrop, M. J. Hawkins, J. K. Hiltner, Lloyd B. Hughes, H. Ignatius, John K. Jackson, R. C. Johnston, T. Bernard Jones, W. Reginald Jones, L. H. Kentfield, H. E. Ketner, T. H. Kidd, C. C. Kirkpatrick, Frank Korinek, E. F. Lacey, Wilbur LaRoe, Jr., George M. Leedom, H. A. Lincoln, T. A. L. Loretz, Frank H. Luther, Irving F. Lyons, G. E. Mace, H. E. Manghum, Albert Mansfield, J. F. Marias, W. W. McCoubrey, Jay W. McCune, E. J. McGuire, L. S. McIntyre, C. A. Mitchell, W. A. Moore, William R. Moore, A. H. Nelson, Rex M. Nielson, M. F. Nugent, Milton O'Donnell, W. B. O'Leary, George J. Olsen, C. Pascarella, W. H. Pease, Sanford Peters, Linwood L. Pitt, W. F. Price, Frank Rich, Walter A. Rohde, James L. Roney, Joel Rosenson, Harry G. Rowe, Charles R. Seal, Louis A. Schwartz, Ralph L. Sheperd, E. G. Siedle, H. F. Sixtus, C. M. Smith, J. C. Sommers, A. D. Spang, J. W. Stannard, Rene A. Stiegler, W. G. Stone, Oscar Swiedler, G. H. Thompson, W. L. Thornton, Jr., E. H. Thornton, R. T. Titus, J. Richard Townsend, Loyal F. Van Kleeck, Frederick M. Varah, H. J. Wagner, Reginald F. Walker, Paul Weaver, W. W. Weller, A. C. Welsh, Edwin G. Wilcox, B. F. Williams, Samuel H. Williams, C. B. Woods, Elmer Westlake, J. L. Williams,* and *J. D. Youman* for interveners.

David E. Scoll for the Commission.

Report of the Commission

By the Commission:

Exceptions to the examiner's proposed report were filed by certain respondents and interveners to which replies were made.

The issues were orally argued. Our conclusions differ somewhat from those recommended by the examiner.

Complainants in No. 408 are American-Hawaiian Steamship Company, The Baltimore Mail Steamship Company, United States Lines Company, American President Lines, Ltd. (successor to Dollar Steamship Lines, Inc., Ltd.), and Luckenbach Steamship Company, Inc., common carriers by water in intercoastal commerce. Defendants are Shepard Steamship Company, a common carrier by water in intercoastal commerce and on-carriers participating in Shepard rates.[2] By complaint, as amended October 22, 1938, complainants allege that the maintenance by defendant Shepard of rates substantially lower as a whole than those contemporaneously maintained by complainants for similar intercoastal transportation "is for the deliberate purpose, and has the deliberate effect, of diverting traffic

[2] See appendix A.

from the route of each complainant to the route of defendant Shepard Steamship Company, thereby attracting to the route of defendant Shepard Steamship Company a share of the traffic available for intercoastal transportation greater than it is justly entitled to," and that Shepard's rates, charges, classifications, tariffs, and the regulations and practices relating thereto are unjust and unreasonable in violation of section 18 of the Shipping Act, 1916. Just and reasonable minimum rates and charges and reasonable classifications, tariffs, regulations, and practices are sought.

On December 15, 1938, Shepard filed a petition for an order enlarging No. 408 to include a general investigation by us of the entire intercoastal rate structure. Supporting petitions were filed by various port and shipper interests. After hearing in No. 408 we instituted No. 514 in response to these petitions.

No. 514 is an investigation instituted by us upon our own motion concerning the lawfulness of the rates, charges, rules, regulations, and practices of common carriers subject to the Intercoastal Shipping Act, 1933, as amended, for and in connection with the transportation of property in interstate commerce by way of the Panama Canal, with a view to making such order or orders or taking such other action as may be warranted by the record. All canal carriers and participating on-carriers were named respondents. (See appendix B.) We announced that the scope of hearing would include the following subjects:

1. Whether the situation in the intercoastal traffic justifies the establishment of one or more minimum rate levels.

2. The lawfulness of such proportional rates as are now in effect.

3. The lawfulness of such port equalization rates as are now in effect.

4. The lawfulness of absorbing in whole or in part through divisions or otherwise the costs of on-carriage to ports which are never, or seldom, served by vessels of the carrier absorbing such costs.

5. The lawfulness of granting the respective carload rates to various commodities shipped in quantities which are less than carload if the total of the combined commodities so shipped equal a carload minimum.

6. The actual level, or levels, at which the minimum rates should be established.

Nos. 408 and 514 have been consolidated.

In No. 524, McCormick Steamship Company and participating on-carriers[8] by schedules filed to become effective May 8, 1939, proposed to change their existing schedules governing the application of rates, charges, regulations, and practices with respect to the intercoastal

[8] See appendix C.

transportation of commodities in mixed carloads. The purpose of the proposed changes is to meet similar mixed carload provisions maintained by Calmar Steamship Corporation. By order of May 1, 1939, we suspended the operation of the proposed schedules until September 8, 1939. After hearing under special permission granted by us, the operation of the schedules in question was further postponed from September 8 to an indeterminate date.

In No. 534 (Arrow Line) Sudden & Christenson, Luckenbach Steamship Company, Inc., McCormick Steamship Company, Pacific Coast Direct Line, Inc. (Weyerhaeuser Line), (Quaker Line) Pacific-Atlantic Steamship Co., and States Steamship Company (California Eastern Line) and participating on-carriers[4] by schedules filed to become effective June 15, 1939, proposed reductions in carload rates on 33 commodities from Atlantic to Pacific coast ports. By order of June 6, 1939, we suspended the operation of the proposed schedules until October 15, 1939. Under special permission granted by us the operation of the schedules were further postponed to an indeterminate date. The suspended schedules propose reductions in rates to the basis now maintained by Shepard.

The hearings developed that the major intercoastal problems involve competition between the carriers for west-bound cargo. This report, unless otherwise stated, therefore, will be confined to west-bound rates and services. Intercoastal Steamship Freight Association and numerous port authorities, civic organizations, chambers of commerce, trade and traffic associations, individual shippers, and common carriers by water intervened. The term "respondents" will mean only canal carrier respondents. Rates will be stated in cents per 100 pounds, west-bound only.

For historical background of intercoastal rates, practices, classification of lines into A, B, and C groups, conference organizations, *et cetera*, see *Intercoastal Rates of Nelson Steamship Co.*, 1 U. S. S. B. B. 326 and *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400.

There are 14 common carriers regularly engaged in west-bound intercoastal commerce. They are American-Hawaiian Steamship Company, American President Lines, Ltd. (Arrow Line), Sudden & Christenson, The Baltimore Mail Steamship Company (Panama Pacific Line), California Eastern Line, Inc., Calmar Steamship Corporation, Isthmian Steamship Company, Luckenbach Gulf Steamship Company, Inc., Luckenbach Steamship Company, Inc., McCormick Steamship Company, Pacific-Atlantic Steamship Co. (Quaker Line), Pacific Coast Direct Line, Inc., Shepard Steamship Company, and Swayne & Hoyt, Ltd. (managing owners, Gulf Pacific

[4] See appendix D.

Line). Atlantic, Gulf, and Pacific coast ports of call west-bound of each of these carriers are shown in appendix E.

History and the present situation reveal the futility of respondents' attempts to establish and maintain a stabilized and sound west-bound rate structure. This is due to short-sighted policies of steamship principals to secure competitive rate advantages for themselves. A cursory survey of the present west-bound rate structure shows that all respondents are at fault in this respect. Such 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 have been indulged in by all respondents to secure traffic without due regard to accepted principles of rate making.

PRESENT WEST-BOUND RATE STRUCTURE

Rates for respondents are published in four tariffs issued by Wells, Calmar, Shepard, and Flood. Each will be considered in the order named.

At the time of hearing in No. 408, respondents serving the Atlantic coast were members of Intercoastal Steamship Freight Association (agreement No. 5410) with the exception of Shepard. American-Hawaiian has since withdrawn and Luckenbach has filed, but temporarily deferred, its withdrawal. Rates are filed for all members, except Calmar, and for American-Hawaiian by Joseph A. Wells, alternate agent. American-Hawaiian (North Atlantic Service), Luckenbach, Baltimore Mail, and American President are classified in the association agreement and in the Wells tariff, as A lines. All other members and American-Hawaiian (South Atlantic Service) are B lines. A and B line rates are the same except that on specified commodities shown in appendix F so-called handicap rates are published for application by the A lines which are 2.5 cents higher than the B line rates. Both the measure of the handicap rates and the commodities selected for their application have been, and still are, matters of controversy between the A and B lines. The 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. American-Hawaiian and Luckenbach regard it as a measure of compromise between the lines. Indicating that it is not a satisfactory bargain, witness for McCormick testified that it gives the cream of the traffic to the A lines, leaving the B lines to "live on the crumbs of the trade." Prior to the inauguration of service by

Baltimore Mail at Baltimore in 1938, A line service was confined to ports north thereof. The B lines serving Baltimore consider Baltimore Mail is now making serious inroads on traffic hitherto considered as theirs, thus lessening the value of the consideration upon which the handicap rates were based.

The Wells tariff names proportional rates applicable to certain commodities shown in appendix G originating at specified interior points. They are lower than port-to-port rates on the same commodities, and are designed to be competitive with rail rates. Proportional rates apply to carload quantities only. Calmar is the only respondent opposed to proportional rates.

On commodities shown in appendix H originating at interior points generally in Central Freight Association territory, Wells provides that on carload shipments transported by continuous rail movement to New York and Philadelphia for movement to Pacific coast ports, differentials of 3 and 1 cents, respectively, are deductible from the carload rates named in the tariff. This is called port equalization, the purpose of which is to offset rail Atlantic port differentials thus equalizing the total charges for transportation of the 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.

The rates published by Wells are blanketed from and to the ports shown in appendix I. Between other ports combination rates made by adding the canal and on-carrier factors apply. American President and Baltimore Mail do not call direct at ports north of San Francisco but tranship cargo to such ports at the published rates. Other respondents frequently transship to ports seldom or never served by them at the regular rates in competition with lines regularly serving such ports by direct call service. This practice is another disturbing factor in the trade.

Due to railroad competition the Wells tariff, as well as all others, publishes intercoastal rates on carload and less-than-carload bases with carload minima. To meet rail competition, the conference lines originally followed the railroad practice of providing mixed carload rules. Later Wells modified the mixing provisions to meet certain departures from the standard mixing rules published by Calmar to be competitive with Calmar on certain traffic. The present general mixing provisions in Wells' tariff and its definition of a carload shipment are shown in appendix J. Exceptions to the general mixing provisions found in individual rate items are numerous.

In general, Calmar maintains the B line rates, with certain exceptions, from and to the ports shown in appendix K. It does not publish proportional rates but names the B line proportional rates as port-to-port rates. Since it does not load west-bound cargo at New York it applies port equalization only at Philadelphia by deducting a differential of 1 cent, carload or less-than-carload, on any cargo moving under its own power or by private, pubic, or Government-owned dray, rail, truck, lighter, or barge to Philadelphia and there loaded into Calmar's vessels for transportation to the Pacific coast, provided such traffic originates in the same interior territory previously described in application of the Wells port equalization system. Another radical departure from the Wells tariff is Calmar's mixing provision shown in appendix L. The A and B lines contend that the Calmar mixing rule contributes to the breaking down of the less-than-carload rate structure. McCormick's action to meet it is evidence that other lines are likely to adopt competitive measures if Calmar's rule is found lawful in these proceedings.

Appendix M shows the ports between which Shepard publishes west-bound rates. Because it claims to provide inferior service as campared to its competitors, Shepard maintains, for the most part, rates lower than the association lines. This has always been one of the major sources of contention between respondents.

The advent of Flood as a common carrier in intercoastal commerce during the pendency of these proceedings has had no apparent effect on the rate structure as a whole and will not be further considered herein.

Rates from the Gulf of Mexico to the Pacific coast are published in one tariff by Isthmian Steamship Company, Luckenbach Gulf Steamship Company, Inc., and Swayne & Hoyt, Ltd. (Gulf Pacific Line), members of Gulf Intercoastal Conference (agreement No. 5910). There are no other common carriers in that trade. Gulf Pacific Mail Line, Ltd., maintains a membership in the conference but has no voting power. The port-to-port rates are generally the same as the B line rates. In contrast to the Atlantic lines, Gulf respondents maintain joint through rail-barge-ocean and barge-ocean rates from interior points which are less than the combination of factors to and from Gulf ports. According to an exhibit of record about 23 percent of all west-bound cargo handled by Gulf Pacific in 1938 moved under joint rail or barge rates. With the exception of Alameda, Oakland, Seattle, and Tacoma, rates of Gulf lines apply on cargo handled in direct call service. Cargo from Gulf ports to Stockton and Sacramento is transshipped at San Francisco Harbor and is charged an arbitrary over the San Francisco rate. Rail and truck competition for traffic to the Pacific coast is more keen from the Gulf than from the Atlantic coast.

Some shippers testified that as the result of real or imaginary competition, rates maintained by all respondents are lower on many commodities than necessary to hold cargo. While treatment of individual rates on particular commodities is not within the scope of No. 514, a serious threat to important carrier revenue is revealed by intervener Pacific Coast Steel Fabricators' Association whose witness demonstrated by undisputed testimony how west-bound rates on fabricated iron and steel articles were being 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.

ANALYSIS OF FINANCIAL POSITION OF PRINCIPAL RESPONDENTS AND RESULTS OF OPERATIONS

Evidence respecting the financial position of respondents and the results of their operations consisted of data in our Economic Survey of Coastwise and Intercoastal Shipping submitted to the Congress March 15, 1939, which was stipulated into this record by reference, and in exhibits introduced by a witness for the Commission. Evidence respecting its net income from intercoastal operations for the year 1938 was introduced by a witness for respondent Isthmian.

The unsatisfactory financial position of the intercoastal carriers as of December 31, 1937, their resulting inability to replace old tonnage without additional capital and the major factors which have contributed to the present difficulties are set forth in the above-mentioned survey. Among the major factors shown to have contributed to the present unsatisfactory condition are: (1) Increased operating expenses; (2) insufficient net revenues to meet capital charges, depreciation, and provide reserves for replacement. Evidence bearing on these two factors will be discussed hereinafter.

The principal respondents at December 31, 1938, and the percentage of their total vessel operating revenue derived from intercoastal service is shown in the following tabulation. The percentages are based on five years' revenue to December 31, 1938, except as otherwise shown.

	Period	*Percent*
American-Hawaiian		98.71
Baltimore Mail	Aug. 2, 1938, to Dec. 31, 1938	100.00
California Eastern Line	Year 1938	100.00
Calmar		100.00
Christenson S. S. Co.		98.61
Luckenbach		99.89
Luckenbach Gulf		100.00
McCormick		68.63
Pacific-Atlantic		92.89
Seekonk Corporation		100.00
Shepard		99.21
Swayne & Hoyt		98.15
Weyerhaeuser		100.00
Pacific Coast Direct		98.60

Other respondents at December 31, 1938, the greater portion of whose revenues was derived from other trade routes, are shown below, together with the percentage of their total vessel operating revenue received from intercoastal service for the periods stated.

	Period	Percentage
American President (successor to Dollar)	4 years to December 31, 1937	15.46
Isthmian	Year 1938	24.46
Northland Transportation Co.	4 years to December 31, 1938	5.95
States	5 years to December 31, 1938	18.79

Operations of the Gulf Pacific Mail Line Ltd., in 1936 and 1937 included revenues from intercoastal services that represented 18.45 and 80.24 percent, respectively, of its total vessel operating revenue. During 1938 its vessels were operated in the intercoastal trade by Swayne & Hoyt under charter.

Financial position of the carriers.—The following statement of the financial position of the 14 principal common carriers listed in the first tabulation above, at December 31, 1938, shows their inability as of that date to replace their property without additional capital funds. The details from which the statement is prepared are shown in appendix N.

Current working assets	$11,523,627
Less current working liabilities	6,152,027
Net current working assets	5,371,600
Property and equipment:	
Floating equipment, vessels	57,939,790
Less reserve for amortization and depreciation	(38,781,179)
Other shipping property and equipment	1,040,563
Less reserve for amortization and depreciation	(683,802)
Nonshipping property and equipment	869,487
Less reserve for amortization and depreciation	(399,533)
Net book value of property and equipment	19,985,326
Less long-term debt	10,468,421
Net equity in property and equipment, book value	9,516,905
Special funds and deposits	1,163,063
Investments	3,676,772
Other liabilities less other assets	(3,621,550)
Deferred credits and voyages in progress less deferred charges	(462,797)
Total	15,643,993
Less sundry operating reserves	1,305,649
Leaving a net worth, per books of	14,338,344

Property and equipment—Continued.

Net worth is represented by:		
Capital stock		$16,490,134
Surplus (deficit):		
Capital surplus	$3,983,377	
Appreciation surplus	944,241	
Earned surplus (deficit)	(7,079,408)	
		(2,151,790)
		14,338,344

The vessels owned by these carriers as of December 31, 1938, aggregated 1,293,658 deadweight tons. The average book cost per deadweight ton is $44.79. The current replacement cost of new vessels would range from $200 to $239 per deadweight ton for cargo vessels and from $269 to $301 for combination cargo and passenger vessels. The carriers' aggregate net worth of $14,338,344 is equivalent to $11.08 per deadweight ton. If the net book equity of $9,506,905 in property and equipment be excluded the net assets remaining aggregate $4,821,439, which is equivalent to $3.73 per deadweight ton. A break-down of these figures for each of the carriers is shown in appendix O.

The accruals for amortization and depreciation of property and equipment which aggregate $39,864,514 exceed the net worth of $14,338,344 by $25,526,170. The nonexistence of assets representing this excess indicates the major portion of the reserves created out of revenue has been disbursed in dividends or to meet operating deficits. It is clear that no provision has been made for replacement of the earning assets represented by property and equipment.

The net worth of 11 of these carriers decreased $3,221,204 during the 5-year period ended December 31, 1938, despite an increase of $3,444,200 in capital investment. Our Survey of Coastwise and Intercoastal Shipping, *supra*, at page 15 shows that net cash, or its equivalent, of the intercoastal carriers decreased by $13,517,000 during the 10 years ended December 31, 1937.

Analysis of surplus.—The surplus of the 14 principal intercoastal carriers as at December 31, 1938, discloses a deficiency of $2,151,790, made up as follows:

Capital surplus	$3,983,377
Appreciation surplus	944,241
Earned surplus (deficit)	(7,079,408)
Total surplus (deficit)	*(2,151,790)*

Changes in surplus during the 5-year period to December 31, 1938, detailed by carriers in appendix P, are shown by the following summary:

	Balance at beginning of period	Balance at end of period	Changes during the period
Capital surplus	$3,597,774	$3,983,377	$385,603
Appreciation surplus	451,122	944,241	493,119
Earned surplus (or deficit)	[1] 1,394,172	[1] (7,079,408)	(8,473,580)
Total surplus (or deficit)	[1] 5,443,068	[1] (2,151,790)	(7,594,858)

[1] Withdrawals of $7,690,644 by sole stockholder and member of family, carried on the books as an asset, have been treated in this report as a dividend disbursement chargeable against surplus. Of the total $7,534,167 was disbursed prior to Jan. 1, 1934, and the balance of $156,477 since that date.

The following analysis of the changes in surplus includes the results of corporate operations of 11 of the carriers for the 5-year period ended December 31, 1938. It includes the operations of California Eastern for the period August 5, 1937, to December 31, 1938, and of Baltimore Mail and Pacific Coast Direct for the year 1938. The last named company operated in the intercoastal service during the 5-year period, but filed no financial reports with us except for the year 1938.

Capital surplus:	
Contributions by stockholders	$476,350
Capital stock reacquired and retired	4,197
Adjustment of opening entries	112,122
Dividend payment transferred from earned surplus	(207,066)
Net increase in capital surplus	385,603
Appreciation surplus:	
Appreciation on vessels acquired	871,228
Depreciation on appreciation of vessels	(140,235)
Adjustment of appreciation surplus	(57,524)
Capital loss in associated companies	(180,350)
Net increase in appreciation surplus	493,119
Earned surplus (or deficit):	
Extraordinary profits and losses resulting from dissolution of and writing off advances to subsidiaries, profits and losses on sale of vessels, investment securities, etc	(2,459,355)
Transfers to capital surplus	283,975
Transfers to capital stock and reserve accounts	(434,200)
Adjustments applicable to other than current year	(385,407)
Net profit (or loss) from operations transferred from income:	
Trans-Atlantic service of Baltimore Mail	(495,101)
All other	366,005
Net decrease in earned surplus before dividends	(3,124,083)
Dividend appropriations, cash [1]	(5,349,497)
Net decrease in earned surplus	(8,473,580)
Net decrease in total surplus	(7,594,858)

[1] Includes withdrawals of $156,477 by sole stockholder treated as a dividend in this analysis.

Analysis of earned surplus of individual carriers is shown in appendix Q.

None of the carriers that declared dividends fully earned them during the period, as shown by the following comparison:

	Net increase (or decrease) in earned surplus *before dividends*	Dividends
American-Hawaiian	($39,663)	$2,438,845
Calmar	2,042,063	2,250,000
Christenson	90,293	100,000
McCormick	(417,518)	149,175
Shepard	(125,849)	15,000
Weyerhaeuser	168,943	240,000
Luckenbach	(2,739,930)	156,477
Total dividends		5,349,497

Analysis of income.—The combined results of operations of the 14 principal carriers in intercoastal service December 31, 1938, for the 5 years ended on that date, is shown by the condensed income statement in appendix S. Appendix T shows a condensed statement, by carriers, of income for the year 1938. The condensed statement for the 5 years includes operations of California Eastern from August 5, 1937, to December 31, 1938, of Pacific Coast Direct for the year 1938, and of Baltimore Mail from August to December 31, 1938. The operations of Williams from January 1, 1934, to November 30, 1936, at which date it was merged with American-Hawaiian are not included.

Intercoastal service accounted for 96.35 percent of the $236,996,824 total voyage revenue for the 5 years ended December 31, 1938, shown in appendix S. This total includes approximately $5,751,300 of Pacific coastwise revenue of McCormick and $1,557,032 nearby and overseas foreign revenue of Pacific-Atlantic.

For the 5-year period the net profit from operations transferred to surplus was $366,005. The operations for 1934 and 1935 resulted in losses of $1,864,472 and $473,975, respectively. For the years 1936, 1937, and 1938 operations showed profits of $1,383,606, $234,914, and $1,085,392, respectively. If the net loss of $386,973 of Baltimore Mail, which operated only for part of the year 1938, be excluded, the net profit of the remaining carriers would amount to $1,472,905 for that year. Reference to appendix R indicates that, for most of the carriers, the year 1938 showed the most favorable operating results.

The capital investment (or deficiency) of the carriers as of December 31, 1938, the net profit (or loss) from operations for that year, and the rate of return on the capital investment are shown by the following tabulation. Further details are shown in appendix U.

	Capital investment (or deficiency)	Profit (or loss) from operations	Rate of return
			Percent
American-Hawaiian	$7,499,361	$568,160	7.58
California Eastern	288,301	22,002	7.63
Calmar	3,477,540	338,317	9.73
Christenson	322,721	(61,810)	None
Luckenbach Luckenbach Gulf	1,215,317	441,017	36.29
McCormick	1,109,200	(29,637)	None
Pacific-Atlantic	258,145	(40,394)	None
Pacific Coast Direct	68,013	19,486	28.65
Seekonk Corporation	244,425	6,111	2.50
Shepard	(223,939)	28,890	----
Swayne & Hoyt	1,136,383	159,928	14.07
Weyerhaeuser	1,234,594	20,835	1.69
Total	16,630,061	1,472,905	8.86
Baltimore Mail	(3,235,958)	(388,973)	None
Total	13,394,103	1,085,932	8.11

Evidence respecting the results of intercoastal operations of Isthmian for the year ended December 31, 1938, shows total vessel operating revenue of $3,548,756.50 and estimated net loss of $52,989.17 after all deductions. The record contains no evidence of the results of the intercoastal operations of American President for the year 1938. The intercoastal operations of its predecessor, Dollar, for the year 1937, resulted in total vessel operating revenue of $2,268,262.75 and direct profit from vessel operations of $116,713.58 before overheads and other deductions of which there is no evidence respecting the portion assignable to intercoastal operations.

Comparison of increases in operating revenues and expenses.—A comparison of the intercoastal operating revenues and expenses and other deductions, and net profit (or loss), of 10 of the carriers for the years 1934 and 1938 is shown in appendix V. The results are expressed in units of miles traveled and revenue tons carried. The comparison on the basis of revenue tons carried shows the following results:

	Per revenue ton carried			
	Year 1934	Year 1938	Increase from 1934	
			Per ton	Percent
Operating revenue:				
Freight:				
East-bound	$7.57	$9.60	$2.03	26.82
West-bound	10.53	12.60	2.07	19.66
Intermediate	4.30	7.74	3.44	80.00
Total	8.47	10.73	2.26	26.68
All other	.23	.47	.24	104.35
Total operating revenue	8.70	11.20	2.50	28.74
Operating expense:				
Wages	.68	1.19	.51	75.00
Fuel	.86	1.00	.14	16.28
Repairs	.45	.52	.07	15.56
Canal tolls	.82	.72	(.10)	(12.20)
Stevedoring and other cargo expenses	2.40	3.28	.88	36.67
All other	1.87	2.01	.14	7.49
Total operating expense	7.08	8.72	1.64	23.16
Direct profit	1.62	2.48	.86	53.09
Overheads, net	1.17	1.21	.04	3.42
Depreciation	.49	.39	(.10)	(20.41)
Other deductions, net	.50	.60	.10	20.00
Net profit (or loss)	(.54)	.28	.82	151.85

While wages, stevedoring, and other cargo expenses and other operating expense items increased substantially during the period, the comparison shows that increases in operating revenues exceeded the increases in operating expenses by 86 cents per revenue ton.

The subjects announced to be within the scope of hearing will now be considered.

1. WHETHER THE SITUATION IN THE INTERCOASTAL TRAFFIC JUSTIFIES THE ESTABLISHMENT OF ONE OR MORE MINIMUM RATE LEVELS

In determining this question, consideration must be given to the policy of our shipping legislation and the purpose of the Congress in vesting the Commission with minimum rate power.

The Shipping Act, 1916, the Merchant Marine Act, 1920, and the Merchant Marine Act, 1936, declare that the policy of the United States through the Commission is to foster the development and encourage the maintenance of a merchant marine "sufficient to carry its domestic water-borne commerce and * * * to provide shipping service on all routes essential for maintaining the flow of such domestic * * * commerce at all times, * * * composed of the best equipped, safest, and most suitable types of vessels." These mandates of the Congress place upon us the duty 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 be considered in interpreting the powers which were granted to us and in our administration of those acts.

The Congress found that the efforts of carriers to maintain ships and services had been handicapped and the efforts of the Commission to build up a merchant marine in line with the national policy had been hampered by the lack of authority in the Commission to fix reasonable rates. The Congress also found that the interests of carriers and the shipping public concerned with the 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. The Congress, therefore, granted such power to the Commission by the amendment of June 23, 1938, to the Intercoastal Shipping Act, 1933. Nos. 408 and 514 are the first proceedings before us involving the question whether minimum rates should be prescribed throughout an entire rate structure.

The A lines contend that there is an emergency in the intercoastal trade, that proposed reductions in the rates to the Shepard level and McCormick's mixing proposals are evidence of a new rate war and that a minimum rate order is necessary to prevent collapse of the whole rate structure and consequent loss of carrier revenue. They urge us to prescribe a uniform minimum rate level not lower than the B line rates for all of the carriers in the Atlantic-Pacific and Gulf-Pacific trades, below which no carrier in either trade should be permitted to publish rates without our approval. They maintain that differences in speed and frequency of service do not justify an order 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, whereas, the declared policy of the law is to encourage a superior merchant marine.

Shepard, and the B lines, with the exception of Isthmian, oppose any minimum rate order. Isthmian favors a minimum rate order at the B line level. Calmar desires approval of the present A and B rates with Shepard classified as a B line. Pacific Coast Direct opposes any minimum rate order, but urges that two levels are essential to the trade from both carrier and shipper standpoints. McCormick fears that a one minimum rate level would give the A lines a "strange hold" on their intercoastal competitors and favors not more than two minimum rate levels. Shepard fears being forced out of business if its rates are raised to the A or B level.

At the time of the hearing in docket No. 408, there was a threatened break-down of the conference, which apparently was prevented by the present proceedings. Notwithstanding a conflict of evidence, 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 by the Commission of minimum rates. 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. The inability of the 14 principal carriers in the intercoastal trade as of December 31, 1938, to replace their fleets (with an average age then of slightly over 20 years) without additional capital funds is apparent when it is considered that their aggregate net worth was equivalent only to $11.08 per deadweight ton for replacement of vessels which cost an average of $44.79 per deadweight ton and would cost currently from $200 to $300 per deadweight ton. If the book value of the fleet, $7.35 per deadweight ton, is excluded there remains only $3.73 available for replacement.

As of December 31, 1938, the accruals for amortization and depreciation of property and equipment, created through charges to income or surplus, aggregated $39,864,514. On the same date the net book assets aggregated only $14,338,344. The nonexistence of any assets representing the differences of $25,526,170 indicates that the reserve funds ostensibly created to replace property and equipment have been disbursed to meet operating deficits or to pay dividends which were not earned. It is significant that during the 5-year period ended December 31, 1938, cash dividends aggregating $5,349,497 were paid when net profits from operations were only $366,005. It is evident that no provision has been made for replacement of the property and equipment.

The net profits or losses from operations for each of the 5 years to December 31, 1938, were as follows:

1934 (loss)	$1,864,472
1935 (loss)	473,975
1936 (profit)	1,383,606
1937 (profit)	234,914
1938 (profit)	1,085,932
Total (net profit)	366,005

The above figures show that the revenues of the intercoastal carriers generally have been inadequate and have furnished no promise of replacements of the tonnage employed in the trade. A study of the history of the intercoastal trade shows that reductions in rates, due to unfair competitive practices and rate wars, have not been uncommon. We believe that these practices can be stopped and the purposes of the law can be furthered by prescribing a minimum level, below which rates may not be reduced. The financial statements of record show the lack of adequate revenue. They show, for example, that the net profits or losses of Shepard Steamship Co. for the years 1934 to 1938, inclusive, were as follows:

1934 (loss)	$144,719
1935 (loss)	5,272
1936 (profit)	43,552
1937 (loss)	99,012
1938 (profit)	28,890
Total (net loss)	176,561

As of December 31, 1938, the surplus account of Shepard SS. Co. recorded a net deficit of $333,088, consisting of $423,939 deficit in earned surplus less $90,851 balance in appreciation surplus. During the 5 years ended on that date the deficit in earned surplus increased by $140,849 and appreciation surplus decreased by $57,524, a total increase of $198,373 in the deficit. A cash dividend of $15,000 was paid in 1936. The proprietary investment in Shepard at December 31, 1938, aggregated $1,049,223, consisting of $200,000 par value of capital stock and advances of $849,223 from the parent company. Considered solely from the standpoint of an independent investment the financial result of operations has not been successful.

Figures of record also show that revenues of most of the other carriers in the trade have been inadequate. Notwithstanding this fact, reductions in rates have been proposed, which would further deplete their revenues, and which are the subject of consideration in docket No. 534. Such a low basis of rates cannot be justified on this record. We conclude therefore that the Shepard rate level and the proposed reductions now under suspension are unreasonably low. On this record it is doubtful that the present B line level of rates is adequate. Certainly it is not too high. However, for the present we will prescribe B line rates as a minimum. It is not our purpose to freeze rates at that level or specifically to approve individual rates. If an individual rate as prescribed appears unreasonably high to any shipper, the matter may be presented for our consideration by the filing of a formal complaint; and if respondents are of the view that any existing individual rate should be reduced below the level here prescribed, the matter may be presented by a petition for amendment or modification of our order. It should be noted that our order contains no prohibition against increasing individual rates to higher levels which are not unreasonable.

(1) We find that many of the rates, charges, rules, regulations, and practices of respondents Shepard and Calmar are unjust and unreasonable and tend to prevent respondents from developing and maintaining a merchant marine sufficient to carry our west-bound intercoastal commerce, and to provide shipping service essential for maintaining the flow of such commerce.

(2) We further find that unrestricted competition in rate making as practiced by respondents in the west-bound 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.

(3) We further find that there is a continuing threat that competition, unrestrained by minimum rates, will tend to bring the intercoastal rates to unremunerative levels.

(4) We further find that the foregoing conditions have impaired respondents' capacity to provide service and facilities and to make necessary replacements, and that as a whole respondents are now conducting their operations in the west-bound intercoastal trade at a substantial operating loss.

(5) We further find that an order of this Commission prescribing the minimum rates and charges to be charged and rules and regulations to be observed by respondents is necessary and desirable in the public interest and is necessary to enable respondents to provide safe and adequate service, facilities, and equipment for the transportation of property in the west-bound intercoastal trade.

(6) We further find that the rates, charges, rules and regulations, except rules for mixed carload rates and rules for port equalization, published in Alternate Agent Joseph A. Wells' Tariff, SB–I No. 6, for application via B lines, as on file with this Commission on July 12, 1939, will provide reasonable minimum charges for the transportation of property by respondents in the west-bound intercoastal trade.

(7) We further find that the schedules suspended in No. 534 are unreasonable.

2. THE LAWFULNESS OF SUCH PROPORTIONAL RATES AS ARE NOW IN EFFECT

Calmar is the only respondent opposed to proportional rates as being unlawful *per se*. Its view is that from the standpoint of ship operation cost of service is the same with respect to transportation of a given commodity regardless of interior point of origin and therefore it is unreasonable and unjustly discriminatory to charge different rates on a given commodity depending upon its interior point of origin. Witnesses for the port interests indorsed respondents' proportional rates. Some shippers called attention to possibilities of rate discrimination between competing industries.

Proportional rates have existed with approval in railroad and water transportation for many years. Calmar'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.

(8) We find that respondents' system of proportional rates is not unlawful, without prejudice, however, to any future conclusions that may be reached in proceedings involving specific rates.

3. THE LAWFULNESS OF SUCH PORT EQUALIZATION RATES AS ARE NOW IN EFFECT

As heretofore stated, the Wells tariff provides that on carload shipments of commodities shown in appendix H transported by continuous rail movement to New York and Philadelphia for movement to Pacific coast ports, differentials of 3 and 1 cents, respectively, are deductible from the carload rates named in the tariff on traffic originating generally in central territory. Calmar deducts 1 cent on any cargo, carload or less than carload, moving under its own power or by private, public, or Government-owned dray, rail, truck, lighter, or barge from central territory to Philadelphia and there loaded into Calmar's vessels for transportation to the Pacific coast. Shepard has no so-called port equalization rule.

The stated purpose of these rules so far as parties to the Wells tariff are concerned is to offset rail Atlantic port differentials, thus equalizing the total charges for transportation of the selected commodities from interior points through Baltimore, Philadelphia, and New York to the Pacific coast. Calmar's purpose is to meet the competition of the other carriers.

The railroad Atlantic port differential application to all freight originating in central territory, with certain iron and steel articles excepted, and moving beyond the ports by water, originated April 5, 1877, when an agreement between the railroads serving the North Atlantic ports was executed. Its purpose was "To avoid all future misunderstandings in respect to the geographical advantages or disadvantages of the cities of Baltimore, Philadelphia, and New York, as affected by rail-and-ocean transportation, and with the view of effecting an equalization of the aggregate cost of rail-and-ocean transportation between all competitive points in the West, Northwest, and Southwest, and all domestic or foreign ports reached through the above cities." At that time the cost of ocean transportation from Baltimore and Philadelphia was estimated to approximate 3 and 2 cents, respectively, more than from New York. Fixed rail differentials on traffic from central territory of 3 cents less to Baltimore and 2 cents less to Philadelphia "than the agreed rates established from time to time to New York" were established.

Today the situation has changed materially. The rail rates from central territory to the North Atlantic ports on intercoastal traffic are 1 cent more to Philadelphia and 3 cents more to New York than to Baltimore. Boston takes the same rail rate as New York, and Norfolk is on the same basis as Baltimore. Albany, as a North Atlantic port, has been accorded the same general basis as Philadelphia.

Neither the Wells nor Calmar port equalization system bears an exact relationship to the rail differentials. Wells limits its application to few commodities, ignores Boston and Albany, and apparently has extended the eastern boundary beyond rail differential territory. Some of the commodities upon which port equalization is applied by Wells are on the list of commodities shown in appendix G on which proportional rates apply from certain points of origin, for example toys, games, and children's vehicles. Certain other commodities shown in appendix H are not listed in appendix G. With the exception of glass, iron and steel, paper, tinware and related articles, with exceptions, none of the port equalized commodities is on the handicap list shown in appendix F. 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. American President is the leading advocate of this system. It points out that the practice makes that line competitive with lines serving Baltimore for traffic originating in central territory and calls attention to shipper testimony to the effect that port equalization affords inland shippers a maximum number of gateways. It urges on brief the value of a broad program of port equalization as a means of reducing the number of ports at which each line needs to call. The other A lines favor port equalization but are willing to eliminate it if necessary to effect a single minimum rate level.

Witness for McCormick, whose principal Atlantic port for westbound cargo is Baltimore, testified that the 3-cent deduction at New York diverts traffic from Baltimore to New York and that port equalization nullifies the results of opinions of the Interstate Commerce Commission dealing with Atlantic port differentials. Calmar recognizes certain advantages of equalization as now practiced but is opposed to it for the same reason that it opposes proportional rates. On brief it asserts that equalization benefits the A lines at the expense of the B lines. No party of record objected to the failure of Shepard to recognze port equalization.

Intervening port interests are divided on the subject, The Port of New York Authority, Boston Port Authority, Joint Executive Transportation Committee of Philadelphia Commercial Organizations, New Bedford Board of Commerce, The New England Traffic League, Chamber of Commerce of City of Newark, N. J., and New Jersey Industrial Traffic League all support the system. Baltimore Association of Commerce, Albany Port District Commission and Norfolk Port Traffic Commission oppose it.

The testimony and position of the various port interests supporting equalization may be briefly summarized as follows. They stress the economic soundness of equalizing gateways and the long history of rate regulation favoring it. Figures are given purporting to show that the claim of Baltimore interests that the system diverts traffic from Baltimore is unfounded. They express the hope that we will not permit selfish interests to outweigh the advantages, both to shippers and carriers, of the flexibility afforded by equalization. New England interests desire that the system be enlarged to include their ports. Boston points to the fact that no respondent could explain why it should not be placed on a parity with New York. New York criticizes respondents because present equalization is limited to certain specific commodities. Philadelphia stands with New York.

In support of its contention that equalization gives New York and Philadelphia unnatural and unfair advantages over Baltimore, Baltimore Association of Commerce directs attention to the fact that with the exception of the selected port equalized commodities, respondents' rates are made without regard to rail rates to the ports. It offers figures to show that the practice diverts high grade traffic through Philadelphia and New York. It stresses Baltimore's natural advantage of being close to interior producing points. Albany Port District Commission bases its opposition on the grounds that equalization as now practiced is unduly prejudicial to Albany and preferential of New York and Philadelphia as well as being in violation of section 205 of the Merchant Marine Act, 1936. Some shippers support and others condemn port equalization.

Neither the Wells nor the Calmar port equalization rates operate exclusively to equalize the rail differentials. The Wells Tariff permits the application of port equalization to a few commodities only. It completely ignores Boston and Albany. From the tariff it appears that the present port equalization rates are primarily designed by the various respondents to entice a larger share of the business away from their competitors. The question put before us is not the lawfulness of port equalization as a rate-making principle, but whether the present port equalization rates are reasonable. The record in this proceeding shows that 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.

We find, therefore, that the port equalization rules published by Wells and Calmar are unreasonable. This finding is without prejudice to the establishment of reasonable rules designed only to equalize rates where necessary in view of the applicable rail rates to the ports.

4. THE LAWFULNESS OF ABSORBING IN WHOLE OR IN PART THROUGH DIVISIONS OR OTHERWISE THE COSTS OF ON-CARRIAGE TO PORTS WHICH ARE NEVER, OR SELDOM, SERVED BY VESSELS OF THE CARRIER ABSORBING SUCH COSTS

The record does not warrant a detailed analysis of testimony and positions of parties of record with respect to disposition of point No. 4. The general situation with respect to it has been described above. There can be no question of the lawfulness of carriers' practices of making absorptions for legitimate competitive reasons nor is there any question of lawfulness of their right to maintain joint rates with reasonable divisions between them. There is no testimony of record demonstrating that any such absorptions or divisions now operative are unreasonable or otherwise unlawful. It is sufficient to observe that any aggrieved party may file complaint. There may be an undue shrinkage of revenue in certain cases, but each such case should be carefully analyzed before condemned.

(10) We find that respondents' practice of absorbing in whole or in part through divisions or otherwise the costs of on-carriage to ports which are never, or seldom, served by vessels of the carrier absorbing such costs has not been shown on this record to be unlawful.

5. THE LAWFULNESS OF GRANTING THE RESPECTIVE CARLOAD RATES TO VARIOUS COMMODITIES SHIPPED IN QUANTITIES WHICH ARE LESS THAN CARLOAD IF THE TOTAL OF THE COMBINED COMMODITIES SO SHIPPED EQUAL A CARLOAD MINIMUM

As long as there are railroad mixing rules it is clear that respondents must of necessity maintain fair competitive mixing rules, and as the rail rules change it is axiomatic that intercoastal rules must follow suit. No party assails the practice of mixing provisions as being unlawful. The whole question here centers about the Calmar mixing provisions as contrasted to the Wells rules and methods. There is not a more severe clash of interests in the trade, including shippers and carriers alike, than as to this problem, nor is anything more confusing in the rate structure than the present mixing provisions applied by Wells and Calmar. This is the result of intense competition and disregard of sound principles of rate making.

In *Armstrong Cork Co.* v. *American-Hawaiian Steamship Co.*, 1 U. S. M. C. 719, we condemned a particular mixing rule and made the following observations on mixing provisions which should govern here:

> The general mixing provision contained in rule 10 of the governing classification originated in railroad transportation and has had the sanction of the Interstate Commerce Commission over a long period of years. The general rule of defendants also is of long standing. Where the specific provision differs from the general mixing rule maintained by defendants, special justification for it should be shown.

Nothing would be gained by a complete description of the many mixing provisions, and the numerous exceptions to general mixing rules in the intercoastal rate structure. The testimony divided into support and condemnation of both tariffs. What is needed in this regard 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-than-carload shipments. Testimony of record is only valuable in that it demonstrates convincingly the need of uniformity. It is not useful in the light of contributing to a proper general rule with necessary exceptions.

Nos. 514 and 524 will be set for further hearing for the sole purpose of determining a uniform general mixing rule with proper exceptions to it for future application over all respondents' lines.

The findings and order herein are without prejudice to the rights of respondents or any of them, or of any interested party to apply in the proper manner for a modification as to any specified rate, charge, rule, or regulation. The proceedings will be held open for the purposes indicated in our conclusions and findings herein.

Appropriate orders will be issued.

TRUITT, *Commissioner*, concurring:

I concur in the report.

Question was raised in oral argument as to the authority of the Commission to establish minimum rates without considering each individual commodity in the tariff. Because of the seriousness with which the argument on the lack of competent evidence was put forward I desire to offer a few remarks in support of the record. It is clear to me that section 4 of the Intercoastal Shipping Act, 1933, as amended, gives the Commission authority to establish minimum rates, without the necessity of a detailed inquiry into all of the rates in the tariff. The section reads as follows:

SEC. 4. Whenever the Commission finds that any rate, fare, charge, classification, tariff, regulation, or practice demanded, charged, collected, or observed by any carrier subject to the provisions of this Act is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice: * * *

This language is similar to that contained in the Motor Carrier Act of 1935 (49 U. S. C. 316) and the Transportation Act, 1920 (49 U. S. C. 15 (1)). In all three acts Congress used the words "individual or joint rate, fare, or charge." The Supreme Court has interpreted the Transportation Act, 1920, as giving the Interstate Commerce Commission authority to establish a general level of railroad rates in broad group proceedings: *New England Divisions Case*, 261 U. S. 184, 198.[5] In administering the provisions of the Motor Carrier Act, the Interstate Commerce Commission has likewise acted on groups of rates under its minimum rate authority, and established a level of minimum rates. *New England Motor Carrier Rates*, 8 M. C. C. 287; *Rates Over Freight Forwarders, Inc.*, 4 M. C. C. 68; *Mid-Western Motor Freight Tariff Bureau, Inc.*, v. *Eichoholz*, 4 M. C. C. 755; *Central Territory Motor Carrier Rates*, 8 M. C. C. 233. With this background of I. C. C. practice and the precedent of the Supreme Court, the authority of this Commission under section 4 of the Intercoastal Shipping Act to establish a general level of minimum rates seems to be assured.

Certain of the respondents contend that the record does not contain sufficient evidence *upon which to base* an order establishing minimum rates. In addition to over 4,000 pages of transcript covering 26 days of hearings and the testimony of nearly all of the carriers in the trade and many of the shippers, there were 131 exhibits covering every possible aspect of the case. The Commission's own staff prepared a study of the financial condition of the carriers in the trade and an analysis of the traffic and services in the trade. An economic study of the principal commodities in the west-bound movement was also made. These studies of the Commission were

[5] The Court quoted the following language from *Rates on Grain*, etc., 66 I. C. C. 203: "In all such general rate cases we have realized and have held that if we were required to consider the justness and reasonableness of each individual rate, the law would in effect be nullified and the Commission reduced to a state of administrative paralysis."

introduced into the record early in the proceeding. They provide a complete economic and financial analysis of the problem. The carriers were given ample opportunity to cross-examine on the basis of these studies and to introduce evidence of their own. In the light of the mass of competent relevant evidence accumulated in this proceeding, the argument that the record is incomplete is not well taken.

It has been contended by certain respondents that rate differentials are justified by differences in speed and frequency of service, and there is some testimony by shippers to this effect. The record discloses, however, that the transit time from an Atlantic port to a Pacific port depends not only on the speed of the vessel but also on the number of calls made. Likewise, the speed of a vessel is not an absolute thing, there being frequently a difference between the actual and potential speed. The difficulty of applying a rate differential based on a speed and frequency formula is illustrated by the fact that the respondents favoring such a differential do not agree on the formula for determining what it should be. Finally, if the Commission were to establish such a formula for rate differentials based on speed and frequency, it would be continually faced with controversies over the application of such a formula and its enforcement.

Looking at the question of minimum rates from the standpoint of attaining a satisfactory intercoastal service that will be available during both good times and bad, a finding by the Commission in this case that no order is justified might freeze the present differentials for a long time to come. This would have an unfortunate effect on future replacements because those vessels which now require rate differentials to attract traffic because of their otherwise inferior service, would tend to be replaced by similar vessels. Since the record shows that fast and efficient vessels cannot be purchased and maintained on existing revenues, it is reasonable to assume that the service on all of the lines will tend to deteriorate to the level of those which operate at the lowest level of rates, and similarly all the rates will go down to that level. Since the B line rates are the rates under which the greater volume of the traffic moves and some of the lines have made profits at these rates, the B line rate level would seem to be a reasonable minimum.

The minimum rate question is, of course, the focal point of the controversy, but even if the establishment of minimum rates would relieve the competitive pressure which reduces the revenues of the carriers as a group, I perceive no assurance that our order will result in the replacement of the existing obsolete World War tonnage with new suitable vessels. The Economic Survey of Coastwise and Intercoastal Shipping, which we transmitted to Congress on March 15, 1939, and which was stipulated into the record in this proceeding, disclosed that while the intercoastal fleet should be replaced with new vessels, the obstacles in the way of such replacements are formidable. The investigation in this proceeding has not, in my opinion, shown a clear way toward removing these obstacles, for it shows that cut-throat competition alone is not responsible for the financial plight of the lines. Depletion of assets through unwise disposition of earnings has been an important contributing cause. This Commission has no authority to prevent these respondents from pursuing unsound financial policies. Perhaps such authority should reside within some regulatory agency of the Government. The absence of such authority should not prevent us from exercising the regulatory powers we have been directed by Congress to use to outlaw unsound competitive practices as a basis for other future reforms and improvements in the service. It is on this basis that I find common ground with my colleagues and support the majority view in favor of the establishment of a minimum rate level as called for in the decision of the Commission this day announced.

MORAN, *Commissioner*, dissenting in part:

The recent turn of events, notably the war and consequent removal of tonnage from the intercoastal trade, has rendered the question of minimum rates in this proceeding academic. Certainly, there is no urgent necessity now for the drastic minimum rate order issued herein. Even though the necessity were apparent, I would hesitate, on this record, to approve the order issued herein, mainly for two reasons.

First, section 4 of the Intercoastal Shipping Act, 1933, in plain terms, requires that minimum rates must be based upon a *finding of unreasonableness*. There is not a shred of evidence here that the rates ordered increased are *per se* unreasonably low. Indeed, the Commission announced prior to the hearings that evidence relating to individual rates would not be received.

Second, the record points clearly to the almost inevitable result of a one rate level—a gradual mastery of the trade by carriers furnishing the better service. We should not ignore the fundamental fact that shippers will pay only in proportion to the value of the service rendered. In recognition of this principle the carriers have always found it necessary to establish differentials in order to bring about a fair distribution of intercoastal traffic. When these differentials have been narrowed or abolished the traffic has invariably gravitated to the better equipped lines.

The question posed therefore is whether a merchant marine is best promoted and encouraged by a few strong lines with a monopoly of the traffic, or a larger number offering a variety of services at rates based on the value and cost of such services. In common with most of the carriers involved and practically all of the shippers affected, I would choose the latter alternative.

A word about the B level prescribed as the minimum. The majority admit that it is in a state of "utter disorder and confusion." It has never been critically examined by the Commission or its predecessors as to its reasonableness. The financial plight of respondents is given as the urgent reason for prescribing the B level as minima. But the raising of the rates to the B level would not substantially assist the trade from a revenue standpoint. Unsound financial practices, costly labor difficulties, and business depression—not the measure of rates alone—have contributed greatly to the carriers' financial condition.

The financial statistics set forth in another part of this report reveal that the respondent carriers have been most imprudent in matters of financial management. It appears to have been their policy to pay dividends whether or not earned and to ignore replacement needs. Some have made up operating losses through loans from proprietary affiliates. Others have made inordinately large loans and payments to stockholders and affiliates. One of the latter shows on its books loans of nearly $8,000,000 to one stockholder, though it has failed to make provision for replacing its vessels. Unless the Federal Government has some authority to prevent the intercoastal operators from withdrawing profits as fast as they are earned, no order directed solely toward regulating competition in order to increase revenues can be of any lasting benefit. What purpose is served by raising rates if the increased revenues go directly into the pockets of the stockholders and no provision is made for assuring adequate replacements to carry on the service?

The mere issuance of a minimum rate order for the correction of competitive abuses will not accomplish any improvement in the intercoastal situation until the power is lodged somewhere in the Federal Government to prescribe accounts for these respondents, require complete reports of their financial operations, and supervise the issuance of securities. It is obvious that some of these carriers are still living in the happy-go-lucky-boom-and-bust era and have learned none of the bitter lessons of the past decade. Without conservative financial management, any effort to improve revenues through regulation of rates is bound to fail, and since some of these carriers do not seem to be capable of pursuing sound financial policies on their own, Congress should provide sufficient authority to compel them to do so.

The desirability of any minimum level or levels in the trade is questionable. Transcontinental rail rates fix the ceiling of intercoastal rates. The present rates are at their permissible ceiling, where they are frozen by this order. Flexibility in adjusting rates is necessary to meet changing competitive rail rates, as well as the needs of shippers in particular instances; with the rates in a strait jacket this advantage will be lost.

Unsatisfactory as the rate structure is, the rates and classification of lines, subject to the findings herein as to port equalization and mixing rules, should not be disturbed by the Commission at this time. Through voluntary association and individual action, and in the light of the Commission's disposition of the primary controversies in these proceedings, respondents should be able to build up a stable structure based on sound principles of rate making. Failing this, the Commission's power of suspension, and minimum rate jurisdiction, plus the continuing right of parties to file complaints would be ample assurance against destructive rate wars and instability of rates.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., this 9th day of April, A. D. 1940.

No. 408

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

v.

SHEPARD STEAMSHIP COMPANY ET AL.

No. 514

INTERCOASTAL RATE STRUCTURE

No. 524

MIXED CARLOAD RULE—McCORMICK STEAMSHIP COMPANY

No. 534

WEST-BOUND CARLOAD COMMODITY RATES

These cases being at issue upon complaint and answer on file, or having been instituted by the Commission on its own motion and without formal pleading, or on orders of suspension of tariff schedules, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had; and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That respondents in No. 514, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 15, 1940, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of property in west-bound intercoastal commerce, rates which shall be less than the minimum rates prescribed in the next succeeding paragraph hereof;

It is further ordered, That the rates, charges, rules, and regulations, except rules for mixed carload rates and rules for port equalization, published in Alternate Agent Joseph A. Wells' Tariff SB–I No. 6, for application via B lines, as on file with this Commission on July 12, 1939, shall be the minimum reasonable rates and charges to be charged and the reasonable rules and regulations to be observed by all said respondents for the transportation of aforesaid property;

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 15, 1940, upon notice to this Commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in the Intercoastal Shipping Act, 1933, as amended, and thereafter to maintain and apply to the transportation of said property, rates which shall not be less than the rates provided in the tariff designated in the next preceding paragraph hereof;

It is further ordered, That respondents in No. 514 be, and they are hereby, notified and required to cease and desist, on or before June 15, 1940, from port equalization practices herein found unlawful;

It is further ordered, That No. 514 and No. 524 be assigned for further hearing at such times and places as the Commission may hereafter direct for the sole purpose of determining a uniform mixing rule and exceptions thereto to apply to the transportation of property shipped in less-than-carload quantities at carload rates to be observed by each carrier by water subject to the Intercoastal Shipping Act, 1933;

It is further ordered, That respondents in No. 534 be, and they are hereby, notified and required to cancel, effective on or before June 15, 1940, the suspended schedules found unlawful herein upon notice to this Commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in the Intercoastal Shipping Act, 1933, as amended;

It is further ordered, That these proceedings shall be held open and that the order herein be without prejudice to the rights of respondents, or any of them, or of any interested party, to apply in the proper manner for a modification as to any specified rate, charge, rule, or regulation; and

It is further ordered, That this order shall continue in force until otherwise ordered.

By the Commission.

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

APPENDIX A

Defendants in No. 408

Bay Cities Transportation Company.
Berkeley Transportation Company.
Border Line Transportation Company.
California Transportation Company.
Crowley Launch & Tugboat Company.
Marine Service Corporation.
Pacific Steamship Lines, Ltd.
Puget Sound Freight Lines.
Puget Sound Navigation Company.
Richmond Navigation and Improvement Company.
Sacramento and San Joaquin River Line, Inc.
Shaver Forwarding Company.
Shepard Steamship Company.
Skagit River Navigation Company.

APPENDIX B

Respondents in No. 514

Agwilines, Inc. (Clyde Mallory Lines).
Alaska Southern Packing Co.
American Foreign Steamship Corporation.
American-Hawaiian Steamship Company.
American President Lines, Ltd.
(Arrow Line) Sudden & Christenson.
Babbidge & Holt, Inc.
The Baltimore Mail S. S. Company (Panama Pacific Line).
Bay Cities Transportation Co.
Berkeley Transportation Company.
The Border Line Transportation Company.
The Bull Steamship Line.
California Eastern Line, Inc.
The California Transportation Company.
Calmar Steamship Corporation.
Coast Transportation Co., Inc.
Coastwise Line.
Consolidated Steamship Companies.
The Consolidated-Olympic Line (Consolidated Steamship Cos., Olympic S. S. Co., Inc.).
Crowley Launch & Tugboat Co.
Erikson Navigation Company.
Hammond Shipping Co., Ltd.
Inland Waterways Corporation.
Isthmian Steamship Company.
A. B. Johnson Lumber Company.
Luckenbach Gulf Steamship Company, Inc.
Luckenbach Steamship Company, Inc.
Marine Service Corporation.
McCormick Steamship Company.
Merchants and Miners Transportation Company.
Mississippi Valley Barge Line Company.
Napa Transportation Company.
Northland Transportation Co.
Pacific-Atlantic Steamship Co.
Pacific Coast Direct Line, Inc.
Prudential Steamship Corporation.
Puget Sound Freight Lines.
Puget Sound Navigation Company.
Red River Barge Line.
Richmond Navigation & Improvement Co.
Roamer Tug & Lighterage Company.
Sacramento & San Joaquin River Lines, Inc.
Schafer Bros. Steamship Lines.
Shaver Forwarding Company, Inc.
Shepard Steamship Company.
Skagit River Navigation & Trading Company.

States Steamship Company (California-Eastern Line).
Swayne & Hoyt, Ltd. (Managing Owners, Gulf Pacific Line).
Thames River Lines, Inc.
The Union Sulphur Company.
United Boat Lines.
West Pass Transportation Co.
Western Transportation Co.
Weyerhaeuser Steamship Co.
Mallory Transport Lines, Inc.
Flood Lines, Inc.
Christenson Steamship Company.
Seekonk Corporation.

APPENDIX C

Respondents in No. 524

Babbidge & Holt, Inc.
Bay Cities Transportation Company.
Berkeley Transportation Co.
The Border Line Transportation Company.
The California Transportation Company
Crowley Launch & Tugboat Co.
Hammond Shipping Co., Ltd.
McCormick Steamship Company.
Puget Sound Navigation Company.
Puget Sound Freight Lines.
Richmond Navigation & Improvement Co.
Sacramento & San Joaquin River Lines, Inc.
Skagit River Navigation & Trading Company.

APPENDIX D

Respondents in No. 534

(Arrow Line) Sudden & Christenson.
Babbidge & Holt, Inc.
Bay Cities Transportation Company.
Berkeley Transportation Company.
The Border Line Transportation Company.
California Eastern Line, Inc. (California-Eastern Line).
Coastwise Line.
The Consolidated-Olympic Line (Consolidated Steamship Cos.).
Crowley Launch & Tugboat Co.
Erikson Navigation Company.
A. B. Johnson Lumber Company.
Luckenbach Steamship Company, Inc.
McCormick Steamship Company.
Marine Service Corporation.
Puget Sound Navigation Company.
Puget Sound Freight Lines.
(Quaker Line) Pacific-Atlantic Steamship Co.
Richmond Navigation & Improvement Co.
Roamer Tug & Lighterage Company.
Sacramento & San Joaquin River Lines, Inc.
Schafer Bros. Steamship Lines.
Shaver Forwarding Company.
Skagit River Navigation & Trading Company.
States Steamship Company (California-Eastern Line).
Pacific Coast Direct Line, Inc. (Weyerhaeuser Line).

APPENDIX E

Atlantic, Gulf, and Pacific coast ports of call, westbound [1]

Ports served	S. S. No. 1 [2]	S. S. No. 2 [2]	S. S. No. 3 [2]	S. S. No. 4 [2]	S. S. No. 5 [2]	S. S. No. 6 [2]	S. S. No. 7 [2]	S. S. No. 8 [2]	S. S. No. 9 [2]	S. S. No. 10 [2]	S. S. No. 11 [2]	S. S. No. 12 [2]	S. S. No. 13 [2]	S. S. No. 14 [2]
Atlantic coast:														
Jacksonville, Fla	D		D	D										
Savannah, Ga	D		D	D			D							
Charleston, S. C	D													
Wilmington, N. C										D				
Hopewell, Va										D				
Newport News, Va				D							D			
Norfolk, Va	D		D	D			D			D	D	D		
Portsmouth, Va												D		
Baltimore, Md	D		D	D	D		D			D	D	D	D	
Sparrows Point, Md					D						D			
Chester, Pa	D			D	D					D	D	D		
Eddystone, Pa	D									D		D		
Marcus Hook, Pa	D			D						D	D	D		
Philadelphia, Pa	D		D	D	D		D	D		D	D	D		D
Wilmington, Del										D		D		
Bayonne, N. J	D		D							D	D	D		D
Bayway, N. J											D	D		
Camden, N. J	D			D				D		D	D	D		
Edgewater, N. J	D									D				
Jersey City, N. J	D	D						D						
Paulsboro, N. J										D	D	D		
Port Newark, N. J	D									D	D	D		
Trenton, N. J				D						D	D	D		
Warners, N. J							D			D		D		
Albany, N. Y										D	D	D		D
Brooklyn, N. Y	D						D	D		D	D	D		
New York (Manhattan)	D							D					D	D
Bridgeport, Conn	D											D		
New London, Conn												D		
Portsmouth, R. I												D		
Providence, R. I								D						
Boston, Mass	D	D						D				D		D
New Bedford, Mass														D
Portland, Maine							D							
Gulf coast:														
Panama City, Fla						D			D					
Port St. Jo, Fla									D					
Tampa, Fla						D			D					
Mobile, Ala						D	D		D					
Lake Charles, La						D								
New Orleans, La						D			D					
Beaumont, Tex						D								
Brownsville, Tex						D								
Corpus Christi, Tex						D								
Galveston, Tex						D								
Houston, Tex						D			D					
Port Arthur, Tex						D								
Pacific coast:														
Alameda, Calif	O	O	D-O	D-O	D	D-O	D	D-O	D-O	D-O	D-O	D-O	O	D-O
Avon, Calif	D-O													
California City, Calif		O												O
Eureka, Calif					O									
Long Beach, Calif						D	D		D	D		D		
Los Angeles Harbor, Calif		D	D	D	D	D	D	D	D	D	D		D	D
Mare Island, Calif			O	D	O						D			
Martinez, Calif	D-O											D		
Oakland, Calif	D-O	O	D-O	D-O	D-O	D-O	D-O	D-O	D	D-O	D-O	D-O	O	D-O
Oleum, Calif												D		
Richmond, Calif	D-O	O	D-O	D-O	D-O	O	O	O	D-O	D-O	D-O	D-O	O	D-O
Sacramento, Calif	O	O	O	O	O	O	O	O		O	O	O	O	O
San Diego, Calif	D			D		D	D		D	D	D	D		
San Francisco, Calif	D	D	D	D	D	D	D	D	D	D	D	D	D	D
San Pedro, Calif				D							D			D
Stockton, Calif	O	O	O	O	O	O	O	D-O		D-O	O	O	O	O
Terminal Island, Calif				D		D		D	D		D	D	D	D
Wilmington, Calif	D		D		D		D			D			D	
Astoria, Oreg	D	O	O	O	D-O		O	O		O	O	O	O	
Portland, Oreg	D	O	D	D	D	D	D	D	D	D	D	D-O	O	D
Aberdeen, Wash		O												
Anacortes, Wash	O	O					O	O		O		O	O	

[1] Letter abbreviations D (direct) and O (on-carrier) after each port indicates that one or both services were rendered by the carrier named at the top of the column.

[2] The SS numbers shown at the top of each column indicate that one or more calls were made during 1938 by the carrier as numbered in the legend.

Atlantic, Gulf, and Pacific coast ports of call, westbound—Continued

Ports served	S. S. No. 1	S. S. No. 2	S. S. No. 3	S. S. No. 4	S. S. No. 5	S. S. No. 6	S. S. No. 7	S. S. No. 8	S. S. No. 9	S. S. No. 10	S. S. No. 11	S. S. No. 12	S. S. No. 13	S. S. No. 14
Pacific coast—Continued.														
Bellingham, Wash	O	O	O	-----	O	-----	O	O	D	O	-----	O	O	O
Bremerton, Wash	-----	-----	O	O	O	-----	-----	-----	-----	-----	O	-----	-----	-----
Dupont, Wash	O	O	-----	-----	O	-----	O	O	-----	D	-----	-----	-----	D-O
Everett, Wash	O	O	D	D-O	O	-----	D-O	O	-----	O	D-O	D-O	O	-----
Friday Harbor, Wash	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	O
Hoquiam, Wash	-----	O	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Longview, Wash	D	O	D-O	O	O	-----	O	O	-----	O	O	D-O	O	-----
Mount Vernon, Wash	-----	-----	-----	-----	O	-----	-----	-----	-----	-----	-----	-----	-----	-----
Olympia, Wash	O	O	O	-----	O	-----	O	O	-----	O	-----	O	O	O
Port Angeles, Wash	O	O	-----	O	O	-----	O	O	-----	O	O	O	O	-----
Port Townsend, Wash	O	O	-----	-----	O	-----	O	O	-----	-----	-----	O	O	-----
Seattle, Wash	D	O	D	D	D	D	D	D	D	D	D	D	O	D
Tacoma, Wash	D-O	O	D-O	D-O	D-O	D-O	D-O	D-O	D-O	D-O	D-O	D-O	O	D
Vancouver, Wash	O	O	-----	-----	O	-----	-----	O	-----	O	-----	-----	-----	-----

LEGEND

S. S. No.	Name	S. S. No.	Name
1	American-Hawaiian.	8	Luckenbach.
2	American President.	9	Luckenbach Gulf.
3	Arrow Line.	10	McCormick.
4	California Eastern.	11	Quaker Line.
5	Calmar.	12	Pacific Coast Direct.
6	Gulf Pacific.	13	Panama Pacific.
7	Isthmian.	14	Shepard.

APPENDIX F

Commodities Upon Which A Lines Apply

HANDICAP RATES

Alumina, sulphate of.
Ammonia, sulphate of.
Ammonia, anhydrous.
Antimony, metal.
Asphalt.
Asphaltum.
Barium, sulphate of.
Barium, carbonate.
Barytes, limestone.
Braces.
Fire clay.
Fire box or furnace linings.
Fire brick.
Calcium, carbide of.
Cement.
Cement sulphur compound.
Grain products.
Charcoal briquettes.
Charcoal.
Clay.
Feldspar.
Coal.
Coke.
Fertilizing compounds.
Foil.
Meat scrap and feeding tankage.
Glass and glassware.
Glycerine.
Boilers, etc.
Apparatus and parts.
Furnace heating pipe.
Iron and steel.
Ivory meal scrap or shavings.
Wood flour.
Wood pulp.
Shells, ground peanut.
Rags.
Sheet lead.
Lead, antimonial.
Lead, pig.
Lime.
Lime crystals.
Lumber and logs.
Manhole covers.

Material, enameling.
Copper, sulphate of.
Copper matte.
Cobbings.
Speiss.
Refinery mud room cleanings.
Fullers' earth.
Nitro-cellulose.
Fertilizers.
Phosphate rock.
Plaster.
Fixtures, bathroom.
Plumbers goods.
Potash, nitrate of.
Railway material.
Cast iron sections.
Salt.
Slate.
Sand, gravel, slag, etc.
Wood sawdust and shavings.
Mica schist.
Ore, chrome, iron, etc.
Pyrites screenings.
Paper and paper articles.
Acid phosphate.
Ammoniated phosphate.
Shells.
Starch.
Stone.
Asphalt rock.
Marble.
Sugar.
Talc.
Soapstone refuse.
Tinware.
Sheet steel ware.
Tile.
Tobacco dust and stems.
Automobile frame parts.
Springs, automobile.
Weights, sash.
Wire cable.
Xanthrite.
Zinc dust.
Zinc.

NOTE.—The commodities listed above include carload and less-than-carload lots and are subject to the following uniform differential: 2.5 cents per 100 pounds; 50 cents per ton; or 56 cents per gross ton.

APPENDIX G

Commodities on which proportional rates apply and points of origin

Commodity:	*Point of origin*
Acetone, in iron or steel drums or barrels	South Charleston, W. Va.
Trunks, bags, etc	Petersburg, Va.
Bowling alley material and accessories, boxed or crated.	Cleveland, Ohio.
	Muskegon, Mich.
	St. Johnsbury, Vt.
Carpet lining, hair felt, etc	Detroit, Mich.
Food preparations	Buffalo, N. Y.
	Cereal, Pa.
	Niagara Falls, N. Y.
	Pittsburgh, Pa.
Electrical appliances, machinery, and supplies	Cleveland, Ohio.
	Fremont, Ohio.
	Suspension Bridge, N. Y.
Fire extinguishers, etc	Elmira, N. Y.
Glass and glassware	Cleveland, Ohio.
	Pittsburgh, Pa.
	Jeannette, Pa.
	Beaver Falls, Pa.
	Corning, N. Y.

Commodities on which proportional rates apply and points of origin—**Continued**

Commodity—Continued.	*Point of origin*
Stoves	Ironton, Ohio.
	Kalamazoo, Mich.
Machinery, paper mill or pulp mill, and parts thereof, K. D.	Hamilton, Ohio.
	Middletown, Ohio.
Pianos, player pianos, boxed	Buffalo, N. Y.
	East Rochester, N. Y.
	Rochester, N. Y.
Acetate, alcohol, ispropanol, etc	South Charleston, W. Va.
	Wyandotte, Mich.
Paper and articles of paper, etc	Herkimer, N. Y.
	Lincoln, N. H.
	Newark, N. J.
	Old Towne, Maine.
	Plattsburg, N. Y.
	Rochester, N. Y.
	Wallomsac, N. Y.
	Waterville, Maine.
Seats	Grand Rapids, Mich.
Sewing machines and sewing-machine parts	Cleveland, Ohio.
Stone	Atlanta, Ga.
	Berkeley, Ga.
	Crab Orchard, Tenn.
	Nelson, Ga.
	Tate, Ga.
	Marietta, Ga.
	Elberton, Ga.
	Knoxville, Tenn.
Billiard tables, billiard table accessories	Cleveland, Ohio.
	Muskegon, Mich.
Cigarettes, in pkgs	Durham, N. C.
	Petersburg, Va.
	Reidsville, N. C.
	Richmond, Va.
	Winston-Salem, N. C.
Tobacco	Durham, N. C.
	Petersburg, Va.
	Reidsville, N. C.
	Richmond, Va.
	Winston-Salem, N. C.
Toys, games, and children's vehicles	Akron, Ohio.
	Barberton, Ohio.
	Bryan, Ohio.
	Cleveland, Ohio.
	Elyria, Ohio
	Girard, Pa.
	Muncie, Ind.
	No. Tonawanda, N. Y.
	Pittsburgh, Pa.
	Toledo, Ohio.
	Wyandotte, Mich.

Commodities on which proportional rates apply and points of origin—Continued

Commodities—Continued.	*Point of origin*
Vehicles, self-propelling, and parts thereof......	Auburn, Ind.
	Buffalo, N. Y.
	Butler, Pa.
	Connersville, Ind.
	Kenosha, Wis.
	Lansing, Mich.
	Grand Rapids, Mich.
	South Bend, Ind.
	Flint, Mich.
	Milwaukee, Wis.
	Racine, Wis.
	Syracuse, N. Y.
	Detroit, Mich.
	Pontiac, Mich.
	Toledo, Ohio.
	Cleveland, Ohio.

Source: Exhibit of record.

APPENDIX H

Commodities Upon Which Port Equalization is Applied

Aluminum and aluminum articles, with exceptions.
Boots, shoes, and slippers.
Burial cases, vaults, shelves.
Canned goods and related articles.
Carpets or carpeting and related articles.
Food preparations, cereals, etc.
Coffee and coffee substitutes.
Drugs, medicines, and chemicals and related articles.
Electrical appliances, machinery, and related articles.
Pole line construction material.
Furniture, with exceptions.
Glass and related articles, with exceptions.
Hardware, tools, etc.
Eating and cooking apparatus, with exceptions.
Insulators, electric wire.
Iron and steel and articles of iron and steel, with exceptions.
Machines, voting.
Matches.
Oil, petroleum, and its products.
Paints and paint compounds.
Paper and paper articles, with exceptions.
Refrigerators and related articles.
Sewing machines and parts.
Soap, cleaning compounds, etc.
Sodas and chemicals, with exceptions.
Tinware, sheet ironware, sheet steelware, with exceptions.
Toys, games, and children's vehicles, with exceptions.
Vehicles, self-propelling, and parts thereof, with exceptions.
Wire and wire goods, with exceptions.

Note.—Carload rates subject to deduction are marked "P. E." in the Wells tariff. While points of origin lie generally in Central Freight Association territory port equalization applies on commodities originating at Johnstown and Jersey Shore, Pa., and Cumberland, Md., east of C. F. A. territory.

APPENDIX I

Ports Between Which Wells Publishes Blanket Rates Westbound

ATLANTIC COAST

Albany, N. Y.
Baltimore, Md.
Bayonne, N. J.
Bayway, N. J.
Boston, Mass.
Bridgeport, Conn.
Brooklyn, N. Y.
Camden, N. J.
Carteret, N. J.
Charleston, S. C.
Chester, Pa.
Edgewater, N. J.
Eddystone, Pa.
Georgetown, S. C.
Hopewell, Va.
Jacksonville, Fla.
Marcus Hook, Pa.
New Bedford, Mass.
New London, Conn.
Newport News, Va.
New York Harbor, N. Y.
Norfolk, Va.
Paulsboro, N. J.
Philadelphia, Pa.
Portland, Me.
Port Newark, N. J.
Portsmouth, R. I.
Providence, R. I.
Rensselaer, N. Y.
Savannah, Ga.
Sparrows Point, Md.
Trenton, N. J.
Warners, N. J.
Wilmington, Del.
Wilmington, N. C.

PACIFIC COAST

Alameda, Calif.
Anacortes, Wash.
Astoria, Oreg.
Bellingham, Wash.
Bremerton, Wash.
California City, Calif.
Dupont, Wash.
Everett, Wash.
Hoquiam, Wash.
Long Beach, Calif.
Long View, Calif.
Los Angeles Harbor, Calif.
Mare Island, Calif.
Martinez, Calif.
Oakland, Calif.
Oleum, Calif.
Olympia, Wash.
Port Angeles, Wash.
Portland, Oreg.
Port Townsend, Wash.
Richmond, Calif.
Sacramento, Calif.
San Diego, Calif.
San Francisco, Calif.
Seattle, Wash.
Stockton, Calif.
Tacoma, Wash.
Vancouver, Wash.

APPENDIX J

The Wells Mixing Provisions

RULE 30. *Application of rate on mixtures of commodities in different items at respective rates.*—Where a mixture of commodities in different items is permitted at the respective rates and the aggregate of the weights fails to make up the carload minimum, the shortage in the weight shall be apportioned proportionately over the commodities at the rate applicable to each one. Where no provision for a mixed carload minimum weight is made in the individual rate items herein authorizing such mixed carloads, the highest minimum weight applicable to any article in the mixed carload will be applied.

Where a mixed carload rating is provided herein on articles at owner's risk or limited liability, which are lower than the ship's risk rate on the same articles, such articles may be shipped in mixed carloads at the respective carload rate, whether owner's risk, limited liability, or ship's risk as declared at the time of shipment, subject to the highest carload minimum weight applicable to any article in the carload. Any shortage in the minimum weight shall be apportioned proportionately over the commodities at the rate applicable to each.

RULE 31. *Application of mixed carload rates.*—Rates published in this tariff on articles immediately followed in the same entry by reference to another rate item in this tariff apply on mixed carloads only, except that rates do not apply on mixed carloads consisting only of articles so followed by reference to the same rate item number. Where articles are followed by reference to another rate item in this tariff, see item referred to for rates on such articles in straight carloads, mixed carloads, or less carloads (in the absence of less carload rate in any item referred to, apply class rates).

RULE 32. *Minimum carload weight for mixed carloads.*—Unless otherwise specified, where commodities carried in separate items are permitted to be shipped in mixed carloads, the carload minimum weight for the shipment shall be the higher or highest mixed carload minimum weight as specified in the items.

RULE 33. *Straight or mixed carloads—Straight carloads.*—Carload rates named in this tariff apply on straight carloads of articles named unless otherwise specifically provided in individual rate items.

Mixed carloads.—Carload rates named in this tariff apply on mixed carloads under the following conditions only, viz:

(*a*) Of two or more articles named in one item not containing alternating sections.

(*b*) Of two or more articles named in the same section of an item containing alternating sections.

(*c*) As otherwise specifically provided in individual rate items.

RULE 4. *Definition of carload shipment.*—Except as otherwise provided in this tariff, carload rates apply only when a carload of freight is shipped from one loading pier, by one shipper, on one ship, to be delivered to one consignee at one destination. Except as otherwise provided, only one bill of lading from one loading port shall be issued for such carload shipment. The minimum weight provided is the lowest weight on which the carload rate will apply.

APPENDIX K

PORTS BETWEEN WHICH CALMAR PUBLISHES RATES WESTBOUND

ATLANTIC COAST	PACIFIC COAST
Albany, N. Y.	Aberdeen, Wash.
Baltimore, Md.	Alameda, Calif.
Boston, Mass.	Anacortes, Wash.
Bridgeport, Conn.	Arcata Wharf, Calif.
Brooklyn, N. Y.	Astoria, Oreg.
Camden, N. J.	Bellingham, Wash.
Chester, Pa.	Bremerton, Wash.
Edgewater, N. J.	California City, Calif.
Eddystone, Pa.	Chuckanut, Wash.

ATLANTIC COAST

Hoboken, N. J.
Jersey City, N. J.
Marcus Hook, Pa.
New Bedford, Mass.
Newburg, N. Y.
New London, Conn.
Newport News, Va.
New York Harbor, N. Y.
Norfolk, Va.
Paulsboro, N. J.
Philadelphia, Pa.
Port Newark, N. J.
Portsmouth, Va.
Providence, R. I.
Rensselaer, N. Y.
Sparrows Point, Md.
Trenton, N. J.
Weehawken, N. J.
Wilmington, Del.

PACIFIC COAST

Dupont, Wash.
Everett, Wash.
Hoquiam, Wash.
Long Beach, Calif.
Long View, Calif.
Los Angeles Harbor, Calif.
Mare Island, Calif.
Oakland, Calif.
Olympia, Wash.
Port Angeles, Wash.
Portland, Oreg.
Port Townsend, Wash.
Richmond, Calif.
Sacramento, Calif.
San Diego, Calif.
San Francisco, Calif.
San Pedro, Calif
Seattle, Wash.
Selby, Calif.
Stockton, Calif.
Tacoma, Wash.
Terminal Island, Calif.
Westport, Oreg.
Wilmington, Calif.

APPENDIX L

Calmar's Mixing Rule

RULE 29

(*a*) Except as otherwise specifically provided in this tariff, when a number of different commodities, for each of which carload rates are provided in this tariff, are shipped at one time in a carload lot, the applicable carload rate will be assessed on the weight of each such commodity.

(*b*) In the application of this rule, the minimum carload weight for mixed commodities will be that provided in this tariff, for the commodity in the carload lot which takes the highest minimum carload weight.

(c) When the total weight of the mixed commodities does not equal the required minimum carload weight provided for in (*b*) of this rule, the difference between the actual weight and the required minimum carload weight shall be divided proportionately between the individual commodities making up the shipment and the applicable carload rate will be assessed on the weight of each commodity as so determined.

APPENDIX M

Ports Between Which Shepard Publishes West-bound Rates

ATLANTIC COAST	PACIFIC COAST
Albany, N. Y.	Alameda, Calif.
Bayonne, N. J.	Avon, Calif.
Boston, Mass.	Bellingham, Wash.
Bridgeport, Conn.	California City, Calif.
Camden, N. J.	Dupont, Wash.
Charleston, S. C.	Everett, Wash.
Chester, Pa.	Hoquiam, Wash.
Hopewell, Va.	Long Beach, Calif.
New Bedford, Mass.	Los Angeles Harbor, Calif.
Newburgh, N. Y.	Mare Island, Calif.
New London, Conn.	Martinez, Calif.
New York Harbor, N. Y.	Oakland, Calif.
Norfolk, Va.	Oleum, Calif.
Perth Amboy, N. J.	Olympia, Wash.
Philadelphia, Pa.	Port Angeles, Wash.
Portland, Me.	Portland, Oreg.
Port Newark, N. J.	Port Townsend, Wash.
Providence, R. I.	Richmond, Calif.
Thompsons Point, N. J.	Sacramento, Calif.
Trenton, N. J.	San Francisco, Calif.
Warners, N. J.	Seattle, Wash.
Wilmington, Del.	Stockton, Calif.
	Tacoma, Wash.

APPENDIX N

Condensed balance sheets of intercoastal common carriers as at Dec. 31, 1938

	American-Hawaiian S. S. Co.	Baltimore Mail S. S. Co.	California Eastern Line, Inc.	Calmar S. S. Corp.	Christenson S. S. Co.	Luckenbach S. S. Co., Inc.[1]	Luckenbach Gulf S. S. Co., Inc.
ASSETS							
Current working assets	$3,104,626	$491,065	$40,723	$2,553,349	$112,402	$2,019,759	$367,197
Voyages in progress—debit balance							
Special funds and deposits	1,150,000	3,418				425	15
Investments	195,000				400	2,080,848	1,800
Property and equipment:							
Floating equipment, vessels	21,604,817	9,421,477	400,950	2,312,815	720,234	14,047,991	
Less depreciation reserve	(16,184,882)	(3,366,023)	(47,101)	(995,889)	(475,316)	(12,914,829)	
Other shipping property and equipment	165,529	26,427				366,252	58,009
Less depreciation reserve	(99,063)	(9,775)				(293,099)	(15,209)
Nonshipping property and equipment	426,134					408,897	24,809
Less depreciation reserve	(208,680)					(177,623)	(11,785)
Net book value	5,703,855	6,072,106	353,849	1,316,926	244,918	1,447,589	55,824
Other assets	2,153,174	102,312	336			6,855	31,185
Deferred charges and prepaid expenses	183,027	507,309	28,724		32,982	76,728	1,301
Total	12,494,682	7,176,208	432,632	3,870,275	390,702	6,632,204	457,322
LIABILITIES AND CAPITAL							
Current working liabilities	581,240	1,181,199	77,738	224,034	16,987	1,911,634	125,086
Advance ticket sales and deposits		94,465					
Voyages in progress—credit balance	429,574	102,654	1,593	168,701	39,345	509,739	164,711
Long-term debt due after 1 year		8,576,152				608,190	
Other liabilities	2,103,514	411,526	85,000		9,649	1,543,595	971,383
Deferred credits		833				4,871	
Sundry operating reserves	1,150,000	46,397				25,000	20,000
Capital stock	4,370,000	5,500	275,300	3,000,000	400,000	5,228,250	25,000
Surplus (or deficit)	3,860,354	(3,241,458)	13,001	477,540	(77,279)	[1](3,199,675)	(838,858)
Total	12,494,682	7,176,208	432,632	3,870,275	390,702	6,632,204	457,322

[1] Withdrawals of $7,690,644 by sole stockholder and member of his family carried on books as an asset is treated here as a dividend disbursement chargeable against surplus. $7,534,167 was disbursed prior to Jan. 1, 1934, and the balance of $156,477, after that date.

	McCormick S. S. Co.	Pacific-Atlantic S. S. Co.	Pacific Coast Direct Line, Inc.	Seekonk Corp.	Shepard S. S. Co.	Swayne & Hoyt, Ltd.	Weyerhaeuser S. S. Co.	Total sheets Nos. 1 and 2
ASSETS								
Current working assets	$1,079,543	$460,626	$287,807	$157,257	$81,256	$476,729	$282,288	$11,523,627
Voyages in progress—debit balance			916				220,120	221,036
Special funds and deposits	*8,607*	*600*						*1,163,063*
Investments	347,459	1,615				49,650		3,676,772
Property and equipment:								
Floating equipment vessels	1,381,529	3,417,551		235,000	1,112,415	1,545,471	1,739,540	57,939,790
Less depreciation reserve	(570,394)	(2,230,473)		(154,719)	(437,216)	(522,281)	(882,056)	(38,781,179)
Other shipping property and equipment	336,340	7,836	4,222	543	2,291	73,114		1,040,563
Less depreciation reserve	*(225,925)*	*(2,006)*	*(666)*	*(543)*	*(1,427)*	*(46,089)*		*(683,802)*
Nonshipping property and equipment	7,918						1,729	869,487
Less depreciation reserve	(989)						(456)	(399,533)
Net book value	928,479	1,192,908	3,556	80,281	676,063	1,050,215	858,757	19,985,326
Other assets	128,270					39,322	55,886	2,517,340
Deferred charges and prepaid expenses	97,863	105,883		6,887	41,354	81,048	55,600	1,223,706
Total	2,590,221	1,761,632	292,279	244,425	798,673	1,696,964	1,472,651	40,310,870
LIABILITIES AND CAPITAL								
Current working liabilities	681,406	391,929	224,266		57,364	439,147	238,057	6,152,027
Advance ticket sales and deposits								94,465
Voyages in progress—credit balance	207,143	55,908			25,174	112,828		1,807,370
Long-term debt due after 1 year	328,429	955,650						10,468,421
Other liabilities	85,000	100,000			849,223			6,138,890
Deferred credits								5,704
Sundry operating reserves	*56,646*					*8,606*		*1,305,649*
Capital stock	500,000	627,720	750	110,000	200,000	947,614	800,000	16,490,134
Surplus (or deficit)	731,597	(369,575)	67,263	134,425	(333,088)	188,769	434,594	(2,151,790)
Total	2,590,221	1,761,632	292,279	244,425	798,673	1,696,964	1,472,651	40,310,870

APPENDIX O

Net book assets as at Dec. 31, 1938, per deadweight ton of vessels owned

	Deadweight tons owned Dec. 31, 1938	Net assets		Net assets, less net book equity in property and equipment	
		Amount	Per deadweight ton	Amount	Per deadweight ton
American-Hawaiian S. S. Co.	408, 225	$8, 230, 354	20. 16	$2, 526, 499	6. 19
Baltimore Mail S. S. Co.	67, 525	(3, 235, 958)	(47. 85)	(731, 912)	(10. 82)
California Eastern Line, Inc.	17, 286	288, 301	16. 68	(65, 548)	(3. 79)
Calmar S. S. Corporation	128, 771	3, 477, 540	27. 01	2, 160, 614	16. 78
Christenson S. S. Co.	25, 904	322, 721	12. 46	77, 803	3. 00
Luckenbach S. S. Co.	254, 076	2, 029, 175	4. 78	1, 189, 776	1. 26
Luckenbach Gulf S. S. Co.		(813, 858)		(869, 682)	
McCormick S. S. Co.	80, 550	1, 231, 597	15. 29	631, 547	7. 84
Pacific Atlantic S. S. Co.	118, 341	258, 145	2. 18	20, 887	. 18
Seekonk Corporation	7, 825	244, 425	31. 24	164, 144	20. 98
Shepard S. S. Co.	43, 672	(133, 088)	(3. 05)	(809, 151)	(18. 53)
Swayne & Hoyt, Ltd.	75, 483	1, 136, 383	15. 05	86, 168	1. 14
Weyerhaeuser S. S. Co.	65, 900	1, 234, 594	19. 77	375, 837	6. 68
Pacific Coast Direct Line, Inc.		68, 013		64, 457	
As a whole	1, 203, 658	14, 338, 344	11. 08	4, 821, 439	3. 73

Amounts enclosed in parentheses indicate deficiency.

APPENDIX P

Balances in surplus at beginning and end of period and increases (or decreases) during the period Jan. 1, 1934, to Dec. 31, 1938, except as indicated

	Balances at beginning of period				Balances at end of period				Increases (or decreases) during the period			
	Capital surplus	Appreciation surplus	Earned surplus (or deficit)	Total surplus (or deficit)	Capital surplus (or deficit)	Appreciation surplus	Earned surplus (or deficit)	Total surplus (or deficit)	Capital surplus (or deficit)	Appreciation surplus	Earned surplus (or deficit)	Total surplus (or deficit)
American-Hawaiian S. S. Co.			$5,607,869	$5,607,869		$730,993	$3,129,361	$3,860,354		$730,993	($2,478,508)	($1,747,515)
Baltimore Mail S. S. Co.[1]			(2,294,820)	(2,294,820)	$19,500		(3,260,958)	(3,241,458)	$19,500		(966,138)	(946,638)
California Eastern Line, Inc.[2]							13,001	13,001			13,001	13,001
Calmar S. S. Corp.			685,477	685,477			477,540	477,540			(207,937)	(207,937)
Christenson S. S. Co.			(67,572)	(67,572)			(77,279)	(77,279)			(9,707)	(9,707)
Luckenbach S. S. Co., Inc.[3]			(302,668)	(302,668)			(3,199,075)	(3,199,075)			(2,896,407)	(2,896,407)
Luckenbach Gulf S. S. Co., Inc.			(274,159)	(274,159)			(838,858)	(838,858)			(564,699)	(564,699)
McCormick S. S. Co.		$302,747	699,543	1,002,290	476,350	122,397	132,850	731,597	476,350	(180,350)	(566,693)	(270,693)
Pacific Atlantic S. S. Co.	$2,979,406		(2,653,608)	325,798	2,979,406		(3,348,981)	(369,575)			(695,373)	(695,373)
Pacific Coast Direct Line, Inc.[4]			63,080	63,080	(15,303)		82,566	67,263	(15,303)		19,486	4,183
Seekonk Corp.			122,173	122,173			134,425	134,425			12,252	12,252
Shepard S. S. Co.		148,375	(283,090)	(134,715)		90,851	(423,939)	(333,088)		(57,524)	(140,849)	(198,373)
Swayne & Hoyt, Ltd.	44,788		64,932	109,720	44,788		143,981	188,769			79,049	79,049
Weyerhaeuser S. S. Co.	573,580		27,015	600,595	478,636		(44,042)	434,594	(94,944)		(71,057)	(166,001)
Total	3,597,774	451,122	1,394,172	5,443,068	3,983,377	944,241	(7,079,408)	(2,151,790)	385,603	493,119	(8,473,580)	(7,594,858)

[1] Operations for year 1938.
[2] Operations from Aug. 5, 1937.
[3] Withdrawals of $7,690,644 by sole stockholder and member of family carried on books as an asset is treated herein as a dividend disbursement chargeable against surplus. $7,534,167 was disbursed prior to Jan. 1, 1934, and the balance, $156,477, after that date.
[4] Operations for year 1938.

APPENDIX Q

Changes in earned surplus (or deficit) Jan. 1, 1934, to Dec. 31, 1938, except as indicated

	Extraordinary profits (or losses)	Transfers to capital surplus or appreciation surplus	Transfers to capital stock account or reserves	Adjustments applicable to other than current year (net)	Net profit (or loss) from operations transferred from income	Net increase (or decrease) before dividends	Cash dividend appropriations	Net increase (or decrease) in earned surplus
American-Hawaiian S. S. Co.	($846, 265)	$140, 235		$36, 279	$630, 088	($39, 663)	($2, 438, 845)	($2, 478, 508)
Baltimore Mail S. S. Co. (year 1938)			($110, 000)	25, 935	[1](882, 073)	(966, 138)		(966, 138)
California Eastern Line, Inc. (from Aug. 5, 1937)				2, 522	10, 479	13, 001		13, 001
Calmar S. S. Corporation					2, 042, 063	2, 042, 063	(2, 250, 000)	(207, 937)
Christenson S. S. Co.	189, 057			1, 604	100, 368	90, 293	(100, 000)	(9, 707)
Luckenbach S. S. Co., Inc.	(1, 538, 798)		300	(109, 699)	(1, 091, 733)	(2, 739, 930)	[2](156, 477)	(2, 896, 407)
Luckenbach Gulf S. S. Co., Inc.				(98, 726)	(465, 973)	(564, 699)		(564, 699)
McCormick S. S. Co.	(71, 719)		(324, 500)	1, 222	(22, 521)	(417, 518)	(149, 175)	(566, 693)
Pacific-Atlantic S. S. Co.	(147, 377)			(103, 721)	(444, 275)	(695, 373)		(695, 373)
Pacific Coast Direct Line, Inc. (year 1938)					19, 486	19, 486		19, 486
Seekonk Corporation	(2, 172)			(15, 046)	29, 470	12, 252		12, 252
Shepard S. S. Co.		48, 796		1, 916	(176, 561)	(125, 849)	(15, 000)	(140, 849)
Swayne & Hoyt, Ltd.	(42, 081)			(130, 727)	251, 857	79, 049		79, 049
Weyerhaeuser S. S. Co.		94, 944		3, 034	70, 965	168, 943	(240, 000)	(71, 057)
Total	(2, 459, 355)	283, 975	(434, 200)	(385, 407)	[3](129, 096)	(3, 124, 083)	[4](5, 349, 497)	(8, 473, 580)

[1] Trans-Atlantic service ($495,101); intercoastal service ($386,972).
[2] Withdrawals by sole stockholder or family treated here as a dividend.
[3] If the loss of $495,101 from trans-Atlantic service be deducted the total would be a net profit of $366,005. See appendix R for analysis by carriers and by years.
[4] See appendix R for analysis by carriers and by years.

APPENDIX R

Net profit (or loss) from operations transferred to surplus—cash dividend appropriations of surplus

	1934	1935	1936	1937	1938	Total
Net profit (or loss) from operations transferred to surplus:						
American-Hawaiian S. S. Co	($328, 939)	($36, 724)	$296, 512	$129, 110	$568, 159	$630, 088
Baltimore Mail S. S. Co. *(intercoastal service)*					(386, 972)	(386, 972)
California Eastern Line, Inc				(11, 523)	22, 002	10, 479
Calmar S. S. Corp	225, 420	333, 680	703, 389	441, 257	338, 317	2, 042, 063
Christenson S. S. Co	(25, 744)	1, 255	65, 889	(79, 958)	(61, 810)	(100, 368)
Luckenbach S. S. Co	(1, 247, 782)	(383, 543)	228, 487	(56, 939)	368, 044	(1, 091, 733)
Luckenbach Gulf S. S. Co	(221, 065)	(71, 085)	(4, 297)	(242, 498)	72, 972	(465, 973)
McCormick S. S. Co	(70, 926)	(9, 999)	(41, 440)	129, 481	(29, 637)	(22, 521)
Pacific-Atlantic S. S. Co	(319, 829)	(349, 979)	61, 332	204, 594	(40, 393)	(444, 275)
Pacific Coast Direct Line, Inc					19, 486	19, 486
Seekonk Corp	26, 824	9, 622	(4, 235)	(8, 852)	6, 111	29, 470
Shepard S. S. Co	(144, 719)	(5, 272)	43, 552	(99, 012)	28, 890	(176, 561)
Swayne & Hoyt, Ltd	199, 849	7, 204	1, 483	(116, 607)	159, 928	251, 857
Weyerhaeuser S. S. Co	40, 469	30, 866	32, 934	(54, 139)	20, 835	70, 965
Total	(1, 864, 472)	(473, 975)	1, 383, 606	234, 914	1, 085, 932	366, 005
Baltimore Mail S. S. Co. (trans-Atlantic service)					(495, 101)	(495, 101)
Total transferred to surplus	(1, 864, 472)	(473, 975)	1, 383, 606	234, 914	590, 831	(129, 096)
Cash dividend appropriations:						
American-Hawaiian S. S. Co	455, 000	455, 000	455, 000	636, 220	437, 625	2, 438, 845
Calmar S. S. Corp		1, 150, 000	680, 000	420, 000		2, 250, 000
Christenson S. S. Co				100, 000		100, 000
McCormick S. S. Co			149, 175			149, 175
Shepard S. S. Co			15, 000			15, 000
Weyerhaeuser S. S. Co	200, 000		40, 000			240, 000
Total	655, 000	1, 605, 000	1, 339, 175	1, 156, 220	437, 625	5, 193, 020
Luckenbach S. S. Co. (withdrawals)						156, 477
Total						5, 349, 497

APPENDIX S

Condensed income statement of 14 principal intercoastal common carriers Jan. 1, 1934, to Dec. 31, 1938

	1934	1935	1936	1937	1938	Total
Terminated voyage results:						
Revenue	$34, 985, 753	$42, 143, 803	$45, 672, 614	$54, 143, 999	$60, 050, 655	$236, 996, 824
Expense	28, 672, 099	34, 908, 977	36, 178, 317	44, 909, 249	47, 792, 382	192, 461, 024
Net	6, 313, 654	7, 234, 826	9, 494, 297	9, 234, 750	12, 258, 273	44, 535, 800
Inactive vessels expense	247, 156	245, 486	143, 744	132, 408	858, 387	1, 627, 181
Gross profit from vessel operations	6, 066, 498	6, 989, 340	9, 350, 553	9, 102, 342	11, 399, 886	42, 908, 619
Terminal operations, net	(172, 974)	2, 788	(1, 227, 724)	(1, 427, 959)	(1, 376, 458)	(4, 202, 327)
Other shipping operations, net	74, 212	62, 827	83, 263	141, 991	(13, 222)	349, 071
Gross profit from shipping operations before overhead and depreciation	5, 967, 736	7, 054, 955	8, 206, 092	7, 816, 374	10, 010, 206	39, 055, 363
Overhead:						
Administrative and general less agency fees, commissions, and brokerage earned	4, 321, 432	5, 016, 306	4, 349, 802	4, 754, 007	5, 057, 974	23, 499, 521
Other	286, 892	208, 886	274, 781	476, 526	1, 201, 397	2, 448, 482
Total overhead	4, 608, 324	5, 225, 192	4, 624, 583	5, 230, 533	6, 259, 371	25, 948, 003
Gross profit from shipping operations before depreciation	1, 359, 412	1, 829, 763	3, 581, 509	2, 585, 841	3, 750, 835	13, 107, 360
Depreciation, shipping property	1, 944, 386	1, 976, 080	1, 786, 558	1, 936, 965	2, 201, 785	9, 845, 774
Gross profit (or loss) from shipping operations	(584, 974)	(146, 317)	1, 794, 951	648, 876	1, 549, 050	3, 261, 586
Other income: Interest, dividends, etc	137, 491	147, 985	322, 627	242, 841	197, 476	1, 048, 420
Other deductions from income:						
Interest	216, 307	201, 393	256, 041	181, 907	314, 517	1, 170, 165
Maritime strike expense	1, 122, 187	135, 299	280, 446	256, 904		1, 794, 836
Miscellaneous	544	23, 525	6, 987	42	46, 086	77, 184
Total other deductions	1, 339, 038	360, 217	543, 474	438, 853	360, 603	3, 042, 185
Net profit (or loss), shipping operations	(1, 786, 521)	(358, 549)	1, 574, 104	452, 864	1, 385, 923	1, 267, 821
Nonshipping operations, net					(1, 910)	(1, 910)
Provisions for Federal income tax	77, 951	115, 426	190, 498	217, 950	298, 081	899, 906
Net profit (or loss) transferred to surplus	(1, 864, 472)	(473, 975)	1, 383, 606	234, 914	1, 085, 932	366, 005

APPENDIX T

Condensed income statement of 14 principal intercoastal common carriers for the year ended Dec. 31, 1938

	American-Hawaiian S. S. Co.	Baltimore Mail S. S. Co.[1]	California Eastern Line, Inc.	Calmar S. S. Corp.	Christenson S. S. Co.	Luckenbach S. S. Co.	Luckenbach Gulf S. S. Co.
Terminated voyage results:							
Revenue	$17, 231, 658	$2, 233, 375	$839, 802	$4, 343, 645	$898, 527	$10, 388, 843	$3, 356, 460
Expense	11, 780, 250	1, 951, 155	737, 978	3, 534, 158	847, 359	7, 844, 217	2, 751, 490
Net	5, 451, 408	282, 220	101, 824	809, 487	51, 168	2, 544, 626	604, 970
Inactive vessel expense	346, 094	33, 819		80, 308		242, 650	
Gross profit (or loss) vessel operations	5, 105, 314	248, 401	101, 824	729, 179	51, 168	2, 301, 976	604, 970
Terminal operations, net	(1, 455, 115)	43				(91, 424)	(2, 139)
Other shipping operations, net	37, 640	(93)		(4, 028)		(43, 748)	(9, 165)
Gross profit (or loss) before overhead and depreciation	*3, 687, 839*	*248, 351*	*101, 824*	*725, 151*	*51, 168*	*2, 166, 804*	*593, 666*
Overhead:							
Administrative and general less agency fees, commissions and brokerage earned	1, 983, 070	24, 291	8, 835	214, 064	646	1, 275, 135	225, 108
Other	156, 729	215, 868	23, 123	10, 350	55, 613	229, 189	272, 605
Total overhead	2, 139, 799	240, 159	31, 958	224, 434	56, 259	1, 504, 324	497, 713
Gross profit (or loss), shipping operations before depreciation	1, 548, 040	8, 192	69, 866	500, 717	(5, 091)	662, 480	95, 953
Depreciation, shipping property	925, 270	230, 672	40, 601	78, 276	56, 650	231, 880	11, 019
Gross profit (or loss) shipping operations	622, 770	(220, 480)	29, 265	422, 441	(61, 741)	430, 600	84, 934
Other income: Interest, dividends, etc	100, 390	664			25	35, 890	4, 450
Other deductions from income: Interest, etc		165, 157	3, 137		94	98, 446	665
Net profit (or loss) shipping operations	723, 160	(386, 973)	26, 128	422, 441	(61, 810)	368, 044	88, 719
Nonshipping operations, net							
Provision for Federal income tax	155, 000		4, 126	84, 124			15, 746
Net profit (or loss) transferred to surplus	568, 160	(386, 973)	22, 002	338, 317	(61, 810)	368, 044	72, 973

[1] Intercoastal operations from Aug. 2, 1938.

Condensed income statement of 14 principal intercoastal com mon carriers for the year ended Dec. 31, 1938—Continued

	McCormick S. S. Co.	Pacific-Atlantic S. S. Co.	Pacific Coast Direct Line, Inc.	Seekonk Corp.	Shepard S. S. Co.	Swayne & Hoyt, Ltd.	Weyer-haeuser S. S. Co.	Totals sheets 1 and 2
Terminated voyage results:								
Revenue	$5, 366, 017	$4, 365, 330	$1, 338, 555	$335, 355	$2, 101, 420	$4, 105, 928	$3, 145, 740	$60, 050, 655
Expense	4, 988, 044	3, 972, 910	1, 016, 964	294, 971	1, 877, 322	3, 253, 334	2, 942, 230	47, 792, 382
Net	377, 973	392, 420	321, 591	40, 384	224, 098	852, 594	203, 510	12, 258, 273
Inactive vessel expense	9, 518	47, 397			14, 912	82, 354	1, 335	858, 387
Gross profit (or loss) vessel operations	368, 455	345, 023	321, 591	40, 384	209, 186	770, 240	202, 175	11, 399, 886
Terminal operations, net	194, 901					(22, 724)		(1, 376, 458)
Other shipping operations, net	(9, 538)					15, 710		(13, 222)
Gross profit (or loss) before overhead and depreciation	553, 818	345, 023	321, 591	40, 384	209, 186	763, 226	202, 175	10, 010, 206
Overhead:								
Administrative and general less agency fees, commissions, and brokerage earned	356, 230	158, 125	162, 617	20, 899	100, 767	451, 064	77, 103	5, 057, 974
Other	66, 721	19, 734	133, 080		7, 644	7, 215	3, 526	1, 201, 397
Total overhead	422, 951	177, 859	295, 697	20, 899	108, 411	458, 279	80, 629	6, 259, 371
Gross profit (or loss), shipping operations, before depreciation	130, 867	167, 164	25, 894	19, 485	100, 775	304, 947	121, 546	3, 750, 835
Depreciation, shipping property	189, 585	181, 512	322	13, 434	57, 382	86, 450	98, 732	2, 201, 785
Gross profit (or loss) shipping operations	(58, 718)	(14, 348)	25, 572	6, 051	43, 393	218, 497	22, 814	1, 549, 050
Other income: Interest, dividends, etc.	51, 152	87		60		1, 456	3, 302	197, 476
Other deductions from income: Interest, etc.	20, 434	26, 133	9		14, 503	32, 025		360, 603
Net profit (or loss) shipping operations	(28, 000)	(40, 394)	25, 563	6, 111	28, 890	187, 928	26, 116	1, 385, 923
Nonshipping operations, net	(1, 637)						(273)	(1, 910)
Provision for Federal income tax			6, 077			28, 000	5, 008	298, 081
Net profit (or loss) transferred to surplus	(29, 637)	(40, 394)	19, 486	6, 111	28, 890	159, 928	20, 835	1, 085, 932

APPENDIX U

Capital investment at Dec. 31, 1938, net profit (or loss) from operations for the year 1938 and rate of return on capital investment

	Capital stock	Surplus (or deficit)	Net worth (or deficiency)	Deduct appreciation surplus	Capital investment (or deficiency)	Net profit (or loss) from operations	Rate of return on capital investment
American-Hawaiian S. S. Co.	$4, 370, 000	$3, 860, 354	$8, 230, 354	$730, 993	$7, 499, 361	$568, 160	$7. 58
California Eastern Line, Inc.	275, 300	13, 001	288, 301		288, 301	22, 002	7. 63
Calmar S. S. Corporation	3, 000, 000	477, 540	3, 477, 540		3, 477, 540	338, 317	9. 73
Christenson S. S. Co.	400, 000	(77, 279)	322, 721		322, 721	(61, 810)	None
Luckenbach S. S. Co.	5, 228, 250	(3, 199, 075)	2, 029, 175		2, 029, 175	368, 044	36. 29
Luckenbach Gulf S. S. Co.	25, 000	(838, 858)	(813, 858)		(813, 858)	72, 973	
McCormick S. S. Co.	500, 000	731, 597	1, 231, 597	122, 397	1, 109, 200	(29, 637)	None
Pacific-Atlantic S. S. Co.	627, 720	(369, 575)	258, 145		258, 145	(40, 394)	None
Pacific Coast Direct Line, Inc.	750	67, 263	68, 013		68, 013	19, 486	28. 65
Seekonk Corporation	110, 000	134, 425	244, 425		244, 425	6, 111	2. 50
Shepard S. S. Co.	200, 000	(333, 088)	(133, 088)	90, 851	(223, 939)	28, 890	
Swayne & Hoyt, Ltd.	947, 614	188, 769	1, 136, 383		1, 136, 383	159, 928	14. 07
Weyerhaeuser S. S. Co.	500, 000	434, 594	1, 234, 594		1, 234, 594	20, 835	1. 69
Subtotal	16, 484, 634	1, 089, 668	17, 574, 302	944, 241	16, 630, 061	1, 472, 905	8. 86
Baltimore Mail S. S. Co.	5, 000	(3, 241, 458)	(3, 235, 958)		(3, 235, 958)	(386, 973)	None
Total	16, 490, 134	(2, 151, 790)	14, 338, 344	944, 241	13, 394, 103	1, 085, 932	8. 11

APPENDIX V

Comparison of intercoastal operating revenues, operating expenses, deductions, and net income (or loss) of 10 common carriers for the years 1934 and 1938 [1]

	Total		Per mile traveled				Per revenue ton carried			
					Increase from 1934				Increase from 1934	
	1938	1934	1938	1934	Amount	Percent	1938	1934	Amount	Percent
Nautical miles traveled	4,755,704	4,724,068								
Revenue tons cargo carried:										
East-bound	2,714,463	2,578,430								
West-bound	1,694,634	1,258,173								
Intermediate	33,202	63,151								
Total tons	4,442,299	3,899,754								
Number of terminated voyages	361	369½								
Average miles per voyage	13,174	12,785								
Average tons cargo per voyage	12,306	10,554								
Operating revenue:										
Freight:										
East-bound	$26,061,497	$19,517,779					$9.60	$7.57	$2.03	26.82
West-bound	21,360,012	13,248,000					12.60	10.53	2.07	19.66
Intermediate	256,953	271,790					7.74	4.30	3.44	80.00
Total	47,678,462	33,037,569	$10.03	$6.99	$3.04	43.49	10.73	8.47	2.26	26.68
All other	2,093,217	881,979	.44	.19	.25	131.58	.47	.23	.24	104.35
Total operating revenue	49,771,679	33,919,548	10.47	7.18	3.29	45.82	11.20	8.70	2.50	28.74
Operating expense:										
Wages	5,276,785	2,666,401	1.11	.56	.55	98.21	1.19	.68	.51	75.00
Fuel	4,436,922	3,362,249	.93	.71	.22	30.99	1.00	.86	.14	16.28
Repairs	2,300,041	1,763,113	.49	.37	.12	32.43	.52	.45	.07	15.56
Canal tolls	3,190,076	3,211,222	.67	.68	(.01)	(1.47)	.72	.82	(.10)	(12.20)
Stevedoring and other cargo expense	14,569,070	9,336,809	3.06	1.98	1.08	54.55	3.28	2.40	.88	36.67
All other	8,968,096	7,268,754	1.89	1.54	.35	22.73	2.01	1.87	.14	7.49
Total operating expense	38,740,990	27,608,548	8.15	5.84	2.31	39.55	8.72	7.08	1.64	23.16
Direct profit	11,030,689	6,311,000	2.32	1.34	.98	73.14	2.48	1.62	.86	53.09

Overheads (net)	5,376,639	4,552,633	1.13	.96	.17	17.71	1.21	1.17	.04	3.42
Depreciation	1,717,046	1,917,032	.36	.41	(.05)	(12.19)	.39	.49	(.10)	(20.41)
All other deductions (net)	2,410,858	1,902,678	.51	.40	.11	27.50	.54	.49	.05	10.20
Provision for income taxes	282,870	36,500	.06	.01	.05	500.00	.06	.01	.05	500.00
Net profit (or loss)	1,243,276	(2,097,843)	.26	(.44)	.70	159.09	.28	(.54)	.82	151.85

[1] Companies included in computations: American-Hawaiian S. S. Co. (including Williams S. S. Co. for 1934); Calmar S. S. Corp; Christenson S. S. Co.; Luckenbach S. S. Co.; Luckenbach Gulf S. S. Co.; McCormick S. S. Co. (intercoastal operations only); Pacific-Atlantic S. S. Co. (intercoastal operations only); Seekonk Corporation; Shepard S. S. Co.; Swayne & Hoyt, Ltd.

UNITED STATES MARITIME COMMISSION

No. 542

GILL GLASS AND FIXTURE COMPANY

v.

AMERICAN CARIBBEAN LINE, INC.

Submitted March 19, 1940. Decided April 23, 1940

Defendant's measurement rate on glass lamp globes not shown to be unjust or unreasonable as alleged. Complaint dismissed.

C. A. Gill for complainant.
W. H. Griffin for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This case was presented under shortened procedure. No exceptions were filed to the examiner's proposed report. His recommendations are adopted herein.

By complaint filed June 27, 1939, it is alleged that defendant's rate on 57 cartons of glass lamp globes shipped from New York, N. Y., March 18, 1938, to St. Thomas, Virgin Islands, was unjust and unreasonable, in violation of section 18 of the Shipping Act, 1916. Reparation and a reasonable rate for the future are requested.

The shipment weighed 872 pounds and measured 238.25 cubic feet. Applicable thereto was defendant's tariff item[1] "Weight Goods, N. O. S.," stating a rate per 100 pounds of 60 cents and "Measurement Goods, N. O. S.," stating a rate per cubic foot of 30 cents, subject to a rule[2] published in the tariff providing, in part, that "When both weight and measurement rates are shown for an item, the basis producing the greater revenue will apply." The measurement rate of 30 cents per cubic foot was assessed on the shipment, and complainant paid freight charges thereon of $71.50.[3]

[1] Item No. 25, American Caribbean Line Tariff SB No. 3.
[2] Rule 1 (b).
[3] Overcharge, 2 cents.

Complainant's position is that the rate charged was and is unreasonable to the extent freight charges thereat exceed $5.23 which would have accrued at defendant's weight rate of 60 cents per 100 pounds. Complainant shows that the value of the shipment was $195.32, that defendant's charge represented approximately 37 percent of that value and was approximately 14 times the amount of a charge computed at defendant's weight rate contained in the particular tariff item. It 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.

Defendant points out that the commodity rate on glass chimneys, common glassware, and plate and window glass from New York to St. Thomas is 30 cents per cubic foot, and that the rates of other carriers from New York to neighboring West Indies and Caribbean ports on glass lamp globes approximate the rate under attack.

Where, as in the trade concerned, transportation rates are assessed on a weight or measurement basis whichever yields a greater revenue to the carrier, it is the established practice to assess the rate on the principle that a weight ton is the equivalent of 40 cubic feet. Defendant's rates applicable to glass lamp globes under its tariff item and rule here concerned accord with this practice, $12 being defendant's revenue per weight ton of 2,000 pounds or per measurement ton of 40 cubic feet. Although the freight charges on glass lamp globes at the measurement rate is 13.7 times the charges at the weight rate, it is to be noted also that complainant's shipments measure 13.7 times their weight. The 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. At the weight rate contended for by complainant, defendant's revenue for transporting 40 cubic feet of glass lamp globes would be 88 cents, which obviously is inadequate as compensation for the service rendered. No facts are presented in the instant case which prove the measurement rate here assailed to be unjust or unreasonable.

We conclude and decide that the rate in issue has not been shown to be unjust or unreasonable in violation of section 18 of the Shipping Act, 1916, as alleged. An order dismissing the complaint will be entered.

Order

At a Session of the UNITED STATES MARITIME COMMISSION held at its office in Washington, D. C., on the 23rd day of April A. D. 1940.

No. 542

Gill Glass and Fixture Company

v.

American Caribbean Line, Inc.

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

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

By the Commission.

[seal] (Sgd.) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 541

GILL GLASS AND FIXTURE COMPANY

v.

ALASKA STEAMSHIP COMPANY

Submitted March 25, 1940. Decided April 23, 1940

Defendant's measurement rate on glass lamp globes or shades not shown to be unjust or unreasonable as alleged. Complaint dismissed.

C. A. Gill for complainant.

Edward G. Dobrin for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This case was presented under shortened procedure. No exceptions were filed to the examiner's proposed report. His recommendations are adopted herein.

By complaint filed June 27, 1939, it is alleged that defendant's rate on 117 cartons of glass lamp globes or shades shipped from Seattle, Wash., to Ketchikan, Alaska, January 22, 1938, was unjust and unreasonable, in violation of section 18 of the Shipping Act, 1916. Reparation and a reasonable rate for the future are requested.

The shipment weighed 1,752 pounds and measured 504 cubic feet. Applicable thereto was defendant's tariff item [1] "Freight, NOS," stating a rate per 100 pounds of 39 cents and a rate per cubic foot of 19.5 cents, subject to a rule [2] published in the tariff providing, in part, that "Where rates are stated in cents per 100 pounds and per cubic foot, charges will be computed by weight or measurement as one mode or the other will yield the greater revenue." The measurement rate of 19.5 cents per cubic foot was assessed on the shipment, and complainant paid freight charges thereon of $98.28.

[1] Item No. 250, Alaska Steamship Company Tariff SB F. No. 56.

[2] Rule 1 (a).

Complainant's position is that the rate charged was and is unreasonable to the extent the freight charges exceed $6.83 which would have accrued at defendant's weight rate of 39 cents per 100 pounds. It shows that defendant's charge was approximately 14 times the amount of a charge computed at defendant's weight rate contained in the particular tariff item. It contends, without production of any supporting facts, that the measurement rate results in a prohibitive price for glass lamp globes or shades 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.

Defendant refers to the bulk of complainant's shipments of glass lamp globes or shades as compared with their weight, reviews generally the importance of shipboard space displacement in connection with rate making for transportation by water, and directs attention to regulatory decisions by the Commission and its predecessor, the United States Shipping Board, which recognize the propriety of rates by weight or by measurement dependent upon whichever method yields the more revenue to the carrier.

Where, as in the trade concerned, transportation rates are assessed on this alternative weight or measurement basis, it is the established practice to compute the rate on the principle that a weight ton is the equivalent of 40 cubic feet. Defendant's tariff item and rule here concerned accord with this practice, $7.80 being defendant's revenue per weight ton of 2,000 pounds or per measurement ton of 40 cubic feet. Although, as shown by complainant, the freight charge on glass lamp globes or shades as shipped by complainant at the measurement rate is 14.4 times a charge computed at defendant's Freight, NOS, weight rate, it is to be noted also that complainant's shipments measure 14.4 times their weight. At the weight rate contended for by complainant, defendant's revenue for transporting 40 cubic feet of the article involved would be 54.2 cents which patently is inadequate for the service rendered. No facts are presented in the instant case which prove the measurement rate here assailed to be unjust or unreasonable.

We conclude and decide that the rate in issue has not been shown to be unjust or unreasonable in violation of section 18 of the Shipping Act, 1916, as alleged. An order dismissing the complaint will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION held at its office in Washington, D. C., on the 23d day of April, A. D. 1940.

No. 541

GILL GLASS AND FIXTURE COMPANY

v.

ALASKA STEAMSHIP COMPANY

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

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 543

FRANKFORT DISTILLERIES, INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, ET AL.[1]

Submitted February 21, 1940. Decided April 25, 1940

Rate on alcoholic liquors from Baltimore, Md., to Pacific coast ports, as applied alike to shipments in glass in cases and in bulk in barrels, not shown to be unduly prejudicial. Complaint dismissed.

George D. Rives and *M. F. Chandler* for complainant.

M. G. de Quevedo, *Harry S. Brown*, *William M. Carney*, *Frank Lyon*, *J. A. Stumpf*, *Gerald A. Dundon*, and *Charles J. Maley* for defendants.

Norman J. Morrison, *Charles W. Braden*, and *Edward Gusky* for interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by complainant to the examiner's proposed report and oral argument was had. The findings recommended by the examiner are adopted herein.

The complaint, as amended, alleges that defendants' rate of \$1.54½ [2] per 100 pounds, minimum 30,000 pounds, on alcoholic liquors from Baltimore, Md., to Pacific coast ports, as applied alike to shipments in glass in cases and in bulk in barrels, is unduly prejudicial and disadvantageous to shippers in glass in cases, in violation of section 16, and unreasonable in violation of section 18 of the Shipping Act,

[1] (Arrow Line) Sudden & Christenson, Baltimore Mail Steamship Company (Panama Pacific Line), Calmar Steamship Corporation, Isthmian Steamship Company, McCormick Steamship Company, Pacific Coast Direct Line, Inc. (Weyerhaeuser Line), (Quaker Line) Pacific-Atlantic Steamship Company, States Steamship Company (California-Eastern Line).

[2] On November 3, 1939, in *Westbound Alcoholic Liquor Carload Rates*, 2 U. S. M. C. 198, reduction of the rate here involved to \$1.41 was found justified.

1916. A lawful rate for the future is sought. The allegation of unreasonableness was withdrawn at the hearing. Rates will be stated in amounts per 100 pounds unless otherwise indicated.

Complainant ships whiskey in glass in cases to the Pacific coast via rail from Louisville and also via defendant lines from Baltimore. Several years ago some of its competitors began shipping in bulk in barrels, the movement usually being by barge line from the producing States of Illinois, Indiana, Ohio, and Kentucky to New Orleans, La., thence by intercoastal lines to destination. There appears to be no competitive bulk movement from North Atlantic ports.

Bulk whiskey is of a high proof [3] and is mixed either with distilled water or diluted grain alcohol to obtain a greater quantity of a lower proof whiskey. For example, a quart of 110 proof reduced to 90 proof by the addition of distilled water produces approximately 22 percent more whiskey. If diluted alcohol instead of water is added the increase is even greater. The latter type, called a spirit blend, is not shipped by complainant west of the Mississippi River. Complainant's cases contain three gallons packed in any one of a number of size bottles, the average gross weight being 50 pounds. As whiskey weighs about eight pounds a gallon, a 50-pound case of three gallons is about half whiskey and half container and packing. The ordinary whiskey barrel contains 50 gallons, the contents weighing about 400 pounds and the barrel about 85 pounds. Thus the container represents less than 20 percent of the gross weight. The rate under attack amounts to 25.7 cents a net gallon on glass shipments and 12.26 cents on bulk shipments. Bulk shippers can reduce their costs by selling the empties on the Pacific coast while glass shippers cannot sell or refill their bottles.

It is complainant's view that the rate should be based either upon the "proof" of the liquor or upon the net contents of the container, and that in the latter case a proper differential for whiskey in glass in cases would be 20 or 25 percent under the rate on whiskey in bulk in barrels. Under the Western Classification, by which defendants' tariffs are governed, the same rate applies on alcoholic liquors whether in glass in cases or in bulk in barrels. We are referred to no instances where bulk shipments have been assessed a higher rate than glass shipments, whereas testimony on behalf of one intervener is to the effect that there are no rates on glass shipments lower than on bulk shipments. This is in accord with the general rule that the rate on the commodity applies as well to the container.

[3] "Proof" scale is graduated from zero to 200, the degrees proof being twice the percentage by volume of alcohol.

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Whiskey in bulk cannot be classed as a finished product inasmuch as it must be rectified, bottled, and labeled before sale to the consuming public. Bulk shipments may be made from distillery bonded warehouse to bottling plant or to other bonded warehouse, the tax[4] thereon being deferred until bottling takes place. Except where it has been bottled in bond prior to tax payment, whiskey in glass in cases is tax-paid before bottling and therefore is of higher value than similar whiskey in barrels.

Although complainant is of the opinion that its sales in California decreased during the last half of 1938 because of the rate, there is no evidence that its losses are the result of the alleged discrimination.

Upon this record we find that the same rate, applied alike on alcoholic liquors in glass in cases and in bulk in barrels, is not shown to be unduly prejudicial to the former description of traffic or unduly preferential of the latter description.

An order dismissing the complaint will be entered.

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[4] $2.25 a proof gallon, which is a wine gallon (standard U. S. gallon) at 100 proof.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION held at its office in Washington, D. C., on the 25th day of April, A. D. 1940.

No. 543

FRANKFORT DISTILLERIES, INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, ET AL.

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

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 547

COSMOPOLITAN SHIPPING COMPANY, INC., AND A/S J. LUDWIG MOWINCKELS REDERI (COSMOPOLITAN LINE)

v.

BLACK DIAMOND LINES, INC., ET AL.

No. 548

A/S J. LUDWIG MOWINCKELS REDERI (COSMOPOLITAN LINE)

v.

UNITED STATES LINES COMPANY (UNITED STATES LINES) ET AL.

Submitted March 6, 1940. Decided April 26, 1940

Just and reasonable cause for defendants' refusal to admit A/S J. Ludwig Mowinckels Rederi to conference membership not shown.

Defendants' refusal to admit Mowinckels found unjustly discriminatory and unfair as between complainant Mowinckels and defendants and to subject Mowinckels to undue and unreasonable prejudice and disadvantage. If full and equal conference membership not accorded, consideration will be given to disapproval of conference agreements.

Horace M. Gray, *Charles E. Wythe* and *Lyle F. O'Rourke* for complainants.

J. Sinclair for North Atlantic Continental Freight Conference and North Atlantic French Atlantic Freight Conference.

Roger Siddall and *William Lage* for defendant United States Lines Company.

J. Newton Nash for defendant Compagnie Maritime Belge, S. A.

M. G. de Quevedo for defendant Black Diamond Lines, Inc.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Defendants filed exceptions to the report proposed by the examiners to which complainants replied. Our conclusions agree with those recommended by the examiners.

These cases involve similar issues and although not heard together, testimony of a number of witnesses in No. 547 was stipulated into the record in No. 548. Both cases will be disposed of in this report.

Complainant Cosmopolitan Shipping Company, Inc., hereinafter referred to as "Cosmopolitan," is the representative in the United States for complainant A/S J. Ludwig Mowinckels Rederi, hereinafter referred to as "Mowinckels." Defendants[1] are named as members of the North Atlantic Continental Freight Conference (Docket No. 547) and of the North Atlantic French Atlantic Freight Conference (Docket No. 548).

Complainants in No. 547 allege that defendants' refusal to admit either or both of them to membership in the North Atlantic Continental Freight Conference (Conference Agreement No. 4490), and the effect of exclusive patronage contracts between members of the conference and shippers, which coerce shippers from patronizing other carriers including complainants and threaten retaliation against shippers that patronize any nonconference carriers, subject complainants to undue, unjust, and unreasonable prejudice and disadvantage, all in violation of sections 14, 15, 16, 17, and 18 of the Shipping Act, 1916, as amended. We are asked to require defendants to admit complainants, or one of them, to membership in the conference or, in the event of their failure to do so, to withdraw the approval heretofore given the conference agreement under section 15 and to condemn as unlawful the contract rate system and practices thereunder. As section 18 relates solely to interstate commerce, the allegations thereunder will not be considered.

The stated purpose of North Atlantic Continental Freight Conference is "to promote commerce from North Atlantic ports of the United States and Canada, in the Hampton Roads/Montreal range, to ports in Belgium, Holland, and Germany (excluding German Baltic * * *." The agreement "covers the establishment and maintenance of agreed rates, charges and practices, for or in connection with the transportation of all cargo, except as may be otherwise provided * * * in vessels owned, controlled, chartered, or

[1] *Docket No. 547*, Black Diamond Lines, Inc. (Black Diamond Lines); Canadian Pacific Steamships, Ltd.; Compagnie Maritime Belge (Lloyd Royal) S. A.; County Line, Ltd. (County Line); Ellerman's Wilson Line, Ltd. (Ellerman's Wilson Line); Hamburg-Amerikanische Packetfahrt Aktien Gesellschaft (Hamburg American Line); Norddeutscher Lloyd (North German Lloyd); Osaka Syosen Kaisya; United States Lines Co. (United States Lines); N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij (Holland-America Line).

Docket No. 548, United States Lines Company (United States Lines); Compagnie Generale Transatlantique (French Line); Cosmopolitan Shipping Company, Inc., and County Line, Ltd. (County Line).

operated by the members in the trade covered by this Agreement." Article 9 provides that—

> Any person, firm, or corporation engaged in operating vessels regularly in this trade may be admitted to membership in the Conference upon agreeing to conform to this agreement and such rules and regulations as are adopted by the Conference pursuant thereto, and such admission shall not be denied by the member lines of the Conference, except for just and reasonable cause.
>
> Application shall be made to the Conference office in writing outlining the corporate and trade name of the Line, the service contemplated and such other information as the Conference may require. Copy of the application shall be sent to all members and shall be considered at the next meeting following receipt.

Cosmopolitan, incorporated in 1915, operated its own and chartered cargo vessels in transatlantic trade until 1919. It also acted as agent for private owners and for the governments of France and Switzerland. From 1919 until August 1939, when its agency agreement expired, it was the agent for the United States Government's America France Line, in operation between United States North Atlantic ports and French Atlantic and Channel ports, namely, Bordeaux, St. Nazaire, Havre, and Dunkirk. The last ship this company sent to Antwerp was in 1920, but it was active in the trade to Rotterdam until the end of 1924. Since the latter year its sole activities have been as managing agents of the America France Line. Until October 19, 1939, Cosmopolitan neither owned nor had any vessels under charter, but Mowinckels, a substantial shipowner, will be either the owner or the charterer of the vessels to be operated under the trade name "Cosmopolitan Line," and will be liable under issued bills of lading.

On July 24, 1939, Cosmopolitan applied for admission to the North Atlantic Continental Freight Conference, stating that in October 1939, a regular service to Antwerp, via Havre, would be inaugurated from United States North Atlantic ports, with sailings from New York every ten days and at frequent and regular intervals from certain outports;[2] also that the conference agreement, tariff rates, and all rules and regulations of the conference would be observed. On July 27, 1939, in reply to requests for additional information, the conference was advised that vessels in the Cosmopolitan Line service were or would be owned or chartered by Mowinckels; that Cosmopolitan would act as general agent in the United States; and that service would be maintained with Norwegian flag vessels of from 13.5 to 14 knots speed and of approximately 8,000 deadweight tons.

On August 3, 1939, complainant was notified its application was not approved. In response to a request for reasons in support of the

[2] U. S. North Atlantic ports other than New York.

conference action, the conference chairman on August 7, 1939, advised complainant of his lack of authority to state reasons for the actions, but he did state without prejudice that "your application does not appear to be an application of the owner." Thereafter, on August 9, 1939, Cosmopolitan again addressed the conference quoting an authorization received from Mowinckels reading:

> We authorize you apply membership conferences our name if necessary.

This letter further stated:

> Accordingly, the application of July 24, 1939, is confirmed as made by us for ourselves as general agents and/or for and on behalf of A/S J. Ludwig Mowinckels Rederi, whichever is required under your Conference rulings.
>
> With this information before you, please give us your immediate decision on our application, as it is our desire to avoid any rate disturbance.

Subsequently, in response to a request of the conference chairman another communication dated August 14, 1939, which restated facts regarding the proposed service and reaffirmed the intention of the Cosmopolitan Line to observe all rates, rules, regulations, and practices of the conference, requested the admission of Mowinckels as a conference member. The previous application of Cosmopolitan for membership independently of its principal, however, was not withdrawn. The applications of Cosmopolitan and of Mowinckels were denied at a special meeting of the conference held August 23, 1939.

No. 548 involves defendants' refusal to admit Mowinckels to membership in the North Atlantic French Atlantic Freight Conference (Conference Agreement No. 185). Allegations of unlawfulness under the Shipping Act, 1916, as amended, in respect to such denial are substantially the same as those heretofore stated in respect to No. 547. Application for conference membership had been submitted by letter dated July 26, 1939.

On August 24, 1932, the United States Shipping Board approved Conference Agreement No. 185, which established—

> a Conference to be known as North Atlantic French Atlantic Freight Conference, which will embrace the steamship trade for carriage of freight from North Atlantic ports of the United States and Canada to French Atlantic ports, the purpose of which is to agree on reasonable minimum freight rates, uniform as between such lines and in all such ways as may be proper to endeavor to stabilize and otherwise improve the steamship and export trade.

Article 6 thereof provided that—

> any other common carrier steamship line operating vessels regularly in this trade shall be admitted to membership in the Conference upon undertaking to conform with this agreement and to abide by such rules and regulations as may be adopted from time to time by the Conference. Eligibility for continued membership shall automatically cease when service is abandoned. If no notice of such abandonment is given the Conference, failure to maintain service for a period of three or more consecutive months shall be regarded as abandonment.

The application was discussed at conference meetings held August 4 and 10, 1939, but no definite action was taken. Minutes of those meetings indicate that the French Line and United States Lines desired further information regarding participation of Cosmopolitan Line in westbound conferences on equal terms. By letter dated August 23, 1939, the conference chairman advised Cosmopolitan that—

> * * * some of the members, also members of the Westbound Conference, advised by telephone that until the Westbound Conference is satisfied regarding membership on equal terms, they are not prepared to deal further with the Eastbound application of Mowinckels * * *

There is also involved in Docket No. 548 a contention that, because of Cosmopolitan's conference affiliation prior to the termination of its agency agreement relating to the America France Line, and the fact that no resignation from conference membership had been submitted by Cosmopolitan, its alleged conference membership in its own right continues to exist. This contention is evidenced by repeated attempts during the period July 24 to August 26, 1939, to have the Cosmopolitan Line service announced to shippers through circulars issued by the conference. In respect to this contention defendants take the position that Cosmopolitan's participation in the conference was solely on behalf of the United States, the owner of the America France Line. At the time the conference agreement was approved, that line was being operated by Cosmopolitan pursuant to a so-called lump-sum contract, under which, defendant United States Lines admit on brief, there may have been a joint common carrier relationship sufficient to entitle Cosmopolitan to membership in its own right. However, the conference agreement was executed by Cosmopolitan as Managing Agents for an owner-principal. Subsequent changes in the operating agreements clearly reflect the existence of an agency relationship only. In support of its position, Cosmopolitan also relies upon the fact that through 1937 the America France Line and Cosmopolitan were named as carriers in conference contracts with shippers. But in 1938, the contract form was modified and thereafter the name of Cosmopolitan appeared only as agents for America France Line. There appears to have been no doubt regarding the relationship between Cosmopolitan and America France Line immediately prior to the termination of that relationship, for on July 29, 1939, a communication addressed to Cosmopolitan by the Commission's Director, Division of Operations and Traffic, stated in part as follows:

> * * * we have learned that it is your intention, upon the termination of your Managing Agency Agreement, to operate foreign flag vessels in the North Atlantic-French Atlantic trade. In view of this and a possible conflict of the respective interests of your company and the Commission, we believe that

it would be more satisfactory to you and to ourselves if Conference matters affecting the America France Line were left in our hands. Therefore, we wish to advise that from this date until the effective date of your withdrawal as Managing Agent of the America France Line, all Conference matters affecting the America France Line are to be handled by either Mr. F. M. Darr, Chief of Traffic, or by Mr. H. Gieb, Traffic Representative, New York.

Conference Agreement No. 185, when originally approved, included as members America France Line, Baltimore Mail Steamship Company, Inc., Compagnie Generale Transatlantique, County Line (Inter-Continental Transport Services, Ltd.) and United States Lines. Article 6 thereof restricts additional membership to "any other common carrier steamship line * * *." As heretofore shown, Cosmopolitan has not operated in the trade as a common carrier since the formation of the conference. It was never eligible for membership, and cannot now be regarded as a conference member.

In No. 547 complainant Cosmopolitan applied for membership in the North Atlantic Continental Freight Conference independently of its principal Mowinckels. Article 9 of the conference agreement provides that any person, firm, or corporation engaged in "operating vessels" may be admitted to membership. Vessel operation referred to in the agreement necessarily means operation by a common carrier principal, and the operating common carrier in this instance is Mowinckels. Votes in matters relating to Cosmopolitan Line will be those of Mowinckels even though actually voiced by Cosmopolitan as agent. Cosmopolitan therefore can have no legitimate interest other than that of its principal and hence no necessity exists for separate membership. Consequently, no further consideration will be given to the application of Cosmopolitan.

The Cosmopolitan Line service was announced first through advertisements in Europe, and during August 1939 in New York. The first sailing vessel from Antwerp to New York was Mowinckels' S. S. *Ronda*, which vessel was also scheduled to sail eastbound from New York October 3, 1939. The *Ronda*, however, struck a mine September 13, 1939, and was destroyed. Thereafter eastbound sailings from New York at approximately 10-day intervals were scheduled and advertised as follows: October 13, 1939—*Anna Odlund;* October 24, 1939—*Molda;* November 5, 1939—*Ogna* and *Troma;* November 15, 1939—*Lista;* and November 25, 1939—*Heina.* Subsequent to the inauguration of service sailing schedules were constantly disrupted. The charter of the *Anna Odlund* to Mowinckels was cancelled. The *Molda*, while enroute to the United States, was fixed for a voyage to South America. The *Ogna* was under construction in Bremen, Germany. The *Troma*, substituted for the *Ogna*, was reassigned to carry grain for the Norwegian Government. Eastbound cargo had been solicited and secured by Cosmopolitan, but when scheduled sailings were cancelled cargo bookings were cancelled. It is clear from the foregoing that at the time of hearing there had been no sailing of Cosmopolitan Line eastbound. But two vessels were then advertised to go on berth, the *Lista* and *Heina*, scheduled to sail from New York November 15 and November 25, respectively. Cargo solicitation for these sailings at conference rates or higher was in progress, and some cargo had been booked. Originally other than conference rates had been quoted.

The conferences in these cases are among those involved in Docket No. 513,[3] and in the *Waterman Steamship Corporation cases*,[4] and in respect to the contract rate system its operation generally, excluding peculiar features discussed in the report in Docket No. 513 applicable to ports on the Great Lakes, is the same as therein stated. Specific testimony of complainant and defendants here involved is that most shippers of commodities which move in large volume in the Continental and French Atlantic eastbound trades have signed the exclusive patronage contracts. Some shippers stated they would prefer not to sign the contracts, but that they desired the greater frequency in sailings of conference lines, and that to refuse would create difficulty in meeting competition of other manufacturers. Testimony of the conference chairman is that approximately 75 percent of the cargo, other than grain, moves under such contracts. Cosmopolitan Line's representative also stated that when soliciting eastbound cargo he had been told by shippers under contract that the line could not expect to obtain any business from them unless it was a member of the conference with the privilege of participation in the contracts.

Defendants' position generally is that Mowinckels has never been engaged in operating vessels regularly in the trade, is not therefore established in the trade and consequently has not met the condition precedent to its right to conference membership. Such a requirement in an approved agreement, however, is not binding on the Commission when deciding questions of contested eligibility. Even though required, establishment in a trade as a condition precedent, is not susceptible of sufficient definiteness to warrant its use in determining membership rights. Agreements Nos. 4490 and 185 herein involved require the "operation" of vessels. Facts of record, viz, (a) that subsequent to the filing of the complaints in these proceedings a state of war has existed in Europe; (b) that transportation conditions are not normal; (c) that in the trade to Antwerp and Rotterdam serious delays have resulted from the right of search on the high seas; (d)

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[3] *Contract Routing Restrictions under Agreements Nos. 16, 147, 185, and 4490*, decided November 30, 1939, 2 U. S. M. C. 220.

[4] Dockets Nos. 519, 520, and 521, decided December 19, 1939, 2 U. S. M. C. 238.

that ships have been destroyed by mines; (e) that schedules of all lines serving Continental Europe have been disrupted; and (f) that all services to German ports have stopped entirely, are such as to raise serious question whether that requirement, if too strictly construed, is warranted. The record shows that Cosmopolitan Line began operations by advertising its service, and soliciting freight which resulted in securing contracts from shippers and in definite booking of cargo. The provision in the conference agreements requiring vessel operation has not been adhered to strictly by defendants; in fact enforcement thereof has been demonstrated to be optional, for absence of prior service in the Continental trade proved to be no barrier to the admission of Osaka Syosen Kaisha to the North Atlantic Continental Freight Conference in July 1938. Its first sailing from New York in the trade, however, was in August 1938. 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; otherwise modification of the agreements should be required.

Defendants stress as a primary reason for denying the applications for membership in the eastbound conferences the unwillingness of Mowinckels to apply for membership in Continental and French Westbound Conferences on equal terms with other members. The record discloses that on August 14, 1939, an application was submitted to the Continental North Atlantic Westbound Freight Conference on behalf of Mowinckels by Agence Maritime de Keyser Thornton, General Agent at Antwerp, requesting admission "subject to arranging satisfactory terms and subject to immediate acceptance of the Cosmopolitan Line as a member of the eastbound conference." On August 16, 1939, application was made by Consortium Maritime Franco-Americain for representation of Cosmopolitan Line in the French North Atlantic Westbound Conference. This application stated that "we should consider it as quite normal to be authorized by your conference to charge the conference tariff after deduction of a differential." A representative of Cosmopolitan stated at the hearing that conference membership westbound on terms set forth in Conference Agreements Nos. 70-1 and 5920 would not be satisfactory; that on eastbound voyages its vessels would call at Havre first, would discharge and load cargo there, and proceed to Antwerp also to discharge and load cargo. The vessel would then sail for New York. Based on its past experience in the trade, Cosmopolitan also stated that many exports from France are luxury commodities which move by vessels of greater speed than the cargo vessels and that cargo carried by America France Line under its management was principally lower class commodities such as chalk, rags, and pebbles, and that it had always operated on a differential westbound.

Effective October 3, 1939, the America France Line was chartered to defendant United States Lines by the Commission. The United States Lines, therefore, is a member of the eastbound and westbound French Conferences. Although vessels of United States Lines in its Hamburg service did not call at Antwerp, its interest was in respect of cargo destined to interior European ports that could move via Antwerp or Hamburg. At the time this company voted against complainants' application for admission to the eastbound Continental Conference, it was informed that Mowinckels and/or Cosmopolitan Lines were underquoting the United States Lines' rates in the U. K. trade via Antwerp. Its position is that complainants cannot cooperate with conference lines eastbound while antagonizing them in westbound operations. "All that we wanted them to do and still want them to do is to come into the westbound conferences on equal terms with all the lines in the trade." That is expressly stated as being the only objection of the United States Lines to complainants' admission to the eastbound conference. This is amplified by counsel's statement that an application to the eastbound Continental and French Atlantic Conferences should be contingent upon membership in the westbound Continental and French Conference, or in other words, "if you get in one you should get in four."

The eastbound Continental and French Atlantic Conferences were organized to promote commerce from United States ports to European ports. The approved conference agreements refer to "the trade covered by this agreement," and the conferences are to be governed by rules and regulations within the purpose and scope of the approved agreements. Requirements for admission have been herein noted. Although it is defendants' position that because the same ships generally are used to transport eastbound and westbound cargo there is but a single trade, and that uniform rates, rules, regulations, and practices in each direction should be observed, the agreements do not so provide, and no rule or regulation has been promulgated which requires an applicant for eastbound conference admission to become a member of conferences operating westbound.

Defendant Black Diamond Lines, Inc., in support of a contention that the trade was overtonnaged, shows that the total tonnage transported by that company eastbound during 1938 represented 65.72 percent of the deadweight and 63.24 percent of the cubic capacity available for cargo. During the period June 15 to September 15, 1939, the percentage of deadweight capacity occupied by cargo was 46.35 percent. Belgian Line's carryings eastbound for 1938 were 65 and 41 percent, respectively, and for the period July through September 1939, were 44 and 31 percent, respectively.

The claim that the trade was overtonnaged was advanced in support of the action of these conferences upon applications for admission of Waterman Steamship Corporation. In rejecting this claim we said:

> * * * this factor cannot be controlling for the reason 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.

In June 1939, Arnold Bernstein Line and Red Star Line discontinued operations, although Black Diamond Lines and Belgian Line by increasing their sailing schedules to a weekly basis supplied to shippers the equivalent of the services withdrawn. Subsequently, the services of Hamburg American Line and North German Lloyd were discontinued. Viewed in the light of conditions as disclosed at the hearing, the contention as to overtonnage is without merit.

No violation of section 14 or 17 of the Shipping Act, 1916, as amended, has been shown.

We find on the record in these cases that complainant A/S J.Ludwig Mowinckels Rederi (Cosmopolitan Line) is entitled to membership in the North Atlantic Continental and the North Atlantic French Atlantic Freight Conferences on equal terms with each of the defendants; that defendants' denials of membership to Mowinckels have been without just and reasonable cause; that such denials while at the same time maintaining exclusive patronage contracts with shippers create unjust discrimination and operate unfairly as between complainant. Mowinckels and defendants, thus subjecting Conference Agreements Nos. 4490 and 185 to disapproval under section 15 and in complainant Mowinckels being subjected to undue and unreasonable prejudice and disadvantage, in violation of section 16 of the Shipping Act, 1916, as amended. Defendants will be allowed 30 days within which to admit complainant Mowinckels to full and equal membership in each of the two conferences, failing which consideration will be given to the issuance of orders disapproving the conference agreements.

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 566

Warehouse Deliveries of Wool and Mohair at Boston, Mass.

Submitted March 18, 1940. Decided April 30, 1940

Schedules eliminating free delivery within the switching limits of Boston, Mass., on wool and mohair from Texas ports and New Orleans, La., found justified. Suspension order vacated and proceeding discontinued.

Julian M. King, *F. C. Tighe*, *J. R. Bell*, *T. D. O'Brien*, *R. B. Wallace*, *T. P. Bartle*, *C. L. Davis*, *J. E. Andrews*, *George C. Bledsoe*, and *R. L. Lockhead* for respondents.

Richard D. Chase for protestant Boston Wool Trade Association.

Walter W. McCoubrey and *Hugo Oberg* for intervener Boston Port Authority.

Joseph Crehan for American-Hawaiian Steamship Company.

Report of the Commission

By the Commission:

By schedules filed to become effective January 31, 1940, and later, respondents[1] proposed to eliminate free delivery to certain warehouses located at railroad sidings within the switching limits of Boston, Mass., on wool and mohair from Texas ports and New Orleans, La.; also to railroad terminals served by railroad sidings within those limits except when the rates of connecting lines include transfer from pier on traffic moving beyond those limits. Upon protest of Boston Wool Trade Association the schedules were suspended to May 31, 1940. Boston Port Authority intervened at the hearing on behalf of protestant. The proceeding was heard jointly with proceedings before the Interstate Commerce Commission, its Docket No. I. & S. 4764, which involves similar tariff provisions. Rates will be stated in amounts per 100 pounds.

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[1] Agwilines, Inc., Lykes-Coastwise Line, Inc., Mooremack Gulf Lines, Inc., Pan-Atlantic Steamship Corporation, Eastern Steamship Lines, Inc., and Merchant and Miners Transportation Co.

Respondents' port-to-port carload rate on wool in grease and mohair, in sacks or bales, from Texas ports and New Orleans to North Atlantic ports, is 86 cents per 100 pounds, minimum 24,000 pounds. The rate applies on shipments originating at interior Texas and Eastern New Mexico points on traffic moving to the Gulf ports by rail, and on shipments originating at interior Texas points and trucked to the ports. The service to Boston may be direct or by transshipment at New York or Philadelphia, and the carriers have the option of delivering by means of truck, rail switch, or lighter. Boston, Philadelphia, and Camden are the only ports where "uptown" delivery is given. It was testified by one of the respondents in the Interstate Commerce Commission proceeding that the absorption at Philadelphia and Camden has been allowed to remain by error and will be eliminated if the suspension is lifted in that proceeding. Should respondents herein prevail and if free delivery is eliminated at Philadelphia and Camden, all North Atlantic ports will be on a parity. Furthermore, those consignees not now accorded free delivery will be on a parity with those who have been receiving the privilege. Protestant contends, however, that the rate should be reduced to the extent of the switching charge if the suspension orders are vacated as the effect would be to increase the rate to that extent.

Prior to May 30, 1930, respondents had no joint through rates or direct service from Gulf ports to Boston, the rates used being the ocean rates to other North Atlantic ports plus local or proportional rates of rail or water carriers beyond. Effective on that date, a joint through commodity rate of 97½ cents, not subject to this Commission, was established from Galveston and Houston to Boston, and where the traffic was delivered by Eastern or Merchants and Miners the Boston rail siding charges were absorbed in order to compete with the New York, New Haven & Hartford Railroad. From that time various transportation services, direct or otherwise, all-water or water-rail, have been furnished. On July 22, 1937, the routes in connection with the rail carriers were cancelled. The rates via routes affording rail haul are now on a combination basis or through fourth class basis, and are considerably higher than the 86-cent rate. Since no competitive reason remains therefor, respondents feel that the abnormal practice of free delivery at Boston should be eliminated. See *Boston Wool Trade Association* v. *Merchants and Miners Transportation Co.*, 1 U. S. S. B. 24, and *Boston Wool Trade Association* v. *Eastern Steamship Lines, Inc.*, 1 U. S. S. B. 36.

Intervener's witness named fourteen commodities moving over some of the respondents' lines from New Orleans to North Atlantic ports, the rates on which include delivery by rail, drayage, or lighterage at destination, but the witness had no knowledge of the shipping characteristics or transportation circumstances which might justify their free delivery.

Wool and mohair are light-weight commodities with a high stowage factor, and respondents' exhibit shows a revenue therefrom 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. There was no evidence, however, of the volume of movement, value or other transportation characteristics of the other commodities. While a general statement was made that labor, fuel, and other costs have increased, no figures were given.

The 97½-cent rate established on May 30, 1930, from Galveston and Houston to Boston, heretofore referred to, was the same as the fourth class rate between the same points, and represented 57½ percent of the first-class rate of $1.69½. Since that time the rate has fluctuated. Effective July 10, 1937, following approval thereof by the Interstate Commerce Commission in *Grain Products from Gulf Ports to Atlantic Seaboard*, 222 I. C. C. 705, 715, a rate of 82 cents was published. The decision in that case was based upon prior cases prescribing a rate of 55 percent of first class on wool from western producing territory to the East. The present 86-cent rate is the result of the 5-percent increase authorized by the Interstate Commerce Commission in *Fifteen Percent Case, 1937–1938*, 226 I. C. C. 41. A corresponding increase was permitted by this Commission on March 12, 1938, by special permission. In the *Consolidated Southwestern Cases*, 211 I. C. C. 601 and 222 I. C. C. 229, there was prescribed a first-class rate of $1.70 from Galveston and Houston to the piers at North Atlantic ports, and on traffic for rail-delivery points in Boston the rate prescribed was $1.93. Except on articles for which commodity rates related to first class were prescribed, class rates governed by the Western Classification were prescribed as maximum reasonable rates. As wool and mohair are subject to fourth class in the current Western Classification, the maximum reasonable rates prescribed therefor from Galveston and Houston docks to Boston would be 94 cents to the piers and $1.06 for rail delivery, exclusive of the 5-percent increase already referred to.

On this record we find that the suspended schedules have been justified. An order vacating the order of suspension and discontinuing this proceeding will be entered.

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ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 30th day of April A. D. 1940.

No. 566

WAREHOUSE DELIVERIES OF WOOL AND MOHAIR AT BOSTON, MASS.

It appearing, That by order dated January 30, 1940, the Commission entered upon a hearing concerning the lawfulness of new and joint regulations and practices affecting rates and charges in the schedules enumerated and described in said order, and suspended the operation of said schedules until May 31, 1940;

It further appearing, That investigation of the nature 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 schedules under suspension have been justified;

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 as of May 31, 1940, 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. 471

In the Matter of Rates, Fares, Charges, Regulations, and Practices of Inter-Island Steam Navigation Company, Ltd., Between Points in the Territory of Hawaii

Submitted May 3, 1940. Decided June 4, 1940

Proceeding discontinued upon receipt of additional evidence showing respondent's net income for 1939 was less than fair return on rate base. Original report 2 U. S. M. C. 253.

Appearances as heretofore noted.

Supplemental Report of the Commission

By the Commission:

In the original report herein, 2 U. S. M. C. 253, wherein it was determined that respondent's rate structure as a whole was not unreasonable, we 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. In this connection we stated: "The task of calculating future revenues and expenses was complicated by the reduction in passenger fares and the strike (in 1938). Therefore, the proceeding will be held open for the incorporation of evidence showing the actual net income for the calendar year 1939."

The evidence submitted indicates that the actual net income from common carrier operations for the calendar year 1939 was $274,234.78 which represents a return of 4.18 percent on the rate base. We will, therefore, enter an order discontinuing this proceeding.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 4th day of June A. D. 1940

No. 471

IN THE MATTER OF RATES, FARES, CHARGES, REGULATIONS, AND PRACTICES OF INTER-ISLAND STEAM NAVIGATION COMPANY, LTD., BETWEEN POINTS IN THE TERRITORY OF HAWAII

This proceeding, instituted by the Commission on its own motion, having been duly heard, and full investigation of the matters and things involved having been had, and the Commission, on January 4, 1940, and the date hereof having made and entered of record reports stating its conclusions and decision thereon, which reports are 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. 565

REDERIET "OCEAN" A/S

v.

YAMASHITA KISEN KABUSHIKI KAISHA ET AL.

Submitted June 28, 1940. Decided July 11, 1940

Found that as a result of the cessation of operation by complainant due to the European War, the issues presented herein have become moot. Under agreement of parties, complaint dismissed without prejudice to complainant's right to petition for reopening of the proceeding and to use, in connection therewith, the record heretofore made.

S. W. Schaefer for complainant.

Roger Siddall and *George F. Foley* for defendants jointly.

Ira L. Ewers and *A. F. Chrystal* for Moore-McCormack Line, Inc.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Complainant, a Danish corporation, is a common carrier by water in foreign commerce, operating, at time of hearing, between Atlantic ports of the United States and various ports on the east coast of South America. Defendants, also common carriers by water in foreign commerce, operate in the same trade under Conference Agreement No. 59 known as the River Plate and Brazil Conferences.

By complaint filed January 23, 1940, complainant alleges that defendants' refusal to admit it to membership in the above-mentioned conferences and defendants' exclusive patronage contracts with shippers of cargo in the respective trades, create an undue and unreasonable preference or advantage to certain shippers, subject complainant to undue and unreasonable prejudice and disadvantage and are in violation of sections 15, 16, and 17 of the Shipping Act, 1916, as amended, and of the anti-trust laws, U. S. Code, title 15, sections 1 to 7.

We are asked to order defendants to cease and desist from the alleged violations of law and to admit complainant to full and equal membership in the above-mentioned conferences. If it is not admitted, complainant requests an order canceling the agreement.

On February 15, 1940, the defendants, in addition to entering a general denial, answered further that complainant's ships were not serviceable for the trade inasmuch as they were fully refrigerated ships and that the tonnage moving was general cargo. Refrigerated cargo is specifically exempted from the scope of the agreement.

At the hearing beginning March 8, the date for filing briefs by all parties was fixed as April 11. Subsequent to the hearing Denmark was invaded by Germany which action subjected complainant's ships to the possibility of being seized as prize by opposing belligerents, whereupon complainant ceased operations. Its attorney from time to time has asked for extension of the brief date. The last two requests have been objected to by attorneys for the defendants. The last extension granted was to July 1, 1940, and a request was then made to grant a further extension to August 1. Inasmuch as defendants' attorneys objected to the granting of this extension of time on the ground that the unsettled condition of this case resulted in unfavorable relations as between the conferences and shippers, all parties were requested to state whether they would agree to the entry of an order dismissing this proceeding without prejudice to complainant's right to petition for reopening in the event that it was in a position later to operate in the trade. Upon reopening the right to use the record heretofore made insofar as it might be applicable was to be preserved. All parties agreed that the proceeding should be dismissed on this basis.

An order will be entered dismissing the complaint without prejudice to complainant's right to petition for reopening if and when they are in a position to operate as a common carrier in this trade and without prejudice to the rights of all parties to use the record heretofore made insofar as it may be applicable.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 11th day of July A. D. 1940.

No. 565

REDERIET "OCEAN" A/S

v.

YAMASHITA KISEN KABUSHIKI KAISHA ET AL.

This case being at issue upon complaint and answer on file, and having been duly heard and the issues herein having been rendered moot by the cessation of operation by complainant, and the parties having agreed that the complaint be dismissed;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed without prejudice to complainant's right to petition for reopening upon the resumption of operation, and the right of all parties to use the record heretofore made insofar as applicable.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 568

WOOL RATES TO ATLANTIC PORTS

Submitted June 3, 1940. Decided July 12, 1940

Proposed increased rates on eastbound wool from Pacific coast ports to Atlantic coast ports, not shown unlawful. Order of suspension vacated and proceeding discontinued.

H. S. Brown, *W. M. Carney*, and *M. G. de Quevedo* for respondents.

Ormand R. Bean, *Calvin L. Blaine*, *Charles E. Blaine*, *H. R. Brashear*, *J. G. Bruce*, *John H. Carkin*, *Willis Crane*, *J. W. Cornell*, *A. M. Geary*, *L. C. Jones*, *I. H. Pfaffenberger*, *L. G. Reif*, *Charles A. Root*, *C. B. Sexton*, *Ralph L. Shepherd*, *E. T. Taylor*, *Alex. A. Tennant*, *J. Richard Townsend*, *Martin G. White*, and *R. H. Young* for protestants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By schedules filed to become effective March 16, 1940, respondents,[1] common carriers by water in intercoastal commerce, proposed to increase the any quantity rates 25 cents per 100 pounds for the transportation of wool and mohair, in grease and scoured, in bags and

[1] American-Hawaiian Steamship Company; (Arrow Line) Sudden & Christenson; Babbidge & Holt, Inc.; Bay Cities Transportation Company; Berkeley Transportation Company; The Border Line Transportation Company; California Eastern Line, Inc.; The California Transportation Company; Calmar Steamship Corporation; Coastwise Line; The Consolidated-Olympic Line; Crowley Launch & Tugboat Co.; Erikson Navigation Company; Hammond Shipping Company Ltd.; Isthmian Steamship Company; A. B. Johnson Lumber Company; Luckenbach Steamship Company, Inc.; McCormick Steamship Company; Marine Service Corporation; Northland Transportation Company; (Panama Pacific Line) (Baltimore Mail Steamship Company, United States Lines Co., General Agents; Puget Sound Navigation Company; Puget Sound Freight Lines; (Quaker Line) Pacific-Atlantic Steamship Co.; Richmond Navigation & Improvement Co.; Roamer Tug & Lighterage Company; Sacramento & San Joaquin River Lines, Inc.; Schafer Bros. Steamship Lines; Shaver Forwarding Company; Skagit River Navigation & Trading Company; States Steamship Company; Weyerhaeuser Steamship Co.

bales, from Pacific to Atlantic coast ports. Upon protests of Public Utilities Commission of the State of Idaho, the Secretary of Agriculture, Arizona Corporation Commission, Public Utilities Commissioner of Oregon, Board of Railroad Commissioners of Montana, National Wool Growers Association and numerous state and county wool growers and marketing associations, farm organizations, and individual wool growers and dealers, the operation of the schedules was suspended until July 16, 1940.

"Wool in the grease" is the commercial designation of wool before removal of the grease, dust, and other foreign substances which, in western territory, comprise about two-thirds of the weight. It is called "fleece" wool when obtained by shearing the live animal and "pulled" wool when removed from the pelt of a dead animal by chemical process or sweating. Wool from which the grease, dirt, etc., has been cleaned is known as "scoured" wool. Scoured wool is assorted and graded, and made ready for the spinner by carding and combing.

Mohair is goat hair. It takes the same rates as wool and will be included in the term wool in this report. Evidence of record is confined almost wholly to wool.

The wool in question is produced in all of the States including and west of Montana, Wyoming, Colorado, and New Mexico. On the Pacific coast California produces more than Oregon and Washington combined. In 1939 California produced more than any of the western states except Wyoming. The principal ports of origin are, in the order named, San Francisco (including east bay ports, Sacramento and Stockton), Portland, Los Angeles Harbor, and Seattle. Most of the wool is delivered at Boston. Respondents American-Hawaiian and Luckenbach transport over 90 percent of all east-bound intercoastal wool, the heaviest movement of which is between April and July.

Witness for respondents testified that wool in grease is shipped in bags 6 feet 7 inches long, 2 feet 4 inches wide, and 2 feet thick, measuring an average of 30.8 cubic feet. The average weight per bag was said to be 288 pounds reflecting a density of 214.66 cubic feet per ton without making allowance for broken stowage which is 10 percent and more. The stowage factor used by the trade is 225 cubic feet per ton.

Scoured wool is stated to be packed in bags of the same dimensions as wool in grease, with a stowage factor of 550 cubic feet. A bale of scoured wool is described as measuring 2 feet 3 inches by 2 feet 9 inches by 4 feet, equal to 26.8 cubic feet per bale. It weighs generally upwards of 300 pounds.

The record contains many figures showing the value of wool during the past 20 years. Values vary with the grades and producing localities and are influenced by imported wools from Australia, South America, and other world-producing centers. It is conjectural what effect the present European war will have on Boston prices of wool and on foreign demands. According to an exhibit of record issued by the United States Department of Agriculture the estimated average local market prices of shorn wool in 1938 and 1939 were 19.2 cents and 22.3 cents per pound respectively. Claims for loss and damage are negligible. Rates will be stated in cents per 100 pounds.

Respondents' present east-bound any quantity rates on wool are $1.18, in grease, in bags; $1.10, in grease, in bales compressed to a density of 12 pounds per cubic foot; $2.25, scoured, in bags; and $1.30, scoured, in bales compressed to density of 10 pounds per cubic foot. They propose to increase each of these rates 25 cents which amounts to percentage increases ranging from 11.2 percent on scoured wool in bags to 22.8 percent on wool in grease, in bales. The latter moves in greatest volume.

Respondents trace the history of east-bound wool rates since June 26, 1922, when the rate was $1.25 on wool in grease, in bags. They take the position that the rate was later forced down by a succession of rate wars and that the present proposals are an attempt to fix wool rates on a sound basis. They show that bagged wool requires unusual care in handling and stowing. Damp or wet wool is susceptible to self heating and spontaneous combustion and requires careful inspection when tendered for shipment. American-Hawaiian gives each bag a thermometer test before loading. Wool in grease will contaminate such commodities as dried fruit, sugar, and flour.

Respondents compare estimated costs of loading and discharging wool with those of such heavy moving commodities as canned goods, dried beans, green hides, flour, woodpulp, sugar, lumber, and dried fruit. The lowest estimate of cost of loading wool in bags is given as $2.63 per ton of 2,000 pounds. The highest estimates of cost of loading the other listed commodities range from 59 cents per ton for woodpulp to $1.67 for hides. The discharging costs appear to be about on the same ratio except that one respondent witness estimates cost of discharging lumber at $1.32 per ton compared to $1.65 for wool. Of the stated commodities all can be loaded or discharged more rapidly than wool which it is said loads only about 10 tons per hour. According to respondents' figures 14 tons of canned goods and as much as 38 tons of flour can be loaded per hour. They stress various special services accorded wool such as stenciling of bags, storing and accumulating lots for shippers and advancement of freight charges for transportation from interior points to the wharves. The record is convincing that because of its bulk in either bags or bales, and its contamination of foodstuffs wool is difficult to stow efficiently and economically. Using a stowage factor of 225 cubic feet, the proposed rate of $1.43 on wool in grease would yield 12.7 cents per cubic foot. According to an exhibit of record the yield per cubic foot on canned goods is 22.9 cents, dried fruit in boxes, 27.6 cents, cotton 11 cents, and green salted hides 27.5 cents at the rates in effect at the time of hearing. Using the all-rail transcontinental rates as a ceiling respondents compare the relationship thereto of the proposed $1.43 rate and their rates on other commodities. For example, the transcontinental carload commodity rate prescribed by the Interstate Commerce Commission is said to be $2.70 on wool in grease in bags. The proposed rate would be 50.3 percent of that rate. It is testified that the intercoastal carload rates on canned goods, tires, lumber, drugs, dried beans, dried fruit, woodpulp, wine, and green salted hides range from 50 percent on canned goods to 72.2 percent on dried beans of the contemporaneous all-rail transcontinental carload rates. It is also testified that the competitive joint rail-and-water rates applying from California terminals to Atlantic piers through Great Lakes and Gulf ports are generally made on the basis of the all-rail rates to Chicago.

Protestants rely mainly upon the poor economic status of the wool-growing industry, stating that the producers who pay the freight cannot bear an increase of ¼ of 1 cent per pound, equivalent to about 2 cents per head of sheep. According to figures compiled by the Department of Agriculture reflecting a survey of Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, and Washington, the average cash income from wool sales during the 10-year period 1930–1939 was 31.6 percent lower than during the previous 10-year period. One protestant witness testified that the average cost of raising sheep in Oregon during the past 5 years has increased 34 percent while the gross returns from the sale of sheep and wool has increased only 9.4 percent. Wages, taxes, supplies, and range were stated to be the principal items of increased cost of producing wool. Such testimony was typical of that of other witnesses from all of the western wool-producing States. They call attention to various incidental charges such as wharfage and insurance which they pay in addition to the ocean freight. Exclusive of war-risk insurance, the incidental charges are said to average about 19.5 cents per 100 pounds on wool from Portland to Boston. Protestants also stress the fact that the proposed increases will result in loss of traffic by respondents to railroads since the rate-breaking line between the transcontinental routes and the intercoastal route will move westward. They instance five rate increases on wool made by respondents since 1931 and contend that American-Hawaiian and Luckenbach, which carry practically all the wool, are not in financial need. They assert that the record fails to show recent increased transportation costs or other changed conditions justifying increased rates on wool. Many of respondents' figures and estimates of stowage factors and loading costs are assailed.

Conceding that some of respondents' analyses are faulty, it must be remembered that stowage factors are not constant. They vary with types of vessels and space used thereon. Nor can loading costs be reduced to mathematical certainty to fit each voyage and port. On the whole, the proposed rates are not excessive considering the characteristics of wool as outlined above. What we said in *Eastbound Intercoastal Lumber*, 1 U. S. M. C. 608, 623, with respect to the economic distress of the lumber industry applies with equal force here: "We cannot require of carriers the establishment of rates which assure to a shipper the profitable conduct of his business."

The record in this case does not warrant a finding that the suspended schedules are 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 12th day of July, A. D. 1940

No. 568

WOOL RATES TO ATLANTIC PORTS

It appearing, That by order dated March 12, 1940, 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 July 16, 1940;

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 findings thereon, which report is hereby referred to and made a part hereof, and has found that the schedules under suspension have been justified;

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. 512

CARGO TO ADRIATIC, BLACK SEA, AND LEVANT PORTS

Submitted September 13, 1939. Decided July 16, 1940

Practice of quoting rates differentially under rates of other carriers in the trade found to be a condition unfavorable to shipping in the foreign trade.

Drastic reduction of rate on flour from U. S. North Atlantic ports to Adriatic, Black Sea, and Levant Ports found unreasonable and detrimental to commerce of the United States.

Payment of commission by common carriers by water in foreign commerce to agents who are also shippers or who have an interest in the cargo transported found to be in violation of section 16 of the Shipping Act, 1916, as amended.

Rules and regulations under authority of section 19 of the Merchant Marine Act, 1920, not promulgated due to present conditions in the foreign trade resulting from the European war which have rendered this issue moot.

R. H. Hallett for United States Maritime Commission.

Roscoe H. Hupper, *James Sinclair*, and *C. R. Andrews* for respondent members of Adriatic, Black Sea, and Levant Conference; and *Charles S. Belsterling*, *Thomas F. Lynch* for Isthmian Steamship Company, and *Charles W. Lowack* for United States and Levant Line Ltd., conference members.

James W. Ryan for Isbrandtsen-Moller Company, Inc.

Roger Siddall for Ellerman-Bucknall Steamship Co., Ltd., and Strick-Ellerman Joint Service.

Herman Goldman, *Elkan Turk*, *Michael D. F. O'Dowd*, and *Leo E. Wolf* for Kerr Steamship Company, Inc.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by certain respondents to the report proposed by the examiner and oral argument was had. Our findings differ in part from those recommended by the examiner.

This proceeding was instituted by us upon our own motion by order dated February 17, 1939, as amended, requiring carriers[1] parties to the Adriatic, Black Sea, and Levant Conference (Conference Agreement No. 133), as well as other[2] common carriers by water in the trade between North Atlantic ports of the United States and Adriatic, Black Sea, and Levant ports to show cause why some of their competitive practices should not be found to be unfavorable to shipping in the foreign trade; and why the conference agreement should not be disapproved, modified, or canceled.

At the hearing the matters in issue were defined as: (1) The lawfulness of the practice of establishing rates below the prevailing rates—the method and the justification therefor; (2) the lawfulness of the reduction made by the conference members in the rate on flour from 40 cents to 10 cents per hundred pounds; and (3) the employment by a carrier of an agent having an interest in the cargo transported over its lines.

Agreement No. 133, which was approved February 26, 1930, is a cooperative arrangement for the purpose of stabilizing rates on traffic from North Atlantic ports of the United States to Adriatic, Black Sea, and Levant ports. Respondents are all the known common carriers operating direct services in the trades involved in this proceeding. Isbrandtsen also has an indirect service via European ports. During 1938 there were approximately 153 conference and 25 nonconference sailings. On a prorated basis the sailings in 1939 have increased, due in part to the additional services inaugurated by Isbrandtsen and Kerr.

In November 1938, prior to entry in this trade, Isbrandtsen, who operates foreign flag vessels, issued a notice to the shipping public that it was establishing a direct service. This notice reads in part as follows:

> You will find us, as to the Far East and Europe, most willing to cooperate in providing reasonable freight rate—assisting you in realizing worthwhile savings and meeting competition.
>
> Since our independent steamship competition will benefit every shipper and receiver in this trade, in your own interest you will naturally want to support it in every way possible. We therefore urge you to check and mail the attached card for full details before signing any transportation contracts.

It was testified by Isbrandtsen's Vice President that, although there were exceptions, it was the general policy of the company to

[1] American Export Lines, Inc., Compagnie Generale de Navigation a Vapeur (Fabre Line), Fern Line (Joint Service of Fearnley & Eger and A. F. Klaveness & Co., A/S), Isthmian Steamship Company, "Italia" Societa' Anonima di Navigazione (Italian Line), Linea Sud Americana, Inc. (Gardiaz Lines), United States and Levant Line, Ltd.

[2] Isbrandtsen-Moller Company, Inc., Kerr Steamship Company, Inc., Ellerman & Bucknall Steamship Co., Ltd., Strick Ellerman Joint Service, and States Marine Corporation.

quote rates differentially lower by ten to fifteen percent than the established rates in the trade whenever it met conference competition. It appeared of record that there was no instance in which Isbrandtsen entered a trade wherein they were not confronted with this conference competition. The witness further testified that the one restriction on this general policy was that a rate would not be quoted if it failed to produce a profit. The record is not clear as to the method used by this company in determining what constitutes a profit. An examination of exhibits introduced at the hearing substantiates the testimony that Isbrandtsen's rates, as a general rule, were quoted on a percentage basis differentially lower than the rates of other carriers in the trade.

Other exceptions to the general rule occurred but they need not be considered here. The issues involved in the instant proceedings are concerned with the general rate making policy and do not pertain to the exceptions thereto.

The order of investigation, among other things, directed Isbrandtsen to show cause why the competitive methods or practices as outlined in the order, namely, the solicitation of cargo in the trade by offers to under-quote rates of the conference carriers and employment of agents and payment of commissions to them when, at the same time, they are shippers or receivers of cargo, should not be found to be unfavorable to shipping in the foreign trade. Isbrandtsen's Vice President, under subpoena by us, in justification of the system, testified that such a system of rate making was made necessary by the need of shippers for lower rates, conference competition, and the use of slow vessels by his company. The fact that a carrier chooses to employ slow vessels is no justification for indulgence in a practice otherwise unlawful. No showing was made that speed was essential to this trade; in fact, in connection with flour shipments it was testified that speed was not essential. This is borne out by the fact that the Italian Line, which has the fastest vessels in the trade, carries practically no flour. Other nonconference carriers appear to be able to operate without indulging in such practice.

Before establishing a rate on flour Isbrandtsen conferred with the shippers and found that flour was moving in substantial volume, though decreasing in amount, at a rate of 40 cents per 100 pounds, and that some shippers were interested in an independent service at rates which could be readily adjusted to meet foreign competition. As the result of these discussions with shippers, Isbrandtsen felt justified in quoting differential rates on flour lower by a fixed percentage than the conference rates.

The quotation of rates on a percentage basis below the rate of another carrier makes it impossible for shippers to know the applicable rate until the current rate of other carriers is first ascertained. The shipper is thus obliged to know all rate changes that occur before he can actually determine the rate applicable via Isbrandtsen. The failure to quote specific rates opens the door to abuses and discriminations. There is nothing unlawful *per se* for a carrier to charge a rate different from that of another, and we have 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 the 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. Moreover, the practice affords only temporary benefit to a particular shipper and to Isbrandtsen, and destroys that stability in rates which the record shows is advantageous to American shippers.

We have heretofore condemned these practices of foreign-flag nonconference carriers: quotation of rates openly or secretly on a basis lower by fixed percentages or amounts than the established rates of other carriers, either American or foreign, establishment of rates without consideration for the usual rate-making factors, and attempts to compel other carriers to make concessions by threatening to make unwarranted rate reductions. *Section 19 Investigation, 1935*, 1 U. S. S. B. B. 470, 501. See also *In the Matter of Rates, Charges and Practices of Yamashita Kisen Kabushiki Kaisha and Osaka Syosen Kabusiki Kaisya*, 2 U. S. M. C. 14. Similar expressions were made by the Secretary of Commerce in *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, 430–431, and in *Intercoastal Rates of Nelson Steamship Co.*, 1 U. S. S. B. B. 326, 334. These cases dealt with rates and practices in intercoastal commerce, and were adopted prior to the granting of the minimum rate power.

We find that Isbrandtsen's practice of quoting rates differentially lower than the rates of other carriers in the trade without giving proper weight to usual rate-making factors, is detrimental to the commerce of the United States, and creates a condition unfavorable to shipping in foreign trade arising from the competitive methods and practices of vessel operators. This finding does not in any way concern the reduction of rates based on fair competitive methods, nor the quantum of the flour rate hereinafter discussed.

Flour shippers are confronted with various forms of competition from shippers in Canada and Europe, and from millers at destination ports. The latter purchase grain in bulk in this country and Canada and mill it into flour. The Palestinian Government has gradually decreased the flour quota in recent years and increased the quota on grain. Further, the tariff rate, which is based upon the set-down cost of the flour, has been increased. Flour is revalued, as a rule, every three months, but immediately after the inauguration of the cut rate on flour the valuation was adjusted to compensate whatever advantage may have been gained by shippers resulting from this rate. Due to actual or threatened charter tonnage, grain moves as an "open" rate commodity, each line being free to quote its own rates.

The conference has contract and noncontract rates, the former usually being about 20 percent below the latter. A shipper is accorded the contract rate provided he agrees to ship all commodities over the conference lines even though the commodities are not specifically set forth in the contract. The contract rate for flour in 1938 was 40 cents per 100 pounds. During and prior to that year practically all flour shippers had signed contracts. Flour moves in substantial volume at regular intervals, approximately 26,000 tons being transported in 1938, principally to Egypt and Palestine. The conference was endeavoring to have flour shippers execute 1939 contracts at the 40-cent rate when Isbrandtsen announced its service and quoted a reduced rate. Several of the large shippers refused to sign the contracts, giving as their reasons the announcement of the service by Isbrandtsen at the reduced rate, coupled with the statement that it would offer differentially lower rates to obtain the business; the fact that all flour shippers had not signed the contracts; and the existence of a differential in rates between flour and bulk grain.

Pillsbury Flour Mills Co., the largest flour shipper in this trade, employs E. Ch. Dilaveri & Co., of Alexandria, Egypt, as its agent for that territory. Dilaveri is presently the agent for Isbrandtsen, having previously been the agent of Gardiaz Lines. Dilaveri has the routing of all Pillsbury's flour, the latter company following Dilaveri's instructions in order to retain its business. Dilaveri requested shipment over conference lines until the end of 1938, at which time, having been appointed Isbrandtsen's agent, it requested Pillsbury not to sign a new contract and to ship all flour via Isbrandtsen. This was given by Pillsbury as a further reason for not signing a conference contract for 1939.

As a result of Isbrandtsen's reduced rate and the request of Dilaveri, the conference found that it had lost the principal part of its flour business. The conference to meet this competition reduced its flour rate to 10 cents.

Although under the circumstances the conference felt that it had to take some action, this fact alone is not sufficient to justify the action taken, if detrimental to the commerce of the United States.

A rate may be so low as to be unreasonable, and 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.

All respondents have agents at most of the destination ports. In order to obtain the services of a reliable agent it generally is necessary to employ one who is engaged in other businesses, usually merchandising, sometimes importing. The evidence shows that practically all the lines pay their agents a flat fee to handle each ship entered, ranging from $25 to $125, varying according to the amount of inward cargo discharged. Some companies pay a commission on their inward cargo in lieu of a flat fee. On outgoing cargo a commission generally is paid. With the exception of one small shipment via Isthmian, upon which the freight amounted to $46, no company reported any instance in which the agent was also the consignee. Isbrandtsen pays Dilaveri at Alexandria an attendance fee for performing certain duties in connection with the handling of each ship, and in addition thereto 2½ percent of the freight on all inbound cargo and 5 percent on outbound cargo. Dilaveri also receives 2½ percent commission from Pillsbury on the laid-down price of the flour for his promotional work. Dilaveri is therefore in a preferred position in the flour market in that territory. It appears, that although purchased on a C. & F. or C. I. F. basis, that Dilaveri was, as a matter of fact, purchaser of all Pillsbury's flour, all of which was routed over Isbrandtsen on Dilaveri's instructions. 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 clearly, the paying to Dilaveri of a commission on his own cargo in addition to a fee for handling the ship results in a violation of section 16.

There is no evidence that the practices of Ellerman & Bucknall, Strick-Ellerman Line, Kerr Line, and States Marine Corporation are unlawful, detrimental to the commerce of the United States, or create a condition unfavorable to shipping in the foreign trade, nor is there evidence that the agents of these companies are shippers or receivers of cargo, although they have been, in certain instances, merchants as well as steamship agents. Such a relationship, without more, is not a violation of law. The investigation will be dismissed as to these respondents, but as some of them, since the hearing in this case, have become members of the conference, they will be subject to the conclusions herein with respect to conference practices.

The Examiner's proposed report in this proceeding recommended that rules and regulations be promulgated under authority of section 19 of the Merchant Marine Act, 1920, to meet the conditions found therein to be detrimental to shipping in the foreign trade. Since the issuance of this proposed report, conditions in the trade have materially changed as a result of the present European war. At the present time service has been discontinued by practically all carriers including Isbrandtsen-Moller. In view of this fact the issues in this case have become moot. Rules and regulations under the authority of section 19 of the Merchant Marine Act, 1920, will not, therefore, be promulgated, and an order will be entered discontinuing the proceeding.

2 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 16th day of July, A. D. 1940

No. 512

CARGO TO ADRIATIC, BLACK SEA, AND LEVANT PORTS

This case, instituted by the Commission by order dated February 17, 1939, as amended, pursuant to section 19 of the Merchant Marine Act, 1920, having been duly heard and full investigation of the matters and things involved having been had, and the Commission on the date hereof having made and filed a report finding that conditions unfavorable to shipping in the foreign trade between ports on the Atlantic coast of the United States and Adriatic, Black Sea, and Levant ports exist as a result of competitive methods and practices employed by owners, operators, agents, or masters of vessels of foreign countries, which said report is hereby referred to and made a part hereof.

It is ordered, That the order heretofore entered in this proceeding on February 17, 1939, as amended, be, and it is hereby, vacated and set aside and that this proceeding be discontinued.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 546

UNITED BOTTLE SUPPLY COMPANY, INC.

v.

SHEPARD STEAMSHIP COMPANY

Submitted June 10, 1940. Decided July 18, 1940

Rate charged on one shipment of second-hand bottles, in open top crates, from Oakland, Calif., to New York, N. Y., found inapplicable. Applicable rate not shown to have been unreasonable. Reparation awarded.

Benjamin Zuckerman for complainant.
Otis N. Shepard and *E. J. Martin* for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the examiner's proposed report on further hearing. Our conclusions differ from those recommended by the examiner.

Complainant corporation alleges that the rate charged on a shipment of empty second-hand glass bottles, in open-top wooden crates, made December 8, 1938, from Oakland, Calif., to New York, N. Y., was unduly prejudicial, unjustly discriminatory, and unreasonable in violation of sections 16, 17, and 18, respectively, of the Shipping Act, 1916. Reparation and a lawful rate for the future are sought. No evidence of undue prejudice or unjust discrimination was offered. Rates are per 100 pounds.

The shipment consisted of 613 crates of 16-ounce one pint glass bottles weighing 37,749 pounds. They were packed in two tiers per crate, those on the bottom standing neck upright and those on the top inverted with necks fitting between the lower rows. They protruded above the open tops of the crates and, being of uniform size, formed a flat top surface. The crates were not of uniform size. The value of the bottles is said to have been 87 cents per 100 pounds.

Prior to the time of shipment complainant requested defendant and other intercoastal carriers to quote the applicable rate on second-hand bottles moving from Oakland to New York. Defendant quoted a rate of 50 cents and the other carriers quoted 63 cents. When the shipment was tendered defendant at Oakland, a rate of $1.25 was demanded and collected from the consignor. Complainant seeks reparation based upon the difference between the rates quoted and charged.

The $1.25 rate charged is named in Item 215 of defendant's east-bound tariff, and applies on "carriers, empty, returning, prepaid or guaranteed, on or under deck, ship's option, viz:" Under that general heading are included "bottles, glass, empty, second-hand (not syphon bottles), in crates or in boxes, O. R. B."[1] As the bottles in question were not "returned" bottles, Item 215 obviously did not apply.

Item 165 of defendant's east-bound tariff, which complainant seeks to have applied, names a 50-cent carload rate on common bottles, owner's risk of breakage, and released to a valuation not exceeding $5 per 100 pounds for shortage and to be so expressed on the bill of lading. That tariff contains no specific commodity rate on bottles unreleased, but Rule 55 provides for the application of the west-bound rate when a specific commodity rate is not named. Item 1480 of the west-bound tariff provides a carload rate of $1, minimum 24,000 pounds, on "bottles * * *, common, unreleased." Since there was no release of valuation in this case, the 50-cent rate in Item 165 is not applicable, and the $1 rate in Item 1480 should have been charged.

Complainant relies solely upon the misquotation of the rate and the contention that the rate on second-hand bottles should not exceed that on new bottles, erroneously assuming that the 50-cent rate would have applied on new bottles shipped under the same conditions. The applicable rate of $1 would have applied on new bottles not shipped at a released valuation. Nor is there any evidence that the 63-cent rate quoted by other carriers would have applied under the same conditions. Complainant asserts that the transcontinental railroad rate was $1.21, but the record does not show whether that rate applied subject to a released valuation and on bottles packed in open crates. Complainant has shipped no other bottles intercoastally eastbound since 1932 or 1933.

Defendant has carried few shipments of bottles. It maintains that any rate less than the applicable rate is unremunerative and that bottles require careful handling to avoid breakage. The stowage fac-

[1] Owner's risk of breakage.

tor is given as about 200 cubic feet per ton. Heavy commodities cannot be stowed on top of bottles.

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. The fact that a 50-cent rate applied on bottles shipped under a released value is not proof that the applicable rate was unreasonable.

On this record we find that the rate charged was inapplicable, that the applicable rate was $1, and that the applicable rate is not shown to have been unreasonable or otherwise unlawful. We further find that complainant received the shipment as described, bore the charges thereon, that it was damaged thereby and is entitled to reparation in the sum of $94.37. 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 18th day of July A. D. 1940

No. 546

UNITED BOTTLE SUPPLY COMPANY, INC.

v.

SHEPARD STEAMSHIP COMPANY

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

It is ordered, That the defendant, Shepard Steamship Company, be, and it is hereby, authorized and directed to pay to complainant, United Bottle Supply Company, Inc., New York, N. Y., on or before 30 days after the date hereof, the sum of $94.37 as reparation on account of inapplicable charges collected for the transportation of 613 crates of empty, second-hand glass bottles from Oakland, Calif., to New York, N. Y., in December 1938.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 552

GREEN COFFEE ASSOCIATION OF NEW ORLEANS

v.

SEAS SHIPPING COMPANY, INC., ET AL

Submitted June 12, 1940. Decided July 18, 1940

Violations alleged of sections 15, 16, and 17 of the Shipping Act, 1916, as amended, in respect to proposed rate on shipments of green coffee of African origin to New Orleans via New York higher than on shipments to New York, not shown.

Louis A. Schwartz for complainant.

Frank V. Barns, *Daniel Flynn*, *Bailey M. Clark*, *Arthur E. D'Herete*, *Harold L. Boihem*, and *L. A. Parish* for defendants.

Charles R. Seal for Port of New York Authority, Shippers Conference of Greater New York, Boston Port Authority, and Baltimore Association of Commerce; *Rene A. Stiegler* for Board of Commissioners of Port of New Orleans, St. Louis Chamber of Commerce and Mississippi Valley Association; *J. D. Youman* for Public Belt Railroad; and *E. H. Thornton* and *C. A. Mitchell* for New Orleans Joint Traffic Bureau, interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

Complainant is an association of companies at New Orleans, La., importing green coffee from British African colonies and Belgian Congo. Shipments move principally through the port of Mombasa, East Africa.

Defendants Seas Shipping Company, Inc., and American South African Line, Inc., hereinafter referred to as Robin Line, and A. S. A.

Line, respectively, or as the ocean lines, are common carriers by water engaged in direct service between ports in South and East Africa and North Atlantic ports of the United States. Defendants Seatrain Lines, Inc., Mooremack Gulf Lines, Inc., Pan Atlantic Steamship Corporation and Southern Pacific Steamship Lines (Morgan Line), hereinafter called coastwise lines, operate as common carriers by water between North Atlantic ports and South Atlantic and Gulf ports of the United States. The ocean lines have joined with coastwise lines in approved through route agreements [1] covering transportation of general cargo under through bills of lading from Mombasa and other African ports to designated Gulf ports of the United States, including New Orleans, with transshipment at a North Atlantic port.

In October 1939, the ocean lines notified shippers that on shipments of green coffee from South and East Africa to New Orleans transshipped at New York a rate $3 higher per ton of 2,240 pounds than the New York rate would be charged. Prior thereto the through rate via that route was the same as that charged on shipments consigned to importers at New York. Complainant alleges that the discontinuance of rate parity is in violation of section 15 of the Shipping Act, 1916, as amended; that it will result in unjust discrimination and undue and unreasonable preference and prejudice prohibited by sections 17 and 16 thereof; and that the contemplated action is unjust and unreasonable under section 18 of that act. The Board of Commissioners of the Port of New Orleans, the New Orleans Joint Traffic Bureau, The New Orleans Public Belt Railroad, the St. Louis Chamber of Commerce, and the Mississippi Valley Association intervened on behalf of complainant. The Port of New York Authority, Shippers Conference of Greater New York, Baltimore Association of Commerce, and Boston Port Authority intervened on behalf of defendants.

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.

Agreements Nos. 6457, 6473, 6415, and 7028 provide that through rates, to be named by the ocean lines, on traffic within the scope of any approved conference agreement will be no lower than the applicable rate established under such conference agreement, and that

[1] Nos. 6457, 6473, 6415, and 4734 between Robin Line and Pan-Atlantic S. S. Corp., Southern Pacific Steamship Lines (Morgan Line), Mooremack Gulf Lines, and Seatrain Lines, Inc., respectively. Nos. 7028, 3611, and 4972 between American South African Line and Pan-Atlantic S. S. Corp., Southern Pacific Steamship Lines (Morgan Line), and Seatrain Lines, Inc., respectively.

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on traffic not within the scope of a conference through rates will be those filed with the Commission by the parties. Agreements Nos. 4972, 3611, and 4734 provide, in substance, only that through rates will be no lower than conference rates or rates for direct shipment. All agreements provide that through rates, also transshipment and other expenses will be apportioned 60 percent to the originating carrier and 40 percent to the connecting coastwise on-carrier.

Defendant A. S. A. Line is a member of the South Africa/U. S. A. Conference and a party to Conference Agreement No. 3579, approved October 22, 1934, which includes transportation from ports in Africa (Mombasa to Lobito, both inclusive) * * * to New York or other United States ports (from Galveston, Tex., to Portland, Maine, both inclusive). There is no direct line service to New Orleans. With the exception of traffic to Brownsville, Port Isabel, and Corpus Christi, Tex., no traffic can move under the transshipment agreements which is not within the scope of the conference. The only tariff of record covering the homeward trade is a conference tariff which names no rates from Mombasa.

Shipments to New Orleans during 1938 aggregated 27,772 bags of 190 pounds each. Through October 1939, 23,651 bags had been received. Shipments to New York during the same periods aggregated 134,504 and 93,921 bags, respectively, of corresponding weight. Shipments to New Orleans have moved via New York under the transshipment agreements mentioned and via ocean lines to Port of Spain, Trinidad, and thence by Aluminum Line. Facilities at Trinidad for transshipping are said to be hazardous, but notwithstanding that alleged disability the bulk of the movement to New Orleans during 1938 and 10 months of 1939 has been transshipped there. The rate via that route has been the same as the direct-line rate to New York. Shipments to Canada also have been transshipped there to Canadian or British vessels to permit Canadian importers to obtain a customs advantage.

Green coffee is sold to roasters located at interior points. A carload shipment usually consists of the various grades used in making different blends. Territory considered as naturally tributary to New York and New Orleans is generally divided by the lines of the Chicago, Indianapolis and Louisville Railroad from Chicago through Indianapolis, and the Cleveland, Cincinnati, Chicago and St. Louis Railway to Cincinnati. Certain points on or adjacent to the line and in Central Freight Association territory are stated to be highly competitive. Differentials in rail rates from New York and New Orleans to principal competitive points stated below range from 1 to 12 cents per 100 pounds in favor of the latter port. The net result, in cents per 100 pounds, of the protested change to New Orleans importers is shown by the following tabulation:

Interior destination	Rail rates from—		Rail differential favoring New Orleans	Ocean differential against New Orleans	Thru-rate differential against New Orleans
	New York	New Orleans			
Milwaukee, Wis.	44	43	1	13.4	12.4
Chicago, Ill	44	41	3	13.4	10.4
Cincinnati, Ohio	39	35	4	13.4	9.4
Louisville, Ky	44	35	9	13.4	4.4
St. Paul, Minn	66	54	12	13.4	1.4
Minneapolis, Minn	66	54	12	13.4	1.4
Duluth, Minn	60	60		13.4	13.4

New Orleans importers claim that if compelled to pay an ocean rate $3 per ton higher than is charged on shipments to New York, the above-mentioned markets will be closed to them; that the loss of these markets to New York competitors will result in the loss of business in noncompetitive markets, since New Orleans cannot handle grades of coffee not readily saleable; that a decline in sales of coffee from other origins will also result because it will be impossible to carry sufficient stocks to supply noncompetitive territory if denied the opportunity to compete in the principal markets; and that if roasters are unable to obtain African coffee for blending from New Orleans, orders for other grades of coffee also will be placed elsewhere.

The average gross maximum profit to importers is approximately 15 cents per 100 pounds. Importers controlling branch offices at New Orleans in some instances maintain branches or separate companies at New York, and can supply purchasers at competitive interior points from New York. By shrinking their profit somewhat, others who do not have that advantage can meet the competition of the New York importer in at least four of the seven principal interior markets. Dependent upon the availability of a route to New Orleans via Trinidad at the same rate as that charged on shipments direct to New York, there will be opportunity for all New Orleans importers to compete. Defendants, through counsel, indicate that the differential also will apply via Trinidad. The level of the rate via that route is not in issue. The distance from Mombasa to New Orleans is slightly greater than to New York, and the cost of transshipment also may be somewhat more at Trinidad than at New York, but such differences do not appear to warrant a higher rate than at New York. Defendants infer that the route via Trinidad heretofore available and actually used to effect deliveries at New Orleans, may be discontinued. However, as long as shipments to Canada are transshipped there, New Orleans shipments could not reasonably be refused.

Defendants feel that parity of rates to New York and New Orleans cannot be continued because of the expense to them of transshipment and on-carriage. A. S. A. Line, for instance, shows that the actual cost of transshipment amounts to $8.05 per ton, consisting of $7.31 paid to the coastwise on-carrier and 74 cents interchange cost at New York which leaves only $8.45 as its gross revenue—slightly more than 50 percent of the $16.50 gross revenue received on shipments to New York. No recent increase in transshipment cost was shown, and complainant contends that since the situation in respect to transshipment cost is not now materially different than when rate parity was voluntarily established, there is no reason for an increase in the through rate. Complainant also points to other trades wherein there is rate parity to New Orleans and other United States ports on shipments of green coffee via direct or transhipment routes. Specifically mentioned are shipments from Brazil, Colombia, and Haiti; from Ecuador to New Orleans and San Francisco transshipped at the Canal Zone, the distance to San Francisco being 600 miles greater than to New Orleans; also shipments from Dutch East Indies to New York and to New Orleans via New York. The contention is made that a similar practice should prevail in this trade. 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. For the same reason the decisions relied upon by complainant are not controlling.

It also appears that A. S. A. Line, as an operating convenience, sometimes transships at New York cargo destined to Boston, Baltimore, Philadelphia, and Newport News, the cost of on-carriage from New York to the destination port being absorbed by that carrier; and that 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. Robin Line observes similar practices. In such instances carriers feel that costs incident to direct service to all destination ports would greatly exceed amounts absorbed by them and that the present practices result in economies not otherwise possible. Complainant contends that shipments billed to New Orleans should be accorded similar treatment. Distances from New York to other North Atlantic ports do not exceed a few hundred miles. The distance from New York to New

Orleans is 1,703 miles. Ocean carriers hold out direct-line service to all North Atlantic ports whereas only a transshipment service is offered to New Orleans. The geographical relationship between New York and New Orleans is not comparable with that between ports within the North Atlantic range. Carriers are willing to accord rate parity with New York if and when direct-line service is established, but we would not be warranted in compelling rate parity on shipments via New York under the circumstances shown.

Allegations involving section 15 are based upon a contention that the change in the through rate covering transportation under transshipment agreements should be filed and approved before it may become effective. The necessity for approval is urged particularly because the change in rate involved disturbs prior rate practices. Defendant Robin Line contends that, since the traffic is within the scope of the South Africa/U. S. A. Conference and the agreements provide only that the rate charged shall not be less than the rate of the conference, there is no rate-filing obligation upon it. The position of A. S. A. Line is not clear. It, as a member of the conference, has engaged in transporting coffee from Mombasa to both New York and New Orleans. Since Mombasa is within the scope of the conference agreement, the rates from that port should be published in the conference tariff.

There remains for consideration the question whether an obligation to file the through rate also rests upon parties to the transshipment agreements. Except in the case of approved conferences, and in a recent proceeding involving nonconference lines, *In the Matter of Rates, Charges and Practices of Yamashita, and O. S. K.*, 2 U. S. M. C. 14, the filing of rates covering import traffic has not generally been required. In the latter case the filing requirement was pursuant to a rule or regulation prescribed under authority of Section 19 of the Merchant Marine Act, 1920. Coastwise carriers publish and file a local rate on green coffee from New York to New Orleans. Such carriers did not name or participate in the naming of the through rates on shipments moving under the transshipment agreements. That cargo originated at ports thousands of miles away and was subject to conditions of which they, as coastwise carriers in the United States, could be expected to have little, if any, knowledge. In this respect the situation of these carriers is no different than that of the great majority of coastwise carriers participating in the through movement of shipments originating overseas. They are aware in a general way of the rate levels prevailing in the various trades and that the economies of transportation ordinarily will not permit such rates to drop to a level where the agreed percentage accruing to the delivering lines would be unremunerative. To avoid a similar result with respect to individual commodities the delivering lines in many instances specify in their transshipment agreements that in no event shall the net revenue accruing to such carriers be less than a stated minimum. This protective provision has been incorporated in all but one of the agreements involved in this proceeding. In *Section 15 inquiry*, 1 U. S. S. B. 121, the filing requirement of Section 15 was interpreted as not to include routine operations relating to current rate changes and other day-to-day transactions. 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 agreements and therefore are not routine, establishment and, revision 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. This record does not justify departure from the present procedure.

The contention also is made that because of a provision in Robin Line's operating-differential subsidy contract, executed October 14, 1938, pursuant to provisions of the Merchant Marine Act, 1936, which requires, among other things, the establishment of rates and practices on a basis satisfactory to the Commission, the proposed change in rate must be approved before it may become effective. So broad an interpretation of the contract provision was neither contemplated nor intended. In 1935 a rate war in the South African trade, in which both Robin and A. S. A. Line participated, depressed rates to an unreasonably low level. *Seas Shipping Company* v. *American South African Line, Inc., et al*, 1 U. S. S. B. B. 568. 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. The purpose of the contract provision mentioned was to prevent, if possible, the use of subsidy payments under the contract to offset losses resulting from destructive competition between American-flag carriers operating in the same trade. No occasion has yet arisen requiring action by us to invoke the rate control provision of the contract with Robin Line to which our attention has been directed.

We find that alleged violations of sections 15, 16, and 17 of the Shipping Act, 1916, as amended, have not been shown. An order dismissing the complaint will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION held at its office in Washington, D. C., on the 18th day of July A. D. 1940

No. 552

GREEN COFFEE ASSOCIATION OF NEW ORLEANS

v.

SEAS SHIPPING COMPANY, 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.

[SEAL]

(Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 511

New Automobiles in Interstate Commerce

Submitted May 27, 1940. Decided September 4, 1940

Agreements of certain respondents engaged in transportation on the Great Lakes found to be subject to section 15 of the Shipping Act, 1916. Practices thereunder found not to result in departures from their tariffs in violation of section 2 of the Intercoastal Shipping Act, 1933, as amended, or to create undue preference in violation of section 16 of the Shipping Act, 1916.

Persons operating hulk freighters renting deck space to subject common carriers for the transportation of automobiles found not to be common carriers subject to the Shipping Act, 1916, as amended.

Proceeding discontinued.

Merrill Shepard, *E. S. Ballard*, *W. F. Price*, and *A. R. Sheff* for Minnesota-Atlantic Transit Company; *Nuel D. Belnap* and *A. L. Crandall* for Western Transit Company; *Frank W. Sullivan* for Great Lakes Transit Corporation; *Milton P. Bauman* and *S. S. Eisen* for Nicholson Universal Steamship Company; *Roy Van Beckum* for Wisconsin and Michigan Steamship Company; *Arvid B. Tanner* and *L. W. Patterson* for Detroit & Cleveland Navigation Company; *L. A. Larzelere* for Luckenbach Gulf Steamship Company, Inc.; *M. G. de Quevedo* and *W. M. Carney* for members of the Intercoastal Steamship Freight Association, except Isthmian Steamship Company; *Alexander Gawlis* for Merchants & Miners Transportation Company; *Julian M. King* for Agwilines, Inc., Mooremack Gulf Lines, Inc., Pan-Atlantic Steamship Corporation, Lykes Coastwise Line, Inc., Southern Pacific Steamship Lines "Morgan Line," and Southern Steamship Company; *Parker McCollester*, *Nicholas Kelley, Jr.*, *N. J. Brennan*, and *C. E. Bell* for Chrysler Corporation; *Elmer W. Cart* and *J. C. Winter* for Board of Railroad Commissioners of North Dakota and Chamber of Commerce of Fargo, North Dakota; *Harry Ames* for National Automobile Transporters Association; *C. R. Scharff*, *E. F. Stewart*, and *Denton Jolly* for General Motors Corporation; *H. C. Barron*, *L. N.*

Bradshaw, and *R. E. Wedekind* for various rail carriers; *Everett B. Lackie* for K. U. K. Auto Transit and K. & C. Transport Company; *Allen Dean* for Detroit Board of Commerce; *H. J. Wagner* for Norfolk Port-Traffic Commission; *Robert Quirk* for Automobile Contract Holders Association; and *R. P. Paterson* for Pere Marquette Railway Company.

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 differ somewhat from those recommended by the examiner.

This is an investigation upon our own motion to determine the lawfulness of the rates, charges, rules, regulations, and practices of carriers subject to the Shipping Act, 1916, as amended, for and in connection with the transportation of automobiles, set up, on the Great Lakes, including the use by one carrier or person of vessel space of another in carrying on the business of a common carrier; and to determine the status of such carriers and of carriers owning the vessel space so furnished. Subsequently, the scope of the proceeding was enlarged to determine the lawfulness of the rates, charges, rules, and regulations of carriers subject to the Shipping Act, 1916, as amended, for and in connection with the transportation of new automobiles, set up, from and to all ports in the continental United States, other than the territory of Alaska. Thus broadened, it more nearly coincided with the extent of the investigation initiated by the Interstate Commerce Commission under its Docket No. 28190. Hearings in the two proceedings have been held together and separately. The matters dealt with in this report were heard separately and pertain only to the transportation of automobiles on the Great Lakes.

The respondents principally concerned are Minnesota-Atlantic Transit Company, Great Lakes Transit Corporation, Western Transit Company, and Nicholson Universal Steamship Company, hereinafter designated Minnesota-Atlantic, Great Lakes Transit, Western Transit, and Nicholson Universal, respectively. Minnesota-Atlantic operates between Buffalo, Detroit, and Duluth; Great Lakes Transit operates between Buffalo, Erie, Cleveland, Detroit, and Lake Michigan and Lake Superior ports; Nicholson Universal operates between Detroit, Buffalo, Cleveland, Green Bay, Milwaukee, and Duluth; and Western Transit operates between Detroit, Duluth, and Milwaukee. The first two transport package freight, such as dairy products, flour and miscellaneous manufactured goods, and automobiles, while the latter two transport automobiles only. Carriers engaged primarily in the transportation of ore or other commodities in bulk which provide vessel space, also are named as respondents.

It is a common practice on the Great Lakes for common carriers by water receiving automobiles for transportation to have the actual carriage performed on vessels which they neither own nor control. It is the lawfulness of this practice and of the status of all carriers involved which will be considered in this report.

Minnesota-Atlantic has been in operation since 1923. It ordinarily employs five package-freight steamers, each capable of carrying about 2,800 tons of package freight and approximately 40 automobiles. In 1925 or 1926, being in need of additional vessel space, it made arrangements to use the spar decks of bulk freighters operating on the Great Lakes to accommodate some of the automobiles tendered to it for transportation. These freighters, which carry iron ore or other bulk commodities in their holds, have space on deck for from 50 to 140 automobiles each. Though not always available to transport automobiles, they provided a means of appreciably supplementing Minnesota-Atlantic's carrying capacity and have since been employed by all of the respondents mentioned above.

Western Transit is said to have engaged in transportation as a common carrier of automobiles for many years. It has dock space under lease at Detroit and Duluth, loads and unloads the automobiles, furnishes the chain hold-downs and wooden wheel blocks used by it in making the automobiles secure on deck, issues bills of lading, assumes liability for cargo loss and damage during the course of transportation, has joint rates with carriers by rail, highway, and water, and files tariffs with the Interstate Commerce Commission as well as this Commission. Western Transit has no ships of its own and relies upon space on bulk freighters, except for such space as it may be able to secure under an arrangement with Great Lakes Transit, described below. In this respect its operations are similar to those of Consolidated Olympic Line, which recently was held to be a common carrier in *Agreements 6210, 6210-A, 6210-B, 6210-C, and 6105*, 2 U. S. M. C. 166.

The operators of the bulk freighters referred to do not hold themselves out to transport automobiles as a public employment. They do not serve automobile manufacturers or dealers, or enter into any arrangements with shippers or receivers of the automobiles transported. They publish no tariffs, issue no bills of lading, assume no responsibilities for the safe carriage of the automobiles, and perform no labor in connection with the loading and unloading. Such transportation of automobiles as they undertake for other water carriers depends upon the schedule permitted by the movement of their bulk cargo and is the subject of special and individual contracts or arrangements between them and such other carriers. In *Intercoastal Charters*, 2 U. S. M. C. 154, we found that the owner which chartered his ship to a shipper under a time or voyage charter must file his rates but that he need not do so when chartering the ship under a similar charter arrangement to a carrier which has filed its regularly established rates. Similarly, we conclude here that the bulk freighters on the Great Lakes which do not hold themselves out to serve the public, which have no contacts with shippers, and which lease part of their vessel space to subject common carriers, are not common carriers as defined in section one of the Shipping Act, 1916, as amended, and that the transportation of automobiles by them for carriers so subject does not result in violation of the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933, as amended. Common carriers, however, should file their charter parties with the Commission as a matter of information.

But certain agreements under which the transportation is performed by subject carriers present a different situation. On March 30, 1939, Minnesota-Atlantic and Great Lakes Transit entered into an agreement, which was approved by the Commission as Agreement No. 6834, whereby each undertook to operate a minimum of three vessels in regular service in the carriage of package freight and automobiles between Duluth and other Lake Superior ports, on the one hand, and Detroit and Buffalo and other Lake Erie ports, on the other hand, the sailings from Duluth of vessels of one line to alternate with those of vessels of the other line, and additional service to be furnished by the operation of a mutual vessel or mutual vessels, so called. They further agreed, among other things, that each, to the extent of the capacity unused in the transportation of its own cargo, would transport, at the request of the other, such of the latter's cargo in excess of available vessel space as might be awaiting transportation. Prior to the 1938 season each carrier had operated five vessels on regular schedules from Duluth to Buffalo. Faced with continuing deficits in 1938 they entered into an agreement similar to No. 6834 in an endeavor to curtail expenses without loss of tonnage or impairment of service. Under this agreement they were able to reduce the number of vessels to four each, handle the same tonnage, and give approximately the same service. Under Agreement No. 6834 it was agreed that in the case of automobiles the rates to each other from Detroit to Duluth would range from $7 to $11 per vehicle, depending upon the overall measurement, and that the rate to each other from Detroit to Buffalo would be $4.50 per vehicle, regardless of size. Subsequently, by an agreement approved as No. 6834–1, the rate from Detroit to Duluth was made $9.50 per automobile. The local tariff rates of Minnesota-Atlantic and Great Lakes Transit filed with the Commission on automobiles from Detroit to Duluth range from $21 per vehicle upward, and the local tariff rates of Great Lakes Transit filed with the Commission from Detroit to Buffalo range from $14.50 per vehicle upward. Minnesota-Atlantic has canceled its local tariff rates on automobiles from Detroit to Buffalo.

Great Lakes Transit has also entered into agreements with Nicholson Universal and Western Transit, approved as Nos. 7079 and 6754, respectively, whereby, among other things, the two latter respondents agree to pay to it for transportation from Detroit to Milwaukee all of their tariff rate in excess of $3.35 per automobile when such rate is $12, or, if the rate exceeds that figure, one-half of the excess over $12 in addition, or, if the rate be less than $12, $8.65 per automobile minus one-half of the difference between $12 and the lower rate. Nicholson Universal and Western Transit's tariff rate is $15 per automobile. Great Lakes Transit therefore receives from either of them a rate of $10.15 per vehicle. Great Lakes Transit's local tariff rate also is $15. These two agreements, unlike Agreement No. 6834, do not provide for reciprocal transportation. They contain no provision for the transportation of automobiles by Nicholson Universal or Western Transit for Great Lakes Transit.

The importance of the agreements in effecting economies is emphasized. It is testified that there are times when as many as 400 or 500 automobiles per day are tendered to Minnesota-Atlantic for transportation and other times when the number received may be less than 30 or 40. Thus, it is pointed out, if it operated vessels sufficient to give prompt service to shippers during the peaks of movement, it would have a large amount of surplus vessel space on hand when the movement was slack. On the other hand, with no additional space to supplement its minimum requirements, it would be unable to meet the demands of shippers when traffic was at its peak without delay to the shipments tendered. The agreements provided a means of taking care of cargo overflow without operating more vessels. Under Agreement No. 6834, for instance, if Minnesota-Atlantic had 40 automobiles on hand and could accommodate only 30, the excess could be turned over to Great Lakes Transit and move forward perhaps the next day. Nicholson-Universal suggests that the agreements are also desirable in instances where automobiles are offered in insufficient number to warrant the dispatch of a boat to lift them.

While automobiles are the only traffic involved in this proceeding, Minnesota-Atlantic and Great Lakes Transit call attention to the fact that they are engaged in the carriage of general cargo and that the agreements between them relate to package freight as well as automobiles. They assert that dairy products provide a principal source of revenue and that it would not be possible for them to retain this business if they were unable to give the dairy shipper the fast and frequent service which the agreements make possible.

The rates of compensation specified in the agreements on automobiles were arrived at by adding to the rates of bulk carriers the cost of insurance and such other sums as were acceptable to the parties. That they differ from the tariff rates on file is readily admitted. It is urged by respondents that agreements between common carriers by water giving or receiving special rates or providing for exclusive, preferential, or cooperative working arrangements are expressly recognized by section 15 of the Shipping Act, 1916, and that the agreements here involved are essential to the making of vitally necessary reductions in operating costs. Section 15 is compared with section 5 (1) of the Interstate Commerce Act, which empowers the Interstate Commerce Commission to approve and authorize the division of traffic and earnings between carriers, and our attention is called to a number of arrangements approved under the latter section. Also referred to are arrangements between express companies and common carriers by railroad, rail-carrier arrangements for the division of joint rates over through routes, and switching arrangements between rail carriers. Section 2 of the Intercoastal Shipping Act, 1933, as amended, provides that no subject carrier shall charge or demand or collect or receive a greater or less or different compensation for transportation or for any service in connection therewith than the rates, fares, and/or charges which are specified in its schedules filed with the Commission and in effect at the time. The purpose of this section was to give publicity to the rates charged, to prevent prejudice and discrimination in the charges made, and to prevent rebates which would result from lack of publicity. Here, no prejudice or discrimination results from the charges assessed against the shippers of automobiles. The amounts retained by the respective carriers are in the nature of divisions of the through rates published and filed with us. The arrangement is one which is specifically authorized by section 15 of the Shipping Act, 1916, which, subject to prior approval by us, permits common carriers to apportion traffic and to enter into cooperative working arrangements. In our opinion section 2 of the Intercoastal Shipping Act, 1933, as amended, must be interpreted in the light of the specific provisions of section 15 of the Shipping Act, 1916. Here, the agreements outlining the arrangements were submitted by the carriers and were approved by us under that section.

We find that Minnesota-Atlantic and Great Lakes Transit in transporting automobiles for each other under Agreement No. 6834, as amended by No. 6834–1, and Great Lakes Transit in transporting automobiles for Nicholson Universal and Western Transit under Agreements Nos. 7079 and 6754, respectively, do not depart from their respective applicable tariff rates on file in violation of section 2 of the Intercoastal Shipping Act, as amended.

Other agreements referred to of record have expired by their terms or have been canceled, but it is stated that Minnesota-Atlantic and Great Lakes Transit intended to revive or renew No. 6801 which provided that Great Lakes Transit would place and maintain in service for the navigation season of 1939, or such part or parts thereof as might be agreed upon, a vessel or vessels acceptable to Minnesota-Atlantic and to it, when available, for their joint use in the transportation of automobiles and other freight between Buffalo and Detroit and between Buffalo or Detroit and Duluth upon terms and conditions therein specified; and that among other things, such mutual vessel or vessels would be operated by officers and crew selected and paid by Great Lakes Transit, but at the joint expense of the parties as therein detailed. This agreement is similar in principle to those hereinbefore discussed and may be revived subject to approval by us under section 15 of the Shipping Act, 1916.

An order discontinuing the proceeding will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 4th day of September A. D. 1940

No. 511

NEW AUTOMOBILES IN INTERSTATE COMMERCE

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.) R. L. MCDONALD,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 522

GRAYS HARBOR PULP & PAPER COMPANY

v.

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

Submitted November 1, 1939. Decided September 10, 1940

Defendants' rates on printing paper from Grays Harbor, Wash., to ports in the Orient found unduly prejudicial and unjustly discriminatory but not otherwise unlawful.

De Forest Perkins for complainant.

Joseph J. Geary, *Gilbert C. Wheat*, and *Theodore M. Levy* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSON:

Exceptions were filed by defendants to the report proposed by the examiner, complainant replied, and the case was orally argued. Our conclusions differ from those recommended by the examiner.

Complainant is engaged in the operation of a paper mill at Hoquiam, Grays Harbor, Wash. Defendants[1] are some of the members of the Pacific Westbound Conference, an association of common carriers whose conference agreement embraces the trades from Pacific coast ports of North America to the Philippine Islands, China, Japan, Korea, Formosa, Siberia, Manchuria, and Indo-China.

Complainant alleges that defendants' rates and minimum-tonnage basis on printing paper from Grays Harbor to the Orient are unduly prejudicial, unjustly discriminatory, unreasonable, and in violation of section 205 of the Merchant Marine Act, 1936. It seeks the same rates on printing paper from Grays Harbor to the Orient as defendants charge on such traffic from Seattle or Tacoma, Wash., to

[1] A. F. Klaveness & Co., A/S, a corporation doing business under the name of Klaveness Line; Rederi A–B Pulp and Rederi A–B Jamaica, corporations doing business under the name of Salen Line, and States Steamship Company.

the Orient, defendants to be permitted to load at docks in Grays Harbor at their discretion. Rates and charges will be stated in cents per 100 pounds or in dollars per net ton.

Defendants contest our jurisdiction to determine the reasonableness of the rates involved. Section 18 of the Shipping Act, 1916, requires just and reasonable rates to be established, observed, and enforced by every "common carrier by water in interstate commerce," which term is defined by section 1 of the act to mean "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 * * *." The chief movement of complainant's printing paper is to Manila, P. I. Defendants contend that the Philippine Islands are not a State, Territory, District, or possession of the United States and that, therefore, by engaging in transportation between a State of the United States and the Philippines, they are not common carriers by water in interstate commerce. Our findings herein make it unnecessary to pass upon the jurisdictional question.

Complainant's paper mill represents an investment of approximately $3,000,000, has a capacity of about 20,000 to 22,000 tons of printing paper per year, and employs about 240 men. It has been in operation since 1929. Adjacent to the mill, complainant maintains a private dock. For calls at this dock for printing paper destined to the Orient defendants require the payment of an arbitrary of $4.90, in addition to a rate of $9,[3] which is the rate applicable over their lines from Seattle or Tacoma to the Orient, or $13.90. Calls at complainant's dock are also subject to a requirement that a minimum of 500 tons of cargo be available when vessel is ready to load or that freight charges be paid on the basis of such minimum. The arbitrary is equivalent to the sum of a rail rate of 17 cents from Hoquiam to Tacoma or Seattle and a car-unloading charge, a handling charge, and a wharfage charge of 2.5 cents each. Inasmuch as the amount of the arbitrary applicable to shipments made from Grays Harbor is the same as the cost of carriage to shipside at Tacoma or Seattle and since complainant does not usually have 500 tons of cargo to move at one time, it ships over the lines of defendants and other members of the conference from the two latter ports, where the minimum-tonnage basis does not apply.

Complainant's shipments constitute more than 20 percent of the printing paper moving from the Pacific Northwest over the lines of

[3] This is a contract rate. The noncontract rate is $12.

the conference. In 1938, complainant shipped to the Orient, principally to Manila, approximately 2,300 tons of printing paper and in four months in 1939 approximately 1,000 tons, or about 12 percent of its total volume, the remainder being shipped to domestic markets and to Havana, Cuba. In the domestic trade from Pacific to Atlantic coast ports, intercoastal carriers do not maintain either a minimum-tonnage requirement or an arbitrary on printing paper from Grays Harbor, and complainant has the privilege, of which it takes advantage, of shipping by way of San Francisco at the same rate as applies on direct shipments from Grays Harbor. Complainant states that there likewise is no such arbitrary or tonnage requirement maintained by the conference in the trade from Grays Harbor to Europe. However, there is no movement of printing paper in the latter trade.

Complainant's shipments of printing paper to the Orient move regularly and average about 200 tons per month. Pursuant to an agreement between complainant and members of the Pacific Westbound Conference, such shipments are confined to the lines of defendants and other members of the conference. If the arbitrary were eliminated and the minimum-tonnage basis reduced to accommodate complainant, the latter would ship to the Orient directly from Grays Harbor instead of through Seattle or Tacoma.

Vessels of defendants have been in Grays Harbor when complainant was shipping printing paper to the Orient by way of Tacoma or Seattle. They pass complainant's dock. In fact, they stop at complainant's dock to lift wood pulp when the required minimum quantity is available. Klaveness Line's vessels call at Grays Harbor about once a month; the other defendants call there occasionally. Vessels of Klaveness Line call on their way from Portland to Seattle and Tacoma. They go into Grays Harbor to lift lumber. To shift a vessel from the lumber dock to the dock of complainant requires from 30 minutes to 2 hours, the average time being less than an hour. The expense involved in such a shift for pilot, linemen, insurance and social-security tax amounts to $23.85, straight time, or about $28, overtime. Klaveness Line allows two days for a call at Hoquiam. If it loaded printing paper in addition to lumber, it would have to allow, in most cases, an extra day. The ship's time is worth approximately $400 a day. The revenue from 200 tons of printing paper at a rate of $9 would be $1,800.

There is no arbitrary or minimum-tonnage requirement applicable to lumber. Nor is there an arbitrary on wood pulp, which, as stated, is lifted at complainant's dock when the required minimum quantity is available. Printing paper is loaded about as fast as wood pulp, that is, from 25 to 40 tons per hour per gang, and faster than lumber, which is loaded at a rate of from 10,000 to 16,000 feet per hour per gang or from 15 to 24 tons per hour per gang. Printing paper is worth between $90 and $100 per ton, this being more than twice the value of wood pulp, which in turn has a greater value than lumber. No claims for damage have resulted from complainant's shipments. The evidence is that printing paper is desirable cargo. The cost to defendants is no more for shipments of printing paper from Grays Harbor to the Orient than for shipments from Seattle or Tacoma to the Orient, and defendants' witness states that his company, Klaveness Line, would be willing to carry printing paper from Grays Harbor to the Orient at a rate of $9, eliminating the arbitrary, were it not for instability in the trade that might result if other members of the conference serving Seattle and Tacoma were deprived of the opportunity to share in the traffic. By sacrificing some of this traffic, defendants apparently obtain business or other benefits that otherwise would not be secured, the conference being, as this witness puts it, a matter of give and take.

With respect to the allegations of unjust discrimination and undue prejudice, defendants stress the fact that there are no competitors of complainant at any of the ports served by them. They also point out that although a competitor of complainant at Salem, Oregon, has available to it the same rates from Portland as apply from Seattle and Tacoma, it incurs the same charges to shipside as does complainant, except that a rail rate of 9 cents applies from Salem to Portland, whereas complainant pays a rail rate of 17 cents to Seattle or Tacoma. Defendants have blanketed their rates from Seattle, Tacoma, Portland and other ports on the Pacific coast, but have shown no justification for maintaining higher rates from Grays Harbor. It is clear from the evidence of record that the circumstances and conditions surrounding shipments of printing paper from these ports are not substantially different from those surrounding like shipments from Grays Harbor, and, in compliance with the requirements of sections 16 and 17 of the act, there should be an equality of rates for the substantially similar services performed. The disparity against Grays Harbor prevents the movement of shipments through that port, is unduly prejudicial, in violation of section 16, and unjustly discriminatory, in violation of section 17. The allegation of unreasonableness is not sustained.

Section 205 of the Merchant Marine Act, 1936, alleged to be violated by defendants, reads as follows:

> Without limiting the power and authority otherwise vested in the Commission, it shall be unlawful for any common carrier by water, either directly or indirectly, through the medium of an agreement, conference, association, under-

standing, or otherwise, to prevent or attempt to prevent any other such carrier from serving any port designed for the accommodation of ocean-going vessels located on any improvement project authorized by the Congress or through it by any other agency of the Federal Government, lying within the continental limits of the United States, at the same rates which it charges at the nearest port already regularly served by it.

That Grays Harbor comes within the purview of this provision is not questioned and the evidence in this connection need not be reviewed. Complainant bases its allegation on the fact that defendants, being members of the Pacific Westbound Conference, are required to observe the conference tariff, which provides for the arbitrary and minimum-tonnage basis in issue. Defendants' witness testified they are willing to serve Grays Harbor at the same rates and minimum-tonnage basis as applies from other ports. They assert, however, that maintenance of the rates and minimum-tonnage basis assailed has been voluntary. Other members of the conference do not serve Grays Harbor and are not named as defendants. The question raised affects not only the other members of this 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, our findings make it unnecessary to consider the question in disposing of this case.

We find that defendants' rates on printing paper from Grays Harbor to the ports within the scope of the Pacific Westbound Conference agreement are, and for the future will be, unduly prejudicial and unjustly discriminatory to the extent that they exceed or may exceed their rates contemporaneously maintained on printing paper from Seattle, Tacoma, or Portland to such ports, calls to load at docks in Grays Harbor to be made at defendants' discretion.

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 10th day of September A. D. 1940.

No. 522

GRAYS HARBOR PULP & PAPER COMPANY

v.

A. F. KLAVENESS & CO., A/S, 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 defendants herein, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist on or before November 1, 1940, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of printing paper from Grays Harbor, Wash., to the ports within the scope of the Pacific Westbound Conference agreement rates which exceed those on like traffic to the same ports from Seattle or Tacoma, Wash., or Portland, Oreg.

By the Commission.

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

Secretary

UNITED STATES MARITIME COMMISSION

No. 564

LORA S. GALLEGHER

v.

CUNARD WHITE STAR LIMITED

Submitted August 28, 1940. Decided September 10, 1940

Request to withdraw complaint denied. Complaint dismissed.

No appearance for complainant.
Joseph Mayper for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION.

By complaint filed January 22, 1940, it is alleged that on an around-the-world cruise of defendant's vessel *Franconia* beginning at New York, N. Y., in January, 1939, and ending at that port in May, 1939, the complainant, a passenger on the cruise, was subjected to payment of fare for transportation and for services which were unduly prejudicial in violation of section 16 of the Shipping Act, 1916, as amended. Reparation in the amount of $1,100 is requested.

Answer was duly filed and served, and the case was assigned for hearing. Complainant did not appear. Subsequently the complainant filed request for withdrawal of the complaint.

Complainant's request for withdrawal is denied, and the complaint will be dismissed. 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 10th day of September A. D. 1940.

No. 564

LORA S. GALLEGHER

v.

CUNARD WHITE STAR LIMITED

This case, at issue upon complaint and answer on file, and complainant having requested permission to withdraw the complaint, and the Commission having on the date hereof made and entered of record a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the request for withdrawal be, and it is hereby, denied, and that the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 577

IN RE GRACE LINE, INC., AND WEST COAST LINE POOLING AGREEMENT No. 5893, AS AMENDED

Submitted August 16, 1940. Decided September 19, 1940

Under present conditions pooling agreement No. 5893, as amended, found to be unjustly discriminatory and unfair as between the parties thereto, and disapproved.

W. F. Cogswell for Grace Line, Inc.

Stanley W. Schaefer and *James M. Estabrook* for Wessel Duval & Company, Inc., and J. Lauritzen.

Roger Siddall for Compania Sud Americana de Vapores.

Ralph H. Hallett for United States Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the report proposed by the examiner were filed by certain of the parties and oral argument was had. Our conclusions differ somewhat from those recommended by the examiner.

By order of June 4, 1940, we instituted this investigation on our own motion requiring Grace Line, Inc., Wessel Duval & Company, Inc., and J. Lauritzen (West Coast Line) to show cause on or before June 17, 1940, why an order should not be entered disapproving or modifying pooling agreement No. 5893, as amended; and making Compania Sud Americana de Vapores a party to the proceeding.

All vessels in the service of the West Coast Line on April 5, 1940, were Danish flag freighters supplied by Lauritzen, a Danish partnership. On April 10, 1940, these vessels were immobilized as a result of the German invasion of Denmark and the West Coast Line has had no sailing since that date until June 9. Grace Line informed the Commission under date of April 29, 1940, that as a result of the inability of Danish freighters to operate as per schedule, a major change had taken place that affected operations under the pooling agreement and that Wessel Duval as representatives of the West Coast Line had been notified that settlements under the pooling agreement would be stopped as of the sailing of Grace Line's S. S. *Santa Ana* on April 12, 1940. Wessel Duval and Lauritzen expressed disagreement with this action in a letter to the Commission dated May 7, 1940, taking the position that the effort of Grace Line to terminate the pooling agreement by a letter to the Commission was without any effect.

In a note dated May 8, 1940, the Ambassador from Chile informed the Secretary of State that the Chilean Line, i. e., the Compania Sud Americana de Vapores, which in September 1939 had established a regular maritime service with motorships between New York and Valparaiso, has been placed, by reason of pooling agreement No. 5893, in an unequal competitive position which is directly prejudicial. The Secretary was requested to intercede before the Maritime Commission for the purpose of having the approval of the pooling agreement withdrawn and thus end a situation which the Chilean Government considers discriminatory and damaging to valuable Chilean interests. A conference was held in Washington on May 27, 1940, at which representatives of all interests were present. Thereafter, on June 1, 1940, Grace Line notified the Commission of the parties' inability to arrive at any solution of their difficulties and on June 4 this proceeding was initiated.

Agreement No. 5893 was entered into on May 19, 1937, and was approved under section 15 of the Shipping Act, 1916, on July 1, 1937. It provides that except for a tolerance of 10 percent one way or the other, Grace Line, Inc., shall maintain 56 passenger and/or freighter sailings per annum and Wessel Duval & Company, Inc., and J. Lauritzen,[1] jointly known as the West Coast Line, shall maintain 26 freighter sailings per annum from ports on the Atlantic coast of the United States to ports on the West coast of Colombia, Ecuador, Peru, and Chile. All gross earnings accruing to each vessel out of its freight operations, on all cargo originating in the United States, carried therefrom on a vessel of one of the parties and destined for ports on the West Coast of South America, shall be divided 75 percent to Grace Line and 25 percent to West Coast Line, after deducting $4 per revenue ton, except on motorcars and trucks on which this deduction shall be $15 per unit. Settlements are to be made at the end of each three-month period and should in future the trade necessitate additional or larger vessels, 75 percent of such additional tonnage shall be provided for by Grace Line and 25 percent thereof by West Coast Line. The agreement was entered into on condition that the West Coast Line be permitted to become a member of the Atlantic,

[1] Grace Line, Inc., will be referred to hereafter as Grace Line; Wessel Duval & Company, Inc., as Wessel Duval; J. Lauritzen as Lauritzen; and Compania Sud Americana de Vapores as CSAV.

Gulf and West Coast South America Conference, and be allowed to charge a 10 percent differential under the tariff of express passenger vessels, except on certain specified commodities. The agreement is for a four-year period from the date of approval and from year to year thereafter unless either party gives six months' notice in writing to the other to terminate the same. Either party has the right to terminate the agreement after it has been in effect two and one-half years by giving such notice at least six months before such two and one-half years have elapsed. Membership in the conference became effective August 2, 1937.

The position of Wessel Duval and Lauritzen is that the procedure followed in this case violated their Constitutional rights. This is said to have resulted because the order of June 4, 1940, put on them the burden of proving four negatives in showing cause why Pooling Agreement No. 5893, as amended, should not be cancelled (1) as against the public interest; (2) as detrimental to the commerce of the United States; (3) as unfair and unjustly discriminatory as between Grace Line and Wessel Duval and Lauritzen; and (4) as unfair and unjustly discriminatory to the Chilean Line. Further contentions advanced are that the order failed to give particulars, details, or specifications as to any of the issues which were to be tried; that the order left undetermined any question as to what the Commission proposed to do with damages; that all of these matters required preparation for proof by Wessel Duval and Lauritzen; that the show cause proceeding was contrary to the statute; that by the order of June 4, received June 6, Wessel Duval and Lauritzen had but eleven days actual notice of the hearing scheduled to be held on June 17, 1940; that a petition of Wessel Duval and Lauritzen dated June 10, 1940, requesting additional information as to the scope of the hearing was denied by the Commission's letter of June 14, received June 15, advising them that the issues were defined by the letters that had been exchanged, by the discussions that had been held, and by section 15 of the Shipping Act, 1916; that a motion for similar relief urged at the start of the hearing was not granted.

The matter to be determined here was whether under the existing extraordinary and emergent conditions, the pooling agreement should be disapproved or modified and not whether any party thereto should recover damages. Wessel Duval and Lauritzen in their exceptions to the proposed report express their accord with Grace Line that if money be owing to any of the parties under the pooling agreement, a court is the place to settle that. The order of June 4 was not contrary to the statute but amply acquainted all concerned with the subjects to be considered in determining the status of the pooling agreement. The matter was assigned for public hearing to insure that everyone should know upon what facts and arguments our decision and action were to be founded. Although the motion for additional information as to the scope of the hearing was not granted, Wessel Duval and Lauritzen were informed that the hearing would proceed, and if, at its termination, it was felt that issues had been raised which could not be met at that time, application for an adjourned or further hearing in order to allow such time as might be needed would be entertained. The hearing continued for three days; all parties had opportunity to present formally any evidence they chose to offer and all parties had opportunity to test the proof offered by the others on the issues involved. The examiner's proposed report was served on all parties; exceptions thereto and replies to such exceptions were filed; evidence of actions subsequent to the hearing has been allowed by stipulations and we have heard the parties in oral argument. A full hearing has thus been had.

Pooling of revenues under Agreement No. 5893 began August 2, 1937, and the agreement has been satisfactory to all parties up to April 5, 1940. All pooling accounts up to and including January 31, 1940, are fully settled subject to any corrections which may later be necessary. On April 8, 1940, the West Coast Line was advertising six vessels for future sailings at weekly intervals, which, except for the invasion of Denmark, probably would have sailed and their proportion of the revenue paid into the pool. Since the departure of its S. S. *Helga* from the United States on April 5, 1940, West Coast Line has had no vessels in the trade until the S. S. *Malantic*, under charter to Wessel Duval, sailed on June 9, 1940. Net revenue thereon of $37,364.99 was reported to Grace Line, pursuant to the terms of the pooling agreement. To take care of the demands of the trade after the immobilization of West Coast Line's vessels Grace Line rearranged its schedule, added a chartered vessel and scheduled additional sailings. From April 12 through June 13, 1940, it has had 13 sailings with net revenue in excess of $800,000. During the pool year starting August 1, 1939, West Coast Line had 27 sailings to and including April 5, 1940, and Grace Line to that date had 51 sailings. West Coast Line therefore contends it has already had the required number of sailings for the year. It contends further that on all sailings of Grace Line down to and including June 17, 1940, the earnings should be credited to the pool and divided 75 percent to Grace Line and 25 per cent to West Coast Line.

Since the pooling agreement was entered into in May 1937, two major changes have occurred in the trade:

(1) The war, resulting in withdrawal of Danish tonnage, and

(2) Entrance of CSAV in the trade with approximately fortnightly sailings of combination passenger and freight vessels under the Chilean flag.

These changed conditions have made the continued operation of the pooling agreement unsatisfactory to Grace Line, and the agreement, in the opinion of Grace Line, has become detrimental to the commerce of the United States because:

(a) Grace Line is handicapped in taking the necessary steps to adequately serve the trade, by the existence of an agreement by which the West Coast Line claims they can go back in the service at any time and share in Grace Line's gross revenue;

(b) It is important that one be free to make prompt decisions and to take any action necessary to meet day-to-day changed conditions;

(c) West Coast Line's interpretation of the agreement to the effect that although not contributing to the sailings, it is entitled to 25 percent of Grace Line's revenue of more than $800,000 for the period after April 5 to June 17, 1940, is equivalent to a heavy burden on the trade, and is similar to an increase in operating expenses which would necessarily have to be met by an increase in freight rates;

(d) If this contribution from Grace Line's revenue has to be made, resulting in the necessity of increasing freight rates, it will make it much more difficult for American manufacturers and exporters to meet their European, Japanese and other competition.

The pooling agreement is considered by Grace Line to be unfair to it now because:

(a) It ties Grace Line to an associate who has ceased to pull his weight in the boat;

(b) It imposes on Grace Line the burden of serving the trade, or in the alternative, neglecting or abandoning the trade to its competitors;

(c) It prevents Grace Line from taking the necessary action to provide properly for the trade themselves and on the other hand prevents Grace Line from joining with CSAV to do so.

(d) Under existing extraordinary and emergency conditions it places on Grace Line the burden of serving the trade under all these handicaps.

Predecessors of Wessel Duval have been in the West Coast South America trade since 1825. The present company was incorporated in 1931. It never owned any ships, nor to the knowledge of its witness, had a ship on a bare-boat charter basis, its operations being those of time chartered owners or as agents. The agency for two Lauritzen steamers was taken in 1934, these being operated in conjunction with two vessels Wessel Duval had under time charter. Sailings at intervals of 20 days were made alternately with the Lauritzen ships and, being outside the governing conference,[2] rates below those fixed by the conference were charged. Two additional steamers especially built for this trade, were subsequently placed in service by Lauritzen and early in 1937 Wessel Duval were operating four Lauritzen steamers and two time-chartered vessels on a

[2] See *Wessel Duval and Company, Inc.* v. *Colombian Steamship Company, Inc., et al.*, 1 U. S. S. B. B. 390.

fortnightly schedule. About April 1937 it was agreed that Lauritzen would place additional tonnage in this trade with Wessel Duval as agents, and the time chartering ceased. Direct services between U. S. Atlantic and West Coast South America ports were being maintained by Grace Line, the Wessel Duval-Lauritzen ships and by Compania Chilena de Navegacion Inter-oceanica.[3] The rate level had dropped to a low and unprofitable basis and in order to bring about stability negotiations were had between officials of Grace Line, W. R. Grace and Company, and Wessel Duval. These resulted in the present pooling agreement and in the admission of Wessel Duval and Lauritzen operating jointly as the West Coast Line, to the Atlantic and Gulf West Coast of South America Conference. Additional vessels of Lauritzen were added from time to time, and as of April 5, 1940, 10 such vessels were available for the trade.

West Coast Line says the pooling agreement benefits the public interest

(a) By guaranteeing to shippers a minimum of 82 sailings in the trade, and by providing that if there is any general increase in business requiring additional vessels, extra tonnage will be made available.

(b) The pooling agreement has resulted in more direct sailings by the West Coast Line than would normally be made to the minor ports (those ports to which there is very little cargo going) if there were no pooling agreement. Competition with Grace Line would necessitate quick turn-arounds and consequently many of these minor calls would be eliminated.

West Coast Line contends that the pooling agreement has not been unfair or unjustly discriminatory to Grace Line from April 10 to June 18, 1940, because Grace Line has carried many thousands of tons of cargo which normally would have been carried by West Coast Line. While pooling the revenues of this period would be unfavorable to Grace Line, it is the opinion of West Coast Line that that does not make the agreement unjust or unfair or discriminatory because Grace Line has operated in a very favorable position under the agreement up to April 10. On the other hand, disapproval of the pooling agreement would be considered unfair or unjust to West Coast Line because it has, up to June 18, 1940, had 28 sailings, the pooling period runs to July 31, 1940, and it is the intention of West Coast Line to observe its agreement. West Coast Line's witness asserts that the pooling agreement is not unfair or unjustly discriminatory to the CSAV as up to this time it has not been a factor in the trade. Its vessels which had been operating between Chile and Europe were put in the service from New York to Chile in October 1939, as a result of the war. This company does

[3] The C. C. N. I. had approximately monthly sailings of Chilean flag freighters from January to July 1937, one sailing in December 1937, and none thereafter.

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not serve the Republic of Colombia and the witness did not believe that on performance a regular service in the trade has been operated. An exhibit of record shows this company had 14 sailings from New York to the West Coast of South America from October 20, 1939, to June 2, 1940, at intervals of from 7 to 30 days. According to this witness, CSAV as a member of the Atlantic and Gulf West Coast of South America Conference, has every advantage that any other conference member has. All of the shippers have signed agreements to patronize conference lines exclusively, and CSAV is entitled to carry any of the cargo on the same basis of rates. Probably five percent of the shippers know of the existence of the present pooling agreement.

Since Danish vessels could not be operated in the trade, Wessel Duval time chartered the American flag steamers *Malantio* and *Wind Rush*, on May 20 and June 7, 1940, respectively, each for one round trip from New York to West Coast of South America and return. These and other ships to be chartered are to be used to maintain the service of the West Coast Line until such time as the ships of Lauritzen heretofore employed in the service may sail without interference by the British and French authorities. On June 7, 1940, Wessel Duval and Lauritzen agreed, subject to approval of the Commission,[4] that such chartered ships should be operated on a basis of sharing profits and losses, and similarly, if under pooling agreement 5,893 sums accrue or become payable by reason of the operation of these vessels such accrued or payable sums shall be equally divided when determined.[5] When they are released, Wessel Duval intends to operate the Lauritzen vessels in the trade the same as before the invasion. Lauritzen's representative feels that whenever that happens, participation in the pool will also be resumed irrespective of the steps Grace Line may have been compelled to take in the meantime. Operation of chartered vessels under the joint-venture agreement is admitted by Wessel Duval and by Lauritzen to be different from the scheme under which the Lauritzen vessels were operated

[4] This agreement, designated No. 7293, was approved on June 28, 1940.

[5] Subsequent to the hearing the parties stipulated of record that the *Wind Rush* sailed from New York on June 30, 1940; that Wessel Duval chartered the S. S. *Carolyn* from A. H. Bull Steamship Co., Inc.; that on July 8, 1940, Wessel Duval agreed with Lauritzen that the *Carolyn* would be operated on the same basis as the *Malantio* and *Wind Rush;* that the *Carolyn* sailed from New York on July 20, 1940; that on July 31, 1940, Wessel Duval chartered the S. S. *Evelyn* from A. H. Bull Steamship Co., Inc., for one round voyage in the trade, and on the same day agreed to share profits and losses of operations of the *Evelyn* with Lauritzen, which agreement was approved by the Maritime Commission on or about August 2, 1940; that the *Evelyn* was delivered, pursuant to the charter, on August 14, 1940, and is scheduled to sail on August 22, 1940; that on July 26, 1940, Wessel Duval and Lauritzen reported to Grace Line $22,230.47 as "the pool figures on the steamship *Carolyn*, sailing July 20, 1940"; that Grace Line has had 10 sailings in the period June 10–August 9, 1940, inclusive, and has 4 sailings scheduled in the period August 16–August 30, 1940, inclusive.

and upon which the parties recognized the West Coast Line. Accordingly, it is Grace Line's position that the *Malantic* and vessels subsequently chartered are not being operated by the West Coast Line within the meaning of the pooling agreement.

CSAV, a Chilean corporation, has been engaged in the operation of steamships since 1872. From 1922 until 1931 it had two vessels in the trade here involved. Before the war broke out, it was operating three Chilean flag combination passenger and cargo motor ships between Chile and Liverpool, Antwerp and Hamburg under a contract with the Government of Chile to furnish refrigerated space to Hamburg for three fruit seasons. Four return voyages from Europe to Chile were made via New York and Baltimore in 1938–1939. After war was declared in September 1939, service between Chile and the United States was reestablished with the three passenger and cargo motor ships and the first sailing from New York was on October 20, 1939. The company also operates one freight steamer in conjunction with the motor ships and intends to continue permanently in this service.

A director of the company testified that while CSAV has the capacity to carry about 30 percent of the south-bound cargo, it carries less than 20 percent. According to computations by this witness covering the 6-month period ending April 1, 1940, Wessel Duval had about 80 percent of its capacity filled, Grace Line about 68 percent, and CSAV 56 percent. Cargo for Chile in this period constituted between 70 and 80 percent of the total south-bound cargo carried by CSAV. Grace Line's carryings to Chile normally amount to about 51 percent of its south-bound volume. Competition of the pool is asserted to compel CSAV to carry lower paying cargo than the pooling lines. The pool, by permitting the members to agree upon extra shipping requirements, makes it possible to arrange sailings and establish schedules with better knowledge of the cargo. Shippers are said to always prefer to deal with pool members because of their greater number of ships and consequently more attractive service than that offered by the line outside the pool. The advantages accruing to Grace Line and West Coast Line are claimed to thus operate against CSAV. CSAV was admitted to full membership in the Atlantic and Gulf West Coast of South America Conference on October 3, 1939, participates in the conference's exclusive patronage contracts with shippers and has never been refused any cargo because of the pooling agreement. There has been a gradual increase in the line's passenger business since October 1939 up to the immobilization of the Danish vessels but despite growing familiarity to the trade, its freight business south-bound has not improved. Some additional business was obtained as a natural result of the stoppage of the Danish vessels, but this is regarded as unusual. The north-bound cargoes differ from south-bound tonnage and the vessels of CSAV are always nearly full north-bound. As the pooling agreement does not apply to south-bound passenger traffic nor to north-bound cargo, the adverse effects on this line's south-bound business are attributed to the existence of the pooling agreement and motivate this company to seek its cancellation as being detrimental to commerce between the United States and Chile. Its witness assumes that if the pooling agreement be cancelled and if the Danish vessels again operate and if CSAV has the same proportion in tonnage, CSAV will be in a better position because it is a Chilean company. Furthermore it is felt that the competition of Grace Line and West Coast Line in combination is worse than would be the competition of those lines operating separately.

The matter of bringing CSAV into the pool has been discussed, but Grace Line is opposed to its inclusion and thereby making it a three-way pool. The cubic capacity of the vessels of CSAV is considerably greater than the cubic capacity of the vessels West Coast Line has been operating, and to give CSAV a percentage would reduce the other percentages to such an extent that it would not be a satisfactory operation. With the increased capacity provided by Grace Line, primarily by substituting large vessels for small ones, and with the additional vessels Grace Line has provided to take care of the trade, it does not believe a pool with three lines would be workable and satisfactory in the trade.

West Coast Line's position is that having had its required minimum number of sailings in less than the full pool year and because it intends to and has had further sailings within the pool year, it is entitled to have Grace Line continue to pool the earnings of all vessels sailed during the pool year, such earnings to be divided 75 percent to Grace Line and 25 percent to West Coast Line. As shown by exhibits, revenues from all sailings of each party to the pool up to and including April 5, 1940, have been pooled. The purpose of the pooling agreement was to arrange as nearly as possible the carriage by Grace Line of 75 percent of the cargo and the carriage by West Coast Line of 25 percent of the cargo with corresponding division of revenues. The pooling agreement also provides that should the trade necessitate additional or larger vessels 75 percent of such additional tonnage shall be provided for by Grace Line and 25 percent thereof by the West Coast Line. There is evidence that the trade has necessitated additional tonnage, especially after April 5, 1940, and the record shows that of such additional tonnage required up to the end of the pool year Grace Line provided approximately 86 percent and West Coast Line 14 percent on a deadweight tonnage basis. West Coast Line has accordingly not completely fulfilled this part of its agreement. Participation by West Coast Line in the pool on a 25 percent basis notwithstanding its failure to provide its proportionate share of the additional tonnage requirements creates a condition which is discriminatory and unfair to Grace.

The fact that vessels have been time-chartered for a single round voyage each, and that they have departed from New York at intervals of 21, 20 and (scheduled) 33 days, gives no assurance that continuation of the pooling agreement would result in regular sailings, as argued on behalf of West Coast Line. It is also urged that the pooling agreement guarantees 82 sailings a year, 10 percent more or less, but that without the pooling agreement there would be no guarantee by contractual relationship between the parties of any sailings at all to the American public and to the American shipper. We are convinced, however, that under the circumstances of this case, self-interest of the carriers will be as adequate a guarantee of service as a contractural relationship would be.

We conclude and decide that under the changed circumstances disclosed of record, Pooling Agreement No. 5893, as amended, is unjustly discriminatory and unfair as between the carriers party thereto. An order will be entered disapproving Pooling Agreement No. 5893, as amended.

Truitt, *Commissioner*, dissenting:

This case arises from an investigation instituted by the Commission on its own motion. By order of June 4, 1940, Grace Line, Inc., Wessel Duval & Co., Inc., and J. Lauritzen (the two persons last named, being referred to as West Coast Line) were ordered to show cause why Pooling Agreement No. 5893, as amended, should not be disapproved or modified. Compania Sud Americana de Vapores was made a party to the proceedings. The order to show cause recites as the grounds for the institution of the proceedings the following:

That in view of existing extraordinary and emergent conditions, said Agreement under present circumstances is opposed to the public interest, is unjustly discriminatory and unfair as between the carriers parties thereto and to Compania Sud Americana de Vapores, and operates to the detriment of the commerce of the United States.

Hearings were held before Examiner Gray and a report was proposed by him recommending disapproval of the agreement on the grounds that by reason of changed circumstances it had become discriminatory as between the carriers parties thereto, and operated to the detriment of the commerce of the United States. The examiner further recommended that disapproval be made effective as of April 10, 1940. This is the date on which the Danish vessels controlled by J. Lauritzen could no longer be employed in the West Coast Line services by reason of their immobilization. Such immobilization was caused by the inability of the owners to make satisfactory arrangements with certain belligerent governments for the continued operation of the vessels.

In the report of the Commission the contention that the agreement operates to the detriment of the commerce of the United States was abandoned as a ground for disapproval. Neither did the report follow the recommendation of the examiner that disapproval be made effective as of April 10, 1940, in which conclusion I am in entire accord.

This leaves as the sole issue decided the question of disapproval on the ground that the agreement under changed conditions is unjustly discriminatory and unfair as between the carriers parties thereto. The finding of the Commission is contained in the final paragraph of its report and reads as follows:

> We conclude and decide that under the changed circumstances disclosed of record, Pooling Agreement No. 5893, as amended, is unjustly discriminatory and unfair as between the carriers party thereto.

In my opinion the conclusion thus reached is unwarranted, first, because it is based on assumptions as to the interpretation of this agreement as to which no findings are made; and second, because the record, in my opinion, does not support a finding that present operations under the agreement are "unjustly discriminatory and unfair as between the carriers party thereto."

At the outset I wish to point out that the question as to whether or not the Pooling Agreement is dissolved as a matter of law because of the impossibility of further performance is not before the Commission. Questions of this nature or of a similar nature, such as whether or not breach of the agreement on the part of one of the contracting parties entitles the other to rescind the agreement, are not among the statutory grounds upon which the Commission is authorized to disapprove agreements previously approved under Section 15 of the Shipping Act, 1916, as amended. They are more naturally questions to be decided by the usual courts of law in litigation between the parties. But there are a few principles underlying the so-called doctrine of frustration of contracts to which it is appropriate in this case to allude. One is the fact that supervening circumstances, which make performance of a promise more difficult and expensive or the counterperformance of less value than the parties anticipated when the contract was made, will ordinarily not excuse nonperformance (*The Harriman*, 9 Wall. U. S. 161). Another principle is that a temporary impossibility which is removed within a reasonable time cannot be used to snap a discharge of the contract (*Andrew Millar & Co.* v. *Taylor & Co.* [1916] 1 K. B. 402). Finally, it is well settled law that where alternative methods of performance are permissible under the contract the fact that one method of performance becomes impossible does not dissolve the contract (Restatement of Contracts, par. 469).

To a certain extent the legal principles referred to above have application to the proceedings before us in determining discrimination as between the parties thereto and detriment to the commerce of the United States. If the effect of the Pooling Agreement between the carriers is to give one of the parties a substantial and permanent advantage not justified by differences in their respective services rendered under the agreement, then I think the Commission would be justified in condemning the agreement as being discriminatory between the parties thereto. I believe, however, in this case that while Grace Line, Inc., is, to a substantial extent perhaps, unable to make the profit from operations which it might make if it were free from the restrictions of the Pooling Agreement, the record does not show to any satisfactory extent that its own operation under the Pooling Agreement, even though increased by the necessity of providing the additional tonnage required to replace immobilized Danish vessels, results in such diminution of earnings as restricts or hampers its ability to provide service on a reasonably compensatory basis. Nor do I think that, unless the contract is to be interpreted along the lines contended for by Grace Line, Inc., viz, performance by Wessel Duval through the use of chartered vessels is not permissible under the agreement, the interruption of service by West Coast Line is necessarily permanent. The record shows that both Wessel Duval and Grace Line, Inc., have in the past in maintaining these services used some chartered vessels.[6] To be sure, service by chartered vessels as distinguished from owned vessels is different, as stated in the report of the Commission, but I fail to see in what respect the difference has any significance from the point of view of the Commission.

Furthermore, in my judgment, it is not possible to say that interruptions to the service were not generally within the contemplation of the parties. The Pooling Agreement dealt with the required

[6] This fact is brought out in several places in the record, but particularly in the cross-examination of J. W. Chapman, vice president of Grace Line, by counsel for the Commission. (Rec., pp. 90, 91. See also Rec., pp. 55–57.)

amount of performance each year which the respective parties were obligated to perform, namely 26 voyages to be made by West Coast Line and 56 voyages to be made by Grace Line annually with a 10% tolerance in each case. It is to be noted that there was no requirement as to regularity of sailing and while the argument may be made that this omission was inadvertent, it seems to me equally open to inference that the failure to provide for regularity of service was intentional.[7] Interruptions to service by reason of strikes either here or in foreign countries are not unlikely occurrences. Such interruptions may, as we all know, be serious and prolonged and may affect either of the parties to the Agreement. The Agreement fairly interpreted seems to me to mean that the parties would carry each other during periods of interrupted service with the contractual safeguard, however, that each of them should make the stipulated number of voyages per annum. Since, as indicated above, the general possibility of interruptions to the service might well have been in the contemplation of the parties I do not think it is sufficient ground for what is in effect a dissolution of the Pool to rely upon the fact that one particular cause of interruption to the service might not have been within such general contemplation.

Finally, it is my judgment based on a perusal of the record here that the chronology of events indicates that Grace Line, Inc., is interested above all in escaping from its obligations under the Pooling Agreement and with what appears to me to be unseemly haste.

As has been stated before, the Danish vessels became immobilized on April 10, 1940. About this time, the record being not entirely clear as to the exact date, discussions took place looking toward Wessel Duval taking over the agency of the Chilean vessels, which vessels would then enter into the trade in place of the Danish vessels, thereby eliminating the vessels of J. Lauritzen from the pooling arrangements. It was contemplated that the Chilean company and Grace Line, Inc., would enter into a new pooling agreement in which Wessel Duval & Co. was to have a certain interest. The record indicates that partly because of the unwillingness of Wessel Duval thus to sever its relationship with Lauritzen, except on terms agreeable to it and partly because of the efforts which were being made to free the Danish vessels, which efforts were to a certain extent assisted by the State Department,[8] little progress was made in carry-

[7] Looking both at the language of the contract itself and the surrounding circumstances, it is impossible to say that interruption to service, thereby preventing performance at least temporarily, was so improbable as to be outside any contingency which, had the parties been faced with it, they would have agreed that the promissor should be excused (see *The Poznan*, 276 Fed. 421).

[8] Rec., pp. 378–380 *et seq.*

ing out this plan. Grace Line, Inc., on April 29, 1940, notified the Commission that because of changed circumstances, payments under the Pooling Agreement would be stopped as of the sailing of the Grace Line's *Santa Ana* on April 12. This letter was apparently delivered to the Commission on May 3, 1940. It is to be inferred that the actual delivery of this letter followed upon the inability of the parties to get together at a meeting which was held in the office of Grace Line on either May 2 or May 3. West Coast Line protested and took the position in a letter to the Commission dated May 7, 1940, that this attempt of Grace Line to terminate the Pooling Agreement by a letter addressed to the Commission was without effect.

Following the occurrences related above, efforts to free the Danish vessels still continued. Apparently these efforts came to a standstill about May 25, 1940. In the meantime Wessel Duval chartered other tonnage to replace the Lauritzen vessels, beginning the latter part of May 1940, and continuing during the course of these proceedings. Grace, however, refused to acknowledge that these chartered vessels could under the agreement be placed in the trade. In this connection it should be noted that prior to April 10, 1940, both Wessel Duval and Grace Line, Inc., had placed chartered vessels in the services without objection.[9]

About the time that the efforts to free the Danish vessels came to a standstill, representations were made to the Commission on behalf of the Chilean company as to the detrimental effect of the agreement upon that line. This resulted in a conference[10] being held by a representative of the Commission with all of the parties in which they were informed that unless they could arrive at a satisfactory arrangement among themselves by June 3, 1940, the Commission would issue an order to show cause why the agreement should not be disapproved. The parties having failed to come to an agreement by the stipulated time the order to show cause issued. It seems to me that a fair inference to be drawn from the foregoing statement of facts is that Grace Line, Inc., was using the immobilization of the Danish fleet as a vehicle of escape from its obligations under the Pooling Agreement. The difficulty of temporarily taking care of the services previously furnished by the Danish vessels and the diminished profit due to its obligations under the Pooling Agreement, although not to be minimized, did not constitute insuperable difficulties in carrying out the provisions of the Pooling Agreement. They seemed to be more in the nature of excuses for seeking dissolu-

[9] See footnote 6, *supra*.
[10] Rec., Exhibit 26.

tion of the agreement, which agreement in the past had operated considerably in favor of Grace Line, Inc., but now appeared to be less advantageous than possible new arrangements with the Chilean line or increasing its own services without obligation to make pool payments.

Since the Commission failed to find that the changed circumstances have rendered the Pooling Agreement detrimental to the interests of the commerce of the United States, the only effect of its decision may be to aid Grace Line, Inc., in its efforts to rid itself of an agreement which Grace Line no longer likes but which, in my judgment, it is impossible to say on the record here operates seriously and permanently in a discriminatory manner as between the carriers party thereto.

The only evidence of unfairness—and this seems insufficient—is that during the period subsequent to April 10, 1940, the contributions of Grace Line to the pool have been in excess of the 75% that it can draw. Pooling agreements must invariably result in one party or the other temporarily contributing more than its share. Rather, the questions is whether the balance over the entire period of the Agreement is or probably will be unfair. At the present time, at least, I am not satisfied that on the record such unfairness exists. It should further be noted in this connection that the Pooling Agreement can be terminated on June 30, 1941, upon either party giving six months' prior notice and that the question as to payments for the period subsequent to April 10, 1940, is a matter of interpretation of the contract which the Commission has properly left to be decided by the courts. For like reasons, the Commission should have also left the question of the continued existence of this Agreement to the courts.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 19th day of September, A. D. 1940

No. 577

In re Grace Line, Inc., and West Coast Line Pooling Agreement No. 5893, as Amended

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It appearing, That by order of June 4, 1940, the Commission entered upon a hearing concerning the lawfulness of Pooling Agreement No. 5893, as amended;

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

It is ordered, That Pooling Agreement No. 5893, as amended, be, and it is hereby, disapproved.

By the Commission.

[SEAL]

(Sgd.) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 465

In the Matter of Dollar-Matson Agreements
(Nos. 1253 and 1253–1)

Submitted January 24, 1940. Decided September 25, 1940

Prior report and order (1 U. S. M. C. 750) affirmed as amended. Agreement also found to be unfair as between carriers.

Additional appearances:

Reginald S. Laughlin and *Robert A. Grantier* for American President Lines, Ltd.

Bon Geaslin for United States Maritime Commission.

Report of the Commission on Further Hearing

By the Commission:

This is a further hearing concerning an agreement between Matson Navigation Company, and certain affiliated companies, which will be referred to as Matson, and Dollar Steamship Lines Inc., Ltd. (now American President Lines, Ltd.), and certain affiliated companies, which will be referred to as Dollar, regulating competition between Matson and Dollar. In the original report herein (1 U. S. M. C. 750), the Commission, with two Commissioners dissenting, found the agreement to be detrimental to the commerce of the United States and in violation of Section 15 of the Shipping Act, 1916, as amended. By order dated August 17, 1938, the agreement was disapproved and the parties to the agreement were forbidden from making further payments thereunder.

Matson petitioned for rehearing September 24, 1938, asserting various errors of fact and law in our original report. Particularly, it challenged the findings that its Philippine service was intended merely as a threat and that a mail contract was necessary to make it profitable, and the finding that the 50 percent of the gross tariffs on Hawaiian business which Dollar retained was not compensatory; and excepted to the failure to find that Matson gave adequate consideration for the agreement. Error was also assigned in that we construed section 15 as not recognizing the desirability of monopoly in water transportation. Furthermore, Matson argued that our interest in Dollar (and particularly our acquisition of 90 percent of the stock thereof during the pendency of this proceeding) disqualified the Commission from judging the case and that a determination by the Commission would therefore deprive Matson of its property without due process of law. By order dated December 6, 1938, the proceeding was reopened for further hearing, and further evidence was introduced.

The jurisdictional question will be considered at the outset.

Matson urges that the Commission is now disqualified from acting on the agreement by reason of its acquisition of 90 percent of the stock of American President Lines, Ltd., and because of its interest under the operating-differential subsidy agreement. (At the oral argument this contention appears to be directed to the propriety of the Commission's acting rather than to the strict legal disqualification.) The objection to our jurisdiction is not tenable. 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. See *Van Brocklin* v. *Tennessee*, 117 U. S. 151, 158 (1886). The interest of the Commission in behalf of the public is not such as to disqualify the Commission from acting. *Spring Valley Water Works* v. *Schottler*, 110 U. S. 347, 353 (1894); *Puget Sound Co.* v. *Seattle*, 291 U. S. 619, 624 (1934). 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. *Brinkley* v. *Hassig*, 83 F. (2d), 351, 357 (C. C. A., 10th Ct., 1936). See also *Evans* v. *Gore*, 253 U. S. 245, 247 (1920); *Gordy* v. *Dennis*, 5 Atl. (2d) 69, 70 (Md., 1939).

Matson also urges that the Commission has no jurisdiction to disapprove an agreement previously approved, unless a change of conditions requiring such disapproval is established. In support of this contention certain language used by the Shipping Board in *In re Rates in Canadian Currency*, 1 U. S. S. B. 264, 281, is cited. The language in that case goes no further than to say that, where an agreement has been approved, it should not be disapproved except upon an adequate showing to justify such disapproval. In view of the conclusions of the Commission, however, as to changes in conditions, and the effect thereof insofar as the agreement in question is concerned, it is unnecessary to consider the objection further.

The evidence before us, as introduced upon the original hearing and the further hearing, reveals the following facts:

The Pacific Mail Steamship Company, a predecessor of Dollar, was engaged in the trans-Pacific trade via Honolulu for a number of years prior to 1913, in which year it ceased to operate in the trade. Dollar itself commenced operations between San Francisco and Honolulu, westbound, on its round-the-world service in January 1924. Two years later, the trans-Pacific service was added, between San Francisco and Manila by way of Honolulu and ports in Japan and China. The two services provided a weekly service westbound and a fortnightly service eastbound between San Francisco and Honolulu.

The Matson service between the Pacific coast and the Hawaiian Islands was inaugurated in 1891 by Captain Matson, first with sailing ships, and later with steamships. Since the establishment of the Matson Navigation Company in 1901, there has been no interruption of service to and from the Islands, and with each advance in facilities for ocean transportation, vessels operated on the route have been improved, or replaced by new vessels especially designed for the trade. Fifteen island ports are served, with regular and frequent sailings from San Francisco and Los Angeles. Other sailings are made as required, particularly of lumber carriers, and sufficient suitable tonnage is available at all times to handle estimated peak demands. In addition, Matson has established direct and through transshipment services to Atlantic coast ports of the United States via the Panama Canal. Matson owns 100 percent of the stock of Oceanic Steamship Company, which operates to Australia and New Zealand (via Honolulu) under an operating-differential subsidy agreement with the Commission.

In July 1929, Matson established a direct service between San Francisco and Manila with two 13-knot vessels, which service was from 7 to 10 days faster than the service then offered by Dollar via Japan and China. As a protective measure, Dollar inaugurated a direct parallel service to the Philippines. Both services showed substantial losses, the 8 voyages of Matson resulting in a loss of $163,813.55,[1] and Dollar's 11 voyages resulting in a loss of $362,-277.88. It is conceded that the direct Manila service would not—

[1] Revenues, $323,207.78; expenses, $487,021.33 ($376,842.26 voyage and vessel expense, $66,650.32 depreciation, and $43,528.75 repairs).

at least for several years—have been profitable without a mail contract.

Matson made application for the certification of the direct route to Manila as an ocean mail route under the Merchant Marine Act 1928, and was successful (over the protest of Dollar) in having the Postmaster General certify such route (F. O. M. 50), to be served by vessels of the same character as the vessels which Matson was using in such service.

Some time before the date for receipt of bids for the service, a suggestion was made to Matson by a relative of one of the Dollars, that the two make some arrangement to avoid the competitive struggle between them. After some negotiation, the agreement here in question was executed on April 23, 1930, and was approved by the Shipping Board on April 29, 1930. There is nothing in the record, therefore, beyond the mere approval of the agreement.

It is urged by Dollar that the agreement was in effect an agreement to refrain from bidding on the mail contract, and therefore illegal from its inception. This is a matter for the courts to decide. The Commission must, of course, consider whether an agreement is prima facie valid; but, such prima facie validity being established (and we think it is in this case), the grounds upon which we may disapprove and thereby render the agreement unlawful are specifically enumerated in section 15, namely that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers or ports, or between exporters from the United States and their foreign competitors, or that the agreement operates to the detriment of the commerce of the United States, or is in violation of the Shipping Act, 1916. The agreement was made lawful when approved; and it remained lawful until disapproved. Though we have no doubt that the Commission has power to withdraw its approval *ab initio* where such approval has been obtained by fraud, we find nothing in the record to justify such an inference here.

The agreement provides in effect as follows:

1. Matson will not engage in service between mainland United States and Asiatic ports, including the Philippines and Guam; and Dollar as "exclusive agent" will receive 50% of the gross passage money for local passengers to Oriental ports carried on Matson cruise ships;

2. Dollar will not solicit passenger or freight traffic between mainland ports of the United States and the Hawaiian Islands (with certain exceptions not material) and will not engage in service with Oceania;

3. Dollar will carry passengers and freight between Pacific ports of the United States and the Hawaiian Islands only as "agents" for Matson at tariffs not less than those in effect on Matson vessels, and will pay to Matson 50% of the gross receipts for such transportation;

4. Each of the parties will cooperate with the other to the end that both will prosper in their respective territories;

5. Provision is made for reformation (in case of partial invalidity) of the agreement and for settlement of disputes by arbitrators; and

6. The agreement is to remain in effect for 10 years and thereafter until the arbitrators shall decide that the necessity for or desirability of the agreement "as measured by the conditions existing at the time it was made," shall have ceased to exist.

The record establishes a number of changed conditions in the light of which the conclusion becomes inescapable that the agreement is unfair to Dollar.

There has been a substantial increase in costs of operation—vessel wage costs increasing 85 to 92 percent, and longshoremen's wages 30 percent, both accentuated by a decrease in efficiency, and costs of materials increasing 20 percent—with no commensurate increase in rates.

Competition with Dollar in the Oriental trade has substantially increased. In 1930 its competitors in that trade numbered 13, with 229 scheduled sailings yearly. In 1938, 404 sailings were scheduled by 21 competitors, some of which have newer and faster vessels. The effect of the increased competition is accentuated by virtue of Japan's control over Chinese commerce.

Dollar now receives an operating-differential subsidy, which is substantially less than the payments under the ocean mail contract previously held by it. Furthermore, this subsidy is subject to reduction under the Merchant Marine Act, 1936, in an amount which bears the same ratio to the subsidy otherwise payable as the gross revenue from its domestic operations bears to the gross revenue from the entire voyage. Dollar must therefore pay to Matson 50 percent of its gross revenues from its Hawaiian business, and in addition must repay to the Government a portion of its subsidy based not upon the revenues which it might retain under the agreement but on its gross revenues prior to such payment.

Since execution of the agreement, Matson has eliminated third-class accommodations from its own vessels, as well as from the vessels formerly operated by Los Angeles Steamship Company, and acquired by Matson in 1930. As a result, Dollar is required under the agreement to pay 50 percent of the revenues from this traffic, though there

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is no longer any possibility of competition between the two. Matson urges that its tourist accommodations are competitive with the third-class accommodations of Dollar, and argues that the variation between rates in one class are in some cases greater than the difference between Dollar's third-class and Matson's tourist-class rates. We find nothing in the record to justify a conclusion that the accommodations are comparable.

Matson submits in partial justification for the agreement the necessity for protection against rate cutting by Dollar and points to threats made during 1929 and 1930 by Dollar to establish rates considerably lower than the conference rates then in effect. The possibility of such rate cutting is materially affected, if not entirely eliminated, by the 1938 amendment to the Intercoastal Shipping Act of 1933, extending the power of the Commission to prescribe minimum rates.

In the light of the foregoing, it is difficult to come to any other conclusion than that the agreement is now unfair as between carriers within the meaning of section 15 of the Shipping Act, 1916. A consideration of the actual results of the agreement down to the time of the hearings confirms this conclusion.

Dollar has paid to Matson the sum of $1,003,767, and there had accrued by August 17, 1938, the additional sum of $244,838.42. Matson has paid Dollar the sum of $7,031.65.

As against the great weight of the payments by Dollar, Matson refers to substantial benefits which Dollar has received under the agreement in the way of additional freight carried by reason of Matson's assistance and cooperation.

The sums paid by Dollar, averaging more than $150,000 per annum, may be considered largely as clear profit to Matson. On a conservative basis it would require something more than $3,000,000 gross revenue annually to yield the average annual payment. To justify a conclusion that the benefits of the agreement were reciprocal as between the parties, Matson's contribution to Dollar, through reference of business and otherwise, should have approximated that amount.

The supposed benefits to Dollar, however, are for the most part conjectural, and in no event sufficient to justify the payments which Dollar has been called upon to make under the agreement. The most important single item to which reference is made appears to be certain gunnies, which are shipped from Calcutta to Hong Kong and there transshipped for carriage to Honolulu. It was testified at the original hearing that this business amounted to $50,000 or $100,000 a year. Upon rehearing, based upon exact statements of such traffic, the revenues were shown to average between $30,000 and

$40,000 per year, and the increase in revenues after execution of the agreement was not more than $10,000 per year. Matson points out that, although solicited to do so, it has refrained from establishing through rate or fare arrangements with foreign lines and to its cooperation with Dollar in developing Oriental passenger business. It points to cargo from New Zealand to the Orient obtained through its influence, and to the transportation of laborers from the Philippines to Hawaii (business that had become negligible by 1938). We conclude from the testimony herein that the gross revenues derived by Dollar from business directly attributable to the agreement would not at the present time be substantially, if at all, in excess of $100,000 per year.

Matson urges its "irrevocable" withdrawal from the Philippine service. While the evidence on further hearing does not support the charge that Matson's inauguration of the Philippine service was intended merely as a threat to Dollar, it discounts the benefits claimed to have accrued to Dollar from the discontinuance of such service. In no event are they sufficient to justify the payments Dollar has been called upon to make.

There is no merit in Matson's argument that the agreement should not be disapproved because, as partial consideration for the agreement, Matson "irrevocably" changed its position by abandoning its direct Manila service. It is clear that this change of position was Matson's voluntary act 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 Shipping 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.

The agreement is also most unfair in requiring Dollar to pay 50 percent of its revenues on business which Matson could not carry. This is most marked in the case of third-class passengers, in view of Matson's ceasing to provide such accommodations; but it also is brought out by the cases where Matson referred shippers or passengers to Dollar, but was still able to collect its 50 percent because it had not made "specific written request" of Dollar to carry the traffic.

We also find that the agreement, in the light of the changed conditions, operates to the detriment of the commerce of the United States.

A word should be said at the outset concerning agreements regulating competition. We cannot condemn too severely those (such as the present) that attempt to do so in perpetuity. The Dollar-Matson agreement is to remain in effect for 10 years and thereafter until the arbitrators shall decide that the necessity for, or desirability of, the agreement "as measured by the conditions existing at the time it was made" shall have ceased to exist. In other words, the agreement may be interpreted by the arbitrators so that it is to remain in effect until the arbitrators shall determine, 10 years or more after execution of the agreement, that the agreement should not have been made in the first place. As we stated in the original report herein, agreements restricting competition should, of necessity, be of definite duration and for relatively short periods, so that the parties and the Commission may have an opportunity from time to time to observe the impact of changing conditions on their undertakings. This agreement is doubly to be condemned because it may extend in perpetuity without consideration by the Commission and because by its terms it attempts to exclude all question of changing conditions from consideration in fixing the duration.

At the time of execution of the agreement, Matson had substantial American flag competition from Los Angeles Steamship Company, which had been operating in the trade since 1921, and had carried approximately 36 percent of the passengers between California ports and the Hawaiian Islands during the years 1923 to 1929. This competition was eliminated by the acquisition of Lassco by Matson 6 months after the execution of this agreement. The agreement, in preventing effective competition by Dollar, thus operates to eliminate the only American flag competition in the trade, and confirms a practical monopoly of transportation between continental United States and Hawaii.

We cannot concur with Matson's contention that the Shipping Act, 1916, recognizes 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. In the light of the provisions of the Merchant Marine Act, 1936, protecting Matson against unfair advantage by subsidized lines, and the provisions of the Intercoastal Shipping Act, 1933, as amended in 1938, providing effective regulation against rate cutting, the situation is not substantially different from that which confronted our predecessors in the matter of *Gulf Intercoastal Contract Rates*, 1 U. S. S. B. 524, and considered by the Supreme Court in *Swayne & Hoyt* v. *U. S.* 300 U. S. 297 (1937).

The agreement is detrimental to commerce in requiring Dollar to carry all Hawaiian traffic at less than a compensatory rate. The results of Dollar's Hawaiian operations for the years 1937 and 1938 are summarized in the following table:

	1937			1938		
	Freight	Passenger	Total	Freight	Passenger	Total
Revenue	$35,522.61	$246,631.26	$282,153.87	$15,823.06	$119,398.80	$135,221.86
Less 50%	17,761.30	123,315.63	141,076.93	7,911.53	59,699.40	67,610.93
Net	17,761.31	123,315.63	141,076.94	7,911.53	59,699.40	67,610.93
Expenses:						
Direct	25,539.88	41,742.35	67,282.23	12,419.02	22,008.43	34,427.45
Indirect [1]	21,259.48	147,603.23	168,862.71	10,815.15	81,609.78	92,424.93
Total	46,799.36	189,345.58	236,144.94	23,234.17	103,618.21	126,852.38
Vessel operating loss	29,038.05	66,029.95	95,068.00	15,322.64	43,918.81	59,241.45
General and administrative expenses [2]	4,680.00	18,934.00	23,614.00	1,532.26	4,391.88	5,924.14
Loss [3]	33,718.05	84,963.95	118,682.00	16,854.90	48,310.69	65,165.59

[1] Indirect vessel operating expenses are prorated on basis of revenue from the various services.
[2] General and administrative expenses, which actually amounted to 13 percent of vessel operating expenses are estimated at 10 percent thereof.
[3] No allowance included for depreciation.

Although admitting that the purpose of the 50 percent clause was to diminish Dollar's profit on Hawaiian traffic to the point where the business would be unattractive, Matson nevertheless insists that the amount retained is adequate to pay for the additional costs incurred in handling the business and return a profit. It contends that it is improper to include expense for advertising and brokerage on passenger tickets because Dollar was not permitted under the agreement to solicit Hawaiian business. The inclusion of port charges at Honolulu is also said to be improper because such charges would be incurred regardless of the carriage of any Honolulu cargo or passengers. We do not subscribe to this theory of rate making. However, the question is of little importance since the exclusion of these charges (approximately $23,000 in 1937 and $12,000 in 1938) would not convert the losses into a profit. Matson errs also in omitting indirect vessel operating expenses and general and administrative expenses.

During the period prior to the institution of this proceeding on November 22, 1937, Dollar's financial condition changed materially; by that date its condition had become desperate, and the line was on the verge of bankruptcy. By reason of Dollar's financial troubles, its fleet had deteriorated to the danger point, and, due to lack of funds to make required repairs, it was necessary to lay up a number of vessels for a total of 2,707 days in the latter part of 1937 and the early part of 1938. Whatever other causes there may have been, it cannot be doubted that the agreement, by depriving Dollar of revenues of approximately $1,000,000 from the Hawaiian service, contributed in substantial measure to Dollar's financial plight. The agreement, for the reasons pointed out being unduly burdensome upon Dollar, has resulted, and can only result in hampering it in carrying on its functions as an instrumentality of commerce, and in obstructing the rehabilitation of the Dollar service as a vital part of the American merchant marine, and therefore operates to the detriment of our commerce.

CONCLUSION

Upon this record the Commission finds that the agreement is unfair as between carriers and affirms its finding that the agreement operates to the detriment of the commerce of the United States.

Both Matson and Dollar seek clarification of that portion of the order of August 17, 1938, which forbids the parties to the agreement "from making further payments thereunder." Matson contends that if the order means that the payment of sums which accrued prior to the date of disapproval is prohibited, the order is beyond the jurisdiction of the Commission; and if it is not intended to prohibit the payment of such sums, the order should be amended to show that such prohibition relates only to transactions subsequent to disapproval. Dollar maintains that no further payments, even including past accruals, can lawfully be made under the agreement after its disapproval, relying upon that portion of section 15 which states that "after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement." It suggests that the order be amended specifically to refer to and include past accruals.

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. The grounds upon which the Commission may disapprove and thereby render the agreement unlawful are those specifically enumerated in section 15. Under that section, the agreement became lawful when approved; and remained so until disapproved. In short, the function of the Commission in this proceeding 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.

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. 1940.

No. 465

In the Matter of Dollar-Matson Agreements (Nos. 1253 and 1253-1)

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 of August 17, 1938, be, and it is hereby, modified to eliminate the provision of said order which forbids the parties to Agreement No. 1253 from making further payments thereunder, and confirmed as modified.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 578

INTERCOASTAL CANCELLATIONS AND RESTRICTIONS

Submitted August 19, 1940. Decided October 1, 1940

Motion to vacate suspension order granted in part. Minimum tonnage restriction found justified except as to Richmond, Calif.

M. G. de Quevedo, *Walter Shelton*, and *N. S. Laidlaw* for respondents.

H. E. Manghum, *Hugh B. Bradford*, *J. Francis O'Shea*, *J. H. Anderson*, *W. G. Stone*, *Eugene A. Read*, *Ralph L. Shepherd*, *Edwin G. Wilcox*, *Harvey B. Hart*, *C. A. Hodgman*, *J. Richard Townsend*, *B. C. Allin*, *C. O. Burgin*, *Ernest Gribble*, *Nels Weborg*, *J. C. Sommers*, *Irving F. Lyons*, *Leonard R. Keith*, *E. A. McMillan*, *M. H. Gates*, and *C. D. Penniman* for protestants.

Merritt D. McCarl and *W. Reginald Jones* for interveners on behalf of respondents.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By schedules filed to become effective June 5, 1940, and later, respondents[1] proposed to cancel direct-line and joint through rates for transportation of freight between various Atlantic and Pacific coast ports and to place minimum tonnage restrictions upon service to several of the ports involved. Upon protests of port authorities, shippers, and other interested parties, the schedules were suspended until October 5, 1940.

At the hearing counsel for respondents moved that the suspension order be vacated as to the Luckenback Steamship Company, Inc., and the Weyerhaeuser Steamship Company as neither carrier participated in the suspended schedules. This motion is granted. Motions were also filed to vacate the suspension order entirely on the

[1] American-Hawaiian Steamship Company, American President Lines, Ltd., (Arrow Line), Sudden & Christenson, California Eastern Line, Inc., Calmar Steamship Corp., Isthmian Steamship Co., Luckenbach Steamship Co., Inc., McCormick Steamship Co., Pacific Coast Direct Line, Inc. (Weyerhaeuser Line), (Panama Pacific Line) (Baltimore Mail Steamship Co., United States Lines Co., General Agents), (Quaker Line) Pacific-Atlantic Steamship Co., States Steamship Co. (California-Eastern Line) and Weyerhaeuser Steamship Co.

ground that we were without authority to require respondents to maintain service, and further that we had no authority to suspend the operation of schedules, the effect of which was merely to withdraw service. Respondents introduced no evidence with respect to the question of service, contending that it is entirely a question of law and cite in support of their position, *Lucking* v. *Detroit and Cleveland Navigation Company*, 265 U. S. 346; *McCormick Steamship Company* v. *United States*, 16 Fed. Sup. 45; and *Routing From Southwest to East and New England* 91 I. C. C. 455.

In the *McCormick case* a permanent injunction was sought against an order of the Secretary of Commerce requiring certain common carriers by water in intercoastal commerce to continue serving the ports of Berkeley and Emeryville, Calif. In that case respondents operating between Atlantic and Pacific coast ports had filed terminal rates applicable between Berkeley and Emeryville and Atlantic coast ports. After 6 weeks the schedules withdrawing the service were filed and these were suspended. The court found that the Shipping Act conferred no authority on the regulatory body to compel carriers to continue service, but in so doing they stated:

> None (cases cited by defendant to establish preference and prejudice) suggests that in the absence of the specific provisions of section 20 of the Interstate Commerce Act (49 U. S. C. A. section 20) a six weeks' service to a certain locality, upon which no industry or trade was shown to be established and which was undertaken in reprisal in a shipping competition, to whose uncontrolled and often destructive vigor the Government offered no protection, must continue merely because it momentarily had conferred on the locality in question the benefit of overcoming the natural disadvantage of its shallow waters.

It is the position of the Sacramento protestants that we have authority to order the removal of undue preference and prejudice created by the withdrawal of service. In support of their contention they introduced evidence to show the effect of the carriers' action upon the shippers located there and upon the on-carrying River Lines.

We have carefully examined the cases cited by respondents in the instant proceeding and the arguments thereon, but find no reason to depart from the view expressed in *Westbound Intercoastal Rates to Vancouver*, 1 U. S. M. C. 770. In that case intercoastal carriers proposed to cancel their through routes and joint rates to Vancouver, Wash. Respondents questioned our jurisdiction to order cancellation of the schedules in question. We said:

> Notwithstanding such absence,[2] pertinent provisions of the Shipping Act to which respondents are amenable are absolute. For example, section 16 of

[2] Provision in Shipping Act, 1916, similar to paragraph 18, section 1 of Interstate Commerce Act making unlawful abandonment of rail transportation service unless authorized by Interstate Commerce Commission.

that Act forbids respondents, without qualification, to subject any locality or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Whenever in a given case the facts show undue and unreasonable prejudice and disadvantage, it is our duty, under the Act, to order its removal.

It should be added here that such an order should only be issued when undue preference and prejudice has been shown by the most clear and convincing proof.

Sacramento is some 94 nautical miles from San Francisco Harbor and, except in the rainy season, is only accessible to shallow-draft vessels routed over inland bays and rivers, whereas the competitive ports are accessible to ocean-going 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. Some of the competitive ports are accorded transshipment service, but this is a result of direct-line competition. Furthermore, even though respondents' costs of transshipment to Sacramento in some instances may be lower than that to the competitive ports, no showing was made as to the cost of the direct service accorded at these latter ports. 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 the unlawfulness of the practice of the carrier in connection with the transportation of the shipper's commodity. *The Paraffin Companies, Inc.* v. *American-Hawaiian SS Co., et al.*, 1 U. S. M. C. 628, 629.

Transshipping services at terminal rates were first established to Sacramento in 1901 but were discontinued in 1915 and again established in 1933 by an intercoastal carrier not a respondent in this proceeding. In 1934 respondents established terminal rates to Sacramento to meet the competition thus offered. Respondents continue to serve Sacramento east-bound with transshipment service at terminal rates and some of the respondents, notably American President Lines and Baltimore Mail Steamship Company, still continue such west-bound service.

The testimony of a shipper witness located at Sacramento, which was adopted through stipulation by 21 other shippers, is typical. He stated that his business had increased principally due to the application of terminal rates and that in reliance thereon he had invested considerable capital for plant improvements. The increases in this witness's business coincided as well with the general increases in business throughout the country as it did with the application of terminal rates. Further it appeared that even during those periods when the terminal rates were not applicable this shipper was able to compete although at a reduced profit. 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. Our only duty with respect to rates alleged to be unlawful is to inquire whether they are in accordance with the provisions of the various shipping acts. We cannot require carriers 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. *Alaskan Rate Investigation*, 1 U. S. S. B. 1, 7, *Eastbound Intercoastal Lumber*, 1 U. S. M. C. 608, 623. In this connection it should be pointed out that the witness was unable to state anything with respect to his own or his competitors' transportation costs for delivery at the consuming points. On the other hand, respondents showed that the Los Angeles receivers, in addition to their steamship costs, incurred the expense of transportation from Los Angeles Harbor to their places of business in Los Angeles. In view of the above, the effect of the withdrawal of the terminal rates is difficult to determine.

Evidence was introduced showing the west-bound movement to Sacramento and competitive ports of typical commodities for the years 1938 and 1939.

	Los Angeles	San Francisco	Alameda	Oakland	Richmond	Sacramento	Stockton	Portland	Seattle
1938 [1]	713, 759	405, 943	42, 760	75, 289	17, 226	21, 902	13, 804	105, 106	149, 813
1939 [1]	892, 063	517, 577	53, 020	82, 233	25, 555	21, 793	17, 221	128, 480	185, 748

[1] Tons of 2,240 pounds.

There is testimony to the effect that the proposed action will jeopardize the terminal property of the city of Sacramento (representing an investment of $3,000,000) which is leased to the River Lines. That carrier 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 this carrier will depend upon the service it renders and the charges it makes therefore, together with the ability of its patrons to hold their markets as against their competitors using other modes of transportation.

All preference and prejudice is not prohibited by law but only that which is unjust and undue. *Associated Jobbers and Manufacturers v. American-Hawaiian SS Co. et al.*, 1 U. S. S. B. 161, 167. As has been pointed out the evidence must clearly demonstrate unlawfulness to sustain the entry of an order. Similarity of transportation conditions is a necessary element of undue preference and prejudice. From the evidence set forth hereinabove it is clear that the transportation conditions prevailing at Sacramento are materially different from those at the competitive ports. While the evidence establishes that the proposed withdrawal of service will be detrimental to the interests at Sacramento, it falls short of proof of unlawfulness. Moreover, consideration must be given to the interests of respondents who in their managerial wisdom have seen fit to discontinue service. Considering these conflicting interests, the difference in volume of movement and other dissimilarities in transportation conditions mentioned above, we conclude that the proposed cancellation of service will not result in undue preference and prejudice.

The remaining question concerns the lawfulness of minimum tonnage requirements for calls at certain ports. This requirement generally has been fixed at 250 tons. Respondents' witnesses testified that a minimum was necessary in order to enable them to hold their competitive position in the trade since the maintenance of schedules is of primary importance. They state that unrestricted terminal rates were accorded to small ports as a result of competitive pressure, that many of these ports do not supply sufficient tonnage to justify unrestricted service, consideration being given to cost, and that the reestablishment of this tonnage requirement is merely a return to good steamshipping practice and an endeavor upon their part to operate at a profit which they have not been able to do heretofore. The minimum in question is the smallest quantity which can be handled economically on an intercoastal ship in a day's time so as to get the full benefit of the services of a stevedoring gang and the reasonable use of ship's gear. We conclude, therefore, that the minimum tonnage requirements under suspension have been justified except as shown hereinafter.

Richmond, Calif., located on San Francisco Bay, is shown to be competitive with other San Francisco Bay ports. Respondents offer service not only to one or two piers in San Francisco proper without restriction but serve from one to four piers in Oakland, in addition to according unrestricted service to Alameda. If consideration is given to the private piers served by respondents at these latter ports, the number will run as high as six in some cases. A Richmond shipper testified that he was in direct competition with shippers at Oakland and Alameda and that the curtailment of service at Richmond would necessitate his using these competitive ports at an additional expense. The minimum tonnage requirement at Richmond has not been justified.

The evidence with respect to Vancouver shows that no substantial volume of traffic moved over the lines of respondents. A witness for the on-carrying River Line did not recollect having had any shipments over these lines with the possible exception of McCormick. His interest in the maintenance of unrestricted terminal rates was the hope of obtaining business in the future. It was testified that practically all the eastbound tonnage from Vancouver moved over the American-Hawaiian Steamship Company and the Luckenbach Steamship Company, neither of whose schedules covering service to Vancouver are here in issue. Consequently an order against these carriers cannot be entered in this proceeding. The establishment of the minimum tonnage requirement at Vancouver has been justified.

The representative of Longview admitted that that port does not have sufficient general cargo to entitle it to service of all respondents, but that there is sufficient tonnage to justify service by a few of the lines and that the port interests would be satisfied with such service. The establishment of rates and service is a question in the first instance for the managerial discretion of respondents. We have no authority to make a finding under these circumstances with respect to some of the respondents and not with respect to the others. Likewise, we are without authority in the instant proceeding to allocate ports as requested by the witness. A witness for respondent admitted that this was the solution of the problem but stated that to date the carriers had been unable to agree among themselves as to the ports to be served by each and that consequently no action in this direction had been taken. 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. We believe the carriers and the shippers should work out a plan so as to accord service to all ports under reasonable rates, rules, regulations and practices commensurate with the needs at the ports. It was suggested that the inability of the carriers to agree in this case was the result of the difference in the amount of revenue tons otainable as between the various ports. If this is the only objection to an equitable agreement, it would appear that it would be to the advantage of all parties concerned for the carriers to again avail themselves of the privileges of section 15 by establishing a pooling agreement or some other such device which would enable them to obtain a reasonable revenue and accord reasonable service.

On this record the minimum tonnage requirement at Longview has been justified.

Respondents discontinued service at ports in addition to Sacramento. Little or no evidence was introduced to show that the cancellation of service at these other ports will result in undue preference and prejudice. Upon this record we conclude that these cancellations will not result in undue preference and prejudice.

We find that respondents' schedules fixing a minimum tonnage requirement at Richmond, Calif., have not been justified but that in all other respects schedules suspended by our orders of June 4, 1940, and June 11, 1940, have been justified. An order will be entered vacating the orders of suspension in accordance with this finding and discontinuing this proceeding.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 1st day of October A. D. 1940.

No. 578

Intercoastal Cancellations and Restrictions

It appearing, That by orders dated June 4, 1940, and June 11, 1940, as amended by order dated June 21, 1940, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the schedules enumerated and described in said orders, and suspended the operation of said schedules until October 5, 1940;

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

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel said schedules insofar as they establish a minimum applicable at Richmond, Calif., on or before October 5, 1940, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 2 of the Intercoastal Shipping Act, 1933;

It is further ordered, That in all other respects our orders of June 4, 1940, and June 11, 1940, be, and they are hereby, vacated and set aside as of October 5, 1940, and this proceeding is hereby discontinued.

By the Commission.

[SEAL]

(Sgd.) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 545

UNITED CAN COMPANY [1]

v.

SHEPARD STEAMSHIP COMPANY ET AL.

Submitted August 4, 1940. Decided October 17, 1940

Rates charged on tinplate tops and bottoms from Philadelphia, Pa., to Los Angeles, Calif., found unreasonable. Reparation awarded.

Vincent M. Smith for complainant.
E. J. Martin for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This case was presented under the shortened procedure. No exceptions were filed to the examiner's proposed report. Our conclusions differ in part from those proposed by the examiner.

Complainant corporation alleges by complaint filed July 21, 1939, that the rates charged on 12 shipments of tinplate tops and bottoms, hereinafter called ends, shipped between January 5, 1937, and February 9, 1938, from Philadelphia, Pa., to Los Angeles Harbor, Calif., over defendant Shepard Steamship Company were unreasonable. General Steamship Corporation, Pacific coast agent of Shepard, was named defendant, but the record fails to show any cause of action as to that company and the complaint, as to it, will not be considered. Reparation is sought. The complaint as to 7 of the shipments is barred under section 22 of the Shipping Act, 1916. Rates will be stated in cents per 100 pounds.

Tinplate ends are reclaimed ends of tin cans. They are washed, dried, polished and flattened before shipment and are packed in cartons measuring 19¼ by 13 by 7 inches weighing about 50 pounds. The value is said to be $14.00 per ton of 2,000 pounds, f. o. b. docks,

[1] Complainant's name has been changed to Val Vita Food Products Company.

Philadelphia. Three shipments, weighing 21,900, 22,560 and 105,700 pounds, respectively were shipped prior to October 15, 1937. The applicable carload rate was 55.5 cents, minimum weight 24,000 pounds. Charges were collected in the amount of $833.40 at the 55.5-cent rate, actual weight. The first two shipments were undercharged $11.65 and $7.99 respectively. Effective October 15, 1937, the rate became 60 cents. After that date, two shipments were made, weighing an aggregate of 134,700 pounds, on which applicable charges of $808.20 were collected.

Reparation is sought to the basis of rates of 33.5 cents and 35 cents contemporaneously in effect on tinplate sides, a commodity shipped by complainant on the same bills of lading with ends and consisting of the sides of tin cans from which the ends have been reclaimed. Effective February 22, 1938, Shepard reduced the rate on ends to 35 cents, minimum 36,000 pounds, and since that date has accorded ends and sides rate parity. On June 15, 1940, the rate became 40 cents.

Tinplate sides are shipped in cartons measuring 19¼ by 7 by 7¼ inches, weighing 200 pounds each and are valued by complainant at $39.00 per ton of 2,000 pounds. There is no evidence of damage claims on either sides or ends. Complainant points to the fact that carriers parties to Alternate Joseph A. Wells' westbound intercoastal tariff have, for a period of years, maintained equal rates on ends and sides and that at the time of movement those rates were lower than the assailed rates. Between October 3, 1935, and May 6, 1937, Wells published a B line rate of 36 cents and an A line rate of 38.5 cents on the commodities in question. Effective May 7, 1937, the B and A line rates became 38 cents and 40.5 cents respectively. Under our minimum rate order of April 9, 1940, *Intercoastal Rate Structure*, 2 U. S. M. C. 285, the 38-cent rate became the minimum in westbound intercoastal commerce. On May 1, 1940, Wells established B and A line rates on sides and ends of 43 cents and 45.5 cents respectively. Complainant shows that on certain commodities Shepard maintains lower rates than those named by Wells. Such evidence is of no probative value in so far as the issue here is concerned and has not been considered. Nor can any weight be given complainant's assertion that it was without knowledge that, at the time of movement, the Wells rates were lower than Shepard's since complainant is presumed to have notice of rates of common carriers legally published and filed.

Shepard takes the position that its 35-cent rate effective February 22, 1938, was unreasonably low and was compelled by the competitive rate of Wells. It states that ends stow 44.5 cubic feet per ton and should yield not less than $9.02 per ton. At that figure, the rate would be 45 cents. Indicating that the assailed rates charged had no influence on the movement, Shepard stresses the fact that it enjoyed a regular and substantial volume of business during the period its rates exceeded the Wells rates and that since the reduction the volume has not increased.

Complainant's contention that ends and sides should be on a rate parity appears sound. However it does not follow that the 33.5-cent and 35-cent rates applicable on sides at the time of movement were maximum reasonable rates. As heretofore stated, the prescribed minimum on both commodities is 38 cents.

We find that the rates of 55.5 and 60 cents charged were unreasonable in violation of section 18 of the Shipping Act, 1916, to the extent they exceeded 45 cents, minimum weight 36,000 pounds; that complainant paid and bore the charges on the shipments involved and has been damaged to the extent of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of $296.47. An order awarding reparation will be entered.

Defendant Shepard Steamship Company should collect the outstanding undercharges.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION held at its office in Washington, D. C., on the 17th day of October A. D. 1940.

No. 545

UNITED CAN COMPANY

v.

SHEPARD STEAMSHIP COMPANY 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, decision, and findings thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the defendant Shepard Steamship Company be, and it is hereby, authorized and directed to pay to complainant, United Can Company (Val Vita Food Products Company, Inc.) of Fullerton, California, on or before 30 days after the date hereof, the sum of $296.47 as reparation on account of unreasonable charges collected on the shipments involved herein.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 563

THE PEOPLE OF PUERTO RICO

v.

WATERMAN STEAMSHIP CORPORATION AND LYKES BROS. STEAMSHIP COMPANY, INC.

Submitted July 26, 1940. Decided October 22, 1940.

Upon settlement of issues by parties request for withdrawal of complaint granted and proceeding discontinued.

William Cattron Rigby for complainants.

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

E. H. Thornton for New Orleans Joint Traffic Bureau and *Rene A. Stiegler* for Board of Commissioners of the Port of New Orleans, New Orleans Joint Traffic Bureau and St. Louis Chamber of Commerce, interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

The complaint, as amended, alleged that the following tariff note published[1] on behalf of defendants was, among other things, unjust and unreasonable and unduly and unreasonably prejudicial and disadvantageous in violation of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933:

Cargo will only be accepted for these ports[2] when there is offered for loading on one vessel sufficient cargo, destined to any one of them, to yield, in the aggregate, to the carrying vessel not less than $1,500 ocean freight revenue. Also, carriers reserve the right, when necessity arises, to effect discharge at

[1] Tariff U. S. M. C. No. 1 of Agent T. J. Lennon; now Tariff U. S. M. C. No. 1, of Agent G. A. Meyer.

[2] Arecibo, Arroyo, Fajardo, Jobos, Guanica, Guayanilla, Humacao, and Yabucoa.

the most convenient port and to transship cargo at carrier's expense to destination at rates and under conditions which would have applied if vessel had discharged directly at the destination port intended.

Except at Guanica and Jobos, at which there are small private piers maintained by sugar centrals, no piers are available at any of the outports involved. Practically all such ports are on open roadsteads, and vessels are required to anchor while cargo is lightered. Lighterage charges apply in addition to published rates. Defendants claim the revenue obtainable from cargo offered for transportation to an outport is frequently insufficient to cover the cost incident thereto, and that weather conditions delay and often prevent discharging. Complainants are aware of such conditions but feel that, because of unfavorable economic conditions in Puerto Rico, consignees require greater service than that accorded under the note attached. They recognize, however, that traffic conditions might not warrant the same service to all outports.

Subsequent to hearing each defendant agreed to schedule two sailings each month to Arecibo, one sailing each month to Arroyo, and one sailing every two months to Fajardo, Humacao, and Jobos. No service is provided for Guanica, Guayanilla, or Yabucoa. In consideration of the foregoing complainants have requested that we permit the complaint to be withdrawn and that the proceeding be discontinued without prejudice. Pursuant to the aforementioned adjustment the following tariff provision has been published and filed in lieu of the note attached, effective October 18, 1940:

Vessels scheduled to call * * * will accept cargo for such ports but at its option may discharge such cargo at another port for transshipment, at vessel's risk and expense, to bill of lading destination provided, however, that consignees shall pay to the vessel an amount equal to the lighterage charge which would have accrued for account of cargo had the vessel discharged at bill of lading destination port.

It should be noted that few, if any opportunities exist for interport transportation in Puerto Rico by water, and consequently, except in rare instances, on-carriage will be by truck or rail.

The voluntary adjustment herein evidenced should result in service from Gulf ports which, with some exceptions, corresponds with the service of other carriers from ports on the Atlantic coast of the United States under tariff provisions which also establish alternative routes, when necessity arises, at the same aggregate charge to shippers as for direct service and with substantially similar provisions for absorption of expense incident to on-carriage.

We have neither prescribed nor approved tariff provisions of this nature. Tariffs should provide means for effecting delivery at bill of lading destination, but whether the substitute note is in compliance with all statutory requirements will be left for future consideration. Complainants will be permitted to withdraw the complaint and the proceeding will be discontinued without prejudice to any subsequent regulatory proceeding upon complaint or otherwise. 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 22nd day of October, A. D. 1940.

No. 563

THE PEOPLE OF PUERTO RICO

v.

WATERMAN STEAMSHIP CORPORATION AND LYKES BROS. STEAMSHIP COMPANY, INC.

This case, at issue upon complaint and answer on file, having been duly heard, and subsequent thereto the issues involved having been voluntarily adjusted and complainants having requested that they be permitted to withdraw the complaint and that an order be entered discontinuing the proceeding; 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 request for permission to withdraw the complaint be, and it is hereby, granted, and that the proceeding be, and it is hereby, discontinued, without prejudice to any subsequent regulatory proceeding upon complaint or otherwise.

By the Commission.

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

Secretary.

UNITED STATES MARITIME COMMISSION

No. 553

GULF-PUERTO RICO RATES VIA THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY

Submitted January 18, 1940. Decided November 7, 1940.

Cancellation by New York & Porto Rico Steamship Co. of service from Gulf ports of the United States to Puerto Rico not unlawful. Proceeding discontinued.

Burton H. White for respondent.

William Cattron Rigby for the Government of Puerto Rico and Department of the Interior; *Rene A. Stiegler* for Board of Commissioners of the Port of New Orleans and St. Louis Chamber of Commerce; *E. H. Thornton* for New Orleans Joint Traffic Bureau; and *J. D. Youman* for New Orleans Public Belt Railroad, protestants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This case involves the lawfulness of the cancellation by respondent of its entire service and rates from Gulf ports of the United States to Puerto Rico.

On September 1, 1939, through an agreement with Waterman Steamship Corporation respondent announced its determination to discontinue its common carrier service from Gulf ports of the United States to Puerto Rico for a period of 10 years, beginning on or about October 15, 1939. That agreement also covered an alleged sale of good will for a consideration aggregating $300,000, payable in ten annual installments.[1] On September 19, 1939, a tariff schedule[2] was filed by which respondent sought to cancel its service and rates from Gulf ports effective October 19, 1939. Upon protest of The Government of Puerto Rico, The Department of the Interior,

[1] The status of the agreement under section 15 of the Shipping Act, 1916, is in issue in No. 556, an investigation on our own motion instituted by order entered November 21, 1939.

[2] Fifth revised page No. 5 to Agent T. J. Lennon's Tariff, U. S. M. C., No. 1.

and the Board of Commissioners of the Port of New Orleans, the operation of the schedule was suspended pending investigation concerning its lawfulness. The suspension period expired February 19, 1940, and the schedule became effective by operation of law.[3]

At a hearing held December 20, 1939, at New Orleans, La., respondent, appearing specially, declined to offer evidence and moved that the hearing be suspended. The motion was denied. The burden of justifying a suspended schedule rests upon the carrier or carriers named respondent[4] and, in the absence of carrier evidence, the schedule ordinarily would be found not justified and an order requiring its cancellation issued. Such action, however, in this instance is not warranted, because the facts requiring discontinuance of this proceeding are clear. Service by The New York and Porto Rico Steamship Company has been canceled. Protestants offered no evidence of undue prejudice. Prior to the agreement aforementioned, the service and rates of both respondent and Waterman 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.

In *Lucking* v. *Detroit Navigation Co.*, 265 U. S. 346, decided in 1924, the right of a common carrier by water operating on the Great Lakes to discontinue its service was upheld. The case turned upon the distinction between the power of the Interstate Commerce Commission, flowing from its authority to issue certificates of public convenience and necessity, to compel continuance of railway service and the absence of such power over common carriers by water. The court said:

> 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 Steamship Co.* v. *United States of America et al.* 16 Fed. Sup. 45, decided August 14, 1936. Legislation subsequently enacted confers no additional authority upon us on the point involved. An order discontinuing the proceeding will be entered.

[3] Decision was deferred pending the outcome of a petition and complaint for a declaratory judgment filed by respondent December 19, 1939, in the District Court for the Eastern District of the State of New York. On April 15, 1940, a motion to dismiss was denied (32 Fed. Sup. 538). While a motion for a writ of prohibition filed in the United States Circuit Court of Appeals, Second Circuit, was denied on July 3, 1940, the court stated that "* * * it appears clear that the District Court lacks jurisdiction * * *." Upon reargument October 10, 1940, before the District Court the Commission's motion to dismiss the petition and complaint was granted.

[4] Puerto Rican Rates, 2 U. S. M. C. 117; Section 2, Public 259, 76th Congress, approved August 4, 1939.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 7th day of November A. D. 1940

No. 553

GULF-PUERTO RICO RATES VIA THE NEW YORK AND PORTO RICO STEAMSHIP COMPANY

It appearing, that by order entered October 17, 1939, this Commission entered upon a hearing concerning the lawfulness of the tariff schedule described in said order, and suspended the operation thereof until February 19, 1940; and no decision having been issued prior to the expiration of the suspension period provided by law the said schedule became effective; 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 proceeding be, and it is hereby, discontinued.

By the Commission.

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

Secretary.

UNITED STATES MARITIME COMMISSION

No. 562

ACME NOVELTY COMPANY

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

Submitted August 1, 1940. Decided November 7, 1940.

Rates charged on canes from New York, N. Y., and Philadelphia, Pa., to Los Angeles Harbor, Calif., found not unreasonable. Complaint dismissed.

Earl W. Cox for complainant.

W. M. Carney and *M. G. de Quevedo* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This case was presented under the shortened procedure. Exceptions were filed by complainant to the report proposed by the examiner, whose findings are adopted herein.

Complainant corporation alleges by complaint filed January 2, 1940, that the rates charged on canes, in less than carloads, shipped over defendants' lines from New York, N. Y., and Philadelphia, Pa., to Los Angeles Harbor, Calif., during July and August 1938, were unreasonable and in violation of section 14 of the Shipping Act, 1916. Defendants are American-Hawaiian Steamship Company, Luckenbach Steamship Company, Inc., and Panama Pacific Line (Baltimore Mail Steamship Company), common carriers by water in intercoastal commerce. The allegation as to section 14 was abandoned and has not been considered. Reasonable rates for the future and reparation are sought. Rates will be stated in amounts per 100 pounds.

Three shipments are involved. The first consisted of 50 cartons of canes invoiced as "parade canes, finished," weighing 5,000 pounds and moved over American-Hawaiian from Philadelphia to Los Angeles July 6, 1938. Charges in the amount of $200 were collected at the first class rate of $4, then in effect. The second shipment, consisting of 35 cartons of finished canes weighing 3,500 pounds and 15 cartons of unfinished rough canes weighing 1,230 pounds, moved over Luckenbach from Philadelphia to Los Angeles July 29, 1938. Charges in the amount of $154 were collected on the finished canes at the first-class rate of $4.40, effective July 29, 1938. On the unfinished rough canes charges of $38.62 were collected on basis of the third-class rate of $3.14. The third shipment, consisting of 10 cartons of finished ladies' swagger canes weighing 475 pounds, moved over Panama Pacific from New York to Los Angeles August 13, 1938. Charges of $20.90 were collected at the first-class rate of $4.40. The last shipment was originally billed as wood toy canes at a rate of $1.47, but upon inspection by an agent of the carrier at Los Angeles the billing was revised before the freight charges were paid.

Reparation is sought on the basis of a commodity rate of $1.40 applicable on toys and games prior to July 29, 1938. On that date the rate on toys and games was increased to $1.47.

Complainant contends the shipments were overcharged since the canes in question were parade canes to be used for amusement and should be rated as toys and games. Defendants assert that canes or walking sticks have never been classified as toys by either water or rail carriers and that movement of canes in less than carloads at commodity rates is unknown to them. No kind of cane is included in the tariff item listing specified articles upon which the commodity rates on toys and games apply. 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 the terms must be taken in the sense in which they are generally understood and accepted commercially. The rates charged were applicable.

No evidence was offered as to the reasonableness of the classification of parade canes or the class rates charged. We find that the rates charged have not been shown to be unreasonable. An order dismissing the case will be entered.

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ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 7th day of November A. D. 1940

No. 562

ACME NOVELTY COMPANY

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

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

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 554

AGREEMENTS OF NICHOLSON UNIVERSAL STEAMSHIP COMPANY AND SPOKANE STEAMSHIP COMPANY WITH DULUTH TRANSIT COMPANY AND CLARENCE L. HOLT

Submitted May 27, 1940. Decided November 15, 1940.

Nicholson Universal Steamship Company found to have allowed Holt Motor Company to obtain, and Holt Motor Company found to have knowingly and willfully obtained, transportation of automobiles from Detroit, Mich., to Duluth, Minn., at less than the legally applicable rate, in violation of section 16 of the Shipping Act, 1916, as amended, and section 2 of the Intercoastal Shipping Act, 1933, as amended.

Nicholson Universal Steamship Company found to have given Holt Motor Company an undue preference, in violation of said section 16.

Nicholson Universal Steamship Company found to have knowingly disclosed and permitted to be acquired, and Duluth Transit Company and Holt Motor Company found to have knowingly received, information, in violation of section 20 of the Shipping Act, 1916. No violation of section 14 or 15 of the Shipping Act, 1916, found to have been established.

Milton P. Bauman and *S. S. Eisen* for Nicholson Universal Steamship Company and Spokane Steamship Company and *Samuel H. Maslon* for Holt Motor Company and Clarence L. Holt.

R. H. Hallett for United States 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 agree with those which the examiner recommended.

This is a proceeding instituted by us upon our own motion to determine whether section 14, 15, 16, or 20 of the Shipping Act, 1916, as amended, or section 2 of the Intercoastal Shipping Act, 1933, as amended, had been violated as a result of two agreements entered into by Nicholson Universal Steamship Company[1] and Spokane

Steamship Company with one Clarence L. Holt and Duluth Transit Company, respectively.

Nicholson Universal is a common carrier by water engaged in the transportation of automobiles from Detroit, Mich., to Buffalo, N. Y., Cleveland, O., Milwaukee and Green Bay, Wis., and Duluth, Minn. It owns Spokane Steamship Company, a common carrier by water engaged in the transportation of automobiles from Detroit to Green Bay. The latter uses Nicholson Universal's boats and both engage space on the spar decks of bulk freighters operating on the Great Lakes.

Nicholson Universal began serving Duluth in 1933. In the same year, due to a lack of business, its operations to that port were suspended. Upon resumption of service in the spring of 1936, it entered into an arrangement with one E. W. Wiley to unload automobiles from its vessels at Duluth, to reload them into freight cars where necessary, and to unload from freight cars and make store-door delivery of such of them as moved by railroad from Duluth to Minneapolis or St. Paul, Minn. On automobiles that moved by rail from Duluth to Minneapolis or St. Paul, Wiley received \$5.34 per automobile, of which sum \$1 was for the unloading from boat, \$2.17 was for the loading into freight cars, and \$2.17 was for store-door delivery. On automobiles for western destinations, he received \$1 per automobile for unloading from boat and \$12.75 per carload (4 automobiles) for loading into freight cars. On automobiles delivered at Duluth and driven off, he received \$1 per automobile for the unloading from boat and delivery to consignees. Wiley soon found the arrangement to be unprofitable, and in June 1936 it was canceled. Nicholson Universal then entered into a similar arrangement with one S. W. Randolph, except that Randolph did not undertake to make store-door deliveries at Minneapolis and St. Paul. This arrangement likewise proved to be unprofitable for Randolph, and with the close of the 1936 season of navigation it was terminated.

In 1936, Nicholson Universal carried only 687 automobiles to Duluth. However, it informed Randolph that it expected to increase that figure to about 2,000 in 1937, but even this estimate and an offer to double his compensation, which are not shown to have been inadequate to yield a fair profit, failed to induce him to continue his services. Nicholson Universal then gave consideration to performing its own stevedoring at Duluth but discarded the plan. It also made an investigation to ascertain whether there were any other stevedores available to it in Duluth and found none. Thereupon, the arrangement with Holt was made.

Holt is president of the Holt Motor Company, a corporation which he organized in July 1925 and which has since been engaged at Minneapolis as a dealer and distributor of Chrysler and Plymouth automobiles. He also at one time was an officer of Spokane Steamship Company. Upon being informed that Nicholson Universal was going to discontinue operating to Duluth on account of its inability to obtain the services of a stevedore, Holt suggested that he would establish his brother-in-law, Russell Van Horn, in the stevedoring business if an agreement as to compensation could be reached, but indicated that the amount offered Randolph would be unsatisfactory. Some negotiation ensued, which resulted in an agreement being made and entered into by and between Nicholson Universal and Holt on February 11, 1937.[2]

After stating that Nicholson Universal had dock facilities at Duluth and certain equipment used in connection therewith for the unloading of automobiles and trucks from its vessels, the agreement set forth the desire on the part of Nicholson Universal to engage Holt's services in the unloading and delivery of, and the collection and remittance of freight charges on, automobiles and trucks transported by Nicholson Universal to Duluth, and provided that Holt would organize a company to act as stevedore which would furnish stevedore services to Nicholson Universal and act as its agent upon the conditions and for the considerations therein recited. Holt agreed that he would, at his own expense, furnish an agent and night watchman at the Duluth dock and that he would unload from Nicholson Universal's vessels and deliver to consignees or their agents automobiles and trucks arriving at such dock, load into railroad box cars wherever required automobiles and trucks so unloaded and purchase such Evans equipment as might be required therefor, collect and remit freight moneys due and owing to Nicholson Universal for the transportation of the automobiles and trucks so unloaded, keep and maintain telephone service at the dock, provide workmen's compensation and public liability insurance to cover his operations, and, in general, do such work and perform such duties as were necessary or required properly to discharge the business of a steamship agent and stevedore. Nicholson Universal agreed that it would, at its own cost and expense, keep and maintain the dock and other facilities to be furnished by it for Holt's use in good order and state of repair, that it would pay to Holt all costs and charges incurred by him in the performance of services under the agreement for light, heat, local telephone calls and dock rental, and that it would assume the risk of loss or damage to automobiles or trucks by fire or theft while on the dock or in Holt's possession in the performance of the agreement and keep and maintain adequate insurance therefor so as fully to protect both parties. It was further stipulated that Holt would have

[2] The agreement was between Nicholson Universal and Spokane Steamship Company, on one hand, and Holt, on the other. Spokane Steamship Company ceased serving Duluth long prior to the execution of the agreement and may be disregarded.

the sole and exclusive right to handle and sell such gasoline, oils or other products as might be necessary or required in the performance of the services provided for in the agreement and as might be sold upon the dock facilities to be used by Holt in his operations, all profits accruing therefrom to be the sole and exclusive property of Holt, who was to bear the expense incurred for tanks, their maintenance and repair. It was agreed that Holt's rates for the storage of automobiles and trucks unloaded pursuant to the provisions of the agreement should be the same as were contemporaneously charged by other boat lines at Duluth and that all net profits that might accrue from such storage should be divided equally between the parties. It was further agreed that Holt should have the sole and exclusive right to unload all automobiles and trucks transported to Duluth by Nicholson Universal and that, commencing with the opening of navigation for the season of 1937, Nicholson Universal's boats en route to Duluth should clear the Detroit docks at least three times a week so as to assure Holt at least three dockings per week at Duluth, Holt reserving the right, in the event of default in this respect, to cancel and terminate the agreement on written notice to Nicholson Universal. It was mutually understood and agreed that the solicitation of automobiles for transportation on Nicholson Universal's boats would be handled by Gwatkin and Gillespie, agents of Nicholson Universal, under arrangements then existing; that Holt would lend such assistance as he could to Gwatkin and Gillespie in the securing of automobiles and trucks for transportation to Duluth in vessels of Nicholson Universal, but that nothing contained in the agreement should be construed as imposing an obligation on Holt to procure any automobiles or trucks to be so transported.

In consideration of the services to be performed by Holt, Nicholson Universal agreed to pay him varying rates of compensation. For automobiles, including Chryslers and Plymouths, unloaded from its boats and reloaded into freight cars for movement to destinations other than Minneapolis or St. Paul, compensation at a rate of $10.75 per carload was provided. For Chrysler and Plymouth automobiles unloaded from its boats and reloaded into freight cars for shipment to Minneapolis or St. Paul, the compensation ranged from $2.09 to $6.92 per automobile, depending upon the through freight rate. For automobiles, including Chryslers and Plymouths, unloaded from its boats and not reloaded into freight cars, the compensation ranged from $5 to $9.50 per automobile, depending upon the freight rate. The compensation to be paid was made subject to a proviso that, if Nicholson Universal should reduce or increase the freight rates to be charged by it for transportation to Duluth, the compensation should be reduced or increased proportionately.

Holt reserved the right to organize a corporation for the performance of the terms, covenants, and conditions of the agreement to be performed on his part and to assign the agreement to such corporation. Without performing any service or receiving any compensation under the agreement, he assigned it to Duluth Transit Company, a Minnesota corporation, upon the organization of that corporation by him in April 1937. Thus assigned, the agreement continued in effect during the 1937 season of navigation. On November 29, 1937, Nicholson Universal and Duluth Transit Company entered into a new agreement,[3] and the agreement of February 11, 1937, was canceled.

The two agreements were substantially the same except in respect of the rates of compensation. The agreement of November 29, 1937, which, also, is now canceled, provided that Nicholson Universal would pay to Duluth Transit Company $12.75 per carload on automobiles, including Chryslers and Plymouths, unloaded from its boats and reloaded into freight cars for movement to destinations other than Minneapolis or St. Paul. On Chrysler and Plymouth automobiles unloaded from its boats and reloaded into freight cars for shipment to Minneapolis or St. Paul, the compensation ranged from $2.09 to $6.92 per automobile, depending upon the through freight rate. On automobiles, including Chryslers and Plymouths, unloaded from its boats by Duluth Transit Company and reloaded into freight cars for shipment to Minneapolis or St. Paul by a company other than Duluth Transit Company, compensation of $2 per automobile was provided. On automobiles, including Chryslers and Plymouths, unloaded from its boats and not reloaded into freight cars, the compensation ranged from $5.05 to $10.05 per automobile, depending upon the freight rate. As in the agreement of February 11, 1937, the compensation to be paid was made subject to a proviso that, if Nicholson Universal should reduce or increase the freight rates to be charged by it for transportation to Duluth, the compensation should be reduced or increased proportionately.

With the agreements in force, Nicholson Universal enjoyed a considerable increase in traffic. From 687 automobiles carried by it to Duluth in 1936, there was an increase to 7,654 in 1937, which was an exceptionally good year for the automobile business, 3,927 in 1938, and 4,049 in 1939. Automobiles consigned to Holt Motor Company were mainly responsible for the increase. In 1936, Holt Motor Company did not patronize Nicholson Universal, but in the three succeeding years there were consigned to it for itself and its dealers, who are said to control the routing of the automobiles to be turned

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[3] Spokane Steamship Company also was a party to this agreement.

over to them, 6,121 of the 7,654 automobiles transported by Nicholson Universal to Duluth in 1937, 2,596 of the 3,927 so transported in 1938, and 2,570 of the 4,049 so transported in 1939. The great majority of the automobiles so consigned were driven or towed from Duluth by Holt Motor Company and its dealers' own crew; therefore, Duluth Transit Company received a much greater compensation than it would have received had they been reloaded into freight cars for movement by railroad.

For each of the three years 1937–1939, more than 90 percent of Duluth Transit Company's compensation under the agreements was derived from automobiles unloaded and driven or towed away. In 1939, it received on these automobiles $22,670.46, which was approximately 91 percent of its total compensation, and in 1938 and 1937 the proportion was about the same. The compensation, as indicated, was not based on the cost of performing the services involved. Though the cost to Duluth Transit Company was less on automobiles that it did not reload into freight cars than it was on those which it reloaded, its compensation for the former was considerably greater. The compensation was based on the measure of the freight rate, and even with the freight-rate bases higher under the agreement of November 29, 1937, than under the one of February 11, 1937, the compensation remained unchanged on Chrysler and Plymouth automobiles reloaded into freight cars for shipment to Minneapolis or St. Paul, but was increased on automobiles not so reloaded but driven or towed away.

In the first year, 1937, Duluth Transit Company made a net profit of $12,900.56, in addition to which $1,500 was donated by Holt, and it paid out as dividends $13,833.56. Its net profit in 1938 was $780.29, and in 1939 it was $1,635.32. Holt is general manager of the company, receiving in that position an annual salary of $7,500; Van Horn as president receives $5,000 per annum; one Leonard L. Kvam is vice president without salary, and one W. M. Shirley is secretary and treasurer at $2,500 per annum. Van Horn, Kvam, and Shirley are directors of the company. Kvam and Shirley also are secretary-treasurer and assistant to the president of Holt Motor Company, respectively.

The capital stock of Duluth Transit Company consists of 25 shares of common stock of the par value of $100 per share. Certificates for 15 and 5 shares were issued to Holt on April 30, 1937, and June 15, 1937, respectively; a certificate for 2 shares was issued to Kvam on June 5, 1937; and on the latter date 3 certificates for 1 share each were issued to Shirley, Van Horn, and a Dr. Spencer, respectively. Prior to the issuance of the certificate for 5 shares to Holt on June 15, 1937, the 15 shares held by him were reduced to 8, and of the remaining 7 shares, Spencer acquired 4 and Kvam, Shirley, and Van Horn 1 each. At the time of hearing, therefore, Holt had 13 shares; Spencer had 5; Kvam had 3; Shirley had 2, and Van Horn had 2.

Holt, Kvam, and Shirley, as stated, are president, secretary-treasurer, and assistant to the president of Holt Motor Company, respectively. They also are directors of the company. Spencer is vice president and a director, but is engaged in the practice of dentistry and does not work for the company. Of the company's 845 shares of capital stock, Holt owns 312 shares; Kvam owns 75 shares; Shirley owns 25 shares; Spencer owns 33 shares; and 400 shares originally owned by Holt are held by Shirley as trustee for members of Holt's family. Thus, a controlling interest in Holt Motor Company is held by those having control and ownership, for all practical purposes, of the Duluth Transit Company. With the corporate veil removed, the two companies appear substantially as one. Hence, if the compensation paid by Nicholson Universal under the agreements was more than was just and reasonable Holt Motor Company was given an indirect concession from the transportation rate. See *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457.[4]

Counsel for Holt and Holt Motor Company asserts that there is no justification for the removal of the corporate veil between Duluth Transit Company and Holt Motor Company. Citing *Fletcher Cyclopedia of Corporations*, Section 44, he urges that the courts will remove the corporate veil and disregard the corporate fiction only where fraud is found to exist as a fact or the separate corporate entity is availed of for the purpose of perpetrating a fraud or violating a statutory commandment. Such is also the position of counsel for Nicholson Universal, who call our attention to *United States* v. *Milwaukee Refrigerator Transit Co. et al.*, 142 Fed. 247, 255, where it was said:

> If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.

Bearing in mind that it is a deliberate violation of law that is in question here, we think that to disregard the corporate entity and

[4] In *United States* v. *Milwaukee Refrigerator Transit Co. et al.*, 145 Fed. 1007, referred to by counsel, the situation appeared to be merely that a majority of the stock of the refrigerator company was owned by persons who also owned brewing-company stock. The majority of the brewing-company stock was owned by persons who had no interest in the refrigerator company. It may be added that control of the traffic was "as absolute in the refrigerator company as if it were owner," and the decree was entered against it and the railroad companies.

look at the substance of the matter would be in accord rather than in conflict with the authorities cited. But it is urged that the parties to the agreements acted in good faith and that indicative of their good faith is the fact that the agreements involved were submitted for our approval. Suffice it to say in this respect that nothing in the agreements discloses the situation that is now uncovered.

We think that the corporate veil may be removed for the purposes of this case, and so we come to a consideration of the reasonableness of the compensation in question.

For the services of a stevedore in unloading automobiles at Milwaukee and Green Bay, Nicholson Universal pays $1 per automobile, the same amount as it paid to Wiley and to Randolph at Duluth. But it is said that, at Milwaukee, National Terminals Company, which performs the services there, is not confined in its activities to serving Nicholson Universal but engages in a general warehousing business and acts as stevedore for vessels other than those of Nicholson Universal. At Green Bay, likewise, the stevedore, Randolph, is not restricted to serving Nicholson Universal. It is testified by the traffic manager of Minnesota-Atlantic Transit Company, which is engaged in transporting automobiles and package freight on the Great Lakes, that it cost his company $9,262.80 to handle 5,976 automobiles at Duluth in 1938, or $1.55 per automobile, exclusive of officers' salaries, maintenance, and return on investment, and that if, like Nicholson Universal, it handled only automobiles, the cost would have been higher. An employee of Western Transit Company, which company, like Nicholson Universal, engages in the transportation of automobiles exclusively, but, unlike the latter, owns none of the vessels employed in such transportation, testifies that direct labor alone, exclusive of officers' salaries, maintenance, and return on investment, cost his company $.995 per automobile for handling 10,074 automobiles at Duluth in 1937, $1.33 per automobile for handling 3,995 automobiles at Duluth in 1938, and $1.27 per automobile for handling 4,502 automobiles at Duluth in 1939. It is clear, therefore, that a compensation of $1 per automobile cannot be considered as the maximum permissible for the services rendered by the Duluth Transit Company in connection with the unloading of automobiles under the agreements. On the other hand, since $2.09 per automobile was agreed upon for unloading Chryslers and Plymouths from vessel and reloading them into freight cars for shipment to Minneapolis or St. Paul, it is obvious that for those so unloaded but not reloaded, a lesser service and cost being involved, the compensation should have been less than $2.09. As pointed out above, for automobiles unloaded under the agreement of November 29, 1937, where the reloading into freight cars was to be done by a company other than Duluth Transit Company, the compensation provided was $2 per automobile. This also was the maximum amount offered to Randolph and was higher than the rate paid Wiley where reloading by them into freight cars at Duluth was not required.

Counsel for Nicholson Universal point out that after deducting the cost figure of $1.55, above, from a compensation of $2 per automobile there would be left 45 cents per automobile for officers' salaries, maintenance, and return on investment. They state that in figuring stevedoring costs for the years 1936 and 1937 and thereafter important consideration must have been given to the actual 1936 tonnage as well as the potential 1937 volume and that 45 cents per automobile is obviously too low when it is considered that it would have produced only $309.15 in 1936. But the reason that it appears to be low is that it would have been inadequate to pay the officers' salaries and other expenses of the costly organization of Duluth Transit Company, not that it would have been insufficient to provide just compensation for services actually performed. The handling of automobiles at Duluth, especially only 687 automobiles in 1936, was but a small part of Nicholson Universal's operations and did not require an elaborate organization. This seems to have been recognized by Nicholson Universal in the employment of Wiley and Randolph. And, so far as any substantial investment in fixed plant is concerned, counsel for Holt and Holt Motor Company states that the functions of Duluth Transit Company were primarily those of a service corporation requiring no such investment. True, there is testimony that, in addition to acting as stevedore, Duluth Transit Company engaged in the solicitation of business, and it is on this ground that the measure of the compensation in question is chiefly defended, but that was not a transportation service, and no compensation therefor could be allowed. *Lehigh Valley R. R. Co.* v. *United States*, 243 U. S. 444. While in the case cited, as stated by counsel, the person receiving the compensation was a shipper, we have shown the common control of Duluth Transit Company and Holt Motor Company, and the latter was consignee. Moreover, the agreements placed no obligation upon Duluth Transit Company to do soliciting, and it cannot be said that one rate of compensation under the agreements any more contemplated the solicitation of traffic than another. Nor is the cost of solicitation established. Most of the business, as stated, consisted of consignments to Holt Motor Company and although they included automobiles for other dealers who are said to have had control of the routing, this control apparently was surrendered to Holt Motor Company, for the record shows that it, not the dealers, was consignee.

It is contended by counsel for Holt and Holt Motor Company that all items of service provided for in the agreements should be taken into consideration and that, if this be done, the rates of compensation on automobiles not reloaded into freight cars would be offset by the lower rates of compensation on other items. The lack of merit in this contention is apparent from the fact that, as pointed out by counsel for Nicholson Universal, for each of the three years 1937–1939 more than 90 percent of the compensation under the agreements was paid for automobiles unloaded and driven or towed away.

The compensation paid by Nicholson Universal to Duluth Transit Company under the agreements on automobiles unloaded at Duluth and not reloaded into freight cars, therefore, should not have exceeded $2 per automobile. By the payment of more than that amount, Holt Motor Company was given a concession, which was not justified by Nicholson Universal's judgment that to perform the services itself would be unwise. And there is no escape from the conclusion that the agreements were entered into with the primary purpose and intent of securing a concession for Holt Motor Company and Holt Motor Company's patronage for Nicholson Universal. The excess compensation, which, in most cases, ranged from $3 to $4.80, went far to remove the differences between Nicholson Universal's local rates on automobiles shipped to Holt Motor Company and lower proportional rates applicable on automobiles. For instance, effective September 21, 1938, local rates of $23.50, $24, and $24.50 per automobile, depending upon the over-all measurement, were applicable on the greater number of automobiles transported by Nicholson Universal from Detroit to Duluth and consigned to Holt Motor Company. On automobiles so transported and subsequently shipped by a common carrier to Minneapolis, Minnesota Transfer, or St. Paul, there was contemporaneously applicable a rate of $16 per automobile. In the amount of the excess compensation, 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 the Shipping Act, 1916, as amended, and section 2 of the Intercoastal Shipping Act, 1933, as amended.

In addition to the automobiles consigned to Holt Motor Company for itself and its dealers, Duluth Transit Company unloaded from Nicholson Universal's vessels 1,533, 1,331, and 1,479 automobiles in 1937, 1938, and 1939, respectively, for other dealers. Competition between automobile dealers is rather severe, and, in granting the concession to Holt Motor Company, Nicholson Universal also gave it an undue preference in violation of section 16 of the Shipping Act, 1916.

The concession is not shown to have constituted a deferred rebate as defined in section 14 of the Shipping Act, 1916, and no violation of that section appears of record. As to section 15, there is no indication that Duluth Transit Company is a common carrier by water, and, although it performed the terminal services under the agreements, it appears that the terminal facilities used in the performance of those services in connection with the vessels of Nicholson Universal, except some warehouse equipment used for stevedoring purposes, were furnished by the latter. Section 1 of the Shipping Act, 1916, defines an "other person subject to this act" as "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." The record does not warrant a finding that Duluth Transit Company is such an "other person."

In respect of the automobiles for others than Holt Motor Company and its dealers, Nicholson Universal necessarily disclosed to Duluth Transit Company, and so permitted Holt Motor Company, its officers and employees, to acquire, information concerning the nature, kind, quantity, destinations, consignees, and routing of such automobiles. It is suggested that, since Holt was well known in the area served by Nicholson Universal through the port of Duluth and endeavored to obtain business there for Duluth Transit Company, the information concerning transactions of shippers or consignees which he received from Nicholson Universal should be considered as obtained with the shippers or consignees' implied consent. This position fails to take into account that the protection sought to be provided by section 20 of the Shipping Act, 1916, was intended for all. 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 Company and thus permitting it to be acquired by Holt Motor Company, its officers and employees, and Duluth Transit Company and Holt Motor Company, by knowingly receiving the information, violated section 20 of the Shipping Act, 1916.

We find that 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 the Shipping Act, 1916, as amended, and section 2 of the Intercoastal Shipping Act, 1933, as amended; that Nicholson Universal gave an undue preference to Holt Motor Company, in violation of said section 16; that Nicholson Universal knowingly disclosed and permitted to be acquired, and Duluth Transit Company and Holt Motor Company knowingly received, information in violation of section 20 of the Shipping Act, 1916, and that no violation of section 14 or 15 of the Shipping Act, 1916, is established. Inasmuch as the agreements have been canceled, no order for the future, except to discontinue the proceeding, is necessary. The violations of law found to exist will be certified to the Department of Justice for prosecution.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 15th day of November A. D. 1940

No. 554

AGREEMENTS OF NICHOLSON UNIVERSAL STEAMSHIP COMPANY AND SPOKANE STEAMSHIP COMPANY WITH DULUTH TRANSIT COMPANY AND CLARENCE L. HOLT

This case, which was 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 this proceeding be, and it is hereby, discontinued.

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, JR.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 561

In the Matter of Rates, Charges, and Practices of Carriers Engaged in Trades from Japan to United States

Submitted October 15, 1940. Decided November 15, 1940.

Respondents named allow persons to obtain transportation at less than their regular rates and charges by means of false billing, unduly and unreasonably prefer and unduly and unreasonably prejudice particular persons, and collect rates and charges which are unjustly discriminatory between shippers, in violation of section 16 "Second," section 16 "First," and section 17 of the Shipping Act, 1916, respectively.

Cease and desist order entered.

William G. Symmers and *Samuel D. Slade* for the Commission.

A. A. Alexander, *Robert A. Grantier*, *Edward A. Jaggie*, and *Reginald S. Laughlin* for American President Lines, Ltd.; *E. J. Martin* for Daido Kaiun Kabushiki Kaisha; *J. Franklin Fort*, *Joseph J. Geary*, *Roscoe H. Hupper* and *Burton H. White* for Mitsui Bussan Kaisha, Nippon Yusen Kaisya, and Yamashita Kisen Kabushiki Kaisha; *Joseph J. Geary*, *Edward Huth, Jr.*, *Hans Isbrandtsen*, and *J. Timmer* for A. P. Moller; *R. A. Condy* and *E. C. Trainer* for Nippon Yusen Kaisya; *Maurice Storch* for Osaka Syosen Kaisya; *Allan A. Baillie* and *George C. Sprague* for Kawasaki Kisen Kabushiki Kaisha, Kokusai Kisen Kabushiki Kaisha, and Osaka Syosen Kaisya; *Chalmers G. Graham* for Kawasaki Kisen Kabushiki Kaisha and Osaka Syosen Kaisya; *Joseph J. Geary* and *William J. Tracy* for Kokusai Kisen Kabushiki Kaisha; *Joseph J. Geary*, *Herman Goldman*, *Perry Newcomb*, *Elkan Turk*, *Leo. E. Wolf*, and *James Bergin Young* for Wilhelm Wilhelmsen.

Report of the Commission

By the Commission:

Exceptions to the examiner's proposed report were filed by certain respondents and the issues were orally argued. The findings recommended in the proposed report are adopted herein.

This is an investigation instituted by orders of the Commission concerning the lawfulness under sections 16, 17, and 15 of the Shipping Act, 1916, of rates, charges, and practices of carriers engaged in transportation of freight from Japan to the United States. Respondents[1] are members of the Japan-Atlantic Coast Freight Conference and/or the Trans-Pacific Freight Conference of Japan, which conferences function under authority of agreements[2] filed and approved pursuant to section 15 of the Shipping Act, 1916.

By the terms of these conference agreements the respondents are required strictly to observe the minimum rates for transportation set forth in their tariffs. Their effective tariffs, Nos. 14 and 15,[3] were filed with this Commission on July 13, 1938, and April 11, 1940, respectively. Provisions of each of the conference agreements (paragraphs 4 and 5a) forbid acceptance of freight by any respondent at less than the actual gross weight or measurement thereof, and tariff Rule D requires that all rates are to be applied according to gross weight or measurement of the freight except where rates upon ad valorem[4] or other basis are specified for application in the tariff. This tariff rule requires further that when an item specifies weight, measurement and/or ad valorem rates, the rate furnishing the respondents the largest amount of revenue will apply. Tariff rule F provides that all cargo is to be weighed and/or measured by appointed sworn measurers and that no shipper's figures are to be accepted.[5] Paragraph 6 of each of the conference agreements provides that the sworn measurers referred to are to be employed and compensated by respondents.

In cooperation with the United States Bureau of Customs personnel, Commission investigators during January, February, March, and April 1940, examined customs files covering shipments from Japanese ports discharged from vessels of American President Lines

[1] American President Lines, Ltd., Daido Kaiun Kabushiki Kaisha, Kawasaki Kisen Kabushiki Kaisha, Kokusai Kisen Kabushiki Kaisha, Mitsui Bussan Kaisha, A. P. Moller, Nippon Yusen Kaisya, Osaka Syosen Kaisya, Wilhelm Wilhelmsen, Yamashita Kisen Kabushiki Kaisha, members of Japan-Atlantic Coast Freight Conference and Trans-Pacific Freight Conference of Japan; Canadian Pacific Steamships, Ltd., The China Mutual Steam Navigation Company, Ltd., and The Ocean Steam Ship Company, Ltd. (Blue Funnel Line), and States Steamship Company, members of Trans-Pacific Freight Conference of Japan.

[2] Japan-Atlantic Coast Freight Conference Agreement No. 3103, as amended, and Trans-Pacific Freight Conference of Japan Agreement No. 150, as amended.

[3] Trans-Pacific Freight Conference of Japan and Japan Atlantic Coast Freight Conference Joint Tariffs Nos. 14 and 15, issued June 20, 1938, and December 1, 1939, respectively.

[4] Rates on commodities specified in the tariff which, because their value exceeds a stated amount per 40 cubic feet or 2,000 pounds, are chargeable upon a stated percentage of their value, or at their commodity rate plus a stated percentage of their value.

[5] "All cargo is to be weighed and/or measured only at the official receiving hatobas by appointed sworn measurers, and no cargo is to be weighed and/or measured in shippers' godowns, nor are shippers' figures to be accepted. Exceptions to this rule: At Nogoya and Yokkaichi weighing and/or measuring will be permitted in godowns of the steamship companies receiving the cargo."

at San Francisco and Los Angeles, of Kokusai, Moller, O. S. K. and Wilhelmsen at New York and Los Angeles, and of Kawasaki, Mitsui, N. Y. K. and Yamashita at New York, San Francisco and Los Angeles, during the period from April 1938 to March 1940, inclusive. A further similar examination was conducted at New York in June 1940, in connection with shipments discharged at that port from vessels of Kawasaki, Kokusai, Mitsui, Moller, N. Y. K., O. S. K., Wilhelmsen and Yamashita during the period from April 1940 to June 1940, inclusive.[6] The papers examined included bills of lading and ships' manifests, consular invoices, customs entries, and customs entry permits.[7]

The bills of lading are in most instances prepared by the exporter-shippers in Japan on respondents' bill of lading forms, and are signed by the respondents' agents when the goods are offered for transportation. In all instances where not so prepared they are prepared by the respondents' agents from memoranda furnished respondents by the shipper. The ship's manifest for the particular voyage is prepared from the bills of lading and contains a description of the merchandise as it is described in the bills of lading.

A copy of the consular invoice, the customs entry, and the customs entry permit, which are presented by the importer in the United States to the collector of customs, comprise what are hereinafter collectively termed for the purposes of this proceeding the entry papers. It is the practice of the customs authorities to open and inspect at appraisers' stores the contents of approximately one case or package of every ten imported, and the penalty for furnishing false information in

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[6] No evidence was presented in this proceeding against Canadian Pacific Steamships, Ltd., The China Mutual Steam Navigation Company, Ltd., and The Ocean Steam Ship Company, Ltd. (Blue Funnel Line), Daido Kaiun Kabushiki Kaisha, or States Steamship Company, and the term "respondents" as hereinafter used in this report will not apply to these carriers.

[7] Consular invoices for shipments from Japan to the United States herein concerned are prepared by the exporter and presented by him to the United States consul located at the point of shipment. The invoice as to each shipment, certified to by the consul, is a declaration by the exporter that the particular merchandise has been sold and that it is intended to make entry of it in the United States. Foremost of its contents are an exact and detailed description of the goods to be shipped, and statement of the price at which they have been sold to the United States importer. This price is thereafter referred to by customs authorities, respondents, and consignors and consignees, as the value of the goods.

The entry is a customs document prepared and verified by the importer and presented by him to the collector of customs at the United States port of discharge of the goods. It customarily contains a description of the goods in correspondence with their description in the consular invoice, and includes a statement of their value.

The entry permit, required in connection with all dutiable imports, is also prepared and verified by the importer and presented by him to the collector. As to shipments entered at New York this permit is a carbon copy of the descriptive portion of the entry, but does not include the statement of value of the goods shown in the entry. At San Francisco and Los Angeles the permit is not ordinarily a copy of the entry, and its description of the goods is usually a statement of the number of cases in the shipment and their markings, followed by, for example, "Cotton Goods, Etc."

entry papers is severe and such cases are actively prosecuted. Erroneous description or statement of value of merchandise in these papers is rare.

Upon payment of customs duty by the importer and compliance with any other customs regulations which may be involved in the entry of the particular merchandise into the United States, the customs inspector on the steamship pier checks the number of cases or packages in the shipment and their markings with the corresponding information shown on the customs permit, and designates as released from customs the merchandise cleared for entry. This release of a shipment, or of so much thereof as has not been reserved for inspection at customs appraisers' stores, is to the steamship company. To insure that merchandise pending entry shall not be delivered before release from customs supervision is completed, each of respondents is under a term bond to the collector of customs in an amount up to $50,000. As a general practice on piers at New York and on some piers at San Francisco, respondents' delivery clerks initial or mark the customs permit in acknowledgment of the information it contains respecting the release to respondent of the portion of the shipment for delivery to the importer and as to the portion thereof ordered to appraisers' stores. At practically all piers in Los Angeles Harbor papers supplementary to the permits which serve to convey such information are in use. On all of the piers at each of the three ports concerned the permits are at all times while on the pier freely available to respondents' delivery clerks or other representatives for examination and for consultation with the inspector. The desks of the inspectors and respondents' delivery clerks are in the same or adjoining buildings, and in the case of some respondents, in the same office room.

In receiving shipments at Japanese ports, respondents make no effort to check or inquire into the nature, weight, measurement, or value of the shipment appearing in the bill of lading prepared by the shipper or in the shipper's memorandum from which respondents prepare the bill of lading. Notwithstanding their tariff rule providing that all cargo is to be weighed and/or measured by their appointed sworn measurers and that no shipper's figures are to be accepted, many of the bills of lading in evidence contain stamped notations on their faces reading "Shipper's Weight" or "Shipper's Measurement." Moreover, 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 measurement stated in the bill of lading and manifest. Similarly, in delivering shipments billed under various tariff items involving the value of the commodity,[8] there is not even a casual effort to inquire into the shipment's value to insure collection of applicable rates; nor in delivering shipments billed under a general descriptive phrase[9] is there exercise of any precaution by them to insure the collection of proper tariff rates. As hereinafter noted, in many instances labels or stencilled inscriptions on the cases of merchandise themselves clearly indicate the contents of the cases to be other than stated in the bills of lading and manifests. In exception to the above statement in the examiner's report, respondent Moller refers to assertion of its United States general agent that on two occasions cargo was "checked out," and that "there were some quite unimportant differences, and we were altogether satisfied that things were as they should be." One of such occasions was recent and the other was "some years ago." Also, that "in a few cases," when claims on shipments were filed by shippers, the description of the goods on ship's manifest was checked by this agent with the claims. In view of the large number of false billings of important character via this respondent disclosed in the instant investigation, it is apparent that the checkings upon which the exception is based could not have been of any substantiality.

No customs duty is assessed on raw silk imported into the United States, and thus it is not ordinarily weighed at entry. For the purposes of the instant investigation, however, customs inspectors weighed shipments of raw silk discharged during January and February 1940, from vessels of American President Lines and N. Y. K. at San Francisco and of Kokusai, Mitsui, Moller, N. Y. K., O. S. K., Wilhelmsen and Yamashita at New York and Los Angeles. The differences between the weights certified to by the inspectors and the weights stated in the bills of lading on which respondents collected transportation charges at rates per 100 pounds of $3 to the Pacific coast and $6 to the Atlantic coast are shown in appendix A. Notwithstanding respondents' tariff rule F heretofore mentioned, providing for weighing of cargo by respondents' appointed sworn

[8] Such as item 170 (metalware—value not exceeding $175 per 40 cubic feet, Atlantic coast $14 M), under which are billed and carried shipments of metal slide fasteners greatly exceeding in value $175 per 40 cubic feet, and to which item 330 (articles not otherwise specified, Atlantic coast $20 W/M) is applicable; or item 27 (bristles, Atlantic coast $20 M or 2½ percent AV), under which are billed and carried shipments of bristles of value requiring application of the ad valorem rather than the measurement rate applied—for example, shipment of 107 cubic feet of bristles of a value of $8,785 on which the transportation charge collected was $53.50 instead of the applicable charge of $219.63.

[9] "Dry Goods." There being no tariff item specifying dry goods, silk goods are billed and carried under item 330 (articles, not otherwise specified, Pacific coast $10 W/M), rather than under applicable item 257 (silk goods, not otherwise specified, Pacific coast $20 M plus ½ percent AV) or item 255 (silk goods, fuji and pongee and spun, value not exceeding $350 per 100 pounds, Pacific coast $18 M).

measurers and that shippers' figures will not be accepted, many of the bills of lading for the raw silk shipments exhibited contain stamped or printed notations stating the bill of lading weights to be shippers' weights.

The conditioned weights shown in the appendix are for all practical purposes the standard net weights upon which original sales of raw silk are based. The recurring instances in which this conditioned or net weight is the same or approximately the same as the bill of lading weight show that shippers bill the approximate net weights as the gross weights, and that they totally or partially disregard the tare. The possibility that this is the practice of shippers is conceded on behalf of one respondent. A departure from this practice is indicated by the instances in which the gross weight of a shipment is arbitrarily billed by the shipper at the convenient round figure of 130 pounds per bale, in disregard both of the tare and of the actual weight of the raw silk itself.

Whatever the explanation of the manner in which the bill of lading weights are arrived at by the shippers, the fact is that such bill of lading weights are false. This fact is not controverted by respondents except for argument, predicated upon misinterpretation of statement in evidence and upon the discredited conclusions of a sales pamphlet, that while en route the raw silk may accumulate sufficient weight in the form of moisture to explain the differences shown in appendix A.

In the case of raw silk from China, the gross weight of the bale is stencilled on each bale before shipment. Along with the shipments of Japanese raw silk discharged at Los Angeles and included in appendix A, a customs inspector weighed approximately 300 bales of Chinese raw silk contemporaneously discharged at that port from the same vessels. His testimony is that "invariably" the bale weights he obtained "never varied a pound" from the stencilled weights. There is no showing or indication of different susceptibility to moisture between Japanese and Chinese raw silk.

Upon the record the conclusion that the bill of lading weights concerned are false is amply established.

The examination of customs files covering shipments of commodities other than raw silk consisted of a "spot check", that is, following a general examination of ships' manifests and selection of a group of different commodities considered to afford instances in which differences between commodity descriptions in the bills of lading and in the entry papers could be readily shown, the documents for only a few shipments of each commodity in the group were segregated and examined. This course of examination was also followed in connection with various commodities described similarly in the bills of lading and entry papers, but whose values as shown by the consular invoices and entries required exaction of higher rates under respondents' tariff than those applied. The investigators' repeated testimony is that the exhibits prepared by them are merely illustrative of a great number of other similar false billings which their examinations disclosed. No effort was made by them to select for exhibit shipments which would display the greatest amount of saving in transportation charges to the consignor or consignee due to the false billing concerned, nor, except in one instance, to select for exhibit the shipments of any particular shipper or consignee.

In addition to the examination of documents of a substantial number of shipments photographs of labelled cases were taken and pencilled sketches of case labels and of stencilled case inscriptions descriptive of the contents of the case were made.[10] In some instances the investigators inspected the merchandise contained in loose or torn wrappings and in opened cases.[11] These photographs and sketches presented in evidence, and the investigators' testimony relative to visual inspections, abundantly corroborate the facts of false billing established by comparisons of bills of lading with entry papers.

In connection with a few of the exhibits showing shipments of commodities other than falsely billed raw silk, 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 of the shipment to exceed that stated in the notation, respondents' 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 in the case of the shipments covered by these exhibits, and at most such notations have no other effect than to restrict the shipper to the value stated in the event of claims for loss or damage. Moreover, the bills of lading contain no such notation on many shipments of the class concerned.

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[10] As, for example, shipments billed as cotton goods ($10 M), the case labels or inscriptions of which conspicuously indicate the contents of the cases to be woolen goods, i. e., "gloves and mittens, woolen knitted" ($22 M). Numerous trade associations sponsored by the Japanese Government inspect and certify to the contents of cases of export merchandise. An extensive practice by these associations is to paste one or more labels indicating, in the English language, the contents of the case on the ends thereof.

[11] Shipments of bamboo blinds ($13 M), billed as bamboo poles ($10 M) or bamboo ware ($10 M), and imitation pearl beads ($20 M) billed as glassware ($11 M).

Respondents question the accuracy of the investigators' interpretations and conclusions in connection with exhibits presented on various other argumentative grounds. Analysis of these grounds, in relation to the exhibits set forth in appendix B, shows them to be patently untenable, and discussion thereof would unnecessarily lengthen this report.

There is no doubt that the false billings of raw silk and other commodities exhibited and considered in this report 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. Reference is made by respondents to the fact that some of the exhibits show this gain or undercharge to be small, and the argument is advanced that the exhibited false billings as a whole are therefore due to mistake and of such unimportance as to relieve respondents of any statutory culpability. This argument fails of persuasion, however, in view of the substantial differences in transportation charges in the case of the majority of the shipments exhibited, and the cumulative rewards resulting to the shippers and consignees from their persistent pursuit of the unlawful billing practice engaged in by them. The per shipment undercharges on the raw silk shipments exhibited and shown in appendix A range in amount up to $153.24. The bills of lading of many shipments of commodities other than raw silk fail to segregate the measurements of different commodities comprising the shipment, and, since the customs duty is assessed according to value, neither do the entry papers furnish this measurement information concerning the falsely billed portion or portions of the shipment. For these reasons the amounts of undercharges due to the false billing concerned in the case of such shipments are not ascertainable. The undercharges range up to slightly more than $258 per shipment on the shipments exhibited in appendix B on which these amounts are ascertainable.

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. Briefly, these practical difficulties are stated to be confusion on the pier if cargo were to be checked with its billing, limited time within which cargo may be kept on the pier, intense activity on the pier at time of vessel arrivals, necessity for undelayed deliveries of shipments to importers, and unfamiliarity of respondents' delivery clerks and checkers with respondents' joint tariff. Respondents stress the fact that they do not see the consular invoices or the customs entries, and that the customs permits do not show the commodity values. 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. Suggestion that respondents establish a weighing and inspection agency to guard against false billings, such as other groups of carriers maintain, and that the expense of maintaining such an agency would be compensated for by the prevention or recovery of losses in their transportation charges, is replied to on their behalf by statements that such an effort by them would not be practical.

The facts and circumstances of record show that for a considerable length of time respondents have had little or no concern for the accuracy of billings under their tariffs, and that they have complacently disregarded the fact that by law [12] 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. Their disregard for this duty is particularly evidenced by the false billing of shipments delivered by them after the receipt of the Commission's order of investigation of December 29, 1939, and by exhibits presented at the further hearing in New York on June 21 and 22, 1940, covering shipments carried subsequent to the close of the New York hearing March 21, 1940. Their persistent 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. The reason for this course of conduct by respondents is that each of them is aware that any effort on its part to insist upon true billing would immediately result in loss of patronage to another respondent. As stated on behalf of one respondent in this connection, while misbilling in the trade "certainly calls for carrier action in the future, no one line can hope to put into effect stringent precautionary measures without putting itself in a bad competitive position," and "it would be ruinous for one line to attempt to weigh and in-

[12] Shipping Act, 1916, section 16 "Second," providing that it shall be unlawful for any subject carrier "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."

spect cargo where others are not following the same practice." 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. *Spurr* v. *United States*, 174 U. S. 728, 735; *Armour Packing Company* v. *United States*, 209 U. S. 56; *C. St. P. M. & O. Rwy. Co.* v. *United States*, 162 Fed. 835, 212 U. S. 579; *United States* v. *I. C. R. Co.*, 303 U. S. 239; *United States* v. *Wishnatzki*, 7 Fed. Supp. 313, 317, 77 Fed. (2d) 357.

By exhibits it is shown and by stipulation it is admitted that shipments of the same commodities as those falsely billed by some shippers are accurately billed by other shippers, and that the higher applicable tariff transportation rates and charges are collected from the latter shippers. Thus for the same transportation services performed under similar circumstances and conditions the record is that different rates and charges are paid by the two classes of shippers. There is, accordingly, undue and unreasonable preference and undue and unreasonable prejudice between persons and unjust discrimination between shippers for which respondents are responsible and answerable for violation of section 16 "First" and section 17 of the statute.[13]

Concerning the issue of violation of section 15 of the Shipping Act, 1916, the record is that no attempt has ever been made or considered by respondents at any time during the several years of the existence of their conference agreements to enforce important provisions thereof.[14] Indeed, the view is warranted that in allowing false

[13] Section 16 "First," providing that it shall be unlawful for any subject carrier "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"; section 17, providing, in part, that no subject carrier "shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers."

[14] Clause 4. "In the event of any party to this agreement granting any of the concessions mentioned hereafter (5a, acceptance of freight at less than the actual gross weight or measurement) to shippers directly or indirectly, or in the event of any party committing a breach of faith or performing any act or causing the performance of any act which is in any way contrary to the spirit and letter of this agreement, or which in any way or manner or method has for its object the subversion of the purposes and intentions of this agreement * * * then the remaining lines may if they so decide declare the defaulting line to have ceased to be a member."

Clause 7. "Each party to this agreement hereby pledges himself to faithfully adhere to and fulfill the provisions of this agreement * * * and further will not seek to subvert or evade any of the terms of this agreement."

Clause 10, of Agreement No. 150. "Inasmuch as it will be impossible to ascertain or measure the amount of damages which the parties hereto will suffer by reason of the breach of this agreement, the parties hereto expressly agree that the damages suffered thereby by each party hereto shall be, and they hereby are, liquidated at a pro rata part, based on the number of parties hereto not including the party committing the breach, of a sum equal to four times the amount of the freight, or other compensation, which the 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. Upon the instant record, 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 as a fact that there is an agreement between them to so disregard and allow.

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 on the part of respondents that they are free of condemnation for violation of section 16 or 17 unless and until such regulations are prescribed. They urge that the instant proceeding be dismissed for lack of proof of violation, and offer to cooperate "in any reasonable manner" in the promulgation of appropriate regulations.[15] In this connection admission is made on behalf of several of respondents that steps might be taken by them to clarify the joint tariff by making classifications more specific, by clarifying tariff rules, and avoiding unnecessary valuation questions; that existing joint tariff items are ambiguous or insufficient and should be enlarged in number and scope, and, in effect, that certain of their tariff items and rules should be revised to conform to workable practice. Additionally, it is clear upon the record that changes should be made by respondents to effect conformity between their tariff rules and their bill of lading provisions. A mixed shipment rule in their tariff made applicable to

party committing such breach shall receive for transportation of any cargo with respect to which such breach shall occur, providing, however, that the maximum damages for any one breach shall be ¥25,000."

[15] Such appropriate regulations, respondents suggest, should provide that "in some way" they should be given "the benefit of the consular invoice," although it is stated that "if only the production of the invoice were required, there might be unequal treatment accorded to shippers by the several lines"; that under "the ample power of the Commission" there should be prescribed by it regulations effecting "the remedy," which remedy "should be a practical one and should avoid to the maximum extent any obstruction to the normal and rapid flow of import merchandise into this country"; that "the Commission" should "require the respondents" to set up a weighing, measuring, and inspection bureau, and that "if the carriers are to enter into a comprehensive program" of checking bills of lading and customs documents "the Commission" should set "a minimum limit below which a carrier should not have to go in collecting additional freight." As respects raw silk shipments over their lines, a suggestion by one respondent is that in connection with any regulation laid down "by the Commission, it should obtain from the Bureau of Standards or some other reliable source a statement of the possible extent of the moisture absorption and allow the possible variation as leeway from the bill of lading weight." Statements in such suggestions are "We consider that in this proceding the objects of the carriers and the Commission are identical: To establish practices whereby misbilling of all sorts may be discouraged and the revenues of the carriers protected"; that "Upon the full record developed in the course of these hearings the Commission should be able to prescribe uniform rules for the guidance of all carriers in the detection and prevention of the abuses disclosed," and "we are willing to leave the prescription of rules for the future to the informed judgment of the Commission."

shipments in one container is desirable. By tariff rule respondents should require, as a condition of the contract of transportation, that a copy of the consular invoice be furnished or displayed to them. Reasonably adequate personnel and means for checking, weighing, measuring, and inspecting cargo to insure compliance with their statutory obligations should at all times be provided for by them.

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. Their problems in this connection are not more difficult than those encountered and solved by other carriers. In their conference capacity the respondents collectively have even more extensive opportunities available to them in this conection through joint and relatively economical means and methods found feasible by carriers in other trades. The 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.

We conclude and decide that each of respondents, namely, American President Lines, Ltd., Kawasaki Kisen Kabushiki Kaisha, Kokusai Kisen Kabushiki Kaisha, Mitsui Bussan Kaisha, A. P. Moller, Nippon Yusen Kaisya, Osaka Syosen Kaisya, Wilhelm Wilhelmsen and Yamashita Kisen Kabushiki Kaisha, is shown upon the record in this proceeding to allow persons to obtain transportation for property at less than the regular rates and charges currently established and enforced by it by means of false billing, in violation of section 16 "Second" of the Shipping Act, 1916, as amended; to give undue and unreasonable preference to particular persons and to subject particular persons to undue and unreasonable prejudice, in violation of section 16 "First" of that act, as amended; and to charge and collect rates and charges which are unjustly discriminatory between shippers, in violation of section 17 of that act, as amended. An order will be issued requiring respondents to cease and desist from the aforesaid violations.

Appendix A

AMERICAN PRESIDENT

Entry No.	Port of origin and bill of lading date	Destination (of water carriage) and approximate date of arrival	Number of bales in shipment	Gross weight as stated in bill of lading	Conditioned weight as shown in entry papers	Gross weight as shown by customs weight return	Total discrepancy between bill of lading gross weight and customs weight return gross weight
				Pounds	*Pounds*	*Pounds*	*Pounds*
IT 3402	Yokohama, 12/22/39	San Francisco, 1/6/40	30	4,070	(1)	4,201	131
Free entry, 03523	Kobe and Yokohama, 12/19/39, 12/20/39, 12/21/39, 12/22/39	do	850	108,834	108,380	112,685	3,851
KOKUSAI KISEN KAISHA							
Free entry, 339026	Yokohama, 12/16/39	New York, 1/23/40	10	1,357	1,354	1,381	24
Free entry, 336066	Yokohama, 12/7/39	New York, 1/8/40	30	4,123	4,042	4,172	49
Free entry, 336261	Kobe, 12/5/39	do	20	2,695	2,695	2,778	83
Free entry, 336175	Yokohama, 12/8/39	do	150	20,050	19,975	21,017	967
Free entry, 335990	Kobe and Yokohama, 12/5/39, 12/8/39	do	40	5,316	5,378	5,510	194
Free entry, 03022	Kobe and Yokohama, 12/15/39	Los Angeles, 1/9/40	40	5,295	5,295	5,526	231
MITSUI BUSSAN KAISHA							
Free entry, 337824	Yokohama, 12/15/39	New York, 1/17/40	265	35,775	35,356	37,035	1,260
Free entry, 338050	Kobe and Yokohama, 11/30/39, 12/1/39	do	40	5,445	5,346	5,575	130
Free entry, 337817	Yokohama, 12/15/39	do	260	35,204	35,201	36,210	1,006
Free entry, 338009	Kobe and Yokohama, 11/30/39, 12/4/39	do	495	67,107	65,919	68,915	1,808
Free entry, 338637	Kobe and Yokohama, 12/11/39, 12/12/39, 12/15/39	New York, 1/19/40	240	32,590	32,008	33,540	950
Free entry, 338638	Yokohama, 12/12/39	do	50	6,800	6,674	6,967	167
Free entry, 03480	Kobe and Yokohama, 1/20/40, 1/22/40, 1/25/40, 1/26/40	Los Angeles, 2/12/40	470	64,188	62,510	65,784	1,596
Free entry, 03472	Kobe and Yokohama, 1/9/40, 1/11/40, 1/12/40, 1/13/40	Los Angeles, 2/2/40	1,350	185,057	185,057	187,684	2,627

[1] No customs documents which serve to show conditioned weight are filed with the immediate transportation (in transit) entries.

Appendix A—Continued

A. P. MOLLER

Entry No.	Port of origin and bill of lading date	Destination (of water carriage) and approximate date of arrival	Number of bales in shipment	Gross weight as stated in bill of lading	Conditioned weight as shown in entry papers	Gross weight as shown by customs weight return	Total discrepancy between bill of lading gross weight and customs weight return gross weight
				Pounds	Pounds	Pounds	Pounds
Free entry, 337681	Kobe, 12/9/39	New York, 1/17/40	30	4,060	4,053	4,224	158
Free entry, 337684	Yokohama, 12/12/39	do	60	8,041	8,012	8,363	322
Free entry, 337680	Yokohama, 12/7/39, 12/8/39, 12/11/39	do	480	64,772	63,963	67,326	2,554
Free entry, 343371	Yokohama, 1/10/40	New York, 2/14/40	130	17,573	17,332	18,062	489
Free entry, 03293	Yokohama, 1/9/40, 1/12/40, 1/13/40	Los Angeles, 1/26/40	340	45,956	45,956	47,604	1,738
Free entry, 03473	Yokohama, 1/22/40, 1/24/40	Los Angeles, 2/9/40	250	33,750	33,750	34,658	908
Free entry, 03229	Kobe and Yokohama, 12/20/39, 12/21/39	Los Angeles, 1/10/40	675	90,954	89,891	94,514	3,560

NIPPON YUSEN KAISYA

Entry No.	Port of origin and bill of lading date	Destination (of water carriage) and approximate date of arrival	Number of bales in shipment	Gross weight as stated in bill of lading	Conditioned weight as shown in entry papers	Gross weight as shown by customs weight return	Total discrepancy between bill of lading gross weight and customs weight return gross weight
Free entry, 339021	Yokohama, 12/20/39	New York, 1/23/40	230	31,160	31,158	32,027	867
Free entry, 339007	Yokohama, 12/14/39, 12/16/39	do	130	17,695	17,341	18,074	379
Free entry, 339006	Yokohama, 12/18/39	do	300	40,500	39,934	41,828	1,328
Free entry, 03673	Kobe and Yokohama, 12/23/39, 12/26/39, 12/27/39, 12/28/39	San Francisco, 1/11/40	495	67,181	67,182	69,224	2,043
Free entry, 04389	Kobe and Yokohama, 1/22/40, 1/23-24/40, 1/25/40, 1/26/40	San Francisco, 2/9/40	840	115,086	115,086	117,023	1,937
Free entry, 03950	Kobe and Yokohama, 12/28/39, 12/29/39, 12/30/39, 1/4/40	San Francisco, 1/20/40	100	13,195	13,195	14,054	859
IT 3917	Kobe, 12/29/39	do	130	17,730		18,264	534
IT 3922	Kobe, 12/28/39	do	150	20,452		21,051	599
IT 3926	Kobe, 12/29/39	do	20	2,733		2,819	86
IT 3920	do	do	60	7,800		8,374	574
IT 3925	Kobe, 12/28/39	do	10	1,362		1,396	34
IT 3921	Kobe, 12/29/39	do	20	2,600		2,818	218
IT 3923	Yokohama, 12/29/39	do	10	1,370		1,404	34
IT 3924	Yokohama, 1/4/40	do	30	3,900		4,265	365
IT 3918	Kobe, 12/28/39	do	100	13,636		14,030	394
IT 3919	Kobe, 12/30/39	do	10	1,300		1,412	112
Free entry, 03225	Kobe, 12/16/39	Los Angeles, 1/8/40	10	1,365	1,365	1,410	45
Free entry, 03440	Kobe and Yokohama, 1/15/40, 1/17/40, 1/18/40, 1/19/40, 1/22/40, 1/23/40.	Los Angeles, 2/7/40	730	99,108	99,078	101,662	2,554

OSAKA SYOSEN KAISYA

Free entry, 340052	Yokohama, 12/19/39, 12/20/39	New York, 1/26/40	355	47,925	47,314	49,443	1,518
Free entry, 339737	Kobe, 12/16/39	do	50	6,824	6,702	7,003	179
Free entry, 339020	Yokohama, 12/19/39	do	390	52,772	52,770	53,974	1,202
Free entry, 337683	Kobe and Yokohama, 12/9/39, 12/11/39, 12/12/39	New York, 1/16/40	480	64,386	64,152	66,885	2,499
Free entry, 337688	Kobe and Yokohama, 12/7/39, 12/11/39	do	170	22,850	22,651	23,731	881
Free entry, 337679	Yokohama, 12/12/39	do	185	24,978	24,704	25,785	807
Free entry, 337770	Yokohama, 12/11/39	do	10	1,350	1,334	1,382	32
Free entry, 03000	Yokohama, 12/18/39, 12/19/39	Los Angeles, 1/9/40	20	2,680	2,650	2,818	138

WILHELM WILHELMSEN

Free entry, 340518	Yokohama, 12/26/39, 12/27/39	New York, 1/27/40	210	28,350	27,916	29,552	1,202
Free entry, 340560	Yokohama, 12/23/39	do	130	17,645	17,243	17,943	298
Free entry, 340556	Kobe and Yokohama, 12/22/39, 12/23/39	do	260	35,445	34,814	36,364	919
Free entry, 340519	Yokohama, 12/27/39	do	60	8,100	7,983	8,291	191
Free entry, 03230	do	Los Angeles, 1/11/40	10	1,350	1,350	1,380	30
Free entry, 03515	Yokohama, 1/29/40, 1/30/40	Los Angeles, 2/12/40	430	58,260	58,260	59,559	1,299

YAMASHITA KISEN KABUSHIKI KAISHA

Free entry, 337981	Kobe and Yokohama, 11/30/39, 12/4/39, 12/5/39	New York, 1/17/40	595	80,175	79,446	82,999	2,824
Free entry, 03060	Kobe, 12/18/39	Los Angeles, 1/12/40	50	6,500	6,650	6,984	484
Free entry, 03519	Kobe, 1/24/40, 1/26/40	Los Angeles, 2/14/40	40	5,466	5,320	5,608	142
Free entry, 03591	Kobe and Yokohama, 1/24/40, 1/25/40, 1/29/40	do	325	44,010	44,010	45,376	1,366

Appendix B

AMERICAN PRESIDENT LINES

[M=40 cubic feet, gross measurement. W=2,000 pounds. AV=ad valorem]

Exhibit No.	Bill of lading date	Port of shipment and discharge	Commodity as stated by bill of lading [1]	Commodity as shown by entry papers [1]	Rate charged	Applicable tariff rate
217	June 21, 1939	Yokohama to San Francisco	Dry goods (70)	Fuji silk pajamas (255)	$10 M	$18 M.
218	July 19, 1939	do	do	do	$10 M	$18 M.
219	Aug. 5, 1939	do	Cheap toys (293)	Wood panels (314)	$6 M	$10 M.
223	Apr. 27, 1939	Kobe to San Francisco	Provisions (220)	50 cases canned fish (42)	$8 M	$8.50 M.
				15 cases canned vegetables (43)	$8 M	$8.50 M.
224	Jan. 17, 1939	do	Cheap toys (293)	1 case silk and rayon mixed handkerchiefs (330)	$6 M	$10 W/M.
				9 cases wooden spoons and forks (314)	$6 M	$10 W/M.
225	Mar. 30, 1939	Yokohama to San Francisco	Dry goods (70)	1 case scarfs silk (257)	$10 M	$20 M and ½% AV.
				1 case ladies' silk blouses (257)	$10 M	$20 M and ½% AV.
226	Mar. 1, 1939	do	Toys (293)	Wooden necktie racks (314)	$6 M	$10 M.
300	Sept. 14, 1939	Kobe to Los Angeles	Rayon goods, etc. (228)	Silk cloth and silk thread (257)	$11 M	$20 M and ½% AV.

KAWASAKI KISEN KAISHA

Exhibit No.	Bill of lading date	Port of shipment and discharge	Commodity as stated by bill of lading [1]	Commodity as shown by entry papers [1]	Rate charged	Applicable tariff rate
137	Dec. 26, 1938	Kobe to New York	Chungking bleached bristles (27)	Chungking bleached bristles (27)	$20 M	2½% AV.
138	do	do	do	do	$20 M	2½% AV.
139	Jan. 11, 1939	do	Glassware (104)	Imitation pearl glass beads (15)	$11 M	$20 M.
140	June 30, 1939	do	do	Glass lenses for spectacles (value exceeding $125 per 40 cubic feet) (330).	$11 M	$20 W/M.
141	Jan. 27, 1939	Dairen to New York	White manchurian bristles (27)	Manchurian bristles (27)	$20 M	2½% AV.
142	Dec. 26, 1938	Kobe to New York	Metal ware (170)	Metal slide fasteners (330), value in excess of $125 per 40 cubic feet.	$14 M	$20 W/M.
143	do	do	13 cases metalware (170)	13 cases metal slide fasteners (330), value $985 per 40 cubic feet.	$14 M	$20 W/M.
			5 cases glassware (104)	5 cases imitation pearl beads (15)	$11 M	$20 M.
144	Dec. 15, 1938	Dairen to New York	Manchurian black bristles (27)	Manchurian black bristles (27)	$20 M	2½% AV.
145	Dec. 28, 1938	Yokohama to New York	Cotton goods (70)	Cotton and rayon mixed goods (229)	$20 M	$22 M.
146	Dec. 30, 1938	do	4 cases cheap toys (293)	4 cases phonograph needles (330)	$12 M	$20 W/M.
			2 cases glassware (104)	2 cases glass beads (15)	$11 M	$20 M.
227	July 3, 1939	Yokohama to San Francisco	Bamboo ware (12)	Bamboo blinds (10)	$4.50 M	$6.50 M.
231	Mar. 3, 1939	do	Lacquerware (144)	Wooden fire screens (314)	$7.50 M	$10 M.
			Cheap toys (293)	Wooden pipe stands (314)	$6 M	$10 M.
			Woodenware (314)	Pongee silk pajamas (255)	$10 M	$18 M.
232	June 1, 1939	do	Toys (293)	Window cleaners with wire handles (330)	$6 M	$10 W/M.
293	Mar. 28, 1940	Kobe to Los Angeles	26 bales bambooware (12)	26 bales bamboo blinds (10)	$5.50 M	$8 M.
			6 cartons toys (293)	6 cartons cotton wearing apparel (70)	$7.50 M	$12 M.
349	May 1, 1940	Kobe to New York	Glasswares (104)	Imitation pearl beads (15)	$13 M	$24 M.

[1] Figures in parentheses are tariff item numbers.

350	do	do	do	do	$13 M	$24 M.
351	Apr. 30, 1940	do	do	Spectacle lenses (330), value $358 for 10 cubic feet.	$13 M	$25 W/M.
352	May 1, 1940	do	do	Imitation pearl beads (15)	$13 M	$24 M.
353	do	do	do	do	$13 M	$24 M.
354	Apr. 30, 1940	do	Bambooware (12)	Bamboo blinds (10)	$13 M	$15 M.
355	do	do	Cotton goods (70)	Cotton and rayon tablecloths (229)	$24 M	$26 M.
356	do	Osaka to New York	Damask tablecloths (70)	Cotton and rayon table damask (229)	$24 M	$26 M.
357	do	Kobe to New York	Rag rugs (235)	Wool hooked rugs (236)	$12 M	$14 M.

KOKUSAI KISEN KAISHA

23	Dec. 19, 1938	Yokohama to New York	Cotton goods (70)	Silk handkerchiefs (257)	$20 M	$36 M or 2% AV.
28	Dec. 28, 1938	do	Cheap toys (293)	7 cases cotton pincushions (70)	$12 M	$20 M.
				1 case oilskin pouches with chromium slide fasteners (330).	$12 M	$20 W/M.
				1 case metal spring tape measures in tin cases (170).	$12 M	$14 M.
29	Dec. 25, 1938	Kobe to New York	Glasswares (104)	Imitation pearl beads (15)	$11 M	$20 M.
30	do	do	Toys (293)	9 cases needles and threaders (170)	$12 M	$14 M.
31	do	do	Hooked rugs (235)	Wool hooked rugs (236)	$10 M	$12 M.
32	do	do	Bamboo poles (11)	Bamboo blinds (10)	$10 M	$13 M.
33	Dec. 26, 1938	Nagoya to New York	69 cases porcelain ware (toys) (218).	69 cases bisque dolls (293)	$10 M	$12 M.
34	Dec. 23, 1938	Kobe to New York	Bristles (27)	Bristles (27)	$20 M	2¼% AV.
35	do	do	Bleached chungking bristles (27)	Bleached chungking bristles (27)	$20 M	2¼% AV.
			Artificial bristles (27)	Artificial bristles (27)	$20 M	2½% AV.
37	Dec. 24, 1938	do	Bristles (27)	Bristles (27)	$20 M	2½% AV.
38	Dec. 25, 1938	do	Glasswares (104)	Hollow crystal glass beads (15)	$11 M	$20 M.
40	do	do	Cheap toys (293)	Artist brushes (28)	$12 M	$20 M.
41	do	do	do	Celluloid handle tooth brushes (28)	$12 M	$20 M.
				Celluloid sacks for tooth brushes (49)	$12 M	$16 M.
290	June 22, 1939	Nagoya to Los Angeles	Glassware (104)	Imitation pearl beads (15)	$5.50 M	$11 M.
329	May 10, 1940	Yokohama to New York	Metalware (170)	Metal slide fasteners (330), value $695 for 48 cubic feet.	$16 M	$25 W/M.
330	May 7, 1940	Kobe to New York	Cheap metal (170)	Metal slide fasteners (330), value $1,828 for 60 cubic feet.	$16 M	$25 W/M.
331	do	do	Toys (292)	Needles and needle cases (metalware) (170)	$14 M	$16 M.
332	do	Osaka to New York	Cheap toys (292)	Artist brushes (28)	$14 M	$24 M.
334	do	Kobe to New York	Bamboo ware (12)	308 bales bamboo porch screens (blinds) (10)	$13 M	$15 M.
335	do	do	Cheap toys (292)	Artist brushes (28)	$14 M	$24 M.
337	do	do	Metalware (170)	Metal slide fasteners (330), value $4,046 for 128 cubic feet.	$16 M	$25 W/M.
339	do	do	3 cases metalwares (170)	Slide fasteners (330), value $326 for 12 cubic feet.	$16 M	$25 W/M.
			3 cases glasswares (104)	Imitation pearl beads (15)	$13 M	$24 M.
341	do	do	Glassware (104)	do	$13 M	$24 M.
343	do	Osaka to New York	Damask tablecloths and towels (70).	12 packages cotton and rayon mixed goods (229).	$24 M	$26 M.
344	do	Kobe to New York	Bamboo (11)	Bamboo porch blinds (10)	$12 M	$15 M.
345	do	Osaka to New York	Cotton goods (70)	Cotton and rayon mixed goods (229)	$24 M	$26 M.

Appendix B—Continued

KOKUSAI KISEN KAISHA—Continued

Exhibit No.	Bill of lading date	Port of shipment and discharge	Commodity as stated by bill of lading	Commodity as shown by entry papers	Rate charged	Applicable tariff rate
				Rayon goods (228)	$24 M.	$26 M.
346	Mar. 26, 1940	Kobe to New York	Cotton goods (70.)	Rayon and cotton goods (229)	$24 M.	$26 M.
				Cotton and woolen goods (316)	$24 M.	$26 M.
347	May 7, 1940	do	Metalware (170)	Metal zippers (330), value $2,058 for 232 cubic feet.	$16 M.	$25 W/M.

MITSUI BUSSAN KAISHA

Exhibit No.	Bill of lading date	Port of shipment and discharge	Commodity as stated by bill of lading	Commodity as shown by entry papers	Rate charged	Applicable tariff rate
60	Jan. 25, 1940	Yokohama to New York	Cotton goods (70)	Woolen gloves and rayon and cotton mixed gloves (316; 229).	$24 M.	$26 M.
			Cheap toys (293)	Wooden toothpicks (314)	$14 M.	$16 M.
			Woodenware (314)	Brushes (28)	$14 M.	$24 M.
				do	$16 M.	$24 M.
89	Jan. 22, 1940	Kobe to New York	Cheap celluloid toys (292)	"Sanitary" crystal celluloid toothbrush holders (49).	$14 M.	$18 M.
			Celluloid goods (49)	Brushes (28)	$18 M.	$24 M.
			Cheap toys (293)	Infants', rubber hot water bottles (234)	$14 M.	$17 M.
				12 cartons silk handkerchiefs (257)	$20 M.	$36 or 2% AV.
				1 carton woolen goods (316)	$20 M.	$22 M.
98	Oct. 29, 1938	Yokohama to New York	Cotton goods (70)	10 bales cotton and rayon mixed goods (229)	$20 M.	$22 M.
				11 cartons rayon goods (228)	$20 M.	$22 M.
				18 cartons woolen and rayon goods (316)	$20 M.	$22 M.
				35 cartons silk handkerchiefs (257)	$20 M.	$36 or 2% AV.
102	July 30, 1938	do	do	40 cartons woolen goods (316)	$20 M.	$22 M.
				4 bales cotton and rayon mixed goods (229)	$20 M.	$22 M.
103	do	do	Cheap toys (293)	Cotton friction tapes (70)	$12 M.	$20 M.
				12 cartons silk goods (257)	$20 M.	$36 M or 2% AV.
105	Sept. 10, 1938	do	Cotton gooda (70)	82 cartons woolen goods (316)	$20 M.	$22 M.
				24 bales cotton and rayon mixed goods (229)	$20 M.	$22 M.
				6 cartons rayon goods (228)	$20 M.	$22 M.
107	Sept. 13, 1938	do	Toys (293)	Cotton frction tapes (70)	$12 M.	$20 M.
108	Sept. 10, 1938	Kobe to New York	Metalware (170)	Metal slide fasteners (330), value exceeding $175 M.	$14 M.	$20 W/M.
109		Dalren to New York, Sept. 29, 1938.	Bristles (27)	Black manchurian bristles (27)	$20 M.	2½% AV.
110	July 9, 1938	Dairen to New York	Black bristles (27)	do	$20 M.	$2½% AV.
				12 cartons silk handkerchiefs (257)	$20 M.	$36 or 2% AV.
				90 cartons woolen goods (316)	$20 M.	$22 M.
111	July 20, 1938	Yokohama to New York	Cotton goods (70)	13 bales cotton and rayon mixed table covers (229).	$20 M.	$22 M.
				9 cartons rayon goods (228)	$20 M.	$22 M.

112	July 18, 1938	Kobe to New York	Hooked rugs (235)	Wool hooked rugs (236)	$10 M	$12 M.
113	July 16, 1938	do	Cotton goods (70)	8 cartons woolen goods (316)	$20 M	$22 M.
				85 cartons cotton and rayon mixed goods (229)	$20 M	$22 M.
114	do	do	Cheap toys (293)	Metalware (170)	$12 M	$14 M.
115	Aug. 8, 1938	Dairen to New York	Black bristles (27)	Black manchurian bristles (27), value $1,980 for 58 cubic feet.	$20 M	2½% AV.
116	do	do	Bristles (27)	Bristles (27), value $6,512	$20 M	2½% AV.
118	Jan. 23, 1939	Kobe to New York	Cotton hosiery goods (70)	Cotton and Rayon socks (229)	$20 M	$22 M.
119	Sept. 10, 1938	do	Metalware (170)	Metal slide fasteners (330), value $696 for 24 cubic feet.	$14 M	$20 W/M.
236	July 2, 1939	Nagoya to San Francisco	Dry goods (330)	Silk wearing apparel (257), 152 cubic feet, value $363.	$10 M	$20+½% AV.
298		Yokohama to Los Angeles	Toys (293)	Wooden nut bowls, with hammers (314)	$6 M	$10 M.
358	Apr. 28, 1940	Kobe to New York	Glasswares (104)	Imitation pearl beads (15)	$13 M	$24 M.
359	Apr. 27, 1940	Osaka to New York	do	do	$13 M	$24 M.
360	do	do	do	do	$13 M	$24 M.
361	Apr. 16, 1940	Yokohama to New York	Cotton goods (70)	Woolen gloves (316)	$24 M	$26 M
363	do	do	do	Cotton and rayon mixed goods (229)	$24 M	$26 M.
366	Apr. 12, 1940	Kobe to New York	17 cases metalware (170)	17 cases metal zippers (330), value $2,206 for 110 cubic feet.	$16 M	$25 M.
			2 cases glassware (104)	2 cases sunglasses (330), (value $139 for 15 cubic feet).	$13 M	$25 M.
367	do	do	Cotton goods (70)	Rayon and woolen goods (229); and woolen goods (316).	$24 M	$28 M.

A. P. MOLLER

147	Feb. 5, 1939	Kobe to New York	Cotton goods (70)	Cotton and rayon goods (229)	$20 M	$22 M.
	Feb. 8, 1939	Yokohama to New York	Dry goods (70)	Silk goods (257)	$20 M	$36 or 2% AV.
148	Jan. 14, 1939	do	Cotton goods (70)	Cotton and rayon mixed goods (229)	$20 M	$22 M.
149	Feb. 5, 1939	Kobe to New York	Metalware (170)	Metal slide fasteners (330) value exceeding $1,000 per 40 cubic feet.	$14 M	$20 W/M.
151	Jan. 11, 1939	do	Glasswares (104)	Alabaster glass beads (15)	$11 M	$20 M.
152	Feb. 7, 1939	Yokohama to New York	Cotton goods (70)	Cotton and rayon tablecloths (229)	$20 M	$22 M.
153	Feb. 5, 1939	Kobe to New York	do	do	$20 M	$22 M.
154	do	do	Glasswares (104)	Glass buttons (330), value exceeding $125 per 40 cubic feet.	$11 M	$20 W/M.
156	Feb. 22, 1939	Yokohama to New York	Cotton goods (70)	1 case rayon goods (228)	$20 M	$22 M.
			Dry goods (70)	18 cases cotton and rayon goods (229)	$20 M	$22 M.
				1 case silk goods (257)	$20 M	$36 M or 2% AV.
291	July 11, 1939	Yokohama to Los Angeles	Rayon goods (228)	Printed habutae silk handkerchiefs (257), value $383 for 14 cubic feet.	$11 M	$20+½% AV.
292	Sept. 25, 1939	do	Cotton goods (70)	Cotton and rayon tablecloths (229)	$10 M	$11 M.
324	do	do	Dry goods (330)	2 cases rayon wearing apparel (228)	$10 M	$11 M.
				2 cases silk wearing apperel, etc., (257)	$10 M	$20+½% AV.
327	Mar. 25, 1940	Kobe to New York	Cotton goods (70)	Cotton and rayon goods (229)	$24 M	$26 M.

Appendix B—Continued

NIPPON YUSEN KAISHA

Exhibit No.	Bill of lading date	Port of shipment and discharge	Commodity as stated by bill of lading	Commodity as shown by entry papers	Rate charged	Applicable tariff rate
164	July 3, 1939	Kobe to New York	Glassware (104) and cheap toys (292; 293).	Imitation pearl beads (15)	$11 M	$20 M.
				Celluloid shaving sets with mirrors (nickel-plated wire easels) (330).	$12 M	$20 W/M.
				Metal-framed mirrors (330)	$12 M	$20 W/M.
				Imitation leather brief cases (147)	$12 M	$14 M.
165	do	do	Glassware (104)	Magnifying glasses (330), value exceeding $125 per 40 cubic feet.	$11 M	$20 W/M.
			Metalware (170)	Sunglass lenses (330), value exceeding $125 per 40 cubic feet.	$14 M	$20 W/M.
				Steel crochet hooks (330), value exceeding $175 per 40 cubic feet.	$14 M	$20 W/M.
167	Mar. 8, 1939	do	Glassware (104)	Imitation pearl beads (15)	$11 M	$20 M.
168	do	do	do	do	$11 M	$20 M.
169	Apr. 28, 1938	Mukden to New York (via Dairen).	Black manchurian bristles (27)	Black manchurian bristles (27), value $4,954.95	$20.50 M	2½% AV.
170	Mar. 2, 1939	Dairen to New York	Manchurian bristles (27)	Black manchurian bristles (27), value $5,308.75	$20.50 M	2½% AV.
172	Mar. 8, 1939	Kobe to New York	Glassware (104)	Imitation pearl beads (15)	$11 M	$20 M.
173	do	do	do	do	$11 M	$20 M.
174	Jan. 21, 1939	do	Cotton goods (70)	Cotton and rayon mixed goods (229)	$20 M	$22 M.
175	Dec. 28, 1938	do	do	Cotton and rayon socks (229)	$20 M	$22 M.
176	Mar. 8, 1939	do	Glassware (104)	Spectacle lenses (330), value $666 for 33 cubic feet.	$11 M	$20 W/M.
177	Dec. 28, 1938	do	Cotton goods (70)	Cotton and rayon tablecloths (229)	$20 M	$22 M.
178	June 30, 1938	Dairen to New York	Bristles (27)	Bristles (27), value $7,321.60 for 182 cubic feet	$20.50 M	2½% AV.
	June 27, 1938	Mukden to New York	do	Bristles (27), value $9,226.72 for 150 cubic feet	$20.50 M	2½% AV.
179	Dec. 28, 1938	Kobe to New York	Glassware (104)	Imitation pearl beads (15)	$11 M	$20 M.
180	Dec. 29, 1938	Osaka to New York	Cotton hosiery goods (70)	Cotton and rayon mixed hosiery goods (229)	$20 M	$22 M.
181	Dec. 28, 1938	Kobe to New York	Metalware (170)	Metal slide fasteners (330), value $2,144 for 74 cubic feet.	$14 M	$20 W/M.
242	May 10, 1939	Yokohama to San Francisco	Dry goods (330)	Fuji silk wearing apparel (255)	$10 M	$18 M.
243	Apr. 5, 1939	do	do	do	$10 M	$18 M.
244	May 31, 1939	do	do	do	$10 M	$18 M.
245	July 5, 1939	do	do	Fuji silk goods (225)	$10 M	$18 M.
246	Feb. 22, 1939	Kobe to San Francisco	Rayon goods (228)	Silk wearing apparel and evening bags (257)	$11 M	$20+½% AV.
247	Feb. 7, 1939	Yokohama to San Francisco	Dry goods (30)	Fuji silk wearing apparel (255)	$10 M	$18 M.
248	Mar. 7, 1939	do	do	do	$10 M	$18 M.
249	Dec. 27, 1938	Kobe to San Francisco	Chip goods (87)	Bentwood chairs (veneer wooden seats) (95)	$4.50 M	$11 M.
251	July 6, 1939	Yokohama to San Francisco	Cheap toys (293)	Wooden spoons and wooden salad sets (314)	$6 M	$10 M.
252	Dec. 28, 1938	do	Lacquered ware (144)	Silk handkerchiefs (257)	$7.50 M	$20+½% AV.
				2 cases wooden spoons, forks, trays (314)	$7.50 M	$10 M.
253	June 10, 1939	Kobe to San Francisco	Toys (293)	Camel hair artist brushes (28)	$6 M	$13.50 M.
254	May 11, 1939	Tokyo to San Francisco	Printed matters	Periodicals (Government publications) (23)	$8 M	$9.50 W/M.

284	Sept. 22, 1939	Yokohama to Los Angeles	Cheap toys (293)	1 carton woolen goods (316)	$8 M	$12 M.
				10 cartons wool and rayon mixed goods (330)	$8 M	$10 W/M.
285	Sept. 30, 1939	Yokohama to Chicago	12 cartons paper ware	12 cartons rice paper (204)	$7 M	$10 M.
287	Sept. 20, 1939	Yokohama to Los Angeles	Cotton goods (70)	2 cases silk wearing apparel (257)	$10 M	$20+½% AV.
			Dry goods (330)	3 cases rayon wearing apparel (228)	$10 M	$11 M.
				1 case rayon and cotton goods (229)	$10 M	$11 M.
288		do	Toys (293)	Varnished wooden bowls (314)	$6 M	$10 M.
368	May 5, 1940	Kobe to New York	Bamboo ware (12)	Bamboo porch blinds (10)	$13 M	$15 M.
369	do	Osaka to New York	Glassware (104)	Imitation pearl beads (15), value, $1,370 for 37 cubic feet.	$13 M	$24 M.
370	Apr. 23, 1940	Kobe to New York	Cotton goods (70)	23 cartons rayon gloves (228), 12 cartons cotton and rayon gloves (229).	$24 M	$26 M.

OSAKA SYOSEN KAISYA

122	Oct. 30, 1938	Kobe to New York	Toys (293)	2 cases metal needle books (170)	$12 M	$14 M.
				1 case metal bobby pins (170)	$12 M	$14 M.
				5 cases wooden toothpicks (314)	$12 M	$14 M.
				5 cases bamboo dryers (95 or 118)	$12 M	$20 M.
124	Oct. 29, 1938	do	Glasswares (104)	Imitation pearl beads (15)	$11 M	$20 M.
125	Oct. 30, 1938	do	do	10 cases imitation pearl beads (15)	$11 M	$20 M.
126	Nov. 4, 1938	Yokohama to New York	Cheap toys (293)	Rubber erasers (234)	$12 M	$15 M.
				Papier mâché masks (206)	$12 M	$14 M.
127	Aug. 8, 1938	Kobe to New York	Metalwares (170)	Metal slide fasteners (330), value exceeding $175 M.	$14 M	$20 M.
128	Oct. 30, 1938	do	Cotton goods (70)	Cotton and rayon table cloth and napkin sets (229).	$20 M	$22 M.
130	May 13, 1939	Osaka to New York	Cheap toys (293)	4 cases celluloid brooches (49)	$12 M	$16 M.
				2 cases glass buttons (330), value exceeding $125 per 40 cubic feet.	$12 M	$20 W/M.
				2 cases imitation pearl glass necklaces (15 or 330).	$12 M	$20 M.
131	do	Kobe to New York	Glassware (104)	Imitation pearl beads (15)	$11 M	$20 M.
133	do	do	Rag rugs (235)	Wool hooked rugs (236)	$10 M	$12 M.
134	do	do	Glasswares (104)	Imitation pearl beads (15)	$11 M	$20 M.
135	Oct. 30, 1938	do	Cotton piece goods (70)	Cotton and rayon printed table covers and napkins (229).	$20 M	$22 M.
280	Sept. 7, 1939	Husan to Los Angeles	Electric bulbs (104)	Electric bulbs (330), value exceeding $125 M.	$5.50 M	$10 M.
294	Sept. 14, 1939	Yokohama to Los Angeles	Dry goods (330)	Silk wearing apparel (257)	$10 M	$20+½% AV.
295	Sept. 13, 1939	Kobe to Los Angeles	Chip goods (87)	Rice paper, first quality (204)	$4.50 M	$10 M.
296	Sept. 14, 1939	Yokohama to Los Angeles	5 cases dry goods (330)	3 cases rayon goods (228)	$10 M	$11 M.
				2 cases silk wearing apparel (257)	$10 M	$20+½% AV.
328	Feb. 23, 1940	Yokohama to New York	Cotton goods (70)	Cotton and rayon goods (229)	$24 M	$26 M.

WILHELM WILHELMSEN

2	Jan. 30, 1940	Yokohama to New York	Cotton goods (70)	Woolen gloves (316)	$24 M	$26 M.
3	Jan. 27, 1940	Kobe to New York	10 cases glassware (104)	10 cases glass and imitation pearl beads (15)	$13 M	$24 M.
			4 cases metalwares (170)	4 cases metal zippers (330)	$16 M	$25 W/M.

APPENDIX B—Continued

WILHELM WILHELMSEN—Continued.

Exhibit No.	Bill of lading date	Port of shipment and discharge	Commodity as stated by bill of lading	Commodity as shown by entry papers	Rate charged	Applicable tariff rate
5	Jan. 27, 1940	Kobe to New York	Glassware (104)	Glass beads (15)	$13 M.	$24 M.
6	Jan. 27, 1939	do	Cotton goods (70)	Mixed cotton and rayon goods (229)	$20 M.	$22 M.
7	Jan. 28, 1939	Yokohama to New York	do	Mixed rayon and cotton goods (229)	$20 M.	$22 M.
8	Jan. 27, 1939	Kobe to New York	Glassware (104)	Imitation pearl beads (15)	$11 M.	$20 M.
9	do	do	do	do	$10 M (minimum).	$20 M.
10	do	do	do	First quality solid glass charms with brass wire (330 or 15), value $270 M.	$11 M.	$20 M.
11	do	do	do	Imitation pearl and alabaster beads (15)	$10 M.	$20 M.
12	Jan. 30, 1939	Yokohama to New York	Cotton goods (70)	Mixed rayon and cotton (229)	$20 M.	$22 M.
13	Jan. 27, 1939	Kobe to New York	Bleached chinese refined bristles (27).	Bristles (27), value $6,471 for 76 cubic feet	$20 M.	2½% AV.
14	do	do	Glassware (104)	Beads (15)	$11 M.	$20 M.
15	do	do	Hooked rugs (235)	Wool hooked rugs (236)	$10 M.	$12 M.
16	Jan. 28, 1939	Nagoya to New York	Earthenware	14 cases dolls (293)	$10 M.	$12 M.
17	Dec. 27, 1938	Kobe to New York	Cotton goods (70)	Mixed cotton and rayon goods (229)	$20 M.	$22 M.
18	Dec. 29, 1938	Yokohama to New York	do	Cotton and rayon mixed goods (229)	$20 M.	$22 M.
19	do	do	do	7 bales cotton and rayon mixed goods (229) 2 cases rayon goods (228) 1 case silk handkerchiefs (257)	$20 M. $20 M. $20 M.	$22 M. $22 M. $36 M or 2% AV.
20	Dec. 28, 1938	Nagoya to New York	Cheap toys (293)	Wooden spoons and forks (314)	$12 M.	$14 M.
21	Dec. 29, 1938	Yokohama to New York	Glassware (104)	3 cases wooden pin trays (314)	$11 M.	$14 M.
279	July 28, 1939	Yokohama to Los Angeles	Dry goods (330)	1 case rayon crepe pajamas (228) 2 cases silk crepe jackets (257)	$10 M. $10 M.	$11 M. $20+½% AV.
281	Sept. 28, 1939	Kobe to Los Angeles	Chip goods (87)	Rice paper (204)	$4.50 M.	$10 M.
282	July 28, 1939	do	do	do	$4.50 M.	$10 M.
373	Mar. 28, 1940	Kobe to New York	Metalware (170)	Metal zippers (330), value $728.55 for 46 cubic feet.	$16 M.	$25 W/M.

YAMASHITA KISEN KABUSHIKI KAISHA

Exhibit No.	Bill of lading date	Port of shipment and discharge	Commodity as stated by bill of lading	Commodity as shown by entry papers	Rate charged	Applicable tariff rate
42	Mar. 7, 1939	Kobe to New York	Cotton goods (70)	23 cases mixed cotton and rayon table cloths (229). 37 cases rayon gloves (228)	$20 M. $20 M.	$22 M. $22 M.
43	do	Osaka to New York	Bedspreads (70)	6 cases cotton and rayon mixed bedspreads (229).	$20 M.	$22 M.
	Mar. 9, 1939	Yokohama to New York	Table cloths (70)	6 cases cotton and rayon mixed table cloths (229).	$20 M.	$22 M.
			Table damask sets (70)	6 cases cotton and rayon table damask sets (229).	$20 M.	$22 M.

44	Mar. 7, 1939	Osaka to New York	Glassware (104)	Imitation pearls and glass beads (15)	$11 M	$20 M.
			Metalware (170)	Metalware (zippers) (330), value $1,046 M	$14 M	$20 W/M.
48	Jan. 30, 1939	Yokohama to New York	Cotton goods (70)	8 cases woolen gloves (316)	$20 M	$22 M.
				22 cases silk handkerchiefs (257)	$20 M	$36 M or 2%.
				5 cases cotton and rayon mixed table covers (229)	$20 M	$22 M.
50	Apr. 18, 1939	Kobe to New York	12 cases glassware (104; 331)	12 cases glass lens for spectacles (330), value $1,159 *for 36 cubic feet.*	$10 minimum	$20 W/M.
51	do	do	Metalware (170)	Metal zippers (330), value $1,025 M	$14 M	$20 W/M.
52	do	do	Cheap celluloid toys (292)	1 case celluloid tooth brush holders (49)	$12 M	$16 M.
			Woodenware (314)	"Klean Bright" wooden hairbrushes (28)	$14 M	$20 M.
				"Klean Bright" wooden nailbrushes (28)	$14 M	$20 M.
			Paper articles (205)	100 dozen genuine leather covered 5 year diaries with brass lock and key (23).	$14 M	$18 W/M.
53	Apr. 20, 1939	Yokohama to New York	Cotton goods (70)	Cotton and rayon tablecloths (229)	$20 M	$22 M.
54	Apr. 18, 1939	Osaka to New York	Metalware (170)	6 cases metal zippers (330), value $686 for 24 cubic feet.	$14 M	$20 W/M.
55	Jan. 27, 1939	Kobe to New York	Glassware (104)	Imitation pearl beads (15)	$11 M	$20 M.
			Metalware (170)	Metalware (330) value exceeding $1,000 M	$14 M	$20 W/M.
57	do	do	Bleached white chungking bristles (27).	23 cases bleached white chungking bristles (27)	$20 M	2½% AV.
318	Dec. 11, 1938	Moji to Los Angeles	Bamboo wares (12)	136 bales bamboo shades (blinds) (10)	$4.50 M	$6.50 M.
319	Oct. 22, 1939	Yokohama to Los Angeles	Dry goods (330)	Silk satin pajamas (257)	$13 M	$24 M+½% AV.
321	Aug. 24, 1939	do	Dry goods (330)	3 cases silk wearing apparel (257)	$10 M	$20+½% AV.
				2 cases rayon goods (228)	$10 M	$11 M.
374	May 11, 1940	Kobe to New York	Bamboo ware (12)	70 bales bamboo blinds (10)	$13 M	$15 M.
375	do	do	Glassware (104)	Artificial pearl beads (15), value $771 for 21 cubic feet.	$13 M	$24 M.
376	do	do	Glassware (104)	Imitation pearl beads (15) value $3,288 for 95 cubic feet.	$13 M	$24 M.
377	do	do	Damask tablecloth sets (70)	Cotton and rayon tablecloth sets (229)	$24 M	$26 M.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 15th day of November A. D., 1940

No. 561

IN THE MATTER OF RATES, CHARGES, AND PRACTICES OF CARRIERS ENGAGED IN TRADES FROM JAPAN TO UNITED STATES

By its orders of December 29, 1939, and June 13, 1940, the Commission having instituted a proceeding into and concerning the lawfulness under sections 16, 17, and 15 of the Shipping Act, 1916, as amended, of rates, charges and practices of carriers made respondents by said orders, 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 respondents American President Lines, Ltd., Kawasaki Kisen Kabushiki Kaisha, Kokusai Kisen Kabushiki Kaisha, Mitsui Bussan Kaisha, A. P. Moller, Nippon Yusen Kaisya. Osaka Syosen Kaisya, Wilhelm Wilhelmsen, and Yamashita Kisen Kabushiki Kaisha be, and each of said respondents is hereby, notified and required to cease and desist, and hereafter abstain, from the violations by them of section 16 "Second," section 16 "First," and section 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. 559

S. H. Kress & Co.

v.

Baltimore Mail Steamship Company (Panama Pacific Line), et al.[1]

Submitted June 13, 1940. Decided December 10, 1940

Rate charged on candy from New York, N. Y., to ports in Hawaii found unreasonable. Reparation awarded and reasonable rate for future prescribed.

Albert H. Nelson and *Albert J. Freese* for complainant.

M. G. de Quevedo, *Robert A. Lauckhardt*, and *George E. Talmage, Jr.*, for defendants and intervener Atlantic and Gulf/Hawaii Conference.

S. H. Richter for Roosevelt Steamship Co.

Report of the Commission

By the Commission:

Complainant filed exceptions to the report proposed by the examiner. Our conclusions differ somewhat from those recommended by him.

The complaint, filed November 29, 1939, alleges that defendants' rate on candy from New York, N. Y., to ports in Hawaii is in violation of sections 16 and 18 of the Shipping Act, 1916. Reparation and a reasonable rate for the future are requested.

Defendant American President Lines, which participates in the tariff publishing the assailed rate, moved to dismiss the complaint on the ground that none of the shipments involved moved over its line. This motion is denied inasmuch as rates for the future are in issue.

The shipments, seven in number, consisted of hollow mold candy, moved in February 1939, weighed 14,067 pounds, measured 2,023 cubic feet, and were released to a value not exceeding 25 cents per

[1] Matson Navigation Company and American President Lines, Ltd.

pound. They were transported by Panama Pacific Line under refrigeration to San Francisco, Calif., and Matson Navigation Company under ordinary stowage to Hawaii. Charges were collected based on a rate of \$21 per 40 cubic feet, that is, \$14 per ton weight or measurement, plus 50 percent or \$7 per ton for refrigeration to San Francisco, applicable on candy and confectionery released to a value not exceeding 25 cents per pound.

Complainant seeks reparation to the basis of a joint through rate which would have applied on the shipments had they moved under refrigeration to Hawaii, namely, \$55 per ton of 2,000 pounds on refrigerated cargo, n. o. s. Had the shipments moved locally to San Francisco and beyond, the applicable combination rate would have been \$23 per weight ton refrigerated to San Francisco and \$6.75 per ton, weight or measurement, ordinary stowage beyond, plus a transfer charge stated to be 16½ cents per 100 pounds. The charges collected, \$1,062.09, compare with \$386.85 at the \$55 rate sought and \$526.36 at the combination rate plus transfer charges. The local refrigerated rate to San Francisco is \$2 per ton higher than the local unrefrigerated rate whereas the differential of \$7 per ton applied for the same service at the through rate under attack.

In explanation of the lower combination rate, defendants maintain that the local rate of \$23 per weight ton to San Francisco is depressed by rail and rail-water competition, comparing it with carload rates on candy ranging from \$29.80 rail-water to \$42.20 rail, and a less-than-carload unrefrigerated rate of \$82.60, applying from eastern seaboard territory to San Francisco. They also 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 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. During 1938 and 1939 candy shipments made by complainant to Hawaii via defendants, on which the assailed rate was charged, weighed 88,054 pounds, measured 5,964 cubic feet, and yielded \$3,137.30 revenue. Charges at the \$55 rate would have been \$2,421.49. Effective May 25, 1939, after complaints were received by defendants, this rate was changed to \$40 weight or measurement, on basis of which the charges would have been \$5,964.

Without question, service which includes refrigeration of a shipment throughout its entire route is superior to service according refrigeraaion over only a part of the route. The rate sought of \$55 per weight ton 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. 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.

No proof of undue preference or prejudice was presented.

Upon this record we find that the rate assailed was, and for the future will be, unreasonable to the extent it exceeded, or may exceed, $55 per ton of 2,000 pounds; that complainant made the shipments above described; that it paid and bore the charges thereon and has been damaged thereby to the extent of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of $675.24. An order awarding reparation 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 December A. D. 1940.

No. 559

S. H. Kress & Co.

v.

Baltimore Mail Steamship Company (Panama Pacific Line), et al.

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

It is ordered, That defendant Baltimore Mail Steamship Company (Panama Pacific Line) be, and it is hereby, authorized and directed to pay to complainant, S. H. Kress & Co., New York, N. Y., on or before 30 days after the date hereof, the sum of $675.24 as reparation on account of the unreasonable charges collected on the shipments involved herein; and

It is further ordered, That defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist on or before February 1, 1941, and thereafter to abstain from publishing, demanding, or collecting for the transportation of candy as described herein, from New York, N. Y., to ports in the Territory of Hawaii, a rate in excess of $55 per ton of 2,000 pounds.

By the Commission.

[seal]

(Sgd.) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 556

In the Matter of the New York and Porto Rico Steamship Company—Waterman Steamship Corporation Agreement

Submitted January 18, 1940. Decided December 13, 1940

Agreement between The New York and Porto Rico Steamship Company and Waterman Steamship Corporation found subject to section 15 of the Shipping Act, 1916. Carrying out such agreement without approval as required by section 15 found in violation of that section.

Burton H. White for respondents.

William Cattron Rigby for Government of Puerto Rico and Department of the Interior; *Rene A. Stiegler* for Board of Commissioners of the Port of New Orleans and St. Louis Chamber of Commerce; *E. H. Thornton* for New Orleans Joint Traffic Bureau and *J. D. Youman* for New Orleans Public Belt Railroad, protestants.

Report of the Commission

By the Commission:

This proceeding was instituted upon protests[1] on our own motion by order entered November 21, 1939, to determine the status of respondents, The New York and Porto Rico Steamship Company, hereinafter called Porto Rico Line, and Waterman Steamship Corporation, hereinafter called Waterman, under Section 15 Shipping Act, 1916, as amended, in connection with an agreement executed September 1, 1939; the status of said agreement; and, if subject to our jurisdiction, the lawfulness thereof. Provisions of the agreement requiring consideration are as follows:

Whereas, the party of the first part has determined to withdraw from its Gulf-Puerto Rican southbound general freight service, including some passenger service, for the period of ten years beginning on or before October 15th, 1939,

[1] Filed on behalf of The Government of Puerto Rico, The Department of the Interior, and Board of Commissioners of the Port of New Orleans. New Orleans Joint Traffic Bureau and New Orleans Public Belt Railroad intervened, supporting protestants.

in which business over a period of years it has built up a good will of substantial value equal at least to the amount hereinbelow specified; and,

Whereas, the party of the second part, which also has operated for a period of years a Gulf-Puerto Rican service, desires to purchase said good will for the amount hereinbelow specified and to have and obtain for itself all of the benefits which will naturally result from such purchase;

Now, therefore, it is agreed by and between the said parties as follows:

The party of the first part hereby sells, assigns, transfers, and sets over absolutely unto the party of the second part, its successors and assigns, and the party of the second part hereby purchases from the party of the first part, the good will of the party of the first part in its aforesaid Gulf-Puerto Rican southbound service for the period of ten years beginning on or before October 15th, 1939, for the consideration of Three Hundred Thousand Dollars ($300,000.00), of which Thirty Thousand Dollars ($30,000.00) is paid on the signing of this agreement and the balance of which is to be paid in annual installments of Thirty Thousand Dollars ($30,000.00) each, on September 1st of each year beginning with 1940. Provided that if the party of the first part or some subsidiary, affiliate, or associated organization of the party of the first part should enter the said service before the expiration of said ten year period then the said annual payments shall cease and the party of the second part shall not be further obligated therefor.

In recognition of respondents' right to submit the agreement for approval, our order also contemplated an inquiry into and concerning its lawfulness. Respondents, however, have not exercised that right; consequently we will consider only the status of the agreement and of the parties.

Section 15 contemplates that every agreement between common carriers by water, or modification thereof, among other things "controlling, regulating, preventing, or destroying competition" shall be filed with us for approval. If objectionable for certain stated reasons, any agreement may be disapproved, cancelled or modified.

At a hearing at New Orleans, La., December 20, 1939, respondents appeared specially, stating that on December 19 a petition for a declaratory judgment to set aside our order of investigation was filed in the United States District Court, Eastern District of New York, based on jurisdictional and other grounds, and moved that the hearing be deferred, pending the decision of that court. The request was denied.[2] Respondents offered no testimony in their own behalf nor did they have witnesses available from whom information concerning the agreement could be obtained.

The subject matter first came to our attention when an agreement executed May 22, 1939 was filed for approval pursuant to Section 15,

[2] The issuance of a report determining the status of the agreement was, however, deferred. After a decision of the District Court denying the Commission's motion to dismiss (32 Fed. Sup. 538) application was made by the Commission to the United States Circuit Court of Appeals, Second Circuit, for a writ of prohibition. On July 3, 1940, the latter court refused the writ, although expressing its view that "it appears clear that the District Court lacks jurisdiction." Upon rehearing of the motion to dismiss before the District Court on October 10, 1940, respondents' petition was dismissed.

wherein Porto Rico Line undertook to discontinue its common-carrier service from the Gulf for a period of ten years in consideration of payments by Waterman of a minimum of $30,000 annually, at the end of each annual period, based on an annual volume of cargo aggregating 140,000 tons, with provision for additional compensation on a sliding scale basis if cargo transported exceeded 140,000 tons. Waterman also was accorded the privilege of discontinuing service should traffic fall below 100,000 tons annually and, if subsequently service was resumed, of extending the ten-year term by whatever period of time it did not operate. If the term were extended an adjustment of compensation upon a prescribed formula would be made. That agreement contained admissions of competition, insufficient cargo for two separate services, heavy financial losses, and specific provisions restricting competition.[3] The agreement also provided that if approval was not granted on or before July 1, 1939, or by such later date as may be agreed upon, "parties shall stand relieved" of all obligations thereunder. Hearing thereon was held (Docket No. 535) June 23, 1939. The limitation of time was extended to August 5, 1939. On August 7, counsel requested that action be deferred pending further advices. Thereafter,

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[3] The pertinent provisions are as follows:

Whereas, each of said parties is operating a steamship service, with weekly competitive sailings, from ports of the Gulf of Mexico to Puerto Rico; and,

Whereas, due to the fact that the obtainable cargo is not sufficient to support the said two separate services, each of said companies is sustaining a heavy financial loss in maintaining its said service; and,

* * * * * * *

Now, therefore, * * * subject to approval by the United States Maritime Commission, the said parties do hereby agree together as follows:

1. The party of the first part covenants and agrees to cease all steamship operations southbound from the Gulf of Mexico to Puerto Rico for a period of ten years beginning five weeks after the approval hereof by the United States Maritime Commission, * * *, *Provided, however,* That if the Lykes Line now operating from certain Gulf ports to Puerto Rico should operate during the said ten-year period a steamship service between the Atlantic ports north of Hatteras and any of the Puerto Rican ports, then the party of the first part shall have the privilege of establishing and maintaining services between Puerto Rico and such of the Gulf ports as then are served by the said Lykes Line, which privilege shall continue only so long as the Lykes Line shall operate between the north Atlantic ports and Puerto Rico. In connection with said cessation of its operation, the party of the first part shall turn over and deliver to the party of the second part as far as is reasonably feasible the good will and patronage of the service so to be terminated.

2. The party of the second part agrees not to operate any steamship services during the ten-year period between the Atlantic ports north of Hatteras and Puerto Rico, unless some line or lines presently operating between Atlantic ports and Puerto Rico should become a competitor of the party of the second part in its service between the Gulf ports and Puerto Rico, in which event the party of the second part shall stand released from its foregoing obligation to abstain from operating between the north Atlantic ports and Puerto Rico. As long, during said ten-year period, as the party of the first part is engaged in transporting raw sugar from Puerto Rico to the Gulf, the party of the second part shall carry said commodity only in its regular liner service and at regular liner rates.

3. Each of the parties hereto agrees that the herein appearing restrictions upon competitive operations by it shall apply to and include not only its operations but also the operations of all of its subsidiaries, affiliates, and associated organizations, and, further, that any infringement by any such subsidiary, affiliate or associated organization shall have the same effect as if it had been by such party.

the following letter from counsel, dated September 8, 1939, transmitting copy of the agreement now under investigation, was received:

> I send you herewith as information true copy in duplicate of an agreement dated September 1, 1939, whereby The New York and Porto Rico Steamship Company has sold to Waterman Steamship Corporation the good will of its Gulf-Puerto Rican southbound service for the sum of $300,000, of which $30,000 was paid on signing, with the balance to be covered by nine annual installments of $30,000 each.
>
> The agreement between these two companies dated May 22, 1939, which was the subject matter of hearing in Docket 535, has expired by its own limitations, by reason of which it would appear to be in order to mark that proceeding terminated on your records, inasmuch as the subject matter thereof no longer exists.

The service of Porto Rico Line was terminated with its last sailing on or about September 9, 1939. Prior thereto, with some exceptions, vessels of each respondent had sailed from New Orleans on the same day of each week. Protestants claimed that such service did not best serve the interests of either shippers or carriers, and that they sought, without success, a staggering of sailings by each line. Refusal, it was said, was influenced by the keen competition for traffic which existed between respondents. It was also said that between May 22 and September 1, Porto Rico Line's carryings had decreased materially; that the traffic of Waterman had increased; and that insofar as Porto Rico Line was concerned, its alleged good will was of doubtful value. It should be noted that under the latter agreement, as in the first one, the withdrawal of service covered only a period of ten years, and that the withdrawal left Waterman without any competition from the ports it served.

The agreement of May 22 appears to have been predicated upon the competition between respondents and the insufficiency of cargo to support two separate services which resulted in alleged financial losses by both carriers. Insofar as Waterman is concerned, the elimination of competition, the prospect of more cargo, and an increase in its gross revenue were primary objectives. The withdrawal of its only competitor would be of inestimable value. Porto Rico Line naturally sought compensation. That agreement also indicated a desire to transfer to Waterman "as far as is reasonably feasible the good will and patronage of the service so to be terminated." The value to be attributed to good will was thus minimized. That counsel should later claim the agreement of September 1 involved only a sale of good will not subject to our jurisdiction is anomalous. Certain of the restrictive provisions of the first agreement were omitted from the second one, but the objectives accomplished under the latter are identical with those originally sought. While the proceeding in Docket No. 535 was dismissed, 2 U. S. M. C. 215, negotiations concerning the subject matter of the agreement therein involved continued and were concluded by the execution of the latter agreement. 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. In *Gehl* v. *Hebe Co.*, 276 Fed. 271, it was said that good will would not be transferred if the grantor remained at liberty to carry on and contend for the very business as to which the good will of the former owner had, by its conveyance, passed to another. In *Metropolitan Bank* v. *St. Louis Dispatch Co.*, 149 U. S. 436, the Supreme Court of the United States recognized good will as an asset and therefore of value, but said that it is "tangible only as an incident, as connected with a going concern or business having locality or name, and is not susceptible of being disposed of independently." See also *Sommers* v. *Commissioners of Internal Revenue*, 63 Fed. (2d) 551; *Pfleghar Hdwr. Specialty Co.* v. *Blair*, 30 Fed. (2d) 614; in re *Leslie-Judge Co.*, 272 Fed. 886. No tangible property of any description passed to Waterman. Porto Rico Line withdrew as a common carrier from the Gulf. The good will which it had built up and which attached to the business through its name or through the company's personal contacts was lost to it as long as it stayed out of the trade. Were it not for its undertaking to stay out of the trade there would be a serious question whether there had been a lack of consideration for the cash payments by Waterman. The installment method of payment and the specific provision for cessation of payments by Waterman if the vendor, or some subsidiary, affiliate, or associated organization, should enter the service before the expiration of the ten-year period, further indicate that a primary objective of the agreement was the elimination of competition and that these payments were to be considered compensation to Porto Rico Line during the time it refrained from operating on the route.

We find that the agreement of September 1, 1939, is one which controls, regulates, prevents, and destroys competition in the Puerto Rican trade and that the said agreement is subject to our jurisdiction under section 15 of the Shipping Act, 1916, as amended. We further find that respondents carried out portions of the said agreement before approved by us as required by section 15; and that their failure to secure such approval was in violation of that section. Respondents will be expected immediately to submit the agreement for action under that section. Pending compliance, the record will be held open.

UNITED STATES MARITIME COMMISSION

No. 540

IN RE INLAND WATERWAYS CORPORATION AND MISSISSIPPI VALLEY BARGE LINE COMPANY

Submitted May 2, 1940. Decided December 17, 1940

Respondents are common carriers by water in intercoastal commerce and are engaged in the transportation of passengers or property on a through route as defined in section 2 of the Intercoastal Shipping Act, 1933. Reduction in rate on alcoholic liquors not shown to be unlawful. Order entered discontinuing this proceeding.

David E. Scoll for the Commission.

Nuel D. Belnap, *H. J. Niemann*, and *W. A. Oliphant*, for Inland Waterways Corporation, operating the Federal Barge Lines.

Harry C. Ames, Sr., and *M. C. Pearson*, for Mississippi Valley Barge Line Company.

Frank Lyon and *J. A. Stumpf* for American-Hawaiian Steamship Company. *Joseph J. Geary* for members of the Gulf Intercoastal Conference. *M. G. de Quevedo* and *W. M. Carney* for members of the Intercoastal Steamship Freight Association, and *R. H. Specker* for Luckenbach Gulf Steamship Company, Inc.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by respondents to the examiner's proposed report and oral argument was had. The findings recommended by the examiner are adopted herein.

By order dated July 7, 1939, we instituted this investigation to determine whether the respondents Mississippi Valley Barge Line Company and the Inland Waterways Corporation, operating the Federal Barge Line, common carriers by water, are subject to our jurisdiction in so far as they engage in the transportation of cargo between New Orleans, La., and Mississippi, Ohio and Missouri River points when such cargo is received from or is destined to Pacific

Coast ports via Gulf intercoastal carriers and moves under proportional rates and should therefore file their rates under section 2 of the Intercoastal Shipping Act, 1933, as amended; and if the respondents are so subject to our jurisdiction, whether the reduction made by them in their proportional rates on alcoholic liquors, n. o. s., carloads, destined to Pacific Coast ports, is reasonable.

Respondents transport general cargo in barges between New Orleans and various ports on the Mississippi River and its tributaries. They publish local port-to-port, and proportional rates, between the ports served by them, which are not on file with us; and joint through commodity rates to and from Pacific Coast ports in connection with intercoastal carriers which are on file. The proportional rates, generally lower than the corresponding local rates, apply to or from shipside at New Orleans when the goods are destined to or received from Pacific coast ports. Local bills of lading are prepared by the shipper on forms furnished by the carrier, the name of the on-carrier being shown as the consignee and the ultimate consignee indicated by notation.

Shipments moving under proportional rates receive the same physical handling as those moving under joint through rates, and respondents either receive the goods at, or deliver them to, the intercoastal steamship companies' docks or absorb the cost of transfer between their docks and those of the steamship companies. Arrival notices are issued by the originating carrier to the on-carrier and, in many instances, the freight charges of one are collected by the other and remitted after each shipment or on a weekly basis. The shipper is required to arrange for the carriage beyond. In advertising and soliciting business the shipper is advised by the carriers that through transportation is available under a combination of port-to-port rates of the Gulf lines, and proportional barge line rates. In short, the only differences between cargo moving under proportional rates and that moving under joint through rates are in the billing, and the fact that the shipper must arrange for the on-carriage prior to its receipt from the originating carrier when cargo moves under proportional rates. In neither case is any physical intervention of the shipper required at the transshipping points. Proportional rates are established for competitive reasons to move through traffic, and the fact that determines their applicability is the final destination of the goods If transportation terminates at New Orleans local rates are assessed but if it continues to Pacific coast ports proportional rates are applied.

Respondents contend that there is no agreement or understanding with the Gulf lines with respect to the establishment of these proportional rates or for the transshipment of this traffic. On the contrary, it appears that the two groups fix these 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. Inasmuch as our order of July 7 did not allege section 15, no finding of a violation thereof will be made at this time. However, it should be borne in mind by respondents that they are subject to the provisions of this section without the necessity of any previous finding by us.

Respondents clearly are subject to our jurisdiction with respect to 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 with us. Section 1 of the Shipping Act, 1916, as amended, insofar as pertinent, reads as follows:

> 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 pertinent parts of sections 1 and 2 of the Intercoastal Shipping Act, 1933, reads as follows:

> The term "common carrier by water in intercoastal commerce" for the purposes of this Act shall include every common and contract carrier by water engaged in the transportation for hire of passengers or property between one State of the United States and any other State of the United States by way of the Panama Canal.
>
> SECTION 2. That every common carrier by water in intercoastal commerce shall file with the United States Shipping Board and keep open to public inspection schedules showing all the rates, fares, and charges for or in connection with transportation between intercoastal points on its own route; and if a through route has been established, all the rates, fares, and charges for or in connection with transportation between intercoastal points on its own route and points on the route of any other carrier by water.

Respondents contend that the words "high seas" apply only to the term "common carrier" and not to the words "transportation of passengers or property," and therefore that they do not come within the scope of section 1 of the 1916 Act, inasmuch as their vessels do not actually travel upon the "high seas." Respondents further contend that the filing requirements of section 2 of the 1933 Act do not apply since the transportation involved does not constitute a through route as defined in that section. They state that a distinction should be made between a through route and a through movement and contend that the former is synonymous with "common arrangement" as used in the Interstate Commerce Act. We frequently have held that carriers need not actually go upon the high seas or the Great Lakes to be subject to our jurisdiction. *Intercoastal Rates to and from Berkeley and Emeryville, Calif.*, 1 U. S. S. B. B. 365; *Intercoastal Investigation 1935*, 1 U. S. S. B. B. 400. Similar decisions have been made by the courts in cases involving other Federal statutes. In *Foster* v. *Davenport et al.*, 22 How. 234, the Supreme Court held that a tugboat operating entirely within the territorial waters of the State of Alabama was engaged in the foreign and coastwise trade because it assisted vessels engaged in those trades. Respondents contend that they are not within the scope of section 1 of the Shipping Act, 1916, but no decision thereon is necessary in view of our findings herein.

At the oral argument one of the attorneys for respondents stated that he did not believe respondents' vessels were licensed in the coastwise trade, and that if the findings recommended by the examiner were carried to a logical conclusion these vessels would have to be licensed. He stated further that he considered this factor controlling and that if the vessels were not licensed in the coastwise trade they could not be considered as a prolongation of a voyage on the high seas. By letter received after argument, which by agreement was made a part of the record, we were advised by respondents that all of their towboats have been granted licenses in the coastwise trade.

The Interstate Commerce Commission in dealing with similar situations, has consistently held that an intrastate carrier by rail becomes subject to its jurisdiction by transporting cargo moving in interstate commerce. Such decisions have been sustained by the Supreme Court on numerous occasions. *Baer Bros.* v. *Denver and R. G. R. R. Co.*, 233 U. S. 479; *Cinn. N. O. and Tex. Pac. Ry.* v. *Int. Com. Comm.*, 162 U. S. 184; *U. S.* v. *Erie R. Co.* 280, U. S. 98.

In *Intercoastal Investigation 1935*, *supra*, it was said:

> If there is an original and continuing intention to ship goods by water from one State of the United States to another by way of the Panama Canal, as appears to be here the case, the commerce is intercoastal and its character, as such, is not changed by the mere accidents or incidents of billing, or number of lines participating in the transportation. It is well settled that the intention of the shipper as to the ultimate destination at the time the cargo starts is the test of its character, though broken, transported by more than one carrier, or moving on through or local bills of lading * * *.
>
> As has been shown hereinbefore, it is a requirement of law that every carrier engaged in intercoastal transportation shall publish, post and file with the department its rates and charges for or in connection with such transportation. For this reason an understanding between carriers for interchange of traffic does not and cannot make the line of one carrier to the understanding a mere continuation, extension or agency of the other. To permit this would tend to defeat the purpose of the act that carriers not otherwise subject to the act shall, when participating in intercoastal transportation, become subject to the act. Every route must have a published rate on file with the department. If a single carrier performs the entire transportation service between two points the rate is a "terminal rate." However, if a through route has been

established, and two or more carriers perform the transportation service, as is here the case, the rate is a "through rate," which may be the sum of separately established factors, or an amount jointly published by all the participating carriers.

Respondents at the oral argument pointed out that the order instituting this investigation fails specifically to allege violation of section 1 of the 1933 act and that consequently they cannot be made subject to an order based on that section. Our order of July 7, 1939, which instituted the investigation contained the following paragraph:

It is ordered, That under authority of section 22 of the Shipping Act, 1916, the Commission, on its own motion, hereby institutes a proceeding of investigation to inquire into the facts concerning the status of the above-mentioned carriers and the lawfulness of their rates, rules and regulations applicable on alcoholic liquors from various ports served by these carriers to New Orleans when destined to Pacific Coast ports, to establish such facts and argument of record and to make such order or orders respecting compliance by said companies with said statutory requirements and the Commission's tariff regulations as may be warranted;

A preceding paragraph of the order recited the fact that it appeared that respondents "are common carriers by water in interstate commerce within the meaning of section 1 of the Shipping Act, 1916, as amended." The Intercoastal Shipping Act, 1933, defines the term "common carrier by water in intercoastal commerce" as including every common and contract carrier by water engaged in the transportation for hire of passengers or property between different states of the United States by way of the Panama Canal. Any doubt concerning the scope of the investigation clearly is dispelled by the wording of the paragraph of the order quoted above.

It cannot be doubted that respondents are engaged in intercoastal transportation. *Intercoastal Rates to and from Berkeley and Emeryville, California*, *supra* and *Intercoastal Investigation, 1935*, *supra*.

Respondents premise their second contention that there is no through route, on *U. S.* v. *Munson Steamship Line*, 283 U. S. 443, seeking to distinguish cases such as *B. & O.* v. *Settle*, 260 U. S. 166, and other railroad cases. The *Munson Case* dealt with a shipment which moved by rail to a port and by water beyond. The Supreme Court found that the transportation did not constitute "a common arrangement" under section 1 of the Interstate Commerce Act. There is no requirement that there must be a common arrangement in the shipping acts. That case, therefore, is not in point. The test here is whether there is a through route. The wording of the two acts leads to the inescapable conclusion that there is a difference in the nature of the arrangement or transportation contemplated in each case. Our predecessor has defined a through route as 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, *Intercoastal Investigation, 1935*, supra. A similar definition was adopted by the Interstate Commerce Commission in *Through Routes and Through Rates*, 12 I. C. C. 163, where it was found that a through route is an arrangement, express or implied, between connecting railroads for the continuous carriage of goods from the originating point on the line of one carrier to destination on the line of another. Through carriage implies a through rate. This through rate it 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.

This latter case has been cited with approval by the Supreme Court in *St. Louis S. W. Ry Co.* v. *United States*, 245 U. S. 136. While the existence of an agreement is emphatically denied by respondents, it is obvious there is an implied arrangement within the meaning of the above definition.

Effective in June 1939, a reduction of 6 cents per 100 pounds was made in respondents' proportional rate on alcoholic liquors destined to the Pacific Coast. It appears that the reduction was made after conference with the Gulf carriers after which the latter reduced their local port-to-port rates 10 cents and respondents reduced their rate 6 cents, or a total reduction of 16 cents, which equalized a reduction made in the transcontinenttal rail rate from the various points served by respondents. We suspended the reduction made by the Gulf Lines and similar reductions made by the Atlantic carriers and after investigation found them not unlawful. *Westbound Alcoholic Liquor Rates*, 2 U. S. M. C. 198. No evidence was introduced in the present proceeding to show that the reduction in the rates on alcoholic liquors made by respondents was unreasonable or otherwise unlawful.

We conclude and decide that respondents are common carriers in intercoastal commerce; that a through route as defined in section 2 of the 1933 Act has been established; and that the reduction in the rate on alcoholic liquors has not been shown to be unlawful. Since the Transportation Act, 1940, will require rates of respondents concerning their interstate operations on inland waters to be on file on and after January 1, 1941, an order with respect thereto will not be issued. 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 17th day of December A. D. 1940

No. 540

IN RE INLAND WATERWAYS CORPORATION AND MISSISSIPPI VALLEY BARGE LINE COMPANY

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

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

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, JR.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 597

Embargo on Cargo Between North Atlantic and Gulf Ports

Submitted December 20, 1940. Decided December 23, 1940

Embargo by Agwilines, Inc. (Clyde-Mallory Lines) on all commodities offered for transportation between United States North Atlantic ports and United States ports on the Gulf of Mexico found unreasonable and ordered canceled.

Charles P. Reynolds for respondent.

Report of the Commission

By the Commission:

This is a proceeding on the Commission's own motion concerning the lawfulness of an embargo by respondent Agwilines, Inc. (Clyde-Mallory Lines), a common carrier by water in interstate commerce, on all commodities offered for transportation between or via Atlantic coast ports on the one hand and Houston and Brownsville, Texas, on the other. By our order of December 18, 1940, herein, respondent is required to show cause under sections 16 and 18 of the Shipping Act, 1916, as amended, why, in the public interest, the embargo should become effective.

The embargo is in the nature of a circular dated December 17, 1940, at New York, N. Y., effective December 26, 1940, and on later sailing dates. The cause of the embargo is stated in the circular to be suspension of service. It also announces "same service as in the past will be maintained between New York and the ports of Charleston, Jacksonville, Miami, Key West, and Tampa." At the hearing it developed that respondent proposes by means of the embargo to completely abandon service to and from the Gulf. It has filed no tariff supplement canceling the rates for the transportation of commodities between the ports involved. It participates in joint through rates with railroads and neither it nor railroads have filed cancelation of rates with the Interstate Commerce Commission.

Respondent submitted figures showing heavy financial losses over a period of years and very little profit at any time on its Gulf operations. It justifies withdrawal of service on that ground alone and takes the position that the Commission has no jurisdiction to compel it to maintain service between the ports in question. It asserts that it is a common practice in the coastwise trade to issue embargoes withdrawing service.

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 limitations of the carrier. *Boston Wool Trade Association* v. *M. & M. Transportation Company*, 1 U. S. S. B. 32. No such condition has been shown in this case. 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.

Section 2 of the Intercoastal Shipping Act, 1933, governing common carriers in the coastwise trade, provides that such carriers shall file and post schedules showing all their rates, fares and charges for or in connection with transportation; that no change in such rates, fares and charges shall be made except by the publication, filing and posting of new schedules which shall become effective not earlier than 30 days after date of posting and filing; and that no carrier shall engage in service as a common carrier by water unless and until schedules as provided in the section have been duly and properly filed and posted. While the foregoing provisions do not specifically require that such schedules shall be canceled upon withdrawal of service or before withdrawal of service, they clearly contemplate that such schedules shall serve as notice to the Commission and the public of the services maintained and the charges therefor. It follows that the maintenance by common carriers of schedules of rates for services they do not perform cannot be justified. *Intercoastal Investigation, 1935*, 1 U. S. S. B. 400, 449. Since no changes in rates duly filed may be made on less than 30 days' notice, except by special permission of the Commission for good cause shown, withdrawal of service without the filing of schedules with statutory notice canceling the rates therefor is an unreasonable practice.

We find that the embargo by respondent is unreasonable. An order requiring its cancelation will be entered. Respondent should file schedules canceling its rates for the services to be withdrawn upon statutory notice or upon such shorter notice as may be authorized by us.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 23rd day of December A. D. 1940.

No. 597

EMBARGO ON CARGO BETWEEN NORTH ATLANTIC AND GULF PORTS

This case being at issue, 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 stating 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 cancel, effective on or before December 26, 1940, its embargo dated December 17, 1940, on all freight offered for transportation between or via Houston and Brownsville, Tex., on the one hand and Atlantic ports on the other.

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, Jr.
Secretary.

UNITED STATES MARITIME COMMISSION

No. 549

Jos. G. Neidinger Co.

v.

American-Hawaiian Steamship Co.

Submitted December 9, 1940. Decided January 14, 1941

Rate charged on teasels, in less carloads, shipped from San Francisco, Calif., to Philadelphia, Pa., found unreasonable. Reparation awarded.

Harry P. Mulloy and *James S. Benn* for complainant.
J. A. Stumpf and *M. G. de Quevedo* for defendant.

Report of the Commission

By the Commission.

A proposed report was waived by the parties.

By complaint filed September 7, 1939, it is alleged that the double first-class rate of $8 per 100 pounds, charged by defendant on a shipment of teasels weighing 5,397 pounds forwarded July 12, 1937, from San Francisco, Calif. to Philadelphia, Pa., on which the charges were paid September 7, 1937, was unreasonable. Reparation is sought on basis of an any-quantity rate of $2.50 per 100 pounds which was subsequently established. Rates will be stated in cents per 100 pounds.

After complaint was filed but prior to the hearing, defendant filed a special docket application seeking authority to pay reparation on basis of a less-carload commodity rate of $3.49 contemporaneously applicable via transcontinental rail lines. This application, which was denied, was incorporated in the record herein by stipulation.

Teasels are a vegetable growth used in making Christmas wreaths. They are valued at 19 cents per pound, f. o. b. California; are packed in wooden boxes 7 x 7 x 8 feet; and have a stowage factor of approximately 150 cubic feet.

Complainant, in addition to relying upon the contemporaneous rail rate, makes a comparison with rates on similar commodities moving in the same trade. For instance, on a dried flower known as "babies' breath", the rate ranged from \$2.26½ in 1936 to \$2.60 at date of hearing. It is used for the same ornamental purposes as teasels and weighs about the same; but it is more susceptible to damage and is about 2½ times as valuable. Tobacco stems are accorded the same rate as "babies' breath".

Defendants are willing to pay reparation on basis of the contemporaneous rail rate of \$3.49. That rate is now \$3.72, and defendant's present commodity rate on teasels is \$2.60, any-quantity. Defendant's witness testified that both the rate on "babies' breath" and the present rate on teasels are depressed by rail competition.

Upon this record we find that the rate assailed was unreasonable to the extent it exceeded a rate of \$3.49 per 100 pounds; that complainant received the shipment above described; that it paid and bore the charges thereon and has been damaged thereby to the extent of the difference between charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$243.40. An order awarding reparation will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION held at its office in Washington, D. C., on the 14th day of January 1941 A. D.

No. 549

JOS. G. NEIDINGER CO.

v.

AMERICAN-HAWAIIAN STEAMSHIP CO.

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, decision, and findings thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the defendant American-Hawaiian Steamship Co. be, and it is hereby, authorized and directed to pay to complainant, Jos. G. Neidinger Co. of Philadelphia, Pennsylvania, on or before 30 days after the date hereof, the sum of $243.40 as reparation on account of unreasonable charges collected on the shipment involved herein.

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 579

LONE STAR BAG & BAGGING COMPANY, INC.

v.

SOUTHERN STEAMSHIP COMPANY AND MOOREMACK GULF LINES, INC.

Submitted December 14, 1940. Decided January 14, 1941

Rate charged on old bags and bagging from Philadelphia, Pa., to Houston, Texas, found not subject to the Commission's jurisdiction. Complaint dismissed.

James J. Shaw and *M. S. Lindsay* for complainant.

Robert Eikel, *Julian M. King*, *T. D. O'Brien*, and *R. B. Wallace* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

By complaint filed June 24, 1940, it is alleged that the rate of 32 cents per 100 pounds on old bags and bagging from Philadelphia, Pa., to Houston, Texas, between April 27, 1938, and March 18, 1939, was unreasonable and unduly prejudicial in violation of sections 18 and 16, respectively, of the Shipping Act, 1916. Reparation is sought. Rates will be stated in cents per 100 pounds.

At the hearing complainant introduced evidence concerning one shipment, stating that it was typical of all the shipments involved. The paid freight bill covering this shipment separates the 32-cent rate charged into ocean charge (29.277 cents), loading charge (1.75 cents), and switching charge (.973 cents). The shipment was delivered to consignee's premises by Houston Belt & Terminal Railroad. The rate charged was a joint ocean-rail rate concurred in by the rail line, and was filed with the Interstate Commerce Commission. The tariff provided that shipments for Houston would be billed for rail delivery unless instructions to the contrary were received prior to loading in or on cars at Houston docks. The bill of lading covering the shipment had no instructions for dock delivery.

We find that the assailed rate is not subject to our jurisdiction, and an order dismissing the complaint will be entered.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 14th day of January A. D. 1941

No. 579

Lone Star Bag & Bagging Company, Inc.

v.

Southern Steamship Company and Mooremack Gulf Lines, Inc.

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

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

By the Commission.

[seal]

(Sgd.) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 569

NATIONAL CABLE AND METAL CO.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY

Submitted November 5, 1940. Decided January 23, 1941

Rates charged on automobile battery cables from Los Angeles Harbor, Calif., to Norfolk, Va., and Philadelphia, Pa., found inapplicable. Applicable rate determined. Complaint dismissed.

Earl W. Cox for complainant.

W. M. Carney, *M. G. de Quevedo*, and *H. S. Brown* for defendant and intervener.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This case was presented under the shortened procedure. Complainant's petition for oral hearing, received after issuance of the examiner's proposed report, is hereby denied. The conclusions recommended in the proposed report are adopted herein.

By informal complaint filed December 20, 1939, and subsequently by formal complaint, it is alleged that defendant's rate of 90 cents per 100 pounds for the transportation of automobile terminals or cables from Los Angeles Harbor, Calif., to Norfolk, Va., was unreasonable, inapplicable, and unlawful in violation of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933. Reparation is requested.

Luckenbach Steamship Company, Inc., intervened alleging that it had transported a shipment of the same commodity from Los Angeles Harbor to Philadelphia, Pa., on which complainant has refused and failed to pay the legally applicable freight charges.

The evidence and argument relate solely to the legally applicable rate. Rates will be stated in amounts per 100 pounds.

The articles under consideration were seven different styles of battery cables with terminals attached, for use in automobiles. They were made of 133 strands of copper wire, tinned for protection against corrosion; five of the styles of cables are insulated with rubber and have steel armor covers; the other two styles are not insulated or covered. Welded to one end of each cable is a terminal made from 100 percent lead alloy, with a small cadmium plated iron bolt inserted for pressure purposes; at the other end is a lug made of copper, cadmium coated. The cables shipped via defendant, described and billed as "Battery Cables with Terminals," ranged from 5 to 93½ inches in length, and weighed 31,880 pounds. Shipment was made January 19, 1938, consigned to Bowes "Seal Fast" Corp., Indianapolis, Ind., and moved by rail from Norfolk to destination. Charges of $172.15 were prepaid on February 3, 1938, at a rate of 54 cents. The billing was later revised from 54 to 90 cents, and the additional charge of $114.77 was paid October 15, 1938. Complainant contends that the rate of 90 cents was inapplicable and that the applicable rate was 54 cents.

The shipment via Luckenbach Steamship Company was made to the same consignee. It moved December 11, 1937, weighed 29,710 pounds, and charges thereon of $160.43 were prepaid at a rate of 54 cents. Subsequently the billing was revised from 54 to 90 cents and balance due bill for $106.96 was issued which complainant has not paid.

The applicable tariff, Alternate Agent Wells' Eastbound Tariff SB–I No. 7, contained no specific rate on the article shipped, but by Rule 55 it provided that where no specific commodity rate applicable to a commodity was named in that tariff but a specific commodity rate was named in R. C. Thackara's Westbound Tariff SB–I No. 6 for the article, the rate named in the westbound tariff would be applicable to eastbound shipments of that article.

The rate originally assessed was published at fifth amended page 290 of Alternate Agent Wells' SB–I No. 6, as follows:

Item 3785—Wire, cable, etc., viz:

Cable, copper, with or without insulation.
Cable (copper), electric, lead covered and/or armored, in coils or on reels.
Cable, wire, brass, bronze, or copper.
Strand, wire, brass, bronze, or copper.
Terminals, cable, or wire.
Minimum weight, 24,000 pounds.

The rate upon which the charges were corrected appeared at second amended page 107, as set forth below:

Item 485—Brass, bronze, copper, yellow metal, monel metal goods, nickel, nickel silver or nickel alloy, plain, chromium or nickel-plated, not silver-plated, viz:

Terminals (automobile battery), with or without connecting cables, insulated or not insulated, in boxes.
Minimum weight, 30,000 pounds.

Complainant argues that the fact that the cables had lead alloy terminals attached, eliminates the application of the 90-cent rate for the reason that that rate is restricted to automobile battery terminals of brass, bronze, etc. Defendant and intervener do not challenge complainant's statement that the terminals are not made of the metals referred to in Item 485.

According to them the entry covering automobile battery terminals was inserted in that item to apply on these specific articles, it being understood that the terminals were made of the metals named in the caption. They concede that the establishment of the entry under that caption was in error because complainant's terminals were made of a different metal than that named in the caption, but feel that the specific designation in the item, while contrary to the caption, is specific enough to cover the article in question. They state that until receipt of complainant's memorandum and supporting affidavit, Item 485 was regarded as being properly applicable, and that it is the most specific designation in the tariff.

In support of its position that the 54-cent rate in Item 3785 is the only proper rate, complainant shows that the articles shipped are known in the trade as "cables"; that the trade name for the terminals which are welded to the cables is "Bowes Seal-Fast KoRoDless Metal Terminals"; that the word "terminals" is defined in Funk and Wagnalls' New Standard Dictionary as pertaining to or creative of a boundary or end; a terminating point or part; a terminus; end; and that "cable" is defined as any heavy wire rope; also a similar support made by binding together parallel wires. Defendant and intervener argue that the entries in Item 3785 apply only to cable by itself; strand by itself, or terminals by themselves; but that there is no provision in the entries of the item, in the item itself, or in the tariff which would authorize application of the rates named in that item to a battery cable when made of wire with the terminals attached. In other words, they say that item would apply on the separate articles but not on the combined articles, and therefore that Item 3785 was inapplicable and could not have been applied to complainant's shipments.

The exceptions of complainant to the proposed report insist that its shipments were of "Terminals, cable or wire"; that the tariff does most assuredly name terminals, cable or wire, in every sense of the words; that the commodity is specified in Item 3785; that the word "Cables" is not used in the tariff, and that therefore the articles under consideration are terminals, cable or wire, and that we should so find.

Complainant's witness was unable to locate any manufacturer of automobile cables selling or shipping terminals without being connected to the cable. Its testimony and exhibit picturing the several styles of its battery cables, demonstrate that these are articles manufactured from certain of the commodities described in Item 3785. In this respect cable, strand and terminals are raw materials or component parts which when combined in a process of manufacture, become separate and complete articles of a type essentially different from the constituent parts. A product made from another product by a manufacturing process cannot itself be correctly described as the commodity from which it is derived, and to contend that item 3785 accurately describes, for instance, 24-inch lengths of insulated cable, armored, to one end of which a lead alloy terminal has been welded and having a copper lug at the other end,[1] clearly distorts the item.

Defendant and intervener argue that if the specific naming of the metals in Item 485 precludes application of that rate to articles made of any other metal, then the rate in Item 3695 should be applied here as unquestionably the articles shipped were automobile parts. This is named at fourth amended page No. 285 as follows:

Item 3695—Vehicle (self-propelling) parts and equipment, viz: Automobile parts, metal (not including accessories which are not integral parts of an automobile), n. o. s.

Rate $1.15 per 100 pounds for Any Quantity.

Complainant's testimony and exhibit admit of no dispute that the articles shipped were parts or equipment, of metal, for self-propelling vehicles, which are not otherwise specified in the governing tariff.

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. Applying these principles to the facts of this case it is apparent that the rates in both Items 485 and 3785 are not applicable to the battery cables shipped by complainant but that under the circumstances Item 3695 is the only item accurately descriptive of complainant's commodity.

We conclude and decide that the rates assessed against complainant's shipments were inapplicable; that the rate of $1.15 per 100 pounds as published in Item 3695 of Alternate Agent Wells' Westbound Tariff SB–I No. 6, is the applicable rate, and that the shipments were undercharged.

An order dismissing the complaint will be entered.

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[1] Described in complainant's exhibit I as being for use in all 4 and 6 cylinder model Chevrolets, exc. Std. '35, 1925–36.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 23rd day of January A. D. 1941.

No. 569

NATIONAL CABLE AND METAL CO.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY

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

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 567

City of Mobile, et al.[1]

v.

Baltimore Insular Line, Inc., et al.[2]

Submitted August 28, 1940. Decided February 4, 1941

Tariff U. S. M. C. No. 1, filed on behalf of defendants by Agent G. A. Meyer, Item 26 thereof, and exceptions thereto, under which on shipments from interior origins to Puerto Rico combination of inland-ocean rates are equalized via all ports, found not published as required by section 2 of the Intercoastal Shipping Act, 1933; said tariff, item and exceptions, and practices thereunder, found unjust and unreasonable in violation of section 18 of the Shipping Act, 1916; and as observed, to result in undue and unreasonable preference and prejudice as between localities in violation of section 16. Cancelation ordered.

S. P. Gaillard, Jr., for complainant; *Roscoe H. Hupper* and *Burton H. White* for Baltimore Insular Line, Inc., Bull Insular Line, Inc., and New York & Porto Rico Steamship Company; *Robert E. Quirk* for Lykes Brothers Steamship Company; and *T. M. Stevens* for Waterman Steamship Corporation, defendants. *William C. Rigby* for People of Puerto Rico; *W. L. Thornton* for Port of New York Authority, Merchants Association of New York, Shippers Conference of Greater New York, Maritime Association of New York and Boston Port Authority; *Rene A. Stiegler* for Board of Commissioners of the Port of New Orleans and St. Louis Chamber of Commerce; *Rene A. Stiegler* and *E. H. Thornton* for New Orleans Joint Traffic Bureau; *J. K. Hiltner* for United States Pipe & Foundry Company and Newark Chamber of Commerce; *Doss H. Berry* for Port Commission of Beaumont; *D. A. Simmons* and *H. B. Cummins* for Houston Port & Traffic

[1] The Department of State Docks and Terminals, State of Alabama; Mobile Chamber of Commerce.

[2] Bull Insular Line, Inc., Baltimore Insular Line, Inc., Lykes Bros. Steamship Co., Waterman Steamship Corporation, and The New York and Porto Rico Steamship Co.

Bureau; *O. G. Richard* and *A. A. Nelson* for Board of Commissioners of the Lake Charles Harbor and Terminal District; *F. G. Robinson* for Galveston Chamber of Commerce and Galveston Cotton Exchange and Board of Trade; *Charles R. Seal* for Baltimore Association of Commerce; and *S. H. Williams* for Joint Executive Transportation Committee of Philadelphia Commercial Organizations, interveners.

Report of the Commission

By the Commission:

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

Complainants allege that a practice of defendants, under Agent G. A. Meyer's Tariff U. S. M. C. No. 1 whereby on shipments to Puerto Rico the combination of the inland rates from point of origin to seaboard and ocean rates beyond are adjusted so that the lowest combination via any United States port served by a defendant will apply via any other port from which any defendant regularly maintains service, is unduly preferential and prejudicial and unjust and unreasonable in violation of sections 16 and 18 of the Shipping Act, 1916.

Bull Insular Line, Inc., and Baltimore Insular Line, Inc., maintain weekly sailings from New York, N. Y., and Baltimore, Md., respectively. Jointly, they have a sailing from Charleston, S. C., and Jacksonville, Fla., every 3 weeks. Porto Rico Line operates a weekly service from New York; it also maintains a weekly sailing from New York to San Juan only with combination passenger and cargo vessels. Lykes maintains a weekly service from Lake Charles, La., fortnightly sailings from Galveston and Houston, Tex., and on alternate weeks from Beaumont, Tex., and a monthly service from Orange and Port Arthur, Tex. Waterman operates a regular weekly service from New Orleans, Mobile, and Tampa. There is no competition between defendants at any origin port except New York.

Defendants, through their Agent, G. A. Meyer, have filed tariff schedule U. S. M. C. No. 1 containing an item numbered 26 (see Appendix), entitled "Port Equalization," which authorizes a deduction of 3 cents per 100 pounds from published rates on C. L. and L. C. L. traffic to Puerto Rico moving via New York, N. Y., and originating at points located on railroads or parts thereof named in the item, subject to specific exceptions published in connection with particular commodities listed in other portions of the tariff. The 3-cent deduction represents the generally recognized differential between inland rail rates from interior origins to New York and Baltimore, Md. On L. C. L. shipments certain additional allowances or deductions are made to cover cost of transfer at New York, as provided for in paragraph (b) of the item or in connection with individual commodities. The item provides that the total deduction in any rate shall not exceed 30 percent of the published ocean rate.

By so-called exceptions to Item No. 26 published in individual rate items, defendants have extended the application of port equalization to traffic moving via New York from origins in Georgia, Tennessee, the Carolinas, and other states in Southern Territory, and from origins as far west as Denver, Colo., not located on any railroad named in Item No. 26, and to traffic moving from interior points via Baltimore, Charleston, S. C., and Jacksonville, Fla., and various United States Gulf ports. Exceptions should be no broader in scope than the provisions to which they are published as exceptions. Therefore, the publication under the guise of exceptions of deductions from local rates on shipments moving via New York from origins not located on any railroad named in Item No. 26 and on traffic which does not move via New York, are not proper exceptions. It follows that the tariff is not published as required by section 2 of the Intercoastal Shipping Act, 1933, as amended.

Deductions from published rates on flour, rice, barley, wheat, cereals, corn meal, hominy, and flax of interior origin, with few exceptions, have been published independently of Item No. 26. 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.

Porto Rico Line, Bull Insular, and Baltimore Insular Lines, and Waterman solicit business from shippers located at points in West Virginia, Central Freight Association Territory, and points north and west thereof. From some points inland rates to seaboard favor Atlantic ports; in other instances, such rates favor Gulf ports. For instance, on refrigerator motors and units of Dayton, Ohio, origin, lower rates apply to North Atlantic ports, but Waterman equalizes routes to New Orleans and/or Mobile by making reductions in its ocean rate ranging from 20 to 34 cents per 100 pounds. Waterman also equalizes against North Atlantic ports on shipments from Greenville, Muskegon, and Niles, Mich., and from Kendallville, Ind. The same or similar articles are manufactured at Evansville, Ind., from which point inland rates favorable to the Gulf are equalized on shipments moving via New York and Baltimore. Other instances of like character could be cited. Bull Insular and Baltimore Insular Lines equalize against Waterman on traffic originating in Southern Territory; and Waterman and Lykes equalize against each other on traffic from origins tributary only to Gulf ports. Equalization favorable to ports served by Lykes are limited in number, but equalizations against such ports are numerous. Waterman serves both New Orleans and Mobile, yet there are few published equlizations via Mobile. Waterman concedes that it obtains traffic from areas naturally tributary to ports served by other defendants. For instance, it draws traffic from Waycross, Ga., a point nearer Jacksonville, Fla., and equalizes New Orleans with Texas ports on traffic from San Antonio, Tex., notwithstanding shipments must move through Houston to reach New Orleans. There are also deductions from local rates on traffic which originates at ports. For instance, carriers operating from New York draw traffic which originates at Baltimore and at Charleston. Traffic originating at Port St. Joe, a port served by Waterman, also moves through Jacksonville. The conference agreement does not authorize equalization on traffic from ports.

It is apparent from the foregoing that there are no geographical limitations upon the practice and that, as one defendant stated "everything is equalized against everything." Many of the published equalizations from areas in which two or more of defendants solicit for business reflect retaliatory action against equalizations which may have been previously published by a competitor.

Defendants operate jointly under a conference agreement approved in 1938 pursuant to section 15 of the Shipping Act, 1916. The agreement states that—

> Rates will be modified so as to make the through rate on merchandise originating at interior points of the United States to port of destination via any United States Atlantic or Gulf port, from which a service is regularly maintained, equal to the through rate from the same interior point to the same destination via any other United States Atlantic or Gulf port, from which a service is regularly maintained, except that the maximum absorption will not exceed 30% of the basic ocean freight rate.

Under the Agreement uniform local rates for each commodity transported have been established for application from all ports by all carriers. While Waterman and Lykes originally signed the agreement, they now are opposed to the equalization practice. Waterman states present practices under the tariff foster uneconomic transportation, destructive competition between carriers and unnecessary dissipation of carrier revenue, and that knowledge that rates will be drastically reduced results in local rates higher than might be necessary without such reductions.

The Atlantic Carrier Group contends that Gulf carriers need not equalize if they do not desire to do so, but when the former group equalizes on traffic from Southern States and other areas having lower inland rates to ports they do not serve, obviously failure of the latter group to equalize when inland rates favor Atlantic ports would result in the loss of much traffic which now moves through Gulf ports. Gulf carriers are unable to have the equalization practice discontinued, or even modified, through the Conference, since a unanimous vote of members present at a meeting is required before any change can be made in the agreement or in rates, charges, rules, or practices. Interveners representing Baltimore and Gulf ports west of New Orleans join other interests in opposing continuation of the practice.

Defendants operating from Atlantic ports move that the complaint be dismissed on the ground that a port is not susceptible to undue preference or prejudice. They cite *Texas and Pacific Ry. Co.* v. *United States*, 289 U. S. 627, a case involving a rail rate adjustment by the Interstate Commerce Commission, in which the court defined the word "locality" as used in section 3 of the Interstate Commerce Act. The court said:

> The word "locality" has its proper office as denoting the origin or destination of traffic and the shipping, producing, or consuming areas affected by rates and practices of carriers. The term was, however, not intended to cover a junction, way station, a gateway, or a port as respects traffic passing through it.

Defendants fail adequately to consider one point influencing the court's decision. 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 the 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 the court's decision, is within the term "locality" even though shipments have received prior rail transportation under an independent contract. Respondents argue that the failure of Congress to amend section 16 of the Shipping Act when section 3 of the Interstate Commerce Act was amended specifically to include a port, port district or gateway, supports their position. Because of the distinction aforementioned that failure also can be urged with equal force in opposition to their contention. They also question the right of complainants to file a complaint. But 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, therefore, proper complainants under section 22. The Department of State Docks and Terminals also is a proper complainant. It it is also urged that port organizations representing Lake Charles, La., and Beaumont, Houston, and Galveston, Tex., should not have been permitted to intervene on the ground that their intervention unduly broadens issues. Similar objection also was interposed to the intervention of the Boston Port Authority and the Baltimore Association of Commerce. Boston has little, if any, interest, but other intervening interests are vitally affected, and their admission as parties to this proceeding tends to eliminate multiplicity of complaints. No new issues are raised and carriers cannot claim surprise, for many of the protested interventions were granted prior to hearing.

The lawfulness of tariffs publishing port equalization to the extent here in issue has not previously been presented for determination. In *Puerto Rican Rates*, 2 U. S. M. C. 117, we found that a tariff rule identical in substance with the above quoted provision of the conference agreement did not conform to the requirements of section 2 of the Intercoastal Shipping Act, 1933, as amended. The tariff under consideration was filed effective October 20, 1939, pursuant to that finding. Such publication, as amended, initially disclosed in tariff form the extent of the practice. Port equalization prevails in some offshore trades but, contrary to contentions of some defendants, it is not generally practiced by ocean carriers.

It is complainant's position that the North Atlantic carrier group should not solicit traffic from origins on and west of the generally recognized Chicago-Indianapolis-Cincinnati line. They show that inland rate structures are the result either of voluntarily established rates which, because not suspended or attacked by complaint, have continued in effect, or which through proper proceedings have been specifically prescribed or found justified by the Interstate Commerce Commission.[3] Our attention also is directed to export rates[4] to Gulf and South Atlantic ports lower than domestic rates to such ports and lower from common origins than are applicable to the North Atlantic, established after due consideration of factors inherent in the transportation service to, facilities for handling cargo at, and ocean services available from the respective ports. It is their position that the development and maintenance of a port depends upon traffic from inland areas naturally tributary thereto, as well as that which originates at Seaboard; that the equalization practice nullifies inland rate structures through the diversion of traffic to ports to which higher rates ordinarily would apply; and that established, prescribed or ap-

[3] 128 I. C. C. 349: *Consolidated Southwestern Cases*, 123 I. C. C. 203; 160 I. C. C. 355; 205 I. C. C. 301; 213 I. C. C. 83; 225 I. C. C. 401.

[4] While traffic between the United States and Puerto Rico is domestic commerce, export rates of rail or other carriers filed with the Interstate Commerce Commission are applicable thereto.

proved inland rates should be left undisturbed. They contend that action by defendants designed to divert traffic indirectly challenges the lawfulness of inland rate structures, and they urge that since both the Interstate Commerce Commission and the Maritime Commission are agencies of Congress, one such agency should not permit nullification of rate relationships established or approved by the other. All opponents of the practice join complainants in this contention.

Complainants are especially interested in structural steel, iron and steel articles and pipe and fittings which are manufactured within the State of Alabama in the Birmingham district. They claim the natural route is through Mobile because of the distance factor and more frequent sailings there available. Bull Insular and Baltimore Insular Lines, in an attempt to equalize the infrequent service from Charleston with Waterman's more frequent service from Mobile and New Orleans shrink their ocean rate from Charleston, S. C., by the exact amount of the difference between the inland rates to that port and to Mobile. From some origins inland rates to New Orleans and Mobile are the same; yet Waterman shrinks its rate only from New Orleans to equalize the 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 in violation of section 16 of the Shipping Act, 1916.

Houston interests state they are particularly affected by equalizations through New Orleans because the latter port can draw traffic from Southern, Central and Western Trunk Line Territory while Houston can draw little traffic except from origins in the Southwest. Galveston is similarly situated. The Texas and Pacific Ry. Co. and Louisiana and Arkansas Lines have voluntarily established rate parity to New Orleans and Texas ports, but it is said that rates from southwest interior origins generally favor the Texas ports. This appears particularly true with respect to flour. Waterman equalizes rates via New Orleans with combinations available via Galveston from in excess of 200 origins of flour or grain in Kansas, Oklahoma and Texas by shrinking its local rate from New Orleans from 1 to 12 cents, dependent upon the origin and the route to seaboard. In some instances the shrinkage represents the difference between an established rail export rate to a Texas port and a rail domestic rate to New Orleans, notwithstanding the existence of the same export rates to both ports. On shipments from Carnegie, Okla., via Frisco Lines and Texas and New Orleans R. R. Co. to New Orleans, milled at Sherman, Tex., the shrinkage is 8 cents. It is said that the export rate does not apply via that route, and that the difference in rates via established routes would be less than 8 cents. On flour via New Orleans, milled at Galveston, from wheat of Ames, Okla., origin, a shrinkage of 8 cents in ocean rate is arrived at by the use of a 43-cent domestic rate from Ames to New Orleans as against an alleged 35-cent export rate to Galveston. The export rate from Ames to New Orleans is said to be 36 cents. Because of the foregoing, defendant Lykes and Texas port interveners state a substantial quantity of flour has been diverted from Texas ports to New Orleans. 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. 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 circumstances, an unreasonable practice.

Respondents maintaining service from New York and Baltimore also equalize inland rates to those ports on shipments of oats, flour, corn, wheat, barley, cereals, farina, glucose, hominy, oat meal, and flax originating at approximately 800 points in Iowa and points in Minnesota and South Dakota when milled in transit at Cedar Rapids, Iowa; on corn meal, wheat, flour, and corn from 22 origins in Illinois and 120 origins in Indiana when milled at Indianapolis, Ind.; and from Minneapolis, Minn., when milled at Milwaukee, Wis. From 22 origins in Illinois different deductions apply, dependent upon whether the milling point is Decatur or Indianapolis. In addition to deductions based on milling points, there also are differences in deductions dependent on the point of origin of the basic grain. On shipments of cotton piece goods, finished, from origins in Georgia, South Carolina, North Carolina, and Tennessee, via New York or Baltimore, deductions differ not only with each point of origin but also upon whether shipments move to seaboard via truck, all-rail or rail-water routes. Such varying deductions result in innumerable port-to-port rates for substantially similar transportation. The 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 ports served by Bull Insular, and Baltimore Insular Lines or to Gulf ports served by Waterman, is uneconomic and unnecessarily wasteful of carrier revenue.

On shipments of flour, corn, and wheat of Iowa and South Dakota origin, moving via a North Atlantic port; and on shipments of finished cotton piece goods of Georgia, South Carolina, North Carolina, and Tennessee origins routed via New Orleans or Mobile, there are deductions in ocean rates which exceed the maximum of 30 percent established by the conference agreement. Other instances of like character appear throughout the tariff. Except on shipments via New York from origins on designated railroads, the tariff does not establish a maximum deduction, but the conference agreement provides a maximum of 30 percent of the local ocean rate. Consequently, all published exceptions in excess of 30 percent are made without section 15 authority.

On passenger automobiles shipped from various origins in Michigan, Indiana, Wisconsin, and Ohio, moving via New York, New Orleans, and Mobile, deductions from a 19-cent per cubic foot local rate are published in cents per 100 pounds. Obviously, it is not possible to ascertain from the tariff the applicable port-to-port rate. The same difficulty exists with respect to other commodities when measurement rates are charged, due to the optional weight or measurement rate system which defendants have established. On commercial units and chassis of from 1½ ton capacity to 7 tons or more, of Springfield, Ohio, and Fort Wayne, Indiana, origin, deductions ranging from $6 to $28.75 per unit will be made on drive-away deliveries to carrier's pier at New York in not less than 2 units. If single units are delivered only 80 percent of the published deductions will be made. Elsewhere in the tariff there are deductions ranging from .02 to .40 cents or more per 100 pounds on shipments of commercial units and chassis via New York of the same origins, unrestricted as to means of transportation to the port, number of units delivered, or manner of delivery, published on a sliding scale weight basis per unit up to and exceeding 18,000 pounds. Published deductions and rates resulting therefrom on shipments of Fort Wayne and Springfield origins are conflicting. A deduction on drive-away deliveries to a carrier at Baltimore of $2 per unit will be made only on vehicles up to and including one ton originating at Springfield. Variable deductions on a similar sliding scale weight basis also 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. These and other publications resulting in numerous different port-to-port rates on the same commodity for substantially similar transportation raise the question whether there should be more than one such rate on shipments of interior origin lower than the local rate. To prohibit more than one rate in every instance might be somewhat arbitrary, but certainly it is unreasonable to have a large number of such rates.

Lake Charles, La., 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 miles to New Orleans. Inland rates from ten origins of rice to Lake Charles are lower than to any other port. Prior to October 1, 1939, rates via New Orleans and Lake Charles were equalized from all origins. Waterman now equalizes only from Abbeville, Crowley, Jennings, and Kaplan. 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 rate to Lake Charles, are not accorded like treatment. New Orleans interveners cite *Board of Commissioners of Lake Charles Harbor and Terminal District* v. *N. Y. & P. R. SS Co.*, 1 U. S. S. B., 154, decided in 1929, in which no unlawfulness was shown concerning the equalization of rates on rice of inland origin via Lake Charles and New Orleans. They state that Lake Charles was not then served by the carrier operating from New Orleans and contend that since Waterman now does not serve Lake Charles no preference or prejudice can result. We do not agree. The interveners overlook the fact that equalization via New Orleans is now restricted to four origins as was not the case when the decision cited was rendered. 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. This situation, however, is analogous to the attempt of carriers operating from New York hereinbefore discussed, to draw to those ports traffic from origins substantially more favorably situated geographically to other ports.

Waterman does not confine its equalization practices to rail rates alone, but also equalizes the rail and water routes to New Orleans on shipments of rice originating at or trucked to New Iberia, La., and likewise rail and barge routes to New Orleans from origins in eastern Arkansas. Interveners representing the Port of New Orleans, and carriers operating from Atlantic ports, oppose equalization of differentials between rates by different modes of transportation to the same port. Such an equalization is not within the scope of the conference agreement. All-rail rates from such origins to both Lake Charles and New Orleans are the same and, therefore, no basis exists for equalization under the agreement. Lykes also makes deductions in its ocean rate from Lake Charles, Houston, and Galveston. When shipments move via Houston and Galveston they are routed through Beaumont. Lykes does not shrink its ocean rate from Beaumont. Consequently that port is denied an opportunity to compete for traffic and is therefore unduly prejudiced in violation of section 16. Equalization by Waterman and Lykes against each other is inconsistent with their position that equalization of inland rates is an unlawful practice.

Baltimore Association of Commerce directs attention to indefiniteness and ambiguity in section (b) of Item 26. (See appendix.) Because paragraph (b) names only minimum and maximum allowances, the specific amount which will be allowed on a particular shipment cannot 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 either paragraph (e) or (f). We have herein found that such indefiniteness in tariffs does not comply with the publication requirement of the Intercoastal Shipping Act, 1933. That applies with full force to this situation.

Rates from inland points to seaboard of rail or other carriers are based on quantity, there being L. C. L. and frequently two or more C. L. rates on each commodity. Recognition by defendants of the resulting differentials produces ocean rates lower on small quantities than are charged on larger quantities of the same article, with the amount of the rate increasing as the specified minimum weights increase. In this respect the practice 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 this trade.

Many other instances of objectional features of defendants' present tariff could be cited. However the foregoing appears sufficiently illustrative.

Defendants Porto Rico Line and Bull Insular and Baltimore Insular Lines urge that the practice should not be condemned because of the length of time it has been observed, the fact that shippers and consignees generally have become accustomed to it, and that ports and businesses have been built thereon. However, they offered little evidence. Tariff rules, and practices thereunder, if otherwise objectionable cannot be upheld for any of the stated reasons. The contention also is made that since the rule results in shippers paying the same amount via any port, and affords carriers and ports an equal opportunity to attract traffic, no unlawfulness exists. They cite *Port Differential Investigation*, 1 U. S. S. B. 61. At page 71 of that decision the contention of New York and other port interests that rail-water rates should be equalized via Atlantic and Gulf ports was considered and dismissed on jurisdictional grounds.

Island 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 manufacturer and the combination of inland-ocean rates is different for each origin.

The Port of New York Authority and allied interests contend that those opposing the practice seek to subordinate the interests of shippers to the interests of ports, and that their position is conflicting because they favor practices of rail carriers whereby through rates via various through routes are equalized. We do not concede that defendants' equalization practices are the outgrowth of factual situations similar to those faced by rail carriers or that the same necessity for equalization exists in ocean transportation. The Port of New York Authority admits that the present practice may warrant some curtailment because of the absence of geographical limitations. Such curtailment can best be initially effected by voluntary action of the carriers themselves.

All proponents of equalization urge that we do not condemn equalization in principle and that we adhere to our decision in *Intercoastal Rate Structure*, 2 U. S. M. C. 285. In that case we found particular equalization rates unreasonable, without prejudice to the establishment of reasonable rules designed only to equalize rates where necessary in view of the applicable rail rates to the ports. We said:

> * * * it appears that the present port equalization rates are primarily designed by the various respondents to entice a larger share of the business away from their competitors. The question put before us is not the lawfulness of port equalization as a rate-making principle, but whether the present port equalization rates are reasonable. The record in this proceeding shows that 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.

The lawfulness of port equalization under a particular tariff rule is presented here. In the case cited the practice was more limited in scope than in this case and the shrinkage in local rate in no instance amounted to 30 percent. A further important distinction is that in the Puerto Rican trade there is no actual competition with trans-continental and joint rail-water routes from inland points. As in *Inter-*

coastal Rate Structure, supra, 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.

Proponents urge that rates resulting from the rule apply as proportional rates on through traffic and that in view of the decision in *Proportional Westbound Intercoastal Rates on Cast Iron Pipe*, 1 U. S. S. B. B. 376, and *Intercoastal Rate Structure, supra*, such rates are not unlawful. Rates under consideration in those cases were published as single-factor proportionals. We recognize 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 defendants' 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. Except Lykes, each defendant stipulated that the amount of traffic obtained by the practice and the aggregate of the shrinkages in local rates was substantial. This stipulation was entered subsequent to expressed reluctance by defendants favoring equalization to disclose the amount of traffic diverted from other ports by the practice and the financial result thereof. Such reluctance, when considered in the light of evidence of record regarding unnecessary dissipation of revenue and knowledge that a large part of the Puerto Rican traffic originates inland gives rise to an inference that local traffic may be unduly burdened. Obviously respondents 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.

The contention that inland rates to seaboard, whether voluntarily established or prescribed or approved, should not be nullified cannot be entirely ignored. We could not prescribe a rule or regulation designed solely to equalize inland rate differentials. Carriers may do many things which we could not compel, but that privilege is not unlimited. To permit continuation of unrestricted solicitation by carriers for business through condonation of a practice whereby unfavorable inland rates are overcome would wholly ignore the right of a port to traffic to which it may be entitled by reason of its geographical location. Such right appears fundamental under statutes designed to establish and maintain ports. Under section 8 of the

Merchant Marine Act, 1920, we are required to recognize territorial regions and zones tributary to ports and should there exist rates to seaboard which, among other things, do not recognize the natural direction of the flow of traffic recommendations may be made to the Interstate Commerce Commission for such action as it deems necessary. The contention has been made that section 8 has no relation to rate regulatory provisions of the Shipping Act, 1916. But to wholly ignore basic policies of Congress would be unwarranted.

We find that Item 26 of Agent G. A. Meyer's Tariff U. S. M. C. No. 1, published exceptions thereto, and practices thereunder are unjust and unreasonable, and that equalization as observed in the Puerto Rican trade results in an unreasonable tariff in violation of section 18 of the Shipping Act, 1916. We further find that equalization as practiced results in undue and unreasonable preference and prejudice between localities in violation of section 16 of the Shipping Act, 1916. We further find that the tariff item above mentioned, exceptions thereto and other tariff provisions do not comply with section 2 of the Intercoastal Shipping Act, 1933. An appropriate order will be entered.

APPENDIX

Item No. 26.—*Port Equalization.*—Rates named herein, except on cement, portland, in bags or barrels; coal, in bulk; fertilizer, n. o. s., in bulk; acid phosphate, in bulk; sulphate of ammonia, in bulk; sulphur and potash, in bags or bulk; will be subject to this rule and except as otherwise specified under individual commodities, the following differentials will be deducted from such rates on traffic as defined in this rule:

(a) On carload shipments of commodities, as defined above, which have moved in continuous railroad or other carrier movement from points, as defined in section E hereof, to the individual carriers, parties hereto, at New York for forwarding to ports in Puerto Rico served by the respective individual carriers as provided on page 5 of this tariff, a differential of three (3) cents per one hundred (100) pounds will be deducted from rates named herein unless otherwise provided for under individual commodities.

(b) On less than carload shipments of commodities as defined above, which have moved in continuous railroad or other carrier movement from places as defined in Section E hereof to the individual carriers, parties hereto, at New York for forwarding to ports in Puerto Rico served by the respective individual carriers as provided on Page 5 of this tariff, a differential of three (3) cents per one hundred (100) pounds will be deducted from the rates named herein, unless otherwise provided for under individual commodities, in addition to which the following allowances will be made to cover cost of transferring less than carload shipments from railroad or other carriers' terminals to the loading terminals of the individual carriers.

Shipments, except commercial and passenger automobiles, transferred from railroad or other carriers' terminals to the loading terminals of the individual carriers located in New York, actual cost of transfer but not in excess of twenty-three (23) cents per one hundred (100) pounds, subject to minimum of one dollar and fifty cents ($1.50), except that when transfer of less than carload shipments can be performed by rail carriers' lighters at the minimum lighterage charge of $8.32 an amount not to exceed this figure will be allowed to cover transfer to carrier's loading terminals.

Shipments of commercial and passenger automobiles on which the inland rate does not include delivery to vessel an allowance of five (5) dollars per unit will be made to cover cost of transfer from railroad or other carrier's terminal to the loading terminals of the individual carriers located in New York.

(c) Shipments consisting of pieces or packages weighing in excess of 6,000 pounds moving to New York by rail on which the inland railroad rates do not include heavy lift charges, an allowance of 55 cents per ton of 2,000 pounds on the gross weight of the piece or package will be made in addition to the inland differential, as provided for under sections "A" and "B" of this rule or as provided for under individual commodities.

(d) Differentials and allowances will be made only when claims for such differentials or allowances are supported by a copy of the inland bill of lading or arrival notice or freight bill, and the total allowances shall not exceed 30 percent of the basic ocean rate.

(e) Except as otherwise provided for herein or under individual commodities the application of this rule is restricted to shipments moving to the individual carriers, parties herto, in a continuous railroad or other carrier movement when such shipments have originated at points as follows:

All points located on the:

1. Akron, Canton & Youngstown Railway Co.
2. Ann Arbor Railway Co.
3. Atchison, Topeka & Santa Fe Railway, Northeast from Hutchinson, Kans.
4. Baltimore & Ohio Railroad Company, subsidiaries and leased lines, west of Kane, Pa., DuBois, Pa., and Cumberland, Md.
5. Bessemer & Lake Erie Railroad Co.
6. Chesapeake & Ohio Railway Company, west of Charleston, W. Va.
7. Chicago, Burlington & Quincy Railroad Co. (Burlington Route), and subsidiaries from Omaha, Neb., Duluth, Minn., and Minneapolis, Minn., eastward.

8. Chicago & Eastern Illinois Railroad, North from St. Louis, Mo., and Evansville, Ind., to Chicago, Ill.

9. Chicago, Rock Island & Pacific Railroad, Eastward from Sioux Falls, Minneapolis, Lincoln, and Omaha.

10. Chicago, Springfield & St. Louis Railway Co., South from Springfield, Ill., to St. Louis.

11. Chicago Great Western Railroad from Omaha, Neb., and Minneapolis, Minn., eastward.

12. Chicago, Indiana & Louisville Railway.

13. Chicago, Milwaukee, St. Paul and Pacific Railroad from Omaha, Neb., Sioux Falls, S. D., Duluth, Minn., and Minneapolis, Minn., eastward.

14. Chicago and North Western Railway Co. and subsidiaries from Omaha, Neb., Duluth, Minn., and Minneapolis, Minn., eastward.

15. Detroit, Toledo & Ironton Railroad Co.

16. Erie Railroad Company, subsidiaries and leased lines, west of Buffalo, N. Y., Niagara Falls, N. Y., Suspension Bridge, N. Y., and Corry, Pa.

17. Grand Trunk Western Railway, west of Buffalo, N. Y., Niagara Falls, N. Y., and Suspension Bridge, N. Y.

18. Illinois Central Railroad Co., from Sioux Falls, S. D., Omaha, Neb., St. Louis, Mo., eastward and northeastward of Cairo, Ill.

19. Louisville and Nashville Railroad from Evansville, Ind., eastward to Cincinnati, Ohio, and Maysville, Ky.

20. Minneapolis & St. Louis Railroad, Southeast from Minneapolis to Chicago, Peoria, and St. Louis.

21. Minneapolis, St. Paul & Sault Ste. Marie Railway, Southeastward from Minneapolis and Duluth, Minn.

22. New York Central Railroad Company, subsidiaries and leased lines west of Buffalo, N. Y., Niagara Falls, N. Y., Suspension Bridge, N. Y., and Jersey Shore Junction, Pa.

23. New York, Chicago & St. Louis Railroad Co., subsidiaries and leased lines, west of Buffalo, N. Y.

24. Pennsylvania Railroad Company, subsidiaries and leased lines, west of Buffalo, N. Y., Kinzua, Pa., Kane, Pa., Falls Creek, Pa., and Johnstown, Pa.

25. Pere Marquette Railway Co., west of Buffalo, N. Y., Niagara Falls, N. Y., and Suspension Bridge, N. Y.

26. Pittsburgh & Lake Erie Railroad.

27. Pittsburgh & West Virginia Railway Co.

28. Rock Island Southern Railway from Davenport, Iowa, South to Galesburg, Ill.

29. Southern Railway Eastward from St. Louis, Mo.

30. Toledo, Peoria & Western Railroad, Eastward from Keokuk, Iowa.

31. Wabash Railway Co., west of Buffalo, N. Y., and Niagara Falls, N. Y.

32. The Wheeling & Lake Erie Railroad Company.

(f) On less than carload shipments of commodities as defined above which have moved in continuous railroad or other carrier movement from points defined below to the individual carriers, parties hereto, at New York the allowances covering cost of transfer from railroad or other carriers' terminals to the loading terminals of the individual carriers, as provided for in Sections B and C will be deducted from rates named herein.

1. Baltimore & Ohio Railroad Company, Points in the State of New York east of Buffalo.

2. The Delaware, Lackawanna and Western Railroad Co., Points in the State of New York from Buffalo southeast to Binghamton and from Oswego southeast to Syracuse.

3. Erie Railroad Company, Points in the State of New York from Suspension Bridge and Salamanca eastward to Binghamton.

4. Lehigh Valley Railroad, Points in the State of New York east of Suspension Bridge.

5. New York Central Railroad Company, Points in the State of New York from Suspension Bridge eastward to Syracuse.

6. Pennsylvania Railroad Company, Points in the State of New York east of Buffalo and Salamanca.

2 U. S. M. C.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 4th day of February A. D. 1941

No. 567

CITY OF MOBILE, ET AL.

v.

BALTIMORE INSULAR LINE, INC., ET AL.

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

It is ordered, That defendants be, and they are hereby, notified and required to cease and desist, on or before March 24, 1941, from the observance of Item 26 of Agent G. A. Meyer's Tariff U. S. M. C. No. 1, exceptions thereto, other tariff provisions relating to port equalization, and practices herein found unlawful; and

It is further ordered, That defendants be, and they are hereby, notified and required to cancel, effective on or before March 24, 1941, the said item, exceptions, and other tariff provisions of the character above mentioned, upon notice to the Commission and to the general public by not less than one day's filing and posting in the manner prescribed by the Intercoastal Shipping Act, 1933, as amended.

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, Jr.,
Secretary.

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UNITED STATES MARITIME COMMISSION

No. 599

Embargo on Cargo at Camden, New Jersey

Submitted January 21, 1941. Decided February 4, 1941

Embargo by Pan-Atlantic Steamship Corporation on all commodities offered for transportation, to, from, and via Camden, N. J., found not unreasonable or unduly prejudicial. Proceeding discontinued.

R. A. Kearney for respondent.
Harry P. Mulloy for interveners.

Report of the Commission

By the Commission:

This is a proceeding on the Commission's own motion concerning the lawfulness of an embargo by respondent Pan-Atlantic Steamship Corporation, a common carrier by water in interstate commerce, on all commodities offered for transportation to, from, and via Camden, N. J., effective January 23, 1941, "account delays being experienced," as stated by respondent. By our order of January 17, 1941, herein, respondent is required to show cause under sections 16 and 18 of the Shipping Act, 1916, as amended, why, in the public interest, the embargo should become effective. South Jersey Port Commission intervened at the hearing in opposition to the embargo.

Since 1934 respondent has operated a service between New Orleans, La., Mobile, Ala., Panama City, and Tampa, Fla., Philadelphia, Pa., Camden, N. J., Boston, Mass., and Baltimore, Md. It has served Baltimore only by transshipment arrangements with Ericsson Line, Inc., at Camden. Its vessles do not call at Camden northbound. Southbound they are scheduled to arrive from Boston at Philadelphia on Mondays and sail Thursdays, making the shift to Camden on Wednesdays and back to Philadelphia Thursdays. While loading at Camden, railroad freight originating west of Philadelphia is lightered from Philadelphia to shipside in order to utilize all of the hatches at the same time. In 1940 about 11,000 tons of such cargo was lightered to Camden, averaging about 250 tons per week. During the same period about 21,000 tons of Baltimore freight was transshipped at Camden, while about 18,000 tons originated at Camden. Witness for respondent states that about 10 percent of all tonnage originating in the Philadelphia area comes from Camden.

Ericsson announced discontinuance of its service between Baltimore and Camden effective January 10, 1941. Thereafter it proposes to transship Baltimore traffic with respondent at Philadelphia. Respondent's embargo notice is dated January 13, 1941.

Respondent justifies the embargo by emergency conditions created by withdrawal of coastwise services of other lines during recent months and by Ericsson's discontinuance of the Camden call. With additional freight accumulating at both Gulf and Atlantic ports formerly carried by other lines, it has been unable to maintain schedules even when not calling at Panama City and Tampa. During the past several weeks, with vessels as much as three days behind schedule, it has had to leave between 200 and 300 tons per trip on the dock at Philadelphia. Before the outbreak of the present European war it was able to secure additional vessels to meet these emergencies, but none is available now. Since the war began it has added two vessels to its coastwise operations and has an understanding with railroads serving Philadelphia to re-route some freight to New York, where it maintains Gulf service, in an attempt to keep the service in question on schedule. In March 1940 the Philadelphia service included New York and New Bedford, but both ports have been eliminated in order to maintain schedules at Philadelphia. Respondent states that withdrawal of the Camden call is only temporary. Its rates have not been cancelled.

Witnesses for intervener point to the fact that abandonment of service at Camden will require shippers either to ferry or truck freight from New Jersey to Philadelphia involving not only loss of time and inconvenience, but additional cost of transportation. It is estimated that the additional cost would amount to about $20,000 annually. When in 1934 Pan-Atlantic began its Camden operations Mooremack Gulf Lines maintained a service between Camden and the Gulf. In March 1940 Mooremack Gulf sold its vessels and discontinued service leaving Pan-Atlantic as the only water carrier serving Camden and Gulf ports. In 1935 Pan-Atlantic originated 6,375 tons of local Camden traffic. In 1940, 18,772 tons of local Camden traffic was handled by respondent. The Camden interests urge that this increase in tonnage warrants continuation of the Camden service. The record leaves no question that the Camden port facilities are adequate and no delays have been experienced there.

Intervener relies on our opinion in Docket No. 597, *Embargo on Cargo between North Atlantic and Gulf ports.* In that case we found an embargo by Agwilines, Inc. (Clyde-Mallory Lines) on all commodities offered for transportation between North Atlantic ports and Gulf ports unreasonable and ordered it cancelled. The two cases are not similar. There Agwilines proposed by embargo to abandon completely its Gulf and North Atlantic operations without the filing of schedules cancelling its rates. In this case respondent does not intend to abandon its coastwise operations or to cancel any of its rates. Its embargo is based upon emergency conditions as outlined above.

We find that the embargo established by respondent is not unreasonable or unduly prejudicial. An appropriate order discontinuing the proceeding will be entered.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 4th day of February A. D. 1941.

No. 599

EMBARGO ON CARGO AT CAMDEN, NEW JERSEY

It appearing, That by order dated January 17, 1941, the Commission entered upon a hearing concerning the lawfulness of an embargo as described in said order;

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

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 582

PATRICK LUMBER COMPANY

v.

CALMAR STEAMSHIP CORPORATION, ET AL.[1]

Submitted January 22, 1941. Decided February 4, 1941.

Complainant found to be unduly prejudiced by defendant's refusal to furnish cargo space accommodations.

William C. McCulloch for complainant.
Erskine Wood, *M. G. de Quevedo*, and *E. J. Karr* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Defendant filed exceptions to the report proposed by the examiner to which complainant replied. Oral argument by defendant was heard. The findings recommended in that report are adopted herein.

Complainant, Patrick Lumber Company, alleges that in June 1939, it made a verbal contract with defendant Calmar Steamship Corporation, whereby the latter was to transport approximately 900,000 feet n. b. m. of lumber from Coos Bay, Oreg., to New York Harbor; that a minimum quantity of 250,000 feet was to be shipped in August 1939, and each month thereafter; that defendant, notwithstanding numerous requests from complainant, refused to transport any of the said lumber while at the same time furnishing space regularly to other shippers with later and less definite reservations; and that eventually complainant had to ship said lumber by railroad to its damage in the amount of $11,839.39, which sum it seeks as reparation.

The prayer for reparation was withdrawn prior to the hearing.

Defendant filed a motion before the hearing to dismiss for lack of jurisdiction and, in the alternative, to make the complaint more definite and certain. Complainant answered. Defendant then filed a motion to strike the allegation of preference to other shippers because

[1] Swayne and Hoyt, Ltd., Agents.

of complainant's refusal to name them prior to the hearing. Both motions were properly denied by the presiding examiner.

Defendant sets up the existence of space shortage, complainant's alleged inability to ship when space was available, and the contention that no contract existed, as reasons for its failure to transport the lumber in question.

Witness Patrick, complainant's president, testified that the company had a contract, executed in April 1939, to deliver 1,500,000 feet of lumber to Interborough Rapid Transit Company at New York. It shipped 247,000 feet in July via Shepard Steamship Company from Coos Bay and 329,451 in August via Calmar [2] from Columbia River ports. This left 923,549 feet to be shipped from Coos Bay and the controversy arises from Calmar's refusal to transport this quantity.

Patrick states that at the solicitation of Calmar's agent Anderson, he began negotiations early in June [3] in regard to the Columbia River shipment. Anderson agreed to lift that parcel upon the condition that, according to Patrick, Calmar receive the remaining Interborough shipments from Coos Bay.[4] Patrick contends that his acceptance of this condition established the verbal contract alleged.

The gist of Patrick's testimony is that he importuned Calmar for space to move the Coos Bay lumber from early June 1939 through February 1940. Anderson usually responded that he was uncertain about space, that it was becoming increasingly "tight," but nevertheless he would try to secure it. Asked in June and again in July for 500,000 feet for August, Anderson thought he could get 250,000 feet for August and probably 250,000 for September. Patrick became insistent in September, and Anderson assured him he could get space either in September or October. In late September Anderson advised Patrick to rush preparation of the lumber for shipment because Calmar probably would not put any more ships in Coos Bay after the next one. By October Anderson was positive there would be no more calls at Coos Bay. Then Patrick solicited other lines for space. Unsuccessful, he turned again to Calmar, this time seeking loadings on Columbia River or Puget Sound, but without results. He renewed the request in November, asking for space in January or February if none were available in November or December. Upon Patrick's assurance that he would pay the increased rate then contemplated, Anderson replied that he would let Patrick know about space for January and February. The contract was becoming delinquent and early in November and

[2] Calmar confirmed the booking by letter dated July 27, 1939, and issued the contract thereon under date of September 9, 1939.

[3] In a letter to Anderson dated September 14, 1939, Patrick referred to these negotiations as starting in late July or early August.

[4] This stipulation was entirely arbitrary as a shipper's right to service is not to be conditioned upon the making of future shipments.

through December, Patrick shipped approximately 300,000 feet by rail. Finally, after further attempts to get space from Calmar in January and February, he forwarded the remainder, something over 600,000 feet, by rail, completing delivery in May 1940. Of the same tenor is the testimony of witness Brushoff, complainant's vice president.

However, Patrick's testimony cannot be wholly reconciled with a letter subpoenaed by defendant, dated August 25, 1939, addressed by Patrick to Coos Bay Logging Company, in reference to the Interborough order. He stated that because of the mill's delay in supplying the lumber, he lost space firmly engaged—with an unnamed line—for August 25 and that he had been unable to switch it to September. Moreover, he advised that "We have firm space engagement now with *another* steamship line for about October 15 for 500,000 feet net and are still endeavoring to sécure 300,000 feet for September." [Italics supplied.] Patrick explains, somewhat vaguely, that "another steamship line" refers to Calmar and that space lost August 25 was a booking with Shepard. This is at variance with his testimony that he had only one contract with Shepard which had been completed in July, and is repugnant to his agreement made in June to ship all the Coos Bay lumber with Calmar. Counsel for Calmar asserts that the space referred to as being lost was on a Calmar vessel which called at Coos Bay on August 28, and hence the other line referred to was not the Calmar Line. If true, this indicates that Patrick, while contending that he had a contract with Calmar for 900,000 feet, had actually booked 500,000 feet of that amount with another line for loading October 15.

However, Patrick's letter to Calmar, for Anderson's attention, dated September 14, 1939, which is the only correspondence between the parties concerning the negotiations, tends to confirm Patrick's testimony that the booking of 500,000 feet for October 15 was with Calmar. He wrote: "On present line-up we will have 564,000 feet ready for about October 15 loading. Our space engagement for that loading was 500,000 feet only. Consequently, if that is all the space available we will hold the surplus over for a later shipment." He testified that Anderson's verbal answer to this letter was: "We will have it (a vessel) in there for 500,000 and we can forget the 64,000 because we can probably take that anyway." Whether the space forfeited was on a Calmar or a Shepard vessel, it is evident that complainant was not prepared to ship from Coos Bay in August.

Without doubt, Patrick was having difficulty accumulating stock for shipment. To begin with, he had an option with Shepard for 600,000 feet and could supply only 247,000. He wrote the mill on July 14 that he was engaging space for 300,000 feet to be loaded about August

25 and urged it to have that quantity ready. He stated "As we are now so far behind schedule, this loading as outlined must be adhered to." But, as stated in the letter of August 25, he lost this space because the lumber was not ready. And he was unable to transfer the space to September because of "past delays in having stock ready at agreed times." He added: "We are now badly behind schedule in our shipments and must have stock ready as vessel space is available." Although Interborough accepted Patrick's offer on November 27 "to ship at once by rail"—and the last shipment under the order was to be delivered in November—only 300,000 feet was shipped by rail in November and December. And the balance of approximately 600,000 feet was not completely delivered until May 1940. This, notwithstanding Interborough absorbed the extra cost for rail transportation and Patrick, according to his testimony, had abandoned hope for cargo space by November.

Coming now to the question of discrimination, the record shows that during the period involved, Calmar regularly served three other lumber dealers shipping out of Coos Bay, nearby Newport, Oreg., and Columbia River ports. From June 1939 to March 1940 both inclusive, one shipped 33 parcels ranging from 22,451 to 743,319 feet. Contemporaneously, another made 14 shipments, from Newport, ranging from 402,022 to 1,773,855 feet. The other made 8 shipments, 4 of which originated at Coos Bay and averaged something less than 1,000,000 feet.[5] It fairly appears from the evidence that Patrick was ready to ship from Coos Bay either on the *Oremar*, whose call of October 8 was scheduled on September 19, or the *Point Arena*, whose call of December 7 was scheduled on November 6. As stated, Calmar was advised on September 14 that 564,000 feet would be ready for about October 15 loading. Besides, the rail shipments began moving in November.

Defendant's rule[6] governing acceptance of cargo, insofar as pertinent, reads as follows:

> Subject to booking the minimum quantities set forth below, cargo will be accepted at any of the points and any of the terminals, piers, wharves and docks listed below provided vessel is scheduled for loading there and has available space for proper stowage of tendered cargo for the specific point and terminal, pier, wharf or dock of discharge and provided the vessel's scheduled time will permit such call.

Defendant contends that under this rule, its common carrier obligations extend only to scheduled ports of call. It states that the Coos Bay space on the *Oremar* and *Point Arena* was allotted to a shipper who had requested 3,000,000 feet in July 1939. Indeed, this shipper

[5] *Massmar* August 8, 829,662 feet. *Kenmar* August 28, 924,648 feet. *Oremar* October 8,996,266 feet. *Point Arena* December 7, 983,874 feet.

[6] Calmar Steamship Corporation's Terminal Tariff No. 1, S. B.-I. No. 4, item No. 1 second amended p. No. 15.

testified: "I had practically a complete understanding with Calmar that they would furnish us a steamer for one million feet of lumber out of Coos Bay—at least one steamer a month—and that arrangement was made practically the first of the year." However, Calmar's traffic manager testified that actual bookings for space are usually issued 60 days prior to loading time. It should be noted here that on none of the shipments, including Patrick's from Columbia River, made prior to the latter part of October, did Calmar issue a written contract before date of loading. And so far as the record shows, none of them, except Patrick's, was confirmed by letter prior to loading.[7] It must be concluded therefore that Patrick's claim of a firm booking was as valid as that of the other shippers.

Anderson, who attended the hearing, was not called to refute Patrick's testimony.

Upon this statement of the evidence we make the following findings of fact: That defendant promised but refused to allocate space to complainant; that a space shortage existed; that complainant was prepared to ship at least in October; and that defendant preferred other shippers in the matter of cargo space accommodations.

It is unlawful for any common carrier by water "to make or give any undue or unreasonable preference or advantage to any particular person, or to subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever" (sec. 16, Shipping Act, 1916). The Supreme Court considered the obligation of a carrier, in times of car shortage, under the similar preference and prejudice clause of the Interstate Commerce Act in *Penna. R. R. v. Puritan Coal Co.*, 237 U. S. 121. Stating that the carrier was not liable for failing to transport more than it could carry, the Court added: "The law exacts only what is reasonable from such carriers—but, at the same time, requires that they should be equally reasonable in the treatment of their patrons. In case of car shortage occasioned by unexpected demands, they are bound to treat shippers fairly, if not, identically." This principle is amplified in *United States v. Baltimore & O. R. Co.*, 165 Fed. 113. There the Court stated that in times of stress "The only defense which the carrier can interpose in case of failure to comply with the request of the shipper is that * * * it has fairly and impartially prorated all of its car equipment."

It would be difficult to determine, except in the most general way, what a fair system or method of proration should be. Past performance of the shipper is not an equitable basis because such an allotment

[7] In response to the presiding examiner's request that defendant furnish for the record confirmations of bookings on the above-mentioned shipments, the written contracts were supplied.

would arbitrarily perpetuate the disadvantages a shipper might suffer. Nor is the common law principle of "first-come first-served" fair because it disregards the rights of the shipping public as a whole and tends to foster monopoly in favor of the large shipper. On the other hand, distribution 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.

It is not clear what basis defendant used, but it is at once apparent that, in arranging the vessel itineraries and apportioning the space, it 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.

We find that defendant unduly prejudiced complainant in refusing to furnish the latter cargo space accommodations in violation of section 16 of the Shipping Act, 1916, as amended.

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 4th day of February A. D. 1941.

No. 582

PATRICK LUMBER COMPANY

v.

CALMAR STEAMSHIP CORPORATION, ET AL.

This case being at issue upon complaint 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 respondent Calmar Steamship Corporation be, and it is hereby, notified and required to cease and desist and hereafter to abstain from the undue prejudice in violation of section 16 of the Shipping Act, 1916, as amended, herein found.

By the Commission.

(SEAL) (Sgd.) W. C. PEET, Jr.,
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 February 5, 1941. Decided February 7, 1941

Seatrain's absorption practice and conference authorization thereof found to be in violation of sections 16 and 17 of the Shipping Act, 1916, as amended. Cease and desist order entered.

F. G. Robinson, D. H. Berry, J. H. Rauhman, Jr., J. L. Read and *H. B. Cummins* for complainants.

Parker McCollester, W. J. Mathey, E. K. Morse, Alfred J. Cooper, A. J. Pasch, D. B. Breen, F. J. Rolfes, L. J. McCalley, J. H. O'Dowd and *M. L. Wilcox* for defendants.

Robert E. Quirk, John K. Cunningham, O. G. Richard, E. H. Thornton for interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

Complainants allege that the practice of Seatrain Lines, Inc. of absorbing various rail and other charges, and the action of the other defendants in authorizing such absorptions, is in violation of sections 15, 16, and 17 of the Shipping Act, 1916, as amended. The absorp-

[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.

tions assailed are of three types; (1) on traffic originating at inland points Seatrain will equalize via Texas City, Texas, the through rate applicable via other ports; (2) equalization will be made via Texas City against the through rate applicable via New York in the same manner that New York is presently equalized via New Orleans; and (3) on traffic originating at Houston, Galveston, and Beaumont, Texas, Seatrain will equalize the cost of making delivery to its vessels at Texas City as against steamer's side at Houston, Galveston, or Beaumont.

Complainants, except Beaumont, abandoned the allegations with respect to the unlawfulness of the first two practices mentioned; and since there was not sufficient evidence introduced to establish their unlawfulness, they will not be considered further.

Three motions to dismiss were made by defendants; (1) with respect to United Fruit, Standard Fruit, and Florida East Coast Ferry on the ground that they did not participate in the equalization of Texas City against Galveston, Houston, and Beaumont; (2) on behalf of all defendants with respect to the allegations of unlawfulness under section 16 on the ground that complainants have no standing under the doctrine enunciated in *Texas and Pacific Ry. Co.* v. *United States*, 289 U. S. 627 that a port is not susceptible to undue preference and prejudice; and (3) as to Seatrain on the ground that there was no evidence introduced to establish a violation of law by that carrier. The first motion is denied as 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. *Commonwealth of Mass.* v. *Colombian S. S. Co.*, 1 U. S. M. C. 711. As to the second motion, 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. decided February 4, 1941, and was determined adversely to defendants' contentions. This motion is therefore denied.

A consideration of the merits requires that the third motion be denied.

Defendants are common carriers by water in foreign commerce operating in the United States Gulf and South Atlantic/Cuba trade, and are members of the Gulf South Atlantic Havana Steamship Conference operating under U. S. M. C. Agreement No. 4188, as amended. Lykes Steamship Company, also a common carrier by water in this trade, intervened on behalf of complainants. Lykes is an associate non-voting member of the conference under U. S. M. C. Agreement No. 4188–B, whereby it agrees to observe conference practices. In return, it is permitted to participate in conference contracts with shippers. The New Orleans Joint Traffic Bureau and the Board of Commissioners, Lake Charles Harbor & Terminal District also intervened in support of complainants.

Lykes and United Fruit accord weekly service from Galveston and Houston and semi-monthly service from Beaumont. Seatrain serves only Texas City direct with a semi-monthly service which began in March 1940. Its service to other Texas Gulf ports is to be accomplished by the equalization here in question.

Paragraph 1 of Agreement No. 4188 provides in substance that the parties thereto associate themselves for the purpose of fixing rates, rules, regulations, and practices. Paragraph 16 provides:

> The Conference may adopt rules and regulations providing for equalization of the through rates prevailing from interior points in the United States and Canada to Havana via any port.

Pursuant to the conference agreement, Port Equalization Circular No. 8 and Conference Tariff No. G–3–A were filed with the Commission. On December 12, 1939, the conference had a meeting at which Seatrain was authorized to make the absorption hereinbefore described at Texas City, on local Galveston, Houston, and Beaumont traffic. No amendment to paragraph 16 was filed, although Tariff No. G–3–A was amended and the conference action was recorded in the minutes of the meeting.

The principal commodities moving in this trade are rice, flour, cotton, lumber, shooks, packing house products, and agricultural products, rice being by far the most important. Galveston, for instance, in 1939, shipped 285,000 pockets of rice each weighing 100 pounds. Houston shipped 27,622 tons which amounted to 71.6 percent of its traffic to Cuba. Rice from Beaumont comprises 71 percent of its traffic.

The amount of equalization is figured by Seatrain in practically the same manner on all commodities. The equalization on rice is illustrative. Rice is grown in areas adjacent to the complaining ports. It moves into the port as rough rice, is there milled and reforwarded as local tonnage. Seatrain absorbs the difference between the cost of getting the rice from the mill to shipside at any of the three ports named and the cost of placing it on board Seatrain at Texas City. On rice moving from Galveston, for example, which is drayed to shipside, the total charges amount to 32.55 cents. The total charges via Texas City are 37.5 cents, the difference being 4.95 cents. Seatrain, however, absorbs 5.35 cents which includes a carloading charge of .4 cents which is not incurred on drayed traffic at Galveston. In the case of traffic from Houston and Beaumont, the absorption is 8 and 10 cents, respectively, less the applicable switching charges at these ports. The distance via rail to Texas City from Galveston, Houston and Beaumont is 14.2, 42.2, and 91 miles, respectively.

Seatrain's service differs materially from that offered by the break-bulk lines. It is conceded by all parties to be of a superior nature.

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

While complainants introduced testimony as representatives of organizations of which shippers were members, they did not present any shipper as such. Their testimony was directed mainly to the effect of the absorption on the port and its facilitiies. However, defendants presented shippers who testified that Seatrain's service was of great benefit to them and in one case had opened up new markets. They testified that with equal costs they would always use Seatrain, but were not able to pay extra for the more valuable service. They also stated that more frequent service was required to meet the service given to their competitors at New Orleans and Atlantic ports.

The first question to be considered is the lawfulness of the conference action under section 15. Defendants contend that under authority of the first paragraph of the agreement, any rate-making action, including equalization as between ports, may be taken. Complainants contend that any equalization made is restricted by paragraph 16. From an examination of paragraphs 1 and 16 it would appear that the agreement, insofar as the question of equalization is concerned, is ambiguous. The carriers should amend the agreement to clearly define the true agreement between the parties.

The next question is the allegation that the absorption practice by Seatrain and the conference authorization thereof creates undue preference and prejudice and unjust discrimination. Insofar as this transportation is concerned, the complaining ports may be considered as consisting of three distinct interests, namely, the shippers, the port facilities and the carriers serving the ports. All of the shippers who testified were in favor of the absorption practice. Consequently, no finding is made that the law has been violated insofar as they are concerned.

Witnesses for the complaining ports testified that during the short period from April 2 to June 16, 1940, Seatrain handled 780,814 pounds or 390 tons of Galveston rice which represents an estimated yearly loss of 1,716 tons or about 11 percent of the total tonnage handled by Lykes from Galveston. In all, Seatrain diverted some 2,673 tons of cargo from the three ports during this period. It was the considered opinion of these witnesses that the break-bulk lines could not long compete with Seatrain at an equality of rates, especially if the latter's service were expanded sufficiently to handle all available traffic.

In the *Mobile Case*, *supra*, we observed that:

> To permit continuation of unrestricted solicitation by carriers for business through condonation of a practice whereby unfavorable inland rates are overcome, would wholly ignore the right of a port to traffic to which it may be entitled by reason of its geographical location. Such right appears fundamental under statutes designed to establish and maintain ports. Under section 8 of the Merchant Marine Act, 1920, we are required to recognize territorial regions and zones tributary to ports, and should there exist rates to seaboard which, among other things, do not recognize the natural direction of the flow of traffic, recommendations may be made to the Interstate Commerce Commission for such action as it deems necessary. The contention has been made that section 8 has no relation to rate regulatory provisions of the Shipping Act, 1916. But to wholly ignore specific policies of Congress would be unwarranted.

This statement 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. In *Contract Routing Restrictions*, 2 U. S. M. C. 220, we stated:

> We do not look with favor upon the attempt of carriers by artificial means to control the flow of traffic not naturally tributary to their lines.

We do not hold that the equalization practice in question results in undue prejudice to Lykes 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. This view is in complete harmony with the declared policy of the shipping acts which we administer, namely to further the development and maintenance of an adequate merchant marine. We take judicial notice of the recent abandonment and curtailment of essential water carrier services, which is accounted for in no small degree by indiscriminate rate-cutting through absorptions and otherwise. "Traffic raiding" through unsound methods of rate-making should be a thing of the past.

The practice of equalization is not condemned by us 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.

We find that the practice of Seatrain of absorbing the difference between the costs of delivering cargo to Seatrain's vessels at Texas City and the costs of delivering local tonnage to shipside at Houston, Galveston and Beaumont, and the action of the other conference members in authorizing such practice, is in violation of sections 16 and 17 of the Shipping Act, 1916, as amended. The complaint in all other respects will be dismissed. An appropriate order will be entered.

UNITED STATES MARITIME COMMISSION

No. 514

INTERCOASTAL RATE STRUCTURE

No. 524

MIXED CARLOAD RULE—McCORMICK STEAMSHIP COMPANY

Submitted December 10, 1940. Decided February 11, 1941.

Respondents' rules, regulations, and practices with respect to mixed carload shipments found unreasonable, without prejudice to the establishment of rules, regulations, and practices which are not more liberal than those maintained by transcontinental rail and water-rail lines.

Additional appearances:

Gerald A. Dundon and *George E. Talmage, Jr.*, for respondents.

G. W. Albertson, *H. R. Fritz*, *R. W. Krantz* and *H. C. Larson* for interveners.

Ralph H. Hallett for the Commission.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by respondent Calmar Steamship Corporation and certain interveners to which reply was made by respondents American-Hawaiian Steamship Company, Luckenbach Steamship Company, and Luckenbach-Gulf Steamship Company. Our conclusions agree with those recommended by the examiner.

In our original report herein, 2 U. S. M. C. 285, 307, 308, we found, in the matter of the lawfulness of granting the respective carload rates to various commodities shipped in quantities which are less than carload if the total of the combined commodities so shipped equal a carload minimum, that nothing is more confusing in the west bound intercoastal rate structure than the present mixing provisions applied by respondents parties to the Wells and Calmar tariffs; that this is the result of intense competition and disregard of sound principles of rate making; and that a uniform mixing rule is needed, applicable over all intercoastal carriers with exceptions to meet the general needs of the shipping public. We further found that use of mixing provisions as an instrument of competitive bargaining between the lines does violence to intelligent rate making, opens the door for prejudice and preference, and deprives carriers of needed revenue from less-than-carload shipments.

These proceedings were set for further hearing for the sole purpose of determining a uniform general mixing rule with proper exceptions for application over all respondents' lines. At the further hearing it developed that, although repeated attempts had been made by some respondents and the Intercoastal Steamship Freight Association to effect an agreement between the lines on such a rule, no agreement could be reached.

The bulk of less-than-carload freight is carried by the A lines, American-Hawaiian and Luckenbach being the principal participants in that traffic. Their primary concern in mixing provisions is preservation of carrier revenue. According to exhibits of record 18 percent of all westbound tonnage carried by American-Hawaiian in 1939 was in less-than-carload quantities while 28 percent of all its westbound revenue for the same period was derived from less-than-carload traffic. The percentages for Luckenbach were 21 and 36 respectively. These two respondents assail the Calmar rule as being ruinous to carrier revenue. They offer a compromise plan generally preserving the Wells principle of limiting mixing to specific groups of commodities, as compared to the unrestricted mixing plan of Calmar, but adopting the Calmar principle of applying the respectively applicable carload rates to each commodity mixed as part of a carload. The present Wells mixing items provide, generally, that the mixed carload will be charged on a basis of the highest rated commodity in the carload at the highest minimum weight applicable to any article in the mixed carload.

Calmar, a B line, urges that its rule should be adopted by all respondents, contending that the Wells mixing items as well as the suggested compromise plan offers the privilege to a small percent of favored shippers, the inference being that they are unduly preferential or discriminatory. It contends that should its rule prevail, the entire trade would benefit from added traffic and hence greater revenue. Calmar transports large quantities of iron and steel, in carloads, loading at Philadelphia and Baltimore. In 1938 it transported 215,381 payable tons of freight, only 3,903 tons moving at less-than-carload rates, while 18,102 tons moved under consolidating or mixing rules.

Baltimore Mail, an A line which did not begin to operate until August 1938, but which carried 9,449 tons at less-than-carload rates in that year, views the Calmar rule as a means of cutting rates below the minimum level of rates prescribed in the original report herein. It seeks a restrictive mixture rule based upon the exigencies of transcontinental rail competition through an amendment to our minimum rate order of April 9, 1940.

McCormick, a B line whose less-than-carload traffic is less than one-half of one percent of its total annual volume, shows how Calmar has been able to get a competitive advantage at Philadelphia and Baltimore through its mixing rule. For example, one shipper formerly manufacturing wheelbarrows and shipping over McCormick, in carload quantities, began the manufacture and shipping of lawn mowers as well as wheelbarrows. Under the Calmar mixing rule less-than-carload quantities of lawn mowers can move with wheelbarrows at the carload rate, whereas the Wells tariff to which McCormick is a party, makes no such provision. The result is that the shipper is now using Calmar exclusively. McCormick's position is that, while it does not advocate Calmar's rule, it must provide similar mixing provisions to be competitive.

Various shippers appeared and, for the most part, sought general application of the Calmar rule.

Respondent's carload, less-than-carload, and mixed carload rates owe their existence to railroad competition. The Interstate Commerce Commission and other authorities recognize that carload rates are an integral part of the American rail rate structure; the shipment unit of these rates is of a size which a great part of the country's shippers is prepared to make, so that their discriminatory effect and tendency to concentrate business is comparatively slight (*Carson, Pirie, Scott & Co.* v. *Atchison, T. & S. F. Ry. Co.*, 156 I. C. C. 329). Railroad carload transportation saves the carrier the cost of loading and unloading, and greatly reduces terminal costs and expenses in connection with receiving and delivering shipments. The possibility of loss and damage is reduced to a minimum. In addition, it has been found that the cost of hauling is less as to carload than for less-than-carload traffic (*Business Men's League* v. *A. T. & S. F. Ry. Co.*, 9 I. C. C. 318, 345). The equipment required to haul a given amount of less-than-carload traffic is materially greater than that necessary to haul the same amount of carload traffic. Packing requirements for carload movement are not so stringent as those required for less-than-carload transportation. These and other considerations such as value of service have been found to justify lower rates for carload movement than for less-than-carload. Carload rates higher than less-than-carload rates are an anomaly requiring special justification.

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 weights nor the spread between the carload and less-than-carload rates is based on cost or value of services. The spread between steamship terminal costs of handling carload and less-than-carload traffic is not so great as that between railroad terminal costs of handling carload and less-than-carload traffic. It is true, however, that 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.

In railroad transportation the usual rule governing mixed carloads is that the entire shipment shall be subject to the highest rate and the highest minimum weight applicable to straight carloads of any article in the mixture. This rule was followed by us in *Armstrong Cork Co.* v. *American-Hawaiian Steamship Company*, 1 U. S. M. C., 719. Since the original hearing herein the rail carriers in Official and Southern territories have adopted the Calmar principle of mixing due, it is testified, to motor carrier competition. The transcontinental lines have not modified their mixing provisions in like manner. A mixed carload by rail has all the incidents of a carload shipment noted above.

Respondents point to many dissimilarities between mixed carload transportation by rail and by water. By rail a professional consolidator handles carload shipments as any other shipper in the manner outlined above. By water, the consolidator does not assemble or load the carload as a unit. The carrier performs all the service of consolidation and distribution resulting in an operating expense greater than if the component parts of the consolidated car are handled as less-than-carloads. It is testified that a truck cannot haul a full carload, making more than one delivery at the wharf necessary to complete the load. Also the billing, identification and stowage of consolidated carloads by water present problems not encountered by railroads in mixed-carload traffic nor by water carriers in straight carload and less-than-carload shipments. A consolidation charge of 10 cents per 100 pounds applies over Calmar when the mixture consists of lots from more than one shipper. The Wells tariff has no similar provision but publishes a 10-cent per hundred pounds split delivery charge.

The contention of Calmar and various shippers that the Wells' system of mixtures by individual treatment of specific commodities is unduly prejudicial, unreasonably preferential and disadvantageous as between persons, localities or description of traffic is not without support (*Consolidated Classification Case*, 54 I. C. C. 1, 18). 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.

On the question of reasonableness of mixing provisions Baltimore Mail assails the Calmar rule or any rule of universal application as breaking down the entire less-than-carload rate structure with consequent loss of revenue. It takes the position that there should be no mixing provisions by water at all except where actual competition compels them. Calmar admits that its rule is more liberal than that maintained by transcontinental competitors. The Wells provisions also go beyond competitive rail rules due to the Calmar competition as to some commodities. American-Hawaiian and Luckenbach show by typical voyage studies that the Calmar rule results in substantial shrinkage of revenue. Calmar, while not admitting loss of revenue under its rule, maintains that if all respondents adopt it, the entire trade will gain added traffic which will make up for any loss of revenue. In further support of its rule Calmar points to the fact that recent trends in manufacturing and marketing are toward diversification of commodities handled and diminution of stocks kept on hand. It endeavors through its rule to enable eastern shippers to meet local competition on the Pacific coast. However, a west-coast witness describes this use of mixing as a means of "dumping" merchandise there to the disadvantage of western industries. Calmar points to the liberal mixing provisions now maintained by rail carriers in Official and Southern territories and to the transcontinental all-commodity rates as competitive factors which can best be met by respondents through adopting its mixing rule. Other respondents take the position that the intercoastal all-commodity rates authorized in the third supplemental order in this proceeding, dated September 25, 1940, will be sufficient to meet the competitive rail all-commodity rates and liberalized mixing provisions. Calmar also relies on the fact that practically all shippers of record support its rule. In view of the conclusions reached and the fact that no undue prejudice or preference has been shown, it is unnecessary to detail shippers' evidence. The record is convincing that shippers' support of Calmar's rule is due to savings in freight costs and desire to expand their sales on the Pacific coast in competition with local merchants there. One shipper located at Baltimore testifies that under the Calmar rule it is able to sell tea in San Francisco in competition with local dealers although the source of the tea in each case is China and Japan. It is well settled that the law does not contemplate the equalization of natural advantages and disadvantages through an adjustment of freight rates (*The Paraffine Companies Inc.* v. *American-Hawaiian S. S. Co. et al.*, 1 U. S. M. C. 628).

It is clear that any liberalization of mixing provisions constitutes a lowering of freight rates on the commodities affected. Heretofore we have authorized the establishment of rates lower than the prescribed minima only upon petitions duly filed and heard, and the basis upon which relief has been authorized is, for the most part, transcontinental competition. It is apparent that 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 clearly cause an unreasonable and unnecessary loss of revenue. Any shipper who is prejudiced, or any respondent who can justify additional mixtures may gain relief through the filing of a complaint or a petition.

We find that respondents' rules, regulations and practices with respect to mixed carload shipments are unreasonable, without prejudice to the establishment of rules, regulations and practices which are not more liberal than those maintained by transcontinental rail and water-rail lines. 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 11th day of February A. D. 1941.

No. 514

Intercoastal Rate Structure

No. 524

Mixed Carload Rule—McCormick Steamship Company

These cases 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 conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That respondents be, and they are hereby, notified and required to cancel, effective on or before May 1, 1941, all rules, regulations, and practices with respect to mixed carload shipments without prejudice to the establishment of rules, regulations, and practices which are not more liberal than those maintained by transcontinental rail and water-rail lines.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 574

ASSOCIATED TELEPHONE COMPANY, LTD.

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

Submitted January 21, 1941. Decided February 11, 1941

Rate charged on complainant's shipments not shown to have been inapplicable. Complaint dismissed.

Earl W. Cox for complainant.

W. M. Carney, *H. S. Brown* and *M. G. de Quevedo* for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

The shortened procedure was followed. Defendant filed exceptions to the examiner's report. Our conclusions differ from those recommended in the proposed report.

By informal complaint filed December 18, 1939, and formal complaint filed May 25, 1940, it is alleged that defendant's rates charged and collected on shipments of telephones and switchboards and parts thereof, viz: Pay station attachments, from New York, N. Y., to Long Beach, Calif., during February and March 1938, were inapplicable and unreasonable, in violation of section 18 of the Shipping Act, 1916, as amended, and sections 2 and 4 of the Intercoastal Shipping Act, 1933. Reparation is requested. No evidence was offered to support the allegation of unreasonableness, complainant relying solely on establishing overcharges. Rates will be stated in amounts per 100 pounds.

Charges were originally assessed at a less-carload rate of $1.15 which complainant contends is legally applicable. This rate applied, under Item 1100 of the tariff,[1] on

Electrical appliances, machinery and supplies, viz:

Electrical appliances n. o. s., classified 5th class and class "A" in carloads, under heading of Electrical appliances in western classification.

[1] Alternate Agent Wells' Westbound Tariff S. B. I. No. 6.

301702—41

Under the heading of "Electrical Appliances" in Western Classification there is a carload rating of class "A" on "Telephones, Telephone Sets, or Parts, N. O. I. B. N." [2]

After inspection of the shipments on arrival the billing was changed twice, eventually the first-class rate of $4 being charged on all the shipments. Defendant's authority for this rate is an item in the classification,[3] under the heading "Electrical Appliances" reading as follows:

Telephone prepay attachments (pay stations), in boxes:

L. C. L.	1st class.
C. L. minimum weight 30,000 pounds	3d class.

Therefore the question is whether the shipments consisted of "telephones, telephone sets, or parts," as contended by complainant, or whether they were "telephone prepay attachments (pay stations)" as contended by defendant. Complainant's Exhibit 2, described as a photostat copy of the identical article shipped, displays a self-contained dial operated pay station telephone complete with receiver and transmitter in one piece, with cord connection, dial, letters and numerals, and with apertures at the top for the deposit of nickels, dimes, and quarters. On the dial the abbreviations "Tel. No." are distinguishable, and affixed to the body of the unit below the dial are labeled instructions for its use. Testimony that Exhibit 2 is a photostat copy of the identical article shipped, however, is wholly at variance with the following statement in the informal complaint:

> In obtaining this classification (telephones and parts, Item 1100 L. C. L.) the shipper pointed out that these were not complete pay stations as it was necessary to add transmitters and receivers, which would be done at Long Beach before they would become pay stations.

According to defendant, the article shipped was not a complete telephone in that certain parts such as the receiver, transmitter, dial and other essential parts were not included in the shipment; these parts having to be added when the complete telephone was assembled. Defendant states that the prepay mechanism, together with the coin boxes, were enclosed in the shell which constitutes the outside of the complete telephone.

It will be observed that there is little probative evidence of a positive nature clearly describing the actual contents of the shipments. Hence it is impossible to determine the applicable rate.

Even though the record were adequate on this point, it affords no basis for the determination of whether overcharges were collected on the shipments. As stated, the rate of $1.15 was originally charged.

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[2] Item 26, page 146 of Consolidated Freight Classification No. 11.

[3] Item 22, page 146 of Consolidated Freight Classification No. 11—Western Classification ratings.

Billing on the shipment made February 1, 1938, weighing 5,600 pounds, was first changed to $3 and on March 21, 1938, changed again to $4. The freight bill was paid February 21, 1938. Billing on the shipment made March 10, 1938, weighing 2,800 pounds, was changed to $4 and the freight bill was paid on March 31, 1938. Billing on the shipment made March 14, 1938, weighing 2,800 pounds, was first changed to $3 and later on March 22, 1938, to $4, but there is no evidence as to whether or when the freight charges were paid. Thus from an inspection of the freight bills it cannot be determined definitely whether any charges were paid at a rate higher than charged in the first instance.

An order will be entered dismissing the complaint.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 11th day of February A. D. 1941.

No. 574

ASSOCIATED TELEPHONE COMPANY, LTD.

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

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

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 576

THE PORT OF BEAUMONT, TEXAS, ET AL.

v.

AGWILINES, INC. (CLYDE-MALLORY LINES), ET AL.

Submitted December 23, 1940. Decided February 13, 1941

Proportional rate on rice and rice products, in carloads, from Houston and Galveston, Texas, to north Atlantic ports, found inapplicable on shipments originating at Houston and Galveston. Complaint dismissed.

J. H. Rauhman, Jr., and *D. H. Berry* for complainants.

Julian M. King, *T. D. O'Brien* and *H. K. Sherfy* for defendants.

F. M. McCarthy, *T. A. Smith*, *C. A. Mitchell*, *O. G. Richard*, *J. H. Rauhman* and *D. H. Berry* for interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report and replies thereto were filed. Our conclusions differ somewhat from those recommended by the examiner.

Complainants are The Port of Beaumont, Texas, the Beaumont Rice Mills, Inc., The Comet Rice Mills and The Tyrrell Rice Milling Company. Defendants are Agwilines, Inc. (Clyde-Mallory Lines), Lykes Coastwise Lines, Inc., Southern Pacific Company (Southern Pacific Steamship Lines "Morgan Line"), and Southern Steamship Company, common carriers by water in interstate commerce.

The complaint alleges that defendants illegally apply a proportional rate of 26 cents per 100 pounds on rice and rice products moving from Houston and Galveston, Texas, to north Atlantic ports in violation of section 18 of the Shipping Act, 1916, and that this practice is unduly prejudicial in violation of section 16 of that act. Complainants seek lawful application of rates on such traffic for the future.

Bay City Rice Mills, Inc., Southern Rice Sales Company, Inc., Orange Rice Milling Company, El Campo Rice Milling Company, Louisiana State Rice Milling Company, New Orleans Joint Traffic Bureau, Board of Commissioners, Lake Charles Harbor & Terminal District and Bull Steamship Line intervened. A similar complaint was filed before the Interstate Commerce Commission, Docket No. 28509, and the two proceedings were heard together.

The primary question is whether the 26-cent proportional rate is applicable on shipments originating within the switching limits of Houston and Galveston and tendered to defendants in railroad cars. It is restricted to apply as follows:

Applicable only as a proportional rate on traffic on which no transit privileges are accorded, moving via rail lines to Galveston or Houston, Texas, from points in Louisiana and Texas. Traffic routed via Southern Steamship Company will apply only from points in Texas.

Complainants maintain that when rice is milled, sacked, or stored at Houston or Galveston, a local rate of 33 cents is applicable. They regard the movement to the dock from a mill within the switching limits of those ports as merely a switching movement and not a line haul by railroad contemplated by the restriction above quoted. To the contrary, defendants contend that since the rice receives no transit privilege, the 26-cent proportional rate is applicable if it is delivered to the docks in rail cars. Defendants overlook the clause "moving via rail lines to Galveston or Houston", which clearly contemplates that the rate does not apply unless the shipments originate at interior points.

We find that the proportional rate of 26 cents does not apply on shipments originating at Houston or Galveston. Outstanding undercharges should be collected. In view of the conclusions reached it is unnecessary to consider the issue under section 16.

An appropriate order dismissing 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 13th day of February A. D. 1941.

No. 576

THE PORT OF BEAUMONT, TEXAS, ET AL.

v.

AGWILINES, INC. (CLYDE-MALLORY LINES), ET AL.

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

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 594

PILGRIM FURNITURE CO., INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY

Submitted February 4, 1941. Decided February 13, 1941

Motion granted to dismiss complaint, praying for reparation because of damage to shipment and defendant's failure to carry shipment on specified voyage, on jurisdictional grounds.

Barney R. King, for complainant.
J. A. Stumpf, *H. S. Brown*, and *M. G. de Quevedo*, for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the examiner's proposed report. The conclusions recommended in the proposed report are adopted herein.

By complaint filed November 1, 1940, it is alleged that complainant made a shipment of furniture samples from New York, N. Y., to Seattle, Wash., via defendant's line in July 1940; that defendant failed to follow shipping instructions that the shipment go forward on a specified sailing; that as a result the furniture did not arrive at destination in time for the particular use for which it was intended. Violations of sections 14 and 18 of the Shipping Act, 1916, are alleged. Reparation is requested.

The facts alleged in the complaint were established by complainant and admitted by defendant at the hearing. Defendant, however, entered a special appearance and filed a motion to dismiss the complaint on the ground that it failed to state a cause of action within the purview of the statutes administered by the Commission.

This furniture was manufactured for use at an exhibition to be held in Seattle on specified dates. Complainant was advised by defendant's agent that if the cargo was delivered to defendant's pier before 11 o'clock a. m., July 12, 1940, it would go forward on the S. S. *Kansan* sailing that day and would be delivered in Seattle on time. Defendant received the goods before 8 o'clock a. m., July 12, but the shipment was not loaded on the *Kansan* but on another vessel scheduled to arrive in Seattle too late for the exhibition. Complainant was advised of this fact after the shipment had been made whereupon it requested discharge at Los Angeles, Calif., intending to forward the furniture to destination at its own expense. Defendant denied the request on the ground that the cargo was not accessible for discharge at Los Angeles. Defendant's bill of lading, which is part of its legally filed tariff, specifically provides that "the shipowner shall not be required to deliver the goods at port of discharge at any particular time, or to meet any particular market or in time for any particular use." The furniture was finally delivered at Seattle in a damaged condition, but too late for the exhibition.

An examination of the various acts from which we derive our jurisdiction fails to disclose that we have 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. No showing was made that there was cargo space available on the *Kansan* and consequently no action may be maintained under the allegation of section 14.

Defendant's motion is granted and the complaint dismissed. 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 13th day of February A. D. 1941.

No. 594

PILGRIM FURNITURE CO., INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the 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; and defendant having entered a motion to dismiss the complaint for failure to state a cause of action;

It is ordered, That the motion be, and it is hereby, granted, and that the complaint be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) R. L. McDONALD,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 581

Rowe Service Company, Inc

v.

American-Hawaiian Steamship Company

Submitted February 8, 1941. Decided February 20, 1941

Rates on coin-operated vending machines from New York, N. Y., and Newark, N. J., to Los Angeles Harbor, Calif., not shown unreasonable. Complaint dismissed.

Earl W. Cox for complainant.

H. S. Brown, *M. G. de Quevedo*, and *W. M. Carney* for defendant.

Report of the Commission

By the Commission:

Complainant filed exceptions to the report proposed by the examiner, and defendant replied. The latter moves that the exceptions 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. Our conclusions agree with those of the examiner.

By complaint filed July 9, 1940, it is alleged that defendant's rates on coin-operated vending machines from New York, N. Y., and Newark, N. J., to Los Angeles Harbor, Calif., were and are unjust and unreasonable. Just and reasonable rates for the future and reparation are sought. Rates will be stated in amounts per 100 pounds.

Coin-operated vending machines are used in selling various kinds of articles. As in the case of other coin-operated machines, defendant's rates thereon from New York and Newark to Los Angeles Harbor were $2.20, carload, minimum weight 24,000 pounds, and $3.00, less than carload, for more than a year prior to December 12, 1939, when they were reduced to $1.50, any quantity. This rate was increased to $2.50 on March 4, 1940, but effective October 17, 1940, was reduced to $2.25. The shipments, made during the period May 11, 1939 to April 30, 1940, consisted of cigarette-vending machines, mainly in less carload lots.

Complainant compares these rates with a less-than-carload rate of $1.27 on steel cabinets in effect from November 13, 1939, to May 1, 1940, when it was increased to $1.35. The cabinets are 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 that of the cigarette-vending machines is about 13 pounds. This is not enough to establish unreasonableness of the rates attacked.

Complainant also calls attention to the existence of a lower rate of defendant on coin-operated vending machines east-bound than west-bound, and to the fact that the rate of rail carriers from New York to Los Angeles on less-than-carload shipments of coin-operated vending machines is lower than their less-than-carload rate on other coin-operated machines. Defendant's east-bound rate referred to was an any-quantity rate of $2.00, which became effective September 5, 1939, and was increased to $2.08 effective May 1, 1940. The rail rates, which cover pick-up-and-delivery servies, are $3.60 and $4.76, respectively.

The minimum reasonable rate prescribed on this commodity in *Intercoastal Rate Structure*, 2 U. S. M. C. 285, was $2.20, carload, minimum 24,000 pounds and $3.00, less carload. As stated, the present rate is $2.25, any quantity, which was authorized by the third supplemental order in the above-mentioned proceeding. We are not convinced upon this record that the rates assailed have been shown to be unreasonable.

We find that the rates assailed are not shown to be, or to have been, unjust or unreasonable. An order dismissing the complaint will be entered.

Order

At a Session of the UNITED STATES MARITIME COMMISSION held at its office in Washington, D. C., on the 20th day of February A. D. 1941.

No. 581

Rowe Service Company, Inc.

v.

American-Hawaiian Steamship Company

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

UNITED STATES MARITIME COMMISSION

No. 590

ATLANTIC SYRUP REFINING CO.

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

Submitted February 13, 1941. Decided February 21, 1941

Defendant's failure to fulfill obligation fixed by its routing sheet in connection with shipment of syrup from Philadelphia, Pa., to San Diego, Calif., found unreasonable practice. Complainant found damaged and reparation awarded.

H. S. Brown for complainant.

R. H. Specker, M. G. de Quevedo for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the examiner's proposed report, the recommendations of which, as modified, are adopted herein.

The complaint alleges than on March 12, 1940, a shipment of 582 cases of syrup, weighing 33,174 pounds, was made via defendant from Philadelphia, Pa., to San Diego, Calif.; that defendant quoted a through carload commodity rate of 60 cents per 100 pounds; that the shipment was routed via McCormick Steamship Co. beyond Los Angeles; that charges were assessed on the basis of 73 cents per 100 pounds consisting of the defendant's ocean rate of 60 cents to Los Angeles and rail charges beyond of 13 cents per 100 pounds; and that complainant has been damaged to the extent of the difference between charges at the rate quoted and the charges assessed. Reparation is requested. Rates will be stated in cents per 100 pounds.

At the hearing defendant admitted the facts as alleged. McCormick proposed to, and subsequently did, discontinue its service to San Diego on April 1, 1940, and on February 27, 1940, Luckenbach through its

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tariff publishing agent filed a cancelation of the route effective April 1. The shipment arrived in Los Angeles on April 1 but not in time for McCormick's last sailing. After arrival of the goods defendant notified the consignee and thereafter forwarded the shipment via rail to San Diego at the 13-cent rate and complainant was billed therefor.

Defendant's applicable tariff, Alternate Agent Wells' Westbound Freight *Tariff No. 1C, SB–I No.* 6, provides in paragraph D–1 of rule 2 that the through joint rates named in the tariff 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 rule is controlling in the premises. The rule was published by defendant as a result of our decision in *Intercoastal Joint Rates via On-Carriers*, 1 U. S. M. C. 760. Therein, 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 as set forth in the rule. None of the conditions outlined in the rule is present here. Moreover defendant had notice of the discontinuance of the on-carrier service on February 27 when the cancellation of the joint through route was filed. It is clear that the rule is inapplicable.

Rule 24 of the Wells' tariff provides that rate changes are effective as of the date of the dock receipt. On that date defendant's tariff provided that shipments to San Diego would be transported either direct by Luckenbach 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.

We find that defendant's failure to fulfill the obligation fixed by its routing sheet was an unreasonable practice which resulted in damage to complainant in the amount of the difference between the charges collected and those which would have accrued at 60 cents, or $43.13 and that reparation in that amount should be made to complainant.

An appropriate order will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 21st day of February A. D. 1941.

No. 590

ATLANTIC SYRUP REFINING CO.

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

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

It is ordered, That defendant be, and it is hereby, authorized and directed to pay to complainant Atlantic Syrup Refining Co., of Philadelphia, Pa., on or before 30 days after the date hereof, the sum of $43.13 as reparation on account of the unreasonable practice found herein.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 586

PLOMB TOOL CO.

v.

AMERICAN-HAWAIIAN STEAMSHIP CO.

Submitted February 13, 1941. Decided February 25, 1941

Shipments of composition tool handles from Brooklyn, N. Y., to Los Angeles Harbor, Calif., found to have been overcharged. Overcharges should be refunded immediately.

Earl W. Cox for complainant.

H. S. Brown, *M. G. de Quevedo*, and *W. M. Carney* for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

By complaint filed September 18, 1940, it is alleged that the rate charged by defendant for the transportation of two shipments of composition tool handles from Brooklyn, N. Y., to Los Angeles Harbor, Calif., was inapplicable and unreasonable. Reparation is sought. Rates will be stated in amounts per 100 pounds.

The shipments weighed 593 pounds and 410 pounds, respectively. At the times of movement, December 17 and 20, 1938, the governing classification contained a rating of second class on composition handles, less than carload. Defendant's second-class rate of $3.80 was charged. Defendant also published a less-than-carload commodity rate of $1.70 applicable on mechanics' hand tools and parts thereof. Defendant admits that the shipments consisted of composition tool handles, thus leaving no doubt that they were parts of machanics' hand tools and entitled to the lower rate. Freight charges at the higher rate were paid on January 7 and 10, 1939. In April 1940, complainant sought to recover the overcharges, but defendant, under date of May 2, 1940, returned the claim without favorable action, citing the following tariff rule, which became effective January 18, 1940:

> Any claim for alleged overcharge must be filed in writing with carrier party hereto within one (1) year from the date on which freight is paid to the carrier.

Section 2 of the Intercoastal Shipping Act, 1933, forbids any common carrier by water in intercoastal commerce to "charge or demand or collect or receive a greater or less or different compensation for the transportation of passengers or property or for any service in connection therewith than the rates, fares, and/or charges which are specified in its schedules filed with the Commission and duly posted and in effect at the time." That act amended the Shipping Act, 1916, but made no change in section 22. This section provides for the payment of reparation if complaint is filed with the Commission within two years after the cause of action accrued. It follows that recovery in the instant case is not barred.

We find that the shipments were overcharged $21.06, which should be refunded immediately.

An order dismissing the complaint will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 25th day of February A. D. 1941

No. 586

PLOMB TOOL CO.

v.

AMERICAN-HAWAIIAN STEAMSHIP CO.

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

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

By the Commission:

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

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 10th day of September A. D. 1940.

No. 522

GRAYS HARBOR PULP & PAPER COMPANY

v.

A. F. KLAVENESS & CO., A/S, 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 defendants herein, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist on or before November 1, 1940, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of printing paper from Grays Harbor, Wash., to the ports within the scope of the Pacific Westbound Conference agreement rates which exceed those on like traffic to the same ports from Seattle or Tacoma, Wash., or Portland, Oreg.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 522

GRAYS HARBOR PULP & PAPER COMPANY

v.

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

Submitted January 14, 1941. Decided February 27, 1941

Prior report and order modified so as to permit the establishment of proposed schedule of rates on printing paper from Grays Harbor, Wash., to ports in the Orient.

De Forest Perkins for complainant.
Joseph J. Geary and *W. H. Hayden* for defendants.

REPORT OF THE COMMISSION ON RECONSIDERATION

BY THE COMMISSION:

In the original report herein (2 U. S. M. C. 366), we found that defendants' rates on printing paper from Grays Harbor, Wash., to the ports within the scope of the Pacific Westbound Conference agreement were, and for the future would be, unduly prejudicial and unjustly discriminatory to the extent that they exceeded or might exceed their rates contemporaneously maintained on printing paper from Seattle or Tacoma, Wash., or Portland, Oreg., to such ports, calls to load at docks in Grays Harbor to be made at defendants' discretion. The undue prejudice and unjust discrimination was ordered removed.

Upon receipt of a stipulation of facts and agreement to modification of the order by the parties, filed January 11, 1941, reciting changed conditions since the prior report and order were issued, the proceeding was reopened for receipt of said stipulation and agreement and for reconsideration of the order.

The rates from Grays Harbor were higher than those from the other ports named by the amount of an arbitrary of $4.90 per net ton, which was equivalent to the charges incidental to the movement of printing paper by rail from Grays Harbor to Tacoma or Seattle. Calls at complainant's dock were subject to a minimum tonnage requirement of 500 tons.

According to the stipulation, there has been a decrease in the rail charges amounting to $1.50 per net ton, which reduces the cost of transportation to Seattle or Tacoma to $3.40.[1] In lieu of a parity of rates between Grays Harbor and Seattle and Tacoma, defendants propose, on shipments from Grays Harbor direct, to charge the entire arbitrary of $3.40 on quantities of less than 200 tons, and to impose an arbitrary of $1.40 for quantities of 200 tons or more. They also propose, on shipments via Seattle or Tacoma of 200 tons or more, to absorb $2 of the charges to those ports. If the rail charges should vary further, defendants agree to increase or decrease their absorption by 60 percent of the amount of the variation on shipments of the required minimum. As a result of the proposal, the total freight charges from Grays Harbor would be the same whether the shipments were lifted by defendants there or at Seattle or Tacoma.

It will be observed that under the proposed adjustment, the arbitrary as well as the minimum tonnage requirement will be reduced to a basis satisfactory to all parties, particularly in view of the additional and more frequent service which will be available to complainant via Seattle and Tacoma.

We find that the original report and order herein should be modified so as to permit the establishment by defendants of the schedule of rates proposed in the stipulation and agreement as described above.

[1] Includes rail charges of $2.40, and wharfage and handling charges of $1.00.

UNITED STATES MARITIME COMMISSION

No. 584

E. I. Du Pont de Nemours & Company, Inc.

v.

Southern Steamship Company

Submitted January 30, 1941. Decided February 28, 1941

Rate charged on shipment of synthetic indigo paste and sodium hydrosulphite from Philadelphia, Pa., to Houston, Tex., found unreasonable and reparation awarded.

Robert W. Marshall for complainant.
Julian M. King for defendant.

Report of the Commission

By the Commission:

This case was presented under the shortened procedure. Exceptions were filed by defendant to the report proposed by the examiner, whose findings are adopted herein.

By complaint filed August 14, 1940, it is alleged that the rate charged by defendant on a mixed carload of sodium hydrosulphite and synthetic indigo paste shipped August 30, 1938, from Philadelphia, Pa., to Houston, Tex., was unreasonable. Reparation is sought. Rates will be stated in amounts per 100 pounds.

The shipment consisted of 50 drums of sodium hydrosulphite weighing 13,450 pounds and 90 drums of synthetic indigo paste weighing 39,963 pounds. Charges were collected on the aggregate weight of 53,413 pounds at a fourth-class rate of $1.03. At the time of shipment, sodium hydrosulphite, carload, minimum 40,000 pounds, was rated fifth class in western classification, which governed, and synthetic indigo paste, carload, minimum 30,000 pounds, was rated fourth class. The fifth-class and fourth-class rates were 37½ and 55 percent, respectively, of the first-class rate of $1.87. Under rule 10 of the classification, the fourth-class rate was applicable on the entire shipment. Complainant contends that a reasonable carload rate on synthetic indigo paste should not have exceeded 45 percent of the first-class rate, or 84 cents, and that the rate charged was unreasonable to the extent it exceeded that figure.

Synthetic indigo is a nonhazardous dye which requires no special packing or stowage, and commercially it has largely displaced natural indigo, which also is nonhazardous and which rarely moves. The shipment of synthetic indigo under consideration had a value of from 16 to 19 cents per pound, whereas natural indigo had a value ranging from $1.63 to $1.67 per pound. During the period involved, defendant published a carload rate of 45 percent of first class on natural indigo, dry, liquid, or paste, from Philadelphia to Houston, and shortly thereafter, effective October 31, 1938, the same rate was established on synthetic indigo paste.

Defendant contends that the comparison of the assailed rate with the rate on natural indigo has little or no weight since the movement of this commodity is rare. Complainant, to show the appositeness of the comparison, cites *Chemicals, Acids, and Dyestuffs*, 177 I. C. C. 529, wherein the Interstate Commerce Commission, after referring to the displacement of natural indigo by the synthetic product and the characteristics of the two commodities, held that a carload rating of fourth class on natural indigo, liquid or paste, was justified, but that for synthetic indigo, in liquid or paste form, the carload rating should not exceed fifth class. Although that case involved ratings in southern classification while we are here concerned with western classification, the basis of the ruling was the "very wide difference in value."

Complainant further shows that, except during the period from July 22, 1937, to October 31, 1938, rates as low as, or lower than, the rate sought have been in effect on synthetic indigo paste from Philadelphia to Houston since June 21, 1932. To justify the increase on July 22, 1937, and to show that rates 45 percent of first class on natural and synthetic indigo are depressed, defendant points out that the Interstate Commerce Commission in *Consolidated Southwestern Cases*, 205 I. C. C. 601, 211 I. C. C. 601, and 222 I. C. C. 229, found that a maximum reasonable first-class rate for application from Philadelphia to dock at Houston would be $1.70 (or $1.87, including the increase permitted in *Fifteen Percent Case, 1937–1938*, 226 I. C. C. 41) and that a maximum reasonable fourth-class rate would be 55 percent of first class. But the issue here is not the reasonableness of the fourth-class rate; it is whether it was reasonable to apply the fourth-class rate on synthetic indigo paste. The facts of record clearly warrant the conclusion that the rate charged was unreasonable. We find that the assailed rate was unreasonable to the extent it exceeded 84 cents; that complainant made the shipment as described and bore the charges thereon; that it was damaged thereby to the extent of the difference between the charges paid and those which would have accrued at a rate of 84 cents; and that complainant is entitled to reparation in the sum of $101.48.

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 28th day of February A. D. 1941

No. 584

E. I. du Pont de Nemours & Company, Inc.

v.

Southern Steamship Company

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

It is ordered, That defendant, Southern Steamship Company, be, and it is hereby, authorized and directed to pay to complainant, E. I. du Pont de Nemours & Company, Inc., Wilmington, Delaware, on or before 30 days after the date hereof, the sum of $101.48 as reparation on account of unreasonable charges collected on the shipment involved herein.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 595

SIGFRIED OLSEN

v.

BLUE STAR LINE, LIMITED, ET AL.

Submitted March 4, 1941. Decided March 25, 1941

Defendants' refusal to admit complainant to conference membership and to participation in exclusive patronage contracts entered into pursuant to conference agreement found to be unfair and unjustly discriminatory as between complainant and defendants, and to subject complainant to undue prejudice and disadvantage.

If complainant be not admitted to full and equal membership in the conference, consideration will be given to disapproval of the conference agreement.

Joseph B. McKeon, *Clarence A. Shuey*, and *Farnham P. Griffiths* for complainant.

Chalmers G. Graham for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Defendants filed exceptions to the report proposed by the examiner, and complainant replied. Our conclusions agree with those of the examiner.

Complainant, an individual doing business under the name of Sigfried Olsen Shipping Company, alleges, in substance, that the Camexco Freight Conference Agreement, under which defendants,[1] which are all of the members of the conference, refuse to admit him to membership therein, and defendants' exclusive patronage contracts

[1] Blue Star Line, Limited, Compagnie Generale Transatlantique (French Line), The East Asiatic Company, Limited, Fred. Olsen & Company (Fred. Olsen Line), Grace Line, Inc. (Grace Line), Hamburg-Amerikanische Packetfahrt Aktien Gesellschaft (Hamburg-American Line), "Italia" Societa' Anonima di Navigazione (Italian Line), N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij (Holland-America Line), Norddeutscher Lloyd (North German Lloyd), Rederiaktiebolaget Nordstjernan (Johnson Line), Royal Mail Lines, Ltd., and Westfal-Larsen & Company, A/S (Westfal-Larsen Company Line).

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entered into pursuant to the conference agreement, are unfair and unjustly discriminatory as between complainant and defendants, subject complainant to undue prejudice and disadvantage, result in undue preference of certain shippers and unjust discrimination against others, and operate to the detriment of the commerce of the United States. We are asked to disapprove the conference agreement unless defendants admit complainant to full and equal membership in the conference.

The conference agreement was approved by us on April 13, 1939. It provides for the establishment, regulation, and maintenance of agreed rates, charges, and practices for and in connection with the transportation of green coffee in vessels owned, chartered, and otherwise controlled by the parties thereto from ports on the west coast of Central America and Mexico to Pacific-coast ports of the United States and Canada. It also provides that any person, firm, or corporation regularly engaged as a common carrier by water in the trade may become a party to the agreement and a member of the conference upon unanimous assent of the conference members and that no eligible applicant shall be denied admission to membership except for just and reasonable cause.

Complainant applied for admission to membership in the conference on September 21, 1940. He informed the conference that he was ready to abide by the terms of the conference agreement, tariffs, and regulations, and on October 1, 1940, furnished additional information pursuant to the latter's request. Under date of October 9, 1940, he was advised that his application had been declined. The conference did not disclose any reason for its action, and an effort on the part of complainant to ascertain why he was excluded from membership met with no success.

Complainant operates the Solship Line, employing vessels which he time-charters. He has agencies throughout Central America, as well as his own offices there, in the Canal Zone, and in San Francisco, Calif.; Portland, Oreg.; and Seattle, Wash. At the time of hearing, in December 1940, he had four vessels under charter. For years prior to the time that he applied for conference membership, he had chartered ships for the carriage of cargo south-bound to Central America and the Canal Zone, to which he ships large quantities of lumber and cement. He began to hold himself out as a common carrier in the north-bound trade to which the conference agreement relates on or about September 23, 1940, and, in weekly shipping publications on and since that date, he has advertised services, north-bound and south-bound, with calls at Corinto, Puntarenas, La Union, La Libertad, Amapala, and San Jose de Guatemala, all coffee ports in Central

America, Balboa and Cristobal, in the Canal Zone, and Los Angeles, San Francisco, Portland, Tacoma, and Seattle, in the United States.

Complainant's sailings average about two a month from the Canal Zone. In his two to three months' activity as a common carrier up to the time of hearing, he had made two Central American calls for ore north-bound and had scheduled another. Because of defendants' exclusive patronage contracts, he has found it impossible to secure shipments of green coffee. Under the contracts, shippers of green coffee from Pacific-coast ports of Central America to ports in California, Oregon, and Washington are required to offer their shipments to members of the conference. For failure to do so, there is charged, on past and future shipments, a noncontract rate which is $3.00 per net ton higher than the contract rate. The result is that defendants, admittedly, have a practical monopoly of the carriage of coffee, and complainant's efforts to secure such shipments are futile.

Complainant has been assured of support for his service by coffee shippers, associations, and government departments throughout Central America, provided that the conference admit him to membership and permit of patronage of his line without penalty. Consular officers of nearly all of the Central American republics testified in his behalf. They generally stress the fact that the vessels of many lines have been withdrawn from operation as a result of the European war, thus creating a need for other tonnage. The record shows that seven members of the conference are inactive. They carried approximately 60 percent of the coffee transported by the conference lines.

Defendants state that the conference has received no complaint with respect to vessel space available for Central American coffee, and, to support their contention that the trade is adequately served by them, they show that there have been times when coffee could not be obtained by present active members. These members, under the conference's coffee pooling agreement in effect prior to the commencement of the war, received less than 40 percent of the freight pooled, and none of them, individually, except one, received more than 3¼ percent. They are engaged in trades between European, Caribbean, and South American ports and Pacific-coast ports of the United States. The coffee ports in Central America are intermediate ports of call served as inducements are offered to ships en route. Some of defendants' ships arrive at or off these ports about the time that another conference vessel is loading, and failure to obtain cargo at times is doubtless due to the arrangement of ships' schedules. Furthermore, many of the calls when no cargo was available were made during periods other than the coffee season. The season extends from about January 1 to June 30, after which shipments are irregular.

But, 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." *Waterman S. S. Corp.* v. *Arnold Bernstein Line*, 2 U. S. M. C. 238, 243; *Cosmopolitan Line* v. *Black Diamond Lines, Inc.*, 2 U. S. M. C. 321, 330. Defendants admit that it is necessary to supplement their tonnage with chartered vessels in order to handle the volume of coffee moving. Moreover, their evidence with respect to available cargo, which includes the coffee seasons of 1939 and 1940, would apply to defendant Blue Star Line, Limited, as well as to complainant. Blue Star Line, Limited, was admitted to membership in the conference July 24, 1940. And, since then, another carrier, Pacific Argentine Brazil Line, Inc., has resigned.

Defendants also 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. *Cosmopolitan Line* v. *Black Diamond Lines, Inc., supra.* It is shown in addition that Blue Star Line, Limited, prior to the time of its admission to the conference, was not actually carrying cargo in the trade.

Defendants suggest the possibility that complainant may, at some future time, for lack of cargo or inability to secure vessels, find it necessary to cease operating. They apparently overlook the fact that most of them at the present time are inactive and that the future of others is uncertain. Membership in the conference continues to be held by the inactive lines while it is denied complainant. Like situations were condemned in *Phelps Bros. & Co. Inc.*, v. *Cosulich-Societa Triestina di Navigazione*, 1 U. S. M. C. 634, 641, and *Sprague S. S. Agency, Inc.* v. *A/S Ivarans Rederi*, 2 U. S. M. C. 72, 76. Also, it should be noted that the conference agreement does not disallow the operation of chartered tonnage; rather, its provisions were evidently drawn with such operation by the members in view. Further, any member is permitted by the agreement to withdraw from the conference on ninety days' notice.

It is pointed out by defendants that complainant has not disclosed his financial condition. But he was not asked to do so; defendants have not revealed theirs, and there is no provision in the conference agreement requiring parties thereto or applicants for membership to divulge such information.

There is testimony by complainant that, southbound, he has charged rates above, below, and the same as those of a different conference in the southbound trade. The charging of the lower rates southbound is advanced by defendants as ground for debarring complainant from the northbound conference despite the fact that complainant has been denied membership in the southbound conference, as well as in the northbound conference. Defendants even contend that complainant should be excluded from the northbound conference unless he again make application for southbound-conference membership. Such a position is unreasonable. No provision of the northbound-conference agreement requires any party thereto or applicant for membership to make even one application to the southbound conference.

Defendants seek support from our decision in *Hind, Rolph & Co., Inc.*, v. *French Line*, 2 U. S. M. C. 138, where refusal to admit the Brodin Line to membership in the predecessor of Camexco Freight Conference, among others, was upheld. But that case was reopened for rehearing "as it appeared that conditions had changed materially as a result of the European war." 2 U. S. M. C. 280. It is true that the complaints were finally dismissed, but that was because the issues had been rendered moot. In the report on rehearing, we pointed out that the vessels employed by complainants were proceeding to Sweden under recall orders, and we stated that the dismissal was "without prejudice to complainants' right to petition for reopening of this proceeding, or to file a new complaint, if and when they reenter the trade involved." Material facts not present in the case cited are presented here. Likewise, in other cases which defendants cite,[2] the facts were essentially different.

We find on the record in this proceeding that complainant is entitled to membership in the Camexco Freight Conference on equal terms with each of the defendants, and that failure to admit complainant to membership in said conference, including participation in shippers' contracts entered into pursuant to the conference agreement, resulted in the said agreement and contracts being unfair, and unjustly discriminatory as between complainant and defendants, thus subjecting complainant to undue prejudice and disadvantage, and subjecting the agreement to disapproval or modification under section 15 of the Shipping Act, 1916, as amended.

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[2] *Wessel, Duval & Co., Inc.*, v. *Colombian S. S. Co., Inc.*, 1 U. S. S. B. B. 390; *American Caribbean Line, Inc.*, v. *Compagnie Generale Transatlantique*, 1 U. S. S. B. B. 549; *Application of Red Star Linie G. m. b. H. for Conference Membership*, 1 U. S. S. B. B. 504.

Defendants will be allowed 10 days within which to admit complainant to full and equal membership in the conference, failing which consideration will be given to the issuance of an order disapproving the conference agreement.

Concerning the allegations of undue preference of, and unjust discrimination against, shippers, no shipper testified, and no substantial evidence was presented. We find that these allegations are not sustained.

By the United States Maritime Commission.

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

WASHINGTON, D. C., *March 25, 1941.*

UNITED STATES MARITIME COMMISSION

No. 585

RATES, CHARGES, AND PRACTICES OF CARRIERS, AND PRACTICES OF SHIPPERS, IN CONNECTION WITH FREIGHT TRAFFIC FROM UNITED STATES TO PHILIPPINE ISLANDS

Submitted March 13, 1941. Decided March 25, 1941

Respondent carriers named allow persons to obtain transportation at less than their regular rates currently established and enforced by means of false billing, and unduly prefer and unduly prejudice particular persons, in violation of section 16 "Second" and "First," respectively, of the Shipping Act, 1916, as amended.

Respondent shippers named obtain transportation of property by means of false billing at less than the rates which would otherwise be applicable, in violation of paragraph 1 of Section 16 of the Shipping Act, 1916, as amended.

Cease and desist order entered, and record herein to be certified to Department of Justice for prosecution.

William G. Symmers and *Samuel D. Slade* for the Commission.

Herman Goldman, *Elkan Turk* and *Leo E. Wolf* for American President Lines, Ltd., Barber Steamship Lines, Inc., De La Rama Steamship Company, Inc., Ellerman & Bucknall Steamship Company, Ltd. (American & Manchurian Line), Isthmian Steamship Company, Kerr Steamship Company, Inc., and United States Lines Company (American Pioneer Line); *Harry Smith* for Abe Cohen; *Jack Adair* and *Marian DeDonna* for L. R. Aguinaldo & Company, Inc.; *Arthur Caplan* for Arthur Caplan, Inc.; *Harry G. Herman* for E. Awad & Sons, Inc., and Cohen & Schwartz Mill Products Corporation; *Herbert M. Statt* for De La Rama Steamship Company, Inc.; *Frank Gindoff* for A. Gindoff & Company; *Charles S. Belsterling* and *Thomas F. Lynch* for Isthmian Steamship Company; *Arthur Leonard Ross* for Kummer, Comins & Company, Inc., and Stronghold Fastener Company, Inc.; *Clement C. Rinehart* and *T. F. McGovern* for Smith, Kirkpatrick & Company, Inc.; *Stanley Bogart* for United

States Bag and Burlap Company and United States Export Products Company.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by certain of the carrier and shipper respondents, and the issues were orally argued. The findings recommended in the proposed report are adopted herein.

This is an investigation instituted by the Commission into the lawfulness of rates, charges and practices of carriers under sections 16, 17, and 15 of the Shipping Act, 1916, as amended, and of practices of shippers under section 16 of that act, in connection with transportation of freight from the United States to the Philippine Islands.

The carriers named respondents[1] are, together with other carriers, members of the Far East Conference. This conference functions under authority of an agreement[2] filed and approved pursuant to section 15 of the Shipping Act, 1916. The other respondents[3] are individuals and corporations engaged in shipping textiles and other commodities from the United States to Manila, P. I., via the respondent carriers. Stronghold Fastener Company, Inc., is a forwarder for Kummer, Comins & Company, Inc., and United States Bag & Burlap Company and United States Export Products Company are trade names for Harry Schetzen, of New York, N. Y., who is purchasing agent for the Manila Remnant Company, of Manila, P. I. Respondent A. Gindoff & Company is purchasing agent for Litton & Company, of Manila, P. I. No evidence was presented against Kerr Steamship Company, Arthur Caplan, Inc., Cohen & Schwartz Mill Products Corporation, or United States Bag & Burlap Company, and the term "respondents" hereinafter used in this report will not apply to them.

By the terms of their conference agreement the respondent carriers are required to exact all rates strictly in accordance with a tariff of

[1] American President Lines, Ltd., Barber Steamship Lines, Inc., De La Rama Steamship Company, Inc., Ellerman & Bucknall Steamship Company, Ltd. (American & Manchurian Line), Isthmian Steamship Company, Kerr Steamship Company, Inc., and United States Lines Company (American Pioneer Line).

[2] Far East Conference Agreement No. 17, approved November 14, 1922, and amended to January 14, 1935.

[3] L. R. Aguinaldo & Company, Inc., E. Awad & Sons, Arthur Caplan, Inc., Abe Cohen, Cohen & Schwartz Mill Products Corporation, Federated Trading Corporation, A. Gindoff & Company, Kummer, Comins & Company, Smith, Kirkpatrick & Company, Inc., Stronghold Fastener Company, Inc., United States Bag & Burlap Company, United States Export Products Company.

rates agreed upon by them. Their joint tariff[4] specifying the rates and regulations in relation thereto was filed with us on January 10, 1938. This tariff, with its supplements subsequently filed, set forth the established and enforced rates of respondent carriers applicable to shipments involved in the instant proceeding.

In cooperation with United States Bureau of Customs, Commission investigators during July, August, and September, 1940, examined customs files in New York, N. Y., covering shipments of textiles via respondent carriers to Manila made during the period June 1938 to July 1940, inclusive. The papers examined included bills of lading, ships' manifests, and export declarations.[5] In some instances bales of textiles were opened and the contents checked with their bill of lading and manifest descriptions. Examination was also made of manufacturers' and shippers' (commercial)[6] invoices and of other papers relating to textile shipments to Manila in the New York offices of respondent carriers and shippers, and inspections were made at places of business of respondent shippers as to the nature of textiles shipped and the manner of their packing for transportation to Manila. Differences between descriptions of textiles in export declarations and their descriptions in bills of lading comprise the principal evidence to establish that respondent carriers allow respondent and other shippers to obtain transportation at less than their tariff rates by means of false billing, in violation of section 16 "Second" of the Shipping Act, 1916, as amended,[7] and, in relation to textiles accurately billed by other shippers, of violation by these carriers of section 16 "First" thereof.[8] Differences in descriptions of textiles as stated in bills of lading and manifests and as stated in export declarations, invoices and other papers, comprise the principal evidence to establish that shippers have obtained transportation at less than rates otherwise applicable by means of false billing, in violation of the first paragraph

[4] Far East Conference Tariff No. 14, issued January 1, 1938.

[5] Export declarations (United States Department of Commerce Form 7525) are prepared sworn to, and filed with customs by the shipper or his broker. They describe the goods to be shipped in detail. Since issuance of Far East Conference circular dated September 8, 1939, the carriers require filing of copy of the export declaration and issuance of a permit by them before they will receive the goods or sign the bill of lading. Previous to that date copy of the declaration was filed with the carriers after their receipt of the goods for transportation and after signing by them of the bill of lading.

[6] The commercial invoice is the basis upon which the textiles are bought and sold. It is one of the documents required by Philippines customs in permitting entry.

[7] Providing that it shall be unlawful for any subject carrier "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."

[8] Providing that it shall be unlawful for any subject carrier "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."

of section 16 of that act.[9] The textiles primarily involved were billed as cotton piece goods and as rags, but shown by the export declarations and other papers and evidence to be rayon, fabrics of mixed rayon and cotton, or remnants rather than rags.

As to a few of the exhibits introduced to show false billing and carriage of rayon fabrics as cotton goods, the accuracy of the investigators' conclusions regarding the material of which the goods was made is questioned by both carrier and shipper respondents upon the ground that textiles as sometimes loosely described by various names[10] could be woven of either cotton or rayon. In the case of all shipments of this class, only those are considered herein which are shown by export declarations, invoices, and/or other papers and evidence to have been rayon.

Concerning the evidence which shows that fabrics woven of cotton and other material are billed and carried as cotton goods, respondent shippers point to the fact that under United States Bureau of Customs' regulations a description of a mixed fabric as "cotton" or "cotton chief value" is acceptable for customs purposes if the fabric contains 50 percent or more of cotton by value. Furthermore, under regulations administered by the Surplus Marketing Administration, United States 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, as conceded by witnesses for respondent carriers, their 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 Item 450, "Cargo, N. O. S." This item expressly provides that it "Applies on Commodities Not Specifically Covered by Individual Rate Items."

Additional evidence to show false billings is the fact that before an increase on May 1, 1940, in the tariff rate on rags in bales to the level of the rate on cotton piece goods and on cotton remnants, cotton remnants were billed and carried as rags; that rayon remnants and remnants composed of mixed rayon and cotton fabrics are billed and

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[9] Providing that it shall be unlawful "for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means, to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable."

[10] For examples, "Drill," "Sharkskin," "Sheer," "Suede."

carried as rags, and that cotton remnants and rayon remnants packed in the same bale and chargeable under Tariff Rule 18[11] at the rate for rayon remnants are billed and carried as rags.

In the Philippine trade respondent shippers deal extensively in substandard textiles. From textile mills in the United States they purchase, by weight, "seconds," "fents," "shorts," "pounds," "mill ends," "rags," and other "off goods" which because of imperfections as to pattern, print, length, width, or other condition, are discarded by the mills as inferior to the standard textiles manufactured by them. Some of these "off goods" as received from the mills are torn or are marred by weaving machine holes. Many of them are perfect except for tears along one of the selvages. Except for rarely occurring grease or dirt spots, the goods are new and clean. In most instances these textiles are sorted or graded by respondent shippers or others as to size and quality so that pieces may be selected for the making of clothing. Pieces thus selected and shipped to Manila on bills of lading describing them as rags, range from 1/4 yard to 15 or more yards in length; and each piece is either of original width from selvage to selvage or of a width sufficient to provide a substantial piece for sewing to other pieces in the making of garments. Many of such pieces are pressed, folded and tied together by respondent shippers or their suppliers in uniform parcels before being compressed in bales for shipment, and others are more loosely arranged in bales and compressed. All witnesses are in agreement that these fabrics billed as rags are retailed in Manila stores and are used by housewives and others in the making of dresses, underwear, and other garments. Exhibits brought from Manila and introduced in evidence showed that even the smallest pieces of cloth involved were used for the making of children's dresses.

Testimony by dealers in textiles, including shippers of textiles to Manila, by witnesses for respondent carriers, and by others, is that rags are fragments or pieces of cloth which because of torn, worn, dirty, or other disqualifying condition, are not usable for the making of garments or other cloth articles as originally intended in their manufacture. The testimony is that "rags" are fit only for utilization for secondary purposes, such as, for example, grinding or shredding in the manufacture of paper, or of wiping or other absorbent "waste." Assertions by witnesses that there are no paper mills in the Philippines are undisputed. No facts are presented which indicate any commercial or other demand or use in the Philippines for "rags" as thus understood which would explain the volume of

[11] Tariff Rule 18 provides, in part, that "Any package containing more than one commodity must be charged at the rate for the highest commodity contained therein."

respondent shippers' consignments billed as rags. An expert in rayons stated that there is no such thing as a rayon rag. No testimony tends to show the existence of any commonly known and established trade definition of rags which would support repondent shippers' billings. The testimony of respondent shippers is indefinite, each giving a definition to correspond with the textiles he bills as rags. That the commodities concerned are remnants of various fabrics falsely billed as rags is further evidenced by letters from respondent and other shippers to the Department of Agriculture, supplementing applications for cotton subsidy payments, in which are statements, for example, that "our shipments of cotton remnants are listed as 'cotton rags' only in order to take advantage of the lower shipping rates" * * * "this is to certify that the goods described as cotton rags in the bill of lading are in fact remnants," and by testimony of customs inspectors that upon opening of bales the contents were disclosed to be rayon goods. Additional evidence shows that Manila customs authorities, in the course of their inspection of textiles, or examination of invoices thereof, or upon other customs supervision over Manila entry, have required amendments of ships' manifests of respondent carriers by changing descriptions of textiles of respondent shippers, mostly from rags to remnants.

The traffic manager of respondent Aguinaldo testified that for the past six years the packers under her supervision have at her direction "stuffed" cotton goods, rayon underwear, and mixed cotton and rayon goods around that respondent's Manila shipments of radios, folding beds, children's high chairs, and nursery furniture "to make the shipments secure" and "in the interest of economy." In some instances, for example, the "stuffing space" has approximated six inches on each side of table models and console types of radios. The bills of lading have described the goods shipped solely as radios, etc., and the textiles and wearing apparel have "traveled free." In some instances textiles thus inserted were duly entered in the export declarations.

At no time have respondent carriers opened any shipments destined to Manila to check the contents with the bill of lading descriptions thereof,[12] nor are copies of invoices required by respondent carriers except when a shipper may claim an overcharge after the signed bill of lading is delivered to him. Apart from recent communications between them and their Manila agents in reference to manifests amended

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[12] Bill of Lading provisions of two of these respondents expressly provide that the carrier may at any time open packages and examine the contents.

at the direction of Manila customs, the only indication of a check made by respondent carriers to insure that they shall not allow shippers to obtain transportation at less than lawful rates by false billing is a comparison in their New York offices of the descriptions of the goods as written by the shipper into the export declaration, dock receipt, and bill of lading at the time the bill of lading is signed by them. The employee of one of them whose duties over a long period of years have included the comparison referred to could recall no instance in which shipments by any of respondent shippers over his line had ever been questioned. Testimony by an employee for another is that occasion has never arisen during his experience with his line for determining whether merchandise in a bale or case corresponded with the bill of lading description. The employee of another testified that it had never occurred to him that a shipper in the trade would endeavor to obtain a lower rate over his line by describing textiles differently in the bill of lading than as described in the export declaration. In the numerous instances of misbilling clearly shown by the evidence, respondent carriers seek to excuse their failure to detect it by testimony detailing pressure of work encountered by their office staffs during an approximate 36-hour period before vessel sailing, the element of human frailty in the making of mistakes due to divided responsibilities and to haste incident to ship clearances, and the complexity of bills of lading because of entry therein of numerous and varied commodities.

The evidence presented by the Commission's investigators was obtained by means of a "spot check" sufficient to prove the facts of false billing and carriers' allowance of transportation at less than the applicable tariff rates. There is no douht that the exhibits prepared pursuant to this "spot check" and presented in evidence are merely illustrative, and that false billing of textiles and transportation thereof at less than lawful rates obtains to a much greater extent than is involved in the actual instances set forth by the Commission exhibits. Respondent carriers affirm that false billing of textiles in the trade is by no means limited to the shippers who are respondents herein.

Respondent carriers disavow any blame for these false billing practices, and insist that they have been diligent in guarding against allowing transportation of falsely billed textile commodities. Pertinent in this regard, however, are numerous exhibits and extensive testimony showing communications and interviews at various times beginning in August or September, 1939 between shippers of textiles on the one hand and respondent carriers' conference organization on the other, and discussions between the respondent carriers themselves in conference, relating to classifications and rates on textiles to the Philippines, and particularly to misbilling and transportation of textiles at less than the applicable tariff rates. As stated, the rate on rags was increased on May 1, 1940, to the level of the rate on cotton piece goods and cotton remnants, so that from then on it was a matter of no concern to the carriers whether shipments transported by them were cotton remnants or rags. As to the other problems, however, they apparently followed the course generally indicated by witnesses for one of them that "Your shipper is the man who will decide what he is shipping * * * it is not up to me to say what he is shipping," and that in the event the export declaration and bill of lading descriptions do not agree the carrier "usually" notifies the shipper. Testimony of witness for another respondent carrier is that except for checking export declarations his line "relies entirely upon the word of the shipper," and of another that when the export declaration reads rayon cloth and the bill of lading reads cotton piece goods "the system" is "to have some person in the bill of lading department notify the shipper and point out the discrepancy."

In short, respondents' 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. As indicated, this comparison is more or less routine and is certainly ineffective. Confronted with the proof of their many failures even to perform this comparison, they demonstrate their lack of any substantial diligence respecting their statutory responsibility by showing the inadequacy of their office staffs to cope with the false billing practices.

The facts and circumstances herein reviewed are convincing that respondent carriers are culpably indifferent with regard to the false billing of textiles to Manila over their lines. 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. *Prince Line* v. *American Paper Exports, Inc.*, 55 Fed. (2nd) 1053; *Spurr* v. *United States*, 174 U. S. 728; *United States* v. *I. C. R. Co.*, 303 U. S. 239; *E. J. & E.* v. *United States*, 253 Fed. 907, 249 U. S. 601. The record amply displays lack of any such inquiry or exercise of care by respondent carriers, and a corresponding indifference on their part as to compliance with their statutory duty. As detailed in Appendix A hereto for illustration, respondent carriers are shown to allow persons to obtain transportation at less than lawfully applicable rates by false billing, in violation of section 16 "Second" of the Shipping Act, 1916, as amended.

Concerning the issue of undue and unreasonable prejudice and preference, testimony by a respondent shipper is that before he began to falsely bill his textile shipments to Manila his business was adversely affected because of the lower transportation charges obtained by his competitors who billed rayons as cottons and otherwise falsely billed their consignments. Another textile dealer testified that one of the reasons for his recent withdrawal from the trade was refusal by his employee in charge of billing to describe falsely rayon and other textile shipments via respondent carriers as is done by others who compete with him. Testimony of a third textile dealer is that a visit to Manila made by him to ascertain the reason for the inability of his company to meet competition disclosed false billing of rayons as cottons and other false billing of textiles by respondent shippers and others over respondent carrier lines. These facts disclosing disadvantage to shippers, together with the showing hereinbefore reviewed of respondent carriers' responsibility therefor due to their allowance of false billing, establish that for the same transportation service performed under similar circumstances and conditions the respondent carriers subject certain shippers to undue prejudice and unduly prefer others in violation of section 16 "First" of the Shipping Act, 1916, as amended.

At the hearing and in their briefs certain of respondent shippers set forth at length various contentions calculated to show lack of knowledge or willfulness on their part in relation to their false billings. These contentions are predicated, among other things, upon the long continued practice of false billing in the trade without interference by the carriers, assertions of absence of tariff information and of ignorance by their billing employees of the kinds of textiles they ship, and upon instances in which respondent shippers have accurately billed their textile shipments. Opposed to these contentions are the conflicts between the descriptions by respondent shippers in their bills of lading and in their export declarations, the evidence afforded by their invoices, and by their statements to the Department of Agriculture, together with the fact that, with rare exceptions, they consistently avail themselves of lower transportation charges in the trade by billing rayon remnants as rags if contained in bales, and as cotton piece goods if contained in cases. Thus there is no sufficient ground for belief that in falsely billing their shipments respondent 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. As detailed in Appendix B hereto for illustration, respondent shippers are shown upon the record to knowingly and willfully, by means of false billing, obtain transportation of textiles at less than the rates lawfully applicable thereto, in violation of the first paragraph of section 16 of the Shipping Act, 1916, as amended.

No evidence was presented respecting violation by respondent carriers of sections 17 or 15 of the Shipping Act, 1916, as amended.

We conclude and decide that each of respondent carriers, namely, American President Lines, Ltd., Barber Steamship Lines, Inc., De La Rama Steamship Company, Inc., Ellerman & Bucknall Steamship Company, Ltd. (American & Manchurian Line), Isthmian Steamship Company, and United States Lines Company (American Pioneer Line), is shown upon the record to allow persons to obtain transportation for property at less than its regular rates currently established and enforced by means of false billing, in violation of section 16 "Second" of the Shipping Act, 1916, as amended, and to give undue and unreasonable preference to particular persons and to subject particular persons to undue and unreasonable prejudice, in violation of section 16 "First" of that act. We also conclude and decide that each of respondent shippers, namely, L. R. Aguinaldo & Company, Inc., E. Awad & Sons, Abe Cohen, Federated Trading Corporation, A. Gindoff & Company, Kummer, Comins & Company, Smith, Kirkpatrick & Company, Inc., Stronghold Fastener Company, Inc., and United States Export Products Company, is shown upon the record to knowingly and willfully, by means of false billing, obtain transportation for property at less than the rates which would otherwise be applicable, in violation of the first paragraph of section 16 of the Shipping Act, 1916, as amended.

An order will be entered requiring said respondents to cease and desist from the aforesaid violations. The record herein will be certified to the Department of Justice for prosecution of the above-named respondents for the violations found herein to exist.

APPENDIX A

AMERICAN PRESIDENT LINES, LTD.

Exhibit	Shipper	Bill of lading description and rate applied	Export declaration, description, and rate applicable
148	Stronghold Fastener	Cotton piece goods, $18	Cotton and rayon mixtures (chief value cotton), $30.
79	Neuss, Hesslein & Co	do	Cotton and rayon suiting, 36-inch, $30.
80	Getz Bros. & Co	do	Rayon-decorated shirtings, $30.
81	do	do	Do.
82	Smith, Kirkpatrick	do	Cotton piece goods (spun rayon and hopsacking, solid colors, piece dyed, under 7½ yards per pound), $30
83	do	do	Cotton piece goods (viscose and acetate suitings, 35/36 inches wide, under 7½ yards per pound), $30.
85	Stronghold Fastener	do	Cotton and rayon mixtures (chief value cotton), $30.
86	do	do	Do.
107	Aguinaldo	Radios, $18.50; cotton thread, $15.25; nursery furniture, $28.50.	Polo shirts and rayon hair nets, $33.
108	do	Radios, $18.50; nursery furniture, $28.50.	Rayon underwear, $33.
84	Smith, Kirkpatrick	Cotton hosiery, $19.75	Cotton and rayon hosiery, $33.
87	Stronghold Fastener	Cotton piece goods, $19.75.	Cotton and rayon mixtures (chief value cotton), $33.

BARBER STEAMSHIP LINES, INC.

Exhibit	Shipper	Bill of lading description and rate applied	Export declaration, description, and rate applicable
102	Aguinaldo	Cotton piece goods, $15	Rayon and cotton remnants, $25.
64	do	Cotton piece goods, $18	Cotton and rayon remnants, $30.
56	Stronghold Fastener	do	Cotton and rayon mixtures (chief value cotton), $30.
60	do	do	Do.
59	do	do	Do.
58	do	do	Do.
62	Smith, Kirkpatrick	do	Cotton piece goods (acetate and rayon printed crepes remnants pieces sold by the pound), $30.
178	Federated Trading Corporation.	Cotton piece goods, $19.75.	Finished piece goods, 40-inch rayon, dyed in the piece, $33.

DE LA RAMA STEAMSHIP CO., INC.

Exhibit	Shipper	Bill of lading description and rate applied	Export declaration, description, and rate applicable
67	Brune Nadler & Cuffe	Cotton piece goods, $18	Cotton and rayon suiting, $30.
71	Stronghold Fastener	do	Cotton and rayon mixtures (chief value cotton), $30.
73	do	do	Do.
74	do	do	Do.
193	Smith, Kirkpatrick	do	Cotton piece goods (spun rayons, 36 inches), $30.
72	do	do	Cotton piece goods (rayon prints, 39 inches), $30.
75	Stronghold Fastener	do	Cotton and rayon mixtures (chief value cotton), $30.
179	Federated Trading Corporation.	Cotton piece goods, $19.75.	Finished rayon piece goods (39 inches, dyed plaids), $33.
184	do	do	Finished piece goods (French crepe, 39 inches, rayon printed), $33.
66	A. Steinam Co., Inc	do	Cotton and rayon cloth (chief value cotton), $33.
68	Federated Trading Corporation.	do	Finished rayon piece goods, $33.
69	do	do	Do.
70	do	do	Do.

ELLERMAN & BUCKNALL STEAMSHIP CO., LTD.

Exhibit	Shipper	Bill of lading description and rate applied	Export declaration, description, and rate applicable
101	Aguinaldo	Folding beds, $19	Including mens cotton polo shirts.
		Radios, $14: cotton piece goods, $15.	Boys' knitted sweaters, part wool, $25.
		Nursery furniture, $21.50	Including worsted yarn, $25.

ISTHMIAN STEAMSHIP COMPANY

Exhibit	Shipper	Bill of lading description and rate applied	Export declaration, description, and rate applicable
95	Stronghold Fastener	Cotton piece goods, $18	Cotton and rayon mixtures (chief value cotton), $30.
96	do	do	Cotton and rayon mixtures, $30.
94	do	do	5 cases cotton and rayon mixtures (chief value cotton), $30.
92	Smith, Kirkpatrick	do	Cotton piece goods (printed rayon ends 36/40 inch remnants), $30.
91	do	do	Cotton piece goods (rayon printed crepes remnant pieces), $30.
93	do	do	Cotton piece goods (assorted spun rayon piece dyed, 36 inches, under 7½ yards per pound), $30.
90	do	do	Cotton piece goods (acetate and rayon prints with spun rayon-remnant pieces sold by pound), $30.
98	Stronghold Fastener	do	Cotton and rayon mixtures (chief value cotton), $30.
97	do	do	Do.
99	do	do	Do.
105	Aguinaldo	do	Cotton and rayon, $30.
100	Stronghold Fastener	Cotton piece goods, $19.75.	Cotton and rayon mixtures (chief value cotton), $33.
88	Federated Trading Corporation.	do	Finished piece goods (39-inch acetate Jacquard dyed in the piece), $33.
110	Aguinaldo	do	Cotton rayon and cotton crochet thread, $33.

UNITED STATES LINES COMPANY

Exhibit	Shipper	Bill of lading description and rate applied	Export declaration, description, and rate applicable
76	Bernard Semel, Inc	Cotton piece goods, $19.75.	Rayon and cotton cloth (cotton chief value), $33.
78	Stronghold Fastener	do	Rayon cloth, $33.
77	Wiener and Bauer, Inc	do	Cotton and rayon mixtures (chief value cotton), $33.
109	Aguinaldo	do	Woven printed rayon pound goods (spun rayon pounds), $33.

Rates shown are measurement per 40 cubic feet.

APPENDIX B

L. R. AGUINALDO AND COMPANY, INC.

Exhibit No.	Bill of lading description and rate applied	Invoice description and rate applicable
101	Nursery furniture, $21.50	Waxed birch hi chair, and worsted yarn, $25.
	Folding beds, $19	Folding beds, worsted yarn, curtains, elastic braid, cotton braid, $25.
	Cotton piece goods, $15	Printed rayon and cotton, acetete 3 yards, and prints 1-3 yards, $25.
102	do	Rayon and cotton. $25.
103	Cotton piece goods, $18	Plain acetate remnants, printed spun remnants, $30.
	do	Printed rayon and cotton ¼-1 yard, $30.
104	Cotton piece goods, $16.80	Printed rayon and cotton crepe, $30.
	Case 3711 cotton piece goods, $18	Marquisettes, acetate rayon, rayon remnants, ladies handkerchiefs, $30.
105	Cotton piece goods, $18	Printed rayon and cotton ¼-1 yard, $30.
106	Cotton piece goods, $18	Printed rayon and cotton crepe, $30.
107	Radios, $18.50	Including Gimp, DW Rec., battery kits, cocktail sets, Silex percolator, bowls, red coaster racks, $33.
	Nursery furniture, $28.50	Waxed birch hi chair and assorted Gimp, $33.
	do	Rayon and cotton shirts, high chair, rayon and cotton polo shirts, cotton polo shirts, $33.
	Cotton thread, $15.25	Assorted Gimp, ladies' belts (samples), and Gimp, $33.
108	Case 1228, cotton piece goods, $19.75.	Printed marquisette and rayon pounds, $33.
	Radios, $18.50	Including rayon underwear, $33.
	Nursery furniture, $28.50	Rayon underwear and waxed birch hi chair, $33.
109	Cotton piece goods, $19.75	Printed crepe ½ inch, rayon remnants, printed spuns, $33.

E. AWAD & SONS

Exhibit No.	Bill of lading description and rate applied	Invoice description, unit price, and rate applicable	
[1] 221	Rayon rags, $19.75	Rayons 1/10 yard Brushed goods 1/10 Prints 3/8 Prints rayon 1 up Spuns 1 up Bemberg 1 up Assorted prints 1/6 R. O. M Assorted prints 1/5 R. O. M Rayon pounds 2 yds. up Jerze spun rayons F. P Plain spuns 1 up Sharkskin 1 up Plain rayons 10 yards to F. P ($33)	$0.70 pound. .25 pound. .06 pound. .70 pound. .38 pound. .90 pound. .70 pound. .70 pound. .48½ pound. .16 yard. .34 pound. .48½ pound. .13½ yard.
[2] 26	Cotton rags and cotton remnants, $18.	Rayons, ribbons, etc. Do. Do. Printed French crepe. Sheers. Pig-skin, ribbons, etc. Sheer. Rayons. Bemberg and silk sheer, white. Cotton and rayon cloth. Cotton and rayon cloth. ($30)	

[1] Other substantially similar exhibits against E. Awad & Sons dealing with remnants and full-piece goods, either cotton or rayon, described in the bills of lading as rags are Exhibits Nos. 222, 10A, 13A, 15A, 17A, 19A, 21A, 23A, and 39A.

[2] Other substantially similar exhibits against E. Awad & Sons dealing with rayon and mixtures of cotton and rayon, silk, and/or wool, described in bills of lading as cotton goods are Exhibits Nos. 9, 12, 14, 16, 18, 20, 22, 24, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, and 52.

ABE COHEN

Exhibit No.	Bill of lading description and rate applied	Invoice description and rate applicable	Respondent's declaration to Department of Agriculture
[1] 215	Bales rags, $17 W	(2) Cotton shorts, $25	(2) Certifies that remnants are listed as rags in order to take advantage of the lower shipping rate.

[1] Other substantially similar exhibits against this respondent are Exhibits Nos. 216, 217, and 218.

FEDERATED TRADING CORPORATION

Exhibit No.	Bill of lading description and rate applied	Invoice description and rate applicable
174	Cotton hosiery, $18	Cotton and rayon hosiery, $30.
173	Cases cotton piece goods, $18	Ptd. Nub. spun rayon, $30.
179	Cases cotton piece goods, $19.75	Plaid wool and spun, $33.
[1] 187	Cases cotton piece goods and cotton hosiery, $19.75.	Poplin; ladies' hose; rail bill lading shows cotton and silk hosiery, $33.

[1] Other substantially similar exhibits against Federated Trading Corporation are Exhibits Nos. 166, 167, 168, 169, 170, 171, 172, 175, 176, 177, 178, 180, 181, 182, 183, 184, 185, 186, 188, 189.

A. GINDOFF & COMPANY

Exhibit No.	Bill of lading description and rate applied	Export declaration description	Invoice description and rate applicable
121	Cases cotton piece goods, $19.75.	Cotton broadcloth	Rayon, rayon French crepe, spun rayon, silk and rayon, gabardine, $33.
113	Cases cotton piece goods, $15.	Printed cotton cloth	Rayon, $25.
[1] 117	Cases cotton piece goods, $18.	Printed cotton cloth and cotton rags.	Spun rayon, printed silk and rayon samples, rayon French crepe, suitings, $30.

[1] Other substantially similar exhibits against A. Gindoff & Company are Exhibits Nos. 114, 115, 116, 118, 119, 120.

SMITH, KIRKPATRICK & COMPANY, INC.

Exhibit No.	Bill of lading description and rate applied	Export declaration description and rate applicable	Invoice description and rate applicable
62	Cotton piece goods (cases), $18.	Cotton piece goods (acetate and rayon printed crepes—remnant pieces sold by the pound, $30.	
72	do	Cotton piece goods (rayon prints 39 inches, under 7¼ yards per pound), $30.	
[1] 191	Cotton rags (bales), $20.40 W.		Khaki drills, twills, herring-bone weaves 1 to 10 yards. (Respondent's certificate to Department of Agriculture states in fact remnants or short lengths cotton piece goods billed as rags for freight-rate purposes), $30.

[1] Other substantially similar exhibits against Smith, Kirkpatrick & Co., Inc., are Exhibits Nos. 82, 83, 84, 61, 193, 89, 90, 91, 92, 93, 194, 195, and 196.

STRONGHOLD FASTENER COMPANY—KUMMER, COMINS & COMPANY

Exhibit No.	Bill of lading description and rate applied	Export declaration description	Invoice description and rate applicable
157	Cotton piece goods (cases), $18	Cotton and rayon mixtures, (chief value cotton).	Plain rayons, $30.
160	Cotton piece goods, $19.75	do	Rayon and cotton, $33.
[1] 147	Cotton piece goods, $18	do	Spun rayon remnants, $30.

[1] Other exhibits against these respondents showing similar false bill of lading descriptions are Exhibits Nos. 144, 145, 146, 148, 149, 150, 151, 152, 153, 154, 155, 156, 158, 159, and 161.

U. S. EXPORT PRODUCTS COMPANY

Exhibit No.	Case or bale No.	Bill of lading description and rate applied	Amended freight bill description and rate applicable
[1] 197	Case 9013	Cotton piece goods, $15	Wool piece goods, $25.
	Bale 9032	Cotton rags, $17-$23.50 W	Rayon remnants, $25.
	Bale 9015	do	Do.
	Bales 9039/40	do	Do.
	Case 9041	Cotton piece goods, $15	Rayon piece goods, $25.
	Bale 9053	Cotton rags $17-$23.50 W	Rayon remnants, $25.
	Cases 9054/56	Cotton piece goods, $15	Rayon piece goods, $25.

[1] Other substantially simiilar exhibits against U. S. Export Products Company are Nos. 201, 201A, 202, 202A, 202B, 203, 204, 205, 206, 207, 208, 209, 210, 211, 198 and 223.

Rates shown are measurement per 40 cubic feet, except where "W" (weight rates per 2,000 pounds) are indicated.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 25th day of March A. D. 1941

No. 585

RATES, CHARGES, AND PRACTICES OF CARRIERS, AND PRACTICES OF SHIPPERS, IN CONNECTION WITH FREIGHT TRAFFIC FROM UNITED STATES TO PHILIPPINE ISLANDS

By its orders of August 30, 1940, and September 26, 1940, the Commission having instituted a proceeding into and concerning the lawfulness under sections 16, 17, and 15 of the Shipping Act, 1916, as amended, of rates, charges, and practices of carriers made respondents by said orders, and into and concerning the lawfulness under section 16 of that act, as amended, of practices of shippers made respondents therein, 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 respondents American President Lines, Ltd., Barber Steamship Lines, Inc., De La Rama Steamship Company, Inc., Ellerman & Bucknall Steamship Company, Ltd. (American & Manchurian Line), Isthmian Steamship Company, United States Lines Company (American Pioneer Line), L. R. Aguinaldo & Company, Inc., E. Awad & Sons, Abe Cohen, Federated Trading Corporation, A. Gindoff & Company, Kummer, Comins & Company, Smith, Kirkpatrick & Company, Inc., Stronghold Fastener Company, Inc., and United States Export Products Company, be, and each of said respondents is hereby, notified and required to cease and desist, and hereafter abstain, from the violations of the Shipping Act, 1916, as amended, herein found; and

It is further ordered, That the record herein be certified to the Department of Justice for prosecution of the above-named respondents for the violations found herein to exist.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 587

LARROWE MILLING COMPANY (TRADE NAME) DIVISION OF GENERAL MILLS, INC.

v.

BALTIMORE INSULAR LINE, INC., AND BULL INSULAR LINE, INC.

Submitted March 20, 1941. Decided April 1, 1941

Rates on commercial mixed feed and dried beet pulp from New York, N. Y., and Baltimore, Md., to ports in Puerto Rico not shown unjust or unreasonable. Complaint dismissed.

E. B. Smith and *A. M. Thomas* for complainant.

H. J. Dellert for *Allied Mills, Inc.*, intervener.

Roscoe H. Hupper, *E. Myron Bull*, and *Burton H. White* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by complainant to the report proposed by the examiner. Our conclusions agree with those which the examiner recommended.

Complainant alleges that defendants' rates on commercial mixed feed and dried beet pulp from New York, N. Y., and Baltimore, Md., to ports in Puerto Rico were, and that their rate on commercial mixed feed still is, unjust and unreasonable. Reparation and a just and reasonable rate on commercial mixed feed for the future are sought. Rates and charges will be stated in cents per 100 pounds.

Complainant's shipments of commercial mixed feed total, roughly, between 7,000 and 9,000 tons a year, and its shipments of dried beet pulp, between 400 and 500 tons. The freight charges thereon are paid by it and, in turn, collected from its customer in Puerto Rico, to which, it is stated, would be turned over any reparation awarded in this case.

In *Puerto Rican Rates*, 2 U. S. M. C. 117, 119, it was pointed out that defendants herein and other carriers comprised the membership of the United States Atlantic and Gulf-Puerto Rico Conference, operating at uniform rates, charges, rules and regulations established pursuant to agreement approved February 14, 1938. The rates of the conference to Puerto Rico are blanketed over ports of the North Atlantic, South Atlantic, and Gulf of Mexico. On commercial mixed feed and dried beet pulp, the rates are 36 cents and 40 cents, respectively. Prior to February 1, 1937, there was a rate in effect on these commodities from Atlantic and Gulf ports to Puerto Rico of 28 cents. On that date, it was increased to 33 cents, and on March 8, 1937, the rate on dried beet pulp was increased to 40 cents. Rates of 36 cents on commercial mixed feed and 50 cents on dried beet pulp were established by the conference effective September 21, 1938. These rates, which represent increases of 29 percent and 79 percent, respectively, in the rate in effect prior to February 1, 1937, are the rates assailed. They were included, with others, in the investigation in *Puerto Rican Rates, supra.* Originally, it was found that they had not been justified, but, upon reconsideration, that finding was eliminated. The rate on dried beet pulp has since been reduced to 40 cents, effective September 23, 1940.

The rates assailed do not include landing and other charges amounting to 5 cents or insurance, except insurance differentials resulting from diversion or other specified cause. Port-equalization provisions to which they were subject were condemned in *Puerto Rican Rates, supra*, and *City of Mobile et al* v. *Baltimore Insular Line, Inc., et al.*, decided by us February 4, 1941.

Complainant compares the assailed rates with rail and water rates in continental United States. In making the comparisons, it assumes that a movement of 3 or 3.6 statute miles by water is equivalent to a haul of 1 mile by rail. It says: "In this proceeding complainant has equated to land-rail miles the water miles from U. S. ports to the port of San Juan, Puerto Rico, and between U. S. ports. The purpose is to make it feasible: (1) to compare with land-rail rates the ocean rates from U. S. ports to Puerto Rico; (2) to compare with land-rail rates the ocean rates between U. S. ports; and (3) to measure mile for mile, against a common yardstick of graduated rail distance rates, both the ocean rates from U. S. ports to Puerto Rico and the ocean rates between U. S. ports." Representative comparisons are set forth in the following table:

From—	To—	Equated miles (3 to 1)	Water rate on commercial mixed feed	Water rate on dried beet pulp	Rail grain rates for equated miles (3 to 1)[1] Revised southwestern distance scale[2] 100 percent	90 percent	Western trunk-line distance scale[3] 100 percent	90 percent
New York	San Juan	537	36	50	37	33	29	26
New Orleans	do	589	36	50	39	35	31	28
Houston	do	668	36	50	43	39	34	31
San Francisco	New York	2,025	69	63	80	72	76	69
New York	Miami	378	22	22	32	29	24	22
San Francisco	Seattle	309		24	28	25	22	20

[1] Complainant shows that under Agent L. E. Kipp's tariff I. C. C. No. A-3158, mixed feed and beet pulp take the grain-rate basis. Complainant also equates mileage 3.6 to 1, producing somewhat lower rates. For instance, from New York to San Juan the rates would average about 3 cents lower than on the 3-to-1 basis.

[2] The reason for showing 90 percent of the scale, as well as the full scale, is explained by complainant, after discussing decisions of the Interstate Commerce Commission, as follows: "The point is that the Revised Southwestern distance scale, as such, represents only the rates for rail transportation of grain and grain products between miscellaneous interior points—and the general level of rates in the Southwest for this transportation is 90 percent of that scale."

[3] Referring to the 100-percent scale and rates 90 percent thereof shown under this heading, complainant says: "The latter represents the general level of the grain and grain products rates within Western Trunk Line Territory. This will again explain why, in all of complainant's rate comparisons, there is used not only the full distance scale rates, as such, but also the rates made 90 percent of those rates."

According to the table, if one of the ratios and the full or 90-percent western-trunk-line or southwestern scale constitute a proper measure for maximum reasonable rates in this case, then, depending upon the ratio and scale used, the rates assailed should not exceed a rate or rates somewhere between 23 and 37 cents, both inclusive. On commercial mixed feed, complainant seeks a rate of 33 cents as a basis for reparation and for the future. It is content with the present rate of 40 cents on dried beet pulp and asks reparation to this basis on past shipments.

The only ground offered for the use of the ratios employed is the fact 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. One of the cases cited by complainant is *Iron and Steel Rates*, 209 I. C. C. 657, in which the Interstate Commerce Commission authorized the establishment and maintenance of certain rates without observance of the long-and-short-haul provisions of section 4 of the Interstate Commerce Act, subject to certain conditions. In that case the Commission said at page 676:

In applying the above conditions in the case of routes operating partly by rail and partly by water, constructive distances determined by adding to the actual rail distances the water distances equated to rail distances on the basis of three to one may be used in lieu of the actual distances.

Then it added:

> This is not to be understood as approval of this formula for general rate-making purposes.

Likewise, in a previous case, *Alexander Grocery Co.* v. *B., S. L. & W. Ry. Co.*, 104 I. C. C. 155, 161, that Commission said:

> Although we have heretofore used a ratio of water miles to rail miles for the purpose of comparing rail-and-water and all-rail rates, we are not here prepared to accept this basis as a controlling principle in prescribing rates for rail-and-water hauls. Before this is done careful analysis should be made of the conditions surrounding the transportation of the different lines.

No such analysis is reflected in the record here.

Complainant points out that, whether equated miles or statute or nautical miles be used, the rates assailed are higher mile for mile than the compared water rates. However, there is nothing in the record to warrant the 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.

Complainant contends that, since the port-equalization provisions referred to above allowed maximum deductions of 30 percent from the rates, the rates must have been made unreasonably high to permit of such deductions. The facts of record are insufficient to sustain this contention.

We find that the assailed rates on commercial mixed feed and dried beet pulp are not shown to have been, and that the assailed rate on commercial mixed feed is not shown to be, unjust or unreasonable.

An order dismissing the complaint will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 1st day of April A. D. 1941

No. 587

LARROWE MILLING COMPANY (TRADE NAME) DIVISION OF GENERAL MILLS, INC.

v.

BALTIMORE INSULAR LINE, INC., AND BULL INSULAR LINE, INC.

This case being at issue upon complaint 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.) R. L. McDONALD,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 593

AMERICAN UNION TRANSPORT, INC.

v.

"ITALIA" SOCIETA ANONIMA DI NAVIGAZIONE

Submitted June 13, 1941. Decided August 12, 1941

Complainant is a broker seeking reparation for brokerage and for alleged injury to its reputation as a broker, because of defendant carrier's refusals to book shipments upon its requests. Duties of defendant carrier under regulatory provisions of Shipping Act, 1916, not owed to complainant broker, as such. Complaint dismissed.

Harold Manheim and *David Sklaire* for complainant.
Homer L. Loomis for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by complainant, to which reply was made by defendant. Our conclusions agree with those recommended by the examiner.

Complainant [1] is a New York State corporation engaged in business in New York City as a steamship broker and freight forwarder. In the capacity of steamship broker it seeks out cargoes which are to move. In return for compensation from carriers of a percentage of the freight earned by the carriers, it obtains such cargoes for movement via the carriers who will book the same and who will pay it

[1] Successor to a Delaware corporation of the same name. The Delaware corporation made the applications for space herein involved, and the alleged unlawful refusals of space were made to that corporation. Upon dissolution of the Delaware corporation in October 1940, its assets, including any award of reparation by the Commission in the instant proceeding, were assigned to complainant. The term "complainant" as hereinafter used in this report will apply to either the Delaware or the New York corporation as indicated by context.

the percentage "brokerage" compensation. By complaint filed December 5, 1940, it alleges violations by defendant during a 5-month period from December 1939 through April 1940, of sections 14, 16, and 17 of the Shipping Act, 1916,[2] in connection with defendant's refusals to make bookings at its request for certain shipments from ports in the United States to Fiume and Trieste, Italy, and payment by defendant of brokerage on such shipments to a broker in Europe. Reparation for injury in the sum of $13,493.99 is requested. Of this sum $3,493.99 represents complainant's alleged loss of brokerage at 1¼ percent of freight charges, and $10,000 is for alleged injury to complainant's reputation for ability as a broker to secure steamship bookings. The shipper-consignees of the cargoes involved are not parties to the proceeding, and there is no evidence that they authorized complainant to represent their interests herein. Complainant shows that one of the shipper-consignees, Manfred Weiss Steel and Metal Works A. G., of Budapest, Hungary, has paid complainant $500 "as a quasi consideration" for the fact that complainant did not receive a brokerage commission on shipments hereinafter indicated (2) and (3), and that another shipper-consignee, Rimamuranyi Salgotarjan Iron Works, Ltd., of Budapest, Hungary, has promised by letter to make complainant a corresponding payment in relation to shipment hereinafter indicated (1). Complainant states that it will return these amounts to the shipper-consignees if and when reparation in the instant proceeding is awarded by the Commission.

Prior to December 1939 defendant dealt with complainant as a broker and paid complainant a brokerage of 1¼ percent of freight charges earned on numerous shipments secured by complainant and transported in defendant's vessels.

During the period covered by the complaint, the complainant requested defendant to book five shipments, as follows: (1) in December 1939, 5,000 tons of steel scrap from New York to Fiume or Trieste; (2) in February 1940, 5,000 tons of steel scrap from New York to Fiume or Trieste; (3) in April 1940, 3,000 tons of pig iron from Philadelphia and Baltimore to Trieste; (4) in April 1940, 400 tons of ferromanganese from Mobile to Fiume or Trieste; and (5) in April 1940, 300 tons of ferromanganese from Mobile to Fiume or Trieste. These requests were made pursuant to information ob-

[2] Section 14, paragraph "Fourth," providing that no subject carrier shall, directly or indirectly, unfairly treat or unjustly discriminate against any shipper in the matter of cargo space accommodations, due regard being had for the proper loading of the vessel and the available tonnage; Section 16, paragraph "First" providing that it shall be unlawful for any subject carrier to make or give any undue or unreasonable preference or advantage to any particular person, or to subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; Section 17, paragraph 2, requiring every subject carrier to observe and enforce just and reasonable practices relating to or connected with the receiving of property.

tained by complainant from New York City representatives of the shipper-consignees located in Budapest, Hungary. The record is that these representatives had authority from their several principals in Hungary to locate and purchase the scrap steel and other commodities concerned, and that their authority encompassed the arranging of the transportation of such commodities from the United States.

Under a barter agreement or trade treaty hereinafter referred to between Italy and Hungary, the freight on the shipments concerned was required to be paid in Italian lira. As lira were blocked by the Italian government for use only in Italy, restriction of the transportation of the shipments to defendant was thereby effected.

Booking was requested by complainant on each of the five shipments referred to several times during the months indicated above. These requests were made to defendant's representatives in New York City by telephone, personal interview, or letter, and were for space in first available vessel. It is not shown that at the times of such requests the respective shipments were aggregated or being held in readiness to move. No written record, as such, of the requests is indicated to have been kept. Respecting shipments indicated (2), (3), (4), and (5) above, cablegrams requesting bookings were also sent by complainant to defendant's Trieste office. For example, in connection with shipment indicated (2), complainant "checked daily" with defendant's New York City representatives, and became "finally convinced" on February 28 "that no progress could be made with them here," whereupon it addressed cablegram request for booking to defendant's Trieste office. The reply thereto, dated March 5, was "Yours 28th. Working direct with Budapest." Complainant's requests for bookings were held in abeyance by defendant for interoffice consideration, refused with the statement that no space was available, or, as in the case of the shipments of ferromanganese, declined (April 29) with the assertion that booking had already been arranged. Complainant shows that each of the five shipments specified was booked by defendant's office abroad in acceptance of offer made by the consignee-shipper or its subsidiary or representatives in Hungary, and that three of the shipments were carried by defendant pursuant to such bookings.[3] Complainant learned of the

[3] Shipments carried were: Shipment indicated (1) above, 2,500 tons in defendant's vessel *Lucia C*, sailing March 8, 1940, and 2,500 tons in defendant's vessel *Carlos Martinolich*, sailing April 5, 1940; shipment indicated (2) above in defendant's vessel *Livensa*, sailing May 15, 1940. Of shipment indicated (3) above, only 1,000 tons were carried by defendant, i. e., 500 tona from Philadelphia and 500 tons from Baltimore in defendant's vessel *Clara*, sailing from the United States in early May 1940. Shipments indicated by (4) and (5) above, although booked by defendant's office abroad in acceptance of offers by Hungarian consignees, were not carried by defendant due to its cessation of service upon entry of Italy into war.

bookings of the shipments by defendant abroad during performance by it of services[4] for and on behalf of the New York City representatives of the Budapest shipper-consignees.

Concerning its allegation of injury to reputation, complainant shows that the New York City representative of one of the Hungarian shipper-consignees concerned declined to allow complainant to arrange booking of a shipment of 2,000 tons of cast iron scrap from Houston to Fiume, and a shipment of 1,000 tons of steel scrap from New York to Fiume, because of complainant's inability to effect bookings in defendant's vessels for previous shipments.

Defendant's service to Trieste and Fiume during the 5-month period covered by the complaint was in a state of uncertainty and disorder. This condition, due to the European war, progressively increased throughout the period, until all service by defendant was discontinued upon entry of Italy into war. Negotiations during the period for transportation to Trieste and Fiume of "deadweight" cargoes, including scrap metals and kindred commodities, were required under compulsion of the Italian government to be conducted by defendant in accordance with allotments and specifications prescribed from time to time by trade authorities in keeping with a barter agreement or trade treaty between the governments of Italy and Hungary. The weight of the evidence is that the authority of defendant's representatives in the United States was restricted to the booking of deadweight cargo when other cargo bookings consummated by defendant's headquarters abroad had been cancelled.

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.

At the hearing defendant moved for dismissal of the complaint on the ground that the regulatory provisions of the Shipping Act, 1916, alleged to have been violated are not for the benefit of brokers as such.

From the foregoing discussion of the evidence it is seen that the basis of complainant's allegations is that it was deprived of earnings as a broker in connection with services to be performed by it for defendant; also that its status as a broker was adversely affected by defendant's refusal of space. We are not convinced that the duties

[4] Obtaining of navicerts, preparation of customs documents, bills of lading, and performance of other details incident to exportation of the shipments.

imposed upon defendant by sections 14, 16, and 17 of the Shipping Act, 1916, were 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. Similar determinations by the Interstate Commerce Commission in proceedings under provisions of the Interstate Commerce Act, involving the principle concerned, are *Jones* v. *St. L. & S. F. R. R. Co.*, 12 I. C. C., 144; *South-western Produce Distributors* v. *Wabash R. R. Co.*, 20 I. C. C., 458; *Cosby* v. *Richmond Transfer Co.*, 23 I. C. C., 72, and *Emery* v. *B. & M. R. R.*, 38 I. C. C., 636.

It is clear that even if complainant were within the class of persons for whose protection the sections of the Shipping Act, 1916, concerned were designed, no violations of those sections have been shown. For example, so far as any evidence to the contrary is adduced, defendant may have booked the shipments abroad before complainant requested bookings from defendant's office in the United States. Moreover, it is entirely possible that no space was available at the times and during the periods of complainant's requests, in view of the circumstances and conditions of defendant's service during the period covered by the complaint. No other broker is shown to have been paid brokerage by defendant, nor is it shown that complainant was treated differently by defendant than any other broker or brokers.

The complaint will be dismissed.

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ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 12th day of August A. D. 1941.

No. 593

AMERICAN UNION TRANSPORT, INC.

v.

"ITALIA" SOCIETA ANONIMA DI NAVIGAZIONE

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,

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 571

ALASKAN RATES

No. 572

ALASKA RATE INVESTIGATION No. 2

Submitted May 26, 1941. Decided August 28, 1941

Rate base and fair rate of return for respondents Alaska Steamship Company, Northland Transportation Company, Alaska Transportation Company and Santa Ana Steamship Company, and net income under proposed rates determined.

Proposed rates found not to yield fair return as to certain respondents and not an excessive return as to others.

Respondents' rate structures as a whole not shown to be unreasonable.

Increases in rates on commodities transported prior to June 1940, at freight, n. o. s. rates, to the extent they exceed increases published in suspended schedules under item freight, n. o. s., found not justified and unlawful.

Special rates to large shippers based on volume found unduly prejudicial and preferential.

Complaint alleging prejudice to Tacoma and preference to Seattle not sustained.

Services of certain respondents to so-called "irregular" ports for which no tariffs are filed found subject to Commissioner's jurisdiction and respondents required to file tariffs.

Provisions of bills of lading, etc., affecting rates and services not effective unless incorporated in tariff.

Respondent Alaska Steamship Company should cancel joint rail and water rates maintained with Alaska Railroad and in lieu thereof publish and file with the Commission water proportional rates.

Common carrier status of certain respondents and carriers determined.

Appropriate order entered.

Albert E. Stephan, *Lawrence Bogle*, *Stanley B. Long*, *George F. Kachlein, Jr.*, *A. S. Zeigler*, *H. L. Faulkner*, *F. M. Donohoe*, *Lester Gore*, *R. E. Robertson*, *F. B. Fite, Jr.*, *John Ambler*, *J A. Talbot*, *Matthew Stafford*, *W. N. Cuddy*, *Alfred J. Schweppe*, *Einar Haugen* and *R. W. Weymouth* for respondents.

James S. Truitt, *F. S. Gordon*, *Jay W. McCune*, *Wilbur LaRoe, Jr.*, *Frederick E. Brown*, *Arthur L. Winn, Jr.*, *L. S. McIntyre*, and *Matthew W. Hill* for interveners.

David E. Scoll and *Samuel D. Slade* for the Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by certain respondents and intervener Tacoma Chamber of Commerce to which replies were made.

The issues were orally argued. Our conclusions differ somewhat from those recommended by the examiner.

In No. 571 respondents,[1] common carriers by water, proposed to increase and decrease rates for the transportation of various commodities between Seattle, Tacoma, and Port Wells, Wash., and certain ports in the Territory of Alaska. By order of May 14, 1940, the operation of the schedules was suspended, on our own motion, until September 20, 1940. On motion of respondents the suspension order was vacated on May 28, 1940, subject to conditions guaranteeing refunds to shippers if the rates in issue are found unlawful.

No. 572 is an investigation instituted by us on our own motion concerning the lawfulness of rates, fares, charges, regulations and practices of common carriers by water for or in connection with transportation between the United States and ports in Alaska, and between ports in that Territory. In addition to the carriers heretofore named, Santa Ana Steamship Company, Alaska Rivers Navigation Company, Heinie Berger, and International Ocean Express System, Inc., were made respondents.

Territory served.—Alaska is about one-fifth the size of the United States with a population density of one person for every ten square miles compared to 41.3 persons to a square mile in the United States. Normally, 80 percent of employment is in the fishing industry; 15 percent in mining; and less than 5 percent in railroading, road building and forest activities. During the summer months the Territory enjoys a large tourist trade. There is very little passenger or freight business in the winter. With the exception of a limited airplane service, Alaska depends on water transportation in its commerce with the United States.

Southeastern Alaska is about 380 miles long and 120 miles wide, extending along the coast from Dixon Entrance on the south to Icy

[1] Alaska Steamship Company, Alaska Transportation Company, Northland Transportation Company, Davis Transportation Company, Haugen Transportation Company, Puget Sound Freight Lines and West Coast Transportation Company.

Straits on the north, the principal ports being Ketchikan, Wrangell, Petersburg, Juneau, Sitka, Skagway, and Haines. This area is the most populous and accessible section of the Territory, having a population, in 1930, of 19,304. Juneau, the largest town, had a population of 5,748 in 1940. In addition to the principal ports, there are many cannery, saltery and fish reduction plants, mining camps, and sawmills located on the many islands and inlets which require steamship service. Ketchikan, the southernmost town and first port, is 750 miles from Seattle. Normally, about 50 percent of the labor in Southeastern Alaska is supplied locally.

Southwestern Alaska extends from Yakutat, in the Gulf of Alaska, through to Seward, including Cordova and Valdez, and the fishing area of Prince William Sound which lies between Cordova and Seward. Many canneries and salteries are located there. Only 20 percent of the labor in Southwestern Alaska is supplied locally.

Cook Inlet and Kodiak Island district embraces Portlock, Seldovia, Homer, Kenai, and Snug Harbor and is open to navigation between March 1 and November 1. Kodiak Island supports canneries and salteries as well as a whaling station. There is a cattle-raising industry on the southern end. The Aleutian Peninsula region extends from a point opposite the southern end of Kodiak Island through to Unalaska Pass and beyond to Umnak Island, along which are located numerous villages, settlements, and cannery ports. At the southern end of the peninsula some sheep and cattle are raised. Bristol Bay comprises the great red fishing districts of Nakeen, Naknek, Nushagak, and Dillingham. In addition to cannery traffic, there is commercial freight for stores, trappers, and traders around Bristol Bay. Goodnews Bay is between Bristol Bay and Bering Sea and has become a prominent mining center in recent years. St. Michael, Golovin, Solomon Bluff, Nome, and Teller are located on Bering Sea. There is transshipment of freight at St. Michael with Northern Commercial Company which operates steamers up the Yukon River.

Operating and traffic conditions.—Steamer operations in the Alaskan trade are extremely hazardous because of navigation dangers such as ice, wind, fog, shoals, strong tides at narrow passes, and poor berthing accommodations. Aids to navigation at the many small settlements, lumber mills, mines, and canneries are poor. Some cannot be reached at night. Where docks are available they are small wooden structures, easily damaged and generally unable to receive cargo from more than one or two hatches at a time. It is not uncommon to tie vessels to trees to prevent tearing the dock away. Side ports cannot be used at any Alaskan port, and the vessels are equipped with unusually long booms.

There are other serious handicaps to maintenance of efficient and economical operation of steamship services in Alaska. The fishing industry is the backbone of the trade. Volume of business northbound and southbound depends upon the unpredictable size of the catch. In 1937 and 1938 the number employed in commercial fisheries was 30,331 and 28,084 persons, respectively. The trade is severely unbalanced. In the spring the cargo, consisting mostly of fishery, cannery, and mining supplies, moves north, the southbound movement being negligible. In the summer cargo is not heavy, but there is a large round-trip tourist passenger trade. In the fall there is practically no volume of cargo northbound while southbound vessels carry the bulk of cannery products. During the winter most of respondents' vessels are laid up for general overhauling and repair. It is testified that the Alaskan fishing industry is on the decline due to governmental restrictions and to the use of high-powered fishing vessels which deliver fish to Seattle direct rather than to Alaskan canneries and salteries. Some of the large canneries maintain their own fleets. The general merchandise steamship business is described of record as a "milk wagon" or "express" service because of inability of Alaskan industries and stores to warehouse their supplies or to keep fuel oil in large quantities. This requires frequent calls with small quantities of cargo per call. With the exception of Ketchikan, Juneau, and Sitka, all the stevedoring and longshoring in Alaska is performed by ships' crews at the regular rates of pay and overtime wages for that labor, in addition to their compensation as members of the crew. Another characteristic of the trade is the total lack of regularity of calls at the outports and varying routes navigated from one voyage to another. On a so-called "regular" trip there are generally 10 or 15 "irregular" or outside calls. There is an instance of record where one of the larger passenger vessels made 40 ports of call on one round trip, the necessity for the extra calls not being definitely known at the beginning of the voyage.

Steamship services.—Alaska Steamship Co. maintains freight and passenger service between Seattle, and practically all coastal and island areas of the Territory. It publishes a number of freight tariffs but only five are filed. In addition it concurs in tariffs of the Alaska Railroad naming joint freight rates and joint settlers fares via Seward to points in the interior of Alaska; and joint tariffs of Pacific and Arctic Railway and Navigation Co., naming joint rates via Skagway to interior points in Alaska and in Yukon Territory, Canada.

Northland Transportation Co. maintains freight and passenger services throughout the year between Seattle, Tacoma, and Port Wells, Wash., and Southeastern and Southwestern ports, except Haines and Skagway. During six months of the summer season it operates a passenger and freight service between Seattle and points on the Alaska Peninsula, and to Kodiak and to Woman's Bay; during 60 days of the salmon canning season two additional freight ships are placed in service.

Alaska Transportation Co. maintains a weekly passenger and freight service between Seattle and Tacoma and Southeastern ports. Its sailing schedule for the months, May to August 1940, inclusive, also shows scheduled calls northbound at Hoonah, Tenakee, Craig, and Klawack, at least once each month. Southbound monthly calls also were scheduled at Craig and Klawack and at Taku Inlet by all vessels. Its common carrier operation included service to five canneries in Southeastern Alaska. Under a special contract, it also transports sacked concentrates southbound for a mine at Tulsequah, B. C., on the Taku River approximately 50 miles east of Juneau. Such cargo is transferred from mine-owned and operated barges placed alongside respondent's vessel at Taku Inlet. Rates charged for this transportation are not of record. Rates on this commodity from other so-called "irregular" ports are subject to special arrangements. However, in its filed tariff U. S. M. C. No. F 2, respondent publishes southbound rates on this commodity from so-called "regular" southeastern ports.

Santa Ana Steamship Company owns and operates one vessel with which it makes three voyages each year between Seattle and Tacoma and Goodnews Bay anchorages, and to Bethel, Alaska, on the Kuskokwim River.

Rate situation.—Rates published by Alaska Steamship and Northland have been and are now generally the same. Prior to the recent increases, rates of Alaska Transportation on most commodities were $1 per ton lower than those of other carriers; but now all rates to Sitka and those on most commodities to other ports are on a parity. Differentials, when now published, with few exceptions, do not exceed 50 cents per ton.

There are no class rates in this trade. All commodity rates apply from ship's tackle to ship's tackle and are generally on a weight or measurement basis. The rate structure appears to have been stable over a number of years, free of rate wars and appreciable tramp competition. There is no evidence of general public dissatisfaction insofar as respondents' rates, fares, practices, or services are concerned. Specific complaints from shippers and receivers of freight are few.

The increased rates in question apply only from and to ports in Southeastern, Southwestern Alaska, and Kodiak and were published to meet increased operating expenses experienced particularly since 1937. Effective January 2, 1940, Alaska Steamship and Northland increased passenger fares between Seattle and Alaskan ports. The passenger fares were not suspended. Respondents estimated the amount of additional revenue necessary to meet increased operating costs and sought to apportion it as nearly as possible between passenger and freight business. The basic increase in freight rates was 50 cents per ton. On some commodities there were no increases, on others higher increases, and still others took reductions. The bulk of general merchandise moves under a n.o.s. rate item. Where increases exceeded 50 cents per ton, respondents assert that they apply on commodities of comparatively higher value and risk of transportation. Some of the increases are on individual items and others result from removal of commodities from the n.o.s. classification to individual items taking a higher rate.

Reasonableness of increased rates.—Respondents' increased operating costs are reflected in rising labor costs, higher insurance rates, increased taxes and greater costs of materials and supplies. Rising labor costs are due to a succession of increased basic wage and overtime scales for seagoing personnel and longshoremen; constant strikes both in the industry and ashore; slowdown tactics of labor in loading and discharging cargo; the carrying of extra pilots and crew; and recent expense of changing interior crew quarters, mess halls and toilet facilities of vessels. Much of these costs cannot be calculated.

Testimony and exhibits of record of Alaska Steamship reflect estimated increased costs, effective at various times during 1940, which, on the basis of 1939 operations, would result in annual increases of $164,730 in wages of ships' crews, $78,574 in cargo handling costs and $30,101 in insurance. Tax accruals of that respondent for 1940 are $237,000 in excess of those for 1939. During the period from January 1, 1937, to June 30, 1940, wages of ships' crews increased 32.5 percent per voyage day. From January 1, 1937 to December 31, 1940, freight revenue increased an average of $1.57 or 18.23 percent per ton and passenger revenue increased an average of $5.46 or 12.66 percent per passenger. Wage increases effective in February 1941 are estimated to result in additional annual costs of $64,387 and other wage adjustments under negotiation in further increases of $25,000.

Both Northland and Alaska Transportation bear the same proportionate increases in wages, stevedoring and insurance costs.

The suspended rates and certain unfiled rates to and from minor ports covering 41 percent of Alaska Steamship's freight traffic, 73 percent of Northland's traffic, and 71 percent of Alaska Transportation's traffic for 1940, increased the revenue of those respondents by 4.57 percent, 3.83 percent, and 3.80 percent, respectively; and their revenue per ton 37.3 cents, 34 cents, and 25 cents, respectively, during the period from June to December 1940. Alaska Steamship's revenue per ton for the year 1940, including revenue from the increased rates for seven months, exceeded 1939 revenue by 90 cents, whereas Northland's revenue decreased 30 cents per ton. The effect of increased costs and revenue is hereinafter shown.

Representatives of various Alaskan industries testified at hearings held in Ketchikan, Juneau, and Anchorage, some opposing and others favoring the rates in issue. However, little evidence of value was received from them.

In view of the extensive adjustments made in respondents' rates, the reasonableness of the changes depends largely upon whether respondents' rate structures as a whole are reasonable. Such determination must be predicated upon the relation of net operating income from Alaskan service to the fair value of the property devoted to that service.

FAIR VALUE

Our counsel urge, as in *Rates of Inter-Island Steam Navigation Co., Ltd.*, 2 U. S. M. C. 253 (1940), the adoption of the "prudent investment theory" as a proper test of fair value. In our decision therein in January 1940 we adhered to principles laid down by the Supreme Court in *Smyth* v. *Ames*, 169 U. S. 466 (1898); the *Minnesota Rate* cases, 230 U. S. 352, 434; *McCardle* v. *Indianapolis Water Co.*, 272 U. S. 400; *Los Angeles Gas and Electric Corp.* v. *Railroad Commission*, 289 U. S. 287, 306, 308; *Railroad Commission of California* v. *Pacific G. and E. Co.*, 302 U. S. 388; and *Driscoll et al.* v. *Edison Light and Power Co.*, 307 U. S. 104 (1939). 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. *Smyth* v. *Ames*, *supra*. We shall proceed to a consideration of the elements of fair value.

ORIGINAL COST

The original cost and original cost less accrued depreciation as of December 31, 1939, of vessels and other property owned and used in the Alaskan trade during 1939 is shown by the following tabulation:

	Original cost	Original cost less depreciation
Alaska Steamship:		
Vessels	$7,500,273	$3,741,748
Terminal property	186,884	51,214
Total	7,687,157	3,792,962
Northland:		
Vessels	1,430,477	1,022,547
Other shipping property	10,612	7,346
Total	1,441,089	1,029,893
Alaska Transportation:		
Vessels	460,954	(1)
Other shipping property	(1)	(1)
Santa Ana:		
Vessel	117,506	107,714
Other shipping property	29,498	29,196
Total	147,004	136,910

1 The original cost less depreciation of vessels and original cost and original cost less depreciation of other shipping property as of December 31, 1939, are not of record. As of June 30, 1940, the original cost of vessels was $470,648 and original cost less depreciation was $426,076; original cost of other shipping property was $957 and original cost less depreciation was $566.

In addition to the property owned and used, Alaska Steamship owned six vessels as of December 31, 1939, which were not in use. During 1940 three of these vessels were sold and one was dismantled. Santa Ana owned but did not use as of December 31, 1939, one vessel which was later sold. The value of these vessels is not included in the rate bases herein determined.

Included in the above tabulation are the costs of two vessels of the Alaska Steamship, the *Derblay* and *Sutherland*, operated under charter in other trades 87 and 95 days, respectively, in 1939 and two vessels of Northland, the *North Haven* and *North Wind*, operated 67 and 159 days, respectively, in the intercoastal trade and under charter in other trades. The portion of such costs assignable to non-Alaskan service, based on the ratio of days in such other service to 365 days, is as follows:

	Original cost	Original cost less depreciation
Alaska Steamship	$57,859	$36,742
Northland	51,296	29,547

COST OF REPRODUCTION

Stipulations of reproduction cost new of vessels, and such reproduction cost new less depreciation as of December 31, 1939, were entered into between counsel for respondents and for the Commission after conferences between engineers representing respondents and our Technical Division. In computing reproduction cost new less depreciation for each vessel an amount representing a deduction for physical depreciation and losses suffered through current lessening in value of tangible property from wear and tear not covered by current repairs, was deducted from reproduction cost new. An additional deduction of 30 percent also was made to represent functional depreciation, obsolescence, or inadequacy resulting from age or physical change by reason of new inventions or discoveries, changes in popular demand or public requirements. Other than data set forth in such stipulations there is no evidence of record on reproduction cost new or reproduction cost new less depreciation.

The stipulated reproduction cost new and reproduction cost new less depreciation, as of December 31, 1939, of vessels owned and used in the Alaskan trade during 1939, is shown in the following tabulation:

	Reproduction cost new	Reproduction cost new less depreciation	Depreciated condition (percent)
Alaska Steamship	$23,200,609	$11,184,578	48.12
Northland	5,923,327	2,927,770	49.43
Alaska Transportation	1,495,100	1,015,369	67.91
Santa Ana	761,000	372,890	49.00

The portion of the above amounts assignable to vessels engaged in non-Alaskan service in 1939, herein discussed under original cost, is as follows:

	Reproduction cost new	Reproduction cost new less depreciation
Alaska Steamship	$538,340	$263,849
Northland	629,722	298,558

Since reproduction cost of property other than vessels was not determined, consideration will be given to the original and depreciated cost of such property in a finding of fair value. For Santa Ana, counsel stipulated that for such other property reproduction cost should be taken as equivalent to book value.

WORKING CAPITAL

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 the fluctuating deficiencies in the receipt of cash from operating revenues necessary to meet maturing operating payments.

Alaska Steamship claims that $1,250,000 should be allowed. During 1939 the average investment in a stock of materials and supplies, as disclosed by monthly balances, was $72,603. A consideration of the monthly balances in accounts covering current operating assets and liabilities and prepaid and deferred items during 1939 indicates that the average amount by which collections from operations lagged behind operating disbursements and prepaid items was $568,495. A fair measure for a buffer fund would be equal to one month's operating expenses and taxes, not including depreciation, which in 1939 averaged approximately $500,000. The sum of the above amounts, $1,141,098, is based on average conditions. Maximum requirements would exceed that amount. We find the respondent's claim of $1,250,000 to be reasonable.

Northland claims $475,000 for working capital. Based upon an analysis of its operating experience that amount appears excessive. The record does not disclose that this respondent maintained a stock of materials and supplies. A consideration of the monthly balances in accounts covering current operating assets and liabilities and prepaid and deferred items during 1939 indicates that the average amount by which collections from operations lagged behind operating disbursements and prepaid items was $142,402. Operating expenses in 1939 in connection with Alaskan service averaged $82,274 per month, which is a fair amount for a buffer fund. The sum of the above amounts which are based upon average conditions is $224,676. Maximum requirements would exceed that amount slightly. We find the amount of working capital to be included in the rate base should not reasonably exceed $250,000.

Alaska Transportation claims $160,000 should be included in fair value for working capital. This estimate includes amounts advanced to meet operating deficits which are not properly includible as working capital in a rate base. The amount claimed for working capital is equal to about four months' average operating expenses for the calendar year 1940. At June 30, 1940 the respondent's investment in a stock of materials and supplies was $1,286. The investment in net current assets, including prepaid items was approximately $10,000. Average monthly operating expenses for 1940 were $40,875. The sum of these items is $52,161. Since maximum requirements would exceed that amount, we find the amount of working capital to be included in the rate base should not reasonably exceed $75,000.

Santa Ana made no claims for working capital. An analysis of its experience and a consideration of the highly seasonal nature of its traffic indicates that an amount to be included in the rate base should not reasonably exceed $80,000.

Conclusions as to Fair Value.—Respondent Alaska Steamship contends the fair value of its property as of December 31, 1939, is $14,000,000, including $1,250,000 for working capital and $1,500,000 for good will and going concern value. Northland urges that its property has a fair value as of that date of $3,900,000, including $475,000 for working capital and $500,000 for good will. Alaska Transportation contends that the fair value of its property as of December 31, 1939, is $900,000 including an unstated sum for going concern value and $160,000 for working capital. While Santa Ana claims no specific amount for fair value it contends that the loss of its one vessel would require the immediate expenditure of $761,000 to replace it. Working capital has heretofore been considered. The amounts claimed for going concern value and good will are merely speculative estimates. The property is valued as an organized going enterprise. Otherwise it would have only a salvage value. The costs of developing the enterprise have been included in the operating expenses paid out of rates collected from the public. Good will is but another name for the value of attached business. In *Los Angeles G. & E. Elec. Corp.* v. *Railroad Commission of California, supra,* the court said: "It (the concept of going value) does not give license to mere speculation; it calls for consideration of the history and circumstances of the particular enterprise * * *." No definite amounts will be assigned for going concern or good will.

Respondents also urge that controlling weight be given to reproduction cost in a finding of fair value. This apparently is based on the hypothesis that under present conditions current replacements will be possible only through new construction. The probability that it will be necessary to replace the fleets through new construction appears remote. Statements of record indicate that the trade will not support the capital investment in a fleet of newly constructed modern vessels. Reproduction cost new was computed by our engineers and those for respondents independently, using the same basic data. No consideration was given to the effect upon construction costs of current war conditions. The results, upon comparison, were said to be surprisingly close. Figures representing depreciated reproduction cost new were based upon actual inspection of vessels by the respective engineers of the parties. As stated, the ratio of depreciated reproduction costs of respondents' vessels to reproduction cost new ranges from 48 percent to 68 percent. The weight to be given reproduction cost less depreciation should be determined in the light of respondents' past history and policy in respect to the acquisition and replacement of their vessel property.

The only vessels in the fleet of 16 owned and used in 1939 by Alaska Steamship that were acquired in new condition, were the

Cordova and the *Alaska*, built in 1912 and 1923, respectively. Of the others the *Yukon*, acquired in 1923 but built in 1899, is the oldest. The *Denali*, built in 1927 and acquired in 1938, is the most recently constructed. The average age is 24 years. The average age of Northland's fleet is 19 years. Three of its vessels were built in 1918. The *M. S. Northland*, built in 1929, has been operating in the trade since 1930. The *North Coast*, built in 1923, was acquired in 1938. The average age of Alaska Transportation's fleet is 21 years. The *Tongass*, a wooden vessel, was built in 1915 and acquired in 1937. The *Taku* and *Tyee* were built in 1921 and acquired in 1939 at which time substantial alterations were made for the Alaskan trade. The S. S. *North Pacific*, owned and operated by Santa Ana was built in 1918 and acquired by it in 1938.

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 rather than to build new vessels. Apparently neither freight nor passenger traffic requires modern vessels.

Based upon a consideration of the elements of value as of Decmeber 31, 1939, hereinbefore discussed, and giving consideration to the fact that the business of each carrier was a going concern, the examiner, in his proposed report, concluded for the purposes of this particular proceeding that the value of the property of respondents Alaska Steamship, Northland and Santa Ana used in the Alaskan service did not exceed $6,875,000, $1,675,000, and $285,000, respectively, as of that date. No finding of value of the property of Alaska Transportation was made in the proposed report on the ground that its operations have consistently shown a deficit. This respondent introduced testimony as to the elements of value of its property and contends, we think rightly, that a finding of the fair value thereof should be made by us.

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. However the evidence respecting certain elements of value does not go beyond December 31, 1939. Except as hereinafter noted, respondents owned and used the same vessels in the Alaskan service during 1940 as in 1939. Also, annual depreciation accruals on respondents' properties normally have exceeded the annual expenditures for additions and betterments to such properties. Hence, it is fair to assume that values for 1940 did not exceed those of 1939. Therefore, values as of 1939, adjusted to reflect changes in the use of the property in 1940, will be used herein.

During the year 1940 Alaska Steamship's vessels *Baranof*, *Oduna*, *Depere*, and *Sutherland* were chartered in other trades for 17 days, 247 days, 148 days, and 110 days, respectively; Northland's vessels *North Haven* and *North Wind* were chartered and engaged in intercoastal service 366 days and 246 days, respectively. The portion of original cost and reproduction cost shown herein that is assignable to non-Alaskan services during 1940, is as follows:

	Alaska Steamship	Northland
Original cost	$214,839	$140,595
Original cost, less depreciation	98,177	82,913
Reproduction cost new	1,483,913	1,902,609
Reproduction cost new, less depreciation	708,244	893,705

The following statement summarizes the available data respecting the elements of value of property owned and used in Alaskan service during 1940:

	Undepreciated	Depreciated
Alaska Steamship:		
Original cost:		
Vessels	$7,285,434	$3,643,571
Terminal property	186,884	51,214
Cost of reproduction—vessels	21,716,696	10,456,332
Working capital	1,250,000	
Northland:		
Original cost:		
Vessels	1,289,882	939,634
Other shipping property	10,612	7,346
Cost of reproduction—vessels	4,020,718	2,034,065
Working capital	250,000	
Alaska Transportation:		
Original cost:		
Vessels	470,648	426,076
Other shipping property	957	566
Cost of reproduction—vessels	1,495,100	1,015,369
Working capital	75,000	
Santa Ana:		
Original cost:		
Vessels	117,506	107,714
Other shipping property	29,498	29,196
Cost of reproduction—vessels	761,000	372,890
Working capital	80,000	

The problem of finding fair value herein is similar to that presented in the *Inter-Island* case, *supra*, wherein we said at page 260:

Essentially, this is a rate rather than a valuation proceeding. Therefore it is unnecessary to make a precise determination of the value of the property in question. The estimates submitted are considered insofar as they have a bearing upon the economic cost of performing the service; also as they indicate the level of rates which may avoid the taking of the carrier's property for public use without just compensation.

In addition to the elements of value summarized above, the record shows the volume of past and present earnings, the actual and estimated amounts necessary to meet operating expenses, hereinafter discussed, and the amount of the stocks and bonds. Considering all relevant factors and recognizing that the property of each respondent is an integrated operating enterprise and a going concern, it is concluded for the purpose of this particular proceeding that the fair value of the property owned and used in Alaskan service during the year 1940, based upon the adjusted fair value as of December 31, 1939, does not reasonably exceed the following amounts:

Alaska Steamship	$6,650,000
Northland Transportation	1,475,000
Alaska Transportation	650,000
Santa Ana	285,000

RATE OF RETURN

In the *Inter-Island* case, *supra*, we found that the fair rate of return on the value of respondent's property did not exceed 7 percent. That finding, however, does not operate as a precedent. Each case as it arises must be considered on its merits. We 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. We also recognize 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." *Bluefield Water Works & Improvement Co.* v. *Public Service Commission of West Virginia*, 262 U. S. 679; *Wilcox* v. *Consolidated Gas Co.*, 212 U. S. 19.

Respondents show 8 percent as the prevailing rate of interest on loans negotiated in Alaska. It was not shown that any respondent actually made loans within the Territory. In fact, the only loans of record were made in 1938 by Northland in Seattle at 4.5 and 5 percent. In addition, that company issued 6 percent cumulative preferred stock in 1937 and 1938. An attempt was made through one witness to show that from 12 to 18 percent would not be unreasonably high. Such testimony was based on experience dealing with more speculative enterprises than public utilities subject to regulation. Counsel for respondents urged 10 percent as a fair rate of return.

The possibility that income will fail or that principal will be lost is an outstanding hazard against which investors in any public enterprise should be guarded. In any water carrier operation there are,

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of course, risks incident to perils of the sea and question arises whether such risks warrant a higher rate of return than would be allowed a land utility. Such utilities operate under public franchise or other protection and are, in effect, monopolies within the areas they serve. Railroads also are afforded protection against undue competition through the issuance of certificates of public convenience and necessity. There is no such protection in the Alaskan trade. In the *Inter-Island* case the respondent had little competition. For the element of competition here involved due weight should be given. Property investments, common carrier risks incident to cargo, also liabilities for personal injuries to passengers, vessel crews and other employees are covered by insurance. Premiums paid for such protection are allocable as an operating expense and ordinarily are borne by shippers in the rates they pay. But even recognizing the element of competition, the effect thereof in the future will probably be no greater than in the past. The original capital investment of Alaska Steamship has shown a return of over 400 percent from all sources and over 300 percent from Alaskan operations. The company was incorporated in December 1907. On January 1, 1908, capital stock of $3,000,000 par value was issued in acquisition of property having a reputed cash value of equal amount. Up to December 31, 1939, net profit from all sources has aggregated $16,589,550 of which $9,547,887 [2] is stated to represent net income from "common carrier" operations in Alaska. A stock dividend of $1,500,000 and cash dividends aggregating $13,690,000 have been declared. During thirty-two years of continuous operations only three years, 1932 to 1934, inclusive, have failed to show a profit from Alaskan operations. In those depression years losses aggregated only $212,193. As of December 31, 1939, the capital surplus was $1,399,550. There are no outstanding bonds or other long-term indebtedness.

Northland was incorporated in 1923. Net profit from 1930 to December 31, 1939, from all operations aggregates $1,036,816, of which $760,236 was profit from Alaskan operations. Dividends during the period aggregated $594,386, of which $131,100 was paid in preferred stock and the remainder in cash. The proprietary investment, as reflected by the average outstanding capital stock, excluding stock issued as dividends, during this period averaged $83,270. On the basis of earnings of $760,236 from Alaskan operations the original capital investment has shown a return of approximately 900 percent.

Alaska Transportation since the inception of its common carrier service in June 1935, has operated continuously at a loss. The exist-

[2] The difference of $7,041,673 represents net profit from charter hire, interest and dividends from investments, sale of investment securities, vessels and other property, etc.

ing service did not commence until 1939 when two additional vessels were acquired.

Santa Ana was incorporated in 1923. The record contains no data regarding its financial history prior to January 1, 1938. Its net profit from operations was $49,443 in 1938, and $80,211 in 1939. Dividends at the rate of 40 percent on $100,000 par value of capital stock were paid in cash in each such year.

It is concluded that the fair rate of return on the value of respondents' property should not exceed 7.5 percent.

NET OPERATING INCOME

The results of the Alaskan operations of respondents, as reflected by their net water-line operating income for the calendar years 1939 and 1940, are shown below:

	1939	1940	Increase+ or decrease−
Alaska Steamship (see Appendix 1)	$382,896	$548,153	+$165,257
Northland (see Appendix 2)	82,888	54,222	−28,666
Santa Ana (see Appendix 3)	86,704	84,059	−2,645

Alaska Transportation's operations resulted in operating deficits of $107,707 for the year ended June 30, 1940 and $96,213 for the calendar year 1940. (See Appendix 4.) Northbound cargo of Alaska Steamship increased 64,553 tons while southbound decreased 12,376 tons. Passengers carried increased by 5,678 of which 4,631 were northbound. Average revenue per cargo ton increased 90 cents while average revenue per passenger increased two dollars. Revenue freight carried by Northland increased 4,508 tons while the number of passengers carried decreased by 88. Average revenue per ton of freight decreased 30 cents while average revenue per passenger increased $5.21.

During the year 1940 Alaska Steamship transported 38,874 tons of freight cargo with revenue of $565,608 for the U. S. Army, Navy, Marine Corps and Civil Aeronautics Authority in connection with the national defense program. Of the total, 37,993 tons with revenue of $556,428 moved northbound from Seattle, the balance being largely Alaskan interport traffic. In addition it transported 648 passengers with revenue of $53,175 for a contractor acting on behalf of the U. S. Navy. Northland in 1940 transported freight and passenger traffic to a contractor for the U. S. Army and Navy with total revenues of $147,769. Respondents contend all this traffic is non-recurring and that the revenues therefrom should be deducted from the normal revenue in determining the reasonableness of their rate structure under normal conditions. Alaska Steamship estimates the approximate net revenue from its gross freight revenue of $565,-608 from this traffic to be $79,185 which latter amount it contends should be deducted from the total net operating income. It estimated the net revenues by applying the operating ratio based on gross operating revenues and expenses. No estimate of the portion of the revenue from passenger traffic that represented net revenue was submitted. But on the basis used for freight traffic, net income would be $7,745, making a total of $86,930. Northland made no estimate of net revenue.

There is no indication of record as to how long the movement of this traffic, designated by respondents as "non-recurring," will continue. A determination of the net operating income assignable to such traffic would necessarily have to be on some arbitrary basis of allocation of expenses, including overheads. The results would be highly conjectural. Furthermore, it would be necessary to determine the portion of fair value found herein that would be properly assignable to the movement of this traffic, an exceedingly difficult problem which could only be solved on some arbitrary basis. For the purpose of this proceeding we will make no attempt to segregate net income or fair value assignable to this so-called "non-recurring" traffic.

Alaska Steamship has submitted evidence of wage increases effective in February 1941 estimated to result in annual increased costs of $64,387 based on operations for the year 1940. It estimated additional increases then under negotiation with unions that will result in an estimated annual increase of $25,000. Such increases will affect the results of operations for 1941. We see no justification for considering them in connection with 1940 net income which reflects the wage increases effective during that year.

Fuel oil, gasoline and oil products accounted for 41.9 percent of the total tonnage carried by Santa Ana in 1938, 32.17 percent in 1939 and 32.54 percent in 1940. Beginning with the season of navigation in 1941 that respondent expects to lose this traffic because the Standard Oil Co. of California is building storage tanks at Bethel and Dutch Harbor to be supplied by that company's tankers. It was testified that as a result of this development the gross earnings of Santa Ana will decrease by 25 percent to 33 percent without any offsetting reduction in operating expenses. All of the respondent's traffic has been handled by one vessel making three voyages a year. On the basis of 1940 operations, a reduction in freight revenue ranging from 25 percent to 33 percent would reduce net operating income to amounts ranging from approximately $17,500 to $34,000.

Conclusions as to reasonableness of rate structure.—The fair value of property devoted to Alaskan service in 1940, based upon the adjusted fair value as of December 31, 1939, and the net operating income therefrom for that year, as found herein, together with the resulting rate of return are summarized in the following tabulation:

Respondent	Fair value	Net operating income	Rate of return (percent)
Alaska Steamship	$6,650,000	$548,153	8.24
Northland	1,475,000	54,222	3.68
Alaska Transportation	650,000	[1] 96,213	None
Santa Ana	285,000	84,059	29.49

[1] Deficit.

Northland's rate of return of 3.68 percent is 3.82 percent less than the fair rate of return of 7.5 percent found herein. Alaska Transportation, with an operating deficit, earned no return. Alaska Steamship earned $49,403 or 0.74 of one percent in excess of the fair return of 7.5 percent. Santa Ana earned $62,684 or 21.99 percent in excess of the fair return.

The estimated net income of $86,930 on traffic that respondent Alaska Steamship contends is nonrecurring is $37,527 more than the excess over the fair return found herein. Considering all factors we conclude that respondent Alaska Steamship's rate structure as a whole is not shown to be unreasonable from the standpoint of the fair value test.

The rate of return of 29.49 percent earned by Santa Ana in 1940 is clearly excessive. Assuming that on 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 percent to 12 percent. That respondent's rate on general merchandise to Bethel is $22.50 per ton weight or measurement, as compared with a similar rate of $18.00 maintained by Alaska Steamship to Goodnews Bay, 150 miles less distant from Seattle than Bethel. Both respondent's president and the master of its vessel testified that this stretch of 150 miles is more hazardous to navigate than any other waters within their knowledge. In view of the unpredictable loss of revenue in 1941 and its effect on net income, and in the absence of complaint from any of the affected shippers, we conclude that respondent Santa Ana's rate structure has not been shown to be unreasonable.

Justification of particular rates.—The foregoing conclusions as to the general rate level do not foreclose an examination of particular rates which may be unreasonable or discriminatory.

The proposed report recommends that increases on articles[3] formerly included in the item freight, n. o. s., be found not justified to the extent they exceed the proposed increases on the latter item. Rates on these articles, which comprise approximately one percent of the traffic, are increased by amounts ranging from $1 to $7, because of alleged susceptibility to damage or necessity for special stowage.

The record shows that while payments of Alaska Steamship resulting from claims on clothing, dry goods, notions, and furniture increased since 1937, payments were less in 1939 than in 1938. On miscellaneous articles, understood to include most commodities formerly transported at the n. o. s. rate, claim payments in 1939 increased slightly over 1938 but since 1937 there has been a decrease. There is no comparison of claim payments with revenue received on any commodity, nor of claim payments on the articles under consideration as contrasted with traffic generally. Hence, statements showing claims paid are of little value. The record shows further that on a per ton basis, total claim payments by Alaska Steamship, except on products of mines and forests, for four years beginning with 1936, were 11.8, 9.93, 13.1 and 10.5 cents, respectively. Regarding the alleged necessity for special stowage, respondents stated that shipments are frequently delivered improperly packed for safe transportation, as for instance, furniture packed in cardboard cartons. Respondents' tariffs, however, contain the following provision:

> All freight for shipment by boat must be packed in shape for safe and expeditious handling. When tariff does not specify kind of package, it is understood that bags, barrels, boxes, crates, or other suitable packages will be used; and when freight is offered in bulk or in such packages as would endanger contents or other cargo or steamer, when handled with ordinary care, it shall be optional with the company to refuse to transport it or to accept it with notation on shipping receipt or bill of lading fully releasing the company from liability for any damage that may occur.

But the rule is not enforced. Obviously, 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.

Special rates to large shippers.—Counsel for the Commission assails a lower basis of rates applying on property moving from

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[3] Clothing, dry goods; dishes and glassware; glass; compounds, liquid; accounting machines; athletic goods; drugs, cosmetics; electrical appliances; furniture, uncrated; acids and chemicals; batteries, storage; films, moving picture; burial cases; and live poultry.

Seattle to Japonski Island near Sitka and to Woman's Bay near Kodiak under a contract between Siems-Drake Puget Sound Company, contractors, and the Navy Department for the construction of Navy air bases. Since the hearing, a copy of the contract has been incorporated by reference into the record by agreement between the parties. It is clear from the terms of the contract that Navy bears the freight charges. The contractors do not profit from either the lower rates or consequences thereof. There is no claim by any party that those rates are below a compensatory level or that they influence other rates or traffic in any particular. We conclude therefore that they are not unlawful.

Alaska Steamship publishes unfiled Tariff No. 583 naming rates applicable to and from points on the Alaska Peninsula, including King Cove and Akutan. However, unfiled Tariff No. 551 names lower rates on cannery supplies and products, oil, lumber and freight n. o. s. to and from False Pass, on the Alaska Peninsula between King Cove and Akutan, which respondents state are based on volume. These rates are restricted to apply only on shipments to and from the cannery wharf of P. E. Harris and Company. Under unfiled Tariff No. 584 rates are blanketed to ports within the Bristol Bay and Goodnews Bay areas, yet unfiled Tariff No. 592 names lower rates to and from a subsidiary of The Great Atlantic and Pacific Tea Company and Nakat Packing Corporation located at Nakeen on Bristol Bay. Tariffs which accord to particular shippers within blanketed areas rates or privileges not available to others similarly situated are unlawful under section 16. *Armstrong Cork Co.* v. *American-Hawaiian S. S. Co.*, 1 U. S. M. C. 719. *Intercoastal Rates of Nelson Steamship Co.*, 1 U. S. S. B. B. 326, 342, 343; *Intercoastal Rates on Silica Sand*, 1 U. S. S. B. B. 373. Tariffs 551 and 592 will be ordered cancelled.

Propriety of blanket rates.—The examiner recommended that we find respondents' 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 an unreasonable practice which results in undue preference and prejudice. Respondents' justification of the practice is that vessels call at intermediate ports sometimes en route to and sometimes en route 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. Respondents also stated that they desire to maintain rate parity on fishery supplies and products.

The proposed report refers particularly to ton-mile revenue on northbound traffic to Seward of 5 mills as compared with 9 mills to Juneau, Skagway, and Valdez. This comparison is not conclusive because it is based on all cargo carried in 1939 which may have varied widely as to commodities and volume to the various ports concerned. The rates offer a better comparison. For example, the rate on freight, n. o. s. yields an average ton-mile earning of 9.3 mills to the three ports named as compared with 7.8 mills to Seward. We are of the opinion that the practice has been justified.

Rates of Alaska Steamship and Northland on fishery supplies and products and certain other specified commodities apply to and from a series of southeastern and southwestern port groups; the minor ports are grouped with and accorded the same rate as the contiguous principal port. No justification is offered by respondents for this practice except as to fishery traffic which, as stated, is the backbone of the Alaskan trade. On northbound traffic respondents state it is necessary to maintain parity of production costs between producers, and on southbound traffic, competitive parity between Alaskan producers in common markets and also between such producers and producers in Puget Sound and other areas.

The bulk of traffic to and from minor ports consists of fishery traffic which takes the lowest rates in the filed tariffs. On northbound traffic, gross per ton revenue for the minor ports is from $1 to $4 per ton lower than for principal ports. The proposed report concludes that traffic to and from principal ports is being unduly burdened with more than its share of operating costs. This does not necessarily follow because traffic to and from minor ports is of a lower grade than to and from principal ports, and the revenue thereon consequently would be less.

Inasmuch as no justification was given for blanketing rates on commodities such as products of mining, fuel, fuel oil, and live stock, respondents will be expected to adjust such rates on a mileage basis. Respondents should also give consideration to the inclusion of ports on Baranof Island south of Sitka, on Chatham Strait, and on Scow Bay, in the Petersburg area, to which they appear to be more contiguous than to Juneau.

Complaint of Tacoma Chamber of Commerce.—Tacoma Chamber of Commerce, an intervener, alleges generally that respondents Alaska Steamship and Northland, in discontinuing rate parity between Seattle and Tacoma on shipments to and from Alaska, are subjecting the Port of Tacoma and shippers there located to undue prejudice and that the Port of Seattle and shippers there located are unduly preferred in violation of section 16 of the Shipping Act, 1916, as amended. Alaska Steamship now restricts the application of its rates to Seattle on 29 commodities. Northland's restrictions are less numerous. Parity still exists on nearly all northbound traffic. Neither Alaska Steamship nor Northland has given Tacoma direct service for several years, but joint rates are published in connection with Puget Sound Freight Lines. Alaska Transportation serves both Seattle and Tacoma with its own vessels at the same rate.

Other than testimony on behalf of Wypenn Oil Co., Inc., and Centennial Flour Mills Co., hereinafter discussed, evidence by intervener consists of general statements of the character of the industries located at Tacoma, the advantages of that port, its possibilities for expansion, and a conclusion that the discontinuance of rate parity has retarded Tacoma's progress as a port. It was not shown that competitive merchants or manufacturers there located receive unlike treatment or that competition actually exists between shippers at Tacoma and shippers at Seattle. Evidence of such general character has little, if any, value. In *Intercoastal Cancellations and Restrictions*, 2 U. S. M. C. 397, we said that findings of undue preference and prejudice resulting from the cancellation of through routes and joint rates should be made only when unlawfulness has been shown by the most clear and convincing proof.

Wypenn Oil Co., Inc., refines and hydrogenates fish and animal oils, and provides bulk storage for such oils at Tacoma. The plant was built in 1936 after the rate to Tacoma on herring oil had been cancelled. There are no processing plants at Seattle with which Wypenn competes. Herring oil is transported in bulk to Seattle in ships' tanks. It was not affirmatively shown that Puget Sound Freight Lines has facilities for transporting oil in bulk. It is apparent that the foregoing is insufficient to support a finding of unlawfulness under section 16.

Centennial Flour Mills Co. manufactures and sells flour, cereal, and animal and poultry feed. The latter product is processed in part from fish meal produced in Alaska. Rates northbound from Tacoma and Seattle on merchandise it sells are the same, but on fish meal southbound the rate applies only to Seattle. Rates from Seattle to Tacoma by rail and boat are 5.5 and 7.5 cents respectively, per 100 pounds. Such rates, it was said, increase Centennial's manufacturing cost from \$550 to \$865 annually. Centennial also has plants located at Spokane, Wenatchee and Portland, and shipments of fish meal move to such plants from Seattle by rail and truck. Rail and truck rates to these plants are the same from both ports. Centennial does not specifically show that there are competitive feed manufacturers at Seattle; hence, as in the case of Wypenn, there is no basis for a finding of undue preference and prejudice.

After hearing, intervener Tacoma Chamber of Commerce filed a petition for further hearing to introduce evidence concerning alleged changed conditions since the hearing, and the service accorded Tacoma by respondents. The petition was denied without prejudice to the filing of a formal complaint. We conclude that intervener's allegations have not been sustained.

Sufficiency of tariff filings.—Respondents Alaska Steamship, Alaska Transportation, and Northland have not filed their tariffs covering service to and from the canneries, salteries, lumber camps, and small settlements on the ground that they are "irregular" ports. They contend that there is no requirement for filing tariffs naming rates to and from such ports because they are not on regular routes and because no regularity exists with respect to sailings or calls. Section 2 of the Intercoastal Shipping Act, 1933, requires that "every common carrier by water in interstate commerce, engaged in transportation on regular routes from port to port shall file schedules showing all the rates, fares, and charges for or in connection with transportation on its own route * * *." The statute does not classify ports nor does it contemplate regularity of sailings in a trade or regularity of calls at a port. The question presented is whether respondents are engaged in transportation on regular routes.

The primary purpose for the insertion in the statute of the phrase "on regular routes from port to port" was to exclude from regulation traffic transported by tramp vessels. 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. Irregularity in respect to sailings and calls at minor ports is due to the seasonal character of the industries respondents hold themselves out to serve. Service to principal ports also is irregular, because of the necessity for more frequent service in the summer season to accommodate the tourist traffic.

It is apparent that there is no clear distinction between vessels which serve minor ports from those which serve principal ports. Schedules of all vessels, although tentatively planned in advance, are subject to frequent and constant disruptions throughout the season due to peculiar industrial and other conditions inherent in the trade. Under such circumstances, to accept respondents' contention would render futile any regulation with respect to principal ports.

We conclude that the service of Alaska Steamship, Alaska Transportation, and Northland is confined principally to one trade, and within their respective areas each of them is engaged in transportation on regular routes from port to port. An order will be entered requiring these respondents to file schedules showing all the rates, fares, and charges for the entire service of each respondent.

Alaska Transporation will be expected to remove the apperent discrimination in connection with transportation of ore and concentrates as between principal ports and minor ports from which rates are subject to special arrangements.

Rule 1 of the filed freight tariffs of Alaska Steamship, Alaska Transportation, and Northland contain the following provision:

> The steamer rates named herein are applicable subject * * * to the conditions of the company's shipping receipts, bills of lading, and livestock contracts * * *.

When rates are published, dependent upon conditions in the carrier's bill of lading, said conditions should be published in the tariff. *Transportation of Lumber Through Panama Canal*, 2 U. S. M. C. 143, *Puerto Rico Rates*, 2 U. S. M. C. 117, 131.

Alaska Steamship maintains joint rates and fares with Alaska Railroad, which is owned and operated by the United States Government under the provisions of the Alaska Railroad Act of March 12, 1914, chapter 37, 38 Stat. 305. Apparently these rates do not come within the jurisdiction of the Interstate Commerce Commission, 34 *Attorney General Opinions*, 232. We are of the opinion that 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. No order to that effect will be entered at this time, but consideration will be given to the issuance of such an order if the action indicated is not taken within a reasonable time.

Common carrier status of certain respondents.—Respondent Heinie Berger is an individual operating the *M. V. Discoverer*, a motor vessel of about 100 tons capacity, between Anchorage, Cook Inlet, and Seattle during nine months of the year. He carries passengers and freight but maintains that his operation is not that of a common carrier because of irregularity of schedules and routes. The record is that 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. We conclude that respondent Heinie Berger operates a common carrier. He will be required to publish and file his schedules.

Questions involving International Ocean Express System, Inc., are (1) whether it is a common carrier, and (2) whether it is being unduly prejudiced because shipments of Railway Express Agency, Inc., its competitor, are being transported by Alaska Steamship under a special contract.

International is engaged in the business of consolidating and forwarding freight. It receives a bill of lading from the transporting carrier and pays the regularly published and filed rates. International charges a rate which is sufficiently higher than the rate it pays the transporting carrier to cover the expense of solicitation, assembling, segregation, delivery, accounting, marine insurance, and other incidental costs. It issues bills of lading, and assumes full liability for loss and damage, but does not own or control vessel space. International's status therefore is that of a consolidator and forwarder or "other persons" as defined in Shipping Act, 1916, and thus is not required to file its tariffs.

Railway Express Agency, Inc., is owned by various railroads and is a common carrier under the Interstate Commerce Act. It publishes an unfiled tariff naming rates and charges applicable, but restricted, to shipments transported by boat between ports in the United States and ports in Alaska. Railway Express forwards its shipments via vessels of Alaska Steamship pursuant to a contract under which the steamship company receives one-half of the gross revenue which Railway Express receives under its tariff. The steamship company does not issue bills of lading or freight bills covering such shipments. Compensation received by Alaska Steamship, it was said, exceeds in the aggregate the revenue obtainable at its tariff rates on Railway Express shipments. Although Railway Express' activities are conducted in a manner substantially similar to those of International, however, through its contract with Alaska Steamship it has the status of a common carrier by water operating on regular routes from port to port. So long as it remains a common carrier under the Act, no preference or prejudice as between it and International can result from the contract. Railway Express will be required to file its tariff.

Upon this record we find:

1. That the value for rate making purposes of the properties used and useful in the Alaskan public service during the calendar year 1940, based upon the adjusted fair value as of December 31, 1939, does not exceed the following amounts: Alaska Steamship Company, $6,650,000; Northland Transportation Company, $1,475,000; Santa Ana Steamship Company, $285,000; and Alaska Transportation Company, $650,000.

2. That the fair rate of return on the respective values above mentioned does not exceed 7.5 percent.

3. That respondents' net operating income from Alaskan service during the calendar year 1940 was as follows: Alaska Steamship Company, $548,153; Northland Transportation Company, $54,222; and Santa Ana Steamship Company, $84,059; and that respondent Alaska Transportation Company's operations for the calendar year 1940 resulted in a net operating deficit of $96,213.

4. That respondents' net operating income for the calendar year 1940 represented rates of return on the fair values found herein as follows: Alaska Steamship Company, 8.24 percent; Northland Transportation Company, 3.68 percent; and Santa Ana Steamship Company, 29.49 percent.

5. That the evidence does not disclose that the rate structures as a whole of respondents Alaska Steamship Company, Northland Transportation Company and Alaska Transportation Company are unreasonable, or that the rate structure of Santa Ana Steamship Company will, for the future, be unreasonable. This finding is not an approval of individual rates and is without prejudice to the right of shippers to file formal complaint against such rates in accordance with section 22 of the Shipping Act, 1916.

6. That to the extent increases in rates on commodities transported prior to such increases at freight, n. o. s. rates exceed increases published in the suspended schedules under the commodity rate item entitled "Freight, n. o. s.," they have not been justified, and are not shown to be lawful.

7. That rates in tariffs No. 551 and No. 592 of Alaska Steamship Company, applicable to particular shippers at False Pass, on the Alaska Peninsula, and Nakeen, on Bristol Bay, lower than rates published in tariffs No. 583 and No. 584 applicable to other ports in the same general areas, are unduly preferential and prejudicial in violation of section 16 of the Shipping Act, 1916.

8. That complaint of Tacoma Chamber of Commerce alleging that discontinuance by certain respondents of rate parity between Seattle and Tacoma, Wash., on traffic to and from Alaska is in violation of section 16 of the Shipping Act, 1916, as amended, has not been sustained.

9. That service by Alaska Steamship Company, Alaska Transportation Company and Northland Transportation Company 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. Tariffs of rates, fares, charges, rules, regulations, and practices applicable to such service should be filed as required by section 2 of the Intercoastal Shipping Act, 1933, as amended.

10. That provisions of bills of lading or other documents affecting rates or the value of transportation service are not governing unless incorporated in carriers' published and filed tariffs.

11. That Alaska Steamship Company should cancel existing joint rail and water rates maintained with Alaska Railroad and in lieu thereof, publish and file with the Commission proportional water rates covering its part of the transportation service.

12. That the *M. V. Discoverer*, operating between Seattle, Wash., and Anchorage, Alaska, and other ports on Cook Inlet is engaged in a common carrier service on regular routes from port to port, and tariffs of rates, fares, charges, rules, regulations, and practices should be filed as required by section 2 of the Intercoastal Shipping Act, 1933, as amended.

13. That 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.

14. Railway Express Agency, Inc. is a common carrier engaged in transportation on regular routes from port to port and should file tariffs of its rates, fares, charges, rules, regulations, and practices as required by section 2 of the Intercoastal Shipping Act, 1933, as amended.

Respondents should promptly refund to interested shippers all freight charges to the extent they have been herein found to be unlawful in accordance with the Commission's order entered in No. 571, dated May 28, 1940.

An appropriate order will be entered.

Appendix 1

ALASKA STEAMSHIP COMPANY

Comparison of revenues, expenses, and net water-line operating income—Alaskan service

	1940	1939	Increases over 1939
Water-line operations—revenues:			
Freight	$4,500,027	$3,617,826	$882,201
Passenger	2,771,432	2,392,520	378,912
Mail	273,830	241,897	31,933
Express	41,556	34,725	6,831
Excess baggage	4,839	3,925	914
Bar and radio	61,093	57,420	3,673
Rents of buildings and other property	1,300	2,520	[1] 1,220
Wharfage and miscellaneous	191,888	158,639	33,249
Total	7,845,965	6,509,472	1,336,493
Water-line operations—expenses:			
Maintenance of equipment	1,120,531	1,154,658	[1] 34,127
Maintenance of terminals	17,384	10,434	6,950
Traffic expenses	222,608	235,182	[1] 12,574
Transportation expenses:			
Operation of vessels	3,152,585	2,718,969	433,616
Operation of terminals	1,311,128	979,272	331,856
Incidental transportation expenses	295,163	107,187	187,976
General expenses	715,168	630,729	84,439
Charter hire	129,768	161,715	[1] 31,947
	6,964,335	5,998,146	966,189
Less charter expenses	152,224	108,504	43,720
Total	6,812,111	5,889,642	922,469
Net water-line operating revenue	1,033,854	619,830	414,024
Water-line tax accruals	429,500	192,500	237,000
Water-line operating income	604,354	427,330	177,024
Miscellaneous rents	56,201	44,434	11,767
Net water-line operating income—Alaskan service	[2] 548,153	382,896	165,257

[1] Decrease.

[2] The net income from all operations for 1940, as shown by Exhibit A of Ford's affidavit dated March 29, 1941, is $716,615. A reconciliation of the reported net income and the amount assigned to Alaska service is as follows:

Deductions:		
Dividend income	$15,225	
Income from securities	400	
Miscellaneous, including $86,422 profit from ship sales	86,836	
Net revenue charter hire	96,668	
		199,129
Additions:		
Interest on unfunded debt	3,260	
Miscellaneous fixed charges	27,407	
		30,667
Net deduction		168,462
Net income Alaska operations		548,153
Total as reported		716,615

Appendix 2

NORTHLAND TRANSPORTATION COMPANY

Comparison of revenues, expenses, and net water-line operating income—Alaskan service

	1940	1939	Change from 1939
Number of voyage terminations	63	66	[1] 3
Nautical miles traveled	147,593	147,621	[1] 28
Number of voyage days	953	1,073	[1] 120
Number of passengers carried	12,428	12,516	[1] 88
Revenue tons cargo carried	89,423	84,915	4,508
Operating revenue:			
Freight	$756,989.75	$745,014.63	$11,975.12
Passenger	454,836.07	392,876.97	61,959.10
Mail	6,236.25	4,607.61	1,628.64
Other voyage revenue	29,188.77	20,882.95	8,305.82
Total operating revenue	1,247,250.84	1,163,382.16	83,868.68
Operating expense:			
Vessel expense	705,189.86	643,949.32	61,240.54
Voyage expense	221,002.03	182,525.97	38,476.06
Total vessel operating expense	926,191.89	826,475.29	99,716.60
Direct profit—vessel operations	321,058.95	336,906.87	[1] 15,847.92
Inactive vessel expense	36,199.57	49,111.46	[1] 12,911.89
Depreciation	77,504.08	81,253.24	[1] 3,749.16
Administrative and general expense and taxes except Federal income tax	138,289.42	109,357.82	28,931.60
Other deductions or other income—net	73.15	(364.15)	437.30
Total other expenses	252,066.22	239,358.37	12,707.85
Gross profit—Alaskan operations	68,992.73	97,548.50	[1] 28,555.77
Federal income tax—estimated	14,770.55	14,660.57	109.98
Net water-line operating income—Alaskan operations	[2] 54,222.18	82,887.93	[1] 28,665.75

[1] Decrease.
[2] The reported net profit from all operations in 1940 as shown by Exhibit A of affidavit was $204,814.31 made up as follows:

Net profit from intercoastal operations	$62,767.94
Net profit from charters	95,272.96
Net profit from Alaskan operations	46,773.41
Total	204,814.31

The reported net income from Alaskan operations, $46,773.41 has been increased to $54,222.18 by the elimination of net interest expense of $7,448.77 which is a capital expense and not properly includible in the determination of net water-line operating income.

Appendix 3

SANTA ANA STEAMSHIP COMPANY

Adjusted net operating income

	Calendar year	
	1939	1940
Operating Revenue—terminated voyages:		
Freight	$211,281.45	$257,596.17
Passenger	4,855.00	4,780.00
Mail	1,547.76	1,450.86
Other	490.02	2,340.18
Total	218,174.23	266,167.21
Operating Expense—terminated voyages	78,289.52	108,732.08
Net	139,884.71	157,435.13
Inactive vessel expense	3,892.94	11,635.31
Gross profit—vessel operations	135,991.77	145,799.82
Terminal operations:		
Income	3,213.54	4,647.57
Expense	3,184.63	4,939.37
Other shipping operations:		
Income (cargo handling)	12,089.20	20,106.72
Expense (cargo handling)	17,483.07	26,815.34
Gross profit from shipping operations before overhead and depreciation	130,626.81	138,799.40
Overhead, including administrative and general expense, advertising and taxes other than Federal income taxes	20,167.91	23,959.97
Gross profit before depreciation	110,458.90	114,839.43
Depreciation:		
S. S. *North Pacific*	5,875.32	5,875.32
Other	302.19	302.19
Total	6,177.51	6,177.51
Gross profit from shipping operations before Federal income tax	104,281.39	108,661.92
Provision for Federal income tax	17,577.72	24,602.94
Adjusted net operating income [1]	86,703.67	84,058.98

[1] Depreciation on S. S. *W. M. Tupper* and interest and dividends have been excluded in this determination.

Appendix 4

ALASKA TRANSPORTATION COMPANY

Comparison of revenues, expenses, and net water-line operating deficit—Alaska service

	Calendar year 1940	Year ended June 30, 1940
Vessel Operations:		
Revenue	$394,295	$356,437
Expenses	456,424	423,861
Loss—vessel operation	62,129	67,424
Administrative and other expenses	34,084	40,283
Net water-line operating deficit	96,213	107,707

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Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 28th day of August A. D. 1941

No. 571

Alaskan Rates

No. 572

Alaska Rate Investigation No. 2

These cases having been instituted by the Commission on its own motion and without formal pleading, or on orders of suspension of tariff schedules, 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 order dated May 14, 1940, entered in No. 571 suspending the operation of schedules enumerated and described in said order, be, and it is hereby, vacated and set aside;

It is further ordered, That respondents herein, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before September 17, 1941, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of clothing and dry goods; dishes and glassware; furniture, uncrated; glass, rolled or plate; poultry, live; acids and chemicals; batteries, storage; compounds, liquid; films, moving picture; accounting machines; athletic goods; burial cases; drugs, cosmetics; and electrical appliances, from Seattle, Tacoma, and Port Wells, Wash., to ports in the Territory of Alaska, rates which exceed the rate contemporaneously maintained by said respondents for the transportation from and to the same points of articles under the item freight, n. o. s.;

It is further ordered, That the orders dated May 28, 1940, and June 27, 1940, entered in No. 571, be, and they are hereby, vacated and set aside except as they apply to shipments of the articles named in the next preceding paragraph, the rates on which have been found to be unlawful herein;

It is further ordered, That respondent Alaska Steamship Company be, and it is hereby, notified and required, on or before September 17, 1941, to cancel its Tariffs Nos. 551 and 592, upon notice to this Commission and to the general public, by not less than one day's filing and posting, in the manner prescribed by section 2 of the Intercoastal Shipping Act, 1933, as amended;

It is further ordered, That respondents Alaska Steamship Company, Alaska Transportation Company, Northland Transportation Company, Davis Transportation Company, Haugen Transportation Company, Puget Sound Freight Lines, West Coast Transportation Company and Heinie Berger, be, and they are hereby, notified and required to file with the Commission and keep open to public inspection schedules showing all the rates, fares, and charges for or in connection with transportation of passengers or property from port to port between Alaska and the United States and between ports or places in Alaska on or before September 17, 1941;

It is further ordered, That Tariff S. B. No. 1 of respondent International Ocean Express System, Inc., be, and it is hereby, stricken from the files of the Commission, effective on the date hereof;

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 555

PRACTICES, ETC. OF SAN FRANCISCO BAY AREA TERMINALS

Submitted July 9, 1941. Decided September 11, 1941

Respondents, including State and municipal terminals, are "other persons" as defined in Shipping Act, 1916, as amended.

Certain respondents are operating under agreements or working arrangements within the purview of section 15 of said act, without approval of the Commission.

Practice of Encinal Terminals of collecting service charges from steamship lines on freight discharged at other terminals unauthorized by its tariff and unreasonable in violation of section 17 of said act.

Encinal Terminals knowingly received information in violation of section 20 of said act.

Practice of State and municipal terminals of making tariff changes without adequate notice unreasonable. Changes should not be made except upon 30 days' notice, unless good cause exists for shorter period.

Respondents' rules, regulations and practices regarding free time unduly prejudicial and preferential and unreasonable in violation of sections 16 and 17 respectively, of said act. Reasonable regulation prescribed.

Respondents' rates, rules, regulations, and practices relating to wharf demurrage and wharf storage unduly prejudicial and preferential and unreasonable in violation of sections 16 and 17 respectively, of said act. Reasonable regulation prescribed.

Respondents should file their tariffs with the Commission in order that regulations prescribed may be enforced.

Appropriate order entered.

David E. Scoll, *Samuel D. Slade*, *T. G. Differding* and *Carl F. Arnold* for the Commission.

Lucas E. Kilkenny, *Earl Warren* and *E. A. McMillan* for State of California and Board of State Harbor Commissioners for San Francisco Harbor.

W. Reginald Jones, *Charles A. Beardsley* and *M. D. McCarl* for Board of Port Commissioners of the City of Oakland.

J. R. Townsend, *B. C. Allin* and *C. O. Burgin* for Stockton Port District.

W. G. Stone for Port of Sacramento and Sacramento Chamber of Commerce.

Leslie M. Rudy for Port of Redwood City.

W. R. Gerini for State Terminal Company, Ltd.

W. F. Williamson and *R. P. Norton* for Eldorado Terminal Company and Eldorado Oil Works.

Eugene D. Bennett, *Hugh T. Fullerton*, *Joseph J. Geary*, and *E. M. Nuckols, Jr.*, for Encinal Terminals.

Chalmers G. Graham for Howard Terminal.

F. A. Somers for Grangers Terminal Company.

P. J. Shaw for South San Francisco Terminal Company.

Eugene A. Read and *Fred D. Parr* for Parr-Richmond Terminal Corporation.

C. S. Connolly for Albers Brothers Milling Company and Interstate Terminals, Ltd.

W. S. Bell for Islais Creek Grain Terminal Corporation.

J. H. Anderson and *F. W. Mielke* for The River Lines.

H. V. Nootbaar for West Coast Wharf and Storage Company.

Joseph J. Burns for Standard Coal Company.

C. A. Hodgman for Port of San Diego.

Edwin G. Wilcox for Oakland Chamber of Commerce.

Elmer Westlake for Western Sugar Company, Spreckels Sugar Refinery and California and Hawaiian Sugar Refining Corporation.

Reginald F. Walker for Western Sugar Refinery and Spreckels Sugar Company.

H. A. Lincoln for Fibreboard Products, Inc.

Walter A. Rohde for San Francisco Chamber of Commerce.

Warren D. Lamport, *John L. Kelly*, *Elor J. Amar*, and *Charles A. Bland* for Board of Harbor Commisioners of Long Beach.

Clyde M. Leach for Board of Harbor Commissioners of the City of Los Angeles.

L. M. Fites for the Glidden Company.

J. K. Hiltner for United States Pipe and Foundry Company and Cast Iron Pressure Pipe Institute.

N. S. Laidlaw for Swayne and Hoyt, Ltd.

J. R. West for Northwest Marine Terminal Association.

L. A. Bailey and *Reginald L. Vaughan* for Warehousemen's Association of the Port of San Francisco.

E. M. Cole for American Cast Iron Pipe Company and Cast Iron Pressure Pipe Institute.

Report of the Commission

By the Commission:

Exceptions were filed to the report proposed by the examiner and oral argument was had. Substantially all of the examiner's recommendations are adopted herein.

This investigation was instituted upon our own motion to determine whether certain acts and practices of respondents,[1] which operate terminals in the San Francisco Bay area, are in violation of the Shipping Act, 1916, as amended. Various shippers intervened, but offered no evidence. After hearing, briefs and replies thereto were filed.

The order of investigation alleges that some or all of respondents: (1) are carrying out agreements in violation of section 15; (2) are diverting cargo from its natural course and creating undue preference or subjecting persons or traffic to undue prejudice by means of controlled tonnage and purchasing power in violation of section 16; (3) are receiving or soliciting confidential information from carriers which might be used to the detriment of shippers in violation of section 20; and (4) have failed to establish reasonable regulations and practices in connection with the receiving, storing, or delivery of property in violation of section 17.

The Board of State Harbor Commissioners for San Francisco Harbor, hereinafter called San Francisco, controls piers and wharves on the San Francisco waterfront which represent an investment of over $40,000,000. Approximately 40 piers are assigned to, and are operated by steamship lines. San Francisco retains all revenue from dockage, tolls, rentals, storage and wharf demurrage. It is not permitted by State law to engage in warehousing or to operate under tariffs which create either a profit or loss. No taxes are paid. San Francisco's pier No. 45 and part of No. 56 are assigned to Golden Gate Terminals and State Terminal Company, respectively. They retain only revenues from handling, loading and accessorial services which they perform. The Board of Port Commissioners of the City of Oakland, hereinafter called Oakland, operates terminal facilities at Oakland. Its investment in property, derived largely from local and partly from Federal funds, is approximately $20,000,000. No taxes are paid and the City is authorized to meet operating deficits by taxation. The Stockton Port District operates terminal properties at Stockton, together with warehouse, belt railroad and other facilities, which represent a total investment of local, State, and Federal funds in excess of $9,000,000. No taxes are paid and interest charges and bond redemptions are met by tax levies upon the Port District.

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[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.

Parr-Richmond Terminal Corporation operates terminal facilities at Richmond. A major portion of the property is owned by the City and leased to the corporation. All of the facilities are exempt from city taxation. Howard Terminal and Encinal Terminals operate terminal facilities on the Oakland inner harbor. Encinal's facilities are leased from its parent company, Alaska Packers Association, which is controlled by California Packing Corporation, hereinafter called "Calpak." Operations of the other respondents are only incidentally involved in this proceeding.

The privately owned terminals, namely, Parr-Richmond, Howard and Encinal and Golden Gate and State Terminals, file their tariffs with, and are regulated by the Railroad Commission of the State of California. The publicly owned terminals, which operate the major portion of the terminal facilities in the San Francisco Bay area, file no tariffs and are unregulated, except by their own governing bodies.

In 1935, the California Commission undertook a comprehensive study of the operations and revenues of private terminals in the Bay area. These studies are embodied in the Preliminary and Final Reports of Dr. Ford K. Edwards and Mr. T. G. Differding, which are of record in this proceeding. An analysis was made of all of the rates, rules, and practices of the terminals from three aspects, (1) the inadequacy of existing revenues, (2) uneconomical diversion of tonnage from one port to another, and (3) discrimination between various users of the terminal services. Certain of their recommendations, approved by the California Commission in *Decision No. 29171; Case No. 4090, Railroad Commission of the State of California*, (1936), and supported by testimony of Mr. Differding in this proceeding have been recommended for adoption by counsel for the Maritime Commission. The order of the California Commission, prescribing an adjustment of the rates, rules, and practices of the private terminals, was conditioned upon similar adjustments being made by the State and municipal terminals. All of the respondents herein have adopted substantially the recommendations of the California Commission covering toll, dockage, and service charges,[2] but not those relating to free time, demurrage and storage. The primary issues in this proceeding concern the latter services.

San Francisco and Oakland, though extending their assistance and cooperation in this investigation, oppose the jurisdiction of the Commission on the ground that they are not "other persons" within the

[2] Toll charges are assessed against cargo for the privilege of transportation over or through terminal, or being loaded or discharged at terminal. Dockage charge is assessed against vessel for docking at wharf. Service charge is assessed against vessel for arranging for berth, space for cargo, checking cargo to or from vessel, receiving or delivering cargo, preparing manifests and "over," "short," "damage" reports, etc.

definition[8] contained in the Shipping Act, 1916, as amended. The law on the question has been ably briefed by those for and against our assumption of jurisdiction in the premises. However, no sufficient reason is shown for a departure from *Wharfage Charges and Practices at Boston, Mass.*, 2 U. S. M. C. 245, wherein, after considering contentions similar to those advanced by San Francisco and Oakland, we ruled that the Commonwealth of Massachusetts, insofar as it engages in the activities of "other persons," as defined in the Shipping Act, 1916, as amended, is subject to that act.

Issues.—Aside from the jurisdictional question, the issues concern the lawfulness of (1) certain agreements under section 15, (2) Encinal's practice of collecting charges from steamship lines on freight discharged at another terminal, (3) Encinal's practice of soliciting freight through reciprocal purchases, (4) Encinal's practice of receiving notices containing names of consignees desiring delivery of cargo elsewhere without their consent, (5) the practice of San Francisco, Oakland, and Stockton, of failing to provide adequate notice of tariff changes, (6) the free time rules of respondents, except San Francisco, (7) the wharf demurrage and wharf storage charges assessed by Oakland, Howard, Stockton, Encinal, Parr-Richmond, Golden Gate and State terminals, and (8) the leasing and rental arrangements of Stockton and Oakland.

Agreements.—Oakland and McCormick Steamship Company operate under an agreement dated March 1, 1932, covering a preferential assignment to the latter of one-half of the shed area at the former's Ninth Avenue 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, dated November 5, 1914, leasing certain facilities to the latter with the understanding that Oakland shall receive all revenue from tolls, wharfage, and dockage. Rates to be observed are those fixed by Oakland. Stockton, under agreement dated July 23, 1936, extends preferential use of certain floor space to its lessee, Port of Stockton Grain Terminal, for the handling of grain and similar products. The latter company, though not a respondent herein, is a public wharfinger and files its rates with the California Commission. Stockton retains control of the space as well as the rates, rules, and regulations to be observed. None of these agreements has been filed with the Commission.

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[8] The term "other person subject to this act" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water. (Section 1.)

Clearly, these are agreements as defined in section 15, providing for "special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; * * * or in any manner providing for an exclusive, preferential, or cooperative working arrangement." As such, they are subject to our approval and it is unlawful to carry them out before such approval.

Encinal's practices.—Encinal is charged with unlawfully exacting service charges from McCormick and Williams, Dimond & Company, agents for Quaker Line for unperformed service. 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.

McCormick tries to confine its East Bay operations to its terminal at Oakland, but admits that its terminal policies are influenced by a desire to obtain cargo controlled by Calpak. In 1935, McCormick discontinued coastwise calls at Encinal and thereby lost both coastwise and southbound Calpak traffic. Later, an agreement was made between Encinal, Calpak, and McCormick whereby McCormick was to resume the calls. In return it was to get southbound cargo controlled by Calpak and agreed, as to freight obtained through its own solicitation, not to oppose discharge thereof at Encinal. The cargo was delivered direct to McCormick's terminal whenever possible, with the permission of the consignees. For this "privilege" McCormick compensated Encinal through the above-described practice.

None of the other lines except Quaker indulged in this practice. Calpak is one of the Quaker's best customers. McCormick has no similar arrangement with any other terminal. Encinal states that under McCormick's tariff the latter was obligated to discharge at Encinal, and that by delivering to consignee at Oakland by Encinal's consent, McCormick saved the cost of draying or shifting to Encinal, and obtained carloading revenues on some of the shipments.

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.

Encinal is charged, through improper solicitation, with diverting to its piers cargo originally consigned to competing piers. This is accomplished through a system of reciprocity between the consignee, Encinal, and a third party who is a buyer from the consignee and and a seller to Encinal. For instance, a cargo of sulphur consigned to General Chemical Company for Howard delivery was diverted while in transit to Encinal (Standard Coal Company) through the intercession, at Encinal's request, of Tidewater Associated Oil Company. Associated sells large quantities of oil to Encinal and Calpak and is an important customer of General Chemical's. The consignee advised its New York principal that the change was made at Associated's request "for reciprocal reasons."

As stated in *Reciprocity in Purchasing and Routing*, 188 I. C. C. 417, 433–4, "the practice * * * succeeds only in making the handling of existing traffic more expensive." However, the evidence does not show that Encinal used its purchasing power or that of its affiliates in a coercive manner. We conclude therefore that the allegation has not been sustained.

Encinal is alleged to have violated section 20[4] of the Shipping Act, 1916, by receiving information, without the consignee's consent, as to the billing of shipments consigned to another terminal. From July 1936, to June 1939, approximately 28 lists of consignees desiring Howard delivery were furnished to Encinal by Swayne & Hoyt, Ltd., Pacific Coast agent of Calmar Steamship Corporation. Calmar rarely calls at any East Bay terminal except Encinal, its regular East Bay terminal. Ordinarily, cargo destined to other East Bay terminals is discharged at San Francisco and delivered by barge.

In defense of this practice, witness for Swayne & Hoyt testified that Encinal was Calmar's agent and that the lists were sent in order to prevent misdelivery of freight not consigned for Encinal discharge. Another defense, urged by Encinal, is that the information was available to anyone at the custom house in San Francisco; and that in any event, such information was not used to the detriment or prejudice of any shipper or consignee.

The justification given 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, as the statute reads, "may be used" to the detriment of a shipper or which "may improperly disclose his business transactions to a competitor."

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[4] That it shall be unlawful for any common carrier by water or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee of such carrier or person, or for any other person authorized by such carrier or person to receive information, knowingly to disclose to or permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier or other person subject to this act for transportation in interstate or foreign commerce, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor, or which may be used to the detriment or prejudice of any carrier; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used. * * *

Commenting on the similar provision of the Interstate Commerce Act, section 15 (11), the Interstate Commerce Commission stated in *Matter of Freight Bills*, 38 I. C. C. 91:

> * * * the purpose of the provision in question was to put it (the carrier) under an affirmative restraint against disclosure, apparently to the extent necessary to protect the interest of "such shipper or consignee."

Also, in *Albree* v. *Boston and Maine Railroad*, 22 I. C. C. 303, 321, that Commission said:

> the above language clearly indicates an intent upon the part of Congress to secure to every shipper immunity from a disclosure of his business from the hands of a common carrier * * *.

Conceding the purpose to be as testified, nevertheless, receiving the information was a violation of section 20.

Notice of tariff changes.—Reasonable notice of rate changes is not always accorded by San Francisco, Oakland, and Stockton. For instance, Oakland has made many rate changes without prior notice. Stockton changed its warehouse space assignment rate on August 28, 1939, effective August 11, 1939; and issued an entirely new tariff on December 15, 1939, on 15 days' notice.

We stated in *Transportation of Lumber Through Panama Canal*, 2 U. S. M. C. 143 (1939) at page 149:

> 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, 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 question is whether the shipping acts which we administer contemplate the correction by us of these abuses.
>
> * * * 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. The power conferred upon us to prescribe reasonable regulations and practices in connection with the handling and delivery 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.

The privately owned terminals are required under State law to file on 30 days' notice. The Northwest Marine Terminal Association, comprising the marine terminals at ports on Puget Sound, the Columbia River and at Portland, Oreg., give 30 days' notice of tariff changes.

The conclusion is warranted that failure of the respondents named to give adequate notice of tariff changes is an unreasonable practice.

Free time.—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.

Generally, 10 days are permitted except that San Francisco allows 5 days in coastwise and intercoastal (in-bound) trade and 7 days in the foreign and offshore trades (in-bound). But under the stress of competition, most of the larger terminals, in cases of emergencies,[5] extend the free time either to cover the additional number of days of delay to the vessel, or, in the case of Oakland, to such number of days as "is warranted and equitable in each individual case," according to the judgment of the Port Manager. This practice appears to be based on the theory that if the shipper is not at fault the terminal operator should waive the demurrage. 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. In *Storage of Import Property*, 1 U. S. M. C. 676, 682 (1937), we said:

> The furnishing of valuable free storage facilities to certain shippers and consignees beyond a reasonable period results in substantial inequality of service as between different shippers of import traffic, and is beyond the recognized functions of a common carrier.

And, in *Storage Charges under Agreements 6205 and 6215*, 2 U. S. M. C. 48, 52 (1939), we stated:

> 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.

Members of Northwest Marine Terminal Association grant no extensions of free time. They, as well as terminals at Los Angeles, provide 10 days' free time in intercoastal (out-bound) and foreign and offshore trades. In other trades these terminals, like San Francisco, grant 5 days except that at Seattle and Tacoma the time is 10 days on coastwise out-bound. The California Commission, in *Case No. 4090, supra*, after a study of the various factors involved in the assembling and distribution of cargo at San Francisco Bay ports, location of points of origin, vessels' organizations, customs clearance, efficient loading and other matters, recommended free time periods, exclusive of Sundays and holidays, as follows:

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[5] Howard, Encinal, Parr-Richmond, and Stockton publish the following provision: "When vessels are delayed beyond the free time period because of weather, accidents, break-downs or other emergencies, such free time period will be extended to cover the additional number of days of delay to the vessel."

San Francisco grants no extensions of free time. But it permits storage at reduced rates, called "bulk-head storage rates," on cargo which cannot be removed from the pier through circumstances over which the shipper has no control.

TABLE 1

	In-bound	Out-bound
	Days	*Days*
Coastwise and Inland Waterway	5	5
Intercoastal	5	7
Foreign	7	7
Transshipment	10	10

Under the recommendation, free time commences (*a*) at 8:00 A. M. of the first day following the day freight is unloaded from railroad cars or vehicles, or (*b*) at 8:00 A. M. of the first morning after complete discharge of the vessel, and terminates upon date goods are actually delivered to railway cars, vehicles, barges, or vessels. There were two exceptions to the rule for the allowance of free time: (1) Allowing Parr-Richmond 21 days, including Sundays and holidays, for the assembling of petroleum or petroleum products, in packages, destined for trans-Pacific ports, and (2) providing that in case vessel is delayed because of certain emergencies, free time will be extended 10 days, the demurrage rates prescribed, except the handling charge, to be charged thereafter against the vessel.

Counsel for the Commission recommended the prescription of these periods and exceptions thereto as reasonable regulations under section 17 of the Shipping Act, 1916. Nearly all of the witnesses who testified on this subject favored stricter free time regulations than those now in effect. With few exceptions, respondents, in their reply briefs, showed little opposition to the periods recommended, most of their comments being directed to the exceptions proposed. Witness for Parr-Richmond testified that a free time period of 21 days is necessary at that terminal for petroleum products destined to trans-Pacific ports, in order to avoid considerable overtime expense for which no compensation is received. There is a conflict of opinion as to when free time should commence, and as to the propriety of the exception extending free time when the vessel is delayed. In *Storage of Import Property*, *supra*, we prescribed the free time period and carriers were allowed to establish reasonable rules and regulations in connection therewith. On the whole, this disposition of the question has proven satisfactory.

Upon consideration of the evidence outlined above, the free time period set forth in Table 1 is found to be reasonable and proper. Respondents' rules, regulations, and practices with respect to free time, in so far as they permit free time allowances greater than outlined in said table, exclusive of Sundays and holidays, are unduly prejudicial and preferential in violation of section 16 of the Shipping Act, 1916, as amended, and unreasonable in violation of section 17 of that act. This finding is without prejudice to the establishment of a free time period not in excess of 21 days, including Sundays and holidays, on petroleum or petroleum products when destined to trans-Pacific ports; and without prejudice to the establishment of reasonable rules and regulations in connection with free time allowances.

Wharf demurrage and storage.—Wharf demurrage is the charge accruing on cargo left in possession of the terminal beyond the free time period. The question here is whether respondents are unduly discriminating between such cargo and that removed during the free time period. The principal evidence on this point is an analysis of the cost of providing wharf storage to determine whether that class of service is self-sustaining or is furnished at rates so low as to cast a burden upon other services.

There is a direct parallel between the problems faced by respondents and those of the wharfinger industry generally, as reported to Congress by the Federal Coordinator of Transportation. He found that:

> The diversity of interests representing parties engaged in furnishing wharfinger service is so great and the practices which have developed in the industry are so lacking in uniformity as to promote widespread discrimination between those using or desiring to use such services. The industry is suffering from over-expansion of facilities and destructive competition, causing chronically low earnings. (74 Cong. 1st sess., House Document No. 89, pp. 56–57).

The wide divergence of interests is accounted for mainly by the type of ownership and the size of the various terminals.

Generally speaking, profit-making is not the primary objective of the operators of the publicly owned terminals. Success of the terminal operations of Oakland and Stockton is measured by the industrial development of the respective cities. Carrying charges, which under the present rates cannot be paid out of terminal revenues, are met by taxation. As stated, San Francisco is precluded by law from fixing its rates so as to yield a profit. Its primary concern is to clear the piers for intransit cargo and its penalty wharf demurrage rates are designed to, and do, accomplish that purpose. However, in order to be competitive, it provides a lower "bulkhead" storage rate for cargo not occupying essential transit space.

Differences in the amount of space available for wharf storage at their terminals account largely for the conflict of interests among the East Bay operators, including Stockton. Encinal, Howard, and Stockton, due to their limited facilities, are compelled to shift or high pile much of their cargo to make room for transit operations. Encinal high piles about 86 percent, Howard 60 percent, and Stockton

68 percent of their wharf demurrage cargo. Generally speaking, these respondents favor a penalty rate high enough either to force the cargo off the pier during free time or induce the cargo owner to declare it for storage during that period. They would set the storage rate high enough to cover the cost of extra handling and high piling. On the other hand, Oakland and Parr-Richmond, with considerable unused space and little high piling required, oppose rates which reflect that expense. The following table presents a comparison of the size of transit shed areas and average number of tons handled per square foot of shed area by principal respondents for either the fiscal years 1939 or 1940.

TABLE 2

	Total square feet of shed area	Tons of general cargo handled	Average number of tons handled per square foot of shed area
Golden Gate and State	498, 920	223, 137	0. 45
Oakland	714, 850	595, 029	. 83
San Francisco (37 piers)	4, 147, 284	3, 789, 977	. 91
Stockton	354, 495	395, 158	1. 11
Parr-Richmond	239, 905	345, 716	[1] 1. 44
Howard	226, 470	386, 439	1. 70
Encinal	313, 710	560, 760	1. 79

[1] The average at Piers 1 and 3, where most storage service is performed, is 0.60.

In addition, Stockton and Oakland have warehouse facilities adjacent to their terminals with floor space totaling 184,000 square feet and 125,180 square feet, respectively, which are available for space rental. Who the lessees will be and the rates they pay at Stockton, are matters within the discretion of the respective operators. Naturally, this space comes into competition with the limited storage facilities of other terminals. How serious this competition can be is attested by the fact that Oakland's space rate of 3 cents per square foot produces a monthly rate on canned goods of approximately 22 cents as against 37½ cents at the present daily rate. Stockton refused to disclose its present rate which superseded a rate of 1½ cents per square foot per month, which would produce a rate of only 11 cents on canned goods.

The aggressive and destructive competition arising out of these conditions has resulted in a striking lack of uniformity in charges for the same or similar services and the general breakdown of wharf demurrage rates. The following table, showing the different charges

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per ton on one important commodity group, including canned goods, is illustrative:

TABLE 3

	Number of days on hand after free time				
	3	15	30	60	90
Oakland, Stockton, Encinal, Howard, and Parr-Richmond [1]	$0.0375	$0.1875	$0.375	$0.75	$1.125
State Terminal (includes 50-cent handling charge) [2]	.65	.65	.90	1.20	1.50
Golden Gate [3]	.15	.15	.40	.70	1.00
San Francisco:					
Penalty Wharf demurrage:					
Out-bound offshore cargo [3]	.075	1.075	2.575	5.575	8.575
In-bound cargo [4]	.25	1.25	2.75	5.75	8.75
Bulkhead wharf demurrage [5]	.125	.375	.625	1.125	1.625

[1] 1¼ cents per ton per day.
[2] First 20 days 15 cents per ton; next 30 days or fraction 25 cents per ton; succeeding periods of 30 days 30 cents per ton.
[3] 2½ cents per ton per day first to third day; 5 cents per ton per day fourth to seventh day; 10 cents per ton per day for each succeeding day.
[4] 25 cents per ton for first 5 days or part thereof; 50 cents per ton for each succeeding period of 5 days or part thereof.
[5] 12½ cents per ton (W/M) for each 7 days or part thereof.

The rates have been so reduced and the rules and practices so liberalized that it is difficult to distinguish between demurrage services and warehouse storage services. Apparently the only difference is in the responsibility of the terminal, that is, to deliver to the truck from storage, while under wharf demurrage, the truck comes to the pile. At the low rate of 1¼ cents per ton per day the shipper may leave the cargo on demurrage for extended periods before it equals storage charges. Goods paying demurrage may be high piled one day, at a cost of 20 to 25 cents per ton to the terminal, and delivered the next day with no compensation other than the 1¼ cents per ton per day.

Chronically low earnings are the inevitable result of the conditions outlined above. As will be demonstrated, the present rates as a whole produce revenues which are far below the cost of the service as computed according to the Edwards-Differding formula. The general theory of this formula is that the responsibility of providing adequate revenues for essential terminal facilities rests upon the cargo and the carrier. The charge for each service is made to cover the direct cost incurred in rendering the service and some portion of the joint or overhead costs which are properly attributable to it.

Edwards and Differding analyzed costs applicable to the vessel, such as dockage and service charges, and costs in connection with cargo [6] such as tolls and wharf demurrage and storage. They de-

[6] An analysis was made of the cost of floor space, checking cargo to or from the shippers, miscellaneous handling or high piling of cargo, and overhead costs for superintendence, accounting, billing, claims, insurance, watchmen, etc.

termined the portions and costs of the physical plant to be compensated by the vessel and the cargo. In addition, they prepared a study of the pile characteristics of different commodities in connection with floor areas required for their storage. Taking the lowest combination of handling and floor space costs, that of Encinal and Howard, respectively, they constructed a scale of wharf storage and demurrage rates, hereinafter called the *4090 scale*, which was recommended by the California Commission in *Case No. 4090, supra*. See Appendix, columns 4 and 5.

The *4090 scale* is approximately 33 percent higher than the level of rates in effect in 1935, which is substantially equivalent to the present basis. In view of the testimony that costs have increased materially since 1935, and labor efficiency has decreased, there can be no question that the present level as a whole is far from compensatory. Any doubt on this score is dispelled by a study prepared for this proceeding showing a comparison of revenues, expenses, and unit costs of demurrage based on the formula. The result of the cost studies at Encinal, Howard, and Stockton, is shown in the following table:

TABLE 4

	Encinal year ended Oct. 31, 1939	Howard year ended Oct. 31, 1939	Stockton year ended June 30, 1940
Revenue	$24,289.35	$31,359.46	$15,935.80
Expense	59,572.98	45,033.49	34,441.72
Loss on basis of existing rates	35,283.63	13,674.03	18,505.92
Average monthly revenues per ton, all commodities	.312	.426	.645
Unit costs:			
Fixed costs per ton, excluding high piling	.336	.489	.972
High piling	.680	.372	.184
Variable costs:			
Overhead per ton per 30 days	.115	.153	.204
Floor space cost per square foot per 30 days	.057	.031	.077

Canned goods is the heaviest moving and most competitive commodity handled by respondents in outbound traffic. The cost per ton per month of handling this commodity, based on the unit costs developed above, excluding high piling, is approximately 88 cents at Encinal and Howard and $1.75 at Stockton.[7] The revenue at current rates is 37.5 cents. Note that Encinal, with the lowest unit cost per ton, failed by 50.5 cents per ton per month, or 134 percent, to earn the actual cost of its wharf storage service. Stockton, with the highest cost, failed by $1.375 per ton per month, or 367 percent. The comparison in the appendix of minimum costs on 14 commodities,

[7] Includes fixed cost per ton (*excluding high piling*), overhead and floor space computed on basis of 0.057, 0.031, and 0.077 cents, respectively, by 7.4 square feet which is the space occupied by a ton of canned goods normally piled.

column 10, with present revenue thereon, column 3, indicates that costs greatly exceed earnings.

No analysis was made of Parr-Richmond's current operations because its general cargo operations are not considered typical in the East Bay area. But based on cost of floor space in 1935 of 7.83 cents at its terminal No. 3, where most storage service is performed, and the lowest unit cost for variable and nonvariable overheads found in 1935, excluding moving, high piling, and checking costs, its present rates are not compensatory. For instance, on canned goods the revenue is 37.5 cents, cost 74.21; slate granules, revenue 30, cost 64.03; and steel sheets, revenue 30, cost 36.63.

Unit costs at other terminals could not be developed because of the accounting methods they use. However, Oakland and San Francisco submitted general data which, when considered with the cost developed by Howard, Encinal, and Stockton, indicate that their rates are far from compensatory. The average monthly demurrage revenue per ton received on all commodities at Golden Gate and State terminals is 30.9 cents, and by Oakland 24.5 cents. It will be noted that Oakland's revenue is considerably below the fixed cost developed for normal piling at Encinal, the lowest cost terminal in the area, even excluding floor space cost which Oakland contends is not properly includible because the space would be idle if not used for storage.

In fact, Oakland's revenue under existing rates on canned goods does not equal its floor space cost alone, without any allowance for additional costs of handling, high piling, checking, or making partial deliveries, which services admittedly are performed as to some cargo. Unit construction costs of piers and wharves available for demurrage and storage at Oakland range from $3.84 to $4.39 per square foot as compared with $2.95 at Encinal. Therefore, it is reasonable to conclude that Oakland's space cost under the Edwards-Differding formula would not be less than at Encinal. As indicated in footnote 7, floor space cost on canned goods for 30 days at Encinal, computed according to the formula, would amount to 42 cents, which compares with Oakland's revenue for the same period of 37½ cents. The deficit of 4½ cents at Oakland would be increased to 19½ cents, if 15 cents, which is the portion of the handling charge (appendix, column 4) imposed to cover the cost of making partial deliveries, were added.

The need for an upward revision in wharf storage rates is also evidenced by the income statments of respondents for the calendar year 1939 or fiscal year 1940. The result of their operations is illustrated by the following table:

TABLE 5

	Net income	Loss
Oakland	[1] $78,950.67	[2] $95,859.43
Stockton	29,447.47	[3] 99,491.55
Encinal		20,758.30
Howard		7,473.95
San Francisco	[4] 215,356.85	

[1] If loss from airport operations be excluded.
[2] If interest on bonds paid by city (other than interest on bonds assignable to airport) be included.
[3] If revenue from county tax funds be deducted.
[4] No deduction made for depreciation.

The foregoing analysis of costs shows unmistakably that users of wharf storage service are not providing their proper share of essential terminal revenues. It must be apparent also that a disproportionate share of this burden is being shifted to users of other terminal services whose charges are based on rates considered to be reasonable in 1935. Singularly enough, Howard's deficit from all operations in 1939 would have been wiped out and a net profit shown if wharf storage charges had been based on the *4090 scale*, assuming that it would have increased revenue by 33 percent. The same would be true as to both Howard and Encinal if they had charged only the actual cost of furnishing the service in 1939 as developed by the formula.

The next question is whether granting storage at noncompensatory rates is unduly preferential and prejudicial in violation of section 16 [8] of the Shipping Act, 1916, and an unreasonable practice in violation of section 17 [9] thereof. The storage cases previously mentioned, 1 U. S. M. C. 676, and 2 U. S. M. C. 48, establish two propositions. First, the furnishing of free storage facilities beyond a reasonable period results in substantial inequality of service as between shippers. Clearly, the furnishing of such facilities at noncompensatory rates is merely a less serious form of the same offense. Second, any preferred treatment by charges or otherwise of certain classes of cargo results in discrimination against other cargo. In the latter case respondents were found to be defeating the free time regulation

[8] 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.

[9] Every such carrier and every other person subject to this act shall establish, observe, and enforce just and reasonable regulations and practices, relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

prescribed in the former case by assessing merely nominal storage charges on coffee after free time. As to such charges, we stated:

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

The charges were found to be in violation of both section 16 and 17, and respondents were ordered to desist from establishing and collecting storage charges on coffee lower than on other import commodities. This decision was upheld in *Booth Steamship Company, et al.* v. *United States*, 29 Fed. Supp. 221. The charges here involved may or may not be nominal. But the court intimated in the *Booth case* that the charges there were more than nominal, and stated:

> The Commission * * * had the authority and the power under the Shipping Act to conduct this investigation and make its findings and conclusions and its order.

The subject of noncompensatory storage charges was exhaustively treated by the Interstate Commerce Commission in *Ex Parte 104, Part VI, Warehousing and Storage of Property by Carriers at the Port of New York, N. Y.*, 198 I. C. C. 134, 216 I. C. C. 291. This case involved the operation of warehouses by railroads serving New York through which the carriers rendered storage services to shippers below cost as an inducement to use their lines. In 216 I. C. C. 291, 351, that Commission said:

> In the instant case it is established that those persons who are able to avail themselves of storage and handling at the carriers' noncompensatory rates, and whose costs from shipside to destination are thereby reduced by the amount of the difference between compensatory rates and the noncompensatory rates, receive an undue and unreasonable preference or advantage over those persons whose commercial practices will not permit of their placing their goods in storage at New York, but require direct shipment from shipside to destination. Not only is the latter class of persons unduly or unreasonably prejudiced or disadvantaged, but such prejudice and disadvantage extends to all persons who are compelled to bear the carriers' transportation rates which are dissipated by their storage practices. The provisions of section 3 conflict with the asserted rights of the respondent carriers * * * to sell their storage at a price less than the cost of that service.

This decision was upheld by the Supreme Court in *Baltimore & Ohio Railroad Company et al.* v. *United States et al.*, 305 U. S. 507. At page 524 the court said:

> Since the carrier warehouse rates, as found by the Court * * * and Commission, are not open to all shippers alike, there is violation of §§ 2 and 3 (1) prohibiting discrimination and unreasonable prejudice. The rail transportation rates have charged against them the loss occasioned by warehousing practices designed to attract a volume of rail business.

Oakland contends that there can be no discrimination since the rates are open to all shippers alike. In a sense this is true. However, the commercial practices of those shippers who supply the major portion of tonnage handled by respondents obviously do not permit of their placing their goods in storage. Furthermore, it should not be overlooked that the practice of furnishing one service below cost has the tendency to prevent any downward revisions of rates for other services however justified they may be. Clearly, such a practice is unreasonable.

The decisions cited are ample authority for condemning the existing wharf storage rates and practices as being in violation of sections 16 and 17, prohibiting undue prejudice and unreasonable practices.

This brings us to a consideration of the level of rates which respondents should observe as a reasonable practice. Counsel for the Commission recommend prescription of the *4090 scale* shown in columns 4 and 5 of the Appendix. Those rates were designed to serve a double purpose—to clear the transit spaces within a reasonable time, and, where the terminal facilities permit, to enable the operator to store goods at rates commensurate with the cost of the service as determined in 1936. A penalty demurrage charge of 5 cents per day is exacted for the first five days beyond the expiration of free time. This charge is intended to compel the removal of cargo off the dock or into storage. Cargo which goes on storage either within or at the expiration of free time is required to pay a handling charge. This handling charge compensates the terminal operator for a portion of the fixed costs which attach to cargo that is placed on time storage. Such fixed costs include handling, delivery to consignee at the end of storage, high piling where required, billing, and certain overhead expenses incidental to the receiving and delivery of cargo on storage. Storage charges are provided on basis of a fifteen-day period. The rates and charges were based upon a consideration of cost of providing the service, ability of the cargo to pay, and competitive conditions. The California Commission states that the proposed increase averages less than 15 cents per ton per month on all commodities for the periods over which they are stored.

The soundness of the Edwards-Differding studies, which are embodied in the proposed scale, is amply demonstrated by the record. However, various objections have been raised to the scale and its method of application.

Howard favors a daily, as well as a period basis. It contends that the abrupt increase of charges on the sixth day after expiration of free time would discourage short-term storage, especially on canned goods, and divert cargo to warehouses. Mr. Differding testified that a period basis, which is applicable at the San Francisco facilities, would be more equitable than a daily basis which is now in effect at East Bay terminals and Stockton. His objection to a daily basis is that it allows the cargo owner to remove his goods before they have been on storage long enough to cover all fixed charges. He expressed doubt that the collection of storage charges could be properly policed if the cargo owner is allowed to choose between a daily and a period basis.

Howard and Encinal contend that the proposed handling charges and period storage rates are too low Encinal would more than double the handling charge on certain commodities; Howard on practically all. Both favor a monthly period basis with slightly increased charges. Admittedly, the *4000 scale* is too low. But with only general testimony as to the increased cost since 1935 of record and no current data as to the other rate-making factors, we would not be justified in attempting to fix compensatory charges on individual commodities. Stockton favors the proposed basis generally but advocates the addition of a wharf-placement charge to cover the cost of transferring storage cargo from the wharf to off-wharf storage areas.

Oakland and Parr-Richmond, with a large amount of unused transit space available, criticize the inclusion of the cost of high piling and extra handling because at their terminals little additional handling of cargo is necessary. This argument overlooks the fact that the handling charge is directly related to the most efficient use of floor space. If it was cheaper to leave goods as the stevedores or the shipper dropped them, this cost was used; but where the savings in floor space cost more than compensated for the expense of high piling over the period the goods remained on storage, costs based on high piling were used as they resulted in a lower cost to the shipper. Also, the argument ignores the necessity for an adequate return on the costs of floor space because if the cargo is not handled by high piling or otherwise, it follows that additional costs are automatically incurred. Consequently, the return of revenue to the terminal operator for the transit shed floor space must be derived from an increase in the wharf demurrage rates to compensate the terminal for the excess space used when the goods are not high piled, in comparison with the economy of space which is accomplished when the goods are high piled. The result would be a substantial increase in the wharf demurrage and storage rates or, in the alternative, the wharf demurrage should be plussed by a handling charge.

There is also the general objection made by Oakland and San Francisco that the Edwards-Differding studies did not cover their operations. But this fact loses its significance when it is demonstrated that the average monthly revenue per ton received by Oakland is lower than the fixed cost per ton of the lowest cost terminal in the Bay area, even excluding costs of high piling, variable overhead and floor space; and its revenue under existing rates on canned goods is lower than its cost of floor space alone. It is not believed that any increases in storage rates would result from the establishment of the *4090 scale* at the San Francisco assigned piers.

Many other matters, dealing with individual problems in connection with wharf storage, were touched upon by various respondents. However, the present record will not support an order designed to do more than correct, to a limited extent only, the basic problem of respondents, namely, chronically low earnings.

Upon consideration of all the evidence, we are of the opinion that the *4090 scale*, including the 5-cent penalty rate, should be adopted. This conclusion does not rest upon the theory that such basis is a "cure-all," but that it (1) will bring about uniformity on a minimum basis which incidentally is not in excess of the cost of the service to any of the respondents, (2) that it will remove many of the abuses disclosed by the record, and (3) that it will provide a standard from which departures can be made on individual commodities as they appear to be justified by further proof.

In considering further relief, respondents should not overlook the possibilities of solving their problems through section 15 agreements. In *Transportation of Lumber, etc., supra* we refrained from prescribing rules and regulations for terminals, with the statement that:

> 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.

Respondents have taken the first step in this direction by forming associations and filing cooperative working agreements which have been approved by us. These agreements, fully implemented and utilized, and strictly adhered to, will go far toward avoiding further regulation.

Leasing and rental arrangements.—The remaining question is whether 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 unreasonable and unduly preferential of the lessees of such space. In its reply brief, Oakland states that its facilities so used will henceforth be used for other purposes and that it will discontinue the dual set of rates at all operative facilities.

Witness for Stockton testified that property stored in its leased facilities is there awaiting sale and that subsequently it may enter into either water, rail, or truck transportation. He stated that when cargo in water transportation is stored in the warehouses the regular tariff rates are applied. The record does not warrant a finding that the practice in question 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, as amended.

FINDINGS

We find:

1. That respondents including Board of State Harbor Commissioners for San Francisco Harbor, Board of Port Commissioners of the City of Oakland and Stockton Port District, are "other persons subject to this act," as defined in section 1 of the Shipping Act, 1916, as amended.

2. That respondents Board of Port Commissioners of the City of Oakland, Howard Terminal, and Stockton Port District are carrying out agreements within the purview of section 15 of the Shipping Act, 1916, as amended. Said agreements, namely the agreement between Board of Port Commissioners of the City of Oakland and McCormick Steamship Company, dated March 1, 1932, the agreement between said Board and Howard Terminal, dated November 5, 1914, and the agreement between Stockton Port District and Port of Stockton Grain Terminal, dated July 23, 1936, should be filed immediately with the Commission for approval. Pending compliance, the record will be held open.

3. That respondent Encinal Terminals collected service charges from McCormick Steamship Company and Quaker Line on cargo billed to, but not delivered at Encinal, notwithstanding Encinal performed no service in connection with such cargo. Said practice is not authorized by Encinal's tariff and is unreasonable in violation of section 17 of the Shipping Act, 1916, as amended.

4. That respondent Encinal Terminals has knowingly received from Swayne & Hoyt, Ltd., lists of consignees desiring delivery at another terminal, without the consent of said consignees. Said act is in violation of section 20 of the Shipping Act, 1916, as amended.

5. That respondents Board of State Harbor Commissioners for San Francisco Harbor, Board of Port Commissioners of the City of Oakland and Stockton Port District have failed in certain instances to give reasonable notice of tariff changes. Unless good cause exists for shorter notice, 30 days' prior notice of tariff changes should be

accorded by said respondents. No order in this connection is deemed necessary now, but any shipper or consignee adversely affected by lack of adequate notice of tariff changes should bring the matter to our attention.

6. That there is lack of uniformity in, and application of, free time rules, regulations, and practices of respondents; and that the manner in which they are applied affords opportunity for unequal treatment of shippers. Said rules, regulations, and practices are unduly prejudicial and preferential in violation of section 16, and unreasonable in violation of section 17 of the Shipping Act, 1916, as amended. We prescribe, and shall order enforced a regulation providing that free time allowances should be no greater than the periods set forth in Table 1 of this report, exclusive of Sundays and holidays, without prejudice to the establishment of reasonable rules and regulations in connection with free time allowances and to the establishment of a free time period not in excess of 21 days, including Sundays and holidays, on petroleum products when destined to trans-Pacific ports.

7. That respondents' rates, rules, regulations, and practices relating to wharf demurrage and wharf storage are lacking in uniformity; that, as a whole, respondents are according wharf storage services at noncompensatory rates which result in unequal treatment of users and nonusers of such services. Said rates, rules, regulations, and practices are unduly prejudicial and preferential in violation of section 16, and unreasonable in violation of section 17 of the Shipping Act, 1916, as amended. We prescribe, and shall order enforced as a reasonable regulation, (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 storage upon the expiration of the fifth day after the end of the free time period. The rates and charges herein prescribed are considered to be on a minimum basis, and the finding is without prejudice to the establishment of higher rates and charges wherever justified, and should not be construed to require the reduction of present rates which are higher than the prescribed level.

8. That in the enforcement of the regulations herein prescribed, it is necessary that respondents file their tariffs with the Commission.

An appropriate order will be entered.

Appendix

Comparative statement showing for East Bay terminals, daily wharf demurrage rates and revenue for 30 days under existing tariffs: rates proposed by California Railroad Commission in case 4090 and revenue thereunder for 30 days: and minimum cost of storage with normal piling for 30 days on those commodities for which floor space requirements are available

[Rates, revenue, and costs in cents per ton of 2,000 pounds]

Commodity	Rate and revenue under existing tariffs		Rates and revenue under Case 4090			Minimum cost per ton for 30 days			
			Rates			Floor space cost			
	Daily rate	Revenue 30 days	Handling charge	Storage per 15-day period or fraction	Revenue for 30-day period	Square feet required per ton	Cost at 3.19 cents per square foot	All other costs	Total costs
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Merchandise, n. o. s.	2	60	40	20	80				
Ammonia, sulphate of	1½	45	30	15	60	15.38	49.06	45.23	94.29
Apricot kernels	1¼	37½	30	25	80				
Beans, dried, in sacks	[1] 1	30	15	12½	40	10.00	31.90	45.23	77.13
Canned goods, n. o. s. in cases, out-bound	1¼	37½	25	12½	50	7.40	23.60	45.23	68.83
Cotton	1¼	37½	30	15	60	14.00	44.66	45.23	89.89
Cotton linters	1¼	37½	30	20	70	17.00	54.23	45.23	99.46
Compound, viz, cleaning, scouring, and washing, in packages	1¼	37½	15	12½	40	7.54	24.05	45.23	69.28
Fertilizers:									
Nitrate of soda, in sacks	1½	45	30	15	60	6.85	21.85	45.23	67.08
Potash, in sacks						7.43	23.70	45.23	68.93
Ammonia, phosphate, cyanamide, superphosphate, urea									
Fruit, dried, in bags or cases	1¼	37½	30	15	60				
Grain, n. o. s.	¾	22½	25	12½	50	7.52	23.99	45.23	69.22
Hops, in bales	4	120	30	45	120				
Iron and steel, held in uncovered areas	1	30	20	10	40				
Meal and meal cake (oil cake, sesame seed meal)	1¼	37½	30	15	60				
Peas, dried	1¼	37½	15	12½	40				
Pipe, iron and steel, held in uncovered areas	1	30	15	12½	40				
Rice, in sacks	1¼	37½	30	15	60				
Scrap, iron or steel	1	30	15	10	35				
Seed, mustard, hemp or sesame	1¼	37½	30	15	60	15.38	49.06	45.23	94.29
Shook	2¾	82½	30	25	80				
Sisal	3	90	50	17½	85	24.10	76.88	45.23	122.11
Soda ash, bags	1½	45	30	15	60	12.27	39.14	45.23	84.37
Steel Sheets	1	30	15	10	35	1.66	5.30	45.23	50.53
Sugar	1¼	37½	30	15	60	7.00	22.33	45.23	67.56
Tin Plate	1	30	15	10	35				
Tires, pneumatic	2	60	50	75	200				
Tomato, puree	(2½ cents per case per season)[2]		(2½ cents per case per season)[2]						
Vehicles, motor, on wheels	10	300	50	125	300				
Wool:									
In bales	3	90	30	30	90				
In bags	5	150							
Veneer, wallboard	7	210	50	50	150				

[1] *Exception.*—When beans are held on wharf demurrage for period beyond which a total of $1 per ton of 2,000 pounds has been assessed within a season, no further charge will be made for that season. Under this provision "season" ends Aug. 31 next.

[2] When season wharf demurrage rate is requested by shipper at time of delivery of merchandise to terminal, the rate for the season commencing on and after Aug. 15 and ending Mar. 1 next, is 2½ cents per case, payable in advance.

NOTE.—*Daily penalty rate proposed by California Commission.*—A charge of 5 cents per ton per day shall be assessed upon all cargo remaining beyond the free time period and not declared for storage, except that when cargo is not declared upon the expiration of the fifth day the demurrage rates set forth above (columns 4 and 5) shall thereafter apply.

Order

At a Session of the **UNITED STATES MARITIME COMMISSION**, held at its office in Washington, D. C., on the 11th day of September, A.D., 1941

No. 555

PRACTICES, ETC., OF SAN FRANCISCO BAY AREA TERMINALS

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 Encinal Terminals 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. 3 and No. 4.

It is further ordered, That respondents be, and they are hereby, notified and required to cease and desist, on or before October 27, 1941, and thereafter to abstain from allowing greater periods of free time than the periods set forth in Table 1 of the report herein, exclusive of Sundays and holidays, without prejudice to the establishment of reasonable rules and regulations in connection with free time allowances and the establishment of a free time period not in excess of 21 days, including Sundays and holidays, on petroleum products when destined to trans-Pacific ports;

It is further ordered, That respondents be, and they are hereby, notified and required to cease and desist, on or before October 27, 1941, and thereafter to abstain from publishing, demanding or collecting wharf demurrage and wharf storage rates which shall be less than the minimum rates found reasonable in finding No. 7 herein, namely, (1) a penalty charge of 5 cents per ton per day to be charged on 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, (2) the handling charges appearing in column 4 of the Appendix hereto 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 hereto, to be charged while cargo is in storage after it has been declared for storage or after it automatically goes into storage upon the expiration of the fifth day after the end of the free time period;

It is further ordered, That respondents be, and they are hereby, notified and required to file with the Commission and keep open to public inspection, schedules showing all the rates and charges for the furnishing of wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water;

It is further ordered, That these proceedings shall be held open pending compliance with the order herein, and that said order be without prejudice to the rights of respondents or any of them, or of any interested party to apply in the proper manner for a modification as to any specified rate, charge, rule, or regulation; and

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.) W. C. PEET, Jr.
Secretary.

UNITED STATES MARITIME COMMISSION

No. 604

LONG BEACH LUMBER COMPANY, INC.

v.

CONSOLIDATED LUMBER COMPANY

Submitted September 10, 1941. Decided September 23, 1941

Defendant, a wharf operator, found not to have refused delivery of lumber to complainant on January 6, 1941. Complaint dismissed.

Ralph K. Pierson and *Samuel P. Block* for complainant.
J. H. Peckham, Jr. for defendant.

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.

By complaint filed April 14, 1941, as amended, complainant, Long Beach Lumber Company, Inc., a corporation engaged in the wholesale and retail lumber business at Long Beach, Calif., alleges that on January 6, 1941, it called at defendant's public wharf to take delivery of lumber shipped by water to it from Marshfield, Oreg., that delivery was refused by defendant, and that such refusal constituted undue prejudice and disadvantage in violation of section 16 of the Shipping Act, 1916. Defendant is Consolidated Lumber Company, a corporation operating, among other things, a public lumber wharf at Wilmington, Calif. A cease and desist order is sought.

When lumber is discharged at defendant's wharf it is taken to its storage yard by motor lumber carriers and put in convenient piles at designated locations where it remains until called for by consignees' trucks. Then a lumber carrier picks it up and carries it to a place of rest under an electrically operated stationary hoist which, in turn, lifts the pile onto consignees' trucks, which must be in position under the hoist to receive the lumber. When a consignee calls at defendant's wharf, its truck driver secures a loading slip from a clerk in the dock office situated about 100 feet from the hoist. The slip identifies the lumber and its location in the yard. The truck driver then presents the slip to defendant's hoist operator so that the carrier can bring the designated lumber from the yard to the hoist. At times, the delivery slip is given directly to a carrier operator.

Defendant's employees are members of various labor unions. On January 6, 1941, complainant had been declared unfair to labor by the unions and its place of business was being picketed. Union members often decline to handle cargo consigned to persons being picketed, although there are instances of record where they have not refused. There is no evidence of any prior refusal of defendant's employees.

According to complainant's witnesses, it sent a Ford truck, driven by Leroy McLaughlin, to defendant's wharf to take delivery of the lumber in issue on January 6, 1941. McLaughlin testified that he arrived at defendant's dock office, secured from the clerk a loading slip, and was met by an unidentified labor union representative not employed by defendant, who stated that he would determine whether or not the hoist operator would load complainant's truck. McLaughlin asserted that he gave the carrier operator the loading slip, that the lumber was placed under the crane, and that a conversation ensued between the hoist operator, carrier driver, and union representative, resulting in a statement by the hoist operator that he would not load complainant's truck. McLaughlin admitted that at no time was the truck under the hoist in position to load the lumber. He stated that upon being told the lumber would not be loaded, he drove the empty truck out of the yard. To refresh his memory as to the date he called at defendant's wharf, this witness said that he consulted a book in which dates of calls are written by truck drivers and agreed to bring the book to the hearing, but it developed that the book could not be located.

Witness C. S. Jones, complainant's manager, testified that he sent McLaughlin to receive the lumber and that when it was not delivered he telephoned defendant on January 6, and was told by defendant's manager that so long as complainant was picketed there was no use in trying to get the lumber and that defendant's employees would not load it. He stated that he did not send another truck for the cargo and that it was eventually switched out by rail.

Defendant denies that McLaughlin was the truck driver sent by complainant on January 6. Witness Jack Moore, called by defendant, testified that he was complainant's employee on that date and was sent by complainant as a driver of its Chevrolet truck to take delivery of the lumber in issue. He testified that an agent of the teamsters' union stopped him as he entered defendant's yard and told him not to load the lumber. Moore, nevertheless, entered and got the loading slip from defendant's dock clerk, gave it to the hoist operator, and parked the truck near the dock office. While in that position, Louis G. Meyers, a union field representative of Truckdrivers Local 692, but not an employee of defendant, entered into conversation with Moore. Without waiting for the lumber, Moore drove out of the yard and left the employ of complainant two days later. Moore had a permit of Sawmill Workers Union No. 2607, which union had members in the employ of defendant. He was identified by complainant's manager as having been an employee of complainant on January 6 and was identified by defendant's dock clerk and hoist operator, as well as by Louis Meyers, as complainant's truck driver who called for the lumber at that time. The dock clerk testified that no other driver than Moore called that day for complainant's lumber. The hoist operator stated that McLaughlin was in the yard about a week later, and that he did not refuse to load for Moore. Meyers testified that when he informed Moore that complainant was picketed Moore drove away without placing the truck under the hoist. Meyers has frequently been ordered off defendant's yard by its superintendent. All witnesses agreed that complainant's truck was never placed under the hoist in position to receive the lumber.

Defendant's manager had no recollection of a telephone conversation with complainant's manager on January 6. However, he stated that on January 14 he had a telephone conversation with a Mr. Jones of complainant's company to the effect that if complainant would send a truck every effort would be made to perfect delivery. No truck was sent at that time for the lumber in issue, but trucks were sent for some millwork at defendant's yard and were hand-loaded from a shed under supervision of defendant's superintendent, notwithstanding pickets were still at complainant's yard. That testimony was not refuted. It appears that there was a Don Jones, as well as C. S. Jones, who has authority to act for complainant. Defendant's manager also testified that the instructions to all of the employees of defendant are to deliver all cargo received at its wharf.

The record is convincing that the lumber was not delivered to complainant because of the representations made to complainant's

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truck driver by a union official not employed by defendant and that complainant's truck driver drove away without placing complainant's truck in a position to receive delivery. It is also clear from the record that defendant performed its duties by allowing complainant's truck to enter the yard, issuing the loading slip, and carrying the lumber from the storage yard to the hoist.

We find that defendant did not refuse delivery of complainant's lumber. The complaint will be dismissed.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 23rd day of September A. D. 1941.

No. 604

LONG BEACH LUMBER COMPANY, INC.

v.

CONSOLIDATED LUMBER COMPANY

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

UNITED STATES MARITIME COMMISSION

No. 603

RATES, CHARGES, AND PRACTICES OF L. & A. GARCIA AND CO

Submitted September 22, 1941. Decided October 9, 1941.

By "brokerage" payments to shippers and by otherwise reducing freight charges, respondent allowed persons to obtain transportation for property 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, as amended.

In not filing with the Commission as required, rates, charges, rules, and regulations for and in connection with the transportation of property from the port of New York to Havana, Cuba, respondent knowingly and willfully violated the rules and regulations of the Commission prescribed in *Section 19 Investigation, 1935,* 1 U. S. S. B. B. 470.

Paul D. Page, Jr., and *Samuel D. Slade* for the Commission.
Renato C. Giallorenzi for respondent.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Respondent, L. & A. Garcia and Co., filed exceptions to the report proposed by the examiner, and the case was orally argued. Our conclusions agree with those of the examiner.

This proceeding, which was instituted by us on our own motion, is an investigation into and concerning the lawfulness of respondent's rates, charges, and practices. Respondent is a partnership organized in Puerto Cortez, Honduras, on January 10, 1938, and has been operating, since January 1, 1939, as a common carrier by water engaged in the transportation of property between the port of New York and Havana, Cuba. It owns and operates 4 vessels, the S. S. *Neptuno*, S. S. *Corisco*, M. S. *Jupiter*, and M. S. *San Luis*, all of Honduran registry, and from September 18, 1939, to March 23, 1940, it had under charter the S. S. *William Hansen.*

Respondent is charged with violations of sections 16[1] and 17[2] of the Shipping Act, 1916, as amended, by paying "brokerage" to certain shippers, and by failure to observe its tariff on certain shipments; and with knowingly and willfully violating the rules and regulations[3] prescribed in the order in *Section 19 Investigation, 1935*, 1 U. S. S. B. B. 470, by not filing its tariffs with the Commission within 30 days from the date they became effective.

There is no dispute as to the facts.

(1) We find these to be the facts with respect to payment of "brokerage": Respondent paid "brokerage" to shippers on 28 shipments[4] transported on the *William Hansen*, which sailed from New York, N. Y., for Havana, Cuba, on December 13, 1939, and on 15 shipments[5] on the *Neptuno*, which sailed from New York for Havana on April 11, 1940. The payments amounted to about 2.5 percent of the freight charges, except that on shipments covered by B/L Nos. 41–45, *William Hansen*, and B/L No. 3, *Neptuno*, they were 11 percent or more. A shipper of hardware (B/L No. 59) and a shipper of medicinal and pharmaceutical preparations (B/L No. 27) were paid brokerage, while two other shippers making shipments of these articles on the same

[1] 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.

[2] 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.

[3] (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.

[4] B/L Nos. 26–30, 41–45, 48–61, and 65–68.

[5] B/L Nos. 3, 5–7, 9, 11–13, 16, 39, 40, 42, and 66–68.

voyage of the *William Hansen* received no brokerage. Respondent's United States manager testified: "There were instances when there was brokerage paid to the shippers when they acted on their own behalf in booking the merchandise, and in many instances there is no brokerage at all." He acknowledged that the payments affected the transportation rates and that they were obtained through bargaining.

Respondent states that except in the cases of B/L Nos. 41–45, *William Hansen*, and B/L No. 3, *Neptuno*, the 28 shipments on the former vessel and the 15 shipments on the latter referred to above, 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 *Lehigh Valley R. R. Co.* v. *United States*," 243 U. S. 444. On the contrary, the court in that case held that the forwarder was to all legal intents the shipper of the goods 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.

(2) We find the following to be the facts with respect to tariff departures: Without tariff authority, respondent made a deduction of 10 percent from the freight rate of $1.05 per 100 pounds or cubic foot W/M on a shipment of plumbing supplies which moved on the *Neptuno* sailing April 11, 1940, under B/L No. 3. This deduction was made pursuant to a "confidential" arrangement between respondent and the shipper and was not mentioned by respondent when reporting the freight charges collected on the shipment in response to an order issued by us under section 21 of the Shipping Act, 1916, as amended. Previously, on a shipment of like traffic on the *William Hansen* sailing December 13, 1939, under B/L No. 63, the full rate of $1.05 was charged, because the shipment weighed less than the minimum then required under a tariff rule which permitted a 10-percent deduction on shipments above a certain minimum. This rule was canceled on January 1, 1940. The shipment of April 11, 1940, also weighed less than the minimum required under the canceled rule.

(3) Respondents charged one shipper a rate of 43 cents per 100 pounds, minimum weight 24,000 pounds, on common glassware transported on the *William Hansen* (B/L Nos. 9, 11, 12, 13, 19, 20, and 22), while other shippers (B/L Nos. 50, 57, and 63) were charged a rate of 51 cents on common glassware transported on the same vessel. Only one shipment, B/L No. 11, met the minimum which respondent considers to justify the application of the 43-cent rate.

Respondent contends that there is no showing of discrimination as to the 10-percent deduction on plumbing supplies, since it does not appear that different rates were charged on these articles shipped "at the same time and on the same vessel and subject to the same tariff." However, the shipments were subject to the same rate and moved over the same line on vessels sailing from and to the same ports. Thus the transportation services were substantially similar and the rate of $1.05 should have been applied without deduction on both shipments. This is sufficient. See *Mitchell Coal & Coke Co.* v. *Pennsylvania R. Co.*, 181 Fed. 403, 411.

Respondent disclaims any intention on its part to discriminate between the above-mentioned shippers of common glassware. 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.

(4) The facts in respect to respondent's failure to file its tariff in compliance with the rules and regulations prescribed in *Section 19 Investigation, 1935, supra*, are found to be as follows: Respondent transported and collected freight charges on 65 shipments consisting of more than 100 different descriptions of articles on the *William Hansen* sailing December 13, 1939. At that time, respondent had filed no tariff schedules with us since May 4, 1939, notwithstanding repeated attempts made by our Division of Regulation to secure such filings. Respondent's United States manager, in November 1939, gave assurances to the Division that tariffs would be filed within 10 days. Finally, respondent's Freight Tariff No. 2, which purported to be applicable to traffic from United States Atlantic ports to Havana, effective May 5, 1939, and which expired December 31, 1939, canceling all previous tariffs, was filed with us on February 5, 1940, after respondent's attention had been called to section 806 (d) of the Merchant Marine Act, 1936, as amended, providing a penalty for knowingly and willfully violating our orders, rules, or regulations.

Respondent gives as reasons for its noncompliance with the rules and regulations prescribed in *Section 19 Investigation, 1935, supra*, that it was still in the process of organization and was handicapped by the death in June 1939 of Lisardo Garcia, who had charge of the filing of tariffs, that the number of its employees was limited, and that its rates were constantly being readjusted in competition with other carriers in the trade. It states that "There is not a scintilla of evidence to prove any wilful disregard on the part of L. & A. Garcia & Co. to evade any of the provisions of Docket No. 128, with regard to filing a tariff with the Commisison." With this contention we cannot agree. The fact that 9 months elapsed between filings, 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 requests from our Division of Regulation, indicate all too clearly that respondent, aware of the rules and regulations, subordinated compliance therewith to its own convenience.

Based on the findings of fact hereinbefore made in paragraphs numbered (1) and (2), we further find that by "brokerage" payments to shippers, and by the 10-percent deduction on the shipment of plumbing supplies on the *Neptuno*, respondent allowed persons to obtain transportation for property at less than the regular rates then established and enforced on its line by unjust and unfair means, in violation of section 16 "Second" of the Shipping Act, 1916, as amended; and unduly preferred such persons and unduly prejudiced and unjustly discriminated against other persons shipping under similar circumstances whom respondent paid lesser amounts of or no "brokerage" or charged the regular rates then established and enforced on shipments of plumbing supplies, in violation of section 16 "First" and section 17 of the Shipping Act, 1916, as amended.

Based on the findings of fact hereinbefore made in paragraph numbered (3), we further find that respondent unduly preferred one shipper of common glassware and unduly prejudiced and unjustly discriminated against other shippers of common glassware, in violation of section 16 "First" and section 17 of the Shipping Act, 1916, as amended.

On basis of the findings of fact in paragraph numbered (4), we further find that in not filing with us as required, rates, charges, rules and regulations for and in connection with the transportation of property on the voyage of the *William Hansen*, respondent knowingly and willfully violated the rules and regulations prescribed in *Section 19 Investigation, 1935, supra.*

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, supra,* will be certified to the Department of Justice for prosecution.

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 9th day of October A. D. 1941.

No. 603

RATES, CHARGES, AND PRACTICES OF L. & A. GARCIA AND CO.

This case, which was 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 respondent be, and it is hereby, notified and required to cease and desist and hereafter to abstain from the violations found in said report to have been committed by said respondent; and

It is further ordered, That the violations found in said report to have been 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, be certified to the Department of Justice for prosecution.

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 608

SUGAR RATES—PUERTO RICO TO U. S. ATLANTIC AND GULF PORTS

Submitted January 12, 1942. Decided January 16, 1942

Proposed increased rates on sugar from Puerto Rico to Atlantic and Gulf ports not shown unlawful. Order of suspension vacated and proceeding discontinued.

Roscoe H. Hupper for respondents.
John H. Eisenhart, Jr. and *Robert M. Jones* for intervener.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By schedules filed to become effective January 2, 1942, respondents,[1] common carriers by water in interstate commerce, proposed to increase the rates from 20 to 28 cents per 100 pounds for the transportation of raw and refined or turbinated sugar from Puerto Rico to Atlantic and Gulf ports. Upon protests of the Office of Price Administration, Resident Commissioner of Puerto Rico, and Association of Sugar Producers of Puerto Rico, the operation of the schedules was suspended until May 2, 1942. The Office of Price Administration and Association of Sugar Producers of Puerto Rico requested permission to withdraw their protests before the hearing. At the hearing the Office of Price Administration intervened "due to its interest in the effect that an increase in freight rates for the movement of sugar to the United States may have on the price of sugar in the United States and on the production of sugar in the Territory of Puerto Rico."

Sugar moves principally from Puerto Rico to Atlantic ports under contract in full cargoes and is competitive with that produced in Cuba. Respondent Bull Insular charters all of its vessels used in this trade. Respondent New York and Porto Rico Steamship Company maintains combination passenger and cargo vessels which carry small

[1] Bull Insular Line, Inc., Lykes Bros. Steamship Co., Inc., The New York and Porto Rico Steamship Company, and Waterman Steamship Corporation.

quantities of sugar but most of the tonnage transported by it moves at charter rates.

Respondents rely upon recent increased operating costs resulting primarily from war conditions and the contemporaneous rates on sugar from Cuba to Atlantic and Gulf ports. From an exhibit of record it appears that the 28-cent rate, including allowances for fuel 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.

Respondents direct attention to the fact that on December 5, 1941, the Commission announced a schedule of rates for the transportation of sugar from Cuba to Atlantic and Gulf ports of the United States as the maxima in which it will concur under the Ship Warrants Act. Those rates range from 32 cents to 39 cents per 100 pounds. While such rates cannot be regarded as a conclusive measure of maximum reasonableness in the Puerto Rican trade, they must be recognized as competitive rates and as a factor, among others, in weighing the rates herein involved.

Protestants failed to offer any testimony in opposition to the proposed rates. There is nothing of record indicating that the proposed rates will adversely affect the movement of sugar from Puerto Rico. Nor is there any indication that the proposed increases will in any manner affect the price of sugar in the United States or curtail the production of sugar in Puerto Rico.

The record in this case does not disclose that the suspended schedules are unlawful. Accordingly we find that the suspended schedules have not been shown to be 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 16th day of January, A. D. 1942

No. 608

Sugar Rates—Puerto Rico to U. S. Atlantic and Gulf Ports

It appearing, That by order dated January 1, 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 May 2, 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 thereon, 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.) A. J. Williams,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 610

SURCHARGE—MATSON NAVIGATION COMPANY, AMERICAN PRESIDENT LINES, LTD., AND THE OCEANIC STEAMSHIP COMPANY

Submitted January 19, 1942. Decided January 20, 1942

Surcharge of 35 percent on Pacific Coast/Hawaiian freight rates found justified

Richard D. Daniels and *William Radner* for respondents Matson Navigation Company and The Oceanic Steamship Company.

Robert M. Jones for Office of Price Administration.

Ralph H. Hallett and *John F. McArt* for Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION.

Respondents seek permission to increase their present surcharge of 10 percent on Pacific Coast/Hawaiian freight rates to 35 percent, on less than statutory notice. The surcharge is to offset additional costs resulting from war-time operations. We ordered a formal investigation into the matter and public hearing was held January 19, 1942.

Matson's computation of the surcharge sought is contained in the statement below. Estimated additional revenue needed is based on latest closed voyage statements covering voyages terminated prior to December 7, 1941, of three typical ships. Revenue is computed at the present basic rates exclusive of the existing surcharge of 10 percent. Expenses embrace, among other items, charter hire at the maximum charter rates, fixed by the Commission and announced in our Press Release 1117, war-risk insurance and war-risk crew bonuses, and a claim for additional overhead to cover the alleged deficiency of overhead allowance in the prescribed *1117 charter scale.*

	Manukai 13,180 DWT 13 knots	Maunawili 9,900 DWT 13 knots	Diamond Head 8,000 DWT 9¾ knots
Revenue at rates effective Oct. 1, 1941	$158,418.65	$126,244.85	$110,494.03
Expenses (estimated):			
Charter hire (P. R. 1117 scale), fuel, stevedoring, port costs, etc.	165,315.07	125,979.63	120,191.88
Insurance—War risk Hull @ 2% on $75 ton	19,770.00	14,850.00	12,000.00
P & I	3,500.00	2,500.00	2,500.00
Crew life @ 1½%	3,150.00	2,925.00	2,850.00
Crew internment at ¼%	1,861.50	1,752.00	1,730.00
Personal effects at 2%	210.00	194.00	195.00
Crew bonus and overhead deficiency in P. R. 1117 scale	10,086.24	9,757.07	12,712.95
Total	203,892.81	157,957.70	152,179.83
Claimed loss	45,474.16	31,712.85	41,685.80
Percent claimed loss to revenue	28.70%	25.12%	37.73%
Average percent—weighted according to number of types of vessels			34.93%

Matson claims that it would require a surcharge of 38½ percent to cover all increased costs without any part thereof being absorbed by the existing rate schedule. It shows, however, that the surcharge would be only 31.06 percent if calculated on basis of the *1117 charter scale* without allowance for the alleged deficiency for overhead in that scale as shown in the above table.

A better approach to the problem is to base the surcharge upon actual costs incurred solely as the result of war-time operation. This excludes consideration of the *1117 scale* because Matson is not chartering ships at those rates. Therefore, expenses based thereon are purely hypothetical costs. The surcharge should reflect the extra cost of war risk insurance, war risk crew bonus and cost resulting from increased length of voyage. Lifting the insurance and bonus cost figures from the above table and adding increased length of voyage expenses, we have the following results:

	Manukai	Maunawili	Diamond Head
Total increased expense	$52,374.02	$41,428.56	$39,714.54
Percent increased expense to revenue	33.06%	32.82%	35.94%
Weighted average			35.18%

Respondents' war risk insurance, except Protection and Indemnity, is provided by the Commission. P. & I. insurance is carried by private companies at rates deemed by us to be reasonable. Crew bonuses are included at amounts fixed by the Maritime War Emergency Board. Costs included for increased length of voyage are computed on basis of the normal cost for the period of the delay plus extra fuel and port costs which would be incurred.

After making necessary assumptions as to increased length of voyage, which are based upon the best available information, and considering the insurance, bonus and other costs reasonable, we conclude that a surcharge of 35 percent is not excessive.

This conclusion is without prejudice to our right to revise the surcharge in the light of changed conditions, and to any proceeding that may arise under the Shipping Act, 1916, as amended, and related acts, involving said surcharge or the rates to which it may be applied.

Respondents will be required to submit for analysis, monthly operating statements of actual freight movements and revenue and expense. This procedure will properly safeguard the public interest and permit future revisions to be made in the surcharge consistent with actual performance under war conditions as shown by completed voyage results.

An appropriate order will be issued.

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. 1942

DOCKET No. 610

SURCHARGE—MATSON NAVIGATION COMPANY, AMERICAN PRESIDENT LINES, LTD., AND THE OCEANIC STEAMSHIP COMPANY

This case, which was instituted by the Commission on its own motion by order dated January 13, 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 stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That respondents be permitted to publish, file and post schedules, pursuant to the Intercoastal Shipping Act, 1933, as amended, establishing effective on not less than one (1) day's notice a surcharge of 35 percent of their existing freight rates as shown in their filed tariffs applicable to freight transported between Pacific Coast ports of the United States and Hawaii;

It is further ordered, That respondents furnish to the Commission not later than thirty (30) days after the end of each calendar month, the following statements showing the results of operations for the preceding calendar month, beginning with the month of December 1941:

Detailed statement of operating revenues, operating expenses, and other income items, with balance transferred to profit and loss.

Detailed statement of revenues and expenses of individual voyages included in the accounts for the month, including data showing the number of tons of cargo westbound and eastbound, and number of voyage days segregated between days at sea and days in port.

Summary of the above individual voyage statements.

Revenue resulting from the surcharge, and all individual items of extraordinary expense on which the surcharge is based shall be separately shown on the above statements.

In addition to the above, information respecting the rates, valuations and other pertinent data for each type of insurance or other extraordinary expense shall be reported.

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 612

SURCHARGE—UNITED STATES ATLANTIC AND GULF-HAITI CARRIERS

No. 613

SURCHARGE—NEW YORK AND CUBA MAIL STEAMSHIP COMPANY AND STANDARD FRUIT AND STEAMSHIP COMPANY (UNITED STATES/EAST COAST MEXICO SERVICE)

Submitted January 26, 1942. Decided January 29, 1942

Surcharge of 22 percent on freight rates for transportation between ports in the United States and ports in Haiti and East Coast of Mexico not excessive

A. J. Pasch for all respondents; *Hendrik S. Muller* for Royal Netherlands Steamship Company; *W. C. Harban* for New York and Cuba Mail Steamship Company; *F. J. Rolfes* for Standard Fruit and Steamship Company.

Gonzalo Abaunza for Cia Mexico de Navegacion; *J. H. Eisenhart, Jr.*, and *Robert M. Jones* for Office of Price Administration.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Respondents in these two proceedings submitted applications to exact a surcharge of 22 percent on their rates for transportation between ports in the United States and ports in Haiti and on the East Coast of Mexico, upon 15 days' notice. This surcharge is contended to be necessary in view of additional costs accruing because of wartime conditions. Formal investigation as respects the lawfulness and propriety of the surcharge in each of the two trades concerned was ordered by us on January 22, 1942, and a consolidated public hearing thereon was conducted on January 26, 1942. No shipper presented testimony at the hearing. As to each of the trades the rates for transportation involved are substantially those in effect on September 1, 1940. Pursuant to stipulation between respondents and the Office of Price Administration, and pending outcome of negotiations between the stipulating parties, we are requested by respondents not to consider the surcharge in either trade in connection with iron and steel scrap.

On January 10, 1942, we approved applications by certain carriers operating in the Caribbean trades for a surcharge of 22 percent. Such carriers operate between Atlantic and Gulf ports of the United States and ports in the West Indies, Caribbean Sea, on the East Coast of Central America, and in Panama, including the Canal Zone. Respondents testify in the present proceedings that, in the applications approved by us as indicated, there may have been a too strong reliance by them and other carriers on the interpretation accorded to the phrase "West Indies/Caribbean Area"; and that their services between United States ports and ports in Haiti and on the East Coast of Mexico, respectively, are part of such an intricate pattern with the other services as to make them, generally speaking, interdependent with those services. It is further testified that the volume of traffic available between United States ports and ports in either Haiti or on the East Coast of Mexico could not of itself support a service. Respondents urge that because of this interrelationship the surcharge approved by us on January 10, 1942, should likewise be approved in connection with Haitian and East Coast of Mexico services.

DOCKET NO. 612

Respondents involved in this proceeding are Grace Line, Inc., Koninklijke Nederlandsche Stoomboot Maatschappij N. V. (Royal Netherlands Steamship Company), Lykes Bros. Steamship Company, Inc., and Panama Rail Road Company (Panama Rail Road Steamship Line). Grace Line and Panama Rail Road are not operating in the trade between the United States and Haiti. Lykes Bros. service in that trade is sporadic. In these circumstances we are convinced that consideration as to whether a surcharge should be permitted should be confined to Royal Netherlands, which operates regularly in this trade, and to Lykes Bros. Freight vessels only are involved.

Respondents' figures to support their application for surcharge are predicated upon a round-trip voyage of a composite vessel of Royal Netherlands. These figures are shown in the reproduction below of respondents' Exhibit No. 3:

JANUARY 24, 1942.

Composite Estimate of a Voyage—New York–Port-au-Prince–La Guira–Maracaibo, returning to New York via Curacao and Haitian ports

Revenue:		
1,500 tons out, @ $18.00	$27,000	
500 tons in, @ $8.50	4,250	
		$31,250
Operating Expenses:		
Loading and discharging 2,000 tons and harbor dues	$12,000	
Fuel	1,600	
Wages	5,500	
Subsistence	550	
Commissions	2,500	
Vessel supplies	1,200	
Maintenance and repair	4,375	
Insurance (ordinary marine)	1,470	
Insurance, war risk ¾%	4,760	
Depreciation, 4%	455	
Overhead, including terminal expenses	1,900	
	$36,310	
22%		6,875
		38,125
		36,310
		$1,815

Above figures do not include cost and/or delay, etc., incidental to arming and degaussing or the cost of maintaining the Amsterdam, Holland, office.

It will be noted that there is no segregation of items to show extra expense incurred due to wartime conditions. For example, it is testified that war bonuses to seamen are included in the item "Wages." But nowhere is the amount of such bonuses given; nor is it shown what portion of the expenses is attributable to voyage lengthened or delayed by war conditions. Exhibit 3 discloses, however, that the illustrative vessel operates at a voyage loss of 16.2 percent in revenue, and that a surcharge of 22 percent would give a profit of only 5.8 percent.

Respondents have been requested to file figures segregating items of expense due to wartime conditions, and to submit figures showing vessel-operating statements on all voyages terminated since November 1, 1941.

DOCKET NO. 613

Standard Fruit and Steamship Company submitted no figures to substantiate its application, but the schedule submitted by New York and Cuba Mail Steamship Company was said to be typical of the revenue and expenses of Standard. The figures for New York and Cuba Mail are for a particular freight vessel and for a particular combination passenger-cargo vessel both for a voyage in September 1940 and under present estimates. Respondents have been requested to submit figures showing vessel-operating statements on all voyages terminated since November 1, 1941. The following tables are a résumé of the schedule referred to above:

Freight vessel

	September 1940	Estimated	Increase	Percent increase
Total revenues	$68, 880. 14	$107, 936. 29	$39, 056. 15	56. 7
Tons carried	8, 627. 00	12, 779. 00	4, 152. 00	48. 1
Average revenue per ton	7. 98	8. 45	. 47	5. 9
Total expenses, including overhead	63, 485. 07	117, 261. 86	53, 776. 79	84. 7
Average expenses per ton	7. 36	9. 18	1. 82	24. 7
Net increase in expenses:				
Actual				28. 0
Per ton				18. 8

Cargo-passenger vessel

	September 1940	Estimated	Increase	Percent increase
Total revenues	$65, 120. 84	$74, 653. 84	$9, 533. 00	14. 6
Total expenses, including overhead	50, 487. 61	97, 114. 13	46, 626. 52	92. 4
Net increase in expenses				77. 8

The following is the weighted average from the above:

27 voyages of freighters @ 28%	756	
50 voyages of passenger vessels @ 77.8%	3, 890	
77	4, 646	
Average—weighted		60. 3%

CONCLUSIONS

The fact that these respondents are servicing their respective trades with vessels which are also used in other trades in the same voyages in the Caribbean area and are either using combination passenger and freight vessels, refrigerator vessels, or are in competition with them, makes it impossible to determine with any accuracy, the financial effect of the earnings from these two trades as compared with the maximum ceiling set by the Commission with respect to time charters of freight vessels only. However, it is believed that the earnings of respondents from the basic rates and the proposed surcharges will not exceed such ceiling. Respondents' unfavorable revenues at the present time, to a very considerable extent, are due to war-time conditions. A surcharge of 22 percent is not excessive.

Accordingly, permission to exact, on or after 15 days from date hereof, a surcharge not exceeding 22 percent of respondent's rates effective as of September 1, 1940, applicable to freight, except iron and steel scrap, transported by them between ports in the United States and ports in Haiti and on the East Coast of Mexico, respectively, is granted. In addition to the submission by respondents of the data required to be filed by them as hereinbefore mentioned, they will be required to submit for analysis monthly operating statements of actual freight movements, revenue, and expense in connection with their respective services to Haiti and East Coast of Mexico. This will permit revision to be made in the surcharge consistent with respondents' actual performances under wartime conditions as more definitely shown by the completed voyage results, and properly safeguard the public interest. Our conclusion that the surcharge of 22 percent is not excessive is without prejudice to any such revision, or to our right to revise the surcharge in the light of changed conditions otherwise shown; or to any proceeding that may arise under the Shipping Act, 1916, as amended, and related acts, involving the surcharge or the rates on which it may be applied.

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 29th day of January A. D. 1942

No. 612

SURCHARGE—UNITED STATES ATLANTIC AND GULF-HAITI CARRIERS

No. 613

SURCHARGE—NEW YORK AND CUBA MAIL STEAMSHIP COMPANY AND STANDARD FRUIT AND STEAMSHIP COMPANY (UNITED STATES/EAST COAST MEXICO SERVICE)

These proceedings, instituted by the Commission on its own motion by orders of January 22, 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 stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That, in connection with the surcharge to be established pursuant to this report, respondents Koninklijke Nederlandsche Stoomboot Maatschappij N. V. (Royal Netherlands Steamship Company), Lykes Bros. Steamship Company, Inc., New York and Cuba Mail Steamship Company, and Standard Fruit and Steamship Company, shall furnish the Commission not later than 30 days after the end of each calendar month the following statements showing the results of their respective operations in the two trades involved for the preceding calendar month, beginning with the month of December 1941:

Detailed statement of operating revenues, operating expenses, and other income items, with balance transferred to profit and loss.

Detailed statement of revenues and expenses of individual voyages included in the accounts for the month, including data showing the number of tons of cargo north-bound and south-bound, and number of voyage days segregated between days at sea and days in port.

Summary of the above individual voyage statements.

Revenue resulting from the surcharge, and all individual items of extraordinary expenses on which the surcharge is based shall be separately shown in the above statements.

In addition to the above, information respecting the rates, valuations, and other pertinent data for each type of insurance or other such extraordinary expenses shall be reported.

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

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 601

G. C. Schaefer, Doing Business as Consolidated Freight Forwarding Company

v.

Encinal Terminals

Submitted November 6, 1941. Decided February 3, 1942

Respondent's use of its terminal facilities in its railroad pool car business, and its practices in connection therewith found not to be in violation of sections 16 and 17 of the Shipping Act, 1916. Complaint dismissed.

J. Richard Townsend for complainant.
Ira S. Lillick and *Joseph J. Geary* for defendant.

Report of the Commission

By the Commission:

Exceptions to the examiner's proposed report were filed by complainant and respondent's request for oral argument was denied. Our conclusions agree with those recommended by the examiner.

By complaint filed February 19, 1941, complainant, G. C. Schaefer, doing business as Consolidated Freight Forwarding Company, an individual engaged in forwarding railroad pool cars of canned goods from Oakland, Calif., to middle western points, alleges that on October 25, 1940, respondent, Encinal Terminals, inaugurated a canned goods pool car service involving use of its wharves and other terminal facilities to receive, store, and assemble canned goods for loading railroad cars, and that respondent's use of its terminal facilities for such purposes and its practices in connection therewith are in violation of sections 16 and 17 of the Shipping Act, 1916. Respondent is an "other person subject to the Act" as defined in section 1 of the Shipping Act, 1916, engaged at Alameda, Calif., in operating docks and other terminal facilities in connection with common carriers by water.

Complainant seeks an order (1) directing respondent to assess and collect its tariff charges on canned goods handled in its rail pool car service; (2) prohibiting performance of such service without assessing and collecting charges not less than the cost of the service; and (3) prohibiting such service upon respondent's terminal facilities.

On March 22, 1941, respondent filed a motion to dismiss the complaint on the grounds that (1) the Commission does not have jurisdiction over the subject matter in that the rail pool car service involves interstate commerce by railroad; (2) that the facts alleged do not constitute violations of the Shipping Act, 1916; and (3) there is pending before Congress legislation designed to confer jurisdiction upon the Interstate Commerce Commission to regulate freight forwarders. In reply to this motion complainant alleged, and sought to prove later at the hearing, (1) that respondent does not collect its tariff charges on canned goods handled on its docks in connection with its rail pool car service, although the tariff charges are applied on other canned goods; (2) that respondent is performing its rail pool car service on its docks at rates less than the cost of performing the service which is equivalent to a rebate; and (3) that use by respondent of its docks for rail pool car service causes congestion and added expense in handling other cargo. By order of May 1, 1941, we dismissed respondent's motion and assigned the case for hearing.

Complainant's business is conducted in an inland warehouse served by a railroad track and a roadway. The bulk of the canned goods handled by complainant originates at canneries in California and is transported at shipper's expense to complainant's warehouse by truck in less than truckloads. Complainant also receives, by truck or rail from respondent's terminal, canned goods originating in California and canned pineapple shipped by vessel from Hawaii. Transfer charges on pineapple are absorbed by complainant. Complainant receives the canned goods, assembles them into lots, called enclosures, from various suppliers for various buyers, loads them into railroad cars, and ships them as consignor to himself or his warehouse agents at interior points, such as Chicago, Ill., and St. Louis, Mo. Except as to store-door deliveries, complainant's operation ends at the interior warehouse where the goods are unloaded, sorted, and made available to the purchasers who call for them. The shipments move at carload rates plus a charge for each enclosure. Complainant is not subject to regulation.

The facts with respect to respondent's pool car operations are found to be as follows. The methods used by both complainant and respondent are substantially the same. The bulk of canned goods handled by Encinal is received by truck and some by rail, a substantial portion of which is shipped beyond in water transportation. Thus shippers are able to deliver full truckloads to Encinal at minimum truckload rates. Not only is the difference between truckload and less-than-truckload rates saved, but a split-delivery charge is avoided for delivery of part of the goods for water transportation to Encinal and part to complainant for rail movement. The motor carrier services are independent of respondent's operations. Respondent also handles Hawaiian pineapples and papaya, and salmon from the Pacific northwest received by vessel. The water haul is terminated when the goods are placed in respondent's warehouse and the regular terminal charges are assessed and collected thereon. Shippers of pineapple using Encinal's pool car service do not incur the expense or inconvenience of transferring the goods to complainant's warehouse.

Canned goods received by truck are placed by the truck drivers on pallett boards in the shed at locations designated by respondent's receiving clerks. Pool carloads, which average 74,579 pounds with an average of 12.76 enclosures, require an average of 400 square feet of space in which to be assembled. The goods remain on the facility an average of 5.3 days. When a carload has been assembled, a jitney truck capable of moving rapidly and lifting 4 to 6 tons, picks up the loaded pallett boards and moves them into the car where the goods are stacked. Jitney trucks are also used to unload incoming rail cars. At times, goods are placed in open spaces outside the shed if the outbound car is to move shortly after receipt. Clerks tally incoming and outgoing cases and make office records of spaces occupied. One clerk can handle as many as 15 trucks at the same time. No additional employees have been required to handle Encinal's pool car business.

Respondent offers pool car service on shipments to eleven middle western cities with both warehouse and, except at two points, store-door delivery. Through charges for this service, with warehouse delivery, range from 7.5 to 10 cents per 100 pounds; for store-door delivery the through charges range from 10 to 13.5 cents. Out of these charges, Encinal retains amounts ranging from 3.5 to 6 cents for warehouse delivery and 2.5 to 6 cents for store-door delivery. The remainder is paid to the distributing warehouses. The major portion of the movement is to Chicago, Ill., on which the charge is 7.5 cents for warehouse delivery and 10 cents for store-door delivery. Encinal retains 3.5 cents where warehouse delivery is called for and 2.5 cents in the case of store-door delivery at Chicago. The charges are prepaid. Encinal fixes its charges on the same basis as complainant in so far as the rates of the latter can be determined.

Additional revenue of 56 cents per ton for carloading plus 10 cents per ton for checking is received from the railroad on pineapple which averages 28 percent of each pool car. Encinal also collects car unloading charges from the railroad on canned goods received by rail. On canned goods taken from storage for shipment in pool cars, respondent has received the regular terminal charges for checking and storage. Up to the date of hearing respondent had forwarded a total of 39 pool cars, 25 of which moved to Chicago, 3 to St. Louis, 6 to Milwaukee, 1 to Minneapolis, 3 to Cleveland, and 1 to Detroit.

Respondent admits complaint's allegation that it does not charge itself the regular terminal tariff charges for transferring freight between rail cars and trucks, for carloading, and for wharf demurrage on canned goods handled in pool car service. As stated, water transportation has ended, and the regular terminal charges have been collected by Encinal, on pool car canned goods received by vessel. These goods, together with those received by truck and rail, are assembled and shipped by respondent as a freight forwarder, Encinal being both the consignor and the consignee. We find that respondent's pool car business is an independent private venture, separate and apart from its terminal operations, and that the tariff charges in question are not applicable to the traffic handled in such enterprise. We further find that the alleged violations of sections 16 and 17 of of the act, based upon respondent's failure to apply the tariff in question, have not been sustained.

Complainant alleges that respondent is furnishing pool car service at less than cost, which in turn enables it to accord patrons unwarranted advantages both in connection with their rail pool car and water-borne traffic.

In support of its allegation that respondent's pool car service is being rendered at less than cost, complainant offers certain evidence to establish the cost of such service. The distribution costs hereinbefore stated are based upon direct evidence. Certain other costs are based upon a study made of these costs at private terminals in the San Francisco Bay area, in 1935, by Dr. Ford K. Edwards and Mr. T. G. Differding for the California Railroad Commission in its Case No. 4090 (1936), with an addition of 10 percent included to reflect alleged increased cost since that date. The Edwards-Differding study, however, was not directed to the costs of rail pool car service, as no such service was then being offered by any of the terminals, and offers no indication as to what a number of costs involved in such rail pool car service might be. Complainant attempts to supply the deficiency by building up hypothetical costs of assembling, floor space, carloading and forwarding and enclosure receipt, without any factual basis in the record to support them. Complainant's cost study thus appears to be based on too many assumptions unsupported by factual evidence to be conclusive. An analogy is sought to be made by complainant between cost of forwarding and enclosure receipt in water pool car service and in rail pool car service on the assumption that the operations are similar. Revenue received by Encinal from the railroad for checking cargo to rail car is not credited by complainant against the cost of carloading on the assumption that it is offset by the cost of loading pool cars which is alleged to be higher than that for loading average cars of canned goods, and the allegation that it is an unlawful rebate. Complainant also uses the cost of assembling water pool car shipments, which is higher than the cost as to rail pool car shipments, on the assumption that such higher cost is offset by an undisclosed cost of high-piling rail pool car shipments. None of these assumptions is supported by factual evidence. Disposition of the factor of dockage costs, included in the service charge on water pool car shipments, is unexplained. Whatever weight the study offered by complainant deserves, it does not support the contention that respondent's pool car service is a rebating device, or that it unjustly burdens other terminal services, and so we find. We further find that the alleged violations of sections 16 and 17 of the act, based upon the contention that respondent's services are rendered at below cost, have not been sustained.

The alleged undue advantages accruing to Encinal's patrons are the savings in trucking costs and the cost of transferring pineapple to complainant's warehouse hereinbefore mentioned. Shippers of canned goods who use both Encinal's steamship and rail pool car service are alleged to be preferred by respondent, while those who use Encinal's steamship service and complainant's rail pool car service are alleged to be prejudiced. The motor carrier rates involved are paid by shippers to such carriers and are wholly independent of respondent's services. Whether or not pineapple moves in rail pool cars, Encinal collects all of its terminal charges thereon. There is no evidence that respondent has failed to apply its terminal charges on outbound canned goods moving by water. Shippers who patronize both complainant and respondent testified, but had no criticism to offer against Encinal's pool car service or practices in connection therewith. The record fails to show that any shipper using respondent's wharf in connection with rail pool cars has been accorded any different treatment than any other shipper using the same facilities for the same purpose. It is apparent, therefore, that while complainant is at a competitive disadvantage in securing business, no shipper has been injured by the conduct of respondent's pool car service. We find, therefore, that the advantages in question do not result in violations of sections 16 and 17 as alleged.

Complainant's contention that respondent's practice of using its wharf for rail pool car operation is unreasonable in violation of section 17 is based upon alleged performance of service at less than cost, resulting congestion of wharves and dissipation of terminal revenue. The only evidence offered to prove that respondent's rail pool car service results in congestion and added expense in connection with the handling of other cargo is the fact that high-piling is practiced by Encinal, and that it maintains an inland warehouse in addition to the wharf. It is not shown to what extent high-piling results from the handling of pool car freight. No connection is shown between rail pool car operations and the inland warehouse. During the period between February 10, 1941, and June 4, 1941, respondent transferred a number of cases of canned goods from its facilities to complainant's warehouse at a total expense, according to complainant's estimate, of $89.29. This, together with the fact that the goods were handled and assembled by respondent for no apparent charge, constitutes the facts supporting complainant's claim of dissipation of terminal revenues. The record does not show whether this item was charged against respondent's pool car operations or its terminal operations. We find that the allegation that respondent's use of its terminal facilities results in an unreasonable practice in violation of section 17 has not been sustained.

The complaint will be dismissed.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 3rd day of February A. D. 1942

No. 601

G. C. Schaefer, Doing Business as Consolidated Freight Forwarding Company

v.

Encinal Terminals

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,

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

By the Commission.

[seal] (Sgd.) A. J. Williams,

Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 609

LUMBER RATES—U. S. ATLANTIC AND GULF PORTS TO PUERTO RICO

Submitted January 22, 1942. Decided February 5, 1942

Proposed rates on lumber from United States ports on the Atlantic and Gulf of Mexico to Puerto Rico found not justified. Suspended schedules ordered canceled, without prejudice to the establishment of a surcharge based upon actual costs incurred as the result of war-time operation.

S. P. Gaillard, Jr., and *E. Myron Bull* for respondents.

John H. Eisenhart, Jr., *Robert M. Jones*, and *George D. Rives* for Office of Price Administration.

Eduardo R. Gonzalez for the Government of Puerto Rico.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By schedules filed to become effective January 12, 1942, respondents [1] proposed to increase rates on lumber from United States ports on the Atlantic and Gulf of Mexico to Puerto Rico as follows: [2] Cypress, fir, gum or yellow pine, from \$14 to \$17; other than cypress, fir, gum or yellow pine from \$15 to \$18, and ties, from \$12 to \$13.50. Upon protest, the operation of the schedules was suspended until May 10, 1942.

The lumber shipped from the United States to Puerto Rico exceeds 100,000,000 feet per year. At least 50 percent of it is used by the United States Government. It is chiefly southern pine, which constituted over 90 percent of the volume shipped in 1941.

The lumber carried by respondents moves from ports on the Gulf of Mexico and the South Atlantic. Those participating in the transportation are Waterman, Lykes, and Bull, operating from ports on the East Gulf, West Gulf, and South Atlantic, respectively. New

[1] Waterman Steamship Corporation, Lykes Bros. Steamship Co., Inc., Bull Insular Line, Inc., and The New York and Porto Rico Steamship Company, hereinafter called Waterman, Lykes, Bull, and New York and Porto Rico Steamship Company, respectively.

[2] Rates and charges are stated in dollars per 1,000 feet, board measurement, unless otherwise specified.

York and Porto Rico Steamship Company, which operates only from the North Atlantic, does not carry lumber. The principal movement is by vessels of Waterman.

Within the last few years the price of lumber has risen over 75 percent. Between January 1938 and the close of 1940, the price of southern pine boards, representing a large percentage of the lumber shipped to Puerto Rico, rose from $17.43 to $32.55 per thousand feet. Following an admonition to the industry by the Office of Price Administration, the price fell to $32 in July 1941. A subsequent rise in the price brought about the establishment of a ceiling on southern pine, effective September 5, 1941. At the end of 1941 the price was $30.61. During the period of these price changes, resulting in an increase of $13.18, the transportation rate was increased $2.

The Office of Price Administration points out that the proposed increase of $3 in the transportation rate would more than offset the savings in price which it has accomplished. It also compares respondents' rates with those prevailing in other trades, but the comparison is not accompanied by any showing of similarity of transportation conditions in the different trades.

Respondents endeavor to show that, based on the maximum time-charter rates fixed by the Commission in General Order 49, both their present and proposed rates on lumber result in a deficit. According to a statement which they submit, as corrected pursuant to agreement at the hearing, at such charter rates a steamship, such as Waterman's *Maiden Creek*, *Kofresi*, or *Afoundria*, of 7994 deadweight tons, a speed of 13 knots, and sailing from Mobile and New Orleans to San Juan, Ponce, and Mayaguez with 3,400,000 feet of lumber, would incur a deficit of $16,882.45 at the present rate of $14 and a deficit of $6,682.45 at the proposed rate of $17. Revenue and expenses are arrived at as follows:

Revenue

3,400,000 ft. @ $14	$47,600.00
3,400,000 ft. @ 17	57,800.00

Expenses

Charter hire	33,000.00
Cargo handling	21,250.00
Fuel oil	1,800.34
Port charges	362.10
Agency fees (not covered by overhead)	1,190.00
Crew overtime (charterer's portion)	438.19
Overhead (charterer's)	4,417.05
P. and I.	600.00
Dockage	925.00
Miscellaneous	499.77
	$64,482.45

Deducting expenses for overhead and P. and I., which are included in the *General Order 49 scale* of charter rates, the deficits would be \$11,865.40 and \$1,665.40, respectively. Revenue from a landing or lighterage charge of \$1.50 at Puerto Rico, less a toll of 35 cents paid to the Government of Puerto Rico, reduces the figure of \$11,865.40 to \$7,955.40 and converts the deficit of \$1,665.40 to a profit of \$2,244.60. It is testified that there is a "de luxe type of delivery" accorded in Puerto Rico which includes services not covered by the \$1.50 charge or the transportation rate. These services, however, appear to be connected with the delivery of lumber by consignees to their customers, not with the transportation. According to respondents' witness, they are services "generally furnished by the wholesaler to the retailer, after the wholesaler has taken the stock." While, no doubt, respondents should require the payment of compensation for performing such services, the transportation rate or charge is not the proper means for securing such payment.

Respondents base their statement on a voyage time, including days in port, of 33 days for the transportation of a full cargo of lumber. Such cargoes are exceptional. On the other hand, voyages of Waterman's vessels made in June, July, and August 1941, with a typical cargo, which includes other commodities, as well as lumber, averaged 17¾ days. Figures showing actual revenue and expenses are not submitted.

Waterman owns the vessels which it operates. This excludes consideration of the *General Order 49 scale* because Waterman is not chartering ships at those rates. Therefore, expenses based thereon are purely hypothetical costs. *Surcharge—Matson Navigation Company et al.*, decided January 20, 1942. Respondents do not seek to justify the increased rates proposed on the ground of increased costs due to war-risk insurance, war-risk crew bonus, etc., and no evidence was presented with respect thereto.

We find that the proposed rates have not been justified. The suspended schedules will be required to be canceled and the proceeding discontinued, without prejudice to the establishment of a surcharge based upon actual costs incurred as the result of war-time operation.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 5th day of February A. D. 1942

No. 609

Lumber Rates—U. S. Atlantic and Gulf Ports to Puerto Rico

It appearing, That by order dated January 10, 1942, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order and suspended the operation of said schedules until May 10, 1942;

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

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel said schedules on or before May 10, 1942, upon notice to this Commission and to 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, and that this proceeding be, and it is hereby, discontinued.

By the Commission.

[SEAL] (Sgd.) A. J. Williams,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 571

ALASKAN RATES

No. 572

ALASKA RATE INVESTIGATION No. 2

No. 611

SURCHARGE—ALASKA TRADE

Submitted Febrary 17, 1942. Decided March 31, 1942

On further hearing, rate base and fair rate of return for respondents Alaska Steamship Company, Northland Transportation Company, and Alaska Transportation Company determined.

Basic rate structures of Alaska Steamship Company and Northland Transportation Company found unreasonable.

Surcharges on adjusted rates determined.

Special rates to Navy Department and Siems-Drake Puget Sound Company found unduly prejudicial, and an unreasonable practice.

Appropriate order entered.

Additional appearances:

Ernest Gruening, Governor of Alaska.

Anthony J. Dimond, Delegate in Congress from Alaska.

Henry Roden, Attorney General of Alaska.

John H. Eisenhart, Jr., *Robert M. Jones*, and *George Rives* for Office of Price Administration.

Frederick A. Delano, *Ralph J. Watkins*, *R. F. Bessey*, and *James C. Rettie* for National Resources Planning Board.

G. Lloyd Wilson for Office of Defense Transportation.

Edwin A. Stone for Quartermaster Corps, United States Army.

Winston Jones for United States Navy.

A. B. Smith for United States District Engineers.

John Laylin, *Ira L. Ewers*, *Pendleton Miller*, and *Henry Schurman* for respondents.

Omar O. Victor, *Harrison Combs*, *Robert Howe, Jr.*, *A. W. Dickinson*, *Ray Ward*, *Glenn Carrington*, *W. C. Arnold*, *Edward W. Allen*, *Ralph L. Shepherd*, and *Sam Nicholls*, for interveners.

Paul D. Page, Jr., Solicitor, U. S. Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

In *Alaskan Rates*, 2 U. S. M. C. 558, we found, among other things, that the rate structures as a whole of respondents Alaska Steamship Company, Northland Transportation Company, and Alaska Transportation Company had not been shown to be unreasonable and that the rate structure of Santa Ana Steamship Company would not, for the future, be unreasonable. Those determinations were predicated upon the relation of net operating income from Alaskan service to the fair value of respondents' property devoted to that service based upon a record embracing the calendar year 1940.

On October 25, 1941, Alaska Steamship Company, Alaska Transportation Company, and Northland filed a joint petition for reconsideration of fair value of the property of those respondents.

On December 30, 1941, Alaska Steamship Company filed a petition for authority to establish an emergency surcharge of 45 percent of its freight rates and passenger fares on less than statutory notice for the sole purpose of offsetting unavoidable increases in expenses being incurred as the result of the present war. In support of its petition respondent estimated the cost of various items of war risk insurance and crew bonuses and showed their relation to gross revenues of two typical voyages. We granted the petition, and the surcharge became effective January 7, 1942. Similar relief has been accorded Northland and Alaska Transportation Company.

Immediately following authorization of the surcharge we received numerous protests from Alaskan individuals, corporations, labor unions, Chambers of Commerce, and civic associations as well as from the Governor of Alaska and the Delegate in Congress from Alaska. By order of January 15, 1942, we instituted on our own motion a proceeding of investigation concerning the propriety and lawfulness of the surcharge under No. 611 and the matter was heard in Washington, D. C., on January 23, 1942. At the hearing United States Smelting Refining and Mining Company, the United Mine Workers of America, the Delegate in Congress from Alaska, the Governor of Alaska, the Chairman of National Resources Planning Board, Office of Defense Transportation, Office of Price Administration, Alaska Miners Association, and National Federation of Federal Employees, Local No. 251, appeared as protestants. It became apparent from the changed conditions in the Alaskan trade, developed at the hearing, that a fair determination of the amount of a surcharge could not be made in the absence of a complete review of the rate structures in question and an analysis of net operating income during the year 1941.

By orders of January 24, 1942, we reopened for further hearing Nos. 571 and 572 and required Alaska Steamship Company, Northland, and Alaska Transportation Company to file on or before February 2, 1942, accounting and statistical data reflecting the results of operations during the year 1941. On the same date Office of Price Administration filed a petition for leave to intervene and to reopen for further testimony. On February 6, 1942, respondents Alaska Steamship Company, Alaska Transportation Company, and Northland filed a joint motion to rescind the order of January 24, in Nos. 571 and 572 and to strike the petition of Office of Price Administration, or, in the alternative, to require the Office of Price Administration to furnish a bill of particulars. The motion was denied, but Office of Price Administration was required to furnish respondents with a bill of particulars.

By order of January 30, 1942, No. 611 was assigned for further hearing. All of the these proceedings were heard together in Seattle, beginning on February 9 and ending February 17, 1942. They were submitted by oral argument on the record.

The Governor of Alaska, the Delegate in Congress from Alaska, the Attorney General of Alaska, and other parties take the position that respondents' extraordinary war costs should not be borne by the population of Alaska in the form of surcharges if steamship revenue under the basic rate structure is not adequate to meet the increased cost of operation. They state that items of war expenses should be assumed by the Nation as a whole in the form of a subsidy, an appropriation, or Government operation. It is our function in these proceedings to determine, first, whether the rate structure as a whole is just and reasonable under present conditions and, second, what additional revenue, if any, respondents need to meet the war costs and how it shall be provided. We are not authorized under law to go further. If the trade cannot stand the full cost of service then the solution rests with the legislative or executive branches of the Government.

Nos. 571 and 572

The valuations made in the prior proceedings will be brought down to December 31, 1941, upon basis of the evidence submitted at the further hearing.

Book value.—The book values [1] of respondents' owned and used

[1] The term "original cost" was used in our prior report. Vessels of respondents, with three exceptions, were acquired in used condition. The amounts shown as "book value" less accrued depreciation, reflect the cost of acquisition by respondents plus subsequent additions and betterments less accrued depreciation, except in respect to one new vessel acquired by Northland Transportation and included in "book value" at cost to the builder, plus subsequent additions and betterments.

property less accrued depreciation, as of December 31, 1941, are as follows: Alaska Steamship, $3,329,465; Northland, $869,605; Alaska Transportation, $375,647; and Santa Ana, $125,372.

Cost of reproduction new of vessels.—Cost of reproduction new of respondents' vessels as of December 31, 1939, considered in our prior report, was stipulated by counsel on the basis of the results of separate studies and subsequent conferences of engineers representing respondents and the Commission. No consideration was given to the effect of war conditions upon such cost.

At the further hearing a witness from our Construction Division testified that the increase in construction costs of new vessels of general type and design, between December 31, 1939, and December 31, 1941, averaged 22.6 percent. His conclusion was based upon a study of contract prices, including the effect of the escalator clause in the contracts, for identical vessels at various dates and covered 222 cargo vessels of the C–1, C–2, and C–3 designs in our construction program. He testified that the price trend determined by him for cargo vessels would be practically the same for combination passenger and cargo vessels. No other evidence was offered on cost of reproduction new and the conclusion of the witness was not disputed.

On the basis of an increase of 22.6 percent over the stipulated costs as of December 31, 1939, the cost of reproduction new of respondents' owned and used vessels, as of December 31, 1941, would be as follows:

	Vessels	
Alaska Steamship	16	[1]$28,443,947
Northland Transportation	5	7,261,999
Alaska Transportation	3	1,832,992
Santa Ana	1	932,986

[1] The S. S. *Victoria* is not included in this amount. It was reconditioned in 1941 and returned to service. The cost of reproduction new as of December 31, 1941, is $1,896,622.

Cost of reproduction new of vessels less depreciation.—The stipulated cost of reproduction new and cost of reproduction new less all elements of depreciation and the resulting average depreciated condition of respondents' vessels, as of December 31, 1939, are shown in the following tabulation:

	Number of vessels	Cost of reproduction new	Cost of reproduction less depreciation	Average depreciated condition (percent)
Alaska Steamship	16	$23,200,609	$11,164,576	48.12
Northland Transportation	5	5,923,327	2,927,770	49.43
Alaska Transportation	3	1,495,100	1,015,369	67.91
Santa Ana	1	761,000	372,890	49.00

The depreciation deducted represented observed physical depreciation due to wear and tear—book depreciation in the case of Alaska Transportation—and a further deduction of 30 percent for functional depreciation.

At the further hearing a witness from our Construction Division, after an examination of repair reports, testified that respondents' vessels were currently in as good condition as they were in 1939. His testimony did not cover functional depreciation. Notwithstanding that in the prior proceeding respondents stipulated that functional depreciation, equal to 30 percent of observed physical condition, existed as of December 31, 1939, witnesses for Alaska Steamship and Northland Transportation testified at the further hearing that the vessels of their fleets were not inadequate or obsolescent for the Alaska trade. They further testified that observed depreciation or deferred maintenance represents all existing depreciation. Witness for Alaska Steamship admitted that the actual physical condition of a vessel does not relate to functional depreciation. Northland's witness conceded that progress had been made from year to year in the science of marine design, engineering, and construction.

If cost of reproduction new less depreciation of vessels as of December 31, 1941, be determined by deducting from the stipulated average total depreciated condition as of December 31, 1939, the additional functional depreciation that has accrued in the 2 years to December 31, 1941, the results shown below are obtained

	Reproduction new less depreciation as of Dec. 31, 1941
Alaska Steamship (see Note 2)	$13,075,822
Northland Transportation	3,435,613
Alaska Transportation	1,163,826
Santa Ana	437,570

It should be noted, however, that these amounts greatly exceed reproduction cost less depreciation computed on basis of estimated remaining life as shown by respondents' depreciation accounting. The statement following shows the estimated average life of vessels of respondents' fleets from the year built to the time they will be fully depreciated in the accounts at the present annual rates, the average age to December 31, 1941, the estimated average remaining life from December 31, 1941, until they will be fully depreciated in the accounts, and the cost of reproduction new less depreciation as of December 31, 1941, on basis of the estimated remaining life for depreciation accounting.

	Number of vessels	Estimated average life from year built until fully depreciated in accounts	Average age to Dec. 31, 1941	Estimated average remaining life from Dec. 31, 1941, until fully depreciated in accounts at present annual rates		Cost of reproduction new less depreciation Dec. 31, 1941, on basis of estimated remaining life for depreciation accounting
		Years	*Years*	*Years*	*Percent weighted*	
Alaska Steamship [1]	16	32.6	24.8	7.8	25.46	$7,240,651
Northland Transportation	5	30.0	19.8	10.2	30.82	2,237,885
Alaska Transportation	3	32.5	22.0	10.5	33.77	618.968
Santa Ana	1	40.5	22.0	18.5	45.68	426.188

[1] The S. S. *Victoria*, reconditioned and returned to service in 1941, is not included as it has been fully depreciated for accounting purposes.

But depreciation accounting, as shown by respondents' books, does not present an undistorted view of depreciation. For instance, the 71-year old S. S. *Victoria*, which was returned to service in 1941, has been fully depreciated in the accounts. An expenditure of approximately $117,000 was made to place it in condition for its present cargo-carrying service. The S. S. *Yukon* was built in 1899 and reconditioned in 1924. In the accounts it will be fully depreciated in 2 more years. Barring accidental loss, it is reasonable to assume that it will remain in service beyond that period.

The real measure of depreciation is the extent to which service capacity has been exhausted. Wear and tear, obsolescence and inadequacy, as determined by inspection, are factors in depreciation to be given appropriate weight in determining the extent to which service capacity has been exhausted. But observation alone is not sufficient. In addition, a careful analysis must be made of past experience, and informed judgment as to future trends must be applied. We will make no specific finding of the amount of accrued depreciation or reproduction new less depreciation as of December 31, 1941, for the purposes of this proceeding. In ascertaining the rate base, consideration will be given to all data of record on the question.

Working capital.—A witness for Alaska Steamship testified that the amount of working capital necessary to operate that respondent's business during the month of peak requirements in 1941 was $2,702,000. Based on that requirement as adjusted to reflect changed conditions since 1941, he estimated that the necessary amount for 1942 would be $3,927,000.

Respondent's claim rests upon the theory that the rate-payers should support, as a part of the rate base, its maximum investment in working capital based on the experience of the peak month of the year despite the fact that the experience of the other 11 months indicates a smaller investment. Inclusion in the rate base of an amount computed on the basis of its average investment throughout the year will recognize the fluctuating investment from month to month and fully compensate the respondent. The tabulation below shows respondent's average investment in working capital during the year 1941 and for the months of that year that indicate the maximum and minimum net investment, based on the balances in the current asset and current liability accounts at the close of the month.

	Average (12 months)	Maximum (August)	Minimum (October)
Uncollected accounts receivable, working funds, cash in transit, prepayments, unterminated voyage expenses, tax certificates, and materials and supplies	$2,594,282	$3,424,068	$3,070,401
Less unpaid current accounts, taxes payable, and unterminated voyage revenue	1,680,889	1,883,187	2,480,704
Net investment in working capital exclusive of provision for a buffer fund of cash	913,393	1,540,881	589,697

Daily balances are not available, but ordinarily the average of monthly balances of active accounts over a yearly period with the many transactions involved would not vary greatly from true daily averages. However, the buffer fund determined hereinafter is designed to meet such variations and provide a safe margin of cash on hand.

The average investment of $913,393 in working capital during 1941, including materials and supplies but exclusive of any provision for a buffer fund of cash, is approximately $345,000 greater than the amount determined in our prior report. This increase is due mainly to large increases in all accounts receivable, balances from greatly expanded traffic, longer delays in collections from the Government and its contractors, voyage delays retarding collections, increased uncollected insurance claims, prepaid insurance, and the impounding of funds to pay increased taxes.

Respondent's claim for $3,927,000 as its working capital requirement for 1942 is necessarily based on estimates. It is approximately 45 percent greater than the amount claimed for 1941, the increase being based on an estimated increase of 45 percent in uncollected revenue by reason of the existing surcharge, increased insurance claims, prepaid insurance, and costs of operation. Under existing conditions, a forecast of the many factors that will affect operations in the Alaskan trade in 1942 and the resulting investment in working capital involves so much speculation that we are unable to accord any weight to the estimate.

In our prior report we determined $500,000 was a reasonable amount for a buffer fund of cash. The respondent has claimed

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$500,000 for 1941 and $750,000 for 1942. The average monthly operating expenses in 1941 were approximately $730,000, exclusive of depreciation charges. Changed conditions justify an increase in the buffer fund and we conclude that $625,000 is a reasonable amount therefor.

We find the total amount of working capital to be included in the fair value of respondent Alaska Steamship's property should not reasonably exceed $1,550,000.

Respondent Northland claimed no specific amount for working capital at the further hearing. However, it furnished data for the record from which we have computed from the balances in the current asset and current liability accounts at the close of each month during 1941 its average investment in working capital during that year and the month that indicates the maximum investment. These amounts are $91,483 and $346,957, respectively. The most favorable month, December, indicates that respondent had no such investment.

The average monthly operating expenses in 1941, including overheads, were approximately $158,000, which amount we conclude is a reasonable measure for a buffer fund of cash.

We find the total amount of working capital to be included in the fair value of respondent Northland's property should not reasonably exceed $250,000.

Alaska Transportation claimed no specific amount for working capital at the further hearing. From monthly balances in the current asset and current liability accounts we have computed its average investment in working capital during 1941 to be $82,440, the maximum monthly investment as $122,979, and minimum monthly investment to be $55,497. Average monthly operating expenses during 1941 were approximately $50,000 which we conclude is a reasonable amount for a buffer fund.

We find the respondent Alaska Transportation's total investment in working capital to be included in the fair value of its property should not reasonably exceed $135,000.

No specific amount was claimed by Santa Ana for working capital. Analysis of its common carrier operations during the year 1941 indicates that the amount to be included in the fair value of its property should not exceed $80,000, the same amount determined in our prior report.

Conclusions as to fair value.—At the further hearing respondents made no contentions respecting the specific amount of fair value of their properties. However, in their petition for reconsideration of fair value, they contended that controlling weight should be given to cost of reproduction less depreciation. We are not bound to do this as a matter of law. In *Fed. Power Comm. et al.* vs. *Natural Gas* *etc. Co. et al.*, (Nos. 265, 268—October Term, 1941) decided March 16, 1942, the Supreme Court stated:

> The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made, and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the Commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end.

Under this decision, our duty is to approach the question of value from a practical standpoint, and to resolve the problem it presents in the light of actual experience as opposed to theory and speculation, without reaching an arbitrary result.

Some weight should be given reproduction cost, otherwise no value could be included for the S. S. *Victoria* which has been entirely written off the books; and little value could be assigned to the S. S. *Yukon*, which will be written off in 2 years. These two ships are insured for substantial amounts and, barring accident, will probably see service for several years to come.

It should be emphasized that we are valuing property currently in use, not property that may replace it in the future. The history of this property was reviewed at length in the prior report. Points not stressed therein were the extremely favorable terms upon which the vessels were acquired and the wide variance between cost of acquisition and replacement cost.

The tabulation following shows on the basis of per built weight ton, on which reproduction costs herein have been estimated, the gross book value, gross book value less depreciation, reproduction cost new, and reproduction cost less depreciation, based on adjustment of depreciated condition in our prior report, of respondents' vessels as of December 31, 1941.

	Alaska Steamship Co.	Northland Transportation Co.	Alaska Transportation Co.	Santa Ana Steamship Co.
Freight vessels:				
Gross book value	$45	$37	$144	$62
Gross book value less accrued depreciation	17	17	115	58
Reproduction cost new	420	591	562	544
Reproduction cost new less depreciation	207	245	357	255
Combination passenger and freight vessels:				
Gross book value	188	193		
Gross book value less accrued depreciation	78	119		
Reproduction cost new	587	693		
Reproduction cost new less depreciation	264	352		

It is apparent from the above comparison that respondents' investment in their vessels is out of all proportion to current costs of replacement. Most of the vessels were acquired at bargain prices much below the cost of their construction.

Considering all relevant factors and recognizing that the property of each respondent is an integrated operating enterprise and a going concern, we conclude, for the purpose of this proceeding, that the total fair value of the property owned and used by respondents in Alaskan common carrier and other service during the year 1941 does not exceed the following amounts:

	Vessels	Other physical property	Working capital	Total
Alaska Steamship	$5,840,000	$145,000	$1,550,000	$7,535,000
Northland	1,505,000	10,000	250,000	1,765,000
Alaska Transportation	573,000	1,000	135,000	709,000
Santa Ana	185,000	27,000	80,000	292,000

The above findings include the value of vessels and working capital which were devoted to operations during 1941 other than Alaskan common carrier service. The values of property devoted to such other service that should be deducted from the above findings of total value for the purpose of determining the fair value of property devoted to Alaskan common carrier service is shown below.

	Vessels	Working capital	Total
Alaska Steamship	$149,000	$36,000	$185,000
Northland	297,000	48,000	345,000
Alaska Transportation	72,000	17,000	89,000
Santa Ana	50,000		50,000

(1) *We find, for the purpose of this proceeding, that the fair value of respondents' properties owned and used in Alaskan common carrier service during the year 1941 does not exceed the following amounts:*

	Vessels	Other physical property	Working capital	Total
Alaska Steamship	$5,691,000	$145,000	$1,514,000	$7,350,000
Northland	1,208,000	10,000	202,000	1,420,000
Alaska Transportation	501,000	1,000	118,000	620,000
Santa Ana	135,000	27,000	80,000	242,000

Our finding of the fair value of property of Alaska Steamship devoted to Alaskan common carrier service during 1941 exceeds the finding of $6,650,000 in our prior report by $700,000. The difference is accounted for by an increase of $264,000 in investment in working capital, $280,000 for additional investment in terminal property and value of one vessel returned to service, and $221,000 which is the net result of increased construction costs less additional depreciation, less $65,000 which is the difference in value of property engaged in non-Alaskan service in 1941. The fair value of property of the other respondents during 1941 is slightly less than determined in our prior report. The difference is accounted for largely by deductions of the value of property used in non-Alaskan service and the net effect of increased construction costs less depreciation.

Rate of return.—In our prior report we found that the fair rate of return should not exceed 7.5 percent. We are requested by counsel for respondents to review the testimony and fix a rate of 10 percent in the "hazardous and unbalanced" Alaskan trade. As stated in the former report, the hazards of the trade are underwritten through insurance paid for by the shippers.

In view of the circumstances that have intervened since the prior decision, we are of opinion that a reduction should be made in the rate of return. The element of competition considered in the prior case has virtually disappeared. The earnings of respondents in 1941 have substantially increased over 1940. For instance, Alaska Steamship's net income is up 14.8 percent, and Northland's increased 27.8 percent. Furthermore, not all of the burden of emergency war costs should be shifted to the shippers. As stated by the Supreme Court in *Covington and Lexington Turnpike Co.* v. *Sandford*, 164 U. S. 578, 596, "It cannot be said that a corporation is entitled, as of right, and without reference to the interests of the public, to realize a given percent upon its capital stock. * * * The rights of the public are not to be ignored. * * * The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends."

(2) *We find that the rate of return on the fair value of the property of Alaska Steamship Company, Northland Transportation Company, and Alaska Transportation Company devoted to Alaskan common-carrier service should not exceed 6 percent.*

Net operating income.—Alaska Steamship's net water-line operating income for the calendar year 1941 amounted to $845,128. This figure includes an adjustment of $67,523 representing income and excess-profits taxes estimated by us as allocable to charter operations which respondents assigned to Alaska common-carrier operations. The amount should be restored to net income for the reason that the charter operations should bear their proportion of these taxes. If respondent had collected the normal rates on traffic handled under the Siems-Drake contract, hereinafter discussed, its gross revenue would have been increased by approximately $333,000 and net income about $152,000 after income and excess-profits taxes.

The net water-line operating income from Northland's Alaska service for the calendar year was $97,500.

Alaska Transportation's operations for the calendar year 1941 show a net profit of $5,253. Excluding net charter revenue, the Alaska water-line operations of this company show a loss of $13,862. (See Appendices 1, 2, and 3 for details of net income.)

Santa Ana's Alaskan common-carrier operations showed a net income of $84,009 before income taxes. These taxes were estimated by respondent to be $29,400, leaving net water-line operating income of $54,609.

Conclusions as to reasonableness of rate structure.—The fair value of property devoted to Alaskan service in 1941 and the net operating income therefrom for that year, as found herein, together with the resulting rate of return are summarized in the following tabulation:

Respondent	Fair value	Net operating income	Rate of return (percent)
Alaska Steamship	$7,350,000	$845,128	11.50
Northland	1,420,000	97,500	6.87
Alaska Transportation	620,000	[1] *13,862*	None

[1] Loss.

Alaska Steamship's return is 5.50 percent, or $404,128, in excess of the fair return of 6 percent on the fair value herein determined. If this respondent had collected normal rates on the Siems-Drake traffic the total excess earning over a fair return would have been $556,128, or 7.57 percent. Northland's return is $12,300, or 0.87 of 1 percent, in excess. Alaska Transportation, with an operating deficit, earned no return.

(3) *We find that the basic rate structures as a whole of Alaska Steamship Company and Northland Transportation Company are, and for the future, will be unreasonable to the extent they yield net income from Alaskan common carrier operations in excess of 6 percent of the respective fair values found herein.*

These respondents will be required immediately to file new tariff schedules effecting general reductions in conformity with the findings herein.

No findings are made as to Santa Ana's rates inasmuch as that respondent assesses no surcharge, and its future operations are uncertain.

Lawfulness of particular rates.—The Office of Price Administration is concerned insofar as transportation rates affect price levels. It asserts that respondent's rates on dry foodstuffs are too high with relation to rates on other commodities. The rate on hardy fruits and vegetables from Seattle to Ketchikan is 23¾ cents per cubic foot, whereas that on general merchandise is 20¾ cents per cubic foot. A wide variety of commodities moves under the general merchandise or N. O. S. rate, including many items of foodstuffs, such as groceries, corn, tomatoes, sugar, canned chicken, and crackers. Other illustrative commodities included in this item are wrenches, playing cards, stoveware, matresses, bathtubs, and atomizers. The unsupported comparison is of little value. A witness for Office of Price Administration testified, but did not show, that respondents' rates on dry foodstuffs were relatively high when compared with rates maintained by carriers in the Hawaiian and Puerto Rican trades. No attempt was made to compare transportation conditions in those trades.

Another witness for Office of Price Administration showed the total freight transported by, and total freight revenue of Alaska Steamship during the years 1939 and 1940, broken down into commodity classifications, and the ratio of revenue to tons carried. It was testified that the amount of revenue derived from transportation of food products was out of proportion to the remaining groups of commodities on the basis of total tons transported. No consideration was given to such transportation factors as stowage, value of commodities, competitive conditions, regularity of movement, packing characteristics, susceptibility to claims or perishable nature of commodities. During the year 1940, 29 percent of tons carried by Alaska Steamship moved under the description of less-than-carload quantities. This item is not broken down into commodities so that it is impossible to get a true ratio as between food products and other commodities even assuming it is proper to measure the rates on particular commodities in this manner. Clearly, evidence of such character does not demonstrate that the basic rate structure is out of balance.

We found in the original report herein that special lower rates applicable on property moving from Seattle to Japonski Island and to Woman's Bay under a contract between Siems-Drake Puget Sound Company and the Navy Department had not been shown to be unlawful. As stated previously, Alaska Steamship's loss in revenue on this traffic in 1941, on the basis of normal rates, approximated $333,000. We are now of opinion, in the light of war conditions and the evidence of record, that maintenance of such rates places an undue burden on the remainder of that respondent's traffic to the extent that the lower rates reduce the revenue and, therefore, the base upon which surcharges are figured, thereby increasing the ratio of surcharges to the total revenues and the amount of the surcharges which other shippers will be required to pay, and resulting in undue preference in favor of Siems-Drake Puget Sound Company and the Navy Department and in undue prejudice to other shippers and in an unreasonable practice. Respondent Alaska Steamship will be required to cancel any rates lower than those which would normally apply.

The record discloses general dissatisfaction in Alaska with the joint rates maintained by Alaska Steamship and Alaska Railroad. In the original report we expressed the opinion that such joint rates should be canceled and proportional water rates published in lieu thereof. However, action on the matter has been deferred at the request of the Interior Department which has complete control over the rates charged by the Alaska Railroad.

No. 611

As hereofore stated, we granted the 45 percent surcharge on basis of data showing that Alaska Steamship needed that much additional revenue to meet additional war costs of operation. The surcharge was designed to cover the cost of war risk hull insurance, crew life insurance, crew bonuses, and expenses of voyage delays due to the war. Insurance covering seagoing personnel and crew bonuses is required by orders of the Maritime War Emergency Board appointed by the President.

At the hearing complete data, including voyage statements, was offered by respondents reflecting all voyages terminated between December 7, 1941, and the date of the hearing. Alaska Steamship showed the results of 12 voyages, the last terminating on January 14, 1942. Revenues and war costs of these voyages are summarized in Appendix 4. It will be observed that, as of the date of the hearing, the existing surcharge has been more than justified.

Since the hearing, changes in insurance rates and crew bonuses have been made. Also, it is likely that voyage delays have been shortened. Respondents are required to furnish monthly revenue and expense statements showing complete details of their operations and segregating emergency war costs. However, the January statements are not of record. In the absence of such data our calculations as to Alaska Steamship's service beyond Southeastern Alaska will be based upon the evidence of record.

Northland showed the results of seven voyages terminated between December 7, 1941, and the date of the hearing. We conclude from that data that the surcharge as of the date of hearing has been justified. However, the Commission is advised that both the items of crew bonuses and insurance rates have been reduced so far as their application in Southeastern Alaska is concerned. Appendix 5 is an estimate of revenues and expenses based upon Northland's showing, but reflecting subsequent reductions in the items of bonuses and insurance rates.

National Resources Planning Board states that increased prices in Alaska resulting from a 45 percent surcharge would have a serious effect upon civilian morale and would precipitate a large exodus of population and rapid deterioration of economic life there. According to its figures retail prices of 45 standard food items increased an average of 15 percent in Juneau during the 9-month period prior to the establishment of the surcharge. Surveys of Anchorage, Sitka, and Petersburg covering the same period reveal increases of 16, 19, and 14 percent, respectively. Following the effective date of the surcharge, other sharp increases in price of foodstuffs occurred. Using the situation in Anchorage as illustrative, the Board shows that, as to lard, sugar, sirup, canned vegetables, navy beans, and prunes, average retail prices advanced 13.57 percent, although the surcharge resulted in an average increase of only 2.32 percent of the actual freight charges on quantities required by a family of four for the period of 1 year. For example, the price of 70 pounds of lard prior to January 7 was $17.50. After that date the price advanced to $21.00, an increase of $3.50, whereas the surcharge resulted in an increase of only 47 cents for the transportation of that quantity. A similar study of the relation of the surcharge to prices at Juneau as of February 2, 1942, was made by the Commission's staff. The retail price of a pound of bacon shipped from Seattle was, on February 2, 40 cents. The surcharge increased the transportation cost 3 mills per pound, or 0.7 of 1 percent of the retail price at Juneau.

The Board fears that increased freight charges on building material will increase building costs and rents in the territory. Reverting again to the Commission's study of Juneau prices, it appears that for the transportation of cement the surcharge amounted to an increase of 64 cents per barrel of 380 pounds. The price per barrel at Juneau was $6.70 on February 2, 1942. The wholesale price of a keg of nails at Seattle on February 2 was $4.25. The wholesale delivery price at Juneau was $5.20, which included wharfage and handling charges at Seattle and Juneau, and ocean freight plus the surcharge. The retail price at Juneau was $10.00, whereas the surcharge amounted to only 24 cents, or 2.4 percent of the retail price.

The record is convincing that the surcharge has had a serious effect upon the prices in Alaska, but in many instances this effect is caused, not so much by the extent of the increased transportation charges as by the pretext these increases give to wholesalers and retailers to increase their prices by much greater amounts. It is also clear that many other factors, over which we have no control, contribute even more seriously to the growing difficulties in Alaska. The mining industry can hardly get priorities for new machinery and maintenance equipment. Due to the defense construction employment and rising wage scale it is hard for Alaskan industries to meet increased overhead and retain normal labor personnel.

(4) *We find that the existing surcharge of 45 percent has not been shown to have been unreasonable in the past or unreasonable for the future on rates to and from ports in Alaska other than in Southeastern Alaska. We further find that said surcharge is, and for the future will be, unreasonable to the extent it exceeds or may exceed 20 percent on rates to and from ports in Southeastern Alaska.*

Respondents will be required to submit for analysis, monthly operating and voyage statements showing revenue and expenses of freight and passenger movements in connection with their respective services. Our findings are without prejudice to any revisions in the light of changed conditions.

An appropriate order will be entered.

Appendix 1

ALASKA STEAMSHIP COMPANY

Comparison of revenues, expenses, and net water-line operating income—Alaskan service

	1941	1940	Increases or decreases
Water-line operations—revenues:			
Freight	$6,801,888	$4,500,027	$2,301,861
Passenger	3,880,125	2,771,432	1,108,693
Mail	370,732	273,830	96,902
Express	63,214	41,556	21,658
Excess baggage	7,852	4,839	3,013
Bar and radio	92,265	61,093	31,172
Rents of buildings and other property	1,029	1,300	[1] 271
Wharfage and miscellaneous	249,460	191,888	57,572
Total	11,466,565	7,845,965	3,620,600
Water-line operations—expenses:			
Maintenance of equipment	1,372,510	1,120,531	251,979
Maintenance of terminals	52,677	17,384	35,293
Traffic expenses	228,018	222,608	5,410
Transportation expenses:			
Operation of vessels	4,329,033	3,152,585	1,176,448
Operation of terminals	2,050,549	1,311,128	739,421
Incidental transportation expenses	128,198	295,163	[1] *166,965*
General expenses	904,749	715,168	189,581
Charter hire	114,837	129,768	[1] 14,931
	9,180,571	6,964,335	2,216,236
Less charter expenses	123,843	152,224	28,381
Total	9,056,728	6,812,111	2,244,617
Net water-line operating revenue	2,409,837	1,033,854	1,375,983
Water-line tax accruals	1,499,935	429,500	1,070,435
Water-line operating income	909,902	604,354	305,548
Miscellaneous rents	64,774	56,201	8,573
Net water-line operating income—Alaskan Service [2]	845,128	548,153	296,975

[1] Decrease.

[2] The total net income from all operations is made up as follows:

	1941	*1940*
Net water-line operating income—Alaska operations	$845,128	$548,153
Dividend income	300	15,225
Income from securities	4,900	400
Net revenue charter hire	124,214	96,668
Miscellaneous	2,945	86,836
Total	977,487	747,282
Deductions:		
Income and excess profits taxes allocated to charter operations	67,523	....
Interest on unfunded debt	58,116	3,260
Miscellaneous fixed charges	19,503	27,407
Net loss on miscellaneous property	9,316	....
Total deductions	154,458	30,667
Total net income	823,029	716,615

Appendix 2

NORTHLAND TRANSPORTATION CO.

Comparison of revenues, expenses, and net water-line operating income—Alaska service

	1941	1940	Change from 1940
Number of voyage terminations	72	63	9
Nautical miles traveled	153, 573	147, 593	5, 980
Number of voyage days	1, 144	953	201
Number of passengers carried	17, 644	12, 428	5, 216
Revenue tons cargo carried	139, 598	89, 423	50, 175
Operating revenue:			
Freight	$1, 164, 353. 90	$756, 989. 75	$407, 364. 15
Passenger	584, 792. 65	454, 836. 07	129, 956. 58
Mail	9, 743. 68	6, 236. 25	3, 507. 43
Other voyage revenue	24, 679. 81	29, 188. 77	[1] *4, 508. 96*
Total operating revenue	1, 783, 570. 04	1, 247, 250. 84	536, 319. 20
Operating expense:			
Vessel expense	912, 646. 34	705, 189. 86	207, 456. 48
Voyage expense	340, 097. 54	221, 002. 03	119, 095. 51
Total vessel operating expense	1, 252, 743. 88	926, 191. 89	326, 551. 99
Direct profit—vessel operations	530, 826. 16	321, 058. 95	209. 767. 21
Inactive vessel expense	21, 748. 67	36, 199. 57	[1] *14, 450. 90*
Depreciation	78, 482. 40	77, 504. 08	978. 32
Administrative and general expense and taxes except Federal income tax	202, 201. 13	138, 289. 42	63, 911. 71
Other deductions or other income, net	1, 652. 93	73. 15	1, 579. 78
Total other expenses	304, 085. 13	252, 066. 22	52, 018. 91
Gross profit—Alaskan operations	226, 741. 03	68, 992. 73	157, 748. 30
Federal income tax—estimated	129, 241. 27	14, 770. 55	114, 470. 72
Net water-line operating income—Alaskan operations [2]	[3] 97, 499. 76	54, 222. 18	43, 277. 58

[1] Decrease.
[2] Net Alaskan income has been increased hy $2,965 representing the elemination from other deductions of interest paid during 1941.
[3] The reported net profit from all operations in 1941 was $261,681.89, made up as follows:

Net profit from intercoastal operations	$6, 289. 67
Net profit from charter operations	122, 863. 75
Net profit from foreign operations	36, 502. 91
Net profit from Alaska dock operations	1, 490. 80
Net profit from Alaska operations	94, 534. 76
Total per income statement	261, 681. 89

APPENDIX 3

ALASKA TRANSPORTATION COMPANY

Comparison of revenues, expenses, and net water-line operating profit (deficit)—Alaska service

	1941	1940
Vessel Operations:		
Revenue	$617,918.00	$394,295.00
Expenses—Including depreciation	584,837.00	456,424.00
Profit (or loss) vessel operations	33,081.00	[1] *62,129.00*
Charter Revenue—Net	19,115.00	
Total	52,196.00	[1] *62,129.00*
Administrative and other expenses	46,943.00	34,084.00
Net water-line operating profit	5,253.00	[1] *96,213.00*

[1] Loss.

Appendix 4

ALASKA STEAMSHIP COMPANY

Summary of war risk costs, including voyage delay costs, of 12 voyages completed in December 1941 and January 1942, and the relationship of those costs to the voyage freight and passenger revenue—based on exhibits in docket No. 611

Exhibit	Vessel	Voyage	Freight and passenger revenues	War risk costs, including voyage delays [1]	Percentage war risk costs are of revenue
A	Alaska	328	$35,416	$36,346	102.63
B	Baranof	91	64,283	33,965	52.84
C	do	92	67,102	52,443	78.15
D	Columbia	46	39,144	31,735	81.07
E	do	47	36,192	24,110	66.62
F	Denali	47	38,443	22,951	59.70
G	Mount McKinley	83	63,893	32,836	51.39
H	do	84	78,506	33,014	42.05
I	Oduna	99	37,360	21,273	56.94
J	Victoria	265	51,211	24,548	47.93
K	Yukon	304	68,682	37,679	54.86
L	do	305	63,797	37,679	59.06
Totals and weighted average			644,029	[1] 388,579	60.34

[1] Does not include war risk P. & I. insurance and internment insurance items shown in the exhibits in the total amount of $41,913. These risks were not carried and did not retroactively affect these voyages.

Appendix 5

NORTHLAND TRANSPORTATION COMPANY

Summary of war risk costs, including voyage delay costs, of 7 voyages in December 1941 and January 1942 and the relationship of those costs to the voyage freight and passenger revenue—based on exhibits in docket No. 611 and application of maximum currently approved war-risk rates

	Freight and passenger revenue	War-risk costs including crew bonus[1]		War-risk costs excluding crew bonus	
		Amount	Percent o revenue	Amount	Percent of revenue
S. S. *Northland:*					
Voyage 291	$9,571	$4,979	52.02	$3,932	41.08
292	20,337	5,024	24.70	3,977	19.55
293	21,712	4,913	22.63	3,861	17.78
294	28,358	4,035	14.23	3,146	11.09
S. S. *North Sea:*					
Voyage 130	23,126	10,990	47.52	9,427	40.76
131	29,260	9,010	30.79	7,286	24.90
132	28,294	9,692	34.25	7,707	27.24
Totals and weighted averages	160,658	48,643	30.28	39,336	24.48
Totals and weighted averages, if *Northland* voyage 291 and S. S. *North Sea* voyage 130, both of which covered the period in which Dec. 7, 1941, fell, be excluded as not fairly representative	127,961	32,674	25.53	25,977	20.30

[1] Insurance values are based on our General Order No. 53, and insurance rates on the War Shipping Administration's Rate Bulletin H-1.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 31st day of March A. D. 1942

No. 571

ALASKAN RATES

No. 572

ALASKA RATE INVESTIGATION NO 2

No. 611

SURCHARGE—ALASKA TRADE

These cases having been 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 conclusions and decision thereof, which report is hereby referred to and made a part hereof;

It is ordered, That respondents Alaska Steamship Company and Northland Transportation Company be, and they are hereby, notified and required to file with the Commission in the manner prescribed by section 2 of the Intercoastal Shipping Act, 1933, on or before May 1, 1942, schedules effecting reductions in their basic rates and fares in conformity with finding No. 3 herein;

It is further ordered, That respondent Alaska Steamship Company be, and it is hereby notified and required to cease and desist, on or before April 6, 1942, and thereafter to abstain from publishing, demanding, or collecting for the transportation of any property whatsoever shipped by or for the account of the Navy Department or Siems-Drake Puget Sound Company, rates which are less than those named in its duly published and filed tariff schedules;

It is further ordered, That respondents Alaska Steamship Company, Alaska Transportation Company, and Northland Transportation Company be, and they are hereby required to cease and desist, on or before April 6, 1942, from publishing, demanding, or collecting a surcharge in excess of 20 percent of existing freight rates and passenger fares for transportation between ports in the State of Washington and ports in Southeastern Alaska, and between ports in Southeastern Alaska;

It is further ordered, That respondents Alaska Steamship Company, Alaska Transportation Company, and Northland Transportation Company, be, and they are hereby, required to furnish the Commission not later than 30 days after the end of each calendar month the following statements showing the results of their respective operations for the preceding calendar month, beginning with the month of March 1942:

Detailed statement of operating revenues, operating expenses, and other income items, with balance transferred to profit and loss;

Detailed statement of revenues and expenses of individual voyages included in the accounts for the month, segregated to show separately the revenues and expenses applicable to southeastern Alaska and to southwestern Alaska and other areas, including data showing the number of tons of cargo and passengers north-bound and south-bound, number of voyage days segregated between days at sea and days in port, and the number of days delay;

Summary of the above individual voyage statements.

Revenue resulting from the surcharge, and all individual items of extraordinary expenses on which the surcharge is based shall be separately shown in the above statements.

In addition to the above, information respecting the rates, valuations, and other pertinent data for each type of insurance or other such extraordinary expenses shall be reported.

By the Commission:

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

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

No. 614

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

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

No. 616

Rates and Practices of Maurice Benin (Shipping) Ltd. and Sigma Trading Corporation

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

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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[5] 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.

[5] 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.

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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,

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[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

No. 624

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

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

No. 573

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

v.

SEATRAIN LINES, INC., ET AL.

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

No. 625

WEIS-FRICKER MAHOGANY COMPANY

v.

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

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 wilfully 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

No. 628

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

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	160
	(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 tbat 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

No. 555

PRACTICES, ETC. OF SAN FRANCISCO BAY AREA TERMINALS

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.[3] 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.

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[3] 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.

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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.

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[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

No. 626

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

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

No. 633

LYKES BROS. STEAMSHIP CO., INC.

v.

FLORIDA EAST COAST CAR FERRY COMPANY, ET AL.

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 unreasonable 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.

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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 eliminated 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 (1)	Bulk cement (2)	Total (3)	Bulk cement (4)	Bulk cement (5)
Revenue	$64,476.99	$6,971.73	$220,584.95	$52,390.07	$29,680.90
Expenditures [1]	48,767.25	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 negotiations 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 promises 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 non-discriminatory—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.

No. 629

CONTRACT RATES—PORT OF REDWOOD CITY

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

No. 637

RUBBER DEVELOPMENT CORPORATION

v.

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

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 Osló.

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

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[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 definiton 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.

No. 635

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

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.[13] *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

[13] 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 considerahle 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 connection 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 between 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.

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[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 car-loaders, 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 averagea $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 Agreement 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

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[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.

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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;

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[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.

No. 651

CARLOADING AT SOUTHERN CALIFORNIA PORTS (AGREEMENT NO. 7576)

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 respondents 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.

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.

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 Castleman 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-percent 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 respondent'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, however, that passenger fares are now on a compensatory basis. Further more, as pointed out above, respondent is now competing for passenger business with Hawaiian Airlines, the fares of which carrier form a ceiling on surface passenger fares.

Respondent estimated a deficit of $220,010 under the proposed rates Counsel for the Commission presented estimates tending to indicate a profit, before taxes, of $234,434. The latter was predicated upon (1) the inclusion of revenue on the extra 40,000 tons estimated by OPA's witness and revenue on an additional 1,000 tons of automobiles and 1,500 head of cattle; (2) the reduction of the allowance for de preciation by approximately $120,000 through the use of a service life of 30 years for vessels instead of 20 years; and (3) the exclusion of an expense item of $12,000 representing donations.

Granting that respondent's estimates of post-war tonnage may be somewhat pessimistic, nevertheless we are not convinced that the estimate of 35,000 additional tons of unclassified cargo offered by OPA or the estimate of additional tonnage of automobiles and coffee have any probative value. Reducing counsel's estimated revenue of $2,417,512 by the revenue on the questioned tonnage leaves revenue of $2,164,312. Then, accepting counsel's estimate of expenses, in cluding his depreciation figure, but eliminating his costs attributable to the 37,000 tons eliminated herein, we have expenses of $2,151,423 leaving net income before taxes of $12,889. Deducting estimated Federal and Territorial income taxes, there remains a profit of $7,218 This estimated profit represents a return of less than one percent on counsel's rate base figure of $809,514.

Summing up, the proposed rates will yield a deficit of slightly less than $220,010 under respondent's estimates; and under the estimates used by Commission counsel, as revised above, there would be a profit of $7,218 or a return of less than one percent on his rate base. It is abundantly clear that the proposed rates, except as to wallboard and 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 first six months of its private operation under the new rates for our further 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 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 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.

No. 641

Increased Rates from, to, and within Alaska

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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[*Numbers in parentheses following citations indicate pages on which the particular subjects are considered*]

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-

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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 nonconference lines. Contracts have been entered into with shippers covering such a percentage of cargo that it is impossible for any steamship line not a 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

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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).

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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 jursidiction 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 (598–600).

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 agreemeuts 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).

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.

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